

## RESTORATIVE JUSTICE IN THE CONDITIONS OF THE SLOVAK REPUBLIC<sup>1</sup>

Tomáš Strémy & Miroslava Vráblová

Comenius University in Bratislava, Faculty of Law, Slovakia;  
Trnava University in Trnava, Faculty of Law, Slovakia

*tomas.stremy@flaw.uniba.sk, miroslava.vrablova@truni.sk*

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**Summary:** Nowadays, traditional criminal policy is facing its limits and is unable to cope with the rising criminality. Current criminal justice based on repressive approaches is unable to face serious obstacles and problems, namely in efficiency of punishment, poor protection of victims, and slow and overburdened criminal courts. New models of criminal judiciary based on principles of restorative justice have been unveiled while traditional systems of criminal justice are facing a serious crisis. The conception of restorative justice is one of the most modern and progressive of current approaches to criminal law that deserves to be implemented into the Slovakia criminal judiciary system. Author focused on punishments as home arrest, compulsory labour and financial penalty.

**Keywords:** Principles, Features, Retributive Justice, Theoretical Background, Reform History, Home Arrest, Compulsory Labour, Financial Penalty.

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### 1 Principles of Restorative Justice

#### a) Support Victim and Healing is a Priority

When Liebmann is talking about restorative justice, he often ask whether anyone has been a victim of crime – often half or all the audience put their hands up – then ask what they would have wanted after the crime. Almost all of them mention things they needed (mainly their property back etc.) rather than punishment for the offender.

#### b) Offenders take Responsibility for what they have done

Offenders are used to take punishment but this is different like to taking responsibility for what they have done. Offenders suppose „I’ve done my time, I’ve paid my debt to society“, while in reality they had cost the state a lot of mon-

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ey and had not given a thought to those they had harmed. To take responsibility means to say „Yes, I did it and I take responsibility for the harm I caused“. From this statement starting point restorative justice.

### **c) Achieve Dialogue Leading to Understanding**

A lot of victims have questions: Why me? Why my house? Is it likely to happen again? Etc. Only one person knows and can answer these questions. Some of offenders do not understand how they have harmed their victims, “What is the problem? They can get it back on insurance, can’t they?”. The offenders realize when they hear from victim what they did.

### **d) There is an Attempt to put Right the Harm Done**

Further step should be logically to take responsibility for doing harm is to try to put things right, as far as possible. Sometimes an apology is enough but mostly not. Sometimes the community has been harmed and these needs putting right, an example might be removing graffiti on an elderly persons’ home.

### **e) Preventing Recidivism of the Offender**

Once, when offenders have realized the harm they have done, they usually don’t like the idea of repeating their behavior. Many offenders have problems that lead to offending, such as homelessness, drugs or alcohol – they may need considerable help to avoid future offending and build a different kind of life. Restorative justice need to go hand in hand with the resources to achieve this. This is long run, most victims are interested in offenders avoiding future offending, thereby preventing the creation of more victims.

### **f) Reintegration of Victim and Offender**

The offenders need to be reintegrated into the community, especially after a prison sentence. They need accommodation, jobs and relationship to become positive members of the community. On the other hand, victims need reintegrating into the community too. They often feel alienated and cut off as a result of crime.<sup>2</sup>

## **2 Features of Restorative Justice**

There are three basic pillars of restorative justice: *harm and need, obligation, engagement*.

### **a) The Restorative Justice Focuses on Harm.**

The term “restorative justice” means in the first place the harm done by crime, specifically to people and the society. Our legal system focuses on the law

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2 LIEBMAN, Matt. *Restorative justice/how it works*. London: Jessica Kingsley Publishers, 2012, pp. 8.

(rules), which sees the state as the main victim. The goal of restorative justice is to provide experience with rehabilitation to all involved parties.

### **b) Wrongs and Harms Resulting in Obligations.**

The restorative justice emphasizes that the offender should be accountable for his acts. The offender assuming responsibility is the basic step for the restorative justice to operate. If the way of punishing the offender is to put him into an institution to serve a term of imprisonment and thus restricting his personal freedom, then the restorative justice cannot be applied. The offender has to realise that he caused harm and, especially, he has to assume responsibility for his acts. The offender has to understand the consequences of his acts. He also has the obligation to restore the damage caused to the highest extent possible.

The first obligation is on the offender's side but let's not forget also the obligation of the society as such that lies in the reintegration of the offender and postpenitentiary care.

