



Report on restorative practices in road traffic offences in Europe

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VICTIMS OF ROAD TRAFFIC OFFENCES



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1. INTRODUCTION

1.1 MOTIVATION

The starting point of this project¹ is EU-Directive 2012/29/EU, establishing minimum standards on the rights, support and protection of victims of crime². This directive provides rights to all victims of crime, including victims of road traffic offences.

Restorative Justice (RJ) in road traffic offences is one of the pillars of this project. Regarding RJ-practices, the directive obliges member states to guarantee some specific rights of victims. Shortly summarized, following articles are relevant to the field of Restorative Justice.

- Art. 1 emphasizes the need for victims to be recognized and treated respectfully in all contacts with professionals, including restorative justice services.
- Art. 2 §1(d): provides a definition of Restorative Justice: 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.
- Art. 4 : introduces the obligation to inform victims about available restorative justice services and this from the first contact with a competent authority.
- Art. 12(§1): provides a right to a number of safeguards in the context of Restorative Justice. In order to prevent secondary victimisation, intimidation and retaliation and restorative justice services to be safe and competent, the following conditions need to be fulfilled:
 - RJ-services can only be used when in the interest of victims and after considering the safety of the victim;
 - victims can freely choose to participate, after informed consent, which can be withdrawn at any time;
 - victims are fully informed about the process of Restorative Justice, the potential outcomes and the procedure of supervising the implementation of a possible agreement between parties;
 - the offender has acknowledged the basic facts of the case;
 - any agreement is achieved voluntarily and after permission from the parties;
 - any agreement may be taken into account in further criminal proceedings;
 - the content of the restorative process is confidential and is subsequently not disclosed, except with the agreement of the parties or as required by national law due to an overriding public interest.³
- Art. 12(2): obliges the Member States to facilitate referrals, including through procedures and guidelines on the conditions for such referral.
- Art. 25: the Member States should encourage training of professionals in Victim Support and RJ-Services
- Art. 25: the Member States should encourage that Victim Support and RJ-Services observe professional standards, ensuring that their services are provided in an impartial, respectful and professional manner.

The Directive focusses on victims of criminal offences. However, in the field of road traffic crashes, it is not always clear if the crash involves a criminal offence. Most crashes are unintentional. There is not always a blameable mistake. Restorative justice processes often take place while the investigation is ongoing and

¹ JUST/2015/JACC/AG/VICT/9276

² <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2012:315:0057:0073:EN:PDF>

³ In the preface of the directive under (46) is mentioned that: "factors such as threats made or any forms of violence committed during the process may be considered as requiring disclosure in the public interest."

the liability not yet established. Sometimes, when both parties are either injured or deceased the question is raised: "Who's the victim?" and subsequently: "Who has access to Victim Support or Restorative Justice Services?" This is an important complication in the application of RJ.

Based on the outcome of a survey conducted amongst its member organisations, the European Federation of Road Traffic Victims (Herbert, Kinable, Aeron-Thomas, & Westland, 2016) suggests that victims of road traffic offences are often not informed about Restorative Justice Services, while these services can be extremely important for this group.

Restorative justice practices, such as victim-offender mediation, make dialogue and mutual understanding possible in cases where persons involved in intentional or unintentional road traffic offences do not start a spontaneous communication process. Restorative justice practices can contribute to the rehabilitation of both victims and offenders involved in road traffic offences. Despite their great and promising potential, RJ-practices for road traffic offences are applied only in a limited and partial way in EU member states.

1.2 OBJECTIVES

Few countries in Europe belong to this promising field in the framework of RJ after road traffic offences. The first aim of this paper is to further discover and share needs and outcomes of victims and offenders regarding RJ-practices after road traffic offences. A second aim is to present some good practices that might be inspiring for other countries or existing RJ-practices.

1.3 METHODS

This report contains two main parts. The first part provides an overview of needs and possible outcomes for victims (and by extension offenders) of road traffic offences, related to Restorative Justice. This overview is based on literature, semi-structured interviews with participants of victim-offender mediation after a road crash and interviews with other professionals in the field.

The second part starts with a short general overview of the RJ-practices for road traffic offences in Europe. Therefore, an online survey was launched and specific information in different countries was gathered through email contact with member organisations of the European Forum for Restorative Justice (EFRJ). Further, it describes good-practices in 4 European countries: Belgium, The Netherlands, Hungary and Ireland. The information for this part was gathered through literature and interviews with professionals in these countries.

This exploration was done between March and September 2017.

1.3.1 Interviews with victims and offenders

During the first months of this project, ten qualitative interviews were carried out with victims and offenders in Flanders⁴. They were asked about their experiences with victim-offender mediation (VOM) after a road traffic crash. Seven victims and three offenders were interviewed. Three victims and three offenders were involved in the same road crash. All respondents were adults and signed an informed consent. The inter-

⁴ The northern part of Belgium

views were audio-recorded and summarized.

Following cases were included in the project:

Case 1: Road crash with one deceased and one seriously injured victim. The offender was driving too fast and under influence of alcohol. The victims were his passengers. Mediation took place before sentencing. Parties made a mediation-agreement. The mother of the deceased victim and the offender were interviewed.

Case 2: Road crash with one deceased victim (cyclist). It was a "blind spot" crash with a truck driver. There were no aggravating circumstances. Mediation took place before sentencing. The father of the victim and the truck driver participated in the research.

Case 3: Road crash with a deceased victim (cyclist). The offender and his passenger committed hit-and-run and the driver was driving under influence of alcohol. Mediation took place after sentencing. The father of the victim participated in a mediation with the passenger in the car. The father of the victim participated in the research.

Case 4: Road crash with one injured victim and one not-injured victim. The offender was driving under influence of alcohol. Mediation took place before sentencing, between the offender and the not-injured victim. This victim participated in the research.

Case 5: Road crash with a severely injured victim. The offender was under influence of alcohol. The mediation took place before sentencing, between offender en victim. The victim participated in the research.

Case 6: Road crash with an injured victim (cyclist). The offender was distracted by a dog in the car. Mediation took place before sentencing. A mediation-agreement was made. The victim participated in the research.

Case 7: Road crash between a car and a truck. Two victims died in the crash. The trucker neglected a red sign. The mediation took place before sentencing, between the daughter of the deceased couple and the trucker. Both participated in the research.

1.3.2 Interviews with (semi-)professionals

The interviews with professionals were held in The Netherlands, Hungary and Ireland. These interviews focused on the description of the local practice, the needs and outcomes for victims and offenders, and possible obstacles for the implementation of RJ-practices in road traffic offences.

Following persons were consulted:

- Antonio Buonatesta (Belgium): director of Médiate, an organisation for victim-offender mediation in Wallonia;
- Sonja Lefferink, Franck Wageman, Fiona Van Mechelen and Moniek Toonen (The Netherlands): staff members of Victim Support The Netherlands;
- Manon Elbersen (The Netherlands): a staff member of "Perspectief Herstelbemiddeling";
- Gert Jan Slump (The Netherlands): expert on Restorative Justice;
- Marie Finan, Peter Keeley and Susan Kavanagh (Ireland): staff members and volunteers of Restorative Justice Services, Tallaght;

- Lorraine Stack (Ireland): Family Liaison Officer of An Garda Síochána (police);
- Donna Price (Ireland): president and founder of IRVA (Irish Road Victims Association);
- Edit Törzs (Europe): executive director of the European Forum for Restorative Justice;
- Erika Magyar (Hungary): staff member of Probation Service Hungary.

For the description of the Flemish practice, information was gathered from our own organisation: internal documents, data and own experiences.

To describe the Dutch practice, a working visit was organised in August 2017. During this visit, we had an interview with staff members of Victim Support The Netherlands and a staff member of "Perspectief Herstelbemiddeling". Some additional information was gained through a skype-interview with an expert on Restorative Justice. Besides that, we consulted reports and some articles on the Dutch situation.

Information on the local practice in Hungary was gained from a Skype interview with a staff member of the Probation Service.

For the Irish experience, information is based on a working visit in August 2017. During this visit, we could interview staff members and a volunteer of Restorative Justice Services. Besides that, the possibility was offered to observe a panel meeting and to attend a part of the Road Safety Program. Additionally, an interview was held with a police-officer and a chairperson of the IRVA.

