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Regulation of Restorative Justice in the European Union and its Importance for Strengthening the Standing of Victims of Crime in Georgia

In the modern world the restorative justice gains its popularity day by day and it becomes a very important mechanism to meet the interests of the victims of crime. According to the victims of crime, they feel recognized, gain back the sense of security and it becomes easier to recover from the impact of crime by means of restorative justice. Because of these positive effects, the restorative justice gained attention on the international level. As a result standards regarding to the restorative justice were laid down in a number of international instruments.

It should be mentioned, that Juvenile Justice Code in Georgia is familiar with the diversion and mediation program, which represents the restorative justice. Regarding to the adult justice system, the Criminal Procedure Code of Georgia is familiar with the diversion institution and one of the conditions of the diversion, particularly, full or partial compensation, at the first glance, may be considered as the restorative justice. But the analyse of international standards and practice give us the reason to conclude that the compensation alone could not be considered as a form of restorative justice. Therefore in Georgia the victims of crime (if the case is not handled by the juvenile justice) do not enjoy access to the restorative justice, which put them in the weak legal standing. Therefore this article aims to clearly demonstrate the standards of the restorative justice, to highlight the characteristics of the diversion, which is laid down in the Criminal Procedure Code of Georgia, to emphasize that the victims of crime do not have access to the restorative justice and in this way to promote its establishment in the adult justice.

Key words: Restorative Justice, Victim of Crime, Criminal proceeding, Diversion and Mediation.

1. Introduction

Today, in modern world, the restorative justice is considered as one of the most important mechanisms in terms of satisfaction of interests of the victim of crime. If the victim of crime is left out and does not feel recognized¹ in the traditional criminal proceeding, most of the victims of a crime have a different attitude towards the restorative justice. According to them, restorative justice helps them to overcome the traumas incurred as a result of crime.² That is why, in recent years the special attention is paid to the restorative justice at international level. The European Union devoted the separate articles to this issue in the “Council Framework Decision of 15 March 2001 on the standing of victims in criminal proceedings the Framework Decision of 2001”³ as well as in the “Directive 2012/29/EU of the European Parliament and of the Council of 25 October 2012 establishing minimum

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¹ Herman S., *Parallel Justice for victims of Crime*, Washington, DC, 2010, 40.

² European Forum for Restorative Justice, *Practice Guide for Restorative Justice Services, The Victims’ Directive Challenges and Opportunities for Restorative Justice*, Belgium, 2016, 6, <<http://www.eu-forumrj.org/wp-content/uploads/2017/03/Practice-guide-with-cover-page-for-website.pdf>>, [15.04.2019].

³ Hereinafter – the Framework Decision or the Framework Decision of 2001.

standards on the rights, support and protection of victims of crime, and replacing Council Framework Decision 2001/220/JHA”,⁴ where it developed the standards of the restorative justice.

Georgia also follows the tendencies developed on the international level and in 2010 the restorative justice was introduced in the juvenile justice system.⁵ It works in the form of diversion and mediation program⁶ and the responsible body for its implementation is the Centre for Crime Prevention.⁷ Accordingly, it is important to determine, to what extent the programs in the juvenile justice system meet the requirements of the European Union.

As regarding the adult criminal justice, the Criminal Procedure Code of Georgia⁸ is familiar with the diversion institution, which is an alternative mechanism of criminal prosecution. It is used in case of less grave and grave crime.⁹ But in compare to the juvenile justice system, the diversion program in the adult criminal justice system does not include mediation program. But the text of subparagraph "c", section 1 of Article 168¹ of the CPCG seems to be interesting, according to which the diversion may be used in case of full or partial compensation for damage. Therefore, the question arises whether only compensation could be considered as a form of restorative justice.

The aim of the present article is to provide answers for the abovementioned questions. Accordingly, in the article, the history, essence, function and objectives of the restorative justice will be reviewed initially, then, provisions regarding to the restorative justice enshrined in the Framework Decision of 2001 and in the Directive of 2012 will be analyzed. At the end of the article the discussed issues will be summarised and it will be determined, to what extent the restorative justice programs in Georgia meet the requirements of the European Union and whether alone the compensation for damage within the diversion program could be considered as a form of restorative justice.

2. Review of Restorative Justice

Becoming a victim of crime is grave phenomenon and it often radically changes the life of a person. It does not matter whether the "less serious" or "serious" offense is committed, it is still accompanied with trauma. After the crime, the victims of crime feel such emotions as fear, feeling of helplessness, anger against themselves and their relatives, loss of faith and blaming themselves.¹⁰ This situation originates the requirements and needs of victim that should be met by the criminal proceed-

⁴ Hereinafter – Directive or Directive of 2012.

⁵ *Chkeidze I.*, Diversion-Mediation Program for Juveniles, Kutaisi, 2018, 4 (in Georgian).

⁶ *Tandilashvili K.*, Opferrechte im Strafverfahren nach der europäischen und georgischen Gesetzgebung, *Deutsch-Georgische Strafrechtszeitschrift*, No.2, 2017, 55-56, <<http://www.dgstz.de/storage/documents/m0wMkIuJTKf3nihzQgPFnyshtBiqcw6PcrPFy4TH.pdf>>, [03.04.2019].

⁷ Regarding to the Mediation Program, <<http://prevention.gov.ge/page/31/geo>>, [16.04.2019].

⁸ Hereinafter – CPCG, 09/10/2009.

⁹ *Toloraia L.*, Commentary on the Criminal Procedure Code in Georgia, *Giorgadze G.* (ed.), Tbilisi, 2015, 487-488 (in Georgian).

¹⁰ *Zehr H., Stutzman Amstutz L., MacRae A., Pranis K.*, *The Big Book of Restorative Justice*, NY, 2015, 136.

ings. According to Jeffrey Murphy¹¹, the key function of the criminal justice system is exactly to restore a victim of crime. In particular, if by perpetration of a crime the perpetrator says that he/she hates a victim of crime, that a victim of crime is less valuable than himself/herself, then the criminal proceedings shall reveal that even the victim of crime is fully-fledged citizen with the same value.¹² However, the fact is that the mentioned function is slightly implemented by the traditional criminal proceeding. This is the system, which is more oriented on accused than on victim of crime, where the needs and requirements of the victim of crime are not properly considered.¹³ Some scientists believe that the criminal justice system is so inadequate and fragmented that it even infringes the honour and dignity of victim of crime.¹⁴

Such treatment of victims of crime has led to the formation of movements supporting the victims of crime in the 70s of 20th century.¹⁵ They demanded to grant the adequate rights to the victims of crime during the criminal proceedings.¹⁶ At the same time, the seeking the alternatives of traditional criminal justice system was initiated and the restorative justice, which was still implemented in ancient times, but has not been functioning for centuries since institutionalization of criminal law, has been reformed.¹⁷ The restorative justice was quickly established in such countries of Anglo-Saxon law system as Canada, the United States, Australia, New Zealand and North European countries.¹⁸ Later it was spread in the countries of continental law system, and today the restorative justice represents a key mechanism for protection of interests of crime victims.¹⁹

¹¹ *Jeffrey Murphy* is an American scientist working in law and philosophy. His teachings in crime and punishment play major role in the development of criminal law science.

