



# Restorative Justice Realities

Empirical Research in a European Context

Het groene gras

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*Empirical Research in a European Context*

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(eds.)



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# 1 Restorative justice in Europe: introducing a research endeavour

*Ivo Aertsen, Inge Vanfraechem and Jolien Willemsens*

## 1 BACKGROUND

Since the late sixties there have been continuing theoretical and ideological debates in Europe on how the consequences of an offence can be faced and resolved more directly by those immediately involved, namely the victim and the offender, and their supporters (Christie, 1977; Wright, 1996; Walgrave, 2002; Weitekamp and Kerner, 2002; von Hirsh et al., 2003). This search was prompted by a deep dissatisfaction on the part of both victims and offenders with regard to the responses offered by the conventional criminal justice system. Many working in this field in European countries – probation workers, victim support workers, legal professionals and academics – have captured these recurrent needs and started exploring structural solutions. This unrest has also been voiced throughout the common law world where the notion of restorative justice as an alternative model first became established (Zehr, 1990; Braithwaite, 1996; Crawford and Clear, 2001; Dandurand and Griffiths, 2006; see also Dignan, this volume). In continental Europe this alternative approach predominantly takes the form of victim-offender mediation [VOM], which came into existence in the 1980s (Aertsen et al., 2004; Miers and Willemsens, 2004; Mestitz and Ghetti, 2005). At the beginning of the 21<sup>st</sup> century, European mainland countries such as Belgium, the Netherlands and Norway launched experiments with family group conferences [FGC] as well (Hokwerda, 2004; Vanfraechem, 2007; Hydle and Kémeny, this volume). The range of responses subsumed by this ‘restorative justice movement’ has attracted great interest not only from criminal justice practitioners and academics, but also from policymakers in charge of defining and funding criminal justice policies.

This interest is reflected, first, at a national level. An increasing number of mediation and conferencing programmes is being implemented at all levels of national criminal justice systems, with both adults and young offenders. It has been estimated that by the end of the 1990s there were more than 900 mediation programmes in operation in Europe (Lauwaert and Aertsen, 2002).<sup>1</sup> Mediation remains the most predominant restorative justice practice in Europe and prac-

<sup>1</sup> According to Miers (2007: 448), the number of programmes alone does not give sufficient information on the state of affairs, but at least it gives some indication.

tices vary amongst countries with regard to, for example, their scope, relation to the justice system and use of volunteers (Willemsens and Walgrave, 2007: 490). This new focus is reflected, secondly, at a pan-European level, where a number of important initiatives has been taken. In 1999, the Council of Europe agreed on *Recommendation No. R (99) 19 concerning mediation in penal matters*, which encourages Member States to provide mediation as a voluntarily accepted and confidential service (Council of Europe, 2000). In the same year, the European Commission called for research on VOM,<sup>2</sup> but of much greater significance was the Council of the European Union's adoption in 2001 of the *Framework Decision on the standing of victims in criminal proceedings*<sup>3</sup> (Van der Aa et al., 2009). Articles 10 and 17 obliged the Member States of the European Union to adapt their legislation and regulations before March 2006 in order to promote VOM. This obligation has significantly raised expectations and in particular has placed a focus on an understanding of how restorative justice in general and VOM more specifically can be implemented into law (see Willemsens, 2008).

In 2002, the COST Action A21 *Restorative Justice Developments in Europe* was approved.<sup>4</sup> The Action undertook a number of initiatives aimed at evaluating restorative justice policy, practice, available research results and legislation within Europe. In preparation for this COST Action, two of the editors (Aertsen and Vanfraechem) organised – with financial support from the Belgian Federal Science Policy – a seminar at the K.U.Leuven inviting experts in the field of restorative justice research from eight European countries. The experts wrote a first paper with regard to the state of the art on *empirical* research on restorative justice in their country. Under impulse of the COST Action, these papers were further extended and elaborated upon. Furthermore, a working group of the COST Action developed a template to summarise and analyse existing evaluative research on restorative justice within Europe (cf. Chapter 2). These materials, together with the discussions in the working group meetings held in the period 2002 to 2006 and subsequent updating, finally led to a comprehensive overview of empirical research on restorative justice in nine European countries.<sup>5</sup>

