

VICTIMS AND RESTORATIVE JUSTICE

COUNTRY REPORTS

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EUROPEAN FORUM FOR RESTORATIVE JUSTICE

**VICTIMS AND RESTORATIVE JUSTICE:
AN EMPIRICAL STUDY OF THE NEEDS, EXPERIENCE
AND POSITION OF THE VICTIM
WITHIN RESTORATIVE JUSTICE PRACTICES**

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(editors)

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Colophon

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General structure of this report

This report covers the final findings of the two-year research project “victims and restorative justice” coordinated by the European Forum for Restorative Justice and implemented in The Netherlands, Finland and Austria. This research aimed to study the position of the victim in restorative justice (RJ). To do so, two main issues were addressed: on the one hand, the experiences of victims of crime who had participated (or not, for whatever reason) in victim-offender mediation and, on the other hand, the opinions and views of practitioners from the fields of victim support and RJ.

This report focuses on the empirical findings on victims’ experiences. Researchers from the three countries that took part in this study (Austria, Finland and The Netherlands) describe and analyse their findings through three informative chapters. Finally, some conclusions are drawn and some implications for practice and research are discussed (chapter 4).

A more detailed and analytical account of specific aspects of our research in addition to other findings not included in this report can be found in the publication Vanfraechem, I., Bolivar, D. and Aertsen, I., eds., 2015. *Victims and Restorative Justice*. London: Routledge. This publication offers a theoretical and empirical overview of the position of the victim within European RJ practices so it can be considered as a necessary complement to this country reports.

General introduction: the research project

By Ivo Aertsen, Daniela Bolivar & Inge Vanfraechem

Origins

This project on the needs of victims within restorative justice (RJ) finds its origins in both practice and research. Victim needs have not always been well known or duly taken into consideration when victims have been asked to participate in a RJ process, for example victim-offender mediation (VOM) or conferencing. Some critics argue that RJ programmes tend to be offender oriented (Dignan, 2007; Pemberton, Winkel and Groenhuijsen, 2007), in part because of the fact that an important number of such practices emanate from probation services. Others point out that RJ is limited to those victims whose offender has been caught or is willing to participate (Herman, 2003). Moreover, is not yet conclusive regarding the effects experienced by a victim as a result of his or her participation in a RJ scheme.

Research however has shown relatively high degrees of victim willingness to participate in mediation and conferencing and reveal subsequently high satisfaction rates as to both the process and outcome (Coates and Gehm, 1989; Dignan, 2005; Shapland et al., 2007; Strang, 2002; Umbreit, Coates and Vos, 2004; Wemmers and Canuto 2002). Some particularly valued aspects by victims are, for example, the opportunity to participate (Morris et al., 1993; Umbreit, 1994), the experience of meeting the offender (Coates and Gehm, 1989), the preparation process (Flaten, 1996; Strang, 2002; Umbreit, 1994), the flexibility of the programme (Rugge and Cormier, 2003), the existence of a follow-up (Flaten, 1996), the agreements reached and fulfilled (Coates and Gehm, 1989; Shapland et al., 2007; Umbreit, 1994), the impact victims might produce on the offender (Umbreit, 1994) and the information they may obtain about what happened (Umbreit, 1998).

At the same time, participation in RJ seems to have important and positive psychological consequences. For instance, participation can contribute to reducing anxiety and fear of suffering a new victimisation (Beven et al. 2005; Strang, 2002; Umbreit, 1994; Wemmers and Cyr, 2005) and give victims the opportunity to express themselves (Umbreit, 1994; Umbreit, Coates and Vos; 2004), which helps to recover respect and self-esteem (Beven et al., 2005; Strang, 2002).

Receiving an explanation seems to be fundamental for victims (Beven et al., 2005; Dignan, 1992; Strang, 2002; Umbreit et al., 2004). This can restore their sense of control over their lives (Wemmers and Cyr, 2005) and their faith in the world as a meaningful place (Beven et al., 2005). Indeed, participation in VOM seems to help in the construction of new conceptualisations of what has occurred, giving more realistic proportions to the victimisation experience (Aertsen and Peters, 1998). Additionally, receiving an apology, a

frequent outcome in RJ (Strang, 2002), may transform RJ into a therapeutic experience (Mika et al., 2004; Strang, 2002; Wemmers and Cyr, 2005).

Another important element in RJ practices is the reparation of the harm. Findings indicate that RJ may help victims to leave their victimisation behind them (Strang, 2002; Wemmers and Cyr, 2005), feel more emotionally settled (Strang, 2002; Umbreit, 1994), reduce the anger felt towards the offender (Strang, 2002), minimise psychological symptoms (Gustafson, 2005) and develop a demystified perception of the offender, humanising him/her (Aertsen and Peters, 1998), improving the perception of the justice system as a whole (Umbreit, 1994). Finally, victims participating in VOM have reported greater satisfaction than victims whose cases were managed by the traditional justice system (Beven et al., 2005; Bradshaw and Umbreit, 1998; Sherman and Strang, 2007).

Despite all of these positive findings, the existing literature is still rather cautious in concluding that RJ offers solely benefits to victims of crime. First of all, the results cannot be generalised to all practices and programmes, in part because many studies have been mainly carried out on programmes dealing with young offenders and minor crimes (Wemmers and Cyr, 2005). Additionally, research would need to consider the variety of contexts in which RJ programmes take place (Dignan, 2005). Concerns and criticisms have also been directed towards the methodology of some of the studies (Wemmers and Canuto, 2002).

In addition, researchers and practitioners have expressed concerns about the fact that (a) some negative effects on victims have also been observed and (b) some important aspects concerning victim participation are still unknown. Regarding the negative effects, Morris, Maxwell and Robertson (1993) found that some victims felt worse after the conference, expressing feelings of depression, fear, anger and distress. Other negative evaluations have been related to a lack of follow-up (Coates and Gehm, 1989; Shapland et al., 2007), an insufficient process of preparation (Strang, 2002), a bias by the mediator (Strang, 2002) and the victim's perception of an insincere offender (Wemmers and Canuto, 2002).

Regarding the unknown aspects, there are some debates concerning who benefits the most from RJ. There is no agreement on whether RJ may be as helpful when dealing with serious crimes as it is when dealing with minor crimes. Contradictory results can be found when comparing Daly (2005) on the one hand, to Strang (2002) and Umbreit (2001) on the other. Still others have suggested that more than the seriousness of the crime, it is its nature or some other characteristics which may produce problematic effects. This may be the case for example for vulnerable victims (Strang, 2002; Wemmers and Cyr, 2005) and cases where victim and offender had a prior relationship, for instance, in cases of domestic violence (Young and Hoyle, 2003) or other cases involving power imbalance (Strang, 2002). For these reasons, the suitability of RJ has been put into questions for some victims (Sherman and Strang, 2007; Strang, 2002). Finally, concerns regarding certain risks, such as possible manipulations by the offender, pressures on victims and the promotion of un-adapted attributions have also been mentioned in RJ literature (Pemberton et al., 2007).

Victim Support Europe has already drawn attention to the experiences of victims within RJ programmes in a 'Statement on the position of the victim within the process of mediation' in 2005. Victim Support workers raised questions regarding the psychological cost of participation for victims. Some questions included issues such as whether victims may feel under (moral or social) pressure or how they experienced the confrontation with the offender, whether their rights were fully respected during the process, what their experiences may have been when the reached agreement is (not) lived up to or whether they become subject to (other forms of) secondary victimisation. Furthermore, supranational regulation refers to the potential benefits of RJ for victims, but also to possible risks. In this respect, the Council of Europe Recommendation Rec(2006)8 on assistance to crime victims requires that, where mediation is envisaged, member states 'support the adoption of clear standards to protect the interests of victims.' In its Guidelines for a better implementation of Recommendation R(99)19 on mediation in penal matters (2007), the European Commission for the Efficiency of Justice indicates that a 'lack of awareness about restorative justice among the judiciary, prosecutors and other criminal justice authorities, victim support organisations, legal professionals, victims and offenders and the general public is one of the main obstacles to the development of mediation' and that these and other bodies 'should provide early information and advice on mediation to the victims and offenders, accentuating the potential benefits and risks to both.' More recently, the new Directive of the European Parliament and European Council (2012) on victims' rights establishes safeguards regarding RJ practices in order to avoid secondary victimisation (Lauwaert, 2013, 2015).