¹² *Dearing A.*, *Justice for Victims of Crime, Human Dignity as the Foundation of Criminal Justice in Europe, Switzerland*, 2017, 341.

¹³ *Buczma S., Kierzyńska R.*, Protection of victims of crime in the view of the Directive 2012/29/EU establishing minimum standards on the rights, support and protection of victims of crime in the European Union and the Directive 2011/99/EU on the European protection order, *Judicial Academy of the Slovak Republic*, 1, <http://www.ja-sr.sk/files/Kierzyńska_Buczma_Protection%20of%20victims.pdf>, [30.03.2019].

¹⁴ *Herman S.*, *Parallel Justice for victims of Crime*, Washington, DC, 2010, VIII- IX.

¹⁵ *Beloof D.*, *Victims' Rights, A Documentary and Reference Guide*, USA, 2012, 20-24.

¹⁶ *Vanfraechem I., Bolívar D.*, *Restorative Justice and Victims of Crime, Victims and Restorative Justice Vanfraechem I., Bolívar D., Aersten I.* (eds.), Oxfordshire, NY, 2015, 49-51.

¹⁷ *Kasper J., Schlickum G., Weiler E.*, *Der Täter-Opfer-Ausgleich*, München, 2014, 1- 4; *Zehr H.*, *The Little Book of Restorative Justice*, NY, 2015, 18.

¹⁸ *Deymié B.*, *Justice Restaurative: Le Dialogue Avant La Peine*, *Revue Projet*, 2018/5 (N° 366), 79-80, <<https://www.cairn.info/revue-projet-2018-5-page-79.htm>>, [17.04.2019]; *Cario R.*, *Justice Restaurative: Principes et Promesses*, *Les Cahiers Dynamiques*, 2014/1 (n° 59), 24, <<https://www.cairn.info/revue-les-cahiers-dynamiques-2014-1-page-24.htm>>, [17.04.2019]; *Moyersoen J.*, *Chronique d'une justice restaurative au-delà des frontières*, *Les Cahiers Dynamiques*, 2014/1 (n° 59), 96, <<https://www.cairn.info/revue-les-cahiers-dynamiques-2014-1-page-96.htm>>, [17.04.2019]; *Zehr H.*, *The Little Book of Restorative Justice*, NY, 2015, 18-19.

¹⁹ *Kilchling M.*, *Opferrechte und Restorative Justice, Opferrechte in Europäischer, Rechtsvergleichender und Österreichischer Perspektive*, *Sautner L., Jesionek U.* (Hrsg.), *Viktimologie und Opferrechte*, *Schriftreihe der Weisser Ring Forschungsgesellschaft*, Band 8, Innsbruck, 2017, 64.

In contrast to the traditional criminal law, the restorative justice considers the crime as the violation of relationships, which leads not to conviction but to imposing the responsibility. In addition, if the traditional criminal law is exercised by the state and is directed towards conviction of a person, those who were directly affected by the crime participate in the process of restorative justice, in particular, the victims of crime, the offender and, in some cases, the community members, and they are directed to correct the damages. And finally, the traditional criminal law is focused on the offender to receive punishment deserved; on the other hand the restorative justice is focused on the needs of victim of crime and the responsibility to be undertaken by the offender.²⁰ Accordingly, the participation (communication),²¹ voluntariness,²² taking the responsibility and reparation²³ represent the fundamental principles of restorative justice.

Modern studies confirm the positive impact of restorative justice upon the victim of crime. After the process the victims of crime feel the fear reduction or even lose the fear, the feeling of safety and security is returned to them, they feel support, self-concept is changed, the feeling of recognition and dignity is returned, they have the feeling of satisfaction and justice. Finally, they are becoming empowered and overcoming of traumas incurred as a result of crime becomes easier.²⁴

Today, the restorative justice unites many programs,²⁵ among them the most common is mediation, restorative conferences and circle processes; as it was already noted, it is implemented in many countries of the world, including most of the EU member states, for example, in Germany, Austria, France, Finland, Denmark, Sweden and Belgium.²⁶

²⁰ Zehr H., *The Little Book of Restorative Justice*, NY, 2015, 30.

²¹ Kasper J., Schlickum G., Weiler E., *Der Täter-Opfer-Ausgleich*, München, 2014, 20.

²² *Ibid.*, 43-44; Zehr H., *The Little Book of Restorative Justice*, NY, 2015, 57.

²³ Béal C., *Justice Restaurative et Justice Pénale*, Rue Descartes, 2018/1, (N 93), 60, <https://www.cairn.info/revue-rue-descartes-2018-1-page-58.htm?try_download=1&contenu=article>, [17.04.2019].

²⁴ APAV, *IVOR Report, Implementing Victim-Oriented Reform of the Criminal Justice System in the European Union*, Portugal, 2016, 55, <<https://www.apav.pt/ivor/images/ivor/PDFs/IVOR-Repot-WebVersion.pdf>>, [16.04.2019]; Vanfraechem I., Bolívar D., *Restorative Justice and Victims of Crime, Victims and Restorative Justice* Vanfraechem I., Bolívar D., Aersten I. (eds.), Oxfordshire, NY, 2015, 53-54; European Forum for Restorative Justice, *Practice Guide for Restorative Justice Services, The Victims' Directive Challenges and Opportunities for Restorative Justice*, Belgium, 2016, 6, <<http://www.euforumj.org/wp-content/uploads/2017/03/Practice-guide-with-cover-page-for-website.pdf>>, [15.04.2019]; Gavrielides T., *The Victims' Directive and What Victims Want From Restorative Justice, Victims & Offenders: An International Journal of Evidence-based Research, Policy, and Practice*, London, 2015, 8-11, <https://www.researchgate.net/publication/276107075_The_Victims'_Directive_and_What_Victims_Want_From_Restorative_Justice>, [16.04.2019].

²⁵ Zehr H., *The Little Book of Restorative Justice*, NY, 2015, 13-20.

