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## RESTORATIVE JUSTICE: THE COMPARATIVE REVIEW OF SERBIA, TURKEY AND GERMANY

**Abstract.** Extensive data illustrate that instances of violence, including bias-related violence and disciplinary problems in schools around the country, are severely interfering with the learning environment of students. In 2018 the number of juveniles was 5102 according to the children's ombudsman Saule Aytpayeva. Three thousand one hundred fifty-six minors committed serious and most serious crimes. The rising incidence of violence in the schools has led numerous school districts to implement a wide range of costly safety measures from purchasing metal detectors to hiring full-time police officers. Although such measures may limit violent acts in the schools, they do not attack the causes of violence and often serve only to move the violence elsewhere in the community. There is a growing, common-sense consensus that the best way to handle violence in the schools and prevent its spread throughout the community is to defuse disputes before they turn violent. The rush toward conflict resolution in the schools is mirrored in society at large by a move away from the traditional litigation model of problem solving in the courts. Alternative Dispute Resolution (ADR) efforts, including court-based mediation programs, are expanding throughout the justice system. Mediation as a method is a part of the concept "Restorative Justice." Recovery approach to justice means involvement and support of all straight lines and indirect participants of an illegal act, including criminals, the victims and a more extensive range of persons from among their relatives and relatives. In our study we compare three different RJ/VOM systems in Serbia, Turkey and Germany.

**Keywords:** mediation, school, parties, ADR, restorative justice.

### Introduction

According to UNICEF (Saliyeva, 2019), about 75% of adults support physical punishments to control the behavior of children in the family, and 67% of parents use violent forms in children's upbringing. The study (Sahova, 2019) showed that nearly one-third of children of one-year-old children faced some forms of abusive behavior. In general, across Kazakhstan, 62-79% of children suffer from violence in the family, most often from parents and trustees.

In an attempt to change the settled social norms of UNICEF conducts communication campaigns in many regions of Kazakhstan. Recently Unicef announced a new campaign "The positive parenthood."

According to Elzhas Ertayuly (Mustaphina, 2019), the main reasons for adolescent's violent behavior is the distance between parents and kids, when adults do not want to spend time with their children. That is why teenagers prefer to spend all their time in virtual reality with their smartphones and computer games.

The deputy of Mazhilis Irina Smirnova made a deputy inquiry to the prime minister where she suggested to find reserves and to increase the availability of mass sport and physical culture for kids. In her interview with Time.kz she mentioned that problems with violence among teenagers are the result of the lack in moral education. The responsibility of child spiritual and mental development is part of school and parents duties where they should work together (Akulova, 2019).

Svetlana Bogatyreva is the founder of "Teens" NGO which works in suicide prevention area. According to Bogatyreva (2018), the fights between teenagers are ferocious, and aggression which thus arises is often causeless and has no borders. The school in many aspects lost educational functions which

were assigned to it earlier. Therefore now it is necessary to develop the general document, a particular protocol of actions, accurate algorithm, and leaning on which it will be possible to work. Bogatyreva created a Facebook group "Stop Bullying" where parents and kids could get some recommendations if they faced bullying.

In 2018 the number of juveniles was 5102 according to the children's ombudsman Saule Aytpayeva. Three thousand one hundred fifty-six minors committed serious and most serious crimes. In comparison with 2017 growth of the crimes committed by minors in Atyrau - for 39,6 percent, by Almaty - for 33,5 percent, in Kyzylorda, Mangistau and Astana - for 18 percent, Akmola and Aktyube - for 11 percent, Turkestan - for 7,8 percent (committee on legal statistics and the special accounting of the State Office of Public Prosecutor) is observed.

Among school students at the age of 13-15 years daily smoke 14,8 percent, 18,1 percent of teenagers of 12-15 years, 15-17 years - 37 percent consume alcohol. About 90 percent of youth do not know or do not understand the detrimental consequences of drug addiction, smoking, and alcohol intake (children's ombudsman S. Aytpayeva).

