



Specific Programme Criminal Justice

European Commission

Directorate-General Justice – Directorate B: Criminal Justice



INSTITUTE OF CONFLICT RESOLUTION

SOFIA - BULGARIA

Key-Practitioners' Questionnaire of TURKEY

3E-RJ-MODEL

The 3E Model for a Restorative Justice Strategy in Europe.
Greece, United Kingdom, Bulgaria, Finland, Hungary, Poland, Spain
(including research also in Turkey, the Netherlands, Denmark,
Germany)

JUST/2010/JPEN/AG/1534

The 3E-RJ- Model
for a Restorative Justice Strategy in Europe
Concerning Act_10 & 11 of the EU "3E-RJ-MODEL" PROJECT

TURKEY'S NATIONAL REPORT ON RJ

AND

INTERVIEWS WITH THE KEY PRACTITIONERS

Prof. Dr. Füsün SOKULLU-AKINCI

Emer. Professor of Criminal Law and Criminology

Istanbul University, Law Faculty

I. INTRODUCTION

A. A SHORT SURVEY OF THE TURKISH SYSTEM

Restorative Justice (RJ) was introduced into many countries during the last decades. European Countries as well as Australia, New Zealand and the United states have all developed their own systems.

The idea of RJ justice is considerably new in Turkey. It is not well known and understood in judicial circles. In fact it was introduced into the Turkish system in 2005, with the new Turkish Criminal Code. The Criminal Code of 2005 introduced reconciliation (mediation)¹ as a means of ending the disputes in crimes that required the victim's complaint for the initiation of the prosecution. It was a short paragraph in the article that the terms of complaint were regulated. Later on considering this as a procedural matter rather than a substantive one, the new Criminal Procedure Code of 2005 was

¹ The concept of mediation was first introduced into the Turkish system in civil matters. The Turkish word used for the concept is "arabuluculuk" which means mediation. But the concept introduced into criminal law is "uzlaşma" and means reconciliation.

amended in 2006 and the provisions of Criminal Code developed with a lot of new issues concerning reconciliation were incorporated into the Criminal Procedure Code. Reconciliation as it is in the Criminal Procedural Code is more detailed and the suspect does not openly accept that he or she is guilty per se, but expresses that he/she is ready to compensate the losses of the victim.

At present, reconciliation between the victim and the offender is possible for a limited number of offences. First of all, reconciliation can be initiated for offences where the prosecution is subject to the filing of a complaint by the victim/victims. Besides these complaint offences, the following crimes are subject to reconciliation even if they are prosecuted *ex officio*:

1. Felonious injury, excluding the aggravated cases
2. Negligent injury,
3. Violation of dwelling immunity,
4. Abduction or retention of a child by the parent who does not have the child's custody,
5. Disclosure of information or documents that are trade secrets, banking secrets or customers' secrets.

Except for the crimes that are investigated and prosecuted upon the victim's complaint, the crimes that are stipulated in laws have to be overtly indicated for being subject to reconciliation.

Reconciliation cannot be applied to crimes that have provisions of effective regret and the crimes against sexual inviolability, even if their investigation and prosecution starts upon a complaint. If a crime that is within the scope of reconciliation is committed with another crime, which is not subject to reconciliation, reconciliation cannot be applied for neither.

In addition to the general restriction about the subject of the offence, a second restriction is cited in the code. For some kind of offences, reconciliation process cannot be used. The legislator explicitly forbids reconciliation for some of the bodily harm cases where the initiation of the prosecution starts with the complaint of the victim. So once the victim complains about a body harm incurred, he/she has no choice to wait till the end of the prosecution and accept the judgment as it is. Some crimes, such as violation of dwelling immunity and abduction and retention of a child and disclosing the trade and

financial secrets of the customers to third parties are crimes whose prosecution is not subject to the complaint of the victims, but they are also cited as situations where reconciliation is possible. Some sexual offences are also cited within that list as crimes that the reconciliation is forbidden. In general terms, the offences that reconciliation is permitted are those crimes that are considered as minor offences with limited harm to the public domain and order.

There are many forms of restorative justice in comparative law, but only reconciliation and compensation are applied in Turkey. Some concepts in the Turkish system have restorative elements too:

- Voluntary employment in a job performed for public interest in stead of short term prison sentence (Turkish Criminal Code,50/f)
- In case of postponement of the punishment, employment of the convict in a public institution (Turkish Criminal Code,51/4-b)
- In case of conditional release, working for a salary (Code of Execution of Punishments, 107/7)
- In cases of postponement of the sentence, reimbursement or compensation of the losses (Turkish Criminal Code, 51/2)
- Reconciliation (Code of Criminal Procedure. 253)
- Effective regret in various articles of Turkish Criminal Code.

