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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)
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Restorative Justice in Turkey

By *Prof. Dr. Füsun SOKULLU-AKINCI*[1]

A. Introduction

During the Ottoman era, laws were made by the Sultans. The most prominent Sultans who passed numerous laws were Mehmet the Conqueror and Suleiman the Magnificent who is also called "Suleiman the Law Maker". Turkey, since the middle of the 19th Century has started to adopt the European laws, thus accepting the continental law tradition. During the Ottoman era the first western Criminal Code was called The Imperial Criminal Code (1856), which was a translation of French Criminal Code of 1810. After the establishment of the Turkish Republic, the Criminal Code of 1926, our previous Criminal Code was a reform code of its time. In fact the Italian Penal Code of 1889 (Codice Zanardelli) was considered as the most liberal Code of its time and was adopted as the Turkish Penal Code. In fact, Atatürk wanted a complete change in the legal system and many Codes had to be made in a short period of time. So the method of adoption of the best codes in Europe seemed to be the best way. All the Codes of Europe were examined by experts and the Swiss Civil Code and the Italian Penal Code were adopted in 1926, German Civil and Penal Procedure codes were adopted in 1929 and thus principal Codes of Turkey were made.

All these codes were in force until the 2000s: New codes were made in the first five years of the 21st. Century. The Civil Code of 2003 is a modernised version of the original one. The Penal Code and the Penal procedure Code were rewritten with a new concept and thus all these codes are named as the second legal reforms[2].

The punishments were more, quantitatively speaking, in the 1926 code, but with every amendment of the Turkish Criminal Code of 1926, death penalties of various articles were converted to life imprisonment. Thus the number of articles containing death penalty gradually decreased. Before the abolition of the death penalty altogether, there were only 25 crimes with death penalty and from 1984 onwards, no death penalties were executed in Turkey. In other words there was a *de facto* tendency towards the abolition of the execution of death penalty in Turkey. Then in 2003, Turkey signed[3] and ratified[4] Protocol no. 6 to the European Convention on Human Rights concerning the Abolition of Death Penalty, thus death penalty

[1] *Istanbul UniversityLaw Faculty*

[2] For a detailed explanation see Adem SOZUER, "Reform of the Turkish Criminal Law", Hukuki Perspektifler Dergisi, p. 210-226.

[3] Jan 15, 2003.

[4] June 4. 2003.

was abolished. Finally, Turkey signed the 13th Protocol Concerning the Abolition of Death Penalty in all circumstances, in Sept. 9, 2004. It was ratified in Feb. 20, 2006 and entered into force in March 1, 2006[5].

At present there are only two kinds of punishment in the Turkish Penal Code: **Imprisonment** and **judicial fines**. There are two kinds of imprisonment:

1. Life imprisonment
    a. Aggravated life imprisonment, which has placed the abolished death penalty. A strict security regime is applied for convicts who have committed certain very serious crimes. But the prisoner may be released because of good behaviour after 30 years in prison (Law on Execution of Crimes and Security Measures, Article 107).
    b. Life imprisonment: Release is possible for good behaviour after 24 years.
2. Termed imprisonment sentence is from one month to 20 years.
    a. Long-term imprisonment is more than one year.
    b. Short-term imprisonment is one year or less.

There are alternative sanctions in article 50 of the Penal Code, to which short-term prison sentences can be converted:

aa) Administrative fine,

bb) Reimbursement of overall loss encountered by the victim or the public and reinstatement or compensation of damages,

cc) Admittance to an education institution for a period of at least two years to improve professional skills or to learn art by providing shelter,

dd) Prohibition from travelling to certain places and to conduct certain activities for a period up to half of the imposed punishment.

ee) In case of commission of an offence by misuse of rights and powers or by failing to take proper care and necessary precautions; seizure of driving license and other license certificates and prohibition from performance of certain profession or art for a period from one half up to twice the imposed punishment.

ff) Voluntary employment in a job performed for public interest for a period from one half up to twice the imposed punishment.

[5] For detailed information please see SOKULLU-AKINCI, "The Abolution Process of Death Penalty in Turkey", Towards Abolution of Death Penalty(ed. Arroyo/Biglino/Schabas), RECAP, Valencia, 2010, s. 159-167.

There are also other penal sanctions called **security** (protective) **measures** in the Penal Code for persons convicted to prison sentence (Penal Code art. 53). These are the deprivation of exercising particular rights, such as not being able to undertake a public office, not being eligible for electing or being elected, not being able to exercise guardianship of his/her children, nor being appointed to any trusteeship, not being able to exercise certain the confiscation of goods and property professions performed as a member of a public organization such as professional chambers, not being able to be administrator or inspector of foundations, associations, labour unions, companies, cooperatives and political parties. These prohibitions last until the end of the execution of the prison sentence.

