

FROM 'SLOW TO GO'

Restorative Justice Initiatives for Juveniles in The Netherlands

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Introduction

Restorative practices have grown in the Netherlands in the last ten years, but it is too early to be really optimistic about its adoption. The European Union (EU) Framework decision on the standing of Victims in Criminal Proceedings (2001) and project evaluations have led to a policy decision in 2007 that all victims of a criminal offence should get an offer of victim-offender 'conversation'. Many other restorative justice initiatives that have been started have not been continued or have to find financial means by themselves. The government is still reluctant to adopt successful projects and experiments, for example those using restorative justice in youth detention centres or at the level of the public prosecutors. There are some promising developments, but the pace of these developments is rather slow, and the impact on the juvenile justice system is still low. This is especially in comparison with neighboring countries such as Belgium and Germany, but also from a global perspective.

In this presentation I will give an overview of recent developments in the Netherlands with restorative justice practices for juveniles and evaluations & research undertaken. I will focus on the question where we stand, on the current political and policy context related to juvenile justice, on evaluation results, and on some suggestions for the future.

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1. Juvenile Justice system & youth offending

The Netherlands counts 16 million people and about 4,8 million children & youngsters under 18.

Since the beginning of the last century views on children changed and with the developing concept of children's rights children are more and more viewed as a subject of their own rights', which also goes with responsibilities. The Netherlands have a separate juvenile justice system since 1905. This is laid down in special sections on juveniles (age 12-18) in the Dutch penal code. The age of criminal responsibility is 12. Important changes were made in 1995 when alternative sanctions such as Halt were formalized within the law. At the same time the maximum length of imprisonment sentences for children was increased to a maximum of 12 months for those aged between 12 and 16 and 24 months for 16 and 17 year olds. Prevention and pedagogical objectives are the key features of the Dutch juvenile justice system.

Contrary to what is often said or shown in the media the overall figures of youth delinquency have not really increased over the last decennia. There are however indications that more violence is involved, and that group delinquency needs more attention.

2. Political climate

The current political climate in the Netherlands can be described as rather punitive. Politicians sometimes have unrealistic expectations and overestimate the possible effects juvenile criminal law can have. There is also a neglect of the negative consequences it has on children and young people. A strong focus on security is very common these days. Here we see an individualistic approach, whereby often a community sense is lacking. This results in more focus on repression instead of prevention. The media plays also a role in giving lots of attention to severe incidents, but almost none to effective projects with young people.

The Netherlands was often a pioneer when it comes to alternative sanctions, especially with the introduction of working & learning schemes, but on the European level the Netherlands is now among the repressive countries. The number of locked up children is still growing. It can be

questioned if this is still in line with the international standards and the pedagogical principles that form the basis of the juvenile justice system.

The main focus of the youth sanction policy of the last years is on effective methods, which are based on 'What works' principles. This implies in summary that the focus is more on the offender and less on the offence, whereas the intervention is based on the factors that lead to the criminal behaviour. A risk of this approach which focuses on the offender- which is from a scientific point of view legitimate and sensible - is that the perspective of the victim might be neglected. Another problem is that a lot of emphasis is put on recidivism, while other factors such as learning of your own mistakes and empathy can be as important.

At the same time there are still openings for change and active politicians and researchers are lobbying for improvement. Diversion and restorative justice are part of this movement. Also at the local level many initiatives have been started (as can be seen below).

3. Restorative justice developments

Overall victims have been given more rights in the Netherlands in the last few decades. Restorative Justice practices such as Victim Offender Mediation (VOM) and conferencing are slowly more visible in the Netherlands. This happens mainly in a bottom up approach since many initiatives and pilots with VOM and conferencing have started locally.