In the present Criminal Procedure Code, reconciliation procedure starts with the decision of the public prosecutor. When the conditions are suitable, the prosecutor or a police officer appointed by the prosecutor will inform the accused and the victim in written form, that a reconciliation procedure can start if they are willing to participate. The reconciliation procedure will start if all parties involved answered to that plea positively within **three days** after they are informed in written form. In case the written form of reconciliation invitation is not delivered to the relevant parties or their legal representatives, it is regarded as if the reconciliation process has failed.

While offering reconciliation, an explanation must be made so as to explain the nature of reconciliation and the legal consequences of accepting or refusing reconciliation. If the parties cannot be found for whatever reason, the investigation will be concluded without applying reconciliation. If there is more than one victim, all of them have to accept the reconciliation process. In the meantime, while applying the reconciliation process, the

conciliator may consult the public prosecutor or the public prosecutor may give directions to the conciliator.

At the end of the reconciliation conferences, the conciliator will prepare a report signed by the parties and attach to it all the related documents.

During the reconciliation process, the accused does not have to admit the guilt. Declaration made during the reconciliation process cannot be used as evidence in any investigation or case. Reconciliation process is not open to the public. The documents created during the process are secret documents. Reconciliation process will **last 30 days** after the submission of the necessary documents to the mediator. The public prosecutor may **extend** this period by **20 days**. At the end of this period if reconciliation is obtained, the conciliator (mediator) will prepare his report together with the signed reconciliation document of the parties. The public prosecutor will be responsible for the safety and secrecy of the documents.

If reconciliation cannot be reached within the prescribed period or the parties refuse to reconcile at the beginning of the process by not willing to participate to the process, a case will start at the court with an indictment of the public prosecutor.

The offender and the victim may produce a document indicating that they have reached to an agreement before the indictment, even if the reconciliation offer is previously refused. If the public prosecutor establishes that reconciliation has been achieved with the free will of the parties and the subject matter of the contract is legal, he/she signs and seals it, which means that it is approved. On the other hand, if the reconciliation is not achieved, reconciliation will not be applied again.

In case the parties refuse to reconcile at the beginning, they may come together by themselves i.e. without the involvement of the judicial official like the public prosecutor, and if they can come to an agreement among themselves and produce a reconciliation document before the preparation of the indictment, the prosecutor should declare that the parties are reconciled if he/she establishes that the parties are acting by their free will and the duties imposed to the offender is legally valid.

The parties may reconcile even at the court level. During the trial, if the judge decides that the alleged crime is under the scope of reconciliation, but somehow the victim and the offender have not been informed previously, he will cease the trial and inform the parties that this is a reconcilable situation and they could consider whether they would

use restorative justice to solve the problems among themselves. According to Art. 254(1), it is a duty imposed on the judge to inform the victim and the offender if the case is about a reconcilable situation and the prosecutor failed to recognize this fact. If the parties involved refuse to use restorative justice as means to sort out their problem among themselves by the answering negatively to the appeal of the prosecutor at the beginning of the investigation, then the judge cannot inform the parties for a second time. The duty to inform the parties exists only when it was forgotten to inform the parties at the initiation of the investigation. On the other hand until the final verdict, the parties may come to the judge with a written document indicating that they have reconciled.

At the end of the reconciliation, if the accused fulfils his obligation in the agreement, there will be no ground for prosecution. If it is postponed to a future date, the filing of the public prosecution will also be postponed. During the duration of the postponement, time of limitation will stop. If the conditions of the reconciliation are not fulfilled, the public case will be filed again. If reconciliation is achieved, no tort claim can be asserted at a civil court for damages.

When the conditions are met and all the parties involved reconcile, this will constitute a final decision for the matter in hand. The matter will be closed definitely as long as the offender fulfils the obligation that is stipulated in reconciliation document.

According to CPC Art. 253(23) the reconciliation and all other related decision are subject to appeal and review by higher courts.

B. THE RESPONDENTS AND THE INTERVIEWEES

As a fulltime professor at the University of Istanbul for long years, I have not been in the law practice. Although some of my former students may have been key-practitioners, I had no idea who they were. On the other hand, since I am teaching the postgraduate students, I had the chance, although scarce, to reach to a few. My doctorate students from the Victimology class first helped with the translation of the questionnaire from English to Turkish an then performed interviews in Turkish.

