


# Chapter 108

## Criminal restorative justice in Minas Gerais

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### ABSTRACT

This text aims to investigate the institute of Restorative Justice, a complementary model to the traditional penal system, providing opportunities for the active participation of all. This study is qualitative and descriptive, having as a methodology the review of literature and regulations, in which the institute of Restorative Justice in Minas Gerais is analyzed. It was found that Brazilian courts have promoted this alternative form of conflict resolution.

**Keywords:** Restorative Justice, NJ, TJMG, Punishability, Constellation.

## 1 INTRODUCTION

Restorative Justice is guided by creativity, sensitivity, and collaboration between the aggressor, victim, and society (BITTENCOURT, 2017), being seen as an integrative model, trying to reconcile everyone's expectations, increasing the resolution capacity of conflicts and preventing them from assuming proportions larger or that are repeated (BOLZAM; SANTOS, 2017). The restorative institute is a creation of modernity or postmodernity. Such systematics permeates the monopoly of public justice, victimology and abolitionism, and minimalism, from the evolution of the punitive model to alternative models of conflict resolution. Justice tries to be more humane and not strictly absolute and retributive (BITTENCOURT, 2017).

The expression Restorative Justice, coined in 1977 by psychologist Albert Eglash, in the work *Beyond restitution: creative restitution*, defends the rehabilitation of the offender through the request for forgiveness and retraction. However, the first experiences of this method are observed in New Zealand, Canada, and the United States of America, where the indigenous population dealt with their criminal occurrences (BITTENCOURT, 2017).

## 2 OBJECTIVE

As a general objective, we sought to ascertain the application of criminal Restorative Justice in Brazil, particularly in the state of Minas Gerais.

### **3 METHODOLOGY**

Of a qualitative and descriptive nature, this study has as its methodology the review of literature and regulations, proposing to analyze the institute of Restorative Justice in Minas Gerais.

### **4 RESULTS AND DISCUSSION**

#### **4.1 RESTORATIVE JUSTICE**

Restorative Justice aims at reparation (moral and material) and the establishment of communications between those involved, trimming edges (LAZARI; PINTO, 2019). This model is an option to the traditional penal system, providing opportunities for the active participation of all, and recognizing the failure of the State in criminal matters and incarceration. The focus is the transformation of the individual, with re-education and psychological follow-up and their reintegration (BITTENCOURT, 2017). The offender has been held accountable; for the repair; and respect for human rights and the dignity of the person (LAZARI; PINTO, 2019).

The Brazilian Judiciary Power cannot be efficient and fast. Thus, after the Federal Constitution (CF) of 1988, methods of conflict resolution emerged, such as those of Law nº 9.099/1995, aiming at good social coexistence, abandoning the culture of judicialization (STORCH, 2018).

The National Public Policy for Restorative Justice is governed by CNJ Resolution No. 225/2016 (CNJ, 2020). This judicial and extrajudicial work tool is encouraged through the Cooperation Protocol for the dissemination of Restorative Justice, of August/2014, with the Association of Brazilian Magistrates (BITTENCOURT, 2017).

In the restorative process, autonomy and dialogue are valued, creating opportunities for those involved in the conflict (author, victim, family members, and community) to talk and understand its cause, restoring harmony and balance (TJMG, 2017). This process is based on the equality provided for in article 3 of the CF, respecting fundamental values (BITTENCOURT, 2017; BOLZAM; SANTOS, 2017).

This procedural relationship can be conducted by a mediator or judge who, promoting dialogue and negotiation between the parties, aims to prevent/recompose divergent and conflicting points (STORCH, 2018), and constellation techniques may be used.

#### **4.2 FAMILY CONSTELLATIONS IN SYSTEMIC LAW**

In the systemic approach, the problems faced by the individual derive from serious facts that last and promote marks and traumas in the family. The expression “Systemic Law” was coined by Sami Storch based on Hellinger's method of family constellations. In this method, people represent and express the feelings of the client's family, trying to restore order and peace in relationships (STORCH, 2018).

The representation can be done individually and with the use of dolls or objects. The Constellation is based on the principles (belonging, respect for the hierarchy and the need to give/receive/take) called Orders of Love (SILVA; BARBOSA, 2017). From the conciliation hearings, agreements are quick and “exciting”, helping Restorative Justice. Systemic Law treats the parties as belonging to the same system, which is linked to others, aiming at a solution that brings greater balance (STORCH, 2018).

#### 4.3 CRITICISM OF THE USE OF THE CONSTELLATION IN LAW

Research shows that constellations are insufficient in their results, with no consensus even in the field of psychology regarding their use. Thus, restorative practices should be used as a resource to existing ones and not autonomously (REBOUÇAS; NETO; FONTES, 2019).

Conciliations are generally made without the technical preparation of the magistrate or conciliator for the use of the constellation. For some, there may be a feeling of participating in a *séance*. In addition, it makes it possible to unearth traumas for which the work leader does not have the skills or professional training to face, which may bring more problems than solutions. However, undeniably constellations have been practiced, being an alternative form of justice.

#### 4.4 RESTORATIVE JUSTICE IN MINAS GERAIS

In its booklet on Restorative Justice, the TJMG (2020) brings the following principles of this institute: voluntariness, impartiality, reasonableness, human dignity, cooperation, responsibility, informality, mutual respect, and good faith. Cases are monitored by a multidisciplinary team, assessing the severity and consequences of the damage caused (JORNAL O TEMPO, 2012).