### **c) Restorative Justice Supports Participation or Engagement.**

The principle of engaging the offender lies in influencing the parties directly affected by the act – the victim, the offender and members of society – they have an important role in the criminal procedure. These involved parties must be provided with information about each other and at the same time they need to know what the prosecuting authorities need from them.

In some cases it might concern dialogues between parties that commonly take place between the offender and the victim at victim offender conferences. Opinions are shared and consensus is sought during such conferences. In other cases, indirect parties, such as surrogates, might be involved.

The engagement principle means involving an enlarged circle of parties as compared to the traditional justice process.

### **The Restorative Justices Requires, at Minimum:**

- compensating the victims and addressing their needs,
- preparation of offenders and holding them accountable to restore the damage and
- subsequently the involvement of victims and offenders and the society into this process.<sup>3</sup>

### **Features of Restorative Justice:**

1. To focus on consequences of the crime more than on the fact that the law was breached.

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<sup>3</sup> ZEHR, Howard. *The little book of Restorative Justice*. Intercourse, PA: Good Books, 2002, pp. 22–25.

2. To show the same concern and resolution towards the victim and the offender that involves the participation of both in the justice process.
3. To work on the compensation of victims, to strengthen them in addressing needs as they perceive them.
4. To support and encourage offenders in the understanding and acceptance of obligations, to make them fulfil their obligations.
5. To recognise obligations that might be more difficult for offender and should not be seen as something harmful and that should be, at the same time, attainable.
6. To provide opportunity for dialogue, direct or indirect, between the victim and the offender.
7. To find meaningful ways how to involve the society in the process.
8. To support cooperation and reintegration of victims and offender rather than to apply coercion and isolation.
9. To pay attention to thoughtless consequences of one's own acts.
10. To respect all parties – the victim, the offender and the society.<sup>4</sup>

### 3 Restorative Justice versus Retributive Justice

In the opinion of Conrad Brun, the theoretical and philosophical scopes of the terms restorative justice and retributive justice are not opposites, as some people might assume.<sup>5</sup> The restorative justice introduces new elements into the traditional criminal justice, such as mediation between the offender and the victim, group extrajudicial hearings of minor offences of juvenile delinquents (the so-called a family group conferences) and also pointing out to the compensation of harm caused to the victim.<sup>6</sup> At the same time, restorative justice represents a traditional form of criminal justice that focuses mainly on punishing the offender but also on the restoration of previous conditions.

The characteristic feature of both theories is the compensation of damage to the victim. The difference between both theories arises in application of specific settlement of affairs.<sup>7</sup>

The retributive theory means that the punishment is deserved, which in practice is often counter-productive for the victims and the offenders. On the other hand, the restorative justice theory shows that the addressing the needs and harms done to the victim is needed in combination with the active effort to

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4 BECK, Elizabeth; KROPF Nancy P.; BLUME LEONARD, Pamela. *Social work and restorative justice*. Oxford: Oxford University press, 2011, pp. 43.

5 BRUNK, Conrad. Restorative Justice and The Philosophical Theories of Criminal Punishment. In *The Spiritual Roots of Restorative Justice*. 2001.

6 SCHEINOST, Miroslav. Restoratívni justice. In *Sborník příspěvku a dokumentu*. Institut pro kriminologii a sociální prevenci, Praha, 2003.

7 KURILOVSKÁ, Lucia, LENHARTOVÁ, Katarína. EÚ ako otvorená cesta restoratívnej justice = EU as an open way of restorative justice. In *Právny obzor*, roč. 96, č. 3, 2013.

support the offender to accept responsibility for committed crimes and focus on the causes of his behavior.<sup>8</sup>

According to Howard Zehr, the differences between restorative and retributive justice are:

**Restorative Justice:**

- The crime presents a disruption of personal and interpersonal relations.
- The disruption leads to obligations.
- In the restoration process, justice involves: victims, offenders and the society.
- Focus: needs of the victim and offenders and responsibility for restoration of damage.

**Retributive Justice:**

- The crime presents a disruption of law and the interests of state.
- The disruption leads to guilt.
- The justice requires the state to decide on the guilt and impose punishment.
- Focus: the offender should get what he deserves.<sup>9</sup>

Howard Zehr created on the basis of these differences three different questions how to see the committed crime from the point of view of restorative or retributive concept:

Restorative justice:

Who has been hurt?

What are their needs?