Mediation (reconciliation) in penal matters is a new concept in Turkey and the earliest legal provisions are dated 2005; therefore my doctorate students could not find big numbers of key practitioners.

The number of interviews: 14

The number of interviewers: 10

The number of respondents: 14

The respondents are all law graduates. In fact only persons with a law degree could be conciliators at the beginning but with a change in regulations any university graduate can be a mediator.

4 of the respondents are judges, 4 of them are attorneys (2 of whom classified themselves as defence lawyers), 5 public prosecutors (one of them retired), one university research assistant. Most of them gave their names during the interview only 2 persons refrained to mention their names in the interview.

We have no interviews with police officers. In fact according to our legal provisions, the police only acts according to the instructions of the public prosecutor².

When the interviews came to me I tried to classify the information and write the report in English.

II. FINAL REPORT

1. A General Approach of Restorative Justice

1.1 On Restorative Justice within the Criminal Justice System.

Almost all respondents believe that the way that Restorative Justice is implemented in Turkey is insufficient. Some of the respondents answered implementation issue within the context of compatibility of RJ with the Criminal Justice System. Although some of the respondents do not believe that the RJ is implemented in line smoothly with the Criminal Justice system.

² In cases where the crime under investigation is suitable for reconciliation, the prosecutor himself or a police officer appointed by the prosecutor shall offer reconciliation orally or in written form, to the suspect, the victim or to the legal representative if victim or offender is a minor.

a) Does RJ lines smoothly with the Criminal Justice System

Three defence lawyers that took part in the survey asserted that implementation of the Restorative Justice in Turkey had inherently deep-rooted cultural problems. They claimed that it is difficult to imagine that the victim and the offender to come together and reach an acceptable solution for each party involved.

The four respondent judges believe that the articles about the Restorative Justice were enacted to ease the work load of the courts, therefore the Restorative Justice implementation in Turkey is not well understood and implemented. The provisions are inadequate and seen by the people involved as an extra restrained to the courts. The Restorative Justice procedure implementation were by passed during the pre-trial period for not to cause further delay to the court proceedings.

The public prosecutors were much more optimistic about the Restorative Justice implementations. They also said that some regulatory provisions are needed for a better implementation. One retired public prosecutor said that Restorative Justice creates some inequalities among the victims since not all crimes can be referred to Restorative Justice implementations. According to this view all crimes should be open to Restorative Justice and the chance of restoration should be given to all victims.

There were two mediators within the respondents. Both of them said that the implementations were inadequate. The victims and the offenders had not been informed about Restorative Justice. The police officers and the public prosecutors were not keen in sending the cases to mediation for Restorative Justice. One of the mediators said that, because of the work overload of the courts, referral of the cases to the mediators are very slow and all hope of speedy justice fades away because of the slow implementations. The mediators accept Restorative Justice as a complementary system to the Criminal Justice system but they also stressed that new rules are also necessary.

The general criticisms of all respondents can be grouped under a couple headings. Insufficient provisions that do not reflect the general beliefs and culture of the Turkish society, unwillingness of the court officials to encourage Restorative Justice and overload of work of the courts.

b) *Can RJ help towards a criminal justice reform?*

All respondents except one defence lawyer said that it could help the reform of this system. They all agree that a full and sincere implementation is needed. They all see today's practice as a cover up of the failure of the Criminal Justice system. The only respondent that said this cannot help anything at all, said that Restorative Justice provisions were accepted just to fill a gap and he asserted that with this type of attitude, it has not been possible to achieve a positive result.

c) *Can RJ provide an alternative, effective and cost-effective response to crime for both the state and also for the parties involved?*

Most of the respondent said that it could be a less costly alternative to the present system but new rules and provisions are needed. Some of the respondents said that the victims should be better informed and physical facilities should also be improved.

Some attorney respondents were less optimistic about Restorative Justice as being an alternative to the Criminal Justice system. They were sceptic about the cultural side of Restorative Justice saying that the society is not ready to a new procedure.

1. 2. The Objectives of Restorative Justice:

a) *Restorative Justice, in the way it is implemented in your country: can actually help towards the community development (e.g. by promoting tolerance)?*

Restorative Justice as implemented today in Turkey is seen as not helping towards the community development. All the respondents, without exception, said that community development was not improved by the introduction of Restorative Justice into system for a couple reasons.