²⁶ Regarding to the restorative justice in Germany, <https://e-justice.europa.eu/content_rights_of_victims_of_crime_in_criminal_proceedings-171-DE-maximizeMS-en.do?clang=en&idSubpage=1&member=1>, [15.04.2019]; regarding to the restorative justice in Austria, <https://e-justice.europa.eu/content_rights_of_victims_of_crime_in_criminal_proceedings-171-AT-maximizeMS-en.do?clang=en&idSubpage=5&member=1>, [15.04.2019]; Bachinger L. M., Pelikan C., *Victim and Mediation in Austria, Victims and Restorative Justice*, Vanfraechem I., Bolívar D., Aersten I. (eds.), Oxford-

3. Regulation of Restorative Justice in the European Union

3.1. Framework Decision of 2001

The popularization of restorative justice has prompted its regulation at the international level. The first text about the restorative justice at international level has already appeared in the United Nations Declaration²⁷ in 1985. It was followed by number of resolutions or recommendations. The United Nations Resolution of 2002 on the Basic principles of restorative justice programs in criminal matters²⁸ and the Recommendation of the Council of Europe of 1999 concerning Mediation in penal cases²⁹ is noteworthy among them. As for the European Union, the first record on restorative justice appeared in the Framework Decision of 2001. It differed from the Acts of United Nations and the Council of Europe by having obligatory for fulfilment rather than recommendatory character. Therefore, its adoption at international and European level is considered to be the most important step.³⁰

The Articles 1 and 10 were devoted to the restorative justice in the Framework Decision. The definition of restorative justice was provided in sub-paragraph "e" of Article 1, and in Article 10 the provisions relating to its implementation were strengthened.

shire, NY, 2015, 91; regarding to the restorative justice in France <https://e-justice.europa.eu/content_rights_of_victims_of_crime_in_criminal_proceedings-171-FR-maximizeMS-en.do?clang=en&idSubpage=5&member=1>, [15.04.2019]; Regarding to the restorative justice in Finland <https://e-justice.europa.eu/content_rights_of_victims_of_crime_in_criminal_proceedings-171-FI-maximizeMS-en.do?clang=en&idSubpage=1&member=1#n10>; [15.04.2019]; *Gade C. B. N.*, “Restorative Justice”: History of the Term’s International and Danish Use, Nordic Mediation Research, *Nyland A., Ervasti K., Adrian L.* (eds.), Tromsø, Helsinki, Copenhagen, 2018, 32-37, <<https://link.springer.com/content/pdf/10.1007%2F978-3-319-73019-6.pdf>>, [15.04.2019]; regarding to the restorative justice in Sweden <https://e-justice.europa.eu/content_rights_of_victims_of_crime_in_criminal_proceedings-171-SE-maximizeMS-en.do?clang=en&idSubpage=5&member=1>, [15.04.2019]; regarding to the restorative justice in Belgiu <https://e-justice.europa.eu/content_rights_of_victims_of_crime_in_criminal_proceedings-171-BE-maximizeMS-en.do?clang=en&idSubpage=1&member=1>, [15.04.2019].

²⁷ United Nation, Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, A/RES/40/34, 29/11/1985.

²⁸ ECOSOC Resolution 2002/12 Basic Principles on the Use of Restorative Justice Programmes in Criminal Matters.

²⁹ Recommendation No. R (99) 19 of the Committee of Ministers to member States Concerning Mediation in Penal Matters, 15/11/1999, hereinafter – Recommendation of the Council of Europe of 1999; *Kilchling M.*, Opferrechte und Restorative Justice, Opferrechte in Europäischer, Rechtsvergleichender und Österreichischer Perspektive, *Sautner L., Jesionek U.* (Hrsg.), Viktimologie und Opferrechte, Schriftreihe der Weisser Ring Forschungsgesellschaft, Band 8, Innsbruck, 2017, 65.

³⁰ *Lauwaert K.*, European Criminal Justice Policies on Victims and Restorative Justice, Victims and Restorative Justice *Vanfraechem I., Bolívar D., Aersten I.* (eds.), Oxfordshire, NY, 2015, 245; *Borgers M.*, Implementing Framework Decisions, *Common Market Law Review*, Vol. 44, 1361–1386, 2007, 1361, <<https://pdfs.semanticscholar.org/4c26/394a09f32b1dcb956bec8622c7a131df9cd.pdf>>, [13.04.2019].

3.1.1. Definition of the Restorative Justice and Its Challenges

Sub-paragraph "e" of Article 1 of the Framework Decision provided the following explanation for restorative justice: "the mediation in criminal cases shall be understood as the search, prior to or during criminal proceedings, for a negotiated solution between the victim and the author of the offence, mediated by a competent person".

Although, the Framework Decision has introduced the definition of the restorative justice, in modern science it is considered that it was characterized by many shortcomings. The first shortcoming was that the Framework Decision was focused on "Mediation in criminal cases". Other forms of restorative justice, for example the conferences, were not considered. The second shortcoming was that mediation could only be used prior to or during criminal proceedings. Accordingly, it did not allow the possibility of implementation of mediation at the stage of execution of punishment. The third shortcoming was that the Framework Decision considered the mediation as the search to reach an agreement through negotiation. It is noteworthy that the approach - "reaching an agreement" - does not properly reflect the diverse content of mediation. A form of mediation, which is limited to communication between the victim of crime and the offender, can be considered as successful mediation; for example, when the offender confesses to participation in crime before the victim of crime, when it answers the questions of victim. Hence, it is not necessary for the mediation process to always envisage the written agreement.³¹

3.1.2. Standards Established by the Framework Decision

The paragraph 1 of Article 10 of the Framework Decision obliged the member states to encourage the mediation to the offences that they considered as appropriate for the use of mentioned measures.

This regulation also caused criticism among scientists and practitioners. For example, *Kilchling* believes that this record was more of general and formal character rather than conveying any content.³² According to *Lauwaert*, the use of the word "promote" revealed a positive view of the Framework Decision towards the restorative justice, however, limiting to the recommendation to apply the mediation only towards the "promotion" and "appropriate offences", the States were given a wide area of action. They were given the opportunity to only minimally use the restorative justice, even towards the lesser offences, that could lead to the exclusion of certain crimes at all.³³

³¹ *Lauwaert K.*, European Criminal Justice Policies on Victims and Restorative Justice, Victims and Restorative Justice *Vanfraechem I., Bolívar D., Aersten I.* (eds.), Oxfordshire, NY, 2015, 248.