Other protective and security measures can be summarized as the confiscation of goods and property derived from crime or used to commit an intentional crime (TPC. art. 54, 55), measures for children, mentally deprived, drug addicts, recidivists and special dangerous criminals. Deportation is another security measure applicable to non-Turkish convicts after the completion of their sentence. There are also security measures for legal entities.

The abolished Turkish Criminal Procedure Code was adopted in 1929 from the German Criminal Procedure Code of 1877, with some minor changes.

In 1992 important amendments were made in the law so as to enlarge the rights of the accused and introducing exclusionary rules to the Turkish criminal procedure such as prohibition of illegal evidences. Exclusionary rules were also added to the Turkish constitution: "Findings obtained through illegal methods shall not be considered as evidence" (art. 38). Principles such as the right to remain silent, the right to be informed about the nature of the incrimination, the right to a counsel in the pre-trial stage are also introduced to the Turkish Criminal Procedure in 1992.
Pre-trial stage is monitored by the public prosecutor and is made by him in conjunction with the law enforcement officers: the police or the gendarmerie.

Subject matter, locality and person, both limiting and protecting the judge, limit the jurisdiction and venue of the judiciary. Therefore courts cannot try any cases outside (beyond) their jurisdiction. The court, which has the venue, is the court of the place where the crime is

committed. If the place of the crime us not known, the court of the place where the accused is apprehended has the venue (Art. 12-16). Detailed rules exist in the laws for the determination of the venue, because like in most countries the principle of natural judge is considered to be crucial.

Impartiality and independence of the judges is also important in the criminal procedure and this is secured by numerous articles both in the Constitution and the Criminal Procedure Code. The recent (2010) amendments made in the Constitution and are accepted by the Turkish public, with a referendum, are discussed within the legal circles because a few of the amended articles are considered to decrease the independence of judges.

The new Turkish Criminal Procedure Code was accepted in 2005. To all the reforms of 1992, new rights were added for the victims in harmony with the Recommendation R (85) 11, of the Council of Europe on the Position of the Victim in the Framework of Criminal Law and Procedure.

The Criminal Procedure Code of 2005 has certain restorative justice elements embedded in the traditional procedures of criminal justice, such as:

Postponing of the Commencement of Public Prosecution

Article 171/2 of the Code, the public Prosecutor may postpone (deter) the commencement of the public prosecution for 5 years if the indicted crime is the type of crime that is investigated and prosecuted after complaint and the punishment's upper limit is one year.

The conditions are:

1. The suspect must not have any prior conviction for an intentional crime,
2. The court must have the opinion that the suspect will not commit any other crimes.
3. The postponement is more useful than a public case, for the sake of the suspect, as well as the community.
4. Complete reparation of the damages incurred on the victim or the public due to the delinquency, via exact return, restoring to original state as before the extortion of the delinquency or through compensation.

If the suspect does not commit an intentional crime within the designated time (5 years), the court decides not to start a prosecution. If the suspect commits such a crime the public prosecution starts.

Postponing the Announcement of the Verdict (Sentence) (Art.231)

It is possible to postpone the announcement of the verdict for 5 Years: If the penalty determined after the trial procedures carried out with respect to the crime with which the accused is found guilty, is imprisonment for two years or less or judicial monetary fine, the court may decide to postpone the announcement of the sentence.

Conditions to postpone the announcement of the sentence (verdict)) are:

aa) The accused must not have any prior conviction for an intentional crime.

bb) The court must have the opinion that because of his/her personality traits, and his/her behaviour during the trial, the accused will not commit any other crimes.

cc) Due to the personal characteristics of the accused and his/her attitude and behaviour during the trial, the court must conclude that it is not necessary to sentence the accused to a penalty.

dd) Complete reparation of the damages, incurred on the victim or the public due to the delinquency, via exact return, restoring to original state as before the extortion of the delinquency or through compensation.

In case of failure to determine the damage incurred to the public due to committed crime, the amount of money to be appreciated by the court must be deposited to the cashier of the Ministry of Finance as lump sum.

Results of the Postponing the Announcement of the Sentence

In case of a decision to postpone the announcement of the sentence, the accused will be subjected to a measure of supervised probation for a period of **five years**. The judge may decide that the accused: continue attending an educational programme for learning a profession, or be banned access to certain places; be imposed an obligation to attend certain institution or to fulfil another obligation, which will be appreciated by the court, within such a period. During probation, the statute of limitations shall cease running.

In case of **failure to fulfil the condition** concerning the rectification of the damages, the

court may decide to put off the announcement of the sentence and impose one of the following obligations on the accused for the probation period:

a) Full indemnification of the damage incurred by the victim or the public due to the offence committed, via payment in monthly instalments.

b) In case of failure to determine the damage incurred by the public due to the committed offence, depositing to the Finance cashiers the amount to be appreciated by the Court, in monthly instalments.