The rising incidence of violence in the schools has led numerous school districts to implement a wide range of costly safety measures from purchasing metal detectors to hiring full-time police officers. Although such measures may limit violent acts in the schools, they do not attack the causes of violence and often serve only to move the violence elsewhere in the community. There is a growing, common-sense consensus that the best way to handle violence in the schools and prevent its spread throughout the community is to defuse disputes before they turn violent.

### **Problem Statement**

"School mediation" is a completely new concept for many. Moreover, we have no wonder. One of the possible explanations of this fact is the birth in Post-Soviet country. School mediation is in Europe and America works for more than two decades. Moreover, in Germany, the idea of the mediation value is so high that graduates of some schools, along with a certificate, can receive a "mediator diploma," promising them in the future quite definite career preferences. Such a diploma is a signal to the employer that there is a person in front of him who has a whole set of special social communication skills - "conflict competence," and therefore he stands head above other applicants for the position.

The school is a part of society, and conflict character is multidirectional: between pupils, between teachers and pupils, between teachers and parents. Moreover, these conflicts sometimes happen very rigid and are fraught with traumatic consequences for all parties. The first attempts of mediation application at school were made in the early eighties in the USA. Since then this method in these or those forms is used rather widely in educational space in many countries of the world. Let's remind; mediation is the method of settlement of disputes ranked a group of alternative methods of settlement of disputes. Thus mediation differs from all other methods of settlement of disputes radically – both traditional and alternative. In mediation the third party – a mediator – is not authorized and has no right to pass decisions on the dispute and, moreover, has to abstain from the offer of options of a resolution of conflict.

Mediation is a method which evaluates the person's respect, voluntary participation, and will, freedom of development and the decision-making process — the mediation based on the possibility of protection and satisfaction of the parties interests on condition of providing the equal rights to all parties of the dispute. Mediation is the meeting face to face the victims of the crime and the person who committed a crime organized in the presence of specially trained mediator (intermediary). Mediation as a method is a part of the concept "Restorative Justice." Tony Marshall offered often quoted and still actively used the definition of recovery justice in 1999: "RJ is a process utilizing which the parties involved in concrete crime in common decide how to cope with its serious consequences in the present and the future."

Restorative justice is based on the desire to cure the relations damaged as a result of illegal acts. At the same time, the emphasis is placed on the damage caused to the victim and her requirements, but not on the offender.

Restorative justice is a fast-growing state, national, and international social movement and set of practices that aim to redirect society's retributive response to crime. It attends to the broken relationships between three players: the offender, the victim, and the community. Accordingly, restorative justice seeks to elevate the role of crime victims and community members; hold offenders directly accountable to the

people they have harmed; and restore, to the extent possible, the emotional and material losses of victims by providing a range of opportunities for dialogue, negotiation, and problem solving. Moreover it views criminal acts more comprehensively than our judicial system because it recognizes how offenders harm victims, communities, and even themselves by their actions (Figure 1).