Whose obligations are these?

Retributive justice:

What law has been breached?

Who did it?

What do they deserve?<sup>10</sup>

The retribution theory believes that the harm caused to the victim will be remedied, but it is often counter-productive in practice for the victim and the offender. On the other hand, the restorative theory justice argues, or more precisely, really advocates for becoming aware of the damage the offender caused to the victim together with the effort to encourage him to assume responsibility for the offence. At the same time, the restorative justice has the potential to transform the lives of the offender and the victim in a positive way.<sup>11</sup>

8 ZEHR, HOWARD. The little book of Restorative Justice. Intercourse, PA: Good Books, 2002, pp. 58-59.

9 ZEHR, Howard. The little book of Restorative Justice. Intercourse, PA: Good Books, 2002, pp. 21.

10 ZEHR, Howard. The little book of Restorative Justice. Intercourse, PA: Good Books, 2002, pp. 22-25.

11 ZEHR, HOWARD. *The little book of Restorative Justice*. Intercourse, PA: Good Books,

The proponents of restorative justice have a different opinion from the traditional reformers of criminal law. Before they see victims, they also see offenders and how to get them back into society, i.e. how to reintegrate them. Naturally, the victims are people that were “hurt” by the offence but at the same time, they should be able to empathize with the offender as a person who could be punished in another way than by a verdict of imprisonment. The restorative justice focuses, inter alia, on the return of the victim into the society.<sup>12</sup>

#### **4 Origins, Aims and Theoretical Background of Restorative Justice in the Slovak Republic**

Nowadays, traditional criminal policy is facing its limits and is unable to cope with the rising criminality. Current criminal justice based on repressive approaches is unable to face serious obstacles and problems, namely in efficiency of punishment, poor protection of victims, and slow and overburdened criminal courts. New models of criminal judiciary based on principles of restorative justice have been unveiled while traditional systems of criminal justice are facing a serious crisis.

The conception of restorative justice is one of the most modern and progressive of current approaches to criminal law that deserves to be implemented into the Slovakia criminal judiciary system. The foundations of restorative justice is a conviction that crime (criminal offence) itself does not mean only a breach of Criminal Code clauses (provisions), but it also means social conflict between individuals and an invisible breach of social and interpersonal relationships. Because of this we think the conflict should be resolved on an elementary level of interpersonal relationships with aim to restore damaged social relations and to compensate damages or other harms. Nevertheless, 100% restoration of damaged social relationships is hardly ever possible, so instead of repression we should focus on preventing criminality and protection of victims. The main goals of restorative justice are to decrease number of those incarcerated, crime prevention, to motivate offenders to compensate damages, give up criminal activities and live in a socially responsible way. We should protect society against criminality with special attention to victim's rights.

##### *4.1 Overview on Forms of Restorative Justice in the Criminal Justice System*

Criminal judiciary in the Slovak Republic is based on traditional continental criminal procedure. Substantive Criminal Law as well as Procedural Criminal Law are more or less rigid and there is not enough space for the independent actions of judges, attorneys-general, prosecutors and policemen to determine

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2002, pp. 59.

12 CLEAR; Todd R.. Community justice versus restorative justice: contrasts in family of value. In SULLIVAN, Dennis; TIFFT, Larry (Eds). *Handbook of Restorative Justice*. Routledge International Handbooks, 2008, pp. 464.

the best practices to cope with criminality and at the same time protect the interests of victims, offenders and the public as well. Modern features of restorative justice in Slovak criminal judiciary are appearing and it could be the way out of the crisis of criminal judiciary in Slovakia.

It is clear that main reforms of Slovak criminal procedure had been implemented in 2005 during the process of Re-Codification of Slovak Criminal Law. Some restorative measures and concepts came into effect on 01 January, 2006, when Criminal Code No. 300/2005 Coll. and Code of Criminal Procedure No. 301/2005 Coll. came into effect, Act No. 215/2006 Coll. On Compensation to Injured Persons by violent criminal offences, as well as Probation and Mediation Officers Act No. 550/2003 Coll. which came into force few years before.<sup>13</sup>

First of all, criminal procedure had been amended via strengthening the position of victims and other injured persons (better chance to claim damages). There is another progressive move, an effort to make victims and other injured persons take part in the criminal proceedings in order to ensure quick and satisfactory claim of damages (using so-called diversions). Finally, some modern informal processes had been implemented, e.g. Conditional Discharge, Reconciliation and Agreement of Guilt and Sentence (Arbitration and Mitigation in criminal proceedings).