At the end of the probation period:

a) In case the accused does not commit an intentional crime the probation period and in case the behaviour of the suspect is in concordance with the imposed obligations, the court shall decide for abatement of the case.

b) In case the suspect commits an intentional crime within the probation time or in case the suspect acts in violation of the imposed obligations, the court shall announce the verdict that it had put off. However, taking into consideration the circumstances regarding fulfilment of the obligations, the court may reduce the penalty for up to 50%, or postponing the prison sentence or convert it to one of the alternatives

The decision to postpone the announcement of the verdict may be appealed.

The decision to postpone the announcement of the verdict shall be registered in a special system. These records can only be used for the purpose stated in the article concerning the postponing of the punishment (art. 23) and in connection with an investigation or prosecution, by the Public prosecutor, the judge or by the court upon demand.

- ***Child Protection Law was the pioneer for this institution and then with amendment in the Code of Criminal Procedure, it was made applicable for everyone, the children became subject to the general rules with the exception that the probation period for children is now three years whereas it is five years for the adults. The positive aspect to this new formulation is that the probation period was five years for the children previously, now it is three years. The negative aspect is that previously postponing was possible for punishments up to***

three years. The new rule makes it two years[6] for everyone with no exception for the children. So it is a change for the worse for children.

Postponing the Execution of the Sentence (TPC. Art. 51)

The judge may announce the verdict but may **postpone the execution of the sentence**. This is possible for every convict: adult, young-adult or child. One exception can be seen in the Law for Combating Terrorism, article 13, which states that prison sentence for crimes of terrorism cannot be postponed except for children under 15.

Otherwise, anyone who is condemned to prison punishment of less than two years and who does not have a prior conviction not more than three months of prison sentence and who shows signs of remorse. But for children the postponing is possible if the prison punishment is **three years**. Children may be condemned to frequent an education institution during this period, so that he/she may acquire a profession or learn a skill or craft. This institution may be a place, which may also provide residential care for the child.

B. Legal Frame of Restorative Justice

Execution of prison sentences under two years may be **suspended** if the **personal indemnities** of the victim are restored by returning the proceeds of the offense or by payment of the damages (TPC. art. 51). The period is 3 years for children under 18 and for those above 65. The prior conviction of the offender should not be above three months for intentional crimes and his behaviour and the penitence he shows during the trial must convince the judge that he will not commit crimes in future. According to the same article, suspension of the sentence may be postponed until the personal rights of the victim are restored or redressed totally by the convict. If this condition is satisfied, the convict is released immediately. I must admit that this article is very positive in terms of restorative justice.

In the previous Turkish Penal Code, which was abolished in 2005, **conditional release** of the convict could be postponed until the compensation of the victim's losses. The new system

[6] It was one year. With an amendment act, it was made two years in Jan. 23, 2008.

mentions "obligations" but does not specify what they are and they do not have any postponing effect. In the old law, one of the conditions for conditional release was the restoration of the victim's losses thus the present system is far from being a reform in terms of restorative justice.

Besides this trivial change, for the first time in the Turkish legal system article 50/1-f, of the new Code has a provision enabling the trial judge to decide on **voluntary community work** as an alternative to short-term imprisonment. In our previous publications we insisted that this alternative is very important, and that it must be included in the Turkish Laws[7]. But the way it is formulated is quite inadequate, because it is only possible for short-term imprisonment. For example, first time offenders, offenders who are overtly remorseful for the crime they committed are convicted to 18 months of prison sentence cannot serve it as community work. On the other hand, there are other examples in the Code where the convict can work. For example, when the sentence is suspended by the judge (Criminal Code 51/4-b) or the convict is released after the execution of some part of his prison sentence because of good behaviour (Code of Execution 107/7), the convict is allowed to work under the control of a person who is the master of that profession. The time limit for the suspension of the execution of the sentence is two years. Although this work is not voluntary, the time limits should be in harmony.

A similar solution is true for convicts who are **released conditionally**. Such convicts are allowed to practice the profession they have acquired during the execution of their prison sentences under the control of a professional, either in a public or a private work place (Code on the Execution of Punishments of 2005, art. 107/7).

