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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)
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Restorative Justice in the Netherlands

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A. Introduction

The Dutch criminal justice system is part of the family of continental legal systems in which criminal law is codified. The main codifications in the area of criminal law are the Criminal Code of 3 March 1881² and the Code of Criminal Procedure of 15 January 1921³.

The Dutch criminal law for juveniles is regulated in the Articles 77a-77hh of Part VIII A of the Criminal Code, titled *Special regulations for juveniles*. It contains mainly a sanction system that differs from the sanction system for adults. Furthermore there are some special regulations for juveniles included in the Code of Criminal Procedure, namely in the Articles 486 and following. Apart from these special regulations the general criminal law is valid also for juveniles. The special regulations for juveniles in the Dutch Criminal Code are in force for those who were at the time they committed an offence already 12 but not yet 18 years of age. Children younger than 12 years of age are principally not prosecuted.⁴ Next to the Criminal Code there are several criminal law statutes such as for example the Narcotic Drug Offences Act (1928), the Economic Offences Act (1950) and the Road Traffic Act (1994).

The recently increasing number of changes made in the Dutch Criminal Code are mainly a result of the fact that modern criminal law is strongly depending on politics and the fact that for political parties criminal policy is an important means to incite people to vote for their party. The importance of the subject *security* in present political discussion, yet enhanced by the events of 11 September 2001 in New York, is mirrored by the fact that the present Dutch government under Prime Minister Rutte changed the name of the Dutch Ministry of Justice into *Ministry of Security and Justice*. One can say: What's in a name? But recent legislation shows that there really is a change behind this new name, criminal law became tougher.

The special character of the Dutch criminal justice system originates mainly from three sources: Primarily there are the specialities of Dutch character and mentality. Furthermore a strong French influence on the organization of the judiciary and on criminal law is still alive

¹ University of Groningen, The Netherlands, Law Faculty.

² Wetboek van Strafrecht of 03 March 1881, in force since 30 January 1886 and since then times out of number amended.

³ Wetboek van Strafvordering of 15 January 1921, in force since 29 July 1925 and since then regularly amended.

⁴ Sagel-Grande 2011, *Jugendliche und Heranwachsende*, p. 232.

and last but not least the character of Dutch criminal law is strongly influenced by a certain negligence of dogmatics and a preference for empirically orientated common law thinking. The recognition of the great importance of and interest in empirical research is of eminent influence on the development of the Dutch legal system, not only of criminal law. The Dutch Ministry of Justice has its own Scientific Research and Documentation Centre (WODC)⁵ that works together with the Central Bureau for Statistics, research departments of the universities and private research institutes. Legislation in the Netherlands is generally prepared, sometimes monitored and rather often evaluated by research.

In 1881 a new Criminal Code was adopted but it came into force only in 1886.

In comparison with the Code Pénal, the 1881 Criminal Code has rather clear and easily understandable definitions for offences, a differentiation between only two kinds of offences, infractions and crimes, and nowadays only four main sanctions: imprisonment, detention, task-penalty and fine.

Since 1886 there were several major reforms that modified the Criminal Code. In the field of restorative justice we can mention the upcoming interest in the victim in the 70s of the 20th century. Victimology research started and new regulations were introduced with the intention of helping the victims of offences and seeking compensation for the damages they suffered. Furthermore the extension of suspended sentences in 1987 offered a framework for regulations that could offer the victim possibilities for reparation of and compensation for the wrong that was done.

The Dutch 1813 Constitution laid down that not only substantive criminal law but also procedural criminal law should be regulated in a code. Until 1838 the Napoleonic Code d'instruction criminelle was in force in the Netherlands, however with some important alterations such as refusing the introduction of the jury system. The first Dutch Code of Criminal Procedure (CCP) came into force in 1838. It based on strong inquisitorial principles and withheld the suspect from any rights. However, the 1838 CCP offered already the possibility for the victim to join criminal proceedings as the injured party on a low level. With the Code of Criminal Procedure that came into force in 1925 the situation did not change, the legal position of witnesses and victims was not improved. Only in 1993, when the Criminal Injuries Compensation Act was passed, the situation changed. The victim or his or her heirs now got the right to institute a lawsuit in order to claim civil compensation in

⁵ Wetenschappelijk Onderzoek- en Documentatiecentrum, www.wodc.nl

criminal proceedings without any restrictions of the amounts one may claim. Furthermore the Threatened Witness Act introduced a witness protection programme. After these reforms improving the position of victims and witnesses several others followed. Overlooking the changes in Dutch criminal proceedings of the last about 30 years those connected with the position of the victim are the most characterizing.

After several years during which the mainstream opinion was that criminal proceedings should be chiefly compact, recently one became interested again in the concept of a model in two phases: During the first phase the question is answered whether the suspect is guilty or not, while in the second phase the decision on the kind of sanction and its length or amount comes up. The State Secretary of the Ministry of Security and Justice made promises to initiate research in this direction⁶ in order to get a solid basis to discuss the pros and cons of proceedings in two phases.⁷ The Amsterdam mediation pilot⁸ was one of the reasons for the new discussion about this model.

The main organisations of the Dutch criminal justice system are the *police*, the *Public Prosecution Service (PP)* and the *courts*.

One of the general specialities of the Dutch criminal justice system is the *Principle of expediency*. It has important consequences on the question by what institution a case can be settled and at the same time on the kind of sanctioning as each institution has its sanction system.

According to Article 167 Dutch Code of Criminal Procedure the public prosecutor has the right to waive cases if he is convinced that this is desirable in the public interest. This is contrary to the so-called principle of legality according to which the public prosecutor is obliged to prosecute when an offence was committed. The principle of expediency strengthens the fact that the PP is *dominus litis* and at the same time it is the basis for settling cases out of court and for the development of alternative sanctions, including those in the field of Restorative Justice.

In 2012 the workload of the public prosecutors were 224.200 cases, 52% of them the prosecutors settled definitely themselves and 48% of the cases were decided by a judge.⁹

⁶ Parliamentary documents (Kamerstukken) II 2011/12, 33176, nr. 6, p. 7.

⁷ The research project already started (project 2292) at the WODC (in cooperation with Groningen University).

⁸ Sagel-Grande 2013, The Amsterdam pilot, in Restorative Justice: towards a new European Perspective, Athens-Thessaloniki: Sakkoulas Publications.

⁹ Department of Public Prosecution 2012, Annual Report. www.om.nl

In the Netherlands Restorative Justice is generally defined in a broad sense with the emphasis on the interests of the victim. Restorative practices in civic society – those in education, child and adolescent welfare, living- and working communities – as well as those parallel to, before, during and after criminal law proceedings – for example during detention and in connection with aftercare – are part of Restorative Justice.¹⁰

In comparison with other countries, European and worldwide, the Netherlands do not at all belong to the trendsetters in this area as until now - besides some pilots - victim-offender meetings are not part of or alternatives to criminal proceedings.¹¹ As Dutch criminal policies are since many years strongly victim oriented, victim-offender meetings are *as well legally as organizationally*¹² modelled as provisions for victims' sake. In the framework of these ideas it is not surprising that the present legal regulation on mediation in criminal matters, concise as it may be, is placed in part III A of the Code of Criminal Procedure titled *Victim* i.e. sub 1: *The victim's rights*, sub 2: *Compensation of damages* (see below B.). For what concerns the realization of victim-offender meetings, it is also primarily victim orientated as the two main organizations involved are the Victim Aid Netherlands¹³ and Victim in Focus.¹⁴

Between the Dutch Restorative Justice movement¹⁵ and the Dutch Victim Aid movement¹⁶ for paradigmatic reasons, there does not exist harmony.¹⁷ In the framework of this report it is not possible to describe the divergences of view. However, as a matter of fact, this tension is inhibiting the developments to more mediation in criminal matters.

Internationally there exist many definitions for Restorative Justice which vary by stressing different accents.

Also in the Netherlands there does not exist one leading definition. The Dutch Foundation Restorative Justice¹⁸, that has *the aim to restore, where possible, the relations and damages from the perspective of victim, offender and society*¹⁹, did not formulate her own definition but pointed out the three decisive features characterizing Restorative Justice that can also be found in many definitions:

(1) Participation of the stakeholders.

¹⁰ Van Hoek, Slump 2011, De toepassing van herstelrecht in Nederland, p. 3.

¹¹ Groenhuijsen 2010, Herstelrecht in Nederland, 53.

¹² Groenhuijsen, 2010, Herstelrecht in Nederland p. 54.

¹³ Slachtofferhulp Nederland (SHN).

¹⁴ Slachtoffer in Beeld.

¹⁵ Herstelrechtbeweging.

¹⁶ Slachtofferbeweging.

¹⁷ Groenhuijsen 2010, Herstelrecht in Nederland p. 54.

¹⁸ The foundation dates from November 2010.

¹⁹ www.restorativejustice.nl ; see section E.