Real Justice initiators in the Netherlands have been very active since the nineties. They introduced the Real Justice method based on the American example with roots in Australia. Currently they are especially successful in the field of youth care, with an active 'Eigen Kracht Centrale', where the focus lays on peoples' own power. Another growing form of conferencing are the large community conferences that they organize when incidents locally result in large groups who are unhappy. Skaters in the village Urk were creating trouble and annoyance. With a large conference, including, youngsters, community members and politicians they managed to talk with each other in a respectful environment. In the ideal situation this makes that people make each other 'inclusive'. (www.eigenkracht.nl)

Mediation does grow in the neighborhoods, in schools, in offices and in the family, but RJ in criminal cases stays behind. We have the recent introduction of VOM by Victim Care, but this is in principle outside the penal procedure. There is progression and expansion, but it does not go easily. Restorative Justice initiatives in detention operate locally. Evaluations of an earlier project in several youth detention centres called 'Herstelopvoeding' (meaning restorative education by several sessions on consequences of criminal behaviour, taking responsibility and if suitable working towards restoration in their own case) where not considered satisfactory. The question is whether these kinds of experiments which show positive satisfaction rates should not get more time to prove themselves. One of the problems is that all these new interventions are strongly focused on recidivism rates and on evidence based criteria.

The impact of the international standards on mediation and RJ in the Netherlands is still rather low, although the UN Convention on the Rights of the Child (CRC, 1989) is now after 20 years a serious starting- and check point, also for politicians. The main international conventions and guidelines that set standards on Restorative Justice for youngsters such as the CRC, the 1999 Council of Europe Recommendation No. R (99) 19 concerning Mediation in Penal Matters, the 2001 EU Council Framework Decision on the standing of Victims in Criminal Proceedings and 2002 UN Basic Principles on the Use of RJ Programmes in Criminal Matters give a framework on how to deal with juvenile justice and to stimulate the use of RJ. The standards guide in short towards: diversion, detention as a measure of last resort, and alternatives such as RJ. More should be done with mediation in penal cases and decisions should be made on the possible impact of RJ outcomes in the penal procedure. The recent victim-offender 'conversations' organized by SiB (Victim in the Picture) where partly a decision under pressure of the EU Framework Decision. They fill a gap, but they are explicitly not influencing the criminal procedure. It can be questioned if that is in line with the EU decision, since mediation in the frame work decision is directed to impact on the penal procedure.

4. Restorative justice projects for youth - A short overview of current projects and experiments:

Victim in the Picture

After evaluations of restorative mediation projects the Minister of Justice has decided to continue victim-offender conversations. The responsible organisation is 'Slachtoffer In Beeld/SiB (Victim in the Picture), an independent institution linked to Victim Care. The Ministry has decided

to do so with the idea that expertise, practical rules and quality would be all in one place. They mentioned that the research showed that victims are satisfied about a conversation with the offender. It adds to the healing process after the offence, because victims see a face of the offender and with that they can close the case. The possibility to fulfil a restorative procedure with young offenders, which can eventually lead to a conversation was seen as a desirable addition to the existing possibilities to react on youth offending. Not only victims of criminal offences can get an offer, but also young offenders. After advice of the Child Protection Board and discussion in a meeting with the judge, public prosecutor and the police ('Justitieel Casus Overleg' (JCO)) the public prosecutor can refer offenders to SIB for a conversation. In 2007 a little more than 400 cases were dealt with, in 2008 approx. 1000 cases and in 2009 numbers are increasing further.

How a victim offender conversation works:

It follows from application to execution in principle a protocol led procedure. After advice of the youth protection board and discussion in the 'Justitieel Casus Overleg (JCO)', the public prosecutor refers the young offender to Victim in the Picture (SiB) to come to a victim offender mediation. Requests by the justice partners are dealt with by Victim Care.

A victim-offender conversation always takes place under supervision of a professional mediator working for Victim in the Picture. The mediator is independent and talks to both the victim as well as the offender about wishes and forms they would want to contact and/or meet each other. If the request is received, the mediator first will try to contact the youth care/social worker involved of both victim and offender.

There are different ways of contact possible between victim and offender. The actual victim-offender mediation is a one time event, a face to face conversation between victim and offender facilitated by a mediator. People in the social networks of both parties can attend as observers. The possibility remains to choose for a Real Justice conference, whereby family and others can fulfil an active role. Further on mediation whereby the mediator brings messages back and back and forward without an actual meeting ('pendelbemiddeling') or correspondence (letters, postcards) are possibilities. The mediator discusses the different forms with all parties and makes a choice.

Police

The police have developed local initiatives in different cities or provinces such as Tilburg, Amsterdam and Friesland. Sometimes these initiatives are very successful, but often they are run by one or two active persons. If these key persons move on, initiatives often disappear. Since there is no structural imbedding and finances many are also depending on local money. This results in 'inventing the wheel in many places' and projects disappearing again.