Execution of prison sentences less than two years may be suspended if the **personal indemnities** of the victim are restored by returning the proceeds of the offense or by payment of the damages (TCC. art. 51). The period is 3 years for children under 18 and for those above 65. The prior conviction of the offender should not be above three months for intentional crimes and his behaviour and the penitence he shows during the trial must convince the judge that he will not commit crimes in future. According to the same article, suspension of the

[7] Fusun SOKULLU-AKINCI, "Alternatif Yaptırımlar" (Alternative Punishmets), in Prof. Dr.Nurullah Kunter'e Armağan, İstanbul, 1998, Pp. 335-338; see also Fusun SOKULLU-AKINCI, Hürriyeti Bağlayıcı Cezalar ve Alternatifleri, in TC. Adalet Bakanlığı, 21. Yüzyıla girerken Cezaların İnfazı Sempozyumu, (21-22 Ocak, 2000), Ankara, 2001.

sentence may be postponed until the personal rights of the victim are restored or redressed totally by the convict. If this condition is satisfied, the convict is released immediately. I must admit that this article is very positive in terms of restorative justice.

In the abolished Law, **conditional release** of the convict could be postponed until the compensation of the victim's losses. The new system mentions "obligations" but does not specify what they are and they do not have any postponing effect. In the old law, one of the conditions for conditional release was the restoration of the victim's losses thus the present system is far from being a reform in terms of restorative justice.

Pre-Payment (TPC. Art. 75)

Excluding the offences within the scope of reconciliation, no public prosecution is proceeded if the offender of the offences which require imposition of only punitive fine or imprisonment not exceeding maximum limit of three months, agrees to pay within ten days as of the date of notice to be served by the Public prosecutor the following amounts together with the investigation charges;

a) The fixed penalty amount, if the amount is not fixed, then the minimum limit of punitive fine,

b) The amount to be calculated by considering 20 Turkish Liras per day, corresponding to minimum limit of punishment of imprisonment,

c) Where the punishment of imprisonment and punitive fine is imposed at the same time, the amount to be assessed for imprisonment according to paragraph (b) of this subsection plus the minimum limit of punitive fine.

In case the matter is spontaneously brought to the court pursuant to the provisions of the special law, dismissal of public prosecution again may be considered if the offender agrees to pay, upon notification of the judge, the penalty amount to be assessed according to first subsection, as well as the court expenses incurred thereof.

The provisions of afore subsection are applied in case of start of public prosecution by the Public Prosecutor without executing pre-payment transaction or transformation of the act

subject to prosecution to an offence within the scope of this clause.

The amount payable in cases where deemed necessary to impose one of the alternatives, either imprisonment with maximum limit less than three months or punitive fine, the penalty is determined on the basis of the punitive fines according to the afore subsections.

Withdrawal from commencement of a public prosecution or dismissal of action pursuant to this clause, may not affect the provisions relating to claim of personal rights, re-possession of property and confiscation.

The above institutions are frequently mentioned by the Turkish scholars as examples of restorative justice. They contain an element of restoring the loss of the victim. But the main aim of these institutions are mainly either keeping the offender outside the boundaries of criminal procedure and lessen the already very heavy burden of the Turkish Criminal Justice system or keeping the offender outside the prisons which are already overcrowded.

Effective Regret

In the special part of the Penal Code, for some crimes, **returning the crime proceeds** before the commencement of the prosecution is a mitigating circumstance and in cases of **effective regret**, the offender is not convicted at all. For example according to article 168 of the new code, if the offender himself or the perpetrator or the facilitator of the crime returns voluntarily that which he had taken or compensates the loss of the victim of the crime, after the commission of the crime is completed and prior to any proceedings are commenced against him, his punishment is reduced from one third to two thirds in crimes of larceny, damaging other peoples property, breach of trust, fraud and utilization without payment. In case of plundering, the ratio of reducing the punishment is from one third to one sixth. In case of partial return or compensation, victim must agree to the reducing of the punishment. This is a good example of restorative justice and the crimes that are included are crimes against property.

There are other examples of effective regret in the new code: According to article 192, if an offender who participates in narcotics crimes shows effective regret by reporting the other participants and the place where the narcotics are manufactured or hidden, before the officials are informed about the commission of the crime, and if this information enables the

apprehension of the participants and the goods, then the informer is not punished. Also if a person buys, accepts or keeps narcotics for his personal use and informs the officials about where, when and by whom this narcotic is delivered, and thus enables the officials to apprehend the offenders and the narcotics is not punished. In cases where the offender only helps the officials, who are already informed about the crime and facilitates the apprehension of the other participants voluntarily his punishment is reduced from one fourth to one half. In the same article if a narcotics offender, applies to the officials with the request for treatment, before any proceedings are commenced against him/her, she/he is not convicted to any punishment. Taking into consideration that the narcotics crimes are both victimless crimes and organized crimes, the offenders are very difficult to apprehend and the majority of such crimes are black numbers, the mentioned formulation of the article is acceptable. Effects of requesting treatment existed in the abolished code too. I consider this quite favourable, and a good example of restorative justice.