(2) Re-establishing the balance that was disturbed by the crime by satisfying the victim in taking away the material and immaterial damages and offering the offender the possibility to accept responsibility now and to try to compensate, repair and restore the consequences of the crime and/or to apologize.

(3) Restorative justice processes are guided by the needs and emotions of the participating parties. These needs and emotions are the result of just their individual experiences and interpretations²⁰ and therefore are an ideal point of departure for finding adequate solutions.

B. The Legal Frame of Restorative Justice

1. The general frame of Restorative Justice in the Netherlands

The relationship between Restorative Justice and criminal law according to the Dutch leading opinion²¹ differentiates between three models:

- 1) Restorative Justice is a part of the normal criminal law proceedings. In a certain phase of the procedure the case can be handed to a mediator. If he/she can find a solution the case can be waved by police or public prosecutor or is ending with a lower sanction.

This model was in use in the Netherlands without being strictly institutionalized. With the nation-wide introduction of the victim-offender meetings in 2007 it became out of use, but theoretically it can be practised.²²

- 2) Restorative Justice is an alternative for the normal criminal lawsuit. In former times this model was known as "diversion". At present it is used in the Netherlands frequently in cases of neighbourhood mediation. If the mediation ends successfully, there is no need anymore for public bodies sanctions.²³

- 3) Restorative Justice is supplementary to criminal proceedings.

This model is primarily used in the Netherlands in cases of serious crime, but then mainly **after** the offender was sentenced at court, but there are also writers who stress that mediation in criminal law cases has to be exclusively a contact between victim and offender guided by a mediator that takes place in their interest and consequently they have to decide together what has to happen with its results. Such a "full mediation" has to keep its distance from the criminal justice system.²⁴

²⁰ Van Hoek, Slump 2011, De toepassing van herstelrecht in Nederland, p. 9.

²¹ Groenhuijsen 2010, Mediation in het strafrecht. <http://arno.uvt.nl/show.cgi?fid=12657>

²² Van Hoek, Slump 2011, De toepassing van herstelrecht in Nederland, p. 3.

²³ Van Hoek, Slump 2011, De toepassing van herstelrecht in Nederland, p. 3.

²⁴ Weijers 2012, Het slachtoffer-dader gesprek als volwaardige mediation, www.idoweijers.nl

In none of these models the aim is to replace criminal proceedings by Restorative Justice. The Dutch abolitionists Bianchi and Hulsman, working mainly in the 60s and 70s of the 20th century, are not really influential at present.²⁵ On the other hand, one is convinced that criminal law should be used regularly as an ultimum remedium only, as inordinate repression proved to be ineffective. This knowledge offers Restorative Justice a solid basis for developing and becoming influential in the framework of criminal law. For what concerns the opinion of a majority of victims, according to research results found by the organisation *Victim in Focus*, they prefer and value most a combination of court decision and mediation and neither value mediation more than the traditional criminal proceedings nor choose for mediation instead of a court decision.²⁶

The primarily victim related official Dutch criminal policy on Restorative Justice can be linked easily with several other policies, such as those in the framework of victim aid, juvenile justice, quick reactions against offenders and after care.

The Restorative Justice models in use in other EU-Member States, as the Belgian model of "strafbemiddeling"(criminal mediation), the German "Täter-Opfer-Ausgleich" (offender-victim reconciliation) and the Austrian "außergerichtliche Tatausgleich" (out of court reconciliation of offences), the English "Breaking the Cycle" and "Time for fresh start" are discussed and are influencing Dutch development in the area of Restorative Justice. Since several years similar new policies and regulations are prepared and tried out in pilots that are generally evaluated. One does not feel at ease as long as one does not have enough facts collected to support policies and legislation one is planning to issue. One of the recent influential experiments was the rather successful Amsterdam pilot. Its evaluation resulted in a proposal of more pilots that are about to start.²⁷

2. Supranational regulations

In several cases including Victim Aid and Restorative Justice, the Dutch legislator is bound by supranational initiatives²⁸ as there are the 1985 Declaration on the Basic Principles of Justice for Victims of Crime and Abuse of Power, The Recommendation on the Position of the Victim in the Framework of Criminal Law and Procedure of the same year, the Recommendation Concerning Mediation in Penal Matters and the 2004 European Forum for Victim Services' Statement on the Position of the Victim Within the Process of Mediation.

²⁵ Van Hoek, Slump 2011, De toepassing van herstelrecht in Nederland, p. 3.

²⁶ Victim in Focus 2013, Annual Report 2012 p. 17.

²⁷ Sagel-Grande 2013, The Amsterdam pilot, in Restorative Justice: towards a new European Perspective, Athens-Thessaloniki: Sakkoulas Publications.

²⁸ □ Groenhuijsen (2001), Hervorming van het strafproces, p. 645.

For several years the Framework Decision of 15 March 2001 on the standing of victims in criminal proceedings²⁹ was most important as it was binding for the EU Member States. For the subject Restorative Justice Article 9, Right to compensation in the course of criminal proceedings³⁰ and Article 10, Penal mediation in the course of criminal proceedings³¹ were of great importance, although they were rather widely defined. However, meanwhile this legal provision proved insufficient concerning the needs of **victims** (sic!). Therefore on 04 May 2012 it was replaced by the Directive Establishing Minimum Standards on the Rights, Support and Protection of Victims.³² With this decision the official Dutch victim oriented policy got a certain recognition and support.

3. The present legal frame of Restorative Justice in the Netherlands

Until now there do not exist special detailed legal regulations on mediation in the Netherlands.

Recently³³ three bills were brought in, one on registered mediators, one on mediation in private law and one on mediation in administrative law.

Since 2007 mediation in criminal law cases is paid more attention to. It was at the opening of the conference "Moving Mediation" in November 2009 that the president of the High Court of the Netherlands³⁴, G. J. M. Corstens, stressed that mediation in criminal cases must receive more attention.

Shortly after, Article 51h was introduced into the Dutch Code of Criminal Procedure (CCP). This article in the beginning only read that by order in council explicit regulations on mediation between offenders and victims can be made. On 01 January 2012 the amendment of Article 51h CCP by Act of 06 June 2011 came into force. The article got 3 new subsections and the only one dating from 2009 then became subsection 4. The amended Article 51h CCP reads as follows:

²⁹ 2001/220/JHA, Official Journal of the European Communities L 82/1.

³⁰ Article 9: (1) Each Member State shall ensure that victims of criminal acts are entitled to obtain a decision within reasonable time limits on compensation by the offender in the course of criminal proceedings, except where, in certain cases, national law provides for compensation to be awarded in another manner. (2) Each Member State shall take appropriate measures to encourage the offender to provide adequate compensation to victims. (3) Unless urgently required for the purpose of criminal proceedings, recoverable property belonging to victims which is seized in the course of criminal proceedings shall be returned to them without delay.

³¹ Article 10: (1) Each Member State shall seek to promote mediation in criminal cases for offences which it considers appropriate for this sort of measure. (2) Each Member State shall ensure that any agreement between the victim and the offender reached in the course of such mediation in criminal cases can be taken into account.

³² IP/12/1066 - 25 X 2012, 2019/29/EU.

³³ 25 May 2013.

³⁴ Hoge Raad der Nederlanden.

- 1) The Department of Public Prosecution stimulates the police to inform the victim and the suspect as early as possible of the possibilities of mediation.
- 2) If a mediation between the victim and the suspect resulted in an agreement, the judge takes this into consideration when he imposes a punishment and/or a measure.
- 3) The Department of Public Prosecution stimulates mediation between the victim and the person sentenced after having ascertained whether the victim consents.
- 4) Regulations concerning mediation between the victim and the suspect or between the victim and the convict can be made by Order in Council.³⁵

In his Explanatory Statement³⁶ the former Minister of Justice Hirsch Ballin elucidated the intention of the regulations developed in the new Article 51h CCP. Here we find the following important explanations:

Ad Article 51h sub 1 CCP:

Primarily the Minister stressed the great importance of informing the victim as early as possible about the possibilities of mediation. There are two kinds of mediation. In the first place there is mediation aiming at compensating damages.³⁷ In Dutch practice this kind of mediation takes mainly place in a very early stage of the proceedings when the police is handling the case. In this phase of the proceedings victims generally prefer to wait for the decision of the judge before they are willing to comply with a request of the offender to participate in the second kind of mediation, a meeting of the victim and the offender in order to talk about the offence and its consequences trying to find a resolution for the “conflict” and an adequate restoration.³⁸

Ad Article 51h sub 2 CCP:

In order to prevent discussions between the offender and the victim whether or not the judge should be informed about the voluntarily worked out agreement concerning compensation of damages the legislator regulated this matter by law. It is a matter of course that the judge decides to what extent the agreement between offender and victim can influence the kind and length or height of the punishment. Furthermore the Minister stressed that it is especially of great importance for the victim to know in advance what the consequences of a successful mediation can have on the proceedings. If the mediation ends without an agreement the judge generally will not take this fact into account when deciding

³⁵ Algemene Maatregel van Bestuur.