Last but not least, substantive criminal law had been amended through implementation and application of alternative sentences. The most important of them is Community Service Orders and the opportunity to impose Protective Supervision over juvenile offenders exercised by the Probation and Mediation Officer in case of Conditional Suspension of Execution of Sentence of Imprisonment with Probation Supervision and Waiver of Sentence with Probation Supervision.

There is also a new institute of Mediation, a form of formal arbitration or mitigation proceedings outside the criminal procedure. It is an alternative to the criminal procedure, which creates an opportunity for imposing alternative sentences, using diversions in criminal procedure or substituting protective custody with less harmful protective measures. However, several concepts of restorative justice have never been implemented in the Slovak Republic, namely restorative group conferencing, police cautioning, community reparation boards and sentencing circles.

#### *4.2 Reform History*

The 1990s brought a broad discussion about possible implementation of restorative justice instruments such as Conditional Discharge and Conditional Discharge with enforcement by the Probation Supervision in Slovakia. Though it sounds strange, the first efforts to implement Conditional Discharge were in the 1980s during the totalitarian regime in Czechoslovakian Socialist Republic

13 DIANIŠKA, Gustáv a kol. *Kriminológia*. 2. vyd. Plzeň, Aleš Čeněk, 2011.

(solving issues of criminal liability for minor criminal offences, misdemeanors, anti-social and moral derelict behaviour). There was also an issue of Criminal Conciliation outside the Criminal Trial Proceedings. The proposed conception of Criminal Conciliation Proceedings was mentioned as a diversion from traditional course of criminal proceedings. The reforming effort was successful and some instruments of restorative justice have been finally implemented in the Slovak Republic.

First of all, the diversion in criminal proceedings, Conditional Discharge, was enacted by Amendment No. 247/1994 Coll. to the Criminal Procedure Code No. 141/1961 Coll. and came into force on 01 October 1994. Moreover, in Amendment No. 422/2002 Coll. to the Criminal Procedure Code No. 141/1961 Coll., which came into effect on 01 October 2002, the instrument of Criminal Conciliation Proceedings was implemented. Criminal conciliation ensures faster criminal proceedings as well as a strengthened position for victims and other damaged parties (to help them claim damages). In order to impose alternative sentences and non-custodial protective measures the Probation and Mediation Service was created. The Probation and Mediation Officers Act No. 550/2003 Coll. was enacted and came into force on 01 January 2004. Last but not least, a new alternative sentence was implemented in Slovakia– Community Service Orders (Sentence of Community Work). Moreover, for juvenile offenders, there was an opportunity to create the Conditional Waiver of Sentence (or Conditional Restraint of Sentence).

#### *4.3 Contextual Factors and Aims of the Reforms*

According to the Submission Report submitted to the Criminal Conciliation Implementation Act the criminal conciliation proceedings should enable agreement between prosecution (the Slovak Republic, victim, other damaged parties) and defence outside of the regular formal criminal proceedings. Of course, regular statutory criminal proceedings cannot be diverted at all, but it could focus exclusively on matters of guilt and sentence. On the other hand, when a criminal conciliation agreement comes into effect, it influences regular criminal proceedings in various ways: First of all, to make conciliation proceedings successful, there should be an agreement of awarding damages to the victim (this will make criminal proceedings quicker, less expensive and far more efficient). Furthermore, if there is valid and effective conciliation decision and an agreement of damages to be awarded, there is still space for Agreement of Guilt and Sentence at the criminal court.

Re-Codification of Criminal Law in 2005 created ideal circumstances for implementation and application of concepts and approaches of restorative justice into the Slovak system of criminal judiciary.<sup>14</sup> The reform process had sev-

14 DIANIŠKA, Gustáv, STRÉMY, Tomáš. *Introduction to Criminology*. Plzeň, Aleš Čeněk, 2009.



eral main goals compatible with the concept of restorative justice, namely effort to decriminalize, depenalize, and to help overburdened courts. Moreover, Trial Proceedings had become less complicated and less time consuming as well as more efficient. Finally, the institute of Probation and Mediation Officers was created and they tried to solve as many criminal cases as they could outside the criminal proceedings and criminal judiciary.