### Types and Degrees of Restorative Justice Practice

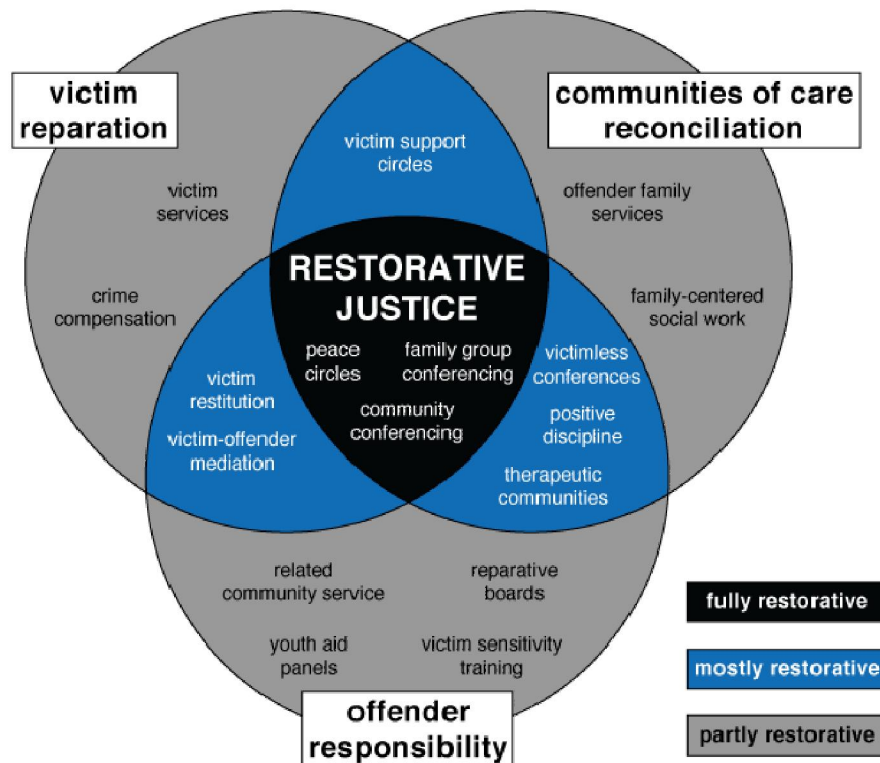


Figure 1 - RJ Practice

The ultimate aim of restorative justice is one of healing. If survivors of crimes receive appropriate emotional and material reparation, the harm can be redressed; by seeking to repair the damage caused, the offender can be reconciled with the victim and reintegrated back into his or her social and familial networks; and through such reconciliation and reintegration, community harmony has a chance to be restored. This manner of healing gives the actual victims and the community, as well as the offenders, the opportunity to take an active part in the justice process instead of a traditionally passive role.

Restorative justice is a young field that emerged during the 1970s as alternative approaches to the court process, such as alternative dispute resolution, were becoming a national trend. It emerged alongside the victims' rights movement, which argued for greater involvement of crime victims in the criminal justice process, as well as for the use of restitution as compensation for losses. Although many of the values, principles, and practices of restorative justice hearken back to indigenous cultures, a 1974 case in Kitchener, Ontario, is considered the beginning point of today's restorative justice movement. This "Kitchener experiment" required two teenagers to meet with and pay restitution to every one of the twenty-two people whose property they had vandalized.

From the late 1970s to the early 1980s, a number of experimental programs, modeled after the Kitchener program, were initiated in several jurisdictions in North America and Europe. These initiatives, however, remained small in size and number, having little impact on the larger system.

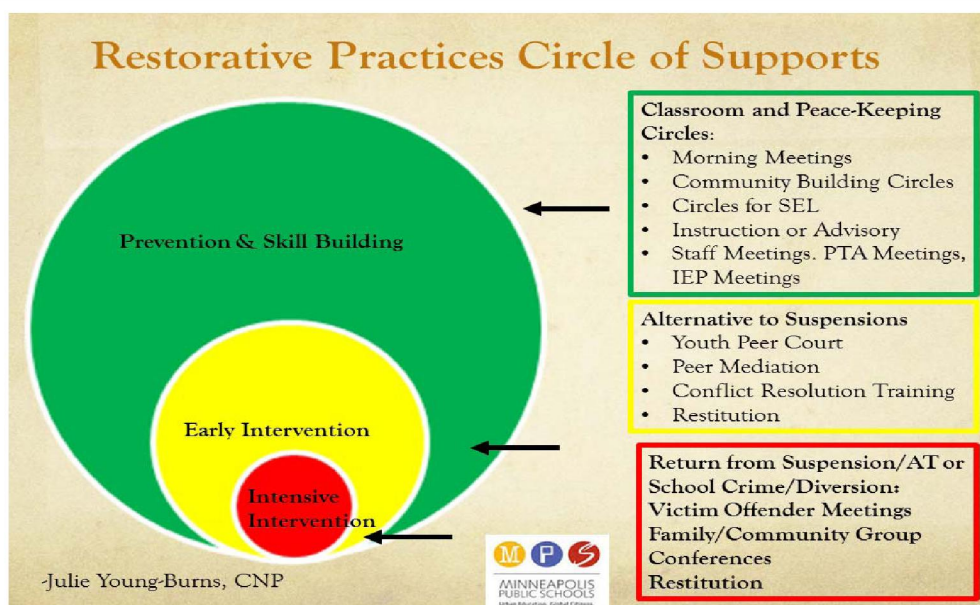


Figure 2 - Restorative Approach in Education and Justice

Today, thirty states either have restorative justice principles in their mission statements and policy plans or legislation promoting a more balanced and restorative juvenile justice system. This institutionalization is further buttressed by the American Bar Association, which began offering grants in 2008 to develop restorative justice initiatives in criminal law settings.