Effective regret is taken into consideration also for some of the crimes against persons, such as trafficking of organs and tissues (93), crimes of violating personal liberty (110), crimes of illegal construction (184/5), crimes against public confidence, for example counterfeiting of money, public bonds and valuable seals (201), crimes against public peace, for example forming societies with the purpose of committing crimes (221), crimes against the trustworthiness and functioning of the public administration, such as embezzlement by extortion (248), bribery (254), crimes against the judicial administration, for example libel and slander(false accusation) (269), perjury (274), evasion of the convicts or arrested suspects (293). The victims of these crimes are not always private persons, in most cases it is the public, but in all of these effective regret is accepted either to give another chance to the offender and not to stigmatize him or to decrease the harm caused by the crime, which in short may be called restorative justice. In other words the harm given to the community is restored in all these cases. On the other hand an offender who is in the position of effective regret is hoped to quit criminal careers therefore will not be a recidivist.

Reconciliation (mediation)

Reconciliation was originally in the TPC (art. 73/ last paragraph) in 2005 version of the Code. In this article reconciliation between the victim and the offender was rendered for a

very limited number of minor offences defined in the Code, where the initiation of legal prosecution was subject to the filing of a private complaint by the victim and both parties agreed on reconciliation. Reconciliation is a very important and useful kind of restorative justice. In the Turkish system initiation of legal prosecution is subject to filing a private complaint by the victim is possible only in a few unimportant crimes. Reconciliation in the mentioned article was possible only if the offender accepts that he has committed the crime and pays compensation to the victim and this was done in presence of either the judge or the public prosecutor, then legal prosecution would not begin.

Reconciliation was not originally possible for cases where legal prosecution commenced by the public prosecutor, and if it was either a negligent crime or a crime against persons, property and the like. But with the Child Protection Act art. 24, reconciliation was made possible also for negligent crimes and also for intentional crimes with the minimum limit of 3 years for people between the age of 15-18 and 2 years for people under 15.

With an amendment in 2006, reconciliation is transferred to the Criminal Procedure Code with considerably detailed article (TCPC. Art. 253-255) and its scope is enlarged.

Reconciliation is a process where the suspect or the accused reconciles with the victim of the crime. It is a way to end the dispute with alternative solutions, outside the court. It is for the good of both the offender and the victim, because it is fair for both of them. It is not just reimbursement of the actual losses it also enables moral satisfaction for both sides. It serves both public and private prevention. General Assembly decision of the Turkish Court of Cassation stressed the fact that, besides private prevention, by giving the offender a chance to repair the damages he caused he is also given the chance to accept the validity of the legal norms and thus re-establishes the public peace.

Reconciliation Procedure

When there are conditions for reconciliation, it is obligatory to apply reconciliation. If this phase is skipped the charges are refused.

If the crime is a sort that is *prosecuted upon the complaint* of the victim, there must be a valid complaint.

After all these, either the public prosecutor himself or a police officer he appoints makes the reconciliation proposal to all parties. The proposal may be made orally to the party

himself or by serving a notice or he is in a distant province, via a judge at that province. If the victim is not found, reconciliation is not applied.

-If the proposal is accepted, the authorities go ahead with the reconciliation.

-If the proposal is **not accepted**, the interrogation is made and charges are placed. Reconciliation is not applied during the trial either. But if the parties first refuse the application of reconciliation but later apply to the public prosecutor, until the written charges are made, it will be accepted.

If one or more of the parties to the crime do not speak Turkish or if he is deaf or dumb a suitable translator is provided for him.

A conciliator enhances the reconciliation. This either the public prosecutor himself, the judge at the trial phase, an attorney appointed by the bar association, anyone who has a law degree, or is graduate of political science, administrative sciences, economics or finance faculties and if he has had sufficient law subjects in the curriculum, or he holds a law doctorate or master's degree.

Copies of all the documents in the investigation file are given to the conciliator. Following this, the conciliator has to finish all the reconciliation process in 30 days. If necessary the public prosecutor can give 20 more days.

All the parties to the crime and their attorneys can participate in the reconciliation procedures. If the suspect, the victim or their representatives do not participate in the negotiations, they are considered as though they did not accept to reconcile.

Reconciliation conferences are not open to public. Only the accused, the victim, their legal representatives, and their counsels participate. The conferences may be made in joint sessions, or separate sessions with the parties. If the victim or his/her representatives or counsels do not participate, they are considered as not having accepted the reconciliation.

At the end of the conferences the conciliator prepares a report and gives it to the public prosecutor with copies of the documents he was given. The report is signed by the parties, if they reach to a consensus. The report also includes the details of the reconciliation process and how it is achieved. The process is not repeated, if the reconciliation is not achieved. But if it is, the public prosecutor examines it whether it is based on the free will of the parties and the arranged obligation is legal. Then he seals and signs it and keeps it in the interrogation file.