2. RESTORATIVE JUSTICE EXPERIENCES AFTER ROAD TRAFFIC OFFENCES

2.1 FINDINGS FROM INTERVIEWS WITH PARTICIPANTS

The central question was: Why do victims and offenders want to participate in mediation after a serious road traffic crash? What are their motivations? What do they expect? What are the needs behind the motivation? Participants in this research gave various reasons for their participation in the restorative justice-process. These reasons do not differ much in comparison to motivations of victims and offenders in other crimes. Most needs are similar to victims and offenders. If not, it is mentioned in the list below.

2.1.1 Reasons for victims and offenders to participate in a mediation process after a road traffic crash

- **Reasons related to what happened:**
 - To get information about the circumstances of the crash, to make the puzzle;
 - To give additions to the police statement;
 - Wanting that something positive comes out.
- **Personal reasons:**
 - Feeling the need to tell their story and talk about the consequences for him/her;
 - Feeling the need to tell how they feel about what happened;

- Feeling the need to tell that they are aware of the impact on the other party;
- Feeling the need to facilitate something in their own healing process, to obtain rest and closure;
- Feeling the need to talk about the deceased person, how he/she was (victim);
- Feeling the need to see directly if excuses or attitude are sincere (victim)
- Feeling the need to get some recognition;
- Feeling guilty about what happened, expressing regret (offender);
- Feeling morally obliged, out of empathy with the other;
- Feeling the need to give another image of him/herself, to correct the image created by the crash (offender);
- Finding it important to talk with the other about what has happened;
- Because making contact with the other party on his/her own is too difficult (fears, shame...).

- **Reasons related to the other party:**
 - Out of concern for the other party, realizing that it is not easy for them either. To give recognition;
 - Feeling the need to facilitate something in the healing process of the other;
 - Feeling the need to let the other know that they do not blame him/her (victim);
 - Feeling the need to let the other know that it could happen to them too (victim);
 - Wanting to know who the other party is, how he/she lives, how he/she deals with it;
 - Wanting to have information about the status of the other (medical condition, psychologically, revalidation process,...);
 - Feeling the need to confront the other with his/her driving behaviour and the consequences of this behaviour. To see how the other deals with these consequences (victim);
 - Feeling the need to avoid problems in a future relationship when parties are known to each other.

- **Other reasons:**
 - Communication with the judicial system; to communicate to the court their mutual point of view;
 - From previous experiences (personal or in a family context), having experienced that it continues to itch when they do not hear anything from the other party;
 - Because of the belief or knowledge that the deceased person would have approved or encouraged it as well (victim).

2.1.2 Outcomes of Restorative Justice Processes after a road traffic offence

Earlier research (Shapland, 2011) on victims participation in RJ-processes revealed some findings related to the outcome of these processes. Most research finds high percentages (70 to 85%) of satisfaction among victims and offenders. Explaining which factors lead to satisfaction among victims would lead us too far here.

Apart from that, research also points out that Restorative Justice Processes can also be a resource for participants (Bolivar, 2017). Victims receive information about their case and experience a sense of fairness and control during participation. At the same time, empirical research showed that participation in Restorative Justice Processes can have important positive psychological effects for victims, like reducing anxiety and fear or the restoration of self-esteem (Hulst, Akkermans, & Van Buschbach, 2014).

Specific for victims of road traffic offences, the interviews held in this project, are giving us some useful information on the possible outcomes of RJ-processes. The findings in this project correspond with the research done on victims of crime in general.

2.1.2.1 Positive outcomes

Some outcomes are focusing on the restorative process of the participant:

- Through mediation, people get the chance to express their emotions about the crash, which leaves them with less frustration afterwards;
- People say they became less bitter and hateful after the mediation;
- Through mediation they received another, more nuanced, image of the other;
- They have been able to tell their story, they have been heard;
- Mediation helped to close a healing process;
- Mediation helped to channel difficult emotions.

Other outcomes focus on the restorative outcome of the process:

- Through mediation, people got answers to crucial questions about the crash;
- Through mediation they were able to confront the other with his/her mistakes, imprudence, recklessness, attitude, ...;
- Through a mediation agreement, people were able to communicate to the judge their common point of view;
- People could express understanding for each other's situation. They got recognition or even forgiveness;
- It brought rest and peace in their heart.

2.1.2.2 Negative outcomes

Despite the positive outcomes, some participants also report negative outcomes.

- Mediation did not solve everything. Some questions remain unanswered;
- Expectations remain unanswered: e.g. If one party wants to speak directly and the other does not, if promises are made that are not held afterwards;
- Disappointment because they feel that the mediation is being used for the offender's own benefit;
- Disappointment because they have not received recognition for 'being the victim';
- Disappointment because the offender shows little regret or repentance.

Apart from that, most respondents appreciated that the mediation was voluntary and that they could decide at any time to end or temporize the communication process. Most of them felt supported and heard by the mediator.

2.2 FINDINGS FROM INTERVIEWS WITH PROFESSIONALS AND VICTIM-VOLUNTEERS

In scientific literature (Hulst, Akkermans, & Van Buschbach, 2014) and our own empirical research, there is a consensus that some kind of communication between parties after the crash is favourable for both parties. This communication even does not have to be an apology. Often a simple act of informing about the condition of the harmed person can be sufficient to create a more nuanced image of the other party.

RJ-practitioners point out that, when there is shortly after the crash a contact between both parties, the VOM often proceeds more smoothly and agreements are more easily reached. Mediators have less work to

do in decomposing prejudices and stuck images of the other. This finding is also supported in a research in the Netherlands (Hulst, Akkermans, & Van Buschbach, 2014), where was found that when victims receive excuses from the author/offender of the crash, the settlement of the damage by the insurance company proceeds faster and smoother.

However, in many countries, people are discouraged to make contact with the other party by police officers, lawyers, insurance companies or their own environment. Due to privacy rules or professional secrecy, information on contact details or medical condition cannot be transmitted. The result is that people remain with lots of unanswered questions about the crash or offence and an image of the other that he/she does not care about what happened.

Not all parties involved in a crash need RJ or mediation to communicate. Some parties are strong enough to establish contact on their own or helpful police-officers can act as an intermediary. But in other situations, like severe crashes with aggravating circumstances or when a high emotional level is reached (feelings of guilt, shame) it is not so easy to make this contact on your own. Restorative justice and more specifically victim-offender mediation can facilitate communication between parties.

Traffic cases and specifically crashes are considered by professionals and victim-volunteers as good and suitable cases for RJ-practices. Victims and offenders often share a common experience about the crash. A crash is often a traumatic experience for both parties. Sharing this experience can be helpful for both parties.

Mutual understanding and recognition are more easily reached when the crash is due to a wrong decision or a miscalculation. But also in severe crashes due to offences like dangerous driving, alcohol or drug abuse, or hit-and-run,... VOM can be very useful. Victims often expect excuses from the offender's side. Offenders are often too ashamed to seek contact on their own. This results in a polarized image of the other and frustration on both sides. For the victim, it seems as if the offender doesn't care and continues his life like before. The offender continues on struggling with feelings of shame and guilt.

The needs of victims in road traffic crashes do not differ much from these from other victims. Professionals argue that people involved in road traffic crashes more frequently choose to meet directly with the other party. For victims, it is often important to see directly how the offender deals with the crash and the consequences.

Concerning the needs of victims for RJ-processes, professionals point out that there is a difference between needs of severely injured victims and those of bereaved families. After the crash, severely injured victims mostly focus on their physical recovery and revalidation. They try to reorganize as good as possible their lives after the crash. They are confronted with more complicated issues on the judicial and insurance level. This process is often more complex than the process of bereaved families. They remain with many questions after the crash, that cannot be answered by the person they lost.

It is clear that the needs of victims or relatives can differ in timing. Professionals argue therefore that victims of road traffic crashes should be informed about the possibility of RJ in their case and this preferably at various moments after the crash.

Information about their rights on RJ is crucial for victims, as it is stated in the EU-directive. However, victims of road traffic crashes are often forgotten. Professionals and victim-volunteers emphasise the importance of information in general and specifically on RJ-practices. Victims should be informed properly about their

rights en they should have free access to RJ-practices. In countries where RJ-practices are designed as diversionary practices, this is often not possible.

Not all persons are receptive to this information shortly after the crash. When there is severe bodily injury, for instance, victims are focusing more on their physical recovery. A bereaved family can be so harmed, that all information, given with good intentions, does not penetrate. Police officers, victim-support officers and judicial administrators should work together to inform parties about their rights at different stages in the procedure. Lawyers and insurance companies should be better informed about the importance of RJ-processes after a road traffic crash and should be able to discuss this possibility with their clients.