#### *4.4 Influence of International Standards*

Criminal justice in Slovakia is being influenced by current European trends, such as extending use of alternative sentences in substantive criminal law and diversions in procedural criminal law. Also International standards played important role in the process of Re-Codification of Slovak criminal law by introducing restorative measures.

### **5 Home Arrest in the Slovak Republic**

**Home arrest** was introduced in the Slovak legal system by Act No. 300/2005 Coll., Criminal Code, as amended (hereinafter as “Criminal Code”). It holds a crucial position within the system of alternative sentences, also due to that the lawmaker has inserted it right behind the sentence of imprisonment within the enumeration of the types of sentences under S 32 of Criminal Code. The conditions for imposing home arrest, its modifications, including other specifics of its content are governed by the provision of S 53 of the Criminal Code. The execution of home arrest is governed by the provision of S 435 of Act No. 301/2005 Coll., Criminal Procedure Code, as amended, and of S 79a of Decree No. 543/2005 Coll., on Administration and office regulations for district courts, regional courts, the Special court and military courts, as amended.<sup>15</sup>

#### *Section 53 Home Arrest*

*(1) The court may impose home arrest for a period of up to one year on the offender of a minor offence.*

*(2) During the execution of home arrest, the convict shall be obliged, for the period of time determined by the court, to stay in his dwelling and premises adjacent thereto, lead a regular life and, if ordered by the court, submit himself to supervision by means of electronic monitoring devices.*

*(3) During the execution of home arrest, the convict may leave his dwelling only upon the previous consent given by a probation and mediation officer or an authority responsible for overseeing the convict via technical devices, and only on the grounds of urgency and for the period no longer than necessary. This period of time shall be included in the calculation of the overall sentence.*

<sup>15</sup> VRÁBLOVÁ, Miroslava. *Slovak substantive criminal law*. Trnava: University in Trnava, 2013.

*(4) If the convict does not comply with the conditions referred to under paragraph 2, the court shall convert home arrest into an unconditional imprisonment sentence in such a way that two days of unserved portion of home arrest shall be equivalent to one day of an unconditional imprisonment sentence, it shall also decide about how the sentence is to be executed.*

In the context of the Slovak Republic, the courts are missing the statutory option to impose the home arrest on a minor, because home arrest is not included in the enumeration of sentences under S 109 of Criminal Code which may be imposed on a minor.

Home arrest is a separate sentence and despite the fact that it presents a detriment to the personal freedom of the convict, the fact that during the execution of home arrest the convict remains in his natural environment with his social, family and economic bonds remaining intact, but with concurrent monitoring of his behaviour, can be seen as a positive attribute. Home arrest should be imposed mainly in cases when the significantly lesser intensity of interference with personal freedom of the offender is required given the nature and severity of the crime, given the personality of the offender, his chance of re-socialisation, taking into account his family background.<sup>16</sup> Introduction of home arrest was motivated by the requirement of the society to punish the offender and at the same time to eliminate the negative effects of unconditional imprisonment, which include the effect of so-called prison subculture that often leads up to the negative change in value orientation, whereas family and social bonds are severed or work habits are lost and the connection of the convicted with the everyday reality is severed. This undoubtedly leads to bad financial situation and the indirect increase of the risk of relapse. The financial intensity of imprisonment compared to home arrest is also an important attribute.

## **6 Punishment of Compulsory Labour in the Slovak Republic**

Punishment of compulsory labour was introduced into our legal system by Act No. 300/2005 Coll. Criminal Code, which is effective from 1 January 2006. Imposition and execution of this sentence are set forth in several legal regulations. Conditions for its imposition are set forth in Act No. 300/2005 Coll. Criminal Code. Specifically, the provisions related to the conditions of its imposition are contained in S 54, S 55 and S 111. Execution of punishment of compulsory labour, its alternation as well as possibilities and conditions of waiving of the executions is regulated by a separate Act No. 528/2005 Coll. On Executions of punishment of compulsory labour. Provision of S 422 of Act No. 301/2005 Coll. Criminal Procedure Code which deals with executions of punishment of compulsory labour refers to the application of Act No. 528/2005 Coll. On Executions of punishment of compulsory labour.

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<sup>16</sup> ŠČERBA, Filip. *Alternativní tresty a opatření v nové právní úpravě*. Praha, Leges, 2011.

