



**Specific Programme Criminal Justice
European Commission
Directorate-General Justice – Directorate B: Criminal Justice**



**Key-Practitioners'
Report of
THE NETHERLANDS**

3E –RJ-MODEL

The 3E Model for a Restorative Justice Strategy in Europe

**Greece, United Kingdom, Bulgaria, Finland, Hungary, Poland, Spain
(including research also in Turkey, the Netherlands, Denmark, Germany)**

JUST/2010/JPEN/AG/1534

December 2012

The 3E-RJ- Model
for a Restorative Justice Strategy in Europe
Concerning Act_10 & 11 of the EU "3E-RJ-MODEL" PROJECT

Questioning of key persons in the framework of the EU RJ project

by

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I. Description of the questioning

1. General remarks

Before describing the questioning of key persons in the Netherlands it is necessary to present some remarks on the actual situation in which the questioning had to take place as these circumstances had a decisive influence on the manner of questioning and answering.

In the first place the fact that restorative justice in penal law cases in the Netherlands until now almost exclusively has an experimental character influenced the people's willingness to take part in the research. Several potential respondents pointed out that as long as there were no general decisions made about the role and the place of mediation in connection with penal law cases one cannot really answer the questionnaire comprehensively. Only after such decisions were made and detailed regulations were introduced one would have a solid basis necessary for responding. Furthermore most, if not all potential respondents did not want to declare themselves to be key practitioners as until now they did not have the opportunity to get well experienced by a relatively long lasting practice of mediation in penal matters. Regarding this factual situation for obvious reasons several potential respondents declared the questionnaire to be too detailed and too long. This might have been the main reason that respondents who in the beginning generally were willing to answer the questions after reading the questionnaire finally decided to withdraw. However, there was also another reason that made potential respondents hesitate to participate. This was the fact that the definitions chosen in the EU Restorative Justice Project did not really match with those in use in the Netherlands. To overcome this problem a detailed comparison concerning the definitions would have been necessary. However this would have made the interviews extremely time-consuming as for many questions there do not exist prevailing official views

in the Netherlands. Furthermore most respondents did not have much time, anyhow not the 1 hour and 45 minutes found in the pilot testing of the RJ interview.

2. Recruiting of respondents

It was a lucky coincidence that, just in the time I started looking for respondents to the questioning of key persons engaged in RJ in the field of penal law, a new book on this topic was published by the editor of "Actual criminology" a book of which I am co-author. Therefore I was invited to participate in the meeting organized on the occasion of the coming out of "*Mediation in criminal cases*"¹ by Janny Dierx and Anneke van Hoek c.s.² The National Ombudsman, main editor of the Mediation Series edited by *Sdu editors*, opened the meeting. After Janny Dierx had introduced her new book and handed the first copy to the present Attorney General, who addressed the audience stating among other facts that the Dutch Department of Public Prosecution is rather positive about mediation in criminal law matters as in addition to the meanwhile everywhere in the Netherlands introduced and regularly used compensation for damages, it offers effective opportunities to restore the relation between victim and offender that was disturbed by the offence. At the same time she stressed the necessity that the Department of Public Prosecution always decides in the end whether the offender is prosecuted or not. The meeting ended with a panel discussion between key persons about the importance of a countrywide introduction of mediation in criminal cases. Panel members were a judge who at present is the national coordinator of the pilots mediation next to jurisdiction at the law courts in the Netherlands, two lawyers, a representative of the Dutch Probation Service, a representative of the non governmental organisation "Peaceful neighbourhood policies"³ and a law court journalist.

There was much interest in the meeting. The audience existed primarily of people working in the field of mediation as I learnt during the break. After the official part of the meeting I had an ideal possibility to find respondents to the RJ project questioning.

Surprisingly, as far as I know, nobody from the police attended the meeting. The main reason for this seems to be that the police in the Netherlands is not really involved in mediation until now. At present their task is mainly to inform the victims where they can find help and to care for compensation of damages; mediation, however, has to be more than this.

¹ Mediation in strafzaken. De praktische toepassing van restorative justice en herstelrecht, Sdu uitgevers, Den Haag 2012, 378 p.

² John Blad, Stijn Hogenhuis, Suzanne Jansen.

³ Vreedzame Wijkaanpak Utrecht.