### Results of Study

Recovery approach to justice means involvement and support of all straight lines and indirect participants of an illegal act, including criminals, the victims and a more extensive range of persons from among their relatives and relatives. Thus, answers to four key questions are the focus of attention of the recovery approach:

- Who was suffered? What was a reason for damage?
- What are their requirements?
- What is necessary to indemnify the caused loss (to improve a situation as far as it is possible?) and
- Who bears responsibility or an obligation for participation in the correction of a situation?

During our study, we analyze different approaches to Restorative Justice in three European Countries. The first country was a Germany where VOM has a long history. Serbia integrated to Restorative Concept recently and made significant progress.

Restorative justice is an alternate method of disciplining students that seeks to balance the process between being too permissive and being too punitive. The goal of restorative justice is to work with students (the victims and the accused) to come to a solution rather than simply handing down punishment. Restorative justice seeks to fix the problem, impose fair punishment, foster understanding, and adjust student behavior.

The current generation of schoolchildren has a high level of conflict, as evidenced by numerous studies of teachers and psychologists. However, conflicts in the adolescent environment pose a great danger. Solving conflict situations, children show aggression, confrontation, illegal actions. All this develops into redistribution and the conquest of power and status, the struggle for their place in the team and the desire to act with impunity, become a way of self-affirmation. At the same time, conflicts are a kind of business for some adolescents who provoke the shooters, video them and blackmail them, and even organize bets on the participants of the fight, in the modern school environment this is called bullying or school prosecution. Psychologists are unanimous that conflicts of this period and their resolution or non-resolution have a significant impact on the formation of a personality and its socialization.

Table 1 - The Restorative Justice in Germany, Serbia and Turkey

Country	Germany	Serbia	Turkey
Legal Document	Communication on Crime Victims in the European Union: Reflections on Standards and Action Recommendation No. R (99)19 of the Council of Europe Concerning Mediation in Penal Matters Youth Courts Law (Jugendgerichtsgesetz) (JGG)	Law on Mediation and Dispute Resolution („Official Gazette of RS no 55/2014) National Judicial Reform Strategy 2013-2018	Mediation Legislation, Law 6325, in 2013. The Law on Initiating Proceedings Against Monetary Receivables Arising Out of Subscription Agreements (“ <b>Law no 7155</b> ”) in the Official Gazette on 19 December 2018.
Support	Juvenile Court	All Basic, Higher and Commercial courts will establish Info-service with the goal to support alternative dispute resolutions methods within court (hereinafter “Infoservice to support ADR”) and to provide notification of the ADR possibilities.	National Judiciary Information System (“UYAP”)
Age of Criminal Liability	14	14	13
Applicability	Centered around bodily injury, criminal damage, insults, offences against personal freedom, property and asset related crimes and also robbery.	Violent behavior, fighting,	Limited crimes, crimes prosecutable upon a complaint by victim (e.g. insult, bodily) harm, and some other listed crimes including threat, theft and fraud of medium seriousness (no robbery or blackmailing)
Content of process	focusing on hearing the victim	focusing on hearing the victim	focusing on restitution of damages
CRC	Accepted	Accepted	Accepted

Meanwhile, practice shows that interpersonal interaction in conflict situations causes difficulties for adolescents; destructive tendencies prevail in their relationships. Often, instead of analyzing the problem and finding the best ways to solve it, a teenager tries to influence the object of contradiction intensively and produces actions that lead to an escalation of the conflict. It is primarily due to the lack of communicative and social competence of adolescents.

"The reconciliation service is a new technology for solving conflict situations in school with the involvement of child mediators." It creates conditions for “not punitive, but the constructive resolution of conflicts.” "This is a form of socio-psychological assistance to all participants of the educational process in conflicts, difficult life situations, cases of student offenses."