In addition to these concerns, some doubts about the capacity of RJ to be responsive to victims' needs have arisen due to its frequent implementation under the umbrella of the criminal justice system. Despite being shared by many practitioners, researchers, policy makers and legal professionals working in the field of victim support and RJ, these concerns are not yet made very clear or explicit and therefore may lead to misunderstandings and a lack of cooperation. There is, for example, a lack of sound knowledge on the needs and experiences of victims before, during and after their participation in mediation or conferencing. There is also a lack of knowledge of the ways RJ programmes are organised and run, specifically with regard to the inclusion of victims, because legal and organisational contexts might influence the orientation of the mediation/conferencing process. In turn, these orientations are likely to influence victims' needs and experiences during mediation or conferencing.

Objectives

The general objective of the project was to gain more insight through empirical evidence about the needs, experiences and position of victims when participating in RJ programmes. The aim was to conduct empirical research in several European countries, in a comparative way. The research consisted of two sub-studies which addressed, on the

one hand, the micro-level of RJ practices (victims experiences) and, on the other hand, the macro-level of RJ practices (the institutional level). The two main research questions were: (1) What are the needs, experiences and position of victims when participating in RJ programmes? And (2) How are RJ programmes organised and run with regard to the inclusion of victims?

At the micro-level, the focus was on:

- a) The personal experience of the victim regarding the offer of mediation, the experience of communicating with the offender in a direct (face-to-face) or indirect way, the mediation outcome and the judicial context.
- b) The offer of mediation, that is, how victims felt when mediation or conferencing was offered, what were critical factors for them when deciding to participate or not and what the perspective of direct contact with the offender meant to them (expectations, hesitations, fears).
- c) The communication process, that is, how victims experienced the contact and dialogue with the offender in terms of content and quality, which topics were discussed between victim and offender and how these relate to the victims' needs.
- d) The experience of mediation in general, such as how victims experience the contact with the mediator or facilitator, whether principles such as confidentiality and voluntariness were fully respected, and which role support persons played for victims (informal surroundings, victim support workers).
- e) The mediation or conference results, that is, how victims assessed the outcome of mediation or conferencing (the importance of reaching an agreement and different forms of material and immaterial reparation including apologies), and how they experienced the (non-)execution of the agreement.
- f) The judicial context in general, such as how they experienced the relationship with the police or the criminal justice system at the selection and referral phase, during the mediation process and after that process, in particular concerning the subsequent judicial decisions about dismissal or prosecution, sentencing and/or the execution of the sentence. The role of the lawyer towards the victim and the mediation process was also dealt with.

At the macro-level, the legislative, organisational and institutional framework of victim-offender mediation and conferencing programmes was considered. In those instances, important topics included:

- a) The origins and initial goals of the RJ programmes, the institutional context in which they have been set up, the legislative framework (type and content of the law of which they are part);
- b) The educational and professional background of the mediators and facilitators, the contents of their initial and ongoing training and their supervision;

- c) The types of cooperation with other organisations including victim support services.

Methodology

The research relied, on the one hand, on a literature review and document analysis related to developments and practices in mediation and conferencing in a number of countries, and, on the other hand, on empirical research in a restricted number of settings.

a) *Literature study*. The needs and experiences of victims have been researched through the literature study, both with regard to the justice system and with regard to RJ (Pemberton & Vanfraechem, 2015; Vanfraechem & Bolivar, 2015a). This offered information on what was (not) known about the position of the victim in RJ. Furthermore, the development of both RJ services and victim support organisations was studied to find out how they were positioned vis-à-vis victims and RJ. After determining the gaps in literature, interviews and a survey were administered to collect information to possibly fill those gaps.

b) *Interviews with victims*. At the micro-level, interviews with victims were carried out in three countries (Vanfraechem & Bolivar, 2015b). The countries were selected on the basis of the following criteria: (1) a well-established/organised RJ programme had to be in operation; (2) the programme must have been widely available and as a uniform model throughout the country; and (3) the countries differed in terms of the victim orientation of the RJ programme. These criteria provided the following constellation: country A which offers mediation on a 'neutral basis', i.e. where mediation services are not part of victim services or offender related services (Finland); country B where mediation is inspired by a probation or offender oriented institution (Austria); and country C where mediation is from the start more victim-oriented, namely developed through victim support (the Netherlands). Furthermore, the main goal was to distinguish between three categories of victims:

- Victims who have gone through a completed ('successful') mediation;
- Victims for whom the mediation process has stopped (for whatever reason);
- Victims who were offered mediation but for whom it was not started (for whatever reason).

In terms of the instrument, a single questionnaire was created in order to assess victims' experiences in RJ. The questionnaire was the result of an extensive analysis of existing questionnaires with regard to RJ and victims. The original version was written in English and then translated into the three languages. The construction of the questionnaire aimed: to include both open and closed questions in order to be able to compare the three countries and at the same time leave room for a 'real' talk with the respondents; and to develop a common questionnaire for the three countries, leaving ample room to deal with local differences (e.g. in the Netherlands, mediation is called 'victim-offender encounter' and it is not aimed at coming to an agreement).

c) *In depth interviews with practitioners*. At the macro-level, in-depth interviews with practitioners from the field of victim support and RJ were carried out. The information obtained through these interviews allowed researchers to have access to rich data in terms

of practitioners' perceptions of the position of the victim in RJ (Bolivar, 2015) and served as a source of information for the construction of the survey.

d) *Survey*. At the macro level, grey literature such as annual reports was studied in order to describe the position of RJ and victim support services in Europe. In order to fill the gaps, a survey was developed and sent out to key informants of RJ and victim support (VS) programmes in the European countries. The survey aimed to collect information about the implementation of RJ but also opinions about the position of the victim within RJ practices.

e) *Regional workshops*. Three regional workshops held in Finland, Austria and the Netherlands in February 2012 gathered various participants (mediators, victim support workers, legal practitioners and academics) from the region to present and discuss preliminary results of the research with regard to the needs and experiences of the victims. The workshops aimed at receiving feedback on preliminary findings and at reflecting on critical issues regarding the inclusion of victims in RJ. Through regional workshops relevant feedback on institutional aspects of the RJ implementation, as well as on methodological aspects was received. In addition, the workshops allowed the practitioners' active involvement in the topic at the regional level as well as the exchange of perspectives between RJ and VS practitioners.

f) *International conference*. The international conference organised by the European Forum for Restorative Justice was held in Helsinki (Finland) in June 2012. Findings of the research project were presented in both a plenary and a workshop. In addition, around 1/3rd of presentations were on victim-related issues. The international conference provided the opportunity to gather professionals from around Europe and beyond to discuss the empirical findings and thus reflect further upon both the needs and experiences of the victims, as well as the position of RJ services.

References

- Aertsen, I. and Peters, T., 1998. Mediation for reparation: the victim's perspective. *European Journal of Crime, Criminal Law and Criminal Justice*, 6(2), pp.106-124.
- Beven, J., Hall, G., Froyland, I., Steels, B. and Goulding, D., 2005. Restoration or renovation? Evaluating restorative justice outcomes. *Psychiatry, Psychology and Law*, 12(1), pp. 194-206.
- Bolivar, D., 2015. The local practice of restorative justice. Are victims sufficiently involved? In: I. Vanfraechem, D. Bolivar and I. Aertsen, eds. *Victims and restorative justice: needs, experiences and policy challenges*, London: Routledge, pp. 203-238.
- Bradshaw, W. and Umbreit, M., 1998. Crime victims meet juvenile offenders; contributing factors to victim satisfaction with mediated dialogue. *Juvenile and Family Court Journal*, 49(3), 17-25.