Community Service Work  
Section 54

*The court may impose on the offender, upon his consent, a community service work sentence for a period not less than 40 hours and not exceeding 300 hours, if it issues a ruling for a minor offence punishable by the term of imprisonment of not more than five years under this Act.*

Section 55

*(1) The convict shall be obliged to perform community service work within one year after the date on which the related court ruling becomes final. The court may, as appropriate, impose the restrictions and obligations referred to under Section 51 par. 3 and 4 on the offender, with the aim of encouraging him to lead regular life; as a rule, the court shall also order him to compensate, to the best of his abilities, for the damage inflicted by the criminal offence. When calculating the period of participation in a community service work, it shall not be taken into account any period of time, during which the convict*

*a) could not perform community service work due to a temporary illness, or because he was not assigned any work during this period,*

*b) attended compulsory military service or other service instead of compulsory military service,*

*c) stayed abroad,*

*d) was remanded in custody, or was serving a term of imprisonment in connection with other offence.*

*(2) The court shall not impose community service work if the offender is on long term sick leave or has been disabled.*

*(3) The offender shall have an obligation to perform community service in person and during his free time without receiving remuneration.*

*(4) If the convict fails to lead regular life or perform, of his own causation, the service in the required scope, or if he does not respect the restrictions and does not fulfil the obligations imposed on him under the sentence, the court shall convert the community service work sentence or the remainder thereof into an unconditional imprisonment sentence execution in such a way that every two-hour segment of unserved portion of community service work shall be equivalent to one day of an unconditional imprisonment sentence, it shall also decide about how the sentence is to be executed.*

*(5) The court may waive the execution of community service work, if the convict, during the serving of this punishment, has gone on long term sick leave or permanent disability without any fault on the part of him.*

Materials of the Council of Europe emphasize that punishment of compulsory labour pro bono for the society has been one of the most progressive measures of the European criminal law over the last few years. The punishment of compulsory labour offers several possibilities for its use and the professionals

put a lot of trust into it. The originality of this punishment is that the punishment actively contributes to the perpetrator's re-socializing, not only during the execution of the punishment. Furthermore, the relationships of perpetrator with his surround are not disturbed. The perpetrator is not exempted from social obligations and also his responsibilities. Thereby the perpetrator's re-integration to the society increases after the punishment. The detriment caused by this punishment is shown in the notable impact into the perpetrator's leisure time, as well as by not receiving any income for the work performed. In accordance with the principle of Decriminalisation it allows to execute this punishment mostly to those perpetrators to whom imposition of another punishment would mean an inappropriate impact into the rights compared to the severity of the crime.<sup>17</sup>

One of its characteristics is universality. The punishment of compulsory labour is not mentioned in any facts of the crime contained in a special part of the Criminal Code. Therefore it may be imposed to all perpetrators, either as a separate punishment or along with another punishment (S 34 (6) and S 34 (7) of Criminal Code) for which unconditional sentence of imprisonment may be imposed. It is obvious that all statutory requirements must be respect.

In all countries where this punishment is enacted, its main feature is that it lies in performing work as a benefit for the society.

## 7 Financial Penalty in the Slovak Republic

Financial Penalty, unlike sentence of compulsory labor and punishment of house arrest, was introduced to Slovak law as a punishment which was already in the provisions of Act No. 140/1961 Coll. Criminal Code, as amended. The inclusion of financial penalty to the fixed list of punishments did not affect the codification of criminal law, which resulted into the regulation of conditions of new types of alternative punishments. Currently, the conditions of financial penalty, conversion to a term of imprisonment as well as other aspects of content governed by S 56 to S 57 of Act No. 300/2005 Coll. Criminal Code, as amended (hereinafter the „Criminal Code“). Procedure for enforcement of financial penalties is governed by the provisions of S 429 to S 432 of Act No. 301/2005 Coll. Criminal Procedure Code, as amended and S 79b of Regulation 543/2005 Coll. On Administration and Office Rules for district courts, regional courts, the Special Court and military courts, as amended.

### *The Financial Penalty* *Section 56*

*(1) The court may impose a financial penalty of not less than 160 EUR and not more than 331 930 EUR the offender of an intentional criminal offence whereby he gained or tried to gain property benefit.*

17 ČENTĚŠ, Jozef. Trest povinnej práce. In Strémy, T. (ed.) *Restoratívna justícia a alternatívne tresty v teoretických súvislostiach*. Praha, Leges, 2014, pp. 340–351.

(2) In the absence of the conditions referred to in paragraph 1, the court may impose a pecuniary penalty for a minor offence if, in view of the character of the offence and the potential for rehabilitating the offender, it decides not to impose a custodial penalty.