Most of the respondents I met at the book presentation in The Hague, some others I found with the help of people I had met during this meeting and few I already had become acquainted with while writing the report on *Restorative Justice in the Netherlands* in 2012.

3. The respondents

Altogether 10 respondents were questioned, three face to face, one indirectly, namely by another respondent and six respondents answered by filling in the questionnaire by computer.

All respondents had a university degree. There are significantly more (ca. two thirds) women than men under the respondents. For what concerns the age of the respondents, 90% of them are older than 40 years. All respondents being practitioners in mediation attended special training courses, have a special experience in conflict resolution of many years and are a relatively shorter time involved in mediation in criminal matters. The organisations involved in restorative justice, pilots in mediation in criminal cases and victim – offender meetings regularly collect statistical data and write annual reports.

1) Police

There was no respondent chosen from the police as the police presently is not involved in real restorative justice but for so far almost exclusively active in connection with the regulation of the compensation of damages caused by offences.

2) Department of Public Prosecution

Two of the respondents are working at the Department of Public Prosecution, one at the section policies and strategies of the office of the 5 Attorneys General and one as prosecutor at Amsterdam law court.

3) Judge and mediation manager in a law court

One of the respondents is a judge in the Amsterdam law court and also nation wide coordinator of the pilots *Mediation next to jurisdiction at the law courts*. Furthermore the manager of the mediation pilot in criminal cases at the Amsterdam law court was interviewed.

4) Probation Services

The tasks of the probation service are performed in the Netherlands by three organisations which are independent but are all the same quasi totally financed by the Minister of Security and Justice. These organisations are the Dutch Probation Service (Reclassering Nederland (RN)), the Foundation Probation Drugs Addiction (Stichting Verslavingsreclassering) and the Salvation Army. For what concerns these organisations the questionnaire was filled in by a

member of RN who at the same time is member of the board of the *Dutch Foundation Restorative Justice*.

5) Mediators

Further two highly qualified mediators answered our questions. They are practitioners since several years, since some years involved with the development of mediation in penal matters and also teaching future mediators at the Dutch Mediation Institute where recently also mediators in criminal cases get their education. One of them is primarily experienced in the field of neighbourhood conflict resolution.

6) Foundation Victim in Focus

This foundation is a sister organisation of *Victim Aid Netherlands*⁴ accordingly having the same director and the same advisory council. One of the respondents is policy adviser at the Foundation Victim in Focus. Victim Aid Netherlands is the organization specialized in helping victims to find solutions for their problems, *Victim in Focus* is exclusively in charge of victim-offender meetings, including their preparation as well as their follow-up.

7) Mediation manager

One of the respondents is attached as project manager and organisation expert to the Foundation Restorative Justice.

II. General Approach of Restorative Justice

1. Restorative Justice within and next to the Criminal Justice System

1.1 Definition

According to the in the Netherlands prevailing view⁵ RJ (Dutch: *herstelrecht*) is defined with Howard Zehr,⁶ as follows:

Restorative Justice is a process to involve to the extent possible, those who have a stake in a specific offense and to collectively identify and address harms, needs, and obligations, in order to heal and put things as right as possible.

Summarizing we can state: RJ is about the consequences of penalized behaviour.

Everywhere in this report RJ is used in this sense.

1.2. Does RJ line smoothly with the Criminal Justice System?

⁴ Slachtofferhulp Nederland (SHN).

⁵ J. Dierx, A. van Hoek, *Mediation in strafzaken, mediationreeks*, Sdu 2012, p. 332.

⁶ *The Little Book of Restorative Justice*, Intercourse: Good Books, 2002, p. 37.

As the questioning is not a quantitative research focussing on a representative number of key practitioners working in all branches of RJ as practiced in the Netherlands but just represents the questioning of few, mainly one or two practitioners per instance or organisation the collected answers represent mainly individual opinions. Nevertheless reading the answers one becomes inclined to suppose that there exists a strong relation between the answers and the place where one is involved in practising RJ.

The opinions of the respondents concerning the question whether the Dutch Criminal Justice System is able to line smoothly with Restorative Justice were not uniform.