³² *Kilchling M.*, Opferrechte und Restorative Justice, Opferrechte in Europäischer, Rechtsvergleichender und Österreichischer Perspektive, *Sautner L., Jesionek U.* (Hrsg.), Viktimologie und Opferrechte, Schriftreihe der Weisser Ring Forschungsgesellschaft, Band 8, Innsbruck, 2017, 67.

³³ *Lauwaert K.*, European Criminal Justice Policies on Victims and Restorative Justice, Victims and Restorative Justice *Vanfraechem I., Bolívar D., Aersten I.* (eds.), Oxfordshire, NY, 2015, 248-249.

As regards the paragraph 2, Article 10 of the Framework Decision, according to it, the States should ensure taking into account the agreement reached under the mediation between the victim of crime and the offender. This phrase clarified that the serious attitude should have been existed towards the mediation results. It also indicated that member states should give appropriate place to mediation in criminal proceedings.³⁴

3.2. Directive of 2012

3.2.1. The Way Prior to Adoption of the Directive

Unfortunately, adequate enforcement of the Framework Decision failed in the European Union. Its enforcement has been prevented by vague provisions, the great discretion given to the states and the lack of coercion mechanism of enforcement.³⁵ According to the Commission's assessment, the Framework Decision was not sufficient for proper protection of rights of crime victim.³⁶ Accordingly, the goal of the Framework Decision, to properly protect the rights of the victims of crime in all member states, has not been achieved.³⁷

After the failure of the Framework Decision, in 2009 the European Commission adopted the Stockholm Roadmap, by which it was recognized that for improvement of rights of crime victims in the legislation of the EU member states, it was required to develop a coordinated and long-term strategy. In 2011, the European Commission elaborated the strategic plan on the strengthening the rights of victim of crime and on protection of the victim of crime in criminal proceedings. It is known as the Budapest Roadmap. It was noted that the Framework Decision of 2001 was outdated and required to develop new regulations.³⁸ As a result, in 2010 the directive was adopted.³⁹

³⁴ *Lauwaert K.*, European Criminal Justice Policies on Victims and Restorative Justice, *Victims and Restorative Justice Vanfraechem I., Bolívar D., Aersten I.* (eds.), Oxfordshire, NY, 2015, 248-249.

³⁵ *Ibid.*

³⁶ *Buczma S., Kierzynka R.*, Protection of Victims of Crime in the View of the Directive 2012/29/EU Establishing Minimum Standards on the Rights, Support and Protection of Victims of Crime in the European Union and the Directive 2011/99/EU on the European Protection Order, *Judicial Academy of the Slovak Republic*, 2, <http://www.ja-sr.sk/files/Kierzynka_Buczma_Protection%20of%20victims.pdf>, [30.03.2019]; *Gavrielides T.*, The Victims' Directive and What Victims Want From Restorative Justice, *Victims & Offenders: An International Journal of Evidence-based Research, Policy, and Practice*, London, 2015, 2, <https://www.researchgate.net/publication/276107075_The_Victims'_Directive_and_What_Victims_Want_From_Restorative_Justice>, [16.04.2019].

³⁷ *Brunilda P.*, *European Forum for Restorative Justice*, Briefing Paper about the Regulation of Restorative Justice in the Directive 2012/29/EU, 2016, 3, <<http://www.euforumrj.org/wp-content/uploads/2017/03/EFRJ-Briefing-Paper-RJ-in-the-Victims-Directive.pdf>>, [1.04.2019].

³⁸ *Ibid.*

³⁹ *Gavrielides T.*, The Victims' Directive and What Victims Want From Restorative Justice, *Victims & Offenders: An International Journal of Evidence-based Research, Policy, and Practice*, London, 2015, 2, <https://www.researchgate.net/publication/276107075_The_Victims'_Directive_and_What_Victims_Want_From_Restorative_Justice>, [16.04.2019].

3.2.2. Regulation of Restorative Justice in the Directive

In contrast to the Framework Decision of 2001, high emphasis was placed on the restorative justice in the Directive of 2012. It recognizes the benefits of restorative justice for the victim of crime;⁴⁰ moreover, by strengthening of restorative justice in the Directive, a significant focus was made: the restorative justice no longer represents a criminal-oriented instrument, as it was mostly understood in the justice system, but became the useful mechanism for victim of crime.⁴¹ The Directive broadly determines the restorative justice (Article 2), requires keeping informed the victim of crime on the restorative justice services (Article 4), demands from the member states to provide safeguards while using the restorative justice, in order to avoid the secondary victimization of victim (Article 12), demands from the member states to facilitate the referral of cases to the restorative justice services (Article 12), requires the training of practitioners implementing the restorative justice (Article 25),⁴² and in addition requires the cooperation and coordination between the services of restorative justice (Article 26).⁴³ It is also important that the Directive considers the restorative justice as an alternative to the criminal justice as well as its complementary part.⁴⁴

But it should be noted that the Directive does not oblige the States to introduce the restorative justice.⁴⁵ It does not establish the access right to the restorative justice for the victim of crime, the Directive is only limited to introduction of the right of protection measures.⁴⁶ If we take into account the fact that given Article is provided in Chapter 3 of this Directive, in which the rights of the crime victim are provided, which should be guaranteed in criminal proceedings, it's surprising, why the Article 12, which does not establish the right of access to the restorative justice, was included in Chapter 3 of the Directive.⁴⁷ The fact that the Directive has not granted the right of access to restorative justice to

⁴⁰ Recital 46, Directive 2012/29/EU of the European Parliament and of the Council of 25th October 2012 Establishing Minimum Standards on the Rights, Support and Protection of Victims of Crime, and Replacing Council Framework Decision 2001/220/JHA.

⁴¹ *Kilchling M.*, Opferrechte und Restorative Justice, Opferrechte in Europäischer, Rechtsvergleichender und Österreichischer Perspektive, *Sautner L., Jesionek U.* (Hrsg.), Viktimologie und Opferrechte, Schriftreihe der Weisser Ring Forschungsgesellschaft, Band 8, Innsbruck, 2017, 67.

⁴² *European Forum for Restorative Justice*, Practice Guide for Restorative Justice Services, The Victims' Directive Challenges and Opportunities for Restorative Justice, Belgium, 2016, 16, <<http://www.euforumrj.org/wp-content/uploads/2017/03/Practice-guide-with-cover-page-for-website.pdf>>, [15.04.2019].

⁴³ *Ibid.*, 17.

⁴⁴ *Blackstock J.*, Protecting Victims: EU Competences and Mechanisms for Safeguards, Symposium "Legal Perspectives on the Victim", 2012, 8, <<http://2bquk8cdew6192tsu41lay8t.wpengine.netdna-cdn.com/wp-content/uploads/2015/02/Protecting-Victims-EU-Competences-and-mechanisms-for-safeguards.pdf>>, [16.04.2019].