If the judge finds out at the trial phase, that the offence is within the boundaries of reconciliation, he/she will follow the above procedure, but a hearing must be opened. If the suspect pays the total obligation, no prosecution will be done for him. If he delays it to a

future date, or accepts to pay it in small amounts, the decision must be the postponing of the execution of the sentence.

If reconciliation is achieved, the victim cannot file a case for damages.

No comment made during the negotiations can be used as evidence in any case.

Restorative Justice measures that are provided by the legal frame apply only to crimes such as:

1. Offences, the investigation and prosecution of which are dependent on complaint, except
   a. crimes where effective regret is possible,
   b. crimes against sexual immunity, such as child molestation and other forms of sexual abuse,
   c. Crimes committed in conjunction with a crime outside the scope of reconciliation.
2. Without regard whether they are prosecuted or investigated on complaint:

a. All intentional injury crimes excluding the aggravated cases such as: Committing the crime,

aa) Against antecedents or descendants, or spouse or brother/sister,

bb) Against a person who cannot protect himself due to corporal or spiritual disability,

cc) By virtue of public office,

dd) By undue influence based on public office,

ee) By use of a weapon,

   c. Unintentional (negligent) injury,
   d. Violation of the dwelling immunity,
   e. Kidnapping and retention of a child,
   f. Disclosure of business secrets, banking secrets or information relating to customers except cases where force or threat is used.

Restorative justice measures that are provided by the legal frame apply both to juvenile and adult offenders. Some academics are against the application of reconciliation to juveniles and do not find I ethical[8].

As pointed above, if the public prosecutor sees that the committed crime is subject to reconciliation, it is possible to administer reconciliation at the beginning of the prosecution. It is also possible at the trial phase of the criminal procedure. If the judge notices that the matter is within the limits of reconciliation, he asks the parties if they want to reconcile.

Reconciliation and pre-payment are applied as alternatives to the traditional CJ procedure. Effective regret is applied as a part of the CJ procedure.
The police cannot act on their initiative. They work in conjunction with the public prosecutor. In fact they are subordinate to the public prosecutor. He enters the scene under the orders of the public prosecutor.

If he public prosecutor sees that, the conditions of reconciliation exist, he is obliged to follow the procedure either himself or he may appoint a police officer for it. The parties may refuse reconciliation at the beginning but later if they both agree to reconcile, they prepare a joint document and apply to the public prosecutor until the charges are finalised with a document.

If the judge realizes that the conditions for reconciliation exist at the trial phase, he/she is obliged to propose reconciliation to the parties.

Reconciliation was not originally possible for cases where legal prosecution commenced by the public prosecutor, and if it was either a negligent crime or a crime against persons, property and the like. But with the Child Protection Act art. 24, reconciliation was made possible also for negligent crimes and also for intentional crimes with the minimum limit of 3 years for minors between the ages of 15-18 and 2 years for juveniles under 15.
In the special part of the Penal Code, for some crimes, returning the crime proceeds before the commencement of the prosecution is a mitigating circumstance and in cases of effective

[8] [8] ÖZTÜRK (ÖZTÜRK- ERDEM), Uygulamalı Ceza Muhakemesi Hukuku, Ankara 2007, p.1114.

regret, the offender is not convicted at all. Examples of effective regret are given above in more detail.
As I had mentioned before, execution of prison sentences less than two years may be suspended if the personal indemnities of the victim are restored by returning the proceeds of the offence or by payment of the damages.

To be able to be conditionally released from prison the prisoner may be obliged "to fulfil some obligations". But the Law of Execution Punishments and Security Measures, does not clarify what these obligations are. In my opinion the payment of the damages caused to the victim may be requested from the prisoner, before he/she is conditionally released from prison.

C. Actual Situation of Restorative Justice

Reconciliation is not practical in comparison to cases where the initiation of legal prosecution was subject to the filing of a private complaint by the victim. The victim may withdraw his complaint and this is more advantageous in many ways. One of the major reasons is that, it is much cheaper and simpler than reconciliation. On the other hand, reconciliation is to be monitored either by the public prosecutor or the judge, whereas the withdrawal of the complaint is not monitored by anyone.

I (as the Director of the Istanbul University Law Faculty, Research Center of Criminal Law and Criminology) organized a Criminology Course on Restorative Justice with the International Society of Criminology so as to introduce the concept to the Turkish lawyers, academics, and students of different level. In fact besides undergraduate and postgraduate law students, students of the Forensic Science Institute showed great interest. In some people we could raise awareness that **the already existing methods are done not for restorative justice but for lessening the heavily loaded criminal justice system's burden.**

D. Informal Referrals and Informal Initiatives

No such concept exists in the Turkish Criminal Procedure in general. BUT there is one special situation where the police try to establish peace between the husband and the wife and that is

in cases of domestic violence. They usually think that it is not their duty to interfere with family matters. They send them home together and or this reason women victimization of murder and injury has increased 1400%.