The *judge*, as well as the respondent from the bureau of the five *Prosecutors General* in The Hague, pointed out that the basis for RJ lies in Art. 51b Code of Criminal Procedure that reads in (not official) translation as follows:

“ (1) Before the commencement of the court session the joinder is effected by lodging a statement of the contents of the claim and its grounds with the public prosecutor to whom the prosecution of the offence has been assigned. The statement takes place by using a form adopted by the (Our) Minister of Justice and containing the name, first names, date of birth, domicile and residence of the injured party.

(2) During the session the joinder is effected by lodging the statement referred to in the first paragraph, first sentence, with the judge at the latest before the prosecutor has been given the opportunity to speak in accordance with Art. 311.

*This statement can also be delivered orally.*⁷

With this comment they make clear that for them it is really a matter of course that RJ has already a certain basis in Dutch criminal law. The pilots organised at present, that factually are cases that still lie with the public prosecutors, aim to collect the knowledge needed to develop further regulations necessary to guarantee good practice.

The representatives of the *Department of Public Prosecution* stated that in view of the developments of RJ in practice time is pressing that the legislator develops regulations about mediation in criminal matters soon. At latest after the now prepared next pilots definite decisions should be taken.

The member of *Victim in Focus*, the organisation the Minister of Security and Justice appointed to organize and carry out the victim-offender meetings, stated that at present RJ does not fit smoothly with the Criminal Justice System. According to her opinion and that of her organisation more pilots are necessary.

One of the *mediators* declared that until now RJ is not really practiced in criminal matters.

⁷ Closing speech of the public prosecutor.

According to the other mediator RJ and the Criminal Justice System do not line smoothly as until now their activities are not geared to one another.

For what concerns the *lawyer*, he stressed that in the Netherlands RJ can be easily combined with criminal law. This opinion was shared by the *mediation manager*. It is likely that their answers primarily regard theory and not practice.

The respondent who represents the *Probation Service* in our questioning was convinced that RJ and criminal law does not line smoothly at present. She stressed that renewing and changes are needed in order to create a better balance between the parties involved in criminal proceedings and to improve the society's possibilities to watch more directly the effects of criminal proceedings.

1.3 Can RJ help towards a criminal justice reform?

All respondents were convinced that RJ is able to give a positive impulse for renewing and improving criminal law in the Netherlands and therefore it was thought favourably of by most of them. Their opinions concerning the content of necessary renewing however obviously differed. One of the *mediators* stressed that the agreements made during mediation meetings can influence the decisions taken by public prosecutors and judges; however the expectations of the influence of RJ on the Criminal Justice System must not be too high as there will always only be a loose connection between RJ and the Criminal Justice System as independence is something essential for RJ.

1.4 Can RJ provide an alternative, effective and cost-effective response to crime?

This question was answered in different ways:

The *judge* and the members of the *Department of Public Prosecution* stressed that RJ can be used only beside and in the Criminal Justice System, in the last case more precisely in connection with the second assessment of the public prosecutor.

The *judge* and the *manager of the RJ pilots* were convinced that for what concerns the costs there are no differences between the RJ pilots and the traditional court proceedings. The costs for the pilot model are not lower, anyhow.

The representative of *Victim in Focus* declared that the question cannot be answered without making a differentiation between the possible alternatives and deciding whose interests should prevail.

The question was not answered by the respondent from the *Probation Service* and was simply answered in the affirmative by one of the *mediators*, the *mediation manager* and the

lawyer thus without adding a definition for “alternative”. They obviously can imagine or are convinced that RJ is able to - and should replace (at least to a certain extent) criminal law. The second *mediator* stated that RJ can be a good alternative for the Criminal Justice System as according to scientific research offenders are quite aware of the consequences of their behaviour, something that influences future behaviour and in this way possibly can prevent recidivism. Furthermore RJ can help the victims to overcome their fear to be victimized again and to come to terms with what they had to get through.

2. The aims of RJ

In connection with the question what the aims of RJ are in the Netherlands, all respondents thought that theoretically RJ can as well help towards community development, as support both, the victims by encouraging them to express their needs and enabling them to participate in the proceedings and the offenders by encouraging them to accept responsibility and to contribute to reduce recidivism. However, there was also pointed out that under the present conditions, the few cases in which RJ factually is used it still does not have these effects in practice. According to the judge the question whether RJ would be able to take some work off the judiciary cannot be answered until now for the same reasons.