Firstly, it was so scarcely used that it has no noticeable effect upon the society's development. Although there are provisions that Restorative Justice will be

implemented whenever the type of crime and the prerequisite conditions are met, if the public prosecutor does not want to implement Restorative Justice provisions, by obtaining a written declaration from the victim that he or she does not want to participate in the Restorative Justice implementations, the Restorative Justice system is by-passed. So implementation of Restorative Justice rarely contributes to the development in the society.

Secondly the facilities for the implementation of Restorative Justice are inadequate. The mediators and public prosecutors are not well trained and the victims and offenders are not sufficiently informed about their rights and the operation of the system. Restorative Justice is only seen and understood as monetary compensation of the victims on one side and letting the offenders free on the other side. Almost all respondents think that the current implementation of Restorative Justice in Turkey does not contribute to the societal order or promote the tolerance among the citizens.

All the respondents said that the legislators enacted the pertaining provisions of the Restorative Justice, to overcome the workload of the courts. For the victims, it is a way to get some compensation and for the offenders it is a means to get away without long trial and punishments. The professionals who take part in the Criminal Justice system feel that the Restorative Justice could be a novel idea and maybe an ideal system in principle, but it is hard to implement in a society where anger, adversary behaviour, exploitation of human dignity and success at all costs are the paradigmatic values.

b) Restorative Justice, in the way it is implemented in your country: can support the victims of crimes by encouraging them to express their needs and by enabling them to participate in the process?

All the respondents said that Restorative Justice facilitates victims to express their needs. The Criminal Justice system has a lot of rules to protect the rights of the offenders. Restorative Justice is seen as a way to protect the victims or to restore the losses of the victims. Although all the respondents view Restorative Justice as a means to protect the victims, but some, (two mediator respondents and one judge respondent) claimed that the victims tend to exploit Restorative Justice proceedings

to make extra profit since they know that on their decisions, the offenders are getting away without a trial.

c) Restorative Justice, in the way it is implemented in your country: can help the offenders of crimes by encouraging responsibility?

Almost all respondents accepted the fact that the offenders involvement in the Restorative Justice proceedings is to get away from something that they had done, without being punished or to stay out of long courtroom practice which might last years. In both cases, the offenders' feelings are not oriented to the victims' situation or their losses and sufferings. The present system and the prevailing conditions in Turkey do not encourage the offenders to feel any responsibility.

d) Restorative Justice, in the way it is implemented in your country: can contribute to the reducing of recidivism?

All respondents think that, Restorative Justice implementation in Turkey does not contribute to the reduction of recidivism. The Restorative Justice implementation is seen as a way to improve the losses of the victims.

2. Restorative Justice Frame of Implementation

2.1. On levels and forms of implementation

The four respondent judges that answered the questions about implementation of Restorative Justice in Turkey limited their answers to the court level of the Criminal Justice System. Only one of them tried to evaluate the system as a whole. According to this respondent the first informal restoration offer was done in the police stations. If an amicable solution can be reached at the police station the whole matter will be closed as long as it is a trivial crime and most probably the type of crimes that fall under one of those crimes that is classified under the Restorative Justice System. If this first informal attempt is not successful, a second attempt will be performed by the public prosecutor but this second attempt will be formal. The courts involvement for the case is when the formal attempt during the investigation stage was somehow omitted.

All the judge respondents said that the Restorative Justice system in Turkey is very ineffective and rarely used because the system has many deficiencies. They asserted that there is no incentive for the offender to accept the Restorative Justice system. The crimes that are the core of the Restorative Justice are unimportant crimes. If the offender was found guilty by the court, then there are different possibilities for the offenders since the judgement will not include a prison sentence. The final decision of the court will be the postponement of the sentence or postponing the announcement of the sentence. If the offender does not commit a crime within a certain period of time the whole matter will be cleared off. All the judges agreed that the provisions regarding Restorative Justice should be changed and only certain crimes should be beyond the scope of Restorative Justice.

The mediator respondents are complaining that the public is not informed about Restorative Justice. The public officers like public prosecutors and police officers do not give a good explanation victims and offenders about their rights. The mediator respondents claimed that there is a lack of knowledge about the system. They said that the public prosecutors and the police officers did not have enough knowledge about Restorative Justice and that they had no training about the subject. They said a better training might help the victims and the offenders and then, Restorative Justice would be more widely used.

The lawyer respondents who take part in Restorative Justice implementation during the prosecution and court levels are criticizing the system from another perspective. They claim that, first of all the public prosecutors are not well trained about mediation.