Public Prosecutors

In 2002 a Decision Public Prosecutors 2002 was filed which stated openness for mediation, but it was not accompanied with active policy. Currently there is not much happening at this level, although there are some active prosecutors who are involved in mediation and there is a link with the VOMs with young offenders. The Office in Utrecht has had a specific pilot, but this stopped only after a few months due to lack of funds and no concrete policy from above. In the same province there was active involvement related to projects with RJ in youth detention centre.

Courts

Only recently youth judges seem to get more information about and interest in foreign experiences and information on VOM and conferencing. There still seems to be a lack of knowledge of Restorative Justice theory and practice. On the information and training level there is still 'a world to win'. Experiences in Belgium with family group conferences in more severe cases based on the New Zealand model could be a suitable option for the Dutch context. In other fields it showed that a working visits and the colleague to colleague method (judges talking to judges) are working well, so that is what we are suggesting now.

Halt

Halt is a diversionary measure for juveniles between 12 and 18 years old, who have committed a minor offence with important restorative elements. This Halt arrangement makes juveniles aware of their behaviour and offers them the opportunity to make good the harm they may have inflicted. This is achieved by talks with the youngster and parents, community service or learning assignments and if relevant by apologising to the victim and repairing any damage done. So

Halt is an arrangement which is both victim and offender oriented, it offers juveniles an alternative to a civil or penal law disposal. It also includes compensation for the victim (apologies) or otherwise repair the damage done. It is primarily targeted at vandalism, shoplifting and petty crime.

Schools

There are many initiatives with peer group mediation, but also on this level it is not nationally coordinated. The projects are mainly local.

Youth care

Family Group Conferencing in youth care is expanding as mentioned above.

Detention

In the closed Youth Custodial Institutions one is also looking for ways on how to address issues as shame and guilt and taking responsibility. Experiments with 'Herstelopvoeding': Developing RJ skills for delinquent youth have been carried out in four closed youth facilities, have been carried out. This initiative focused on talking about the offence and taking responsibility. The experiments gave good satisfaction results, but evaluations were considered not positive enough for continuation. The State Secretary has concluded that new research is needed before further projects can be developed. The problem that we see with these evaluations is that they focus very much on recidivism, but less focus on satisfaction rates and the notion that areas in development also need time and energy to develop them in something good.

Currently there is still one active Youth Custodial Institution (Teylingereind in Sassenheim) with VOM and courses whereby the actual offence and shaming and responsibility take a central place. See further details under 6: research & evaluation.

5. Legislative context

The Netherlands has as yet no legal or statutory rules with regard to VOM or conferencing. So far, claims settlement can take place in the context of the Directive for the Care of Victims. HALT has a legal basis in art. 77e Criminal Code and is additionally regulated by the Directive on HALT and by a Decree.

The Board of Procurators-General issued in 2002 a viewpoint articulating a positive attitude towards restorative justice programmes. They are willing to take restorative processes into account during the criminal proceedings if they respond to the requirements of voluntariness (of all participants), transparency (of the procedure) and professionalism (on behalf of the persons in charge of the process). It also states that no guarantees can be given in advance concerning the impact of the restorative process on the criminal justice decisions.

In 2007, a government bill with regard to changes in the Code of Criminal Procedure was accepted by parliament, which provides a new section in the Code on rights and the position of victims. It includes a new paragraph 51h that states that rules can be issued with regard to mediation between suspects and victims. The intention is not to provide for statutory rules, but only for regulation through a ministerial Decree. Currently the law is discussed in the Upper Chamber (Eerste Kamer). The new law is expected to enter into force in the first half of 2010.

6. Research & evaluation

I will describe a few evaluations related to RJ & young people:

Victim offender conversations SiB

This working method is the main method now since 2007, but there are no large evaluation results yet. Currently an evaluation has started on the victim offender conversations (carried out by bureau Van Montfoort). SiB is also undertaking a research by them selves. Some of the results of the research in a youth detention centre mentioned below is also related to work of SiB.