Both the police and the judiciary think that their primary aim is to protect the family, not the individual women. In terms of sociology the subculture of both these professions has the element of conservatism. So if the laws do not take this into consideration, judges and the police will go on considering violence as a matter of family and not to be interfered by anyone. "There are many barriers facing women who need access to justice and protection from violence. Police officers often believe that their duty is to encourage women to return home and "make peace" and fail to investigate the women's complaints. Many women, particularly in rural areas, are unable to make formal complaints, because leaving their neighbourhoods subjects them to intense scrutiny, criticism and, in some cases, violence"[9].

E. The key-practitioners of Restorative Justice

The key practitioners of reconciliation are different people, at different stages of the procedure. During the interrogation period, the reconciliation offer is made by the public prosecutor or by the police officers that he appoints. During the prosecution the proposition is made by the judge. The offer is made to the suspect and the victim. The Court of Cassation did not find an offer made to the counsel of the accused. The Court indicated that it was necessary that the offer be made directly to the accused.

If one of the parties is a minor the offer can be made to his/her representative.

If the victims are more than one, each one must accept the offer. If the offenders are more than one, only those who accept reconciliation and reconcile in the end are in the scope of reconciliation. Ordinary procedures are applied to the other associates.

Those who play an active role in reconciliation are:

1. The public prosecutor during the investigation phase

   He may act as the reconciliatory or he can request from the bar association to appoint an attorney at law or he can appoint anyone with a law degree.
2. The judge applies the same procedure during the trial phase.

[9] OPUZ v. Turkey paragraph 102.

I do not know any official network of Mediators or similar alike club or network. But I hope the Bar associations will show more interest in future.

F. Case Study

RJ is used as a part of the traditional system. In fact, in both phases of the criminal procedure, reconciliation is obligatory if the crime committed is cited in the Code and the conditions are present.

G. Current Reforms

Reconciliation was originally in the TPC (art. 73/ last paragraph) in 2005 version of the Code. With an amendment in 2006, reconciliation is transferred to the Criminal Procedure Code with considerably detailed article (TCPC. Art. 253-255) and its scope is enlarged.

H. Evaluation and Recommendations

The application of reconciliation is not very popular yet. One of the reasons for this is that actors of criminal justice do not find reconciliation very favourable and are reluctant to use it. Another reason is that reconciliation is applicable for only a limited amount of crimes. I would advise the legislator to make the list longer and take more crimes into the scope of reconciliation, for example for crimes against property.

Another reason is that some offenders are not very prone to accept their guilt and some victims are not very favourable to forgiveness. We should first educate our people so as to develop a feeling of empathy.

Reconciliation is not practical in comparison to cases where the initiation of legal prosecution was subject to the filing of a private complaint by the victim. The victim may withdraw his complaint and this is more advantageous in many ways. First of all it is much cheaper and simpler than reconciliation. Then, reconciliation is to be monitored either by the public prosecutor or the judge, whereas the withdrawal of the complaint is not monitored by anyone.

Restorative justice is an “approach” to justice and it can be applied to prevent crime by using reconciliation to resolve conflicts before they reach to the threshold of criminal behaviour or sometimes right after it.

The new Criminal Code is enacted in 2005, for the sake of harmonizing the Turkish legal system with that of the European Union, within a whole series of reforms in which the Code of Criminal Procedure, Code of Execution of Punishments, Child Protection Act etc. are also newly made (all in the year 2005). In the European legal system, **restitution and compensation** of the harm caused to the victim is an important aspect of restorative justice. Recommendation R (85) 11 of the Council of Europe on the Position of the Victim in the Framework of Criminal Law and Procedure, under paragraph D. 10 states that, "It should be possible for a criminal court to order compensation by the offender to the victim. To that end, existing limitations, restrictions or technical impediments which prevent such a possibility from being generally realized should be abolished". In the abolished Turkish Criminal Procedure Code the victim could apply for his damages either at a civil court or at the criminal court (Abolished Criminal Code art. 37). What I was criticizing in the old system was, that after the criminal court's decision on the amount of compensation, the victim was in a disadvantageous situation and the laws should be changed so as to enable the victim to receive the compensation in the same way as the government gets the fine from the offender[10]. But the reforms did just the contrary and abolished the victims right to sue for his compensation in the criminal court. On the other hand, numerous articles where the offender is given a chance to compensate the damages of the victim such as postponing the execution of the sentence, postponing of the announcement of the verdict, conditional release etc.