The representative of the organisation *Victim in Focus* additionally stated that principally RJ can safeguard the interests and desires of the victim better than the Criminal Justice System as the *Victim's* rights and interests are *in Focus* and looked after anyway during the victim-offender-meeting. Nevertheless in some cases the victim could be better off with a criminal justice settlement. In her opinion reducing recidivism does not play a leading part.

One of the *mediators* stressed, that RJ is of great help for victims as it offers them the opportunity to address those it really concerns with their emotions and interests. Furthermore in the framework of RJ the victims get more insights into the reality of the how and why of what happened to them. For what concerns the offenders, research results showed how difficult it is for them to be confronted with what they did and that this confrontation can facilitate their acceptance of responsibility. The question whether RJ prevents recidivism was answered by the same *mediator* declaring that recidivism depends from many factors, not all of them can be taken away by RJ.

The *lawyer* stated that insight in harm and sorrow that one caused can have a lasting learning effect. The respondent from the *Probation Service* mentioned that she experienced that community development belongs to the possibilities.

3. Placement of RJ in the Criminal Justice System

The respondents' answers were differing from each other. According to the *judge* RJ theoretically is conceivable at every stage of the proceedings, at the police, the public prosecutor, the judge, in combination with the execution of the sentence and at the probation service.

The respondent from the bureau of the Prosecutors General declared that mediation can play an important role at the police in connection with conditional dismissals (voorwaardelijk sepot). Furthermore there are plans to start pilots to answer the question whether and if so in how far mediation can be made use of by mayors.

Besides it is possible to integrate mediation in the framework of the tasks of the public prosecutors as there are the summary award of punishment (OM-afdoening), the conditional dismissal by the public prosecutor and the conditional transaction.

The judge has the possibility to integrate mediation by accepting it as a condition in connection with conditional sentencing.

The plans are to start with mediation in mainly minor criminal cases and in cases of juveniles in the framework of the recently introduced '*As quickly, intelligent, selective, simple, together, society directed as possible*'⁸ (ZSM) method. According to this method, with which meanwhile many regions in the Netherlands are working, the public prosecutor looks together with police, Probation Service and Victim Aid Netherlands at all cases that come in. This is an important step to be able to settle the often committed offences as "quickly as possible". At the same time already at this stage there can be decided whether mediation makes sense in the respective case. Many ZSM-cases are decided immediately. If the offender does not agree with the public prosecutor's proposal the judge has to decide.

There are plans to let lawyers start up mediation, this in order to take the financial interests of them into account – lawyers will generally earn more when the case is decided at court by a judge than in connection with a mediation - by introducing a regulation that does not reduce their income so that they do not so easily become motivated to stimulate their clients to choose court proceedings instead of mediation. Furthermore the question "who pays the mediator?" is not yet definitely answered. According to the respondent of the *bureau of the Prosecutors General* mediators should be paid principally - as lawyers already are - by legal aid.

At present there are mainly three groups of mediators with different qualifications at work. At *Victim Aid Netherlands* we find professionals who are very well experienced in solving

⁸ Zo Snel, slim, selectief, simpel, samen, samenlevingsgericht als **M**ogelijk.

victims' problems. *Victim in Focus* is specialized in victim-offender meetings. At the Probation Service practitioners are working as specialists in the respective tasks of their organisation. Most of the mediators at these organisations have a NMI⁹ (Dutch Mediation Institute) certification. Furthermore there are practitioners who hold a diploma from the NMI but do not belong to one of the three above named organisations. To those who want to become a certificated mediator several specialisations are offered, meanwhile also the one for mediators in criminal matters. In future the trained and specialized mediator with a certification will be the regular RJ professional.

The respondent from *Victim in Focus* answered the question about the placement of RJ in the Criminal Justice System as follows: Whether the police is the right place for mediation she was not sure about. Although the public prosecutors were content with the pilots for so far, there was found that the results for the victims were not so positive as not all of them knew that their participating was totally voluntary. For what concerns RJ at the stage of the judge she doubted whether this is the right place considering the differing of interest of the parties. The Ministry of Security and Justice is supporting the idea of making use of mediation during the execution phase and its introduction is prepared. The main aim hereby is the taking care of the needs and interests of victims.

