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Restorative justice in school mediation

“Justice in punishment, not severity, sanctifies the power of law”

Montesquieu

Introduction – Justice

Since the dawn of time people have shown a great need to be treated fairly, worthy and “according to merit”. Throughout various artifacts of the past, works of literature, monuments of culture and also science, history of mankind shows that man manifested a huge awareness in the field of justice and the need of reparation or compensation.

In different cultural circles it manifested itself in different ways. Ancient Christian “eye for an eye, tooth for a tooth”, Hammurabi’s Law, classic Vendetta or payment in gold were compensation for harm done.

The notion of justice itself has many meanings and they are used in different contexts, and its sense is extremely subjective. What is (or should be) fair may be dependent on the social norms applicable in a given culture, generally accepted principles of social co-existence, but also universal values. A. Lewicka-Zelent (2015) thinks that: “justice should be understood as a timeless value that is unlimited by cultural, gender and space-time barriers, etc. and that is largely associated with human behavior. The sense of justice, however, expresses the subjective feelings of a human being about it”. The special need of justice arises in a conflict or harm situation. Then, the implementation of justice involves a punishment that should be commensurate with guilt.

Retributive justice

The administration of justice along with the system of punishments from the tribal times evolved in parallel to the ages, adapting ever newer ideas, until the time when reconciliation became a value. However, it is very difficult to achieve and requires work and involvement of all parties of conflict. An additional difficulty on the way to it, is the demanding attitude and deep victimization. “Traditional reaction of society to the fact of committing a crime is to punish the perpetrator with the punishment that is proportional to the guilt and social harmfulness of the act. The need for punishment according to the assumptions of classical criminology results from the requirements of the principle of retrieval justice. However, for

several years in academic debates there has been a growing articulation of the need to use a differentiated remedial (retaliatory) method of reaction to crime, namely conciliation, which could result in the perpetrator remedying the crime" (Cieply, 2009). Implementation of retaliatory justice does not bring such positive effects in comparison with restorative justice, because, as mentioned earlier, the sense of justice is strongly dependent on subjective impressions. The penalty appointed arbitrarily, imposed, does not always bring relief to the harmed person. What is considered in restorative justice as "a punishment", should be a consequence of the agreement between the parties to mediation.

In situation, where perpetrator can independently draw conclusions and propose real solutions for implementation and acceptance, the educational process begins as well.

Restorative justice

The beginnings of restorative justice (RJ) go back to criminal law. However, it is currently used in various dimensions in many types of mediation. It is of the greatest importance in penal mediation, where relations between victim and perpetrator are particularly critical. This does not mean, however, that it is not important in the other types of mediation.

Retribution at school usually dominated over other restorative methods in terms of the victims, as well as the perpetrators. It is precisely on this canvas that restorative justice has found its application also in school mediations with particular emphasis on peer mediation. The reason for this is that the RJ is associated with morality, education, values and attitudes towards other people. It generates positive attitudes, thanks to which the perpetrator understands the act, assesses the degree of caused damage on the basis of the victim's report (and maximum positive interaction with him/her), and then works independently on compensation.

Writing the form of "payment" in the form of a settlement for the harm done is an important motivating, but also a controlling element, on the basis of which the consequences are obtained in the event of unjustified partial withdrawal or complete resignation from repair or compensation. It can be said that the RJ is a process by which a positive change in the way of thinking and acting takes place. This promotes building a sense of security and respect. "People involved in a conflict should not experience dehumanization from other people, but should trigger mutual trust and intensify cooperation" (Lewicka-Zelent, 2015). In the case of young people, who are often lost and are looking for corresponding values and attitudes, who are in a difficult situation related to the conflict, the idea of restorative justice can be used as a "training" of responsibility for their actions. "It is emphasized that the great advantage of the idea of restorative justice is the possibility of the victim actively participating in his/her own case, what is to help him/her out of the personal crisis caused by the crime" (Cieply, 2009). At the core of the RJ stands "seeking to remedy the wrongs or crimes committed. The essence of restorative justice programs and practices is involvement and cooperation of all persons in whose interest is solving a given problem" (2017: <http://www.mediacja.com/index.php/>