Creating such a model can help not only in the prevention and correction of students' deviant behavior but also in creating a favorable psychological climate for an educational organization. "It is the school mediation that today can competently help in resolving national and other sociocultural conflicts with the help of an independent mediator - the school mediator."

According to Kononov, school mediation services and School services of reconciliation have major differences (Table 2).

Table 2 - Comparative analysis of two major types of Mediation in Russia

	SCHOOL SERVICE MEDIATION	SCHOOL SERVICES OF RECONCILIATION
Model of Mediation	ADR	Restorative Mediation
Basic Idea	The western theories of conflicts.	Russian product on base restoration justice.
Programms	✓ Mediation	✓ Reconciliation program ✓ Harm reduction program ✓ Preventive recovery programs ✓ Community circle ✓ School conference ✓ Family conference (in territorial reconciliation services).
Start in Russia	2005	December 2001
Mediator Positions	Voluntariness, openness, confidentiality, trust, respect, impartiality, equality of all parties; impartiality and independence of a mediator.	Equally supports the parties in realization of the restoration principles: victim healing, harm reduction, restoration of a constructive parental position, termination of hostility, restoration of ability to understanding and others.
Type of Situation	✓ Conflict	✓ Conflict between peers. ✓ Conflict between parents and teachers. ✓ Bullying ✓ Juveniles' Crime

### Conclusions

In school, restorative justice look more like cooperative discussions, and less like the traditional handing down of punishment we have known. Restorative justice in practice will include all involved parties discussing the incident in question. The victim will be given the opportunity to share their feelings, as will the accused. Restorative practices must provide equal time to each party as the primary goal is not punishment, but restoration. One way that restorative justice looks different from our more archaic forms of punishment is in the role of the teacher/administrator. Restorative practices use teachers/administrators as facilitators as opposed to the judge and jury. The facilitators' job is to ask opened ended questions in an effort to foster reflection, not lecture students on behavior. Questions like; what can you do to fix this? How would you feel if the same thing happened to you? And how did your behavior impact your fellow students?

The restorative justice discussion is by no means an alternative to punishment. Students who break the rules should be punished. That being said, when restorative justice is carried out correctly, students will be more likely to accept the punishment without harboring any resentment as they were a part of the process and understand what they did. Furthermore, because the discussion was carried out with the facilitator involved, punishments tend to be more reasonable as they were not made in the heat of the moment.

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### ҚАЙТА ҚАЛПЫНА КЕЛТІРУ МЕДИАЦИЯСЫ

**Аннотация.** Медиация жанжал мен дауды шешудің баламалы бейбіт тәсілі ретінде, сондай-ақ Қазақстанда кәсіби қызмет түрі ретінде танымалдыққа ие болады. Қалпына келтіру медиациясы барысында тараптардың келенсіз жағдайлардан босату және қалыптасқан жағдайдан шығуды бірлесіп іздеу үшін ресурс табу мүмкіндігі болуы маңызды. Тарихи қалпына келтіру медиациясы өткен 80 жылдары АҚШ-та қалыптасты және Еуропада кеңінен таралған. Біздің мақалада біз Сербия, Түркия және Германияда қолданылатын түрлі тәсілдерді салыстыру туралы тоқтадық.

**Түйін сөздер:** қалпына келтіру медиациясы, құқық бұзушылық, Құрбан, айыпталушы.

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## ВОССТАНОВИТЕЛЬНАЯ МЕДИАЦИЯ

**Аннотация.** Медиация как альтернативный мирный способ разрешения конфликта и спора, а также как профессиональный вид деятельности приобретает в Казахстане растущую популярность и узнаваемость. В ходе восстановительной медиации важно, чтобы стороны имели возможность освободиться от негативных состояний и обрести ресурс для совместного поиска выхода из сложившейся ситуации. Исторически восстановительная медиация сформировалась в США в 80 годах прошлого и получила широкое распространение в Европе. В нашей статье мы остановились на сравнение различных подходов, используемых в Сербии, Турции и Германии.

**Ключевые слова:** восстановительная медиация, правонарушение, жертва, обвиняемый.

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