2 Communication on Crime Victims in the European Union: Reflections on Standards and Action. COM (1999) 349 final.

3 Council Framework Decision of 15 March 2001 on the standing of victims in criminal proceedings (20001/220/JHA).

4 COST is a European Union supported, intergovernmental framework for European Cooperation in Science and Technology, allowing the coordination of nationally funded research on a European level (<http://www.cost.esf.org/>). More information on COST Action A21 dealing with restorative justice research: <http://www.euforumrj.org/Projects/projects.COST.htm>. Aertsen was initiator of this COST Action, with the assistance of Vanfraechem and Willemsens, and chaired the COST Action during its four years of functioning (2002-2006).

5 The information in the country-based chapters of this volume has been updated until 2008, unless otherwise indicated.

## 2 PURPOSE OF THE BOOK

The purpose of this book is to offer an analysis of empirical research carried out within European countries with regard to restorative justice. This is not another collection of theoretical essays on restorative justice. Neither is the book dealing with international research projects (apart from the work presented in Chapter 2 and references made in the chapter on Italy), which have been implemented in Europe during the last ten years mainly with financial support from the EU. Furthermore, 'restorative justice' is investigated through its operational models; in particular the focus will be on VOM and conferencing since they are considered to be the most restorative practices (McCold and Wachtel, 2002). In the respective chapters, authors may briefly refer to other practices that are considered as restorative in their country.

The nine countries included in the book have developed research on the topic, to a varying extent. Reviewing this research and its results offers an insight on the state of affairs, not only of the research but also of the restorative practices and policies in those countries. The concluding chapter provides an overview of research results and furthermore reflects upon the difficulty of collecting comparable research materials in Europe.

Each country contributor was given a template delineating three common types of research: descriptive-inventory research, action-research and evaluative research. After a general introduction on the state of affairs with regard to the practices and legislation on VOM and FGC in their country, the authors present the different types of research conducted so far in that country in detail, including the set-up, research methodology and main results. Not all authors could strictly adhere to the scheme because of differences in restorative justice and research developments between countries, various research cultures and modes of cooperation, and combinations of the abovementioned research types. Nevertheless, the template was used as a common framework to present the available research.

## 3 DEFINITIONS

In collecting research results, it proved to be important to clearly set out what we would be discussing from the start. It was therefore crucial, firstly, to delimit the endeavour and, secondly, to define the concepts clearly. Our project in general aimed at collecting *empirical research on restorative justice in Europe*.

We selected those countries where research on restorative justice was already being carried out at the time of the seminar (2002). This resulted in Southern and Eastern European countries being somewhat underrepresented, even though research efforts might have evolved in the meantime (Fellegi, 2005; Casado Coronas, 2008).

We further limited our efforts to empirical research, which we subdivided in three categories: descriptive-inventory research, action-research and evaluative research. *Descriptive-inventory research* provides general information on the occur-

rence of restorative services and practices, and detailed information on topics such as the number of organisations, number of cases, referral agencies, funding, training and background of mediators, as well as information on concrete cases: type of cases, outcomes, participation rates, etc. In *action-research*, researchers are closely related to practice and may even be practitioners.<sup>6</sup> Authors were asked to provide us with the definition of action-research used in the research reports and furthermore to deal with the policy context, the partners involved in the research, and its main results. Lastly, *evaluative research* covers the evaluations by participants, the relation between restorative practices and the criminal justice system, effects on recidivism, the mediators' job perception and satisfaction, legal safeguards, and cost-effectiveness.

*Restorative justice* was defined as 'a process for responding to crime, based on reparation, as far as possible, of the harm caused by the crime to the victim, holding the offender accountable, and facilitating communication between them and other relevant persons involved.' For our purposes, and as already mentioned, restorative justice was further delimited to VOM and conferencing, which were defined as follows:

'Victim-offender mediation is mediation between victim(s) and offender(s) or "mediation in criminal matters" (or criminal cases vs. civil cases).'