Sprawiedliwosa-naprawcza.html). A. Lewicka-Zelent (2015) defines RJ in a similar way: "The essence of restorative justice is the process of satisfaction, in which the harmed party can get a part of compensation in a financially-material (e.g. giving back someone else's property) or immaterial form (apologizing to someone, help in performing a certain act). Also, the side of conflict may commit to a particular behavior, work, study, treatment or therapy, or social work".

Mediators take actions to ensure that all participants in the dispute can concentrate on the feelings, needs and expectations of the harmed person, including the possibility of the perpetrator of the damage.

Applying the principle of restorative justice to students during mediation

In mediation, RJ may be independent initiative of the parties. The proposal for compensation and creation of solutions should be made voluntarily by the perpetrator, which makes that this principle can be considered as a creative and developing element of mediation. However, it should be remembered, that all "promises" connected with RJ have to be equally accepted by both sides of the conflict. In the case of teenagers, a mediator should pay special attention to the parties for possible consequences resulting from the implementation of the idea of restorative justice. What is more, looking through the prism of the whole process, the advantage of mediation is, above all, that it can lead to understanding by the underage the essence of evil, and that his behavior has caused a lot of suffering, loss, and even ruined life to someone very concrete. Harmed person – whereas – may find out why he/she became a victim, what motives guided the minors when choosing him/her as a subject of attack, which may weaken his/her fear and restore faith in people. The system's response to violations of criminal law will be more rational and at the same time understandable not only for the perpetrator and his social environment, but also for the aggrieved party and people in his circle. Undoubtedly, it has significant impact on the increase in the level of trust for the system, and also – what is very important – has an educational value (Bieńkowska, 2011).

Describing advantages and disadvantages of restorative justice in school practice, the following advantages and disadvantages may be indicated:

I) advantages

1. Learning the responsibility for decisions and actions.
2. Focusing on the other person (victim).
3. Independent compensation.
4. Help the victim out of the crisis.
5. Prevention of future undesirable behavior (and/or conflicts).
6. Focus on the problem, needs, feelings and interests, not on the punishment itself.
7. Emphasizing the parties' initiative.

II) disadvantages

8. Strong connotations with criminal law.
9. Terminology related to the identification of a conflict with a crime.
10. Frequent involuntary stigmatization "victim", "perpetrator".

In addition to many pluses, there were some remarkable remarks in minus. First of all – historical-mediational feature of restorative justice, which is connected with criminal law. From this comes another negative premise, which in criminology connects with the phenomenon of victimization. “pigeonholing”, classifying is a human reflex, which may be very harmful not only for a perpetrator, but also for a victim. Another disadvantage turns out to be terminology. In mediations, it is common to understand two concepts – crime and conflict – in the same way. “However, it seems that identifying a crime with the concept of “conflict” in a signaled context is a fundamental mistake” (Cieply, 2009).

Although, despite individual remarks, the application of the idea or the principle of restorative justice in school mediation can – potentially – bring more good than evil, the more so that terminological problems are less important for young people. In the conciliation process their personal feelings, needs and interests are much more valuable for them.