According to the opinion of *Victim in Focus* victim-offender meetings in the framework of the Criminal Justice System are not the same as those outside this system where the interests of the parties are in the centre of what happens and restoration and compensation does happen in the way the parties want. When the parties want to inform the public prosecutor or the judge they can do that. *Victim in Focus* proposes to extend RJ inside and outside the Criminal Justice System. In this way victims and offenders get the most possibilities for restoration.

In the Netherlands restorative family meetings are organized by the *Own Strength Centre (Eigen Kracht Centrale)*.

The *mediators* were convinced that RJ makes sense at all possible stages of the proceedings, also at the police where successful mediation can keep the case immediately out of the Criminal Justice System. One of them recommended a fully fledged mediation in current proceedings.

The other *mediator* added that until now RJ is only used in few cases. The police and the public prosecutors are the persons who are referring and she herself prefers that RJ is used as early as possible. That means that already the police should refer the cases to a mediator.

⁹ Nederlands Mediation Instituut, www.nmi-mediation.nl

Accordingly her proposal is to extend the use of RJ primarily at this early stage and she wishes that this will become the “normal” approach.

The *lawyer's* vision is that the prison sentence gets a work-off effect in the sphere of pre-trial detention and as package of behaviour influencing measures. The sanction can be suspended under the condition of mediation satisfying all parties. This can directly influence the power of public prosecutors to prosecute.

The *mediation manager*, not being a jurist, let us know that until now at the police office RJ only plays a minor role, while what happens at the Department of Public Prosecution is almost invisible. Trendsetters are until now the judges. In connection with the execution RJ is not yet coherent. Victim-offender meetings only exist on an experimental basis and according to his opinion a link with the Criminal Justice system is missing. All the other models mentioned in the questionnaire are until now only sporadically in use.

The respondent working at the *Probation Service* declared that until now RJ is scarcely introduced at the police. At present the *Department of Public Prosecution* is also only in a starting position. It is mainly the recently in the Netherlands introduced so-called ZSM method¹⁰ that handles the principle of “directly dealing with, unless ...” and is used in connection with the often committed offences in which assessing, sanctioning and, if possible executing, are fit into each other and also RJ is tried to be integrated.

From the side of the *Probation Service* we further got the information that they started with the so-called restorative directed detention.

4. RJ and categories of crime

Almost all respondents declared explicitly that RJ can be used principally in connection with all kinds of crime. Whether RJ in the form of victim-offender meetings can be practiced in individual cases depends primarily from the will of the victim and the offender. Only if and as long as the victim and the offender are freely willing to participate in such a meeting, it can take place. The *lawyer* and the respondent from the bureau of the Prosecutors General made some reservation, stating that for example cases of sexual abuse will mostly not be found to suit.

One of the *mediators* added that in serious cases a very precise and expert preparation of the case is precondition in practice. There are more cases of so-called ‘often committed offences’ than of serious crime settled with the support of RJ. But the seriousness of the crime is not a criterion for the success of RJ. Until now there were not enough pilots

¹⁰ See above and note 7.

organized and evaluated to have sufficient empirically based know-how in this area. The official criminal policies in the Netherlands is at present that RJ should primarily be a means to help the victim and accordingly in cases of very serious and rude crimes there will be a strong wish to protect the victim for further harm. In these cases special prudence is called for and will cause a tendency to decide in accordance with the adagium 'in dubio abstinere', in order to prevent harm for the victim anyhow. However, it is also generally accepted and strongly stressed mainly by the RJ organisations, that using RJ is also in the interest of the offender and the society.

5. RJ and juvenile delinquency

The *judge's* opinion was that RJ is especially useful in cases of juvenile justice. During the first pilot in Amsterdam in about half of the cases juveniles were involved. At the bureau of the *Prosecutors General* this is also the leading opinion. Further the *judge* stated that mediation is heavier than HALT,¹¹ where the victim is not present. According to her opinion RJ can be used everywhere in juvenile justice.

The representative of *Victim in Focus* stressed that as RJ is so well theoretically based on pedagogical principles, its use should be extended in future. Further she pointed out that according to Wolthuis,¹² RJ factually *is* juvenile justice. For juveniles who had already been in an Institution for Juvenile Offenders (Justitiële Jeugdinrichting) *Focus on Victims* is organizing courses on victim awareness. Institutions for juvenile offenders are very interested in concentrating on victims in working with their inmates.