'Mediation is a process in which victim(s) and offender(s) communicate with the help of an impartial third party, either directly (face-to-face) or indirectly via the third party, enabling victim(s) to express their needs and feelings and offender(s) to accept and act on their responsibilities.' (Mediation UK, 1994).

'Conferencing is a method of resolving (the effects of) a crime by bringing together a large number of stakeholders with a facilitator (see also family group conferencing). Sometimes another word is added, e.g. "community conferencing".'

'Family Group Conferencing is a method of resolving family difficulties by bringing together as many as possible of a young person's extended family ("welfare" FGC). When the young person has committed an offence, the victim and his or her family or supporters are also present ("youth justice" FGC, because it is usually used for juveniles; for adult offenders, see conferencing).'

The focus thus clearly lay on the one hand upon criminal cases, dealing with victims and offenders, and on the other hand upon communication processes between the parties.

6 For a description, see Daly and Kitcher, 1998; Aertsen and Lauwaert, 2001; Reason and Bradbury, 2001; Young, 2001.

## 4 STRUCTURE OF THE BOOK

After this general introduction, the following chapter outlines the results of an attempt within the COST A21 Working Group to compile information on local research programmes and to compare their results. A template was created in order for respondents to give similar country information. Attention was thereby focused on evaluations of processes and effects of restorative justice. Rather than going into too much detail about the concrete research outsets and results, Lemonne and Hydle identify opportunities and difficulties in developing such a European data collection. Differing theoretical and methodological starting points, variability in research backgrounds, and language issues (research reports often only exist in the national language, but sometimes English summaries are available, as will be shown in the country chapters) proved to be the most difficult issues.

In Austria – the first country-based chapter – VOM is applied as a diversionary measure at the prosecutor's level, both for adult and youth offenders. The practice of VOM is based on §90 of the Code of Criminal Procedure and leaves a great margin of discretion for the public prosecutor. Research started as an 'accompanying research' of two pilot-projects, which, according to the author, falls under the heading of action-research but also includes elements of evaluative research. Comparative research is available, complemented by the work done by students under the heading of descriptive-inventory research. Evaluative research has been undertaken on the topics of evaluation of the process by participants, recidivism and the efficacy of mediation in cases of partnership violence. Pelikan sees the most striking feature of research on VOM in Austria in its close connection to the criminal justice agencies, related to the interest that the relevant ministries took in getting the pilot projects established and thoroughly researched.

In Belgium, various mediation models exist for adults, at all levels of the judicial procedure. Since 2006, VOM as well as conferences have a legal basis for youth offenders. On the one hand, research is done on a variety of topics and in various fields of mediation and restorative justice, such as in prisons, schools and neighbourhoods. On the other hand, theoretical research is carried out as well. The chapter focuses on empirical research: descriptive-inventory research was done on restorative justice for juveniles, and provides an overview of the organisation of mediation services and details of mediation practice. Action-research was carried out on 'mediation for redress', mediation for youth in the French Community, and conferencing in the Flemish Community. Evaluative research covered topics such as the Compensation Fund, local mediation for petty offences, and an experimental project on mediation for juveniles in the French Community. Van Doosselaere and Vanfraechem thus conclude that empirical research is mostly limited to the field of youth offending.

Legislation on mediation exists for youth and adult offenders since 2006 in Finland. Both theoretical and empirical research have been carried out. Rather than following the template, Iivari prefers to describe the research projects in a chronological order, since it shows the evolution in research approaches. Action-

research was carried out at the beginning of the mediation practice, whereby researchers were at the same time developing and evaluating the programmes. A practical-theoretical analysis and meta-analysis offered a more theoretical basis for the mediation work. In the 1990s, the focus lay on evaluating topics such as satisfaction of the parties, influences of VOM on the justice system, recidivism, job perception and satisfaction of the mediators, and cost-effectiveness. Since 2000, research has been done on the organisation of nation-wide mediation, children in mediation, social mediation with refugee communities, domestic violence, and follow-up of the new mediation law. The author concludes that various research methods have been used to study diverging topics.