Other professionals emphasize the free choice of the parties. Victims and offenders should not only have free choice to participate or not in RJ-processes, they should also have free choice to decide when (before or after trial) and how (direct or indirect communication) they participate in the RJ-process.

Informing on RJ is a first step. Discussing the possibility of RJ and VOM with victims is not always so easy for victim support officers or victim-volunteers. For victim support organisations, informing victims about restorative justice is easier in road traffic offences than in other cases (because of the often non-intentional aspect of the offence). Nevertheless, also in road traffic offences, victim support officers or volunteers can feel some reservation to talk about the perspective of the offender. Therefore specific instruments and training can be useful. Besides that, other aspects are important: like the knowledge and the proximity of the mediation organisation or the way the victim support worker feels about RJ (attitude).

2.3 CONCLUSIONS

Needs and expectations of victims of road traffic offences do not differ much from victims of other types of crime.

Regarding to Road traffic offences, some specific remarks must be made:

1. Victims of road traffic offences (crashes) expect to hear something from the offender/the person who caused the crash;
2. Victims/relatives remain often with many questions and feel that answers will help to facilitate their healing process. Restorative justice practices can facilitate this process, because victims in general may need support in their search for help;
3. Informing victims and discussing the possibility of RJ is:
 - Often not done;
 - Often not repeated at different stages of the procedure;
 - Often discouraged by police, lawyers or insurance companies;
 - Difficult for victim support/ victim support- volunteers.
4. Not all victims need RJ to fulfil their needs. Often communication between parties involved in the crash is done by police-officers or victim support services or even without the intervention of a third person;
5. The outcomes of RJ-processes in road traffic crashes are in general favourable for both parties and can facilitate the healing process of victims and their families.

3. GOOD PRACTICES OF RESTORATIVE JUSTICE FOR ROAD TRAFFIC OFFENCES IN EUROPE

In this second part, we will focus on some good practices in the field of RJ and road traffic offences.

3.1 SHORT OVERVIEW

At first, we tried to get an overview of the situation in Europe. It was clear that there is a variety of RJ-practices in Europe. These practices differ in various aspects:

- They are located inside or complementary to the Criminal Justice System;
- They focus on specific types of crime or all types of crime;
- The outcome of the RJ-process can be diversionary or not;
- There is a variety of used methodologies: shuttle mediation, direct victim-offender mediation⁵, group conferencing, panel reparation programmes,...

Few countries have specific experience with restorative justice in road traffic offences. We found examples in Belgium, the Netherlands, Denmark, the UK, Germany, Hungary, Spain and Ireland.

Based on this overview, we decided to choose four countries for further exploration: Belgium, the Netherlands, Hungary and Ireland.

Belgium and the Netherlands were chosen because of their large experience and practices in victim-offender mediation in road traffic offences (mainly car crashes), complementary to the criminal justice system. The situation in Belgium is specific because the parties are often informed by the prosecutor's office. The practice in The Netherlands is interesting because substantially more referrals come from victim support services.

In Hungary and Ireland, the RJ-practices are embedded in a diversionary project. In Hungary, victim-offender mediation is carried out in road traffic offences (mostly in crashes with bodily injury). In Ireland, the Restorative Justice Service is running an innovative project. The Road Safety Panels are a mainly offender-orientated program, based on a panel-methodology.

The legal framework of a specific country or region determines often the existence of a certain practice. Martin Wright (Wright, 2010) distinguishes 4 types of legal frameworks for restorative justice practices:

1. Restorative Justice Programs are included in existing legislation: e.g. In Ireland, restorative justice programs operate within existing Probation Legislation;
2. Restorative Justice Programs with new and specific legislation: e.g. Belgium has a specific law, regulating VOM for all kinds of offences at any stage of the procedure;
3. Restrictive legislation that complicates or excludes the use of restorative justice: e.g. Hungary: offences punishable with penalties above 5 years of imprisonment are excluded for VOM;
4. Legislation that prescribes the use of restorative justice procedures for certain types of crime: e.g. in many countries, RJ-practices are prescribed for juvenile offenders.

⁵ Further abbreviated as VOM

Road traffic offences or crashes are often forgotten regarding restorative justice practices. Progressive legislation like in Belgium created space for RJ-practices to be innovative and include road traffic offences in their work. Nevertheless, the examples of Hungary and Ireland are proving that even when legislation is restrictive or not existing, it is possible to develop a restorative justice practice in road traffic offences.

Besides a certain legal framework, good practices often emerge when there is a consciousness in the society that certain needs could be addressed by developing a certain practice and the courage among policymakers to facilitate and support the development of such practices. Victim-volunteer associations could play an important role in influencing policymakers on this theme.

3.2 GOOD PRACTICES

3.2.1 Restorative Justice Practices complementary to the Criminal Justice System

3.2.1.1 Belgium

Introduction

Belgium has a large and long experience in restorative practices in road traffic offences. The law of 2005⁶ made it possible to offer VOM also in road traffic offences with an identifiable victim. In 2007 a multi-disciplinary conference was held about the situation of victims of road traffic offences in Flanders⁷. In the preparation of this conference all stakeholders, involved in the field of victims of road traffic offences: insurance companies, victim support, the medical services, police and judicial services, rehabilitation services, education, ... were gathered. This conference raised more awareness among professionals to improve the situation of victims and offenders of road traffic crashes.

Legal framework

Belgium has a broad experience in RJ-practices. There are 3 main types of RJ-practices:

1. **Mediation in Penal Matters:** this is a diversionary practice for adult offenders, incorporated in the Criminal Justice System. The practice is limited to offences punishable with max. 2 years of imprisonment. This practice is only accessible through referral by the prosecutor.
2. **Victim-offender Mediation for adult offenders:** VOM parallel to the Criminal Justice System which can take place before or after sentencing. It is a voluntary and confidential procedure. The law provides that everyone involved in the criminal procedure can ask for mediation. This means that victims and offenders have free access to mediation (there is no referral needed). Judicial actors, like police and prosecutors, have the obligation to inform parties about the possibility of VOM.
3. **Victim-offender Mediation for juvenile offenders:** this is a voluntarily offered mediation, referred by the prosecutor or juvenile judge. If mediation succeeds, the prosecutor could dismiss the case. The procedure is confidential.

Concerning road traffic offences, cases can be handled by all three of the RJ-practices.

In **Mediation in Penal Matters**, offenders can be referred towards a course (Driver Improvement), after some

⁶ 22 JUNI 2005. - Wet tot invoering van bepalingen inzake de bemiddeling in de Voorafgaande Titel van het Wetboek van Strafvordering en in het Wetboek van Strafvordering.

⁷ This is the northern region of the country

offences. In 2015, 488 such cases were referred, the majority after offences like "driving under influence of alcohol and drugs" (Slootmans, 2016). In these courses offenders are sensitized about their conduct and the possible consequences on (potential) victims, but there is no real participation of the victim as such.

Victim-Offender Mediation for adult offenders is carried out by 2 recognized NGO's⁸. This practice will be described in detail below.

Victim-Offender Mediation for juvenile offenders: data concerning road traffic offences are not available, but in practice, very little cases of road traffic offences are referred to these services. Minors between 16 and 18 years in road traffic offences are sentenced by the same court as adult offenders, thus when referred to restorative justice practices, they are also referred to services for adult offenders.

Organisational framework

Nationwide, 2 NGO's are providing victim-offender mediation in road traffic offences. In the southern mainly French-speaking part, the organisation is called "*Médiante*". In the northern and Dutch-speaking part, the NGO is called "*Moderator*". In the capital Brussels, both organisations are active and cooperating intensively. This part will concentrate on the practice of "*Moderator*". The practice of "*Médiante*" is similar to the Flemish one, only for road traffic offences, it is less elaborated.

As said, "*Moderator*" offers VOM for adult offenders, parallel to the Criminal Justice System. The organisation was founded in 1998 under the name "*Suggnomè*", as an independent and neutral organisation. In the first years, the practice focused on VOM in the post-trial phase, but shortly after that VOM was also introduced in the pre-trial phase. Today, most cases are pre-trial. In 2016 the name was changed into "*Moderator*".

The whole organisation counts about 40 persons. In every jurisdiction, mediators are organized in mediation services. They are responsible for the organisation and implementation of VOM in their jurisdiction. The central management is done by two coordinators and some staff members, together with a representation of mediators from the different jurisdictions.