³⁶ Parliamentary Document (Memorie van Toelichting) Tweede Kamer 2009-2010, 32363 nr. 3, 19 April 2010.

³⁷ Schadebemiddeling.

³⁸ Herstelgesprek.

on the punishment. In some of these cases however the judge will have to decide about the need to add a compensation for damages measure to the sanctions claimed by the public prosecutor.

Ad Article 51h sub 3 CCP:

Concerning this regulation the Minister stressed that the Department of Public Prosecution (PP) has to promote both kinds of mediation under the condition that the victim agrees and that both parties participate voluntarily. For so far the cases are regularly directed to the Probation Service or an organisation specialized in meetings looking for restoration.³⁹ Thus the fact that the PP has to promote mediation does not mean that it has to carry it out itself. For what concerns the mediation in the form of a meeting between the offender and the victim aiming at conflict resolution and restoration, in the Netherlands it generally takes place after the criminal case was tried. The final responsibility for compensation of damages mediation lies with the PP.

During the meeting on the occasion of the presentation of the book on *Mediation in criminal law cases*⁴⁰ in October 2012 a member of the Board of the Highest Public Prosecutors⁴¹ announced that a guideline will be prepared that will give a broad interpretation of Article 51h CCP. Until now (May 2013) this guideline was not published.

C. The Actual Situation of Restorative Justice, Informal Referrals and Initiatives and Current Reforms

1. Introduction

As a matter of fact it is rather difficult to solve all problems caused by crime and find means that can at the same time satisfy the needs and emotions of the involved parties, society, government, victim and offender. The Dutch legislator chose until now primarily to improve the system of material compensation and restoration for the victim in the framework of criminal law while leaving victim-offender mediation in criminal cases with the exception of Article 51h CCP outside this framework. Furthermore the group of persons who got the rights introduced for victims was extended. Additional and parallel with these reforms, new organisations were founded, for example the Dutch Mediation Institute⁴² and the Foundation

³⁹ *Slachtoffer in Beeld* (Victim in Focus).

⁴⁰ Dierx, Van Hoek 2012, Mediation in strafzaken.

⁴¹ College van Procureurs Generaal.

⁴² www.nmi-mediation.nl

Restorative Justice Netherlands.⁴³ Furthermore several research projects were initiated at the Scientific Research and Documentation Centre of the Dutch Ministry for Security and Justice (WODC) and at other research institutes trying to get more knowledge about the situation of the victims. Research is in progress to test questionnaires worked out for a Victim Monitor⁴⁴ that will collect information in order to map experiences with police, justice and victim support organisations, but will also look after the interests victims have concerning aspects of victim support.⁴⁵

This short overview on the present Dutch Restorative Justice policy shows that it is still guided by the wish to help and protect the victim and to keep far away from him/her everything that could cause any further harm. This attitude was also the basis for research searching for information about the contentment of victims with victim support and asking what in their opinion would be open to improvement. The conclusion from this research⁴⁶ was that there are several aspects of victim support that do not really meet the needs of the victims.

In connection with the further development and extension of victim support the insight was growing that real conflict resolution generally needs - within the borderlines of the victim's allowance - the voluntary participation of the offender for a successful process of dealing with the damages and the harm caused by the crime. Furthermore the offenders' involvement into the process of getting over the crime can prevent the offenders from watching themselves as victims of the criminal justice system and from not accepting their own responsibility. "Restorative Justice aims at reintroducing a moral learning process in handling conflicts. It is of great importance that the offender himself disapproves of his/her crime and experiences his/her guilt and shame."⁴⁷

In the following some experiments⁴⁸ and already introduced Restorative Justice means are presented in short as examples for many try-outs that were and are organized by several instances such as the Probation Services, the police, the Department of Public Prosecution, youth welfare instances and private organisations locally or district-wide to give an idea about what kind of models were developed and tested in the Netherlands.⁴⁹ The first one, a

⁴³ See above and: www.restorativejusticenederland.nl

⁴⁴ www.wodc.nl

⁴⁵ Slachtoffermonitor 2011, www.wodc.nl

⁴⁶ Koolen, v.d. Heide, Ziegelaar 2005, Research voor Beleid (with summary in English).

⁴⁷ Van Stokkom 2001, Werken aan emoties, p. 74.

⁴⁸ A full summary of the Dutch restorative justice projects since 1980 and some examples from foreign countries are to be found in: Van Hoek, Slump et al. 2011: Inventarisatie herstelrechtelijke projecten en activiteiten.

⁴⁹ www.restorativejustice.nl/publicaties

private law out of court settlement with the name *dading* (compromise) took place meanwhile more than 20 years ago. At present it is of little importance. The second model, victim-offender contacts, is meanwhile nation-wide introduced and in use by two independent organisations, *Victim in Focus*, organising victim-offender contacts and conversations and *Eigen Kracht (Real Justice/Family group conferences)*, organising restorative conferences. In both cases the contacts are independent from the criminal law proceedings. They can take place before, at the same time as or after the lawsuit. The public prosecutor, respectively the judge can be informed about the outcome of the contacts. The third kind of experiments are examples of Restorative Justice in penitentiary institutions. One of them was organised in a youth prison, the other in prisons for adults, both are focussing on the implementation of Restorative Justice in detention, thus in a criminal justice environment after the offender was sentenced. The fourth pilot is a recently finished, small scale, for the Netherlands by then rather unique, experiment, in which mediation in criminal law cases in the framework of criminal proceedings was tested.

2. *Dading*, a compromise model in the shade of criminal justice⁵⁰

In the centre of this model we find the question 'in which cases an agreement on compensation between the suspect and the victim could make prosecuting unnecessary'.⁵¹

In the experiment cases were included that at the PP in Amsterdam were prepared for summons at court. The experiment demonstrated that about 50% of the parties were interested in an out of court compromise. In about 33% of the cases a regulation concerning the compensation of damages was successful so that the public prosecutor stopped prosecuting. The compromises were implemented by professional legal aid assistants who had knowledge in civil law matters as well as in mediating and were able to look after the freedom of decision making of their clients. Of great importance for the success of the model was that legal aid was offered free of costs. Even the notary was free in those cases the parties asked for an authentic document concerning the compromise eventually to be used as legal instrument.

The cases that were worked on during the experiment were varying strongly: from different kinds of theft, burglary, bodily injuries, forgery of documents, damage of property to arson and even attempted manslaughter and serious bodily injuries.

⁵⁰ Wemmers, Van Hecke 1992, *Strafrechtelijke dading*.

⁵¹ Ingelse 1991, *Dading in plaats van strafrecht*, p. 963.

Compensation had place by returning the objects in question, by committing to undertake restoration work and in cases of relational offences by not appearing in certain forbidden areas or observing other restrictions related to behaviour combined with penalty clauses.

Complying with the agreed obligation was sometimes a problem. As according to the *dading* model the waiving of the case by the public prosecutor had to be definite, there were only civil law means to force the offender to fulfil his obligations. The public prosecutors do not accept this vision easily.

According to the creators of the *dading* model all involved parties have advantages: The offender is not prosecuted, the victim has better opportunities to get the damages compensated as he/she can negotiate him/herself about the kind and extent of the compensation. At the same time the offender is rather directly confronted with the consequences of his criminal act and the situation of the victim. This might make a valuable impression on the offender and could have preventive effects. It would be an advantage for society that the effectiveness of the *dading* model might be higher than that of court proceedings and the resulting sentences. A positive aspect of the *dading* model is also that members of society learn to manage their problems primarily by themselves, something that should be a matter of course for independent, responsible people. Furthermore the costs of the *dading* model might be (slightly) lower than for criminal proceedings, but that can not be the only decisive reason to decide for this model.

Of most interest is, what victims think about the *dading* model as they suffered an injustice, experienced damages and pain and therefore they know best what the right remedies are to ease the shock and to get over all the injuries.

According to the evaluation studies not all victims were content with the results of the *dading* model.⁵² A problem was indeed the fact that after the victim and the offender had signed the contract and the PP had waived the case there was sometimes no performance. Furthermore, the project was thought to become relatively expensive after the pro deo help of the volunteers would not be continued. The introduction of the newly developed legal regulations on compensation in the framework of penal law were another reason that the interest in *dading* diminished. At present some kind of *dading* is in use only by the Department of Public Prosecution in Maastricht where yearly about 300 cases are settled in this way.

3. Victim-offender contacts and meetings

3.1 The beginning

⁵² Wemmers, Van Hecke 1992, Strafrechtelijke dading.

Since 2004 *Victim Aid Netherlands*⁵³ offers adult victims the opportunity to 'interview' their offenders. The idea behind these victim-offender contacts, differing from those in many other countries, was to create an extra facility for victims.