Before the idea of restorative justice “hit the roofs” of Polish schools, many undertakings were organized to promote it in the mediation, court and educational environment, according to the assumption “first education”. Following this, in 2002, one of the largest campaigns promoting both mediation and restorative justice was organized. Coordinator of the campaign were members of Polish Mediation Centre. As part of it, a competition “I solve disputes without violence, or what I know about restorative justice in Poland” was prepared. “The competition was also intended to counter violence at school. It was run in 12 Polish middle schools. 3500 people (students, parents and teachers) took part in the competition took part 3500. The first stage of the competition was directed to parents and teachers. During meetings in this group, organizers talked about how conflicts can be solved without violence, what restorative justice is and what is the difference between restorative justice and retributive justice. At that time, children wrote an essay on a personally experienced or imagined conflict. The second stage of the competition (preceded by training on communication without violence, active listening, forms of resolving conflicts, mediation – its principles and benefits), children resolved the test and prepared visual works illustrating the benefits mediation can bring. At the end students answered the question: “What can I do to reduce mental and physical violence in my school?”. Many children taking part in the competition postulated that a permanent mediator should be employed at their school. They noticed that in school conflicts are usually resolved in a forceful manner (Staszewska, 2002).

Since then, the “mediator at school” is a very common postulate, but so far, the right measures at school have not yet received adequate legal and financial support from legislators.

Restorative justice conferences as a form of social mediation at school

“Simple”, but also one of many ways to achieve restorative justice at school are so-called restorative justice conferences (RJC). Over the years since their introduction in Poland, as a form of solving conflicts and other difficult situations, they have evolved greatly by generating different types/styles of organization. Since

2005¹, restorative justice conferences gain more and more recognition above all among social workers (Grudziewska, 2015), social pedagogues and teachers, mainly because of efficiency, speed and quality of undertaken activities. It is worth to refer to three types of education in the situation of interpersonal conflict. These types include two basic paradigms: behavioral and humanistic (Olubiński, 2015). These types are:

1. Conflict-destructive education – “stick”.
2. Collision-free education – “carrot” (otherwise static-conservative).
3. Conflict-constructive education, so-called dialogue (subject-emancipation).

Restorative justice conferences are included in the idea of dialogical education, which is why in the conciliation process they constitute a special form of striving for satisfaction and reconciliation. Anyone, who can influence a positive solution of a difficult situation, can offer real help and those who have appropriate legal means to help, can be invited to a conference. In RJC those should also be attended by people, who are every day responsible for education of a minor. They can therefore be:

- a) parents or legal guardian,
- b) relatives taking part in education, e.g. grandparents or adult siblings,
- c) pedagogue/psychologist,
- d) teachers,
- e) social worker,
- f) family assistant,
- g) schools superintendent,
- h) neighbors or other close people.

The meeting is led by a moderator/mediator (an impartial neutral person in a dispute), who, above all, cares for the order of meetings, equality of parties and is a clarifier of solutions. He/She is responsible for building the climate, atmosphere of trust and safety. During the meeting, participants agree on solutions and a restorative action plan. Any proposed actions should correspond to the SMART principle. In restorative conferences, the most important are a process of drawing conclusions that are important both from the perspective of the perpetrator and of the victim, and also the stage of implementation of the provisions of the settlement in the process of satisfaction. Restorative justice conferences² are organized when the problem that we should deal with is coupled – it affects many aspects of a child’s life and it is necessary to involve other institutions to help.

Another way to achieve restorative justice are mediations. In this context there is the possibility of, without including a third party, finding a way to joint activities, that bring the parties closer together, which in the future may prevent re-conflict between them. Here appears also the thread about situations, when there was damage to property (e.g. student’s items), which would result in costs of repair or repurchase.

¹ This year, mediations have been entered into civil law as an alternative, out-of-court dispute resolution method, definitely going beyond the area of criminal law. First restorative justice conferences in Poland were tested by members of Polish Mediation Centre.

² We are only talking about a certain dimension of the restorative justice conference regarding the school environment. They have many more varieties and uses.

Then, parents are also invited to mediations, and the form of compensation is discussed – mediated also with their participation.