- Coates, R. and Gehm, J., 1989. An empirical assessment. In: M. Wright and B. Galaway, eds. *Mediation and Criminal Justice: Victims, Offenders and Community*. London: Sage Publications, pp. 251-263.
- Daly, K. 2005. A tale of two studies: restorative justice from a victim perspective. In: E. Elliott and R. Gordon, eds. *New directions in restorative justice: issues, practice, evaluation*. Cullompton: Willan Publishing, pp. 153-174.
- Dignan, J., 1992. Repairing the damage: can reparation be made to work in the service of diversion? *The British Journal of Criminology*, 32, 453-473.
- Dignan, J., 2005. *Understanding victims and restorative justice*. Berkshire: Open University Press.
- Dignan, J., 2007. The victim in restorative justice. In: S. Walklate, ed. *Handbook of victims and victimology*. Cullompton: Willan Publishing, pp. 309-332.
- Flaten, C., 1996. Victim offender mediation: Application with serious offences committed by juveniles. In: B. Galaway and J. Hudson, eds. *Restorative justice: International perspectives*. Monsey: Criminal Justice Press, pp. 387-402.
- Gustafson, D., 2005. Exploring treatment and trauma recovery implications of facilitating victim offender encounters in crimes of severe violence: lessons from the Canadian experience. In: E. Elliott and R.M. Gordon, eds. *New Directions in Restorative Justice: Issues, Practice, Evaluation*. Cullompton: Willan Publishing, pp. 193-227.
- Herman, J., 2003. The mental health of crime victims: impact of legal interventions. *Journal of Traumatic Stress*, 16(2), pp. 159-166.
- Lauwaert, K., 2013. Restorative justice in the 2012 EU Victims Directive: a right to quality service, but no right to equal access for victims of crime. *Restorative justice: an international journal*, 1(3), 414-425.
- Lauwaert, K., 2015. European criminal justice policies on victims and restorative justice. In: I. Vanfraechem, D. Bolivar and I. Aertsen, eds. *Victims and restorative justice: needs, experiences and policy challenges*, London: Routledge, pp. 239-272.
- Mika, H., Achilles, M., Halbert, E., Stutzman, L. and Zehr, H., 2004. Listening to victims. A critique of restorative justice policy and practices in the United States. *Federal Probation*, 68(1), 32-38.
- Morris, A., Maxwell, G. and Robertson, J., 1993. Giving victims a voice: a New Zealand Experiment. *The Howard Journal*, 32(4), 304-321.
- Netzig, L. and Trenczek, T., 1996. Restorative justice as participation: Theory, law, experience and research. In: B. Galaway and J. Hudson, eds. *Restorative justice: International perspectives*. Monsey: Criminal Justice Press, pp. 241-260.
- Pemberton, A., Winkel, F.W. and Groenhuijsen, M.S., 2007. Taking victims seriously in restorative justice. *International Perspectives in Victimology*, 3(1), 4-14.
- Pemberton, A. & Vanfraechem, I., 2015. Victims' victimization experiences and their need for justice. In: I. Vanfraechem, D. Bolivar and I. Aertsen, eds. *Victims and restorative justice: needs, experiences and policy challenges*, London: Routledge, pp. 15-47.

- Rugge, T. and Cormier, R., 2003. Restorative justice in cases of serious crimes: an evaluation. 6th International Conference on Restorative Justice "Best Practices in Restorative Justice" held in Vancouver, British Columbia, Canada. Available at: <http://www.sfu.ca/cfrj/fulltext/rugge.pdf>
- Shapland, J., Atkinson, A., Atkinson, H., Chapman, B., Dignan, J., Howes, M., Johnstone, J., Robinson, G. and Sorsby, A., 2007. Restorative justice: The views of victims and offenders. The third report from the evaluation of the three schemes. Center for Criminological Research, University of Sheffield.
Available at: <http://www.justice.gov.uk/docs/Restorative-Justice.pdf>
- Sherman, L. and Strang, H., 2007. Restorative justice: The evidence. The Smith Institute.
Available at: www.smith-institute.org.uk/publications.htm
- Strang, H., 2002. Repair or revenge: victims and restorative justice. Oxford: Clarendon Press.
- Umbreit, M., 1994. Victim meets offender. The impact of restorative justice and mediation. New York: Willow Tree press, Inc.
- Umbreit, M., 1998. Restorative justice through victim-offender mediation: A multi site assessment. *Western Criminology Review*, 1, 1-29.
- Umbreit, M., 2001. *The Handbook of Victim Offender Mediation*. San Francisco: Jossey-Bass.
- Umbreit, M., Coates, R. and Vos, B., 2004. Victim-offender mediation: Three decades of practice and research. *Conflict Resolution Quarterly*, 22(1-2), 279-303.
- Vanfraechem, I. and Bolivar, D., 2015a. Restorative justice and victims of crime. In: I., Vanfraechem, D. Bolivar and I. Aertsen, eds. *Victims and restorative justice: needs, experiences and policy challenges*, London: Routledge, pp. 48-75.
- Vanfraechem, I. and Bolivar, D., 2015b. Methodology of a comparative European research. In: I., Vanfraechem, D. Bolivar and I. Aertsen, eds. *Victims and restorative justice: needs, experiences and policy challenges*, London: Routledge, pp. 79-82.
- Wemmers, J. and Canuto, M., 2002. Victims' experiences with, expectations and perceptions of restorative justice: A critical review of the literature. Department of justice Canada. Available at: <http://www.justice.gc.ca/en/ps/rs/rep/2001/rr01-9.pdf>
- Wemmers, J. and Cyr, K., 2005. Can mediation be therapeutic for crime victims? An evaluation of victim's experiences in mediation with young offenders. *Canadian Journal of Criminology and Criminal Justice*, 47(3), 527-544.
- Young, R. and Hoyle, C., 2003. Restorative Justice and Punishment. In: S. McConville, ed. *The use of punishment*. Cullompton: Willan Publishing, pp. 199-234.

Chapter 1. Victims and restorative justice in Austria

By Leo Matteo Bachinger and Christa Pelikan

Introduction

Austria has a longstanding nationwide practice of victim-offender mediation (VOM), called Tatausgleich (TA; until 2004 “Außergerichtlicher Tatausgleich” – ATA) based on provisions inside the Juvenile Justice Act (since 1988) and the Criminal Procedural Law (since 2000). It is VOM only, albeit potentially including support persons of both victims and offenders. Since it was institutionalised within the Austrian Association for Probation and Social Work (now Neustart) it was typified in this European study as an offender-oriented model of restorative justice. The research was meant to provide well founded empirical evidence regarding the quality of the service and especially of the position of the victim therein. In this chapter we first provide information on the background of the Austrian VOM, comprising its historical and theoretical foundation, its legislative basis and the role of international standards. We go on to describe the ways VOM is implemented, first of all as regards its relation to the criminal justice system (CJS) as well as its relation to victim support, the types of cases that are referred and handled through VOM and the range of methodological devices applied. This part will conclude with an account of research done so far on the role of victims in the Austrian VOM. The third part contains a description of the results of the research done in the course of this project, starting with the quantitative results and followed by the presentation of a few topics of interest emerging from the qualitative data analysis. Methodological considerations are added in a separate part, followed by a summary and conclusions.

1. Background

1.1. Historical and theoretical foundations

In Austria the idea of victim-offender mediation was brought up in the context of the debate about a new Juvenile Justice Act that had been on and off the political agenda since the late 1970s. The initiative was taken predominantly by juvenile judges, together with public prosecutors in the field of juvenile justice and by the Association for Probation and Social Work. At the theoretical level, the Vienna Institute for the Sociology of Law and Criminology (IRKS) was both influenced by and influential in disseminating at the policy level Nils Christie’s notion of the re-appropriation of conflicts. Trying to characterise the spirit that carried the introduction of VOM into the CJS, we might speak of a genuine European model of a true alternative to the criminal procedure, promoting the active participation of both victim and offender, striving for reparation and thus eschewing

punishment and “working through” the conflict by attending to the concrete experience of the people involved. At the same time, this Austrian practice of VOM stayed well connected to the CJS, the public prosecutors remaining the gate-keepers, the “masters of the procedure”, as they preferred to call themselves.

1.2. Legislative basis of VOM

The history of RJ interventions in Austria started in 1985 when a pilot project in the juvenile justice system was established. The overwhelming success of this pilot project and the great interest it had excited within the CJS and with a wider public resulted in the inclusion of provisions for an out-of-court-offence compensation as part of the new Juvenile Justice legislation. This major reform realised in the Juvenile Justice Act was passed in Parliament and came into force on 1 July 1988.