In his letters to parliament the Minister of Justice explained⁵⁴ that the victim-offender interviews have the following three points of departure:

- 1) Participation on basis of voluntariness.
- 2) Exclusively as supplement to criminal law.
- 3) The Public Prosecutor *can be* informed by reporting.⁵⁵

In the first place one can think that the information of the public prosecutor was a consequence of Article 10 of the Council Framework Decision of March 2001⁵⁶ on the standing of victims in criminal proceedings, however this was not the main reason. Primarily the reasons for the link with criminal law were, as one declared, pragmatic. Firstly there is the need to direct the information - that one obviously thought as being of importance and that would reach the judge anyhow - in this direction. Secondly there is the need to inform the judge because the judge is principally taking all kinds of circumstances into account before he comes to his decision.⁵⁷ Furthermore, this link seems to be a compromise between the differing opinions at the Ministry of Justice. Whereas the main opinion of the section victim policy is to disconnect mediation and criminal proceedings, the section sanction policy prefers to integrate mediation into criminal proceedings.⁵⁸ This opinion is also favoured by practitioners and academics, for example by Tak in his report commissioned by the Department of Public Prosecution.⁵⁹ Furthermore the Council for the Administration of Criminal Justice and Protection of Juveniles recognizes the worth of mediation as it offers relatively much space to give in own words one's subjective perceptions. In this way, feelings of revenge as well as feelings of repent can be expressed.⁶⁰ The recommendation of the council therefore was, to extend the use of mediation in criminal cases and to use it not only next to criminal proceedings but also as a part of them.⁶¹

3.2 Victim-offender contacts for juveniles

⁵³ See section E.

⁵⁴ Parliamentary documents, 2003-2004 nr. 27 212, nr.8, Tweede Kamer 2005-2006 27 213, nr. 11 (De positie van het slachtoffer in het strafproces).

⁵⁵ Van Burik, Heim, Hoogeveen, de Jong, Slump, Vogelvang 2010, Evaluatie slachtoffer-dader gesprekken, p.136.

⁵⁶ See note under A. 2.

⁵⁷ Van Burik et al. 2010, p. 136.

⁵⁸ Van Burik et al. 2010, p. 136.

⁵⁹ Tak 2011, Mediation in Strafzaken.

⁶⁰ Boorsma 2011, Letter to the State Secretary Security and Justice.

⁶¹ Council for the Administration of Criminal Justice and Protection of Juveniles, s. above.

Since 2006 the victim - offender contacts are also organised for juveniles.

Most offenders interested in a meeting with the victim were in 2011 and 2012 minors as the *Child Welfare Council*⁶² referred relatively many minors to *Victim in Focus*.⁶³

In 2012 *Victim in Focus* participated in the Amsterdam pilot Mediation next to penal law. During this pilot *Victim in Focus* received 17 applications from the Amsterdam law court.⁶⁴

3.3 Nation-wide introduction of *Victim in Focus*

Shortly after, in 2007, with the relatively positive results of the contacts between victims and offenders in mind, one decided to introduce victim-offender contacts nationwide for adult and juvenile victims and to transfer the tasks connected with these meetings to the organisation *Victim in Focus*, an organisation that in 2007 was already since several years involved and experienced in developing and implementing training courses for juvenile offenders. One of these training and learning projects was the course *Victim in Focus* that was used in the framework of the task penalties, Article 22c Penal Code as a "learning sanction". As the name already says this course was directed strictly on the victim, the pains, losses and troubles victims have to go through in consequence of the criminal offence. For all its new efforts the organisation did not change its name and besides its new task, the victim-offender meetings, also trainings, not only for juveniles, but also for adults and professionals, are still offered.

Victim in Focus is regionally organised and works with professional mediators. There are 7 regions. The main office is in Utrecht. In every region one full-time paid mediator and on an average five free-lance employees are working. The mediators are highly educated and well experienced. They work in accordance with a policy working plan developed by *Victim in Focus* that is put down in a Handbook Instructions and Protocols.⁶⁵

The number of applications grew from 467 in 2007 to almost 1100 in 2009, 1.196 in 2011 and 1.508 in 2012. In 2011 about 75% of the participants were younger than 18 years and 15% older than 24 years of age. On the other hand, a bit more than 50% of the victims were older than 18 years, between them a quarter was aged between 40 and 65 years.⁶⁶ The reason for this phenomenon lies in the fact that *Victim in Focus* is especially equipped for juveniles.

In 2012 84% of the applicants were offenders, 15% victims and 1% heirs.⁶⁷

⁶² Raad voor de Kinderbescherming.

⁶³ See section E.

⁶⁴ *Victim in Focus* 2013, Annual Report 2012, p. 7.

⁶⁵ Van Burik et al. 2010, p. 139.

⁶⁶ Van Burik et al. 2010, 97.

⁶⁷ *Victim in Focus* 2013, Annual Report 2012, p.4.

Victim in Focus defines the victim-offender conversation as follows:

“Every mediation process outside a judicial framework between victim and offender and eventually their social network, with the most ideal result being the conversation.”⁶⁸

In cases a conversation for what reasons ever is not possible, a letter, shuttle mediation, model in which the mediator is functioning as a messenger bringing the answers of the victim to the offender and the other way round, or a *Real Justice/ Family Group*⁶⁹ conference can also be an option. In practice, between 2007 and 2009 in about 45% of the applications a contact between the victim and the offender was arranged: In 23% of the cases there was a meeting, in 14% there was an exchange of letters and in 8% of the cases the contact resulted in an *Eigen Kracht (Real Justice/Family Group)* conference, shuttle mediation or another kind of contact.

According to *Victim in Focus*, in 2011 of all cases in which the other party could be contacted 56% resulted in a victim-offender contact. In 2012 this number was 54%.⁷⁰ Obviously victims relatively often accept the proposal of the offender to participate in a meeting, although they in most cases do not make the first step in this direction.

3.4 The offences

The victims who applied for a victim-offender contact in 2012 suffered, suffered in 36% of the cases a property offence, in 26% a traffic-offences, in 13% an act of violence and in 8% a sexual offence. If we look at the offences of offenders who were interested in a victim-offender contact, 51% of them committed a property offence, 35% an act of violence, 4% a traffic offence - and also 4% a sexual offence.⁷¹

The seriousness of the crime seems not to be decisive for the possibility of mediation. In earlier research⁷² the incidence of acts of violence was higher than that of property crime and almost no sexual offences were reported. For what concerned the offences committed with violence they caused no injury.

Victim in Focus is involved in all kinds of cases from small to large-scale, from light to very serious. In 2012 for example *Victim in Focus* was asked by the municipality of Alphen aan den Rijn to help to mediate between the victims, respectively the surviving relatives and the parents of the offender who killed customers by shooting in a supermarket in the same

⁶⁸ Van Burik et al. 2010, p. 11.

⁶⁹ Echt Recht Conferenties. The method of this RJ model is based on the jurisdiction of the Maoris in New Zealand in which offender, victim and other persons concerned come together in order to develop a restoration plan with which the offender can undo the wrong he did.

⁷⁰ www.slachtofferinbeeld.nl

⁷¹ Slachtoffer in Beeld (2013), Jaarverslag 2012, p. 6.

⁷² Van Burik et al. 2010, p. 98.

year.⁷³ There were several meetings of the participants and the mediation was rounded up with a letter written by the family of the offender addressed to the victims.

Furthermore *Victim in Focus* is involved in cases in which victims of sexual abuse want to contact juvenile offenders. If the offender is unknown *Victim in Focus* is discussing with the youth welfare work or any other authorized organisation who could act as representative of the offender. Another important task of *Victim in Focus* is the cooperation in the framework of the commission Deetman that is investigating sexual abuse in the Roman Catholic Church.⁷⁴

To get more insight in the seriousness of the crimes it is confronted with, *Victim in Focus* participates together with the University Twente in an EU research project that investigates the questions, 'how is it possible to quantify the seriousness of offences and how serious are the crimes of the offenders who apply for mediation at *Victim in Focus*?⁷⁵

3.5 Facts influential for the outcome

Contact between victims and offenders took more often place when the victim was a woman. Older victims were more often willing to meet the offender than younger ones. The gender and the age of the offender were not influential in connection with the realisation of a contact with the victim. Victims are relatively more often (41%) than offenders (22%) the reason the contact fails.⁷⁶

As already stated above, more offenders than victims are interested in a meeting. According to research the following factors are mainly decisive for the fact that the majority of victims is not willing to participate in a victim-offender contact:⁷⁷

- 1) Victims are asked to participate in a contact with the offender by *Victim Aid Netherlands*⁷⁸ shortly after the crime when they meet people of this organisation. For many of them this is the wrong time. In this period they are not yet ready for this contact. Later they are not asked again because their contact with *Victim Aid Netherlands* in general does not last long.
- 2) *Victim Aid Netherlands* is talking with the victims only very carefully and trying to refrain from everything that could have negative consequences for them. In this

⁷³ Victim in Focus 2013, Annual Report 2012, p. 13.

⁷⁴ Victim in Focus 2013, Annual Report 2012, p. 14.

⁷⁵ Research in the framework with EU-projects, Victim in Focus (2013), Annual Report 2012, p. 16.

⁷⁶ These "Real Right Conferences" are used at several schools in the Netherlands, www.echt-recht.nl

⁷⁷ Van Burik et al. 2010, p. 98.