Secondly the public trust to the police officers and public prosecutors is very low. So whenever a suggestion comes from these groups the offenders and the victims become very irritated and they immediately refuse Restorative Justice proposal because they do not know much about it and the suggestion and because it came from a public officer. They said if the bar associations were included in the process this would give more confidence to the victims and the offenders. Usually, members of the bar associations are from the same area as the victims and the offenders and trust among them is much stronger. Whereas, trust to police officer or a public prosecutor is unthinkable.

Respondents from the Public Prosecutors office were very keen in answering the first

part of the questionnaire ardently and positively but in this section showed a little bit of hesitation. They complained that the proper facilities were not provided for an effective implementation. Shortage of space and lack of personnel, not enough trained staff were their main complaint. A second issue that was raised by the public prosecutors is the role of the police officers in the Restorative Justice implementations. According to the law, a police officer cannot even suggest reconciliation to the parties by his or her initiative. The police officers involvement can only be possible if he or she is given the duty to do it by the public prosecutor. The respondents from the Public Prosecutors office wished that the police officers should be authorized by law, the right and duty to suggest to the parties involved to consider implementation of Restorative Justice measures. They claimed that if Restorative Justice is implemented in police level, the success rate will be higher and more cases will be resolved by the Restorative Justice system.

The last point made by the public prosecutor respondents had been answered very differently by the lawyer respondents. The lawyer respondents said that there is a public mistrust to the police officers. The suggestion of the public prosecutors to divert some of their workload to some other public office is fairly understandable. In 2011 there was nearly 6 million prosecution cases in the whole country and out of that 6 million prosecution cases almost 4 million of them end up in a courtroom as a criminal case.

2.2 Categories of crimes

All respondents with different roles in the Restorative Justice process declared that the present restriction in Turkey should be changed. Some of the respondents said that all types of crimes should be subject to Restorative Justice rules.

In Turkey, reconciliation, is available only for certain types of crimes. The types of crimes that will be subject to Restorative Justice were stipulated in the Turkish Code of Criminal Procedure Law.

At present, reconciliation between the victim and the offender is possible for a limited number of offenses. First of all, reconciliation can be initiated for offenses where the prosecution is subject to the filing of a complaint by the victim/victims. Besides these complaint offenses the following crimes are subject to reconciliation even if they are prosecuted ex officio:

- Felonious injury, excluding the aggravated cases
- Negligent injury,
- Violation of dwelling immunity,
- Abduction or retention of a child by one of the parents who does not have the child's custody,
- Disclosure of information or documents that are trade secrets, banking secrets or customers' secrets.

Some of the respondent judges and public prosecutors are suggesting that the Turkish Criminal Code is restricting the implementation of Restorative Justice unnecessarily, but they say that some kind of restrictions are needed. They asserted that sex crimes, murder and homicide, intentional bodily harms, crimes against children and elderly persons should be excluded from the implementation of Restorative Justice provisions.

Two defence lawyers and two mediators and one public prosecutor said that Restorative Justice should be used in connection with all types of crimes. Two judges and one public prosecutor and a lawyer suggested a restriction not on crime categories bases, but mainly with the criminal past of the offenders. When it comes to habitual offenders or offenders with a criminal history, their point of view shifted in favour of Criminal Justice System. In that case, they put the needs of the victims and the principles of Restorative Justice aside and they tried to go after the offender to punish him. For one public prosecutor this situation is the weakness of the Restorative Justice system. He said if the implementation of Restorative Justice is restricted as it is in Turkey, this would constitute inequality among victims. Some victims' losses will be compensated and some others will not.

2.3. Restorative Justice for Children and Young Offenders

The common view among the respondents is that Restorative Justice implementation for adults and children and young offenders are same. Everyone is subject to the same rules and procedures. They all said that Restorative Justice implementations are very insufficient and superficial and new rules should be developed especially for children and young offenders.

They all agreed that Restorative Justice implementation is not sufficient and new rules are needed. For some, as mentioned above Restorative Justice were accepted to ease the workload of the courts. One respondent said it was enacted just to show that Turkey is online with the Western World. Every respondent agreed that if Restorative Justice is going to be implemented in the country, new rules and procedures should be accepted and the practitioners should show some willingness to do it. In case of children and young offender, all the respondents showed the same enthusiasm to support new rules and improvement in the Restorative Justice system. They all said, it is essential that Restorative Justice should be implemented for the children and juveniles.

The judge and public prosecutor respondents said that the Criminal Justice system for children and young offenders are similar to adults. There is no difference between the children and young offenders and adults during the investigation and prosecution levels. The courts for children and young offenders are different than the courts for adults, but the same rules are applied except there could be some reduction in the sentencing (This is not true, there is a special law for children Called Child Protection Law. Procedures and precautions applied to children are much different in this Law).