Mediators have different educational backgrounds and working experiences. There is an internal training provided. Mediators meet on regular basis in their jurisdiction to discuss local policy matters and cases. Three to four times a year, all mediators meet at a regional meeting, to exchange information, to discuss methodological or policy issues, to hold case-discussions and follow specific training.

Referrals and access for victims/offenders

There is free access for victims and offenders to participate in VOM. No referral is needed. Judicial authorities are obliged to inform people about the possibility of VOM in their cases. This information is given at different stages in the procedure. Shortly after the offence, victims receive a "certificate of complaint", with general information on the judicial procedure, victim support and victim-offender mediation. In the invitation letter of the court-session, this information is repeated.

Besides that in most jurisdictions, there are agreements made to inform parties in more specific cases and with a personalized letter, coming from the prosecutor's office. The way this happens differs from one jurisdiction to another. The letter aims to inform parties on the possibility of VOM in their case. The letter emphasizes voluntariness, confidentiality and the support of a neutral mediator. It informs also about the possibility of indirect mediation. Both victim and offender are informed at the same time and by the same

⁸ In Flanders by Moderator.be, in Wallonia by Médiante.be

letter. The contact details of the local mediation service are mentioned and people are invited to contact the service for further information.

Since 2009 some jurisdictions started informing parties about the possibility of VOM in road traffic offences. Quickly this practice was expanded to the whole Flemish region. Therefore, local mediation services made agreements with the prosecutors' offices and the victim support services within the judicial system. In 2017, there are existing agreements in every jurisdiction, with those prosecutors responsible for road traffic offences. These agreements concern the nature of the cases, suitable for VOM, the timing of the information letter, the local cooperation with victim support services (within the judicial system). In some jurisdictions, there is a very good cooperation, in others, there is still work to be done.

Most of the cases are road traffic crashes: mainly traffic crashes, with deceased or severely injured victims, often also with aggravating circumstances, like alcohol abuse or hit-and-run. Besides that, also crashes without criminal offence, can apply for VOM. The only criterion is, that there is, or was a judicial procedure or investigation.

Most parties (80% of all traffic cases) contact the mediation service after the information letter they received from the prosecutor. Apart from this, the prosecutor can decide that mediation should be offered in other cases too or people can be referred to the mediation service by the police, victim support services or other professionals. Some victims or offenders contact the mediation service themselves.

"Moderator" has a specific flyer to inform parties about mediation after a road traffic crash. On the website, information and stories about VOM after a road traffic crash are shared and there is a possibility to apply for mediation.

Methodology/Procedure

When parties contact the mediation service, they first receive information about the principles, purpose and procedure of mediation. People can freely decide whether they want to participate in the mediation process or not. Mediation is always voluntary. Emphasis is put on the fact that mediation does not replace the criminal procedure, but is additional to the judicial procedure.

The mediation is confidential. Confidentiality is guaranteed by the law. Mediators are not allowed to report to the judges or prosecutors. The only way to communicate with the judicial system is by the form of a mediation-agreement, signed by both parties. These mediation-agreements can contain an agreement on the settlement of the damage⁹, but also a personal reflection on the mediation process. Mediators will always discuss the possibility of the mediation-agreement, also in cases of road traffic offences.

Mediators explore with the applying party needs, expectations and possible outcomes in their specific situation. This first contact is mostly done telephonically.

When one party is willing to participate in a mediation process, the mediation service sends a reminder (letter) to the other party. In that letter is announced that one party is interested in a mediation. Most services mention a term of 20 days in this letter, asking the other party to react within these 20 days.

When at least two parties are willing to participate, the mediation process can start. Most mediations start

⁹ In road traffic offences, settlement of the damage is rarely a subject. Most mediation-agreements are expressions of the emotional consequences of the crash and the way the parties dealt with this.

with a separate meeting with victim or offender.

The majority of all mediations proceeds indirectly (64%) (MODERATOR, 2016) and almost all mediations start this way. The mediator then, acts as an in-between, between victim and offender, and exchanges questions, answers, messages,... between both parties. In 36% of the traffic cases, parties decide to meet face-to-face. These encounters between victims and offenders are carefully prepared and facilitated by the mediator. Sometimes there is an exchange of a letter or contact by video-messages.

The content of the mediation is determined by the parties themselves. Compensation for the damage is rarely part of mediation in road traffic crashes (since this part is regulated by the insurance companies). Dealing with the emotional impact of the crash is one of the main themes in mediation between victims and offenders after a road traffic crash.

The mediation process is free. People do not have to pay for it. Support persons (family, friends or professionals) can be included in the mediation process.

Mediation can take place in every phase of the judicial procedure, even after a dismissal (e.g. when the person that caused the crash died in the crash). Sometimes people choose to wait until the judicial procedure is totally completed, to start the mediation process.

Data

Approximately 12% of all cases are road traffic cases¹⁰. In 1683 cases between 2012 and 2016 parties were informed about the possibility of mediation after a road traffic offence. This resulted in 586 mediation-relations¹¹. Most of these cases (98%) are – as already said – severe traffic crashes.

98% of all mediations started in the pre-trial phase, in general within the first year after the crash. In 80% of all cases, people were informed by the prosecutors' letter.

The majority of the mediations in road traffic offences are indirect (64%), which means that people choose to exchange information through shuttle-mediation. In 36% of the traffic cases, parties decide to meet face to face. This is a higher proportion than in other offences¹². Mediation agreements are less frequent in road traffic offences.

37% of the parties react after receiving a letter with information on VOM. There is a slightly higher response rate among offenders (40%) than among victims (36%).

In 75,5% of all cases initiated in road traffic offences in 2016, the mediation process was completed entirely. In other offences, this proportion is only 61,7%.

Conclusion

The Belgian example is interesting because of the systematic and neutral information policy on RJ-practices, regarding the judicial authorities. In most jurisdictions in Flanders, victims and offenders of severe road traffic crashes are personally informed about the possibility of VOM shortly after the crash by a letter from

¹⁰ Data only for Flemish Region. In Wallonia, the proportion is 4,6%

¹¹ One victim and one offender is willing to participate in a mediation process. In one case, there can be different relations.

¹² Only 20% of all cases is a direct mediation.

the prosecutor's office. Besides that, information about the possibility of VOM is repeated at several times during the criminal procedure. All jurisdictions are legally obliged to inform parties about their rights regarding RJ-practices.

Free choice is a very important principle in the Belgian practice. People can choose freely to participate or not in VOM. They can choose the form of the mediation (direct/indirect), the content and the timing of the mediation (before or after trial). Finally, they can choose whether they want to communicate about the mediation process with the judicial authorities by mean of a mediation-agreement or not.

Victims and offenders have direct access to mediation. No referral is needed. Mediation is also possible in crashes without criminal offence. The only legal requirement is that there is (or was) a judicial procedure.

3.2.1.2 The Netherlands

Introduction

Since the beginning of VOM in the Netherlands (in 2006), road traffic offences and crashes were included as possible cases for mediation. Most mediations in road traffic offences are carried out by a national organisation (NGO), called "*Perspectief Herstelbemiddeling*". This NGO is a sister-organisation of Victim Support The Netherlands.

Legal framework

Currently, there are two main RJ-practices existing in the Netherlands:

1. Victim-offender Mediation (since 2006): this practice is located parallel to the criminal justice system. It can take place before or after sentencing. The aim is not to influence the criminal procedure, but more to obtain "emotional recovery" for victim and offender. Settlement of the damage is rarely a theme in VOM.
2. Mediation in Criminal Law¹³ (since 2012): this practice is always conducted in the pre-trial phase. The aim is to influence the criminal case. Settlement of damage is often a theme in this kind of mediation.

The Dutch Code of Criminal Procedure contains an article (51H) that focusses completely on mediation in Criminal Cases (Cleven & e.a., 2015).

It says that:

- The Department of Public Prosecutions should encourage that police officers inform victim and suspect about the possibility of mediation as early as possible in the criminal procedure.
- The judge should take into account any agreement as result of mediation between victim and suspect when imposing a penalty or measure.
- The Department of Public Prosecutions should encourage mediation between victims and convicts, after approval of the victim.
- Further regulations about mediation between victims/offenders can be made by an Order in Council.

On 24 August 2016, an Order in Council was approved. This decision determined some guarantees for victims, inspired by the EU-Directive 2012/29 art. 12, first part¹⁴.

¹³ Mediation in het strafrecht

¹⁴ See under Introduction for the explanation of art. 12.

Apart from these, there is no specific legal framework for victim-offender mediation or mediation in the criminal law.