Already as early as 1987, when the success of the pilot project with juveniles became apparent, it was suggested that the out-of-court approach to conflict resolution should be quickly extended to the general criminal law. However, it was not until 1991 when a new pilot project for adults was launched and as late as 1999 that the new legislation including ATA for adults was finally passed in parliament and came into force at the beginning of 2000. It consisted of a whole “diversion package” with VOM only one of the diversionary paths opened; the others were community service, a fine and a period of probation with or without probation assistance by a social worker (*Bewährungshelfer*). Next to the amendment to the Code of Criminal Procedure, new provisions were inserted into the Probation Act, regulating the specific tasks and responsibilities of the mediator (*Konfliktregler*). At present, we find the following basic legal prerequisites for diverting a case:

- No serious culpability on the part of the suspect,
- A maximum range of punishment for the offence of five years,
- Adequate clarification of the facts and circumstances, and
- No loss of life.

If these conditions are met, victim-offender mediation, community service, a fine, or a period of probation with or without a probation assistance can be applied. A further prerequisite for a referral to VOM is that legally protected interests of the victim (health, property etc.) have been directly affected. It is recommended that the prosecution chooses VOM as a form of diversion in cases when the victims’ interests benefit most from it. Apart from these general prerequisites for diversion, the following special prerequisites for VOM apply:

- The suspect is willing to take responsibility for the incidence, i.e. the offence and to face up to its cause;
- The suspect will take measures as deemed appropriate under the circumstances to compensate for the consequences of the offence;

- If necessary, the suspect will take on commitments that show his/her willingness to abstain in the future from behaving in a way that led to the offence;
- The victim approves of VOM; this does not apply in cases where the suspect is a juvenile.

In those cases where the public prosecutor has brought charges, the court has yet another chance to decide for diversion. Under the given general prerequisites outlined above, the court may, of its own motion or at the application of either the victim or the offender, propose VOM. It can do so until the end of the trial and terminate them with a ruling. The public prosecutor may lodge a complaint against this, but after bringing charges it is no longer entitled to decide on a diversionary measure itself. A diversion by the court is only allowed for offences with *ex officio*, not for such with private prosecution.¹

1.3. The role of international standards

The Austrian model of VOM that had quickly become a nationwide practice for juveniles and twelve years later for all offenders, was apt to serve as a 'good practice example' for other countries, specifically for the civil law countries (as different from the common law countries). This happened indeed when the "Committee of Experts on Mediation in Penal Matters" was set up by the "European Committee on Crime Problems (CDPC)" of the Council of Europe and started its deliberations in November 1996. In the course of four three to four day-sessions that lasted into the year 1999, the Austrian experience proved a valuable source of influence on the drafting of the recommendation, especially with regard to the relation between VOM and the CJS. The insistence on the autonomy of the mediation service that is stated as a recommendation in the first section draws to a large part on the Austrian practice as a guiding line. Three years later Christa Pelikan, on behalf of the "Criminological Scientific Council (CSC)" to the CDPC, undertook a follow-up study that was to assess the influence the recommendation had exerted in member states of the Council of Europe (Council of Europe, 2002), i.e. the knowledge about the document and the degree to which it had impacted on the member states' legislation and policy regarding the introduction and/or extension of VOM. There it became obvious that developments in Austria had come to a standstill and meanwhile Austria's role within the 'movement' had turned from that of a vanguard into a latecomer.

¹ Offences with private prosecution constitute an exception from the principle of legality prevailing in the Austrian (inquisitorial) CJS. These offences leave the right for prosecution solely in the hands of the injured party, which has to act as a private prosecutor. There are very few offences so defined in the criminal code, slander (verbal insult) being one of them. The exclusion of this type of offences from being referred to VOM constitutes the complete opposite of the situation in most other countries where complainant offences are first and foremost deemed suitable for being dealt with by VOM.

2. The implementation of VOM in Austria

2.1. *VOM's relationship with the criminal justice system*

As stated above, the manner VOM fits into the criminal justice system follows the diversionary path. This implies that criminal law agencies, in the first instance public prosecutors, exercise their discretion at the beginning as well as at the end of the VOM. Figure 1 shows the flow of criminal cases referred by prosecutors and/or judges to the VOM-offices. The central (gate-keeping) role of the public prosecutor's office is clear and so is the subsidiary function of the courts in making referrals. The box marked 'diversion' which also lists the diversionary measures, other than VOM, pertains to the phase of decision-making by the public prosecutor's office. The same process happens (but only as a subsidiary consideration) at the level of the judge's decision-making in the way indicated in the relevant box. The figure also shows that whenever the VOM process comes to a halt (because of lack of contact with the parties, the failure to reach an agreement or the non-fulfilment of the terms of the agreement despite repeated admonition by the VOM bureaus) the case has to go back to the referring agency. In any case, the public prosecutor or the judge, is called upon to exercise discretion as to whether to discontinue proceedings or to draw up an indictment, respectively to continue proceedings.

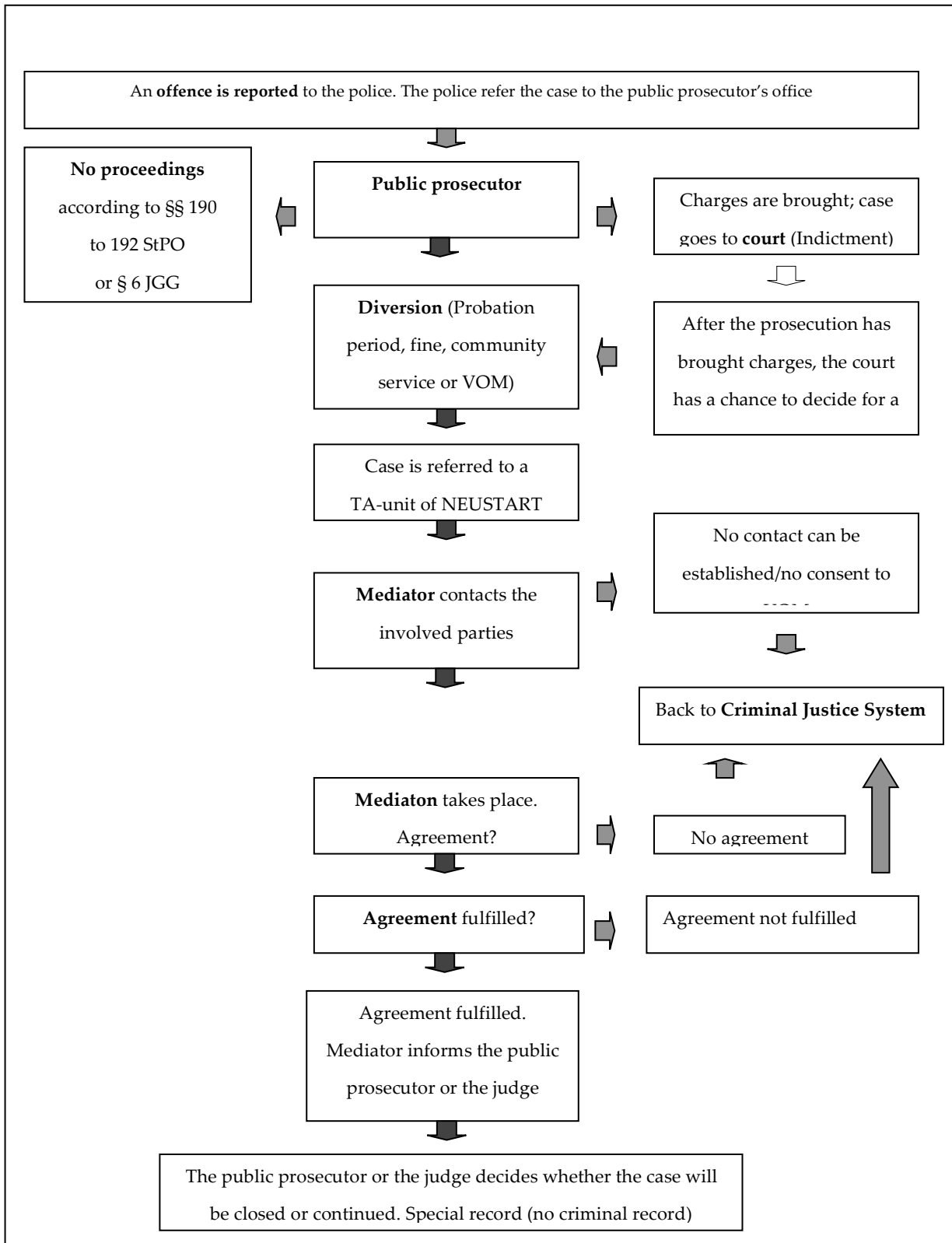


Figure 1: Referral and processing of criminal cases in VOM

2.2. Cooperation with victim support

Austria has a wide array of victims' support agencies but no nationwide umbrella organisation. In matters of general victimisation the "White Circle" operates nationwide. It gives advice focussing on financial compensation but acting also as a pressure group in the field of legal and criminal policy. Besides this, a number of institutions (state, municipal or non-governmental) are to take care of women and children as victims of violence. First of all there are 30 women's shelters in Austria with an umbrella organisation, the *Autonome Österreichische Frauenhäuser (AÖF)* (Autonomous Austrian Shelters) responsible for overall nationwide coordination and policy. There also exist 28 Child Protection Centres (predominantly municipal and non-governmental) also with an umbrella organisation, the *Bundesverband der österreichischen Kinderschutzzentren* (Federal Association of the Child Protection Centres).