Another model of realization of restorative justice at school which is noteworthy is the so-called Method of Shared Concern, which is most clearly described by E. Czerniowska-Koruba. “The Method of Shared Concern was developed by Anatol Pikas, a Swedish psychologist from the Department of Education at the University of Uppsala. It is particularly recommended in situations where a group of students is using violence against one or several colleagues. The Method of Shared Concern focuses on finding a solution to the problem; it does not explain the details of the situation of violence, it does not deal with the investigation of the truth or fixing the guilty party, nor does it assume the creation of friendly relations between the students. Its purpose is to put in practice basic rules allowing students to stay in the same school – without harming others” (Czerniowska-Koruba, 2017).

Conflict – educational situation

When organizing restorative justice conferences, it should be kept in mind, that conflict does not have to be destructive, just the opposite. Well managed, it can become an ideal educational situation. Considering the scientific discourse, which in its essence is a substantive conflict of arguments, it could be said that conflicts are natural situations, which everybody meets in life. In order to implement the principle of restorative justice at school, the mediator should therefore remember the positive functions of the conflict and not focus on its negative aspects. This is a condition that support building a sense of justice among the parties.

Analyzing the positive functions of the conflict, we can distinguish the following:

- motivational functions – conflict at school leads to action, reduces stagnation, makes you solve problems,
- innovative functions – conflict at school forces managers to search for alternative solutions, beneficial to more than one party (...), forces to better define the views on a given topic,
- information functions – conflicts help to get to know new facts, aspects of problems not previously noticed by the parties, correctly solved they can improve vertical and horizontal communication, they also increase interest and lead to self-discovery of the group,
- exploratory functions – thanks to a conflict, the management and superiors can take into account all the assumptions hidden so far, data giving rise to doubts and other facts pertaining to the matter and the whole functioning of the school (Błachnio, 2015).

For restorative justice to be of an educational nature, to become a value in the mediation process, the student must be faced with a conflict situation or other difficult situation, such as with a task to be solved. Therefore, the mediator will be re-evaluating the conflict in the developmental and problem situation. Such a necessity before mediator or teacher puts not only the desire to bring reconciliation but also dynamic changes taking place both in society and in the education system. “If a student at school has to learn how to learn, he is to be put in new, problematic

situations for him, demanding to get the information and use it to solve the problem, and thus acquire the appropriate skills and attitude. Therefore, the education process requires reversing the order, first the student has a problem situation and is looking for information to solve it, and does not absorb information that later may be useful for solving problems" (Zimny, 2015).

Striving to implement restorative justice at school can be used as part of democratic education. Conflict situations allow to shape different types of attitudes "from anti-creative and submissive, through destructive-aggressive to creative-emancipation. (...) What kind of attitude will eventually be shaped in a conflict situation depends on its type and dynamics as well, and the level of pedagogical awareness of people, groups or communities in which such situations take place" (Olubiński, 2015). These attitudes directly translate into social relations and the expressed views. By creating a worldview discourse at school, students are brought up *de facto* in a conflictual (problematic) situation and learn to argue their choices. An important aspect in a mediation process is initiative and creativity of conflicting parties. Usually it is reflected in the efforts of the parties to independently create solutions and individual conditions for a settlement that can be implemented. Thanks to the involvement of both parties (students) in solving the conflict, special attention is paid to positive and creative solutions that are much more valuable than those which, as in the case of ordinary punishment, are imposed, often inadequate to the needs of the victim and real in relation to the possibility of the perpetrator. "Individually solving the conflict, through discussion and communication is equally important for teachers who can benefit from the creative imagination of young people and its specific ideas" (List Rzecznika Praw Dziecka, 2011). School is special place for building interpersonal relations. Relationships from school often last and they connect people for a long time after completing formal education. Therefore, conciliatory solution of conflicts, learning dialogue rather than aggressive way of dealing with difficult situations should be organized with the effects on the future in mind – how young people will someday manage in relationships with loved ones, at work, in different situations and social contexts. This is emphasized, among others, by Cz. Banach who writes: "The tasks of education in the field of human functioning should be considered in its relations to society, people, work and culture" (Banach, 2007).