Recently, in September 2016, the Dutch Department of Justice and Safety, worked out a policy framework on restorative justice. (Ministerie van Veiligheid en Justitie, 2016). This policy framework outlines the legal framework, the working principles, criteria and the outcomes of victim-offender mediation. Specifically for victims, this policy framework states that mediation should be accessible at any moment the victim needs it.

Since 2006 the minister of Justice assigned "*Perspectief Herstelbemiddeling*" to conduct victim-offender mediation in the Netherlands. There is a formal mandate from the Ministry of Justice, which gives the NGO a certainty of existence.

Mediation in the criminal law can be done by independent mediators or mediators belonging to organisations like "*Perspectief Herstelbemiddeling*". Road traffic offences are not often subject of this form of mediation. In crashes without criminal offence, mediation in the criminal law is legally not possible.

Most mediations after road traffic offences are "victim-offender mediations", conducted by mediators of "*Perspectief Herstelbemiddeling*". This organisation is nationwide and exclusively assigned by the Ministry of Safety and Justice, to conduct victim-offender mediation.

Victims are informed about their rights by the police. After a crime or a crash, victims receive a leaflet called "Declaration of Rights"¹⁵. One of these rights is the right to receive information about contact with the offender. Besides that, parties are informed by Victim Support, The Council for Child Protection (juvenile offenders) or other professionals.

Organisational Framework

"*Perspectief Herstelbemiddeling*" was founded in 1990 as a sister-organisation of Victim Support The Netherlands. Initially, it's was called "Victim in Focus". The main aim was to raise more awareness about victims for the (juvenile) offender. (The 3E Model for a Restorative Justice Strategy in Europe, 2013) Therefore training programs were developed, but later (2006) the organisation also started to pilot with "victim-offender conversations". Since 2016 the organisation changed his name into "*Perspectief Restorative Mediation*", which refers better to the content of their work. "*Perspectief Herstelbemiddeling*" is a nationwide active NGO.

Nowadays, the core business of "*Perspectief Herstelbemiddeling*" is conducting VOM. Besides that, the organisation still organises training for offenders, but also for professionals working with victims and/or offenders.

"*Perspectief Herstelbemiddeling*" has a central office in Utrecht, where 9 persons are employed. There is a central sign-in point for the whole country, staffed by 3 part-time persons. Besides that, there is a director, a financial officer and some staff members. 25 Mediators are working across the country from their own place of residence. Most of them are employed by "*Perspectief Herstelbemiddeling*", others are free-lance.

Mediators are always highly educated and well experienced. They work according to a manual and an ethic code. They are trained on-the-job and coached by an experienced mediator during 6 months or 1 year. They have to attend supervisions and are asked to write reflection reports on their professional attitude. A basic training of 8 days is provided within the organisation. After this term mediators obtain a license and are

¹⁵ This declaration of rights was only recently introduced and has not yet everywhere been implemented well.

expected to see a supervisor. Twice a year they meet with colleagues for an advanced training.

Referrals and access for victims/offenders

Road traffic victims are one of the main target groups of "*Perspectief Herstelbemiddeling*". The organisation developed a specific flyer about mediation in road traffic crashes/offences.

Mediation can take place after any crash, also when there is no criminal offence. Mediation can take place at any stage of the judicial procedure (before and after trial).

Referrals are always coming from one side (victim- or offender-related professionals). In traffic cases, they often come from Victim Support or other professionals, like specialized lawyers. Parties can sign-up themselves also: they have free access through the website. There is a good cooperation between "Victim Support The Netherlands" and "*Perspectief Herstelbemiddeling*". The headquarters are housed in the same building.

A structural and firm cooperation with victim support is helpful, especially to inform victims about the possibility of restorative justice. "Victim Support The Netherlands" developed, in cooperation with "*Perspectief Herstelbemiddeling*", instruments, coaching and training tools for victim support volunteers and professionals. Informing victims at different times in the procedure also leads to more referrals to RJ practices (Zebel, 2010).

Not only Victim Support provides specific instruments on RJ. Also, other referrers like the Council of Child Protection or the probation services are equipped with instruments to inform their clients about RJ. The possibility of VOM is a standard question in these instruments.

Besides that, the wider public is informed by a well-developed website. On the homepage of the website of Victim Support¹⁶, there is a possibility to link with the website of "*Perspectief Herstelbemiddeling*". There is also a chat-function, that pops-up when you open the webpage.

The website of "*Perspectief Herstelbemiddeling*" is clear and well-organized. It contains 3 main parts: "How does it work", "How to refer" and a contact page. Quotes and stories of users make mediation understandable for the readers.

Methodology/procedure

All applications are received by the central "entry point". Staff members of the "entry point" complete the application with additional information, like the contact details of the other party. All this information is entered in a central registration system. Every application then is through this registration system dispatched to a mediator. He/she first contacts eventually the referring organisation, to discuss the application. Then, he/she organizes an intake with the applying party. During the intake, the mediator checks if the case is suitable for mediation and discusses motivation and expectations of the applying party. In traffic cases, approximately 20% falls out, after the intake, mostly because the applying party withdraws. However, in comparison to other offences, there is less drop-out when the applying party is the victim or the bereaved family. Sometimes, it occurs that the mediator stops the process when he/she feels that mediation will not contribute to the restoration of both parties.

After the intake, the mediator contacts the other party by letter and plans an intake with him/her. Then the mediator organizes with both parties apart the following meeting to discuss expectations and eventu-

¹⁶ www.slachtofferhulp.nl

ally to prepare to contact,... Finally the mediation results in some kind of contact. This contact can be direct, by letter or indirect. Most mediations in the Netherlands are direct mediations.

Clients are seen mostly in the location of other professionals like Victim Support, the probation service,... Face-to-face contact with victims and offenders is organized in more neutral places like community centres, district houses, churches,....

Parties can bring support persons into the mediation. These can be victim support officers, probation officers, therapists, or family members. Their role can be supportive during a face-to-face contact with the offender/victim or they can offer support after the encounter. Victims and offenders can choose what gives them the most comfort.

The methodology is the same as in other offences. Mediators, however, point out that the dynamic between victim and offender is different. A possible explanation is that in road traffic crashes, there is often "shared victimization" among victim and offender what leads to more understanding among victims also.

The central aim of victim-offender mediation is "emotional restoration". This is not only in road traffic cases but also in other cases.

Mediation-agreements are usually not made. There is only communication to the judicial authorities if parties agree on this.

The VOM is confidential. This is discussed with the parties before the start of the mediation. The referring organisation is informed whether there was a mediation or not. Substantive information is shared in a written form with the referrer if the parties agreed on this in the mediation. Parties receive a copy.

Mediation is free of charge.

Data

Road traffic offences and crashes were included since the beginning of victim-offender mediation in 2006. In 2016 7% of all cases were road traffic cases¹⁷. If we only consider cases with adult offenders, the proportion of road traffic cases is around 14%. 16% of all cases are referred by Victim Support, which is higher than in a comparable country like Belgium. When considered only road traffic cases, the proportion is even higher: 41% of all cases were referred by Victim Support.

Approximately 10% of the victims and offenders in road traffic cases contact the mediation service on their own, without the intervention of professionals. This contact is mostly established through the website (after a google search).

Approximately 33% of all applications lead to a form of mediation (direct, indirect or letter). In road traffic cases, there is a higher rate: 56% of all applications lead to a form of mediation.

There is a higher rate of direct contact in road traffic crashes/offences in general when compared to other crimes. When the victim applies for mediation, there is a higher rate of direct mediation, than when the offender applies.

¹⁷ In 2016 "Perspectief Herstelbemiddeling" received 2030 applications for victim-offender mediation. 137 of these were road traffic cases.

In general, 75% of all applications for VOM are coming from the offender's side. However, in traffic crashes/offences the opposite is true: more than 50% of the applications are coming from the victim's side.

Conclusions

The Dutch example is interesting, because of the strong focus on victims. Dutch criminal policies are strongly victim-orientated. Victim Support The Netherlands is a solid organisation, with a specific policy on Restorative Justice. There is a well-established and mutual cooperation between both organisations.

Parties are informed by a good website with clear information. There is a possibility to make contact through the website.

All persons involved in the crash can apply for mediation, even if the crash was not caused by a criminal offence. The need to communicate about the crash, the consequences, the caused damage and the wish to restore are central elements in the start of a mediation process. In VOM, the link to the judicial authorities and proceedings is optional in the Netherlands. The focus is to a large extent on the emotional part.