All respondents were very concerned about the children and young offenders' situation and they stressed that Restorative Justice system is needed particularly for this group of offenders.

Almost all respondents seem to be concerned more with the protection and mental development of the children and young offenders and they asserted that this group of offenders usually are first time offenders and they should not be sent to prison or should not have a criminal record so a chance should be given to them and this can be achieved by implementing Restorative Justice system to children and young offenders. In their report the needs of victim or restoring the losses is not mentioned. Only two out of fourteen respondents said that if the Restorative Justice system is implemented the children and young offenders will encounter the victim and the harm they had caused. Those two respondents hoped that the young offenders facing their victim would give them a good lesson and they would repeat their wrong doings.

f. Victim-offender mediation

Two respondents said that victim-offender mediation for children and young offenders are subject to the rules set at the Child Protection Act article 23 and 24. Usually crimes against property and minor bodily harm are within the scope of applications. Both respondents said that the system is not functioning properly because it involves the participation of social workers and psychologists. They said that the social workers were not trained properly. They don't take their job seriously and the system is not functioning, as it should be. One respondent judge said those social workers do not assess each case individually; they use the same already printed form in each case.

Involvement of parents

Most of the respondents said that involvement of parents was a positive factor. Some respondents said that if the parents are involved, then there is going to be someone to pay the damages. One lawyer and mediator respondent said that sometimes the parents could be an obstacle to the process and it was not always a positive factor. They suggested that someone should decide whether the parents should be introduced to the process or not for each case.

2.4. Restorative Justice Process and Services.

The respondents' answers are evenly divided. Half of them said that equal access to Restorative Justice could not be achieved because of geographical reasons and for the other half of the respondents there is no problem in this respect. They said that the laws are not restricting anyone to implement Restorative Justice. Although the laws are supposed to be applied equally to everybody, there are restrictions arising from the geographical reasons. Turkey geographically is a big country in terms of European standards. More than half of the population lives in rural areas. During the winter months some part of the country is cut off from the rest due to heavy weather conditions. It is not enough to have a couple articles in the Code of Criminal Procedure to have Restorative Justice be implemented in the whole country. In some regions they don't have enough judges for the courts. That everyone has equal access to Restorative Justice in the law is not a realistic picture of the present situation.

Besides the geographical limitations, all respondents agreed that equal access to the implementation of Restorative Justice had been denied for other reasons. All

respondents said that the parties involved in the conflict, the victims and the offenders did not know their rights. Restorative Justice was not explained to them properly by the competent authorities, who had the duty to explain. The respondents said that the victims and the offenders, during the prosecution stage were asked whether they want to use relevant article of Code of Criminal Procedure on Restorative Justice. The offenders and the victims, unless they knew these article before going to the public prosecutor's office, would definitely refuse to accept the implementation of Restorative Justice, because they would not like to get in a situation of which they would not know the results. All respondents said that if the competent authorities explain the rights of the victims and the offenders, victims and offenders might use Restorative Justice much more frequently. Of course the way information is given could be ameliorated. According to the respondents, first of all the official authorities who are responsible of implementation the relevant articles of the Code of Criminal Procedures on Restorative Justice should accept, understand and appreciate the importance of implementing them. The facilities should be improved, mediators should be informed and trained in better conditions and the social workers working in these matters in connection with the courts should be subject to stricter tests and better trained according to work requirements.

The respondents admitted that the competent authorities who had duty to inform the victim and the offenders did not believe that Restorative Justice could be achieve in those circumstances. These authorities are also aware that the provisions of Restorative Justice were accepted because of some international concerns and the provisions are only creating a superficial system for the sake of having Restorative Justice. The judge respondents stressed that the Restorative Justice provisions were inadequate and one of them suggested that they should be implemented as it is now.

All respondents declared the time given to the victim and to the offenders are enough for them to think it over. Besides since the crimes covered by Restorative Justice are very limited, the victim and offender can always come to a peaceful out of court agreement, which will end the court proceedings.

2.5. Restorative Justice Process and Services

Questions about universally accepted principles and their application during the implementation of Restorative Justice seemed to be a controversial issue among the respondents. Although Restorative Justice provisions are fairly new in the society and there are a lot of problems to be solved on the implementation level, but still one would expect the answer to this question is affirmative. Some respondents said, "Yes, but there are some black areas", and some respondents said that Restorative Justice rules were partially applied and some respondents said that they are not applied at all. Those who said that the basic principles are not applied asserted that in rural areas in some cases, the officials assumed that the consent of the offender existed. If the officials sign a document, it is very difficult to prove that that document does not reflect the truth. Starting or ending an implementation of Restorative Justice by coercion is illegal but it is in most situations, very hard to prove. Although by law the consent of the victim and the offender should exist to start the process.