Regarding women and children as victims of violence, the Austrian 'Protection Against (Domestic) Violence Act' needs to be mentioned. Its main instruments are a barring and eviction order issued by the police that can be extended by a civil law injunction (or restraining order) that keeps the person representing a threat to physical and/or psychical safety of other household members from re-entering the premises or a wider so defined area of safety. In addition, police authorities are obliged to inform about the non-governmental 'Intervention Centre' that provides advice and support to victims of domestic violence. For the work of the mediators in Austria these "Intervention Centres" or "Centres for Protection from (domestic) Violence" (hereafter "Centres") have become the most important cooperation partners. The Austrian VOM looks back on a very stormy relationship with the protagonists of the women's movement. The lines of argument and disagreement have been described in connection with various research projects dealing with the application of VOM in cases of partnership violence (Hoenisch and Pelikan, 2000; Pelikan, 1989, 2010a, 2012). There was massive critique on this practice and the attempt to have legislation explicitly forbidding the referral of this type of cases to VOM, which, in fact, never happened. But the critique uttered had an effect on VOM practice and contributed to the development of a specific methodology for dealing with these cases inside the Austrian VOM-services.

2.3. Inside VOM – the mediation procedure

The Austrian model is predominantly one of direct mediation between victim and offender. The following basic steps have been established for VOM-procedures: the public prosecutor screening his/her files, consisting mainly of the reports drawn up by the police, decides if a case looks suitable for VOM and, if so, sends the file to the local TA office. In the course of a so-called 'case-conference' the team of mediators discusses whether the

case is suitable from a social worker's point of view and can be dealt with by VOM, otherwise it will be sent back to the public prosecutor.²

A single or a pair of mediators will "take on" the case. At the next step, the mediator responsible for the case establishes contact with the offender and invites him/her, usually by letter, to the VOM-bureau for a personal interview. During this interview, the purpose and the procedural status of VOM is explained and the readiness of the alleged perpetrator to "own up", i.e. to accept responsibility and to participate in the mediation attempt, is explored. In many cases, the offender's perception of the incident is assessed for the first time as well as the circumstances of the occurrence, his/her relationship to the victim (the 'relational distance') and the consequences the incident has had so far. The same procedure is followed regarding the victim. It is of prime importance to explore the expectations of the victim, starting with what prompted him/her to notify the police. And it is equally important to assess the victim's capacity to fulfil one of the most important requirements of any mediation, i.e. to stand up for his/her own interests. If there is a power imbalance (as there almost inevitably is, at least to some degree), it is the task of the mediator to help and support the weaker party towards gaining the strength to participate fully and independently in the mediation process.

Often the victim has been forced for quite a long time to suppress and control his/her emotions, fears and apprehensions. The interview can result in voicing these for the first time, which in turn might force the mediator to devote quite a lot of time and careful attention to coping with them. The sequence of contact can be reversed, i.e. the victim might be contacted first if there is a good reason to do so, e.g. if the participation of the victim, in the case of domestic violence, seems doubtful, the involvement of additional victim support agencies might be advisable. Attempts to contact the parties must be repeated; if no contact can be established, the case is sent back to the public prosecutor's office. The same applies whenever one of the parties rejects participation in the mediation procedure. The procedure can be stopped at any stage during the mediation process. As a consequence, the formal criminal procedure will be resumed. In most instances this means putting the case at the public prosecutor's discretion once more. Depending on the case, the individual interviews with the victims and/or offenders can also be repeated. In between interviews or just before the mediation session the parties can be advised to consult a lawyer, seek legal support or consult with free services (addresses of which can be provided). It is also possible that two mediators work together as is the case with domestic violence between partners (see below, point 2.4) Working towards the agreement (conflict resolution or compensation plan) starts at the moment when the first

² The decision regarding suitability is made by applying the professional competence of a social worker to the specific qualities of the case. There are no 'hard criteria' according to which this decision is made. The application of professional competence rests on the acquisition of a mode of perceiving, a mode of thinking and a set of motivations. In the literature on 'professionalism' one talks about 'structures of relevance' that need something like an apprenticeship to grow on those who are to become mediators (Pelikan, 1992, 4-16).

interview takes place. In a number of cases, the first individual contact proves sufficient to trigger an autonomous conflict resolution process between the two parties: they make an agreement without further assistance by the social worker. The social worker then simply informs the public prosecutor (or the judge) that an agreement has been reached and provides an outline of its content. In the majority of cases, a mediation session (*Ausgleichsgespräch*) takes place, led by the social worker/mediator in charge, again only if both parties agree to do so. The steps during this session are roughly the same as those that characterise mediation in general.

2.4. Types of cases

We would like to refer to an interesting categorisation to be found in the statistics of Neustart. It focuses on the victim-offender-relationship, or as it is sometimes called, on the category of 'relational distance'.³ Here the Neustart-statistics make a distinction between partnership conflicts, family conflicts, neighbourhood conflicts, conflicts at the workplace (labour relations) conflicts in school, other conflicts where the parties know each other (i.e. friends) and so-called 'situational conflicts' (conflicts arising out of a brief encounter in a special situation: brawls in public places or related to traffic situations). Other cases dealt with are stalking and conflicts where no persons are involved. The respective figures for juveniles and for adults in the year 2010 are as follows:

Table 1: Type of offence (conflict) according to relational distance, 2010

	Juveniles	Adults
Work	1%	3%
Family	6%	10%
No persons involved	2%	1%
Neighbourhood	1%	6%
Partnership	2%	23%
School	12%	1%
Situational	57%	42%
Friends etc.	19%	13%
Stalking	0%	1%

Source: NEUSTART, statistical records

³ This categorisation according to 'relational distance' was developed at the IRKS already in the 1980s (Hanak, 1987; Hanak, Stehr and Steinert, 1989) and was then adopted and used by Neustart in its statistical documentation.

The overall breakdown for the adult group was similar, yet bore distinct differences. Even though situational conflicts were the most frequent reason for a referral to VOM (42%), there was a significant difference concerning conflicts in middle-range or close relationships. For 23% of the cases that were referred to NEUSTART by the public prosecutors (or the court), the offence stemmed from or occurred within an intimate or partnership relationship. 13% were other conflicts where the parties knew each other. 10% of cases involved conflicts in a family context. Neighbourhood conflicts were even more frequent than in the juvenile group, amounting to 6%. Three percent of cases dealt with a conflict at the workplace and only about 1% of all cases did not involve any (physical) persons at all.

2.5. Previous evaluations

We want to point to a re-conviction study carried out by Veronika Hofinger and Alexander Neumann of IRKS, namely a study on "*Legalbewährung*", i.e. eschewing re-conviction in the aftermath of having benefited from one out of the range of interventions offered by Neustart, namely VOM, community service and probation assistance (Hofinger and Neumann, 2008). The authors had also collected data on the types of cases referred. They show that in 2005 40% of all cases were so-called 'situational' conflicts, i.e. conflicts between persons with no previous relationship, mostly brawls, minor assault, dangerous threat, etc., a quarter of all referrals consisted of partnership violence, about 8% of other family conflicts, 6% are conflicts in the neighbourhood or between friends and acquaintances, working-place or school conflicts constitute together only 4% of the referrals; offences against physical integrity are the vast majority (more than 85%) while property offences and offences against personal freedom constitute the remaining 13% to 15%. It is also worth mentioning that almost a third of the persons involved in VOM, participated as both victim and offender. More than two-third of all cases were registered as successful according to the Neustart-records, dropping the charge by the public prosecutor happened in 78% of all cases which implies that negative results of VOM will not necessarily bring about an indictment. Dropping the charge happens most often in the case of juveniles (83%).