⁴⁵ European Commission, DG Justice, Guidance Document related to the transposition and implementation of Directive 2012/29/EU of the European Parliament and of the Council of 25th October 2012 Establishing Minimum Standards on the Rights, Support and Protection of Victims of Crime, and Replacing Council Framework Decision 2001/220/JHA, Ref. Ares (2013) 3763804, 2013, 32-33.

⁴⁶ *APAV*, IVOR Report, Implementing Victim-Oriented Reform of the Criminal Justice System in the European Union, Portugal, 2016, 56, <<https://www.apav.pt/ivor/images/ivor/PDFs/IVOR-Repot-WebVersion.pdf>>, [16.04.2019].

⁴⁷ *Ibid.*

the victim of crime is often perceived as a failure of the Directive.⁴⁸ The European Forum for Restorative Justice considers that Europe really needs the right of access to restorative justice instead of right to safeguards.⁴⁹

Also, the tone of Directive towards the restorative justice is problematic. Article 12 directly begins with an emphasis on the safeguards, thus creating an impression that the victim of crime should be protected from restorative justice programs.⁵⁰ The Recital 46 of Directive adds, that restorative justice programs may be very beneficial for the victim of crime, however, it does not go in details and directly speaks about the necessity of safeguards.⁵¹ It can be said that with such tone the Directive expresses its distrustful attitude to the restorative justice.⁵²

3.2.2.1. Definition of Restorative Justice

According to paragraph 1.d, Article 2 of the Directive, “restorative justice” means any process whereby the victim and the offender are enabled, if they freely consent, to participate actively in the resolution of matters arising from the criminal offence through the help of an impartial third party”.

As a result of the analysis of this definition, it can be said that the Directive acknowledges different forms of restorative justice and it is not focused only on the mediation. It considers the direct as well as indirect forms of restorative justice, which implies the communication between the victim of crime and offender without a face-to-face meeting, for example, through written or audio-video communication. This record is particularly important in the light of today's practice, since indirect mediation is frequently used, for example, in case of grave offence, where the face-to-face meeting of a victim of crime and offender may not be expedient.⁵³

In contrast to the Framework Decision of 2001, the Directive is also not focused on the model of reaching of an agreement. Accordingly, the Directive recognizes such programs that are oriented on communication and does not end with the agreement of the parties.⁵⁴

⁴⁸ Brunilda P., *European Forum for Restorative Justice*, Briefing Paper about the Regulation of Restorative Justice in the Directive 2012/29/EU, 2016, 12, <<http://www.euforumrj.org/wp-content/uploads/2017/03/-EFRJ-Briefing-Paper-RJ-in-the-Victims-Directive.pdf>>, [1.04.2019].

⁴⁹ Ibid, 16.

⁵⁰ Kilchling M., *Opferrechte und Restorative Justice*, *Opferrechte in Europäischer, Rechtsvergleichender und Österreichischer Perspektive*, Sautner L., Jesionek U. (Hrsg.), *Viktimologie und Opferrechte*, Schriftenreihe der Weisser Ring Forschungsgesellschaft, Band 8, Innsbruck, 2017, 71.

⁵¹ Brunilda P., *European Forum for Restorative Justice*, Briefing Paper about the Regulation of Restorative Justice in the Directive 2012/29/EU, 2016, 12-13, <<http://www.euforumrj.org/wp-content/uploads/2017/03/-EFRJ-Briefing-Paper-RJ-in-the-Victims-Directive.pdf>>, [1.04.2019].

⁵² Lauwaert K., *European Criminal Justice Policies on Victims and Restorative Justice*, Vanfraechem I., Bolívar D., Aersten I. (eds.), Oxfordshire, NY, 2015, 260.

⁵³ Ibid, 256.

⁵⁴ Ibid, 255; *European Forum for Restorative Justice*, *Practice Guide for Restorative Justice Services*, The Victims' Directive Challenges and Opportunities for Restorative Justice, Belgium, 2016, 8, <<http://www.euforumrj.org/wp-content/uploads/2017/03/Practice-guide-with-cover-page-for-website.pdf>>, [15.04.2019].

It is important that the Directive refers only to the victim of crime and the offender in the text, however, this record does not exclude participation of other parties, such as supporters or other members of the community.⁵⁵

Definition of restorative justice, as provided in Article 2 of the Directive, does not establish time limits for the implementation of restorative justice, accordingly, it gives the opportunity to implement the restorative justice at any stage of criminal proceedings, starting from the investigation as well as at the stage of imposing or execution of punishment.⁵⁶ It is also indicated in the Guidance document of the European Commission that the restorative justice unites various services that may be attached to the criminal proceedings prior to, with or after it.⁵⁷ This differs from the approach of the Directive of 2001, according to which the mediation in criminal cases was applied only prior or during the criminal proceedings.⁵⁸ It should be noted that in the European states, such as Great Britain, Germany, Belgium, France, the restorative justice services are already implemented at the stage of execution of punishment.⁵⁹

The Directive allows the use of restorative justice to all crimes.⁶⁰ It only mentions the factors that should be taken into account when making decisions on the implementation of restorative justice. These factors include the character and severity of a crime, the severity of the trauma, systematic (repeated) infringement of physical, sexual and psychological integrity of victim of crime, inequality of power, age, maturity or intellectual abilities of the victim of crime.⁶¹ It is important that the victim of crime, regardless of its vulnerability, should have the opportunity to participate in the restorative jus-

⁵⁵ *European Forum for Restorative Justice*, Practice Guide for Restorative Justice Services, The Victims' Directive Challenges and Opportunities for Restorative Justice, Belgium, 2016, 8, <<http://www.eu-forumrj.org/wp-content/uploads/2017/03/Practice-guide-with-cover-page-for-website.pdf>>, [15.04.2019].

⁵⁶ *Brunilda P.*, *European Forum for Restorative Justice*, Briefing Paper about the Regulation of Restorative Justice in the Directive 2012/29/EU, 2016, 9, <<http://www.euforumrj.org/wp-content/uploads/2017/03/EFJR-Briefing-Paper-RJ-in-the-Victims-Directive.pdf>>, [1.04.2019].

⁵⁷ European Commission, DG Justice, Guidance Document Related to the Transposition and Implementation of Directive 2012/29/EU of the European Parliament and of the Council of 25th October 2012 Establishing Minimum Standards on the Rights, Support and Protection of Victims of Crime, and Replacing Council Framework Decision 2001/220/JHA, Ref. Ares (2013)3763804, 2013, 32-33.