⁷⁷ Van Burik et al. 2010, p. 141.

⁷⁸ Slachtofferhulp Nederland.

situation they do not go into depth about a possible meeting with the offender after the victim declared that he/she does not want any contact.

3) Victims who have contacts with *Victim Aid Netherlands* belong to the group of victims of serious crimes. For them participating in victim-offender meetings is specially difficult, painful and possibly risky.

4) As long as the case is not settled the volunteers of *Victim Aid Netherlands* hesitate to talk about victim-offender contacts with the victims.

The conclusion of Van Burik et al. is, that victims should get later a second chance to meet the offender. *Victim in Focus* organised already a pilot to learn what the results of a second call would be. Its results were positive but the number of victims one could reach by a second call was lower.⁷⁹

Finally we can state that research results did not point in the direction that there are many victims interested in victim-offender contacts, who are not reached by *Victim in Focus*.

Recently *Victim in Focus* started to cooperate with *Victim Office*,⁸⁰ that will organize the information about victim-offender meetings in future. They will send a letter about victim-offender meetings to the about 70. 000 victims who yearly get a letter about the settlement of their case. Perhaps this will help to motivate and encourage more victims to get in contact with their offenders. The fact that in many cases a victim-offender meeting can be rather helpful for victims, although certainly not always, is generally accepted.

3.6 Results of victim-offender contacts organized in the framework of *Victim in Focus* in 2012
In 36% of the victim-offender contacts the result was a conversation, a letter or a mediation without meeting of the parties but with the mediator as a go-between.⁸¹

In 31% of the cases the contact had not place. There was only an attempt for a contact. In 33% of the cases *Victim in Focus* decided that the case or the parties were not suitable for mediation.⁸²

3.7 Results of victim-offender contacts, conducted by *Victim in Focus* initiated respectively by the victim and the offender

Interestingly the results in cases the victim applied for a contact, were better than those in which the offender applied: In the contacts initiated by the victim, 47% ended with a

⁷⁹ Zebel, Elbersen, Van Ruiten 2010, De juridische dienstverlening: een goed moment?

⁸⁰ Slachtofferloket.

⁸¹ Pendelbemiddeling/shuttle mediation.

⁸² *Victim in Focus* 2013, Annual Report 2012, p. 5.

conversation, 7% with a shuttle contact, 5% with a letter, 4% with a group conversation and 36% already after an attempt to come to a contact.

Contacts initiated by the offender lead only in 22% of the cases to a conversation, in 23% to a letter, in 6% to a shuttle contact and in 2% to a group conversation. 47% of the cases ended with a an attempt for a meeting.⁸³

3.8 *Eigen Kracht*⁸⁴(Real Justice/Family Group) conferences

The model for these conferences was developed in New Zealand where the right to organise these conferences is legally regulated. Since the beginning of the 21st century they are also in use in the Netherlands. Here the conferences have about the following scheme: The conference is organised by a coordinator who is independent and neutral in relation to the problem/objective and the person in question. The person in question or somebody close to her/him explains the situation. During this phase family, friends, neighbours, social workers and other professionals can be present. The latter and the coordinator, however have to leave the *own power(!)* conference before the second part begins, during which a plan for the future is made. The idea of the model thus is that people first have to find a solution for their problem themselves. The conference ends with the presentation of the plan by the participants. The plan can include that professionals help to realize the plan.⁸⁵ At the end agreements are made about what must be done and how the realization process can be controlled.

In March 2011 an amendment for a legal regulation was accepted to the effect that the parents with parental authority concerning the minor, the authorized guardian or others who belong to the network of the minor have to draw up a plan in which the in the interest of the minor necessary care and support is summarized. If this plan was not made the foundation asks the parents and the other above summarized persons to still make such a plan.⁸⁶ The *Eigen Kracht* conferences were the example for this regulation. With their experiences the fact was proved that "it is the owner of the problem, who, together with his/her own people has the key for the solution of the problem in his/her own hands."⁸⁷ One can expect that with the introduction of this new regulation that is planned for 1 January 2014,⁸⁸ the use of

⁸³ Victim in Focus 2013, Annual Report 2012, p. 6.

⁸⁴ Verbatim: own power.

⁸⁵ www.eigen-kracht.nl

⁸⁶ Parliamentary documents (Handelingen van de Tweede Kamer Staten Generaal), 2010-2011, 32 015, nr. 30, p. 1.

⁸⁷ Parliamentary documents (Handelingen van de tweede Kamer Staten Generaal), 2010-2011, 32 015, nr. 30, p. 2, Elucidation.

⁸⁸ www.rijksbegroting.nl/2013/kamerstukken, 2012/12/20/han63997a53.html

Eigen Kracht conferences will increase. This is even more likely as according to recent research *Eigen Kracht* conferences work money-saving in the area of social work.⁸⁹

4. Restorative Justice experiments in Penitentiary Institutions

The idea behind restorative activities in prison is to stimulate inmates to start a raising of consciousness about the own personality and one's behaviour with all its consequences. As a result of this process one should develop an understanding of one's own responsibility for what one did. Furthermore the idea is that restorative activities can improve the prison climate and create a surrounding in which there is space for more openness and for the possibility to talk about the crime one committed. In 2003 one started with a restorative project in the penitentiary institution for juveniles Nieuwegein,⁹⁰ in 2005 the project was extended, in 2008 an evaluation report was published.⁹¹ The main findings were as follows: Not all intended programme activities were started. Activities aiming at creating a social basis and at creating a better prison climate were not realized. The activities that took place were mainly focussing on the prisoners themselves, on their awareness, their responsibility and their self-reflection which could lead to behavioural changes.

The conclusion⁹² nevertheless was that the first steps taken were encouraging, but for a nationwide implementation it was too early as the project was not fully developed. The missing aspects, society and prison-staff, should be added in future and investments should be made in order to extend the prison staff and to involve external organisations.

Recently Restorative Justice Netherlands installed the working group Restorative Justice Detention⁹³ in which the Dutch and Flemish prison - and juvenile justice institutions' governors work together with practitioners in developing and implementing the new detention model.⁹⁴

Since 2006 Prisoner Support Netherlands⁹⁵ organises courses on "Talking about guilt, victims and society" (SOS) that are based on the 'Sycamore Tree Project' of Prison Fellowship International in several prisons. Only in Lelystad the course is compulsory. At present this course is the most used one. In Lelystad from 2006 to 2011 more than 10.000 prisoners participated in the course. During 8 meetings for adults respectively 6 meetings for juveniles one tries to develop insights and responsibility concerning the consequences of the crime

⁸⁹ Schuurman, Mulder 2012, *Besparingen door Eigen Kracht-Conferenties* p. 10.

⁹⁰ Jansen - van Driel 2004, *Herstel en Detentie*.

⁹¹ Jansen, Hissel, Homburg 2008, *Plan- en procesevaluatie herstelgerichte detentie*.

⁹² Jansen, Hissel, Homburg 2008, p. 8.

⁹³ *Herstelgerichte detentie*.

⁹⁴ Van Hoek, Slump, Ochtman, Leijten 2011, *De toepassing van herstelrecht in Nederland*, p. 18.

⁹⁵ *Gevangenzorg Nederland*.

committed. Many offenders feel themselves a victim: The system is wrong, the surroundings as well and they had bad luck. Restorative mediation tries to build a bridge from the offender to the victim and society. The course can lead to a victim-offender meeting. In most cases first there is a letter to apologize. The courses are run by Victim in Focus.⁹⁶ There are several varieties of this course in use, differing in length. Meanwhile *Victim in Focus* is trying to extend the possibilities of victim-offender mediation in prisons for adults and juveniles and discussing possibilities for mediators to go to prisons for mediation, conciliation and conflict resolution.⁹⁷

5. Mediation next to criminal proceedings⁹⁸

The Court and the Department of Public Prosecution in Amsterdam recently organised something new for the Netherlands: a try-out with mediation in the framework of criminal law. Victims and offenders of 65 criminal cases, such as threat and violence in connection with conflicts between neighbours, ex-partners or pupils took part in the pilot. 48 of the offenders and 30 of the victims were willing to take part in a mediation. In two thirds of the 26 mediation cases resulting from these preliminaries agreements concerning the resolution of the conflict caused by the crime were reached. Consequently in 70% of the cases the offender was not sentenced by the court. The pilot was too small to make far reaching conclusions. However, the participating judges, public prosecutors, lawyers and mediators viewed the pilot positively. Public prosecutors and judges took the results of the mediation into account in their decisions. They are convinced that mediation can have a stronger impact on the offender than a penalty.⁹⁹

In consequence the decision was taken to continue the experiments also at other courts in order to get better insights and more experience.¹⁰⁰ These mediation in criminal cases pilots have two purposes: Making victims feel less insecure and keeping offenders from recidivism.

6. Dutch Restorative Justice for juveniles

6. 1 Introduction

⁹⁶ Verduyn 2007, Schuld en boete, p. 10.