In the restorative circle (arranged in chairs), the meeting is guided by a coordinator (Guardian of the Circle), who follows a predetermined script (a safe and protected space is used), where all interested parties will have a seat. The procedure is divided into three stages: the pre-circle (preparation for the meeting); the circle (holding the meeting) and the post-circle (follow-up). The Guardian of the Circle, impartially, does not seek to point out culprits or victims, but rather, to awaken awareness of actions that affect everyone, providing the repair of social ties (TJMG, 2020).

In the Special Criminal Court in the city of Belo Horizonte, both the defendant and the victim only participate if they so wish. The restorative process is a way out to avoid recidivism from crimes, which has the dialogue between defendant and victim as its purpose.

## **5 FINAL CONSIDERATIONS**

Restorative Justice is presented as a judicial modality. Dialogue and understanding between the parties are promoted, seeking the non-recurrence of the author, as well as the victim's acceptance of the imposed reparation, abandoning the desire for revenge, and applying humanized justice.

Following the guidelines of the CNJ, Minas Gerais has applied Restorative Justice with good results. This method was initially implemented in the Infractional Court of Childhood and Youth and the Special Criminal Court of the Comarca of Belo Horizonte. The agreement formed, to be valid and effective, will observe the legislation and must be ratified by the judge and approved by the Public Ministry.

## REFERENCES

BITTENCOURT, Ila Barbosa. **Justiça restaurativa**. Enciclopédia Jurídica da PUCSP. Ed. 1, maio 2017. Disponível em: [https://enciclopediajuridica.pucsp.br/verbete/138/edicao-1/justica-restaurativa\[...\]](https://enciclopediajuridica.pucsp.br/verbete/138/edicao-1/justica-restaurativa[...].). Acesso em: 15 dez. 2021.

BOLZAM, Angelina; SANTOS, Cortelazzi Rafael Fernando dos. Justiça restaurativa como modalidade de justiça inclusiva. **Revista da Faculdade de Direito do Sul de Minas**, Pouso Alegre, v. 33, n. 1, P. 289-306, jan./jun. 2017. Disponível em: <https://orcid.org/0000-0001-5908-9271>. Acesso em: 15 dez. 2021.

CONSELHO NACIONAL DE JUSTIÇA (CNJ). **Justiça restaurativa**. 2020. Disponível em: <https://www.cnj.jus.br/programas-eacoes/justica-restaurativa/>. Acesso em: 30 set. 2020.

JORNAL O TEMPO. **Justiça restaurativa começa a ser implantada em Minas**. 03 fev. 2012. Disponível em: <https://www.otempo.com.br/cidades/justica-restaurativa-comeca-a-serimplantada-em-minas-1.343235>. Acesso em: 30 set. 2020.

LAZARI, Rafael de; PINTO, Ricardo Vilarício Ferreira. A justiça de transição como possível instrumento de justiça restaurativa: análise do caso brasileiro. **Revista Jurídica Luso-Brasileira - RJLB**, ano 5, n. 3, p. 1.569-1.584, 2019. Disponível em: [https://www.cidp.pt/revistas/rjlb/2019/3/2019\\_03\\_1569\\_1584.pdf](https://www.cidp.pt/revistas/rjlb/2019/3/2019_03_1569_1584.pdf). Acesso em: 15 dez. 2021.

REBOUÇAS, Gabriela Maia; NETO, Vilobaldo Cardoso; FONTES, Isabela de Queiroz. CONSTELAÇÕES SISTÊMICAS E JUSTIÇA RESTAURATIVA: INTERSECÇÕES POSSÍVEIS? **Revista do Direito**. Santa Cruz do Sul, n. 59, p. 2-26, set./dez. 2019. Acesso em: 08 set. 2020.

SILVA, Artenira da Silva e; BARBOSA, Gabriella Sousa da Silva. POSSIBILIDADE DE APLICAÇÃO DA TÉCNICA DE CONSTELAÇÕES FAMILIARES E DA MEDIAÇÃO NAS VARAS ESPECIALIZADAS DA MULHER E DA VIOLÊNCIA DOMÉSTICA FRENTE À RESOLUÇÃO CNJ Nº 125/2010. **Rev. de Formas Consensuais de Solução de Conflitos**, Maranhão, v. 3, n. 2, p.88-10, jul./dez. 20. Disponível em: <https://indexlaw.org/index.php/revistasolucoesconflitos/article/view/2503/pdf>. Acesso em: 08 set. 2020.

STORCH, Sami. **Direito sistêmico é uma luz no campo dos meios adequados de solução de conflitos**. Consultor Jurídico. Opinião. 20 jun. 2018. Disponível em: <https://www.conjur.com.br/2018-jun-20/sami-storch-direito-sistêmico-e-uma-luzsolucao-conflitos>. Acesso em: 15 dez. 2021.

TRIBUNAL DE JUSTIÇA DO ESTADO DE MINAS GERAIS (TJMG). **Justiça restaurativa**. 07 abr. 2017. Disponível em: <http://www.tjmg.jus.br/portal-tjmg/acoes-e-programas/justicarestaurativa.htm>. Acesso em: 30 set. 2020

TRIBUNAL DE JUSTIÇA DO ESTADO DE MINAS GERAIS (TJMG). **Cartilha sobre Justiça restaurativa**. 2020. Disponível em: <http://www8.tjmg.jus.br/institucional/programasprojetos/justica-restaurativa/folder.pdf>. Acesso em: 30 set. 2020.