3.2.2 Restorative Justice as a Diversionary practice

3.2.2.1 Hungary

Introduction

Victim-offender mediation in Hungary was initiated in 2006. Since the beginning, traffic offences were explicitly included as preferable cases for VOM. Although there is a restrictive legal framework, 38,6% of the referred cases in 2016 were traffic offences. Besides property crimes and crimes against persons, traffic offences were considered as good cases for victim-offender mediation. The motivation behind this was that most traffic offences are unintentional, most offenders also are victimized by the crash they caused and there is often a significant damage to restore.

Legal framework

The legal framework for VOM is provided by the Criminal Code, the Code of Criminal Procedure and the Act on Mediation in Penal Matters (the Mediation Act) (Csúri, 2015).

In 2006 mediation-related provisions were introduced in the Code of Criminal Procedure. The notion of "active repentance" in the Criminal Code was established as a substantive requirement for mediation. Agreements resulting from mediation should lead to the closure of the case or mitigation of the sentence.

The Act on Mediation in Penal Matters came into force in 2007. This act contains some specific regulations on mediation and the profession of the mediator. The act states that the aim of the mediation is to settle the conflict via a written agreement, compensating the victim and facilitating future lawful behaviour on behalf of the offender (Csúri, 2015).

VOM is possible for juvenile and adult offenders. The legislator defined the criteria and the kind of cases suitable for mediation. Cases can be referred by prosecutors or judges (Törzs, 2010).

Following cases can be referred: crimes against the person, traffic-related offences and property crimes, unless they are punishable with more than 5 years of imprisonment.

Cases can only be referred if the offender has admitted guilt, and after parties have given their consent to participate. The prosecutor must be convinced that VOM is legally possible and favourable.

VOM is legally excluded in following cases (Törzs, 2010):

- When the offender is a habitual offender, committing a similar crime for the second time or committing a crime more than twice;
- When the crime is committed within a criminal organization;
- When the crime results into death;
- When the crime is committed during the time of suspended sentence, during probation, during an ongoing sentence,...
- When the offence was committed within 2 years after a successful mediation in a previous offence.

Natural and non-natural persons can participate in mediation. Parties have right to legal assistance and maximum two support persons during the mediation. The mediator can request for participation of experts (e.g. psychologists,...)

Criminal proceedings are postponed for maximum 6 months during mediation. Successful mediation has an impact on the criminal proceedings. For juveniles, it means the closure of criminal proceedings. For adult offenders, the gravity of the offence has to be taken into account. For crimes punishable by maximum 3 years, the case will be dropped or postponed by 2 years. For crimes punishable with maximum 5 years of imprisonment, mediation results in sentence mitigation (Csúri, 2015).

In July 2018 a new Code of Criminal Procedure will come into effect and there will be no criminal offence restriction, which means that VOM will also be possible in lethal traffic crashes.

Organisational framework

Since the beginning in January 2007, mediation in criminal cases have been carried out by the probation officers. Recently, the general responsibility for VOM was divided between two ministries: the Ministry of Justice for professional issues and the Prime Minister's Office for operational issues.

The mediation is conducted by specially trained and appointed probation officers. Most of them combine VOM with another task like probation work. However, in 4 jurisdictions, probation officers only work in mediation cases.

The case is referred to the probation service of the jurisdiction where the offence was committed.

All mediators are, according to a ministerial decree, obliged to follow a basic training, provided by a university or a training institute. To become a victim-offender mediator, you also need to be assigned as a probation officer. Following there is an internal training including 2 times 30 hours of theory and practice in mediation is provided. Mediators - in order to become practising mediators - have to participate in a mentor program.

In the whole country, 55 to 60 mediators are active. They are organized into teams at the local level. Every team is led by a senior mediator (mentoring system) and organizes team meetings on a regular basis. Mediators of local jurisdictions meet also at a regional level. Approximately 2 times a year a national meeting with senior mediators is organized. During these meetings, cases are discussed or training on methodology or law changes is provided. At the national level, the Department of Probation (Ministry of Justice) is in charge of the implementation and management of VOM throughout the country.

At the policy level, there is some cooperation between the probation service and other stakeholders, like Victim Support or the Legal Aid service. There is no cooperation with self-help associations.

Especially in road traffic offences, the insurance companies are an important stakeholder. Cooperation on the case level is happening frequently.

There is no specific ethical code, but the guiding principles of mediation, like neutrality and confidentiality, are anchored in the Mediation Act.

Referrals and access for victims/offenders

VOM is nationwide available, but only accessible through referral. Referrals are depending upon the discretion of prosecutors and judges.

Parties can be informed by the police, victim support officers, lawyers or probation officers (during the investigation). The police ask if parties are willing to participate in a mediation process. Based on this information, written down in the police report, the prosecutor can decide to refer the case. If the police did not ask the consent of the parties, the prosecutor sends the case back to the police, asking them to check if parties are willing to participate. Cases can be referred in pre-trial (by the prosecutor) or trial (by the judge) phase. The emphasis is on the pre-trial phase. At this stage, parties (or their lawyers) can request mediation, but the decision on the referral is made by the prosecutor. At the trial phase, only the parties (or their lawyers) can request mediation. The judge can only authorize the referral, but cannot refer on his own initiative. (Csúri, 2015)

Until 2014, only criminal offences could be referred to VOM. Since January 2014, it is also possible to send minor offences to mediation (misdemeanours). These are offences that normally should not be prosecuted, but are dealt by the administration or the police. Whether a traffic-offence is considered as a crime, depends on the consequences. Cases with severe bodily harm are considered as criminal offences. Cases with minor bodily harm or only material damage are considered as misdemeanours. These last cases are referred by the police. This change was introduced, to improve the rights of victims but also to free up the court from minor cases. In the first half year, this already resulted in more than 1000 cases, but most of them (90%) were property cases.

Almost all traffic offences in VOM, are road traffic crashes with bodily injury caused by a motorized vehicle. Few cases are concerning hit-and-run. Traffic crashes combined with alcohol or drug abuse are not referred, because they are considered as too serious to refer to mediation. Crashes with deceased persons are currently legally excluded but may be possible in the near future.

Most prosecutors refer to mediation on a regular basis. After 10 years the procedure is known to them. Mediators try to develop good working relations with the prosecutors in their jurisdiction.

Methodology/procedure

The methodology used in traffic cases is not different from those in other cases, but the content or the discussed topics differ compared to other cases.

The mediator contacts parties within a period of 15 days after the decision on referral. This contact is made by a letter, containing information on the process and a proposition of a date for a first mediation session. If one of the parties is not willing to meet the other one directly, there is a possibility to contact the mediator,

to find a solution.

When one of the parties is unable to come to the mediator's office, due to the injury, the mediation session can be done elsewhere, e.g. in the hospital or in the home of the victim.

When one of the parties does not show up, after been invited twice to a mediation session, the mediator discusses with remaining party whether he/she wishes to continue. The mediator will try to reach the missing party, to find out the reason for his/her absence. After 3 failed attempts, the case is sent back to the prosecutor.

The first mediation session will normally take 2 to 3 hours. Both parties are meeting immediately at the same time. Because of capacity reasons, it is not possible to organize separate preparatory meetings with both parties. Normally in traffic offences, there is no problem in meeting directly, in contrary, e.g. in cases of family violence.

The first mediation session starts with an introduction by the mediator. He gives information on the procedure and the guiding principles (voluntariness, confidentiality, neutrality). Subsequently, the first question is asked: "What happened?" This question is asked first to the victim and then to the offender. The mediator starts working with these narratives. Usually, he starts working with those topics where agreement is easily reached and moves to topics that are more emotional, like the consequences of the crash.

An important theme in all VOMs is the responsibility. The offender should take up responsibility for what happened. The parties usually talk about the impact on their life or the lives of their families, about the psychological or physical recovery process, ... Parties can decide for themselves which topics to discuss in the mediation process.

There is no fixed script used, but mediators apply certain general lines: they are moving from the emotional consequences, towards the needs of victims and end with the actions that can be done to restore or compensate.

Those actions are written down in the mediation-agreement. Parties have free choice to discuss and decide on what is written down in the mediation agreement. The mediator will take a neutral position on this. Especially in traffic offences, the mediator will always check whether the parties discussed their actions with their insurance company.