In terms of Criminal Law, crimes are deviations which disturb the public order and by punishing them we restore the public order and this is called criminal justice or legal justice, but the aim of the contemporary Criminal Law cannot be just punishment. The aim of punishment today is still general and individual prevention of crime[11]. Jeremy Bentham centuries ago (1789), said that "the general object of all laws is to prevent mischief...when there are no other means of doing this than punishment... the most extensive, and most eligible object is to prevent...all sorts of offences whatsoever... so to manage that no offence whatsoever may be committed" [12]. Indeed "Beccaria then Bentham, contributed the central claims of the deterrence hypothesis on which almost all systems of criminal law now rely: that punishment is more likely to prevent future crime..."[13]. But to be able to do this the

[10] SOKULLU-AKINCI, Viktimoloji ,Pp. 207-208
[11] Füsun SOKULLU-AKINCI, Kriminoloji (Criminology), 4th. Ed., Istanbul, 2004, p. 117-118.
[12] Jeremy BENTHAM, An Introduction to the Principles of Morals and Legislation, New York, 1948, p. 179.
[13] Lawrence W. SHERMAN, "The Use and Usefulness of Criminology, 1751-2005: Enlightened Justice and Its Failures", ANNALS, AAPSS, 600, July 2005, p. 120.

punishment must be certain, immediate[14], proportionate to the crime and more costly than the outcomes of the crime[15].

Fair and efficient criminal justice is a prerequisite for any democratic society based on the rule of law[16] but the justice we achieve is it always fair for all the parties: for the victim, for the society (community) and even for the offender? The needs of the victim may be different from that of the society. There are also lots of things to do for the offender. Punishing the criminals is not sometimes sufficient for neither of the parties. On the other hand restorative justice is a problem solving approach to crime and it involves the parties themselves as well as the community[17].

Then, what should be restored besides justice? What do we restore to achieve restorative justice? Justice is not there to solve social problems. So we have to find an alternative way to solve the social problems created by the crime. Since crime causes injury to people and communities, we must find a way to repair those injuries and the parties must be permitted to participate in that process. Restorative justice programs therefore enable the victim, the offender and affected members of the community to be directly involved in responding to the crime. They all become a part of the criminal justice process and the system aims at offender accountability, reparation to the victim and full participation by the victim-the offender-the community, and thus by involving all the parties achieving the restorative outcome of reparation and peace. For example, to attend fully the financial, material, emotional and social needs of the victim and those who are close to the victim and are affected by the crime; to enable offenders to assume active responsibility for their actions; to prevent recidivism by reintegrating offenders into the community; to recreate a working community that supports the rehabilitation of offenders and victims and is active in preventing crime; to provide a means of avoiding escalation of legal justice and the associated costs and delays[18]. In short restorative justice is the repairing of the harm caused by crime.

[14] Caesare BECCARİA, Dei Delitti e Delle Pene, Milano, 1973, Pp. 47-50.
[15] BECCARİA, 79-80; BENTHAM, 179-180,
[16]Recommendation No R (95) 12, Council of Europe, Commitee of Ministers.
[17] Since Aristoteles justice is classified as distributive justice and rectificatory justice. Today social justice took the place of distributive justice and legal justice is the compensation of pecuniary (actual) damage (restitutive justice) and compensation of moral damage (corrective justice). Criminal justice on the other hand is retributive justice.
[18] Tony F. MARSHALL, Restorative Justice an Overview, Home Office Research Development and Statistics Directorate, London 1999, p.6.

In restorative justice, just like classical criminal penalties, we aim general and individual prevention of criminality, even with more success, because crime is mainly caused by social conditions and relationships in the community. As a result of this the community must take some responsibility for remedying those conditions that cause crime. In addition it must not be forgotten that the aftermath of crime cannot be totally resolved for neither the offender nor the victim without their personal involvement[19]. The concept of restorative (reparative) justice seeks to use interventions that return the victim and offender to their pre-offense states. For offenders this means an assurance that the action will not be repeated[20]. In fact research indicates that in cases where the offender meets the victim, and realizes the pains he/she caused, he/she is more apt to pay indemnities and his/her recidivism is less probable[21].

There are different kinds of restorative justice as practiced all over the world such as community service, restorative resolutions, conferencing, mediation, family/group conference, peer mediation, victim offender reconciliation, restitution [22]. I must admit that we are far behind all these, excepting reconciliation which has developed in time.

[19] MARSHALL,6.
[20] William G.DOERNER- Steven P. LAB, Victimology, 1995, Cincinatti, Ohio, p.224.
[21] Füsun SOKULLU-AKINCI, Viktimoloji (Victimology), Istanbul, 1999, Pp. 177-8,
[22] For detailed examples see, Paul C. FRIDAY, "Community-Based Restorative Justice: The Impact on Crime", in H. Kury &J. Oberfell-Fuchs (Eds.), Crime Prevention: New Approaches, Meinz: Weisser Ring, Pp.386-389.

I. ANNEX

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