⁵⁸ *Lauwaert K.*, *European Criminal Justice Policies on Victims and Restorative Justice*, *Vanfraechem I., Bolívar D., Aersten I.* (eds.), Oxfordshire, NY, 2015, 256.

⁵⁹ *Kasper J., Schlickum G., Weiler E.*, *Der Täter-Opfer-Ausgleich*, München, 2014, 53-54; *Kilchling M.*, *Opferrechte und Restorative Justice*, *Opferrechte in Europäischer, Rechtsvergleichender und Österreichischer Perspektive*, *Sautner L., Jesionek U.* (Hrsg.), *Viktimologie und Opferrechte*, Schriftreihe der Weisser Ring Forschungsgesellschaft, Band 8, Innsbruck, 2017, 77; *Deymié B.*, *Justice Restaurative: Le Dialogue Avant la Peine*, *Revue Projet*, 2018/5 (N° 366), 80, <<https://www.cairn.info/revue-projet-2018-5-page-79.htm>>, [17.04.2019].

⁶⁰ *APAV*, *IVOR Report*, Implementing Victim-Oriented Reform of the Criminal Justice System in the European Union, Portugal, 2016, 56, <<https://www.apav.pt/ivor/images/ivor/PDFs/IVOR-Repot-WebVersion.pdf>>, [16.04.2019].

⁶¹ *European Forum for Restorative Justice*, *Victims and Restorative Justice*, Country Report *Bolívar D., Aersten I., Vanfraechem I.* (eds.), 2015, 142, <http://www.euforumrj.org/wp-content/uploads/2015/05/report_victimsandRJ-2.pdf>, [30.03.2019].

tice. Studies demonstrate that, for successful implementation of restorative justice, the process itself is important but not the type of crime, the legal qualification of the crime, the category of victims of crime or the gravity of the damage inflicted on the victim of crime.⁶²

3.2.2.2. Compatibility of Georgian Provisions with the Definitions Established by the Directive

The Juvenile Justice Code in Georgia provides the definition of restorative justice measures as well as the mediation. According to section 8, Article 3 of Juvenile Justice Code “the restorative justice measures is a measure that allows minors in conflict with the law to accept their responsibility for an act committed, to remedy the consequences of a crime, and to compensate damage to and/or to reconcile with the victim”. In accordance with section 9 of the same Article the mediation is “a process of dialogue between a juvenile in conflict with the law and a victim, which is led by a mediator and which aims to reconcile the minor and the victim and settle the conflict between them”. Based on these definitions it can be said that not only the mediation can be used in the juvenile justice, but also other forms of restorative justice, which of course is welcomed. It is also welcomed that, in mediation definition, the mediation is demonstrated as a dialogue process between the victim and the juvenile in conflict, which in itself means participation of both parties in the process. Besides, according to the subparagraph “c” of Article 2 – “the procedure for imposing the diversion/diversion and mediation program on the minors and the terms and conditions of an agreement to be concluded between the parties” - approved by the Order No.120 of February 1, 2016 of the Minister of Justice of Georgia, one of the parties of diversion-mediation agreement is a victim. The mentioned record also indicates involvement of the victim of a crime. However, it should be noted that, as a rule, the victim's denial does not hinder the use of diversion, but the victim may at any time be involved in the mediation process.⁶³

Besides positive trends, there are number of shortcomings in Georgian legislation. It is regrettable that attention is paid to the dialogue between the victim and the juvenile in conflict only in the definition of mediation; and in definition of restorative justice, only the juvenile in conflict is focused, which does not demonstrate that both parties are equally important in the restorative justice. True, that the requirements provided by the norm meet the interests of victim; however, it would have been desirable to have both sides equally presented in the definition of restorative justice and emphasise the communication between the parties similar to the mediation definition. It is also regrettable that in Georgia as well as in many European states the restorative justice is largely used as a tool of diversion

⁶² Brunilda P., European Forum for Restorative Justice, Briefing Paper about the Regulation of Restorative Justice in the Directive 2012/29/EU, 2016, 14, <<http://www.euforumrj.org/wp-content/uploads/2017/03/-EFRJ-Briefing-Paper-RJ-in-the-Victims-Directive.pdf>>, [1.04.2019]; Kasper J., Schlickum G., Weiler E., *Der Täter-Opfer-Ausgleich*, München, 2014, 81-82.

⁶³ Diversion in the juvenile justice system in Georgia, <<http://prevention.gov.ge/page/28/geo>>, [21.04.2019].

from a less grave or grave crime,⁶⁴ which, from the perspective of victim of crime, is an unjustified approach. For instance, if the victim of crime is not fortunate and the person, convicted many times in the past, commits a crime against him/her, then the restorative justice can no longer be applied as a mean of diversion; and if the victim of crime is fortunate and the offender was not convicted in the past, then the restorative justice is applied to him/her.⁶⁵ Accordingly, a system that excludes a certain group of victims of crime from the restorative justice, cannot meet the needs of the crime victim.⁶⁶ It is also regrettable that the restorative justice is not accessible at the stage of execution of a punishment.

3.2.2.3. Right to Information

Article 4 of the Directive provides the mandatory nature list of essential information, the exclusive authority of acceptance of which has a victim of crime, in order to as far as possible realize the rights enhanced by the Directive. The right of receiving of information is also applied to the restorative justice. Accordingly, based on Article 4 of the Directive, the State is obliged to provide the victim of crime with information on services of restorative justice, if any.⁶⁷ The essence and purpose of the norm is to ensure the accessibility of restorative justice via providing the victim of crime with information.⁶⁸

3.2.2.4. Standards of the Restorative Justice

Although, the right of access to restorative justice has not been guaranteed for a victim of crime under the Directive, the Directive requires that if the restorative justice is offered to the victim of crime, then it should meet the standards set out in the Directive, which, for its part, provide the minimum guarantees for protection of the victim of crime.⁶⁹

⁶⁴ *Kilchling M.*, Opferrechte und Restorative Justice, Opferrechte in Europäischer, Rechtsvergleichender und Österreichischer Perspektive, *Sautner L., Jesionek U.* (Hrsg.), *Viktimologie und Opferrechte*, Schriftreihe der Weisser Ring Forschungsgesellschaft, Band 8, Innsbruck, 2017, 63-64; *Kasper J., Schlickum G., Weiler E.*, *Der Täter-Opfer-Ausgleich*, München, 2014, 54-55.