Several VOM projects exist throughout Germany. VOM is based on the youth law as well as the Penal Code and Federal Code of Criminal Procedure, and is being applied as a diversionary measure for youth and adult offenders. A peculiarity with regard to research is the informal scientific cooperation network carrying out research on VOM and collecting data throughout the country. Research is therefore mostly of a descriptive-inventory nature. Lenz and colleagues differentiate between the model-projects (the first projects on VOM in Germany), stock hold surveys (a nation-wide survey on VOM) and data-based studies, which evolved to 'German VOM statistics'. The chapter focuses on the methodology and main results of the latter, which provides us with a more concrete view on the German VOM practice.

In Italy, restorative justice is, according to Mestitz, not a well-known concept and it remains mainly associated with VOM. Mediation is not legislated but can be applied as a diversionary measure by prosecutors and judges. Most initiatives are taken in the field of youth delinquency. Empirical research is mostly limited to, on the one hand, local surveys by mediation services, and, on the other hand, evaluative research on topics such as probation and VOM/restorative justice practices, as well as concrete VOM services and practices. The author presents the set-up of mediation services and mediation practice in detail. Furthermore, she presents the international research projects on VOM for juveniles and on information and data exchange. She concludes that the possibilities for carrying out independent research on VOM are rather limited in Italy.

In the Netherlands, various restorative justice practices do not fall under the heading of VOM or conferencing, such as claims settlement, HALT (a diversionary measure for juveniles) and community mediation. Besides these, other practices do fall under the heading of VOM, such as mediation by Neighbourhood Justice Centres, criminal law settlement, police mediation, restorative mediation and, possibly, victim-offender conversations. Conferencing is applied for youth offenders. According to Blad and Lauwaert, descriptive research takes stock of the modalities of mediation practices in specific contexts. Evaluative research has been carried out with regard to criminal law settlement, restorative mediation, conferencing and the relatively new victim-offender conversations. Action-research is not applied. The authors conclude that research does cover most of the practices and applies various methods. Descriptive-evaluative research is deemed to be predominant. Evaluation of the programmes is strongly related to the Ministries' decision on whether it will be continued.



In Poland, VOM can be applied for adult and youth offenders through specific articles in the Code of Criminal Law, Code of Criminal Procedure and the Law on Juvenile Responsibility, but its availability varies throughout the country. Even though the interest for mediation is growing, Czarnecka-Dzialuk concludes there is little research. Descriptive-inventory research provides a view on the organisation of services and mediation practice. The first experimental programme of VOM in juvenile cases is defined by the author as both evaluative and action-research. Evaluative research was carried out on mediation with adult offenders, studying the outcomes of mediation, recidivism rates and judges' opinions on mediation.

A vast amount of research has been carried out in the United Kingdom. Dignan focuses on the research in England and Wales and points out the importance of the changing policy context. Research focused first on the 'stand-alone' restorative justice initiatives, mostly small-scale experimental projects including VOM and reparation initiatives. This was followed by research on FGC initiatives and police-led conferencing. Several elements were introduced by youth reforms and thus become part of the mainstream approach. Research has started, but findings are still mostly tentative and inconclusive. Research projects are oriented towards restorative justice interventions at the pre-prosecution stage, at the point of first conviction and as optional sentencing for young offenders; and on interventions for adult offenders at various stages of the judicial process. The author concludes that the eclectic implementation of restorative justice initiatives impedes comparability and that research is of a variable quality.

In the concluding remarks, finally, we offer an overview of the most striking results, commonalities as well as differences between the nine countries. Furthermore, we provide some overall thoughts on the definition of research (methods); the advantages and disadvantages of comparative research in Europe; and the important influence of the legal and cultural framework in which restorative justice practices are implemented. In that way, we invite the reader to reflect upon the possibilities of national and international empirical research in Europe.

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