Victim-offender mediation for juveniles in the framework of criminal law is not yet well organized in the Netherlands, but *Victim in Focus* gets relatively many applications from the Child Welfare Council and the Probation Service for Juveniles. The representative from *Victim in Focus* pointed out additionally that as far as victim-offender meetings are organized for juveniles parallel to the Criminal Justice System, they work quite well.

Victim in Focus gets all kinds of cases. Community conferences are helpful in those cases in which the social surroundings can help to solve the offender's problems. Those cases that are too light for RJ are generally dealt with put down by other instances, for example the school.

¹¹ Het **AL**Ternatief = The Alternative, HALT is an organisation in which municipalities, police and justice cooperate in order to settle minor offences, committed by juveniles aged 12 to 18 years quickly by a simple sanction such as a working and/or learning project.

¹² A. Wolthuis, *Herstelrecht, een kinderrecht*, Den Haag 2012.

In juvenile cases *Victim in Focus* always involves the parents. Social workers participate as supporters if the parties want that. *Victim in Focus* is stimulating the presence of people who know the offender, this mainly in order to be able to organize an effective after care later.

Restorative family group meetings are very suitable for juveniles, but not yet introduced in the Netherlands.

If the victim or the offender is/are in attendance by a psychologist, the psychologist is contacted in order to clear the question how the mediation can fit with the attendance. According to the experiences of *Victim in Focus* the participation of parents and psychologists is of great importance.

One of the *mediators* stated that already at present there is generally much possible in the field of RJ for juveniles. There is space for experiments and their outcomes form the basis for the development of methods. In practice until now there is only little happening at the police. The public prosecutors are strongly focussing on handling things themselves and not primarily oriented towards the interests of the parties.

The judge often does not see/meet the victim because he/she is not present at the court sitting. Consequently there is often nothing or only little to do for the judge.

During the execution phase there is often not spoken about coming to terms with what happened and about responsibility for one's own behaviour.

Until now mediation in juvenile justice does not work optimally.

The use of family group meetings should depend from the conflict analysis that must be worked out in advance.

Restorative community meetings etc. should be organized always when the offence caused commotions and when damages can be compensated.

The second *mediator's* opinion is that RJ should be extended in the Netherlands in all areas, also for juveniles. Until now it is not sufficiently implemented, mainly not in quantitative sense.

The use of restorative community meetings should not so much depend from the kind of offences but from the circumstances the offender/victim is living in. Juveniles live in family communities. Meetings during which parents, family and friends are present are therefore very suitable.

At present for juveniles RJ is mainly in use for minor offences. Extending RJ in the direction of more serious offences can be recommended as the agreements developed by the parties

are always more effective than those chosen by the officials (public prosecutor, judge) because they were worked out by those involved personally.

In cases of juveniles parents are mostly participating. Professionals can participate when they are involved and the parties agree with their participation. "I let them sit in the outer circle. They take part in the conversation not before there is spoken about agreements."

The participation of professionals at the RJ meeting makes sense for professionals that later are involved in a treatment as at the meeting they get an impression of their client and knowledge of the agreements made that later can play an important role.

The *mediation manager* declared that RJ should be introduced in the first place for juveniles. The present victim-offender meetings for juveniles in the framework of criminal law do not function well. Restorative community meetings should be introduced widely. The same is necessary for family group meetings. At all meetings the participation of parents, psychologists and other professionals should be possible.

For what concerns the opinion of the *Probation Service* they want that RJ gets more influence in juvenile justice. The responsibility and insight of young offenders should be enlarged. The staff member of the *Probation Service* suggested the strengthening of the family group conferences. She is not content with what at present is organised concerning the victim-offender mediation. She also proposes the use of RJ for all kinds of crime with the participation of all persons involved, however under the strict condition that the performance is organised correctly, making the right balance, offering absolute voluntariness of participation and adequate professionalism of the mediator.

6. On victims and offenders

6.1. The respondents were not able to tell anything concrete concerning problematic situations

in connection with access to RJ due to geographic reasons. But the possibility of their existence was not totally denied.

The number of cases handled by RJ can be expanded by improving information and intensifying the sending of victims to Victim Aid Netherlands by the police, the public prosecutors and the child and youth welfare organisations. Almost all respondents stated that the information about RJ is still insufficient.