⁶⁵ *Kilchling M.*, Opferrechte und Restorative Justice, Opferrechte in Europäischer, Rechtsvergleichender und Österreichischer Perspektive, *Sautner L., Jesionek U.* (Hrsg.), *Viktimologie und Opferrechte*, Schriftreihe der Weisser Ring Forschungsgesellschaft, Band 8, Innsbruck, 2017, 76.

⁶⁶ *Ibid.*, 78; *Gavrielides T.*, The Victims' Directive and What Victims Want From Restorative Justice, *Victims & Offenders: An International Journal of Evidence-based Research, Policy, and Practice*, London, 2015, 13, <https://www.researchgate.net/publication/276107075_The_Victims'_Directive_and_What_Victims_Want_From_Restorative_Justice>, [16.04.2019].

⁶⁷ *Brunilda P.*, European Forum for Restorative Justice, Briefing Paper about the Regulation of Restorative Justice in the Directive 2012/29/EU, 2016, 10, <<http://www.euforumrj.org/wp-content/uploads/2017/03/-EFRJ-Briefing-Paper-RJ-in-the-Victims-Directive.pdf>>, [01.04.2019].

⁶⁸ *Kilchling M.*, Opferrechte und Restorative Justice, Opferrechte in Europäischer, Rechtsvergleichender und Österreichischer Perspektive, *Sautner L., Jesionek U.* (Hrsg.), *Viktimologie und Opferrechte*, Schriftreihe der Weisser Ring Forschungsgesellschaft, Band 8, Innsbruck, 2017, 72.

⁶⁹ *European Forum for Restorative Justice*, Practice Guide for Restorative Justice Services, The Victims' Directive Challenges and Opportunities for Restorative Justice, Belgium, 2016, 4, <<http://www.eufo>

Article 12 of the Directive obliges the States to take appropriate measures in case of implementation of restorative justice, in order to avoid the secondary and repeated victimization, intimidation and revenge of victim of crime. In addition, the Directive requires that if the victim of crime decides participation in the restorative justice program, it shall have the access to safe and competent services.

The Directive requires that participation of victim of crime to be voluntary; in addition, it distinguishes three directions: first of all, a voluntary decision of the victim of crime on participation in restorative justice shall take place. The given decision shall be based on informed consent, which, in turn, should be preceded by providing the complete and impartial information to victim of crime about the process, in case of existence of alleged results of the process and the agreement, on the supervision procedures of its performance. In addition, the consent on participation in the process can be withdrawn at any time, i.e. the victim of crime should be able to refuse to continue the process at any time. Finally, any agreement reached under the restorative justice must be voluntary.⁷⁰

The Directive also requires keeping of confidentiality in line with the Directive, within the framework of restorative justice; non-public conversations may not be disclosed, except the case if the parties agree on this or if, in accordance with national legislation, there is greater public interest towards disclosure. According to the recital 46 of Directive, if during the process revealing of threat or other forms of violence takes place, then this may be the basis for disclosure. The main purpose of this provision is to protect a victim of crime and prevent the use of process by the offender for the purpose of repeated victimization, intimidation and revenge.⁷¹

The Directive also requires that the offender acknowledges the basic facts of the case. There are different positions on this issue in the literature and legal and psychological aspects opposing each other. In legal terms, in fact, the presumption of innocence and the right to silence loses the significance, if the accused does not deny that he/she was involved in the offense. In case of acknowledgement, agreement reached through mediation must necessarily result in termination of criminal prosecution. In terms of psychology, only following admission of guilt by the defendant, the participation in restorative justice process shall be reasonable for the victim of crime. The Directive has chosen the intermediate position, reiterating the position of Recommendation of the Council of Europe of 1999, by which the admission of guilt is not required. The minimum requirement is that the offender does

rumrj.org/wp-content/uploads/2017/03/Practice-guide-with-cover-page-for-website.pdf>, [15.04.2019]; *Gavrielides T.*, *The Victims' Directive and What Victims Want From Restorative Justice*, *Victims & Offenders: An International Journal of Evidence-based Research, Policy, and Practice*, London, 2015, 19, <https://www.researchgate.net/publication/276107075_The_Victims'_Directive_and_What_Victims_Want_From_Restorative_Justice>, [16.04.2019].

⁷⁰ *Lauwaert K.*, *European Criminal Justice Policies on Victims and Restorative Justice*, *Vanfraechem I., Bolívar D., Aersten I.* (eds.), Oxfordshire, NY, 2015, 257.

⁷¹ *Ibid*, 255; *Brunilda P.*, *European Forum for Restorative Justice*, Briefing Paper about the Regulation of Restorative Justice in the Directive 2012/29/EU, 2016, 15, <<http://www.euforumrj.org/wp-content/uploads/2017/03/EFRJ-Briefing-Paper-RJ-in-the-Victims-Directive.pdf>>, [1.04.2019].

not fully reject the facts. For starting of communication between the victim of crime and the offender it is enough that the offender fully or partially acknowledges his/her participation in offense.⁷²

According to the Directive, the agreement reached within the framework of restorative justice may be taken into account in the criminal proceedings. The main achievement of this provision is that it connects the restorative justice to the criminal proceeding and prevents the development of restorative justice independently of criminal proceedings. It is noteworthy that the initial project of the Directive contained the word “must” instead of word “may”. This wording was greatly focused on the outcome of restorative justice; in addition, the parties were deprived of their freedom to decide whether to use the agreement in criminal proceedings.⁷³ Accordingly, it was rejected in the final project of the Directive.

The security requirement is also included in the Directive. Subparagraph "a" of paragraph 1 of Article 12 requires that restorative justice programs to be applied only if it is in the interest of the victim of crime. In addition, the recital 46 of Directive notes that restorative justice programs should first take into account the interests and needs of the victim of crime. According to the European Forum of Restorative Justice, protection of interests of the victims of crime is goal of the Directive; however, in the process of restorative justice the main principle of justice – neutrality, i.e. a balanced approach between the victim of crime, offender and interests of the community - is violated, appealing only to the needs of victim of crime.⁷⁴ *Kilchling* believes that the record is roughly incompatible with the impartiality principle.⁷⁵ In *Lauwaert's* opinion it is not surprising that the attention is paid to the victims of crime in the document devoted to the victim of crime, however, she believes that, unfortunately, Article 12 of the Directive lays the foundation to the idea - to consider the restorative justice as the instrument for executing only the interests of victim of crime.⁷⁶

3.2.2.5. Applicability of the Directive's Standards in Georgia

If the restorative justice of Georgia will be compared to the provisions of the Directive, it will be obvious, that Georgia feasibly tries to meet the European requirements. In Article 3 of “the procedure for imposing the diversion/diversion and mediation program on the minors and the terms and conditions of an agreement to be concluded between the parties” - approved by the Order No.120 of

⁷² *Lauwaert K.*, *European Criminal Justice Policies on Victims and Restorative Justice*, *Vanfraechem I., Bolívar D., Aersten I.* (eds.), Oxfordshire, NY, 2015, 257.