Both the records of Neustart and the official criminal record were used to establish the differentiated recidivism or rather: re-conviction rates. The period of observation amounted to 2,5 to 3,5 years. The results proved quite remarkable: of all VOM clients/offenders regardless of the result achieved, only 16% have been re-convicted during the observation period. The percentage is 14% for those that have reached an agreement and 21% for those with a negative result. As is to be expected, the respective specific rate for juveniles is decidedly higher: 37%; it is 28% for young adults and only 10% for adult clients. The re-conviction rate is especially low where partnership conflicts are dealt with: 11%.

Hofinger and Neumann have attempted to pitch these figures against results from general statistics of re-conviction. As a comparison they have used the rates of re-conviction within a period of three years for the offence of minor/slight assault. Looking at different subgroups it becomes evident that for all of them the re-conviction rate after VOM is distinctly lower than the re-conviction rate after one of the reactions of the court, including the least intrusive one, the fine; the overall rate is 41% of re-convictions after a court sentence vs. 15% after VOM. One has to be aware though that these highly favourable results are due to the fact that the public prosecutors use their discretion in order to refer those cases that are 'promising', meaning there is a favourable prediction of desistance and the expectation that they are amenable to the type of intervention that constitutes VOM. As a matter of fact, the clients of VOM are better educated, they are older and generally more 'middle-class' than the average of people that are sentenced by court as a consequence of having committed the offence of criminal assault.

In addition, important evaluation studies deal with the effect of VOM in cases of partnership violence. Rather elaborated research was done at IRKS; it has resulted in a two-volume research report (Hönisch and Pelikan, 2000).⁴ It was commissioned by the Ministry of Justice and funded in cooperation with the Ministry of the Interior and the Ministry of Family and Youth Affairs. Already in the late 1990s, a considerable percentage (about 25%) of VOM consisted of cases of partnership violence and this fact had met with the critique of the protagonists of the women's shelter movement. They wanted the introduction of a clause as part of the amendment to the Criminal Procedural Law, the "diversion package" that would rule VOM non-applicable to these cases.

The more specific aim of the study was to produce a list of criteria that would guide case selection and placement, i.e. assist public prosecutors in their decision-making with regard to these cases. Instead this research resulted in a "typology of the restorative process" that describes the efficacy of the VOM procedure according to different constellations of cases and the power relation that mark them. It was the result of an extensive qualitative analysis of the observation of VOM procedures and of interviews with male perpetrators and female victims that were repeated after several months.

This analysis made obvious that VOM is effective mainly as reinforcement of dynamics already set in motion, i.e. of change and of efforts that were brought about either by both partners or by the woman alone as a consequence of the occurrence of violence that was made public by calling in the police. The VOM procedure is apt to address deeper relational power structures, to make them visible and to reinforce their transformation. But this analysis showed also that only very rarely a conversion or a 'reformation' of the alleged perpetrator takes place.

About ten years later a follow-up research on the application of VOM in cases of partnership violence was commissioned by Neustart (Pelikan 2010a, 2010b, 2012). Having

⁴ An English version is published on the website <http://www.restorativejustice.org>.

concluded the first study by proclaiming, somewhat flippantly: “Men don’t get better, but women get stronger”, one could now perceive the following:

- The efficacy of VOM in cases of partnership violence is still to a large part due to the empowerment of the women victims, but now, albeit to a smaller percentage, also due to an inner change, to insight and following from that a change of behaviour on the side of the male perpetrators.
- These achievements cannot be understood except as part of a comprehensive societal change; a change of collective mentalities, regarding the use of violence in intimate partnerships.

This change has to a large part been brought about by the implementation of the ‘Protection from Domestic Violence Act’ and especially its instrument of an eviction and barring order issued by the police. Empirical research has traced these deep-reaching effect in the course of previous research on the use and the effects of VOM in cases of partnership violence. This law has become effective both as providing immediate protection and relief, and – even more so – exerting a symbolic effect. In the last instance it has been changing perceptions of violence and changing the perception of remedies available to victims of partnership violence. Regarding the referrals to VOM, its usage results in a wider range of cases being brought to the attention of the state prosecutors, cases where an imminent threat, albeit only a minor assault had instigated the interference of the police. The police, after assessing the imminence and the seriousness of the threat wielded by the aggressor, decides – independently of the explicit and expressed wishes and demands of the woman (the person endangered) – whether the aggressor (or “endangerer”, “*Gefährde*”) has to leave the premises, immediately, on the spot. Special provisions are foreseen concerning the endangerer’s keys to the living quarters to be delivered to the police, the possibility for him to fetch things (clothing, toilet articles) necessary for daily life. A checking up occurs after three days by the police. And the police notifies the state prosecutor in case there is evidence of a criminal act committed. The expectation of keeping violence out of intimate relationships has become a matter of course and has acquired wider acceptance within (Austrian) society. It is an acceptance that is not reserved for ‘official’ declarations to the outside world only. The term “change of mentalities”, or a rebuild of mentalities therefore appears indeed an appropriate term. New horizons of expectations have become transformed into new horizons of opportunities and the social workers of VOM help to realise those opportunities at the individual level – making women stronger and men better (Pelikan, 2010b).

3. Experiences of victims in VOM in Austria

3.1. Recruitment of interviewees

In order to recruit the number of interviewees within the different groups, the following procedure was applied. In each of the research sites chosen (Vienna, Lower Austria, Burgenland, Carinthia and Styria), the researchers had asked and carefully instructed (in the course of a half-day seminar) the mediators about the project and their task. Whenever they deemed it feasible, they were to ask the victims of each case at its conclusion or its break-off for permission to hand over their contacts details to the researchers. A letter prepared by the researchers was handed out to the victims together with additional information about the project.

Those refusing to participate in VOM should be asked on the occasion of their contacting the VOM-bureau and informing Neustart about their decision not to participate in VOM. This left the considerable percentage of persons that even after repeated attempts to contact them did not react at all. Neustart decided not to approach them once more and ask whether they would be prepared to be interviewed by the researchers. But when being confronted with the fact that the number of interviewees of this group was very small, Christoph Koss, as the head of the VOM-unit of Neustart started another initiative and asked the VOM-bureaus all over Austria to try to find victims that had declined to participate in VOM but agreed to be interviewed. The intensified efforts of the mediators finally brought the number of refusers up to 16.

Once the researchers received a contact number (or address) they made the initial phone call, usually already the next day, and tried to make arrangements for the telephone interview. In a few cases, the victims explicitly preferred a face-to-face interview that was done at the location of the interviewee's choice: in the IRKS premises or in the house of the victim, once in the prison, where the victim stayed at the time of the interview. At the time they were contacted, three victims had decided not to do the interview, in six cases no contact could be established and in eight cases the prospective interviewee was not available at the time arranged for the interview and could not be contacted again further on.

The interviews were with the permission of the victim tape-recorded; the questionnaires were coded and stored and the answers to the open questions or rather excerpts of them became documented in an excel-file. Since recruiting proved really difficult it was not at all possible to further 'select' cases in order to arrive at a sample that mirrors the overall distribution of cases according to characteristics as gender, age, and type of offence. But it soon became evident that such a distribution had occurred 'by itself' with a slight bias as to the type of conflicts, which we will describe and account for in the following paragraphs.

Table 2: Overview of sample

Contacts received (Gross Sample 1):	84
Not reached at all	5
Consent withdrawn	3
Not available for interview	9
Total number of cases (Net sample):	67
VOM completed	42
VOM interrupted	9
No VOM	16
Net sample	67

This categorisation affords further explanation: in Austria, those cases are regarded as ‘completed’ that end with an agreement drawn up. The cases categorised as ‘interrupted’ are those that ended without an agreement. This could be due to the offender refusing to accept responsibility for the offence or either the victim or the offender wanting to withdraw at one point during the process, notwithstanding the fact that a victim might have profited (even considerably) from an individual interview and a mediation session that did not lead to the signing of an agreement. The cases where no VOM took place at all are those where the victim did not want to participate in VOM. Since it is usually first the offender whose consent is asked for, the decision of the victim not to participate is almost always responsible for the categorisation of ‘no mediation.’