If consensus is reached, the mediation agreement is signed by both parties. Compensation can be in any form, as long as it is not immoral or illegal. It can be financial compensation, a personal service, the repair of the damage caused, or the offender's promise to undergo treatment or therapy. Also in traffic cases, most of the mediation agreements are financial compensation agreements. Some expenses are not covered by the insurance e.g. emotional harm. This can be subject of mediation agreements in traffic cases. Compensation can also mean offering help, like bringing the victim to the rehabilitation hospital. Sometimes, the simple fact that there was an apology or an act of forgiveness can be enough as a restoring action.

The second phase of the mediation is the accomplishment of the agreement. The mediator monitors the accomplishment of the agreement and then sends the agreement and a report on the accomplishment to the ordering authority. The ordering authority decides on the continuation of the case.

If no agreement is reached, parties will have the same status they had in the original procedure but will not have the right to apply for mediation again.

Voluntary participation, confidentiality and neutrality of the mediator are the most important basic principles. Mediators are not outcome-focused. Their main task is to create a safe environment for the parties.

When there is a high emotional level of the meeting, which happens more when there was no previous contact between parties after the crash, mediators in traffic cases use more often "separation of the parties". Then both parties are set in different rooms and the mediator transmits information from one to another. The intention, however, is always to come together again.

Parties can bring support persons (max. 2) to the mediation. Most support persons are family members. In traffic offences, parties usually bring in more support persons than in other offences. Besides that, also lawyers participate more in mediation processes after a traffic crash, than in other offences. Support persons normally do not participate in the discussions. There is an inner circle, with the mediator and both parties. Support persons are more in the background.

Especially in road traffic offences, insurance matters are a common theme in the mediation process. In most cases insurance covers most of the financial loss. Some lawyers are specialized in traffic offences and insurance matters. Parties are motivated to consult their lawyer or insurance company before coming to the mediation session so that there is as little as possible doubt about what they can expect from the mediation.

Data

The majority of all cases are pre-trial. Almost 98% of all offences are referred by the prosecutors.

In 2016 almost 38,6% of all referred offences for adult offenders were traffic offences. For juvenile offenders, about 6% of all cases are traffic cases.

In around 80% of all closed cases, there is an agreement reached. In general, 90% of those agreements are fulfilled.

In 2016, VOM was finished in 1468 cases. In 90% (N:1468) of these cases, an agreement was reached. In only 2,5% of these cases, the agreement was not fulfilled.

Over a period of ten years, the proportion of traffic offences has increased from 28% in 2007 to 38,6% in 2016. According to the mediators, this increase is a consequence of the activity of lawyers, requesting more VOM in traffic cases and also participating more in those cases.

Conclusions

10 years after the introduction of VOM in Hungary, traffic offences are a substantial part of the referred cases, thanks to legal criteria, referring policy of prosecutors and activity of lawyers. In the near future, the legal restrictions will be widened, so that VOM will be possible for more offences. Participation of more support persons will be possible, and as a consequence of that, more methodological variety, like circle-meetings, can be possible.

The Hungarian example is interesting because of the central role of police and prosecutors. The police are doing some preparatory work in asking the consent of the parties already shortly after the offence. Prose-

cutors refer cases where two parties already agreed on participating in a VOM.

A high rate of VOMs results in a mediation-agreement. The mediation-agreement is used as an instrument to give voice to the point of view and the needs of parties regarding the compensation of the harm caused by the crash. Prosecutors have to respect the content of the mediation-agreement in their decisions.

Most agreements are accomplished well. Mediators monitor the accomplishment of the agreement. This guarantees that victims do not remain disappointed and thus prevents secondary victimization.

3.2.2.2 Ireland

Introduction

Restorative Justice for adult offenders in Ireland is not so well established, in contrast to RJ-practices for juvenile offenders and in schools, prisons and communities. Neither there is a firm legal framework. However, the methodology used (Panel Reparation Programs) in those practices for adult offenders outside the prisons, differs from the Belgian/Dutch/Hungarian experience. Besides that, the community (as a harmed victim) is strongly represented in the restorative justice practice and philosophy in Ireland. More, community-thinking is part of the Irish nature.

Dublin Restorative Justice Services (RJS) are running since 2016 a pilot program on road safety. This pilot will be described in this part of the report. During the exploration of this practice, we had some doubts whether this project could be described as a good practice in the scope of this paper. The victims-side indeed is highly underrepresented in this phase of the project. However, we decided to incorporate the Irish example because of the specific methodology (panels), the specific community approach and the pilot-character of this project.

Legal framework

Restorative Justice in Ireland was formerly introduced by the Children's Act of 2001. This act provided restorative approaches for juvenile offenders, including restorative cautions and conferencing. This caution is done by specially trained police officers. The Children's Act also introduced court-referred family conferencing. The conferences are organized by the Probation Service (Sheary, 2016).

In 2009 the National Commission on Restorative Justice (NCRJ) published a report, recommending that a restorative perspective should be introduced into the Irish criminal justice system (Sheary, 2016). The NCRJ recommended the Probation Service as the leading agency for the delivery of RJ in Ireland. In 2013 the Probation Service published its Restorative Justice Strategy (The Probation Service, 2013), containing actions to enlarge the application of restorative practices in the work of the Probation Service.

After the report in 2009, there was a rise in the amount of referred cases. Before only 5 or 6 courts referred, while afterwards approximately half of the District Courts refer to restorative justice practices.

There is no specific law on RJ-practices for adult offenders. RJ-practices work within the legal framework of existing law on probation. This means that RJ-practices are always offender-initiated.

Cases are referred mostly from the District Courts (lower courts, offences punishable with max. 1 year of imprisonment), however, a smaller number of cases are also referred from the Circuit Courts (higher courts). After referral, the criminal procedure is suspended during the program for 8-10 weeks. This period can be

extended, for instance, to facilitate the process of victim-offender mediation. Caseworkers report directly to the judges on formal elements (attendance, motivation). When deciding on sanction judges generally take into account if the program is completed.

Organisational framework

There are only two small NGO's providing restorative justice for adult offenders in Ireland: RJC (Restorative Justice in the Community) and RJS (Restorative Justice Services). RJS covers the greater Dublin area which included the 3 surrounding jurisdictions, while RJC is located more in the southern part. Both were founded in 1999 and developed similar activities, called the Offender Reparation Programme. Between both organisations, there is contact and cooperation on the casework level when required, but not necessarily on the policy level. Both organisations are funded by the Irish Probation Service.

The Restorative Road Safety Programme is a project of Restorative Justice Service (RJS) in Dublin. There is no similar project in the other NGO. It is a specific form of Panel Reparation Program for offenders of traffic offences.

RJS is a small organisation. There are 1 manager, 2 case-workers and one administrator. Sometimes free-lance caseworkers are included. There are 8 volunteer chairs and some volunteer administrators. Above there is a board of directors, altogether, some 20 persons are directly involved. Besides that, there is a group of police officers and probation officers (at least 20), contributing to the work.

Resources come from the government through the probation service.

Ireland has a long tradition in partnership-approach between community and statutory partners. The partnership approach is important at the policy level of the organisation but is also present in the casework. RJS is a result of a partnership between the Judiciary, An Garda Síochána (police), the Probation Service, Victims Crime Helpline (<http://www.victimassistanceireland.com>) and community members.

Referrals and access for victims/offenders

The Offender Reparation Programme started in 2004. Courts were confronted with offenders, continuously coming back and were looking for some more effective alternatives. The Reparation Programme was developed with the support and cooperation of the local District Court where RJS was located. The programme started initially with minor offences, but later on, particularly post the NCRJ-Report in 2009, more serious crimes like theft, assault, fraud and possession of drugs for supply were included.

Also in the traffic cases, there was a lot of re-offending and there was nothing done to educate the offenders. Cases relating to road safety were also being referred to the offender reparation program. It was then identified by RJS in conjunction with the Probation Service, that a specific road safety programme would be of benefit to those being referred, including those who were reoffending on a regular basis. This was the beginning of the development of the Restorative Road Safety Programme.

This development was done in conjunction with the Probation Service and the Irish police (An Garda Síochána). The Road Safety Authority¹⁸ was consulted in advance of the program commencing. It was important to

include restorative elements, educational elements and the view of the emergency services in the program.

¹⁸ The Road Safety Authority is a Governmental Organization, aiming to make roads safer through education, information campaigns, improving technical vehicle standards, overseeing driver license system,... see www.rsa.ie for more information.

Typical offences referred to the Road Safety Program are: driving without insurance, tax or license, failure to produce, dangerous driving, drink driving. Often there is a combination of offences in one case. Most of these cases are without a direct victim, but the community is always considered as a victim.