⁷³ *Ibid.*

⁷⁴ *Brunilda P.*, *European Forum for Restorative Justice, Briefing Paper about the Regulation of Restorative Justice in the Directive 2012/29/EU*, 2016, 15, <<http://www.euforumrj.org/wp-content/uploads/2017/03/-EFRJ-Briefing-Paper-RJ-in-the-Victims-Directive.pdf>>, [1.04.2019].

⁷⁵ *Kilchling M.*, *Opferrechte und Restorative Justice*, *Opferrechte in Europäischer, Rechtsvergleichender und Österreichischer Perspektive*, *Sautner L., Jesionek U.* (Hrsg.), *Viktimologie und Opferrechte*, *Schriftreihe der Weisser Ring Forschungsgesellschaft*, Band 8, Innsbruck, 2017, 72.

⁷⁶ *Lauwaert K.*, *European Criminal Justice Policies on Victims and Restorative Justice*, *Vanfraechem I., Bolívar D., Aersten I.* (eds.), Oxfordshire, NY, 2015, 267.

February 1, 2016 of the Minister of Justice of Georgia, is strengthening the principles of the diversion and mediation program, which include voluntariness and confidentiality. But it is worth mentioning that according to the Georgian legislation the juvenile has to plead crime.⁷⁷

After analysis of the standards established by the Directive, it can be determined whether one of the conditions of the diversion functioning in the adult justice system, particularly full or partial compensation may be considered as the restorative justice.

According to the provision of the Directive, **voluntariness** and **participation**⁷⁸ represent the main principles of restorative justice. Accordingly, it is necessary that the victim of crime and offender participate in restorative justice program based on their own choice.

In Georgia the victim is actually minimally involved in the diversion process, not even for communication and dialogue with the offender, but only for the purpose of counselling with the prosecutor. Therefore, the communication between the victim and the offender is not established. It's difficult to consider the counselling with prosecutor as indirect communication, because indirect communication implies the relationship through communication with a letter, audio recording, telephone or other technical means directly between the victim of crime and the offender, but not between the prosecutor and the victim.⁷⁹

In addition to the lack of communication element, the voluntariness element is also important. The CPCG envisages the counselling only with victim. The word "counselling" demonstrates that if the victim does not agree with the prosecutor's decision, the prosecutor anyway may draw up a diversion. Accordingly, the victim's consent is not required. This indicates that in case of diversion the element of voluntariness can be disregarded, which, from its part, may lead to secondary victimization of the victim. In addition, the Directive requires conducting the process with participation of "third, impartial person". Even the prosecutor cannot be considered as such, since it represents the party in the process and has a specific interest.

The Diversion institution is implemented in many states, including Germany and Austria. In the legislation of both countries, the mediation between victims of crime is found in the list of conditions of diversion that may unite the compensation for damage, thus require the participation of crime victim and offender and the communication between them.⁸⁰ Accordingly, it could be said that the diver-

⁷⁷ sub-paragraph "d", Article 40, the Juvenile Justice Code, Legislative Herald of Georgia.

⁷⁸ Kasper J., Schlickum G., Weiler E., *Der Täter-Opfer-Ausgleich*, München, 2014, 34; Lauwaert K., *European Criminal Justice Policies on Victims and Restorative Justice*, Victims and Restorative Justice *Vanfraechem I., Bolívar D., Aersten I.* (eds.), Oxfordshire, NY, 2015, 257; Daimagüler M G., *Der Verletzte im Strafverfahren*, Handbuch für die Praxis, München, 2016, 301.

⁷⁹ Lauwaert K., *European criminal justice policies on victims and restorative Justice*, Victims and Restorative Justice *Vanfraechem I., Bolívar D., Aersten I.* (eds.), Oxfordshire, NY, 2015, 256.

⁸⁰ Meyer-Großner L., Schmidt B., *Strafprozessordnung mit GVG und Nebengesetzen*, Beckliche Kurzkommentare, München, 2018, 815, 853-854; Satzger H., Schluckebier W., Widmaier G., *Strafprozessordnung mit GVG und EMRK Kommentar*, Heymanns Kommentare, Köln, 991, 1012-1013; §204, *Strafprozessordnung von Österreich*, 9/12/1975, <<https://www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=Bundesnormen&Gesetzesnummer=10002326>>, [21.04.2019].

sion program functioning in the Georgian adult justice system, does not contain the elements of the restorative justice.⁸¹

4. Conclusion

The research clarifies that to the restorative justice is given more and more attention on the level of the European Union. The provisions are becoming clearer, which contributes to the strengthening of the legal standing of the victim of crime. By focusing on the safeguards, the European Union once again recognized the great importance to prevent the secondary victimization of the victim of crime. However, it is regrettable that the Directive does not establish the right of access to restorative justice for the victim of crime and leaves in the State discretion, whether it establishes it or not. In addition, it is regrettable that the directive prevails the interests of the victim of crime, that may cause the danger to the neutrality of the restorative justice.

As it has been shown, the mediation program is functioning in the Georgian juvenile justice system, which is a step forward for Georgia, on its way to the European integration. It should be mentioned, the the mediation program is mostly in conformity with the european standards, but it still needs improvement. As regard to the adult justice system, it is not familiar with the restorative justice, because only compensation for damage cannot meet those principles and standards, established by the Directive and which are recognized by international practice. Therefore, in order to properly meet the needs of victim of crime, it is desirable to introduce the restorative justice programs into the adult justice system.

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⁸¹ In the article “Opferrechte im Strafverfahren nach der europäischen und georgischen Gesetzgebung“, published in the “Deutsch-Georgische Strafrechtszeitschrift“ (German-Georgian Criminal Law Magazine) in 2017, it was mentioned that the restorative justice is applied even to adults. It was meant full or partial compensation for damage by the defendant within the diversion; however, proceeding from the developed practice, it could be considered that only compensation cannot be considered as the restorative justice, because it does not meet the important element of restorative justice - communication and voluntariness of the parties, see. *Tandilashvili K.*, Opferrechte im Strafverfahren nach der europäischen und georgischen Gesetzgebung, Deutsch-Georgische Strafrechtszeitschrift, No. 2, 2017, 55-56, <<http://www.dgstz.de/storage/documents/m0wMkIuJTKf3nihzQgPFnyshtBiqcw6PcrPFy4TH.pdf>>, [03.04.2019].

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