3.2. Description of the sample

Altogether 67 victims have been interviewed; 42 of them completed mediation with an agreement being drawn up. There are nine cases that have to be counted as ‘interrupted’ as explained above and 16 cases where the victims declined the invitation to participate in VOM. As concerns the personal features of the interviewees, they appear by and large well balanced regarding gender, age, employment status and educational attainment, i.e. they are in tune with the characteristics of the clientele of VOM in Austria in general.⁵ 39 interviewees are male (58,2%) and 28 are female (41,8%); the majority of interviewees is in the age group of 35-49 years; the mean lies within the group of 25 to 34 years old respondents; 12% are juveniles (16-18 years) which is less than the percentage of juvenile offenders going through VOM. There are 18% of persons with immigrant status (six immigrated themselves and in six cases both or at least one of their parents immigrated). Regarding the respondent’s civil status 24 interviewees declared himself or herself being single (35,8%) about 37% are living with a partner and about 25% declared to live within a

⁵ It is important to note that we do not have systematic statistical evidence regarding the socio-demographic characteristics of victims in VOM in Austria. ‘Naturally’, also the research of Hofinger and Neumann on reconviction of offenders focuses exclusively on these offenders (Hofinger and Neumann, 2008, 27).

(larger) family. Most of the respondents are working (about 60%) or still completing their education (about 18%); two respondents were unemployed at the time of the inquiry, six respondents were retired and seven respondents declared “other” or did not know. 17% had completed primary school (nine years of schooling), the majority (41%) an apprenticeship and/or vocational training, 24% had completed high school and 18% had a university or other academic degree. In that respect we have a bias toward higher educational attainment as compared to the group of offenders we generally find in VOM.

Table 3: Demographics of respondents

		N (%)
Gender	Female	28 (42%)
	Male	39 (58%)
Age	<18	8 (9%)
	18-24	13 (19%)
	25-34	12 (18%)
	35-49	18 (27%)
	50-65	13 (19%)
	65<	3 (5%)
Employment	Employed	40 (60%)
	Not employed (unemployed, student, home-maker)	27 (40%)
Marital status	Single	24 (36%)
	Relationship	42 (64%)
Ethnicity	Austrian	55 (82%)
	Non-Austrian	12 (18%)
Education	Primary education	11 (17%)
	Apprenticeship, etc.	28 (41%)
	Secondary education	16 (24%)
	Tertiary education	12 (18%)

3.3. Results: description and analysis

3.3.1. The victimisation experience

The offences experienced by the victims included in our research are mostly assault/battery (66%). Since multiple responses were allowed, one has to consider that the 16 cases (24%) of domestic violence are mostly also counted as 'assault'. Vandalism occurred in 12% of the cases (multiple responses allowed). Dangerous threat occurred twice, theft only once. There were three stalking cases and one where libel, which is a complainant offence according to Austrian law, came together with slight assault.

Table 4: Experienced crime (multiple response)

	Frequency	N(%)
Theft	1	1%
Burglary	0	0%
Robbery	0	0%
Vandalism	8	12%
Threat	2	3%
Assault/battery	44	66%
Stalking	3	4%
Sexual violence	0	0%
Domestic violence	16	24%
Hostage taking	1	1%

91% of the victims were present at the scene of the crime; only 27% of victims did not know 'their offender' previously. Of the 73% of all interviewees that did know their offender before the crime occurred, only 6% did know this person from work or 'other'. The majority of offenders belong to the closer social surroundings of the victim, with 27% of the offenders being the victim's (ex) partner and approximately 18% being his or her neighbour. 15% of the offenders are (or at least were) friends of the victim and 5% a member of the victim's family.

Table 5: Relationship to offender

	Frequencies	Percent
Friend/acquaintance	10	21,3
Family	3	6,4
Neighbour	12	25,5
Partner/ex-partner	18	38,3
Colleague	1	2,1
Other	3	6,4
All offenders known	47	100

In more than 40% of the cases the victim had had trouble with the offender before the incidence was reported to the police.

Table 6: Previous trouble with offender

	Was it someone you had trouble with before?			
	No		Yes	
	Frequencies	% of rows	Frequencies	% of rows
Friend/acquaintance	5	50%	5	50,0%
Family	0	0%	3	100,0%
Neighbour	4	33%	8	66,7%
Partner/ex-partner	8	44%	10	55,6%
Colleague	0	0%	1	100,0%
Other	3	100%	0	0,0%

Another important piece of information that has to be taken in consideration when looking at victims' experiences in the Austrian VOM is that in eleven cases (16%) the victim was also a suspect in the case referred.

Generally speaking, both emotional and physical consequences were named most often. Several times victims mentioned that it is difficult for them to say which of them were more important. Interestingly, social consequences are those that were more frequently considered the most important by victims that participated in VOM.

Table 7: Most important consequences of crime

	Mediation (N=49)	No mediation (N=15)
Emotional consequences	33%	40%
Physical consequences	33%	47%
Financial consequences	6%	7%
Social consequences	29%	7%

Table 8: Seriousness of crime

	Mediation (N=49)	No mediation (N=16)
Not serious at all	14%	13%
A little bit serious	20%	
Quite serious	22%	38%
Very serious	22%	25%
Extremely serious	20%	25%

As regards the subjective feeling of seriousness, we can see that only a small percentage of the victims classified this feeling as not serious or only a little bit serious. This is remarkable considering the fact that within the Austrian diversionary model generally only cases that are defined less serious according the criminal code, are referred to VOM. Related to the feelings of seriousness of the occurrence of victimisation as they were remembered by the victims, an attempt was made to also assess the longer-lasting effects of this experience.

Current symptoms of trauma

The assessment of traumatic symptoms lasting until after the VOM procedure has been measured with the Trauma Screening Questionnaire (TSQ). The TSQ has 10 items, taps trauma symptoms experienced over the past two weeks, like involuntary memories of the event, trouble sleeping, heightened irritability, each measured by one yes/no item. The items are summed, yielding a score from 0 to 10, with 0 meaning no symptoms present and 10 meaning all symptoms present. The cut-off score for indications of post-traumatic stress is 5. 36% of the victims reported having had at least one of the symptoms listed. Admittedly, this result did present some surprise; we had expected a much higher rate of 'no' answers. We still doubt that the question was understood and answered in the 'correct' and more narrow sense it was phrased and intended, namely focussing on the concrete experience of the last two weeks before doing the interview. It was 'audible' that the interviewees often had the period after the criminal incidence in mind when responding. In addition, there is some indication that victims in a generally difficult and disadvantaged position, or with a background of more recent experiences of social discrimination, e.g. mobbing, showed increased probability of reporting traumatic

symptoms. The high score for traumatic effects shown for those that had not completed mediation appears remarkable as compared with those that had gone through the full VOM procedure, even when one considers the small number of interrupted cases. The small sample does severely restrict the validity of these finding though.

Table 9: Current symptoms of trauma

	Med. completed	Med. interrupted	Med. declined	Total
N	42	9	16	67
Mean	1,28	6,22	3,63	2,62
% above cut-off score (5)	5%	78%	38%	22%

3.3.2. Assistance after victimisation

To what extent did victims elicit support and assistance in order to deal with the experience of victimisation?

Table 10: Assistance after victimisation

	Mediation (N=42)	No-mediation (N=16)
Medical assistance	74%	75%
Psychological assistance	19%	25%
Financial assistance	7%	
Legal assistance	10%	13%

The large number of victims seeking medical assistance is not least due to the process requirement to have the statement of a medical officer assessing and confirming the degree of injuries incurred as a consequence of a crime of violence. Quite often the police advises the victim to immediately go to the medical officer. 'Legal assistance' was understood as assistance provided by various agencies that deliver this kind of advice and assistance free of charge. Only 24% of the victims did contact a lawyer in the aftermath of the crime and only 16% sought contact to a victim support agency; these victims were mostly satisfied with the support they received both from a lawyer and a victim support agency. When we asked those that had not contacted a specialised agency whether they would have wanted this kind of support, only very few (5) respondents answered in the affirmative.

3.3.3. Motivations for notifying the police

The motivation named most frequently (67%) was the desire to have the police on the scene in order to stop the violence and to convey to the perpetrator that he/she was acting

against the law (45%).⁶ Wanting the punishment of the offender was indicated as a motivation by 36% of the victims; receiving compensation by 20% of those answering, referral to support agencies or being afraid of the crime being repeated was a motivation indicated less often.