Most referrals are pre-sanction and after the establishment of guilt. On occasion, an offender who is on probation supervision for a period of time post sanction can be referred to the program to increase their victim awareness/risky behaviour on the road. Road crashes have not been referred in the first year of this pilot.

There is a strong cooperation between the RJS and the probation service. Probation officers can suggest in their report to the judge that the case could be referred to the programme.

Referrals are voluntary. Offenders are not forced to participate but are mostly highly motivated because of the influence on the criminal procedure.

There are no fixed criteria: the offender should be willing to take responsibility, to change behaviour, to apologize, to compensate and to repair the harm caused.

Where there is an identifiable victim, contact is always made by RJS to ascertain if they would like to be involved in a VOM process. There is no obligation on the victim to take part or make any contact with the Service.

When a victim wants to meet with the offender, there is no formal procedure or framework. But, if a victim would like to initiate a contact with the offender, RJS would make this possible. Victims are not systematically informed about the possibility of RJ. Neither there is a national coverage of RJ-practices for adult offenders.

Methodology/procedure

The main aim of the Restorative Justice approach is to prevent future offences: by making offenders aware of the (possible) consequences, and to repair harm caused to victims. Besides that, the added value for the victim or the community, by doing something back to repair the harm, is also important.

RJS offers two main methodologies: the offender reparation programmes (the panels) and victim-offender mediation.

The road safety panel programme follows a certain script, which is similar to the offender reparation programme. After the referral, the caseworker organizes the first meeting with the offender. In this meeting, the offender is informed about the programme. The offence and the consequences are discussed just as the offender's intentions on restorative actions.

When there is a victim, the caseworker checks if the offender is willing to participate in a victim-offender mediation process. If so, the caseworker tries to involve the victim in a victim-offender mediation. This mediation can be a shuttle communication, a written apology or a face-to-face contact. If victims do not want to participate, case-workers will involve volunteers of Victims Crime Helpline¹⁹ who are also represented on the Board of Directors of RJS.

Then a road safety meeting is organised with the community representative. In this panel meeting the of-

¹⁹ If the victim is involved in an early stage of the Panel Program, he/she can also have a voice in the Panel and the discussion about the contract, through the caseworker.

fences, the restorative questions, as well as the contract, is discussed and signed.

The offender, the chairperson (as the community representative) and the caseworker are present around the table. The contract is an engagement of the offender based on what he/she could do to repair the harm to the victim, the community, their family and everyone affected by the offence. In the road safety programme, it contains 4 or 5 main points. The contract is signed by the offender and the chairperson of the panel.

Standard points in the contract are:

1. (if there is a victim) Actions towards the victim: e.g. willing to participate in VOM, paying damages,...
2. Meeting with a Road Safety Garda (police officer): this meeting is organised with other offenders, participating in the programme. A presentation based on the RSA's Wrecked Programme, focusing on the killer behaviours on the roads i.e. speeding, driving under influence, mobile phone use, etc. is shown. The Garda tries to have a dialogue about their behaviour. He/she also brings in the point of view of the emergency services
3. Making a reflected journal, based on restorative questions: the offender has to write a report on who is affected, how are they affected, what could be done to repair,...
4. Making a charitable donation. The amount of donation and the destination of the donation are discussed with the caseworker or in the panel. Mostly, it is related to the offence: e.g. in road traffic offences, charity donation may go to the National Rehabilitation Hospital where victims of road crashes are treated. The idea behind this was that, instead of being fined by the court, the offender makes a donation that is less than the fine the court could impose. The charitable donation is seen as a way of restoring the harm of the community. When involved, victims can suggest to whom the charitable donation may go. The ownership of the donation remains with the offender, what makes it more meaningful to them. The judge cannot impose it. If people have financial difficulties and cannot make a donation, volunteer work is brought in the discussion in the panel: instead of their money, offenders donate their time.
5. Making a commitment on good behaviour in the future.

In the next phase, the offender has to complete the contract. The case-worker supports the offender through the contract.

When the contract is completed, the second road safety panel is held. There, the work done by the offender is overviewed: the reflection piece is read by the chair (before the offender comes in), the receipt of the donation is presented. There is also a dialogue with the offender and the chair, regarding the program: what did they learn, how did they experience the meeting with the police officer, the road safety presentation and eventually the contact with the victim.

Finally, there is a communication to the court. The case-worker writes a report directly to the court, based on the work done and the observations from the second panel. The report contains some formal elements, like attendance, information on the progression in their attitude and learning process. The reflected journal is also sent to the court.

Role of community members in the restorative program

The panels are always chaired by a community member, which gives a great responsibility to the community. The case-workers are present in the panel meetings but are not taking a leading role. As chair, the main aim of the community member is to ensure that it is a restorative process and to facilitate the restorative dialogue with the offender, e.g. with questions like "Who do you think, was affected?" Especially in the Road

Safety Programme (where there is no probation officer or police officer present), it's the community member that leads the dialogue with the offender and also signs the contract.

Community members are volunteers, who receive a small compensation for their expenses. People are recruited because of certain skills or experiences they possess (e.g. mediation, counselling, social work). Currently, there is a group of 8 volunteers, who are chairing the panel programmes (rotating). There is within the community a lot of interest in doing this kind of volunteering work. After recruitment, there is a common introductory training provided (20 hrs), which is also open for the police officers and probation officers participating in the reparation programme panels. Later on, an intermediate training is organised (more advanced). Volunteers are well coached by the organisation. They start by observing some panels. The next step might be that they co-chair it, with another chair, before chairing panels themselves.

Data

In 2016 RJS received 240 court referrals, of which 71 individuals for the pilot Road Safety Programme (30%). This was the first year of the Road Safety Programme. Most cases were for offences like driving without insurance, license, where there is no direct victim.

Conclusions

Road Safety Panels are a small but innovative project in Ireland. In theory offences with direct victims involved are welcome, but at this moment, judges often do not refer these cases. Sensitization of judges and probation officers could probably solve this problem.

Regarding the EU-directive on victims' rights, Irish legislation is still being drafted. At present victims of crime do not have direct access to Restorative Justice Programs, they are rarely informed about the possibility. All RJ programs start from the offender's side. Future legislation will change this and will have an influence on the work of RJ-practices in Ireland.

What makes the Irish example interesting is the specific role of community in the restorative justice programs. Not only the victim and the offender are involved, but also the community is included in the restoration process. Even when there is no direct or a participating victim, still the point of view of the victim (as an individual or a community member) is brought in.

3.3 OVERALL CONCLUSIONS AND RECOMMENDATIONS

Restorative Justice is a new and often unusual way of dealing with the consequences of a road traffic offence or a crash. Especially to deal with the emotional consequences of the crash, RJ can be a welcomed addition to the judicial proceedings, the settlement of the damage by the insurance companies or the physical recovery by the medical institutions.

In this paper, some good practices were described. What makes a practice to be a good practice, is not always similar or comparative. Some good practices emerge because of specific policies, like explicit referrals of road traffic offences. Other practices develop because of the freedom given by legislation. Still, others can grow because of the personal engagement of certain persons in certain strategic positions. Often it is a combination of different factors.

It is our hope and wish that the examples in this paper may inspire policymakers and practitioners in the field of Victim Support and Restorative Justice, to develop more and innovating practices for all persons involved in road traffic offences.

From our experience in this field and this project, we can formulate some useful recommendations:

1. Given the high potential for RJ in road traffic offences and the possible positive outcomes for victims, RJ-practices should be available and preferably directly accessible for victims of road traffic offences.
2. Restorative Justice practices are preferably available in all kinds of road traffic offences and crashes, whether there is an offence or not.
3. A firm and transparent legal framework for the implementation of RJ-practices is important, but good practices emerge and grow by the grace of goodwill and creativity of policymakers and practitioners.
4. Policymakers should be sensitized and encourage RJ-practitioners/organizations to develop RJ in road traffic offences.
5. Victims should be informed about the possibility of RJ after a road traffic offence/crash so that they can make a deliberate choice. Police-officers, judicial authorities, medical services, victim support-organisations, and insurance agencies should have instruments to facilitate the supply of information. Information should be provided at various moments during the judicial procedure.
6. Victim-support officers and victim-volunteers should be trained and coached to discuss the possibility of RJ with victims.
7. All professionals involved in the process of victims of road traffic crashes should discuss the possibility and if possible encourage contact between the parties shortly after a crash.

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