RJ projects for youth before 2007

In 2003 the Ministry of Justice has launched a youth programme called 'Youth before the Law' ('Jeugd terecht'). Even though it stands for action and reaction, there was also room for some initiatives in relation to Restorative Justice methods. Several pilots throughout the country were part of it. By the end of 2006 the Minister of Justice took a decision on whether or not to make Restorative Justice initiatives a country wide reality. First seven projects were evaluated by Hokwerda (Hokwerda 2004), followed by further research on six projects which started at the end of the nineties have been evaluated by the Verwey-Jonker Instituut in 2005/2006 (Steketee et al,

2006) . During a period of a year is looked at the way VOM was working, which results came out and to which extent the form and/or the period within the criminal justice period was influencing the effects measured.

Most projects worked along the Real Justice methodology, using a script, and were imbedded by the police, Halt, the Youth Protection Board or Victim Care. They all focused on youngsters between 12 and 18 who committed a criminal offense. The goal was a meeting between offender and victim and to restore the harm done. Ideally it would stop recidivism and would add to improve the process of recovery. Most projects got the youngsters after referral by the police or the youth protection board. Many of the cases were first discussed in a meeting between public prosecutor, police and youth protection.

They were all an addition to the juvenile justice system, not part of it. The vast majority of the cases were referred while in the stage of the level of the public prosecutor, but not yet put before the judge. Most offenders were between 14 and 17 years old and of different cultural backgrounds. More than half were first offenders. And in many cases offender and victim knew each other. Results showed that in one of three VOMs it came to a face to face meeting between victim and offender. In two of the three they did not succeed to realise a conversation.

Conclusions were that in the VOMs a successful dialogue was created between victim and offender and that both parties agreed to work towards creating restoration. The offender's insight into his own behaviour increased in almost all cases. All parties consider VOM a useful addition to the criminal youth system. Most of the participants were 'relatively' to 'very' happy about the process and the results. All six projects seemed to work well. Some of the critical remarks were: The mediation itself was well protocolised, but there is a lack of clarity about the position it takes in relation to the penal system. That should improve. The responsibility for the fulfillment of the appointments made was put exclusively with the participants themselves. To get a better picture of the position of the victim they concluded it would be important to see if agreements are really met. One could use more alternative forms of RJ. And finally there should be more exchange between the different projects and working methods.

These positive outcomes did not result in continuation. The Minister decided to go for the victim offender conversations as mentioned before. Part of the mediators working for some of the previous projects have been hired by Victim in the Picture, so they still continue similar work in a slightly different setting.

RJ in detention

An evaluation done by the Verwey-Jonker Institute in 2009 shows that the satisfaction rates of the young offenders and staff were very positive about the outcomes of both the VOM as well as the course 'Talking about Guilt'. Working towards taking responsibility and reintegration were important factors in the pedagogical approach of the institution.

There are external VOMs with 'outside victims' (victims of the offence which resulted in the placement of the youngster in the youth detention centre). These are then taken up by SiB and follow the structure as explained for the victim offender conversations. Mostly the victims are invited to come to the closed youth facility for the conversation. There are also 'internal VOMs' organised for internal conflicts from youngsters with a staff member or another pupil at the group. The course 'Talking about Guilt' exists of 6 sessions in a group where the youngsters talk about issues like victims, responsibility, shame and restoration. In the end they can make something for their own victim.

The results show that the restorative approaches do work and fit in the overall vision and attitude of the institution. Satisfaction results are positive. The youngsters talk more freely about their offence and they seem to get more insights in feelings of the victim. Sometimes more information or after care was wished for. Youngsters react enthusiastic and professionals see opportunities in expanding restorative methods within the institution. Restorative justice could well fit in the basis methodology. The researchers recommend continuity and repetition of the programmes, also because of youngsters moving elsewhere or home within several months. The research on recidivism was done on a relatively small scale and did not show significant differences for the experimental and control group, but it was certainly not worse for the experimental group. Meta-studies do show differences in the long run, was mentioned by the research. It was also concluded that recidivism should not be seen as one of the main goals, only as a positive side effect. The main goal can better be the restoration itself and the use of restorative justice as a moral practice, like they emphasise in Belgium. Important for continuation is that the direction of the institution makes RJ as a priority issue and takes it up in the general daily programme.