⁹⁷ Victim in Focus 2013, Annual Report 2012, p. 12.

⁹⁸ Sagel-Grande 2013, The Amsterdam pilot, in Restorative Justice: towards a new European Perspective, Athens-Thessaloniki: Sakkoulas Publications.

⁹⁹ Nederlands Juristenblad of 24 February 2012.

¹⁰⁰ Scheltema, www.advocatenblad.nl

Besides the already described victim-offender contacts for adults and juveniles and the courses in prison with restorative justice aims, the following means for juveniles are in use that also have Restorative justice characteristics:

- 1) At the police level, the project HALT and
- 2) in connection with aftercare, the programme of Bureau MHR¹⁰¹ (Community Restoration and Rehabilitation).

Furthermore there were also several pilot projects tested.¹⁰² Some other small programmes are in use.¹⁰³

6. 2 The HALT project

HALT- an abbreviation for 'the alternative'- projects are co-operation projects of municipalities, the police and the PP. They aim at preventing and repressing in the first place vandalism but also some other offences by an out of court direct settlement for minors who got in contact with the police. In 2010 juveniles who committed the following offences could principally take part in a HALT project: Vandalism, offences against public order, property crime, rowdiness, firework offences and play truant. 35% of the cases referred to HALT were property crime, 23% firework offences and 19% vandalism. In cases of more serious offences a referral to HALT is only possible with the allowance of the public prosecutor.

The first HALT-projects started already in 1981 in Rotterdam. Meanwhile HALT was nationwide introduced. It is regulated in Article 77e Criminal Code for juveniles aged 12-18 years.¹⁰⁴ The HALT projects are organized and realized by the non profit organisation HALT Netherlands that was founded in 1994 and is subsidized by the Ministry of Security and Justice and the municipalities.

According to Article 77e CC the police officer, empowered by the public prosecutor, can propose a juvenile delinquent to participate in a HALT project in order to prevent prosecution. The juvenile is not obliged to accept this proposal.

As quickly as possible after the juvenile was arrested he/she has to restore what he/she had damaged, broken or polluted etc. and to compensate possible further damages. The reaction is a pedagogically well-founded alternative for the normal reactions the criminal justice system uses for juveniles and can be understood as an *avant la lettre* practicing of Braithwaite's concept¹⁰⁵ of re-integrative shaming.

¹⁰¹ Maatschappelijk Herstel en Rehabilitatie.

¹⁰² For the evaluation of the pilot projects see: Steketee et al. 2006, *Herstelbemiddeling voor jeugdigen in Nederland*.

¹⁰³ For example the project "Restorative Justice" (Herstellend recht) at the Safety house in Tilburg.

¹⁰⁴ Art. 77a Criminal Code/NL.

¹⁰⁵ Braithwaite 1989, *Crime, Shame and Reintegration*.

Since 2010 HALT works with a new method¹⁰⁶ that stresses, next to the original programme subjects, apologises, the participation of the parents and offence- and behaviour related learning projects. The apologies can consist of a letter, a face to face excuse and or a report.

In more serious cases also a working project can be part of the HALT reaction. The updated HALT settlement exists of an opening conversation, a continuing conversation and a final conversation and lasts at least six en not longer than 20 hours. Next to this regular HALT settlement a short version is in use lasting at least two and maximally six hours. It exists of an opening conversation, a final conversation and a learning project.

By letter of 23 May 2013 the State Secretary of the Ministry of Security and Justice informed the parliament about the results of the process evaluation on the new HALT and about the appointments that are necessary to make with HALT, under which that apologies at the address of the victim must be done in all cases eligible.¹⁰⁷

When HALT informs the police officer that the juvenile fulfilled his/her tasks sufficiently and the police officer is convinced that the project ended successfully, he informs the public prosecutor and the offender in written. The public prosecutor then dismisses the case, the right to prosecute ends and the juvenile does not get a criminal record.

The main aim of the HALT project is to prevent recidivism. Furthermore the project tries to strengthen the law, to improve the juvenile's behaviour and to initiate the victim's compensation and satisfaction.

First analyses of the effect of HALT concerning the prevention of recidivism in 1990 were rather positive,¹⁰⁸ later research, however, resulted for so far in doubts.¹⁰⁹

Quantitatively, HALT is rather important. Since 2005 HALT receives yearly between 18.000 and 23.300 cases. Since 2008 this number was decreasing. In 2011 according to the Annual Report Halt Nederland there were 1.603 referrals.¹¹⁰ In 2012 the number of referrals was 17.606,¹¹¹ the first increase since 2008.

6. 3 The programme of bureau MHR¹¹²

¹⁰⁶ Abraham, Buysse 2013, HALT vernieuwd, p. 3.

¹⁰⁷ Parliamentary documents (Kamerstukken) II, 2012/13, 28 741, nr. 22.

¹⁰⁸ Kruissink, Verwers 1993.

¹⁰⁹ Ferwerda et al. 2006.

¹¹⁰ HALT 2012, Annual Report 2011, p. 12.

¹¹¹ Volkskrant (daily newspaper) of 16 April 2013.

¹¹² Bureau Maatschappelijk Herstel en Rehabilitatie (Bureau Community Restoration and Rehabilitation)

The Foundation Community Restoration and Rehabilitation (MHR) was founded in 2008. It has a Dutch-Moroccan background itself and therefore the families of the Dutch-Moroccan juveniles do trust the members of the Foundation more easily than those of other organisations. Bureau MHR is cooperating with several other instances, for example the Child Welfare Council, youth welfare, health organisations, the district council, police Haaglanden (that is the district where it is operating) and Parnassia (a mental health care organisation). Only juveniles aged 17 to 27 years of age, mainly first-offenders, with a Dutch- Moroccan cultural background in the region Haaglanden can participate in the programme.

Yearly there are 15 – 20 families guided by Bureau MHR. The aim of the programme is to improve the life of the juvenile and his/her family. The pedagogical programme tries to create a better relationship between the parents and their children. The mother is designated to be the key-figure of the family. She is trained and instructed. One tries to empower the mothers in order to strengthen their position as educator so that they are better able to receive their sons or daughters when they return home from prison. It is seen as most important that juveniles, coming home, are not punished another time for the same crime they were already sentenced for as this repeated punishing strengthens the isolation of the juvenile and can easily cause recidivism.

Accompanying the juvenile, much attention is paid to the crime committed and the victim. The aim is that the juvenile develops the wish to apologize and compensate the damages he/she caused. When the juvenile succeeds in developing these thoughts and feelings one tries to find the victim with the help of *Victim Aid Netherlands* in order to be able to organise a restorative conference. In 2010 six of these conferences took place.¹¹³

Furthermore there is a programme with the name *Forsa* run for Non-western detainees up to 27 years of age. The detained allochthones that are participating in the programme are regularly visited already during their detention. A rehabilitation plan is worked out and the Forsa participants are guided until one year after they left prison. Persons with a non-western background who enjoy the adolescent's trust support the juveniles and try to restore the family relationship in order to reduce recidivism.¹¹⁴

D. Key-Practitioners

In the Netherlands key-practitioners in the field of Restorative Justice generally are cooperating in the *Foundation Restorative Justice Netherlands* (RJN). This charity works

¹¹³ Van Hoek, Slump 2011, Inventarisatie herstelrechtelijke projecten, p. 42.

¹¹⁴ www.mhr-r.com

within a network of several organisations, policy makers, scientists, practitioners and citizens interested in Restorative Justice. RJN aims at promoting the application of Restorative Justice practices not only in private law matters, but also in the criminal justice system, including aftercare. Furthermore RJN aims at improving the exchange of information, at developing theories on Restorative Justice, at stimulating the cooperation between academic research and the work of practitioners, at participating in training and organising seminars in order to become a centre of expertise and innovation. The organisation was initiator of the *Restorative Justice Wiki* and co-founder of *Restorative Justice for All*.¹¹⁵

In 2011 RJN has published a vision paper about the future of Restorative Justice in the Netherlands.¹¹⁶

The *Dutch Mediation Institute* (NMI)¹¹⁷ is a private, independent organisation operating since 1995 as a national centre for mediation in the Netherlands. According to the organisation itself its strict independence is something unique in Europe.¹¹⁸

The NMI provides a platform for multilateral consultation about mediation, a reliable, nationally applied infrastructure by uniform mediation rules and models, an independent quality framework in the shape of accreditation and registration of mediators, rules of conduct, a complaints procedure and independent disciplinary rules and a quality assurance system in conformity with the uniform European Standard EN 45013.¹¹⁹

*Victim Aid Netherlands*¹²⁰ (SHN) is partner of the organisation *Victim Support Europe*. It has about 75 bureaus in six regions of the Netherlands with 350 employees, about 1.300 volunteers and 70 trainees. It offers free practical, juridical and emotional help to victims, surviving relatives, witnesses and persons concerned, not only in cases of crime but also in connexion with traffic accidents and catastrophes. In 2012 ca. 150.000 victims and other concerned persons were helped by SHN. About 80% of these clients came to SHN via the police, that is reporting all victims, except those who don't agree, to SHN. Some victims apply by themselves for help.