All respondents agreed on one point: that the social and cultural factors are taken into consideration in order to refer the case to Restorative Justice. Also all respondents agreed that the supervision and an assessment of the outcomes arising out of a Restorative Justice process is necessary and vital and that trained mediators and well trained staff are scarce in the country. The majority of the respondents said that the training provided in the country is inadequate for the job.

Some of the respondents suggested that the mediators should be trained among the law graduates and should be under the auspices of a government office. A separate body of officials should be created, with special rules for promotions, but everything should be under the control of the state. One mediator respondent said that, training only the law faculty graduate or people with legal educational backgrounds is wrong, other people like imams should also be used as mediators (in fact with a change in the bylaw, everyone with a Bachelor's degree can become a mediator).

3.On Restorative Justice Obstacles and Good Practices

3.1 Obstacles for diffusion and implementation of Restorative Justice

Some respondents (two judges and a public prosecutor) mentioned the lack of financial resources and the lack of public awareness and of social acceptance of

Restorative Justice as the main obstacle for a successful implementation in Turkey. They said that the existing legislation is not perfect but still can give fairly good results at the moment. The public prosecutor also added that police, prosecutors and judges are rather sceptical towards Restorative Justice because they had regarded Restorative Justice as insufficient.

Two attorneys said that the main obstacle is lack of financial fund for mediation. One of them cited lack of social conscience and social acceptance of the concept and polarisation in the society as obstacles for diffusion.

One lawyer respondent said that the existing legislative frame is restraining because it only covers a limited category of crimes and the procedure envisaged in the Code is also insufficient. Besides, he also added that no active involvement of the community exists and lack of public awareness and low esteem towards Restorative Justice is widespread.

Two judges and two mediators said that the existing legislative frame, limited local experience and no involvement of the social community, lack of human and financial resources, lack of public awareness and of social acceptance towards Restorative Justice and finally sceptical attitude of police, prosecutor and judges towards reconciliation are main obstacles for the diffusion and implementation of Restorative Justice in Turkey. That group declared that there was no will behind these article about Restorative Justice to be implemented. It was accepted in the parliament for different reason with no intention to be implemented.

3.2 The most crucial factors that affect you negatively as a practitioner during the implementation of a Restorative Justice process

One lawyer respondent said the crucial factor that affected him during the implementation of Restorative Justice was all public officers i.e. police officer, prosecutors and judges regarded Restorative Justice implementation as a part of Criminal Justice system.

Two judges, who said that Restorative Justice was not functioning at all, stressed that lack of trained personnel in their offices and not enough time to spent for implementation of Restorative Justice. If the reconciliatory is an attorney or anybody with a university degree, there is no place, staff or equipment supplied.

3.3 The most important components for Restorative Justice good practices in the field of your experience:

One of the judge respondents said that giving a chance to become a mediator to all university graduates regardless of his or her major study is a good practice, but still he believed that the training given by the ministry is insufficient.

4. Conclusions, comments and suggestions by the researcher:

The concept of restorative justice is not well developed in the Turkish criminal justice system. In the last so-called Criminal Justice reform package, Restorative Justice is incorporated into the system as Reconciliation. But unfortunately, these rules were introduced to the system not for the sake of restorative justice but mostly for other reasons, such as to overcome the overcrowding problem of the prisons or to reduce the number of cases pending in the Appeal Court and probably the most important of all is to show to EU authorities that Turkey is reforming her system to be part of the European family. So none of these reasons are overlapping with the Restorative Justice goals.

The real aim of Restorative Justice ought to be to restore justice in the society with the participation of the victim. Therefore the main actor is the victim. During the implementation of Restorative Justice, the social order that is harmed is also restored and the given message to the people is that the offence committed is an unacceptable act by the society as a whole. The offender will encounter with the results of his unlawful conducts and will feel shame and remorse. It is hoped that the implementation of Restorative Justice will facilitate the integration of the offender to the society faster and easier, enabling him to be a law-abiding citizen.

Criminal Justice is interested mainly with the past and wants to find out how the crime is committed. But for Restorative Justice, the act is committed, and the restoration of the harms caused is a matter of the future.