Education for justice

Using conflict as a learning situation is not only appropriate for building social relations in the classroom, at school, and later in family and the workplace. Striving for justice in a conflict situation, not retaliation but reconstruction, supports a balanced social development of the individual and is an important element of peace building in the future. Mediations, arbitration, restorative justice conferences or another alternative methods of solving conflicts are conducted with respect for human rights, the right to follow people's own internalized values in life, expressing views consistent with people's own conscience and experiencing emotions in an atmosphere of security, which gives space to the parties to

express their emotions and feelings and what could be related to the development of the conflict. Therefore, mediations and restorative justice conferences are methods which support education for justice. "Education for justice is educating in the conviction that human rights are connected with his duties and even they result from them. The right to life results from the duty to protect it, the right to property from the duty of own development, the right to freedom of speech from the duty to care for the truth. Therefore, in order to teach people how to respect human rights, it is first and foremost important to show the duties that lie at the root of them. These rights, separated from the duties that guarantee them, can become something that develops exasperate individualism, breaks down society and destroys the common good" (2017: <https://dzielodlapokoju.wordpress.com/wychowanie-do-pokoju/wychowanie-do-sprawiedliwosci/>). Restorative justice is realized by setting a clear course of action, a way of repairing the harm done, and thus by taking on a responsibility, a duty by the perpetrator (e.g. I will help with homework in mathematics, I will clear the written walls, I will take an active part in the charity campaign for the animal shelter, etc.). Certain obligations may also be assumed by the victim (e.g. I will not be more accosted, I will support a colleague in the organization of a charity event, etc.). Education for justice is a long process, but it has a guarantee of peace for the future.

Summary

The idea of restorative justice has much wider application than its original meaning. Although its purpose is to improve the situation in a satisfactory way, striving to get the improvement in the difficult situation can be developing and much more efficient than a straightforward punishment.

As in the literature on the subject, in the studies and relations of mediators known from their own professional practice, restorative justice aroused many emotions. This is an interesting, but also difficult subject, because of the connotations with criminal matters from which the idea of restorative justice has started its life. Many mediators adapt it according to the environmental conditions and the type of affairs they deal with, present this idea with delight in various articles, others keep distance and caution.

Important from the point of view of upbringing, the advantages of mediation are noticed by the Ombudsman for Children who writes: "in mediation young person has the opportunity to learn the constructive thinking about the dispute and respect for the other person, as well as tolerance, i.e. openness to the views of others. Thanks to mediation, the child learns the necessity of recognizing and understanding the existing situation – which is very important – from the perspective of the other party" (List Rzecznika Praw Dziecka, 2011).

However, it should be remembered that restorative justice is not something that is given, but it must be constantly pursued. It is difficult to achieve and unfortunately not always possible, but it should be combined with the system of punishing and rewarding as well. "(...) restorative justice assumes cooperation of the perpetrator, which – as you know – is not always possible. If there is no reconciliation and

compensation for damage, it may be necessary to apply other consequences to the perpetrator. Therefore, in an effective school system, the restorative approach will be integrated with the disciplinary response to breaking school norms and students should know that they have a choice between being subjected to disciplinary sanctions and taking responsibility for their behavior and satisfaction" (Czerniowska-Koruba, 2017). The teacher, the educator, and the mediator should make every effort not to cease in the effort to achieve restorative justice, because it is obvious that "punishment alone is not enough to improve a man"³. Sometimes the way he must go to get reconciliation and regain his own honor is much more important.

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³ Polish saying

Restorative justice in school mediation

Abstract

The article presents the importance of restorative justice in school mediation. Corrective justice appears to be an educational model that can be used in conflict situations. It allows on the one hand to give the victim a sense of security, and on the other – the perpetrator is not just a passive recipient of punishment imposed by a teacher, educator, teacher, but he takes an active part in repairing damage and compensation. The article contains the answer to the key questions regarding retributive justice and corrective justice.

Key words: mediation, education, justice, retribution, victimization, compensation

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