(3) The court may, taking account of the amount of the financial penalty and the personal and property situation of the offender, allow the payment of the financial penalty in monthly instalments. At the same time, the court shall determine the amount of instalments, and the time limit for the payment of the financial penalty, which may not be longer than one year from the date on which the convicting judgment became final.

(4) The financial penalty that the sentenced person has already paid shall be credited towards the new financial penalty imposed in respect of the same offence, or the penalty imposed as a cumulative or concurrent sentence.

(5) The court shall not impose a pecuniary penalty if this would obstruct the payment of the compensation for damage caused by the criminal offence.

#### Section 57

(1) When imposing the financial penalty the court should consider the personal and financial circumstances of perpetrator. The court doesn't impose a financial penalty if it is clear that the perpetrator will not be able to pay.

*Effective until 31/8/2011:*

[(1) In determining the amount of the financial penalty, the court shall also consider the personal and property situation of the offender. It shall not impose a pecuniary penalty if it is obvious that it cannot be collected.]

(2) The paid financial penalty shall constitute the revenue of the State.

*Effective until 31/8/2011:*

[(2) The confiscation amounts of financial penalty shall constitute the revenue of the State.]

(3) In addition to imposing a pecuniary penalty, the court shall deliver an alternative custodial penalty of up to five years to be executed, should the execution of the pecuniary penalty be deliberately prevented. The combination of such alternative penalty and the imposed custodial penalty may not exceed the statutory sentencing range.

(4) If the alternative penalty would exceed the range referred to in paragraph 3, or if a pecuniary penalty is imposed in combination with life imprisonment, the court shall impose no alternative penalty.

#### Section 114

(1) The court may impose a pecuniary penalty of not less than 30 eur and not more than 16 590 eur under conditions set out in this Act, if a young offender is gainfully employed, or the property owned by him enables such a penalty to be imposed.

(2) *When imposing a pecuniary penalty on a young offender, the court shall deliver an alternative custodial penalty of up to one year to be executed, should the execution of the pecuniary penalty be deliberately prevented within the prescribed time-limit. The combination of such alternative penalty and the imposed custodial penalty may not exceed the statutory sentencing range reduced pursuant to S 117 par. 1.*

(3) *When a decision whereby a young offender has been imposed a pecuniary penalty becomes final and conclusive, the court, upon the statement of a young offender, may issue a ruling that its payment or unpaid remainder thereof be replaced in such a way that a young offender shall perform community service work within the probationary programme.*<sup>18</sup>

Financial Penalty is a specific type of punishment that does not have the nature of alternative sanctions in relation to imprisonment. Especially given that the court may impose statutory conditions as an independent punishment but also to another sentence, for example, to imprisonment. Financial Penalty is an injury to the prisoner's property but his primary purpose is to affect the perpetrator's efforts to gain unfair advantage by means of withdrawal of funds raised directly by crime or those funds that could be used to commit other crimes. Provisions of S56 of the Criminal Code apply to those cases and the court will impose a financial Penalty rule, in addition to imprisonment.

Financial Penalty as the sentence imposed separately applicable for offenses of a less serious nature (misdemeanors), while his alternative nature is in relation to imprisonment, in the literal sense, governed by S 56 of the Criminal Code. Provision of Criminal Code creates a relatively wide space for its court application and after assessing the nature and seriousness of the offense, as well as the person and the circumstances of the perpetrator. Imposition of financial penalties is also associated with a major drawback because it does not only affect the perpetrator but also other people against whom the perpetrator may have commitments, such as the actual victim.

Financial Penalty pursuant to the provisions of the Criminal Code could be imposed on a juvenile and the conditions for its application are governed by S 114–116 of Criminal Code.

## 8 Conclusion

We pointed out in the article on the definitions of restorative justice, principles and their basic features. Furthermore, we tried to show up the main differences between restorative justice and retributive justice. Also, we focus on the application of restorative justice in the Slovak Republic. The conception of restorative justice is at the beginning of implementation into Slovak criminal judiciary system. We could make an example as application of Probation and

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<sup>18</sup> According to Act No. 300/2005 Coll. Penal Code, as amended.

Mediation Officer or other institutes which works more theoretically than practically. At the end of the article, we mentioned the alternative punishments as home arrest, compulsory labour or financial penalty which are used in Slovak criminal judiciary system.