Halt (the Alternative)

In 2006 an external study was published examining the effects of the Halt arrangement on the rate of re-offending after a positive Halt-arrangement (recidivism), alternative behaviour and the attitudes of these juveniles. The results indicate that juveniles who participated in the Halt programme showed the same pattern of recidivism after one year as juveniles who did not participate in the programme. It also turned out that after six months both groups showed fewer problems as to emotions, behaviour, relationships and attention, which means that the Halt arrangement has no significant influence on behaviour. Furthermore, two thirds of the juveniles indicated that they had learned a lot of the Halt arrangement, especially from the punishment and the talks.

A closer look into the factors that play a role in recidivism indicated that the Halt arrangement is a more appropriate intervention for group offenders who are susceptible to group pressure than for offenders who act on their own. The same applies for first offenders who are aware of the consequences of their behaviour with little or no problems (school, family, peer group). Another outcome was that a restorative element of the Halt arrangement turned out to be successful: juvenile offenders who apologised to the victims tended to commit fewer and/or minor offences.

As a result Halt will strengthen the restorative elements of the Halt arrangement, f.i. more emphasis on making apologies to victims (face to face) and strengthening the network of the juvenile offender (parents). Furthermore, Halt is dedicated to encourage forms of restorative justice practices within the criminal justice system, especially for youth, also for serious offences. Halt is actively involved in Real Justice conferences and introducing and facilitating peer mediation in schools.

6. Conclusion

On the basis of the principles of the CRC and the additional UN principles governments have the obligation to create positive and safe situations for children and young people to grow up in order to prevent them from making serious mistakes and/or criminal behaviour. The moment they do so the governments also have to react in an adjustable and pedagogical way¹. The Dutch criminal justice system is mainly a pedagogical system which started about 100 years ago. In recent years reactions to crime have become more harsh towards young people. At the same time there is still emphasis on alternatives for imprisonment, such as the Halt arrangement, community service and learning schemes and new forms of restorative justice.

Restorative justice offers an opportunity for both the young offender and the victim as well as the community to reach an acceptable solution in case of a conflict or a criminal offence. Especially for young people the understanding of the caused harm is so important. They can and should learn from their own mistakes. Evaluations show that restorative justice meetings have high satisfaction rates and meta-studies show they result in less recidivism. For the victims it offers at the same time an opportunity to diminish feelings of revenge and to leave the matter behind.

The Dutch government is slowly recognizing the possibilities of restorative justice initiatives, which resulted at least in the introduction of victim-offender conversations organised by Victim in the Picture. Looking at the international rules and especially the EU framework decision we are obliged to do so. Municipalities can play a stimulating role. Implementation, research and evaluation are needed and as well as financial support. Positive steps and/or opportunities for more restorative justice involvement in Dutch criminal youth cases lay for example in the obligation of article 10 of the EU framework decision encouraging countries to promote mediation in criminal cases and to ensure that an agreement can be taken into account. Strengthening restorative elements of the Halt approach as mentioned above are also positive steps. The New 'directive victim care' arranges that at police level compensation for harm done by an offence should be possible. Sometimes this happens at local level by means of a mediation. This method could be broadened. We see continuation and expansion of victim-offender conversations by Victim in the Picture. Another positive fact is that there is (slowly) internal support within criminal authorities. There are some active police and justice people, again this leans too much on individuals. The search for effective sanctions could be broadened to restorative justice more. It works inspiring to look at the increase of (informal) restorative approaches at other levels in neighborhoods, schools etc. Further on one should look for expertise of academics and NGOs. The statement of principles

¹ Article 37 and 40 CRC, in relation to the main principles laid down in the articles: 2, 3, 6 and 12.

by a national platform on mediation in penal matters, existing of researchers and practitioners involved or with an interest in restorative justice are a well thought through example.² Thus what is happening in the field of restorative justice for juveniles in the Netherlands is encouraging but it is not sufficient. Especially in more severe cases I see an additional task for restorative justice methods such as conferencing. The method of family group conferences in New Zealand, whereby the juvenile judge is referring youngsters to such a session, is an example which the Netherlands should at least experiment with. We can seriously learn from the hergo (herstelgericht groepsoverleg) model in Belgium which is inspired by the New Zealand model. There is information and expertise available, but with some extra study, information exchange and political will, such an adaptive model could be adopted and fit Dutch culture and needs. We need to go from SLOW to GO!

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