Another important aspect should be to find out the reasons for the commission of the crime. The offender within the informal atmosphere of the reconciliation process may reveal his motives, his thoughts, why he committed the said crime, what his

aims were. The answers to those questions may help us devise systems to prevent future criminality.

Restorative justice is a new concept in Turkey. Although it has some historical resemblance to "*diyyet*", an ancient institution of the old Ottoman Criminal Justice system, it is not well known and understood properly by judicial circles. Basically, *diyyet* was a payment of money to the victim or victims' relatives for the crime that had been committed by the offender. Turkish society values harm and losses of the victims only in monetary terms. Neither the victims nor the society are aware that, in most of the cases, payment of some money to the victims is not enough to achieve Restorative Justice. It is a bit strong statement to assert that maybe the society does not know that the victim needs to be restored or the society knows that the victims need restoration but it does not care a bit. So the Modern Turkish society is living with its past and what it inherited from its ancestors. Restoration is just giving some money and for the Turkish society what is the most valued is how much money the victim will receive as compensation at end of the day. Victims are also from the same society, so they are no different. They only want to receive more money, maybe more than they lost due to crime so they could make a little bit more money out the misfortune.

One respondent, who is a public prosecutor and also my doctorate student, said this is true for most victims, but he met only two victims who said that what they expected from the offender is some compassion, understanding and utter a few words to indicate that he is sorry.

Restorative justice on the other hand is more than monetary compensation. There are different types and phases of restorative justice. Common to all, dialogue between victim and offender is the essential element in the process. It could be difficult at the start but eventually at one point the victim and the offender will try to understand each other and share their sorrow. The compensation of the material loss of the victim is probably the easiest part. One could also think of a system that the burden of compensation could be shifted to the State, since its reason of existence should be to provide and facilitate the happiness and well being of their citizens. So compensation of material loss is trivial. The difficult part is restoring the justice, so the victim and the offender will understand each other and at the same

time, they will share their sorrows and misfortunes. Restorative justice in the mind of Turkish people who just heard the concept a couple of years ago, is a means to compensate the losses of the victim and in some cases maybe getting some extra money because the offender does not have much choice.

Another wrong perception of Restorative Justice in Turkey is that it is considered as a solution to problems originating from the malfunctioning of the judicial system. It is thought to be obtaining "cheaper" and "faster" justice.

Public prosecutors, on the other hand, are not very keen on applying reconciliation, which they find time consuming. One public prosecutor said that withdrawal of the complaint is easier and very fast. So for complaint crimes they prefer the withdrawal process. In fact for 2012 he was in charge of 1000 cases, of which only three ended with reconciliation.

Restorative justice requires communication between people, trying to understand each other and feeling sorrow from the misfortune of others even if you yourself caused them. Restorative justice practices in Turkey are mainly reconciliations. It is mainly the transfer of wealth from one party to another, like compensation in a tort case. In Turkey, generally people think that if the offender has enough means to compensate the victim's losses, why should the victim forgive and let the offender get away without being punished. The answer to this argument is the time delay between the occurrence of the misfortunes and losses and receiving compensation by court order. It might take years and years till the victim gets a full compensation of his or her losses. In Turkish society, the victims feel much satisfied if the offenders get longer prison sentences and most people in the society complain that the sentences are too short or the judges are too lenient to the accused but still the victims have an incentive for implementing Restorative Justice. The monetary compensation will be faster without a delay.

Turkey, unfortunately, does not provide a good environment for restorative justice to prosper. Practices like victim offender mediation, group conferencing or family conferencing could never be thought of in this environment. In most cases where family conferencing occurs, it ends with killing each other or wiping out the other family out of existence.

On the other hand alternative means of solving the dispute is met with suspicion at certain circles of Turkey. Lawyers and members of Parliament with a law background think that reconciliation and mediation are like the *diyyet* of the old Ottoman law, which has Islamic connotations. They fear that this will be a draw back from the secular European laws that Turkey adopted since the 19th century. Besides some lawyers might even be against the restorative justice process, just because they consider it as a threat to their income.

The scope of reconciliation is very limited in our law. It should include more categories of crimes that are prosecuted *ex officio*. Even more serious crimes can be included in reconciliation if the victim accepts. Its only aim is not to satisfy the victim, but also to make the offender understand the pains the victim suffered. This is a very important element of the prevention of recidivism.

Restorative justice does not exist during the execution phase in Turkey. It should be an important issue for conditional release and for amnesty, which are both cases of early release. When releasing the offender, it is very important to obtain the consent of the victim or his/her family if the victim is not living any more.