Key-practitioners in the area of victim-offender contacts are the employees of *Victim in Focus* who prepare, organise and implement the victim-offender contacts and meetings, after the victim reported the offence to the police and the police had referred the victim to *Victim Aid Netherlands* from where the victim, willing to participate in a victim-offender contact, is

¹¹⁵ www.restorativejustice.nl

¹¹⁶ Van Hoek, Slump, Ochtman, Leijten 2011, De toepassing van herstelrecht in Nederland.

¹¹⁷ Nederlands Mediation Instituut (NMI).

¹¹⁸ www.nmi-mediation.nl/english/about_nmi.php

¹¹⁹ www.nmi-mediation.nl/english/about_nmi.php There you also find the NMI professional profile of a mediator.:

¹²⁰ Slachtofferhulp Nederland.

referred to *Victim in Focus*. The foundation *Victim in Focus* was established in 1990 by *Victim Aid Netherlands* and the *Child Welfare Council*. It is a sister organisation of *Victim Aid Netherlands*. There are 35 professional mediators working at *Victim in Focus*.

Furthermore the meaning of the *Eigen Kracht* (Family Group/Real Justice) conferences is increasing and Probation Services are also key organisations in Restorative Justice practices.

In the framework of the principle of expediency (Article 167 CCP) public prosecutors have the possibility to wave further prosecution "for reasons of public interest". In connection with these decisions victim-offender contacts and meetings resulting in compensation of damages, apologies, personal meetings etc. can influence the public prosecutor's decision. Furthermore restorative means of all kinds, compensation by helping, visits in hospital, writing of letters, explaining the backgrounds of the crime, obvious changing of behaviour etc. can make the public prosecutor decide to settle a case under conditions by means of transaction or prosecutor fine.

In the framework of the criminal justice system judges have the possibility to make use of restorative means in connexion with their sentences, especially when choosing conditional sentences, Article 14 sub 5 Penal Code. Since the introduction of Article 51h CCP, public prosecutors and judges are involved a bit more directly in Restorative Justice.¹²¹

Lawyers, in adequate cases, inform their clients about the facts that public prosecutors can possibly wave the case and that a victim-offender meeting could have a positive influence of the offender's position in the proceedings. There are also individual mediators offering their services to offenders and to victims who are interested in a victim-offender meeting.

E. Case Study with Emphasis on Emotions¹²²

1. Introduction

As described above, at present Restorative Justice in the Netherlands mainly takes place outside the criminal justice system. Criminal law is part of public law in which the relationship and the reciprocal rights and duties of the state and his citizens is regulated. Only a state official, the public prosecutor, is empowered to decide on prosecution. Mediation is based on the civil right of citizens to come to agreements with other citizens. This freedom ends, where the state is empowered to decide exclusively as on criminal cases. Thus, in cases of crime, with the exception of offences requiring an application for

¹²¹ See above B.

¹²² Stemmler 2009.

prosecution, victim and offender for so far do not have the right to decide in law about the crimes one citizen committed and another suffered. However, crimes are not only the cause for a juridical conflict, but just as much a (socio)psychological conflict between victim and offender.¹²³ The last regularly cannot be solved sufficiently during the formal criminal proceedings in which victim and offender are restricted by procedural regulations and juridical, not psychological points of view are decisive. A mediation can be helpful, as it can offer the directly involved individuals the chance to find themselves, assisted by a mediator, answers to still open questions in a formless process. During the informal meeting the participants should feel comfortable. There should be coffee while one is sitting, all together, commonly dressed at one big table talking in "common" language. At court, the situation is totally different: formal, stiff, a language, one cannot easily understand. The jurists in their robes sit far away from the suspect and the victim and behave standoffishly.

During a mediation sitting the parties may express their emotions almost without restrictions and their emotions get full attention by all attendants. There is enough time for the participants to tell everything each individual wants to tell and to ask everything he/she needs in order to be able to understand what happened during the crime and to be able to cope mentally and emotionally with the experiences. Already during the intake the participants are confronted with their emotions, their feelings of revenge, anxiousness, insecurity, grief, shame and guilt.¹²⁴

Here we have to commemorate the fact that psychological knowledge of emotions until now is not far developed and still on a rather initial stage as for about 50 years, until about 1970, there was little interest in this subject.¹²⁵ For mediators the development of this part of psychology is of great importance.

Mediators know that victims and offenders often cannot easily talk about the crime and the emotions that were caused by it.¹²⁶ There are more anger and fits of emotion in criminal law matters than in civil mediation and it is necessary that these emotions can be talked about in detail. The mediator should try to prevent that anger is turning into aggression, something that can easily happen if the victims or the mediators keep on blaming the offender for what he did. Revenge is a normal emotion and should be talked about in extenso as revengefulness is the consequence of the trust the victim lost when being victimized. Fright and insecurity do relatively often decrease after a victim-offender meeting as it offers the victim the possibility to recognize that the offender is not thus tall, big, ugly, aggressive etc.

¹²³ Lösel, Bliesener 1999, pp. 61-78; Bilsky 1999, pp. 45-59.

¹²⁴ Dierx, Van Hoek 2012, p. 282.

¹²⁵ Benesch 2002, p. 222.

¹²⁶ Dierx, Van Hoek 2012, p. 283.

as he/she seemed to be during the crime. In many cases the offender has deep feelings of insecurity and anxiousness himself too, while being recognized as offender and confronted again with his/her crime.¹²⁷ Victims who notice that, not only exceptionally, feel pity, compassion or mercy for the offender.

In the framework of criminal law there generally is only little attention for emotions. **Guilt** is an *abstract juridical concept* developed to decide whether a person is responsible for an act he/she committed or omitted.¹²⁸ Guilt and shame *in psychological sense* are much more complex and the reason for strong emotions such as regret, deep sorrow, the need to compensate and the recognition how dreadfully immorally, really bad one behaved.¹²⁹

2. A short report from practice:¹³⁰

Restorative oriented approach of guilt and shame

Some months ago I met a detainee, remanded in custody because of robbery with violence. Obviously the man suffered under his sense of guilt. He told me that he had a terrible aversion to himself and even no longer suffered to see his own face in the mirror.

Trying to apology he wrote a letter.

In the period before the trial he wrote a letter to his victim, trying to make amends for his wrongdoing. Finally this led to a correspondence that meant much for both parties, notwithstanding the fact that the victim was not willing to cooperate in a restorative meeting.

During the trial, in which the victim was also present, a rather heavy sentence was demanded against which the defence counsel objected. In this moment the offender rose and said to his lawyer: "Now keep quiet, for now I want to tell something myself." He told the judge that he did not want at all to get a lighter sentence because he thought that he had deserved this sanction. He told about his correspondence with the victim and how much this had meant to him. When I met him later, he said to me: "In this moment, when I stood there, I really felt a man."

Later the victim stated that she was impressed by what the offender said at the court sitting.

This is one example of many that makes obvious that interactions between victim and offender whether they exist in a meeting, a correspondence, a single letter or a short notice from the one to the other are able to stir up interests and commotions, to lead to better

¹²⁷ Dierx, Van Hoek 2012, p. 285.

¹²⁸ Jescheck 1969, pp. 327 and following;

¹²⁹ Benesch 2002, pp. 222-237; Göppinger 1971, pp. 163 and following, Dierx, Van Hoek 2012, p. 285.

¹³⁰ Jansen-Van Driel 2004, p. 60; also cited by Dierx, Van Hoek 2012, p. 287.

insights and to cause changes in behaviour. Something like that can also happen during a court sitting, as we have just heard, but during a mediation the interchanges are more direct and therefore more intense. Compared with criminal proceedings the important surplus value of mediation in criminal cases is that the voluntarily participating conflict parties can find together solutions for their emotional conflicts in an open setting in which emotions play a main part and finally often come to peace.

F. Evaluation and Recommendations

The interest in Restorative Justice is growing in The Netherlands. It can be expected that the legislator will take a decision soon on where and how it should be introduced or better implemented.

The strength of mediation in criminal matters as in mediation in general lies in the direct participation of citizens who meet on eye level, in a pleasant, informal, open atmosphere to search together with a mediator for a conflict resolution regarding the factual, social and psychological aspects of their conflict not being restricted by formalities and timings as in criminal proceedings. As much as detailed material and formal legal regulations belong to a law suit, as little they fit with the character of good mediation. Therefore regulations on mediation should be minimal and refrain from patronizing, guarantee and protect the rights and freedoms of the mediation parties and provide means that the agreements met during mediation are complied with. The stronger mediation is linked with criminal proceedings the bigger is the risk that it is losing its strength and vitality which are based on the contribution of modern emancipated citizens, ready to take responsibility and to decide in their own matters. Crime falls in the sphere of jurisdiction and all participants of mediation are naturally rather aware of this fact. This awareness is hardly influenced whether Restorative Justice is a part of the criminal justice system or in use additionally as long as mediation is not practiced after the judgement. Therefore it is necessary to prevent that mediation is misused for a deal by one or both of the parties, trying to profit before the background of the coming up proceedings. Neither victims should try to use the situation of the accused to get relatively more compensation, nor should the accused use the mediation just to get a shorter or lower sentence. The experiences made with automatic early release of prisoners after a certain period of detention made obvious that regulations of this kind are not effective. Thus the sum *positive mediation = no prosecution or less sanctions* should not become the rule.