According to one of the mediators there exist problems in the area of cooperation between justice and the non governmental organizations (NGO's). *Victim in Focus* is organising meetings but is not willing to cooperate with public prosecutors and judges because the

organisation is afraid to lose its independence. Therefore the *mediator* proposes to introduce a service for mediation at the courts from where adequate cases can be referred to *Victim in Focus*.

Victim in Focus works nation wide and is principally able to offer everybody a victim-offender meeting. The problem until now is that not everybody looking for such a meeting is sufficiently informed.

The *judge* stressed that it is a disadvantage that the information is not yet structured.

The public prosecutors seem to inform the victims and offenders not regularly about the possibility of victim-offender meetings organised by *Victim in Focus* but propose mediation via the Criminal Justice System. The reason might be that many public prosecutors do not really believe in RJ, as the respondent from the bureau of the Prosecutors General reported. What concerns the question whether victim and offender get enough time to decide about the offer to take part in a victim-offender meeting, the answers show that the situation is not optimal in cases of mediation in the Criminal Justice System as one of the conditions in the first pilot was that the proceedings may not slow down. In the case of victim-offender meetings organised by *Victim in Focus* the parties just get the time they need to take their decision. The respondent from the *Probation Service* declared that it is necessary to regulate this problem.

Our respondents did not experience cases in which the rights of the victim or the offender were not fully respected. The representative of *Victim in Focus* had some doubts and one of the *mediators* stressed that empiric research should find the right answer to this question. The second *mediator* declared that there is only little regulated in this area for so far and that is a drawback.

7. RJ Process and Services

What concerns the general principles of referring to RJ (sufficient evidence to charge the offender, agreement of the offender to be referred, voluntary participation of the victim, right of victim and offender to withdraw their consent at any time, qualified mediators) the respondents answered that these are implemented and as far as they know also practiced, but everything is scarcely out of its egg. One of the *mediators* stated that according to her opinion sufficient evidence is not so important as a precondition for RJ as not evidence but the acceptance of one's responsibility matters.

Social, cultural and other factors are principally taken into account. Nevertheless the opinion existed that it could be that allochthones are less often referred to RJ than autochthones. One of the mediators stated that interpreters and translators are principally available but in most cases there are family members present who do this job.

One of the *mediators* stressed that the most important point for a successful ending of RJ is creating a good atmosphere, a pleasant room, sufficient chairs, coffee, tea and biscuits (that is very Dutch!) Furthermore it is necessary that the mediators are well prepared, so that they know what will happen and that there is sufficient calmness and time.

Supervision and assessment are according to this mediator needed as it is important to get always feed-back, so that one can constantly learn and improve one's doing.

The respondent from the *Probation Service* declared that professionalism, voluntariness, confidentiality and transparent operating are the most crucial conditions for a successful mediation. She is also convinced that supervision is needed for the mere sake of professionalism. The respondent from *Victim in Focus* stressed also the need of supervision as it is "essential".

For what concerns the existence of adequate programmes and seminars for training and feedback for RJ practitioners the respondents answered that there already exist good programmes, some of them added that nevertheless there could be more.

The representative of *Victim in Focus* mentioned that at her organisation there are several professionals working who are directing victim-offender meetings since years but are not certified mediators according to the NMI (Nederlands Mediation Instituut = Dutch Mediation Institute). The Department of Public Prosecution that is initiating the RJ pilots, is planning to require that all people who work as mediators have a NMI certification. *Victim in Focus* doubts whether that is enough regarding the group victims and offenders and their rather special and delicate problems that ask for special experience and skills. *Victim in Focus* has the necessary expertise but that is not fully recognised.

The question whether there are sufficient well experienced officials working in the area of referring is answered by most of the respondents in the negative. Referring seems to be a problem until now.

Whether the mediators/facilitators should be professionals only or whether also well trained laymen can do this job was answered by one of the *mediators* in the sense that they really should be specially educated mediators in view of the difficulties of the tasks of mediation. This is also the opinion of the *mediation manager* and the respondent from the *Probation*

Service. The latter gave her answer with reasons: Mediator in criminal cases is a job of its own asking for being able to lead complicated conversations in which emotions and interests are of great importance.

The second *mediator* was differentiating between formal and informal mediations and stated that the formal kinds need better educated mediators. In cases of informal mediation everybody can learn to work with RJ. The *lawyer* referred for so far to the COSA projects (Circles for support, cooperation and approachability), that are directed to sexual offenders being supervised by the Probation Service in which coached volunteers play an important role.