Table 11: Motivations for notifying the police

% of N (answered this question with 'yes')	Mediation (N=32)	No mediation (N=10)	Total (N=42)
Because the offender deserved to be punished	41%	20%	36%
Needed the police to intervene	41%	50%	67%
To receive compensation	25%		20%
Fear of repeat	31%	20%	29%
Because the victim was afraid	19%	20%	20%
To be referred to other agencies	19%		14%
Other (make the offender understand that h/she has acted against the law)	47%	40%	45%

3.3.4. The offer of mediation

In Austria the information about VOM comes always via a letter of the VOM services addressed to the victim. It contains a flyer explaining this offer and the general construction and set-up of VOM. Usually there is also already a date set for a first interview. Victims are asked to contact the VOM bureau on beforehand in case they cannot attend at the date proposed or, more importantly, in case they do not want to participate in mediation at all. They also receive the information that they can bring a support person.

⁶ This is the item marked 'other' which according to the request from IRKS was extend to contain: "e.g. make the offender understand that he/she has acted against the law."

Table 12: Motivations for participating in VOM

	Get financial compensation	Receive apology	Explain feelings	Get answers	Prevent further crime/offence	Duty
m	2,5	3,5	3,8	3,1	3,8	2,6
N	48	48	47	48	47	46
s	1,4	1,4	1,3	1,4	1,4	1,5

(m=mean, N=frequencies, s=standard deviation)

The victims recalled as their motivation to participate or the expectations directed at VOM mostly that they wanted to let the offender know how they felt (m=3,79; s=1,26)⁷ as well as to make sure that the offender does not commit another similar crime.⁸ Also very important for the victim seems to receive an apology from the offender. Less important is financial compensation; quite a number of victims felt it to be their duty to meet the offender. The motivation to fulfil a duty is at least partly due to the fact that the Austrian VOM appears to victims as very closely bound to the CJS, as a “Behörde”, an authority. To agree to participate implies compliance with an order from above. In a similar direction point the results pertaining to the first contact of victims with the VOM agency, i.e. with the mediators responsible for carrying out VOM: 15% of the victims said having experienced some sort of pressure from the side of the mediators. The qualitative data analysis shows that this experience does not necessarily stem from the individual mediator exerting pressure. It can also be the way the invitation and the whole organisational set-up of VOM imparts the impression that participation is required, a duty imposed by the state and its CJS. Finally, in the same vein, we see that the important information that they could withdraw from mediation at any time was received or remembered by 74% of the victims only, although it was mentioned several times that it was implicitly understood to be the case. 90% thought the information received in the period of preparation as sufficient. But only 73% felt themselves well prepared for a meeting with the offender.

Factors influencing participation in VOM

Looking for critical factors influencing the decision to participate in VOM, we cannot detect any significant correlation either regarding gender nor the seriousness of the offence. The same holds for the time that has elapsed between the occurrence of the

⁷ On a scale from 1 (fully agree) to 5 (completely disagree)

⁸ Here we have to explain that in the German translation this item rather sounds like: ‘I wanted to make sure it stops and there is no further incidence of crime.’ (*‘Um den Täter von weiteren Straftaten abzuhalten’*). It is less about individual prevention and more about having (social) peace restored and it was certainly understood that way.

offence and the offer to participate in VOM. We do see that the fact that the victim had experienced some pressure to participate does exert some influence on her/his decision in that respect, with pressure more often resulting in her/his refusal to participate in VOM.

Table 13: Feeling of pressure and acceptance, interruption or completion of VOM

Did you feel some pressure to accept the offer to participate?	Type of case						Total
	Med. completed	% in rows	Med. interrupted	% in rows	No mediation	% in rows	
No	37	66%	8	14%	11	20%	56
Yes	4	40%	1	10%	5	50%	10
Total	41	62%	9	14%	16	24%	66

Furthermore, the relationship between victim and offender seems to have an important influence on the readiness to participate in VOM and on VOM being completed or not.

Table 14: Type of relationship between victim and offender, acceptance and completion of VOM

	Type of case						Total
	Med. completed		Med. interrupted		No mediation		
	Freq.	% rows	Freq.	% rows	Freq.	% rows	
Short encounters	24	70%	2	6%	8	24%	
Family/partnership	13	62%	4	19%	4	19%	
Neighbourhood	5	42%	3	25%	4	33%	

The tendency to decline participation is higher for cases where the offence occurred as a short, mostly violent encounter with either a stranger or a person with whom the victim was not intimately acquainted. But once VOM was accepted it did lead to an agreement in the vast majority, 70% of all cases of that type. On the other hand, victims of offences in the context of a family or partnership were more reluctant to participate in VOM, but these cases were more often interrupted. Finally, we see that the context of the neighbourhood is the most difficult one with the highest percentage of refusals and the highest percentage of an interruption as well.

3.3.4. The VOM procedure

VOM in Austria has proved to be predominantly direct mediation. In only 18% of all cases did indirect mediation take place; four persons had declined to meet the offender on their own will, in two cases the offender had refused to meet face-to-face, in one case the mediator had proposed indirect mediation. In the vast majority of cases there was only one meeting between victim and offender, in 14% two or more meetings. The duration of the meetings is mostly (73%) between ½ hour and 2 hours with most sessions lasting about one hour. Although the majority declared the location as convenient, 15% of the interview partners said the timing was not convenient for them and their wishes had not been sufficiently considered.

Table 15: Key characteristics of the VOM procedure

	N (%)
Face-to-face (direct) mediation	82%
Indirect mediation	18%
One mediator	71%
More than one mediator	29%
Less than 30 minutes	12%
31 thru 60 minutes	28%
One thru two hours	45%
More than two hours	15%
Support person present	21%
No support person present	79%
Resulted in agreement	82%
Did not result in agreement	18%
VOM impacted the judicial process	23%
Don't know	65%
VOM did not (yet) impact the judicial process	13%

Most of the victims did not bring any support persons to the meeting (79%) and the majority of these victims did apprise a supporter as not at all or only slightly useful (85%). Anyhow female victims are more likely to regard a supporter as potentially useful as

indicated by a high Cramer-V-value (0,349) and the deviation of the frequencies as shown in the table below.

Table 16: The usefulness of (potential) support person

		To what extent would you have felt it was useful to have someone support you?			Total
		Not useful at all	Slightly useful	Very useful	
Male	Frequencies	11	8	0	19
	Exp. frequencies	11	6,7	1,2	19
	% within row	58%	42%	0%	100%
	Std. residuals	0	0,5	-1,1	
Female	Frequencies	7	3	2	12
	Exp. frequencies	7	4,3	0,8	12
	% within row	58%	25%	17%	100%
	Std. residuals	0	-0,6	1,4	
Total	Frequencies	18	11	2	31
	Exp. frequencies	18	11	2	31
	% within row	58%	36%	7%	100%

As concerns the topics discussed in the course of the VOM procedure, it appeared a bit difficult for the interviewees to state separated concise topics; obviously they were perceived as merging into each other. But the 'fact of the crime' stood out as the most frequently addressed topic, followed by matters of financial compensation.

Table 17: Topics discussed in VOM

	Frequencies	% of N(=42)
Facts about the crime	38	90%
Personal and social consequences for you, as the victim	22	52%
Personal and social consequences for the offender	18	43%
Legal consequences, such as the sentence	18	43%
Financial compensation	30	71%
Other types of compensation	8	19%
Other promises from the offender	6	14%

82% of the victims had received an apology in the course of the mediation and 70% regarded it as sincere; only 14% thought that it was insincere. 82% ended with an

agreement, predominantly a written agreement that almost always contained financial compensation and the fact that an apology had been uttered and accepted. This agreement was almost always understood, it was perceived as satisfactory and considering the victim's wishes. 84% also thought that it was a fair agreement.

3.3.5. Evaluation of the VOM procedure

Trying to catch the overall experience of victims in and with the mediation session, one can resort to the set of questions pertaining to the session itself, to the perception of the offender and that of the performance of the mediator. The indicator for the mediation experience consisting of the scores on the questions about understanding (transparency) of the mediation procedure, the confidentiality of the process, consideration for one's opinions and demands and the respect experienced, presents a very positive overall picture of victims' assessments of this experience. As shown in the table below the statements with highest agreement according to the mean are those relating to aspects of the general setting of the mediation (confidentiality, information, respect). Less