The real profit of mediation for the parties who succeed in solving their case should lie in the following: For the victim the profit should be the diminishing of the trauma, of the feelings of

insecurity, anxiety and anger and for the offender it should be the getting better over the feelings of shame, sorrow and disappointment, the aversion against his or her own person and possibly even in deciding to try keeping from reoffending. In these possible profits we also find the real surplus in relation to criminal proceedings. First research results¹³¹ show that mediation might have these positive effects which would be also advantageous for society.

¹³¹ Victim in Focus, Short report on Bolivar, D. et al. (2013) "Het belang van institutionele context: Slachtofferervaringen met bemiddeling vergeleken", Tijdschrift voor herstelrecht (2), an international comparative research project commissioned by the European Forum for Restorative Justice under victims who participated in restorative justice means in Austria (RJ instead of criminal proceedings), Finland (both, instead of and next to criminal proceedings) and the Netherlands (next to criminal proceedings). The Dutch respondents preferred the model RJ next to criminal proceedings and were rather positive about their contacts with Victim in Focus and the most content in comparison with the respondents in the other two countries. www.slachtofferinbeeld.nl A full report about this research is in print.

Dierx, Van Hoek 2012, p. 296.

G. Bibliography

Abraham, M., W. Buysse (2013), *HALT vernieuwd, Procesevaluatie van de vernieuwde HALT-afdoening*. Amsterdam: DSP.

Bilsky, W. (1999), "Conflict management. Some considerations from a psychological perspective". In I. Sagel-Grande, M.V. Polak (Eds.), *Models of conflict resolution*. Leiden: Meijers Instituut, Antwerpen: Maklu, pp. 45-59.

Braithwaite, J. (1989) *Crime Shame and Reintegration*. Cambridge etc.: Cambridge University Press.

Burik, A. van, M. Heim, C. Hoogeveen, B. J. de Jong, G. J. Slump, B. Vogelvang (2010), *Evaluatie slachtoffer-dader gesprekken, een onderzoek naar de landelijke implementatie van slachtoffer-dadergesprekken*. Woerden: Adviesbureau Van Montfoort, WODC

Dierx, J., A. van Hoek (2012), *Mediation in strafzaken. De praktische toepassing van Restorative justice en herstelrecht*. Den Haag: sdu uitgevers

Eurelings-Bontekoe, E.H.M., P.P. Goudena 2001, "The Role of Conflict Resolution in Children's Development: Implications for Later Life". In I. Sagel-Grande (Ed.), *In the best interest of the child*. Leiden, E.M. Meijers Instituut, Amsterdam: Rozenberg Publishers, pp. 37-47.

Ferwerda, H. B. et al.(2006), *Halt, Het Alternatief?* Meppel/Den Haag: Boom, Beke, WODC, Onderzoek en Beleid 244.

Göppinger, H. (1971), *Kriminologie*. München: C.H.Beck, pp. 163 and following.

Groenhuijsen, M. S. (2000), "Mediation in het strafrecht. Bemiddeling en conflictoplossing in vele gedaanten." *Delikt en Delinkwent* 30 (5) pp. 441-448.

Groenhuijsen, M. S. (2001), "Hervorming van het strafproces met het oog op de belangen van het slachtoffer: "We ain't seen nothing yet." *Delikt en Delinkwent* 31 (9), pp. 645-653.

Groenhuijsen, M. S. (2010), "Herstelrecht in Nederland: een slachtofferperspectief". *Tijdschrift voor herstelrecht*, 10 (4), pp. 53-62.

Hoek, A. van, G. J. Slump (2011), *De toepassing van herstelrecht in Nederland: bouwstenen voor een toekomstvisie*. Amsterdam: Stichting Restorative Justice Nederland.

Hoek, A. van, G. J. Slump (2011), *Inventarisatie herstelrechtelijke projecten en activiteiten in Nederland vanaf 1980 tot heden en buitenlandse voorbeelden*. Amsterdam: Stichting Restorative Justice Nederland.

Hoek, A. van, G. J. Slump, A. Ochtman, M. Leijten (2011), *De toepassing van herstelrecht in Nederland: Toekomstvisie en advies*. Amsterdam: Stichting Restorative Justice Nederland.

Ingelse, P. (1991), "Dading in plaats van strafrecht", *Nederlands Juristenblad*, 66 (24) pp. 963-967.

Jansen, M., S. Hissel, G. Homburg (2008), *Plan- en procesevaluatie herstelgerichte detentie PI Nieuwegein*. Amsterdam: WODC, Regioplan Beleidsonderzoek.

Jansen-van Driel, J. (2004), *Herstel en Detentie*, undergraduate thesis.

Jescheck, H.-H. (1977), *Lehrbuch des Strafrechts, Allgemeiner Teil*, 3. Auflage, Berlin: Duncker & Humblot, pp. 326 – 383.

Koolen, I., N. v.d. Heide, A. Ziegelaar (2005), *De tevredenheid van slachtoffers van misdrijven met de slachtofferzorg*. Leiden, Den Haag: WODC and Research voor Beleid.

Kruissink, M., C. Verwers (1989), *HALT: een alternatieve aanpak van vandalisme. Eindrapport van een evaluatieonderzoek naar Halt-projecten*. Arnhem: GoudaQuint.

Lösel, F., Th. Bliesener, "Aggressive conflict behaviour and social information processing in juveniles". In I. Sagel-Grande, M.V. Polak (Eds.), *Models of conflict resolution*. Leiden: Meijers Instituut, Antwerpen: Maklu, pp. 61-78.

Sagel-Grande, I. (2001), "Conflict resolution by and for children and young people". In I. Sagel-Grande (Ed.), *In the best interest of the child*. Leiden: E.M. Meyers Instituut, Amsterdam: Rozenberg Publishers, pp. 1-6.

Sagel-Grande, I. (2011), "Jugendliche und Heranwachsende im niederländischen Strafrecht", *Bewährungshilfe*, 58 (3), pp. 232-252.

Schuurman, M., C. Mulder (2012), *Besparingen door Eigen Kracht-Conferenties in de Stad regio Amsterdam*, Kalliope Consult, Nieuwegein, Antropol/ Ermelo.

Slachtoffer in Beeld (Victim in Focus) (2012), *Jaarverslag 2011*.

Slachtoffer in Beeld (Victim in Focus) (2013), *Jaarverslag 2012*.

Steketee, M. et al. (2006), *Herstelbemiddeling voor jeugdigen in Nederland. Een evaluatieonderzoek naar zes pilot projecten*. Utrecht: Verwey-Jonker Instituut.

Stemmler, G. (Ed.) (2009), *Psychologie der Emotionen*, 2. Auflage, Stuttgart: Kohlhammer.

Stokkom, B. v. (2001), "Herstelbemiddeling en de organisatie van schaamte. Werken aan emoties." In: H. Boutellier et al. (ed.), *De straf voorbij. Morele praktijken rond het strafrecht*, pp. 74-87.

Tak, P. J. P. (2011/2013), "Mediation in strafzaken. Een verkennend rechtsvergelijkend onderzoek naar de wettelijke regeling en de toepassing van mediation in strafzaken in Duitsland, Oostenrijk en Frankrijk." Nijmegen: Report for the Department of Public Prosecution and Radboud University, Series *Staat en Recht* no.13.

Verduyn, M. (2007), "Schuld en boete", *Justitie Magazine* no, 7.

Wemmers, J. M. , T. van Hecke (1992), *Strafrechtelijke Dading*. Den Haag: WODC, K-reeks 23.

Weijers, I. (2012), *Het slachtoffer-dader gesprek als volwaardige mediation*.
www.idoweijers.nl

Zebel, S., M. Elbersen, S. van Ruiten (2010), *De juridische dienstverlening: een goed moment?* Slachtoffer in Beeld.

H. Links to Legislation and Relevant Restorative Justice websites

Community Restoration and Rehabilitation: www.mhr-r.com

Department of Public Prosecution: www.om.nl

Dutch Mediation Institute: www.nmi-mediation.nl

Dutch Research and Documentation Centre of the Ministry of Security and Justice:
www.wodc.nl

Family Group/Real Justice conferences: www.eigen-kracht.nl

Legislation: www.rijksoverheid.nl

Probation Service: www.reclassering.nl

Restorative Justice Netherlands: www.restorativejustice.nl

Restorative Justice and detention: www.herstelgerichte-detentie.nl

Victim Aid Netherlands: www.slachtofferhulp.nl

Victim in Focus: www.slachtofferinbeeld.nl