Victim in Focus does not work with laymen. In the broad framework of the tasks of the organisation Victim Aid Netherlands, however there are also trained laymen in function.

The question focussing on the RJ services was answered as follows:

One of the mediators is convinced that there are already enough services working in the field of RJ in The Netherlands. She summed up the following: Focus on Victims, Own Strength Centre (Eigen Kracht Centrale), Mediators in Criminal and RJ cases (for example MISZA)¹³, the Centre for Conflict Resolution in Haarlem, the Dutch Probation Service and Restorative Justice Netherlands. The other mediator named the present services only an advance guard. This opinion is shared by the respondent from the *Probation Service*. According to the *lawyer* there are no services active yet in his district. The *mediation manager* is also convinced that there are still not enough services at work until now.

For what concerns a harmonic cooperation between private and public RJ services one of the *mediators* declared that she does not have detailed information but that there is in any case not enough cooperation. This opinion is shared by the respondent from the *Probation Service*. The other *mediator* mentioned that there are hardly any public RJ organisations.

The representative from *Focus on Victims* stated that since the last two years the organisation *Restorative Justice Netherlands* is the driving wheel in this area.

8. RJ Obstacles and Good Practice

8.1 Obstacles

One of the *mediators* named two important obstacles to RJ, the lack of sufficient financial means and the lack of information in the public, at the courts and at the police. The other *mediator* declared that all obstacles summarized under 3.1 of the English version of the

¹³ Mediators in straf- en herstelzaken Amsterdam, www.misza.nl

questionnaire exist in the Netherlands, but she added that there exist also manners to handle the problems. Success is possible. Furthermore she pointed out that crucial factors are populism and the mainstream overemphasizing of harder sanctions.

According to the *lawyer* the existing legislative framework, the limited local experience and almost an absence of active community involvement, lack of human and financial resources and lack of public awareness and social acceptance towards RJ are the main obstacles.

The respondent from *Focus on Victims* places the main problems at the lack of public awareness and social acceptance, the lack of cooperation between public and private sectors and the conflicts of interests of the participating actors.

The *mediation manager* chose the existing legislative framework, the limited local experience and almost an absence of active community involvement, the lack of sufficient human and financial resources and the lack of public awareness and social acceptance as the main obstacles listed in the questionnaire and he added that in general police, public prosecutors and judges are rather sceptic about RJ. The respondent from the *Probation Service* and Member of the Board of the *Foundation Restorative Justice Netherlands* made the following choice from the list: the existing legislative frame, the limited local experience and absence of sufficient active community involvement, lack of human and financial means, lack of public awareness and social acceptance towards RJ. As other obstacle she named the Ministry of Security and Justice and its criminal politics.

According to the respondent working at the bureau of the Prosecutors General there is a good cooperation between the Department of Public Prosecution and Restorative Justice Netherlands and Focus on Victims. The Minister of Security and Justice and his staff, however, do not take the decision about RJ that was already announced months ago. He then continued that if this decision is not soon taken, drafts can be overruled by the developments in society where the RJ practice is steadily developing and expanding.

At the bureau of the Prosecutors General the opinion is that important obstacles are the costs and then the fact that many public prosecutors are not so convinced of the effectiveness of RJ, have doubts about the voluntariness by the victims and the sincerity of the offenders.

8.2 Components for RJ good practice

As the most important components for RJ good practice one of the *mediators* mentioned the peaceful neighbourhood method policies.

Most important for good practice are according to her:

- 1) Maintaining relations and giving restoration a chance. Marking and penalizing is good but then always follows an action opening the possibility to compensate and to restore.
- 2) Zooming in at solutions and strengthening what already works well.
- 3) Clearness about what this means for the action of professionals. Follow-up is not depending from organisation or individual.
- 4) It must always be clear who is responsible for everybody being able to learn the skills he/she needs.
- 5) Developing networks between organisations is necessary for success.

The network for interchange of information and good practice in the Netherlands is *Restorative Justice Netherlands*.

The respondent from the *Probation Service* stated that for good practice voluntariness and involvement at all levels of the organisations is of importance.

Further she pointed out that the Foundation Restorative Justice Netherlands has an internet forum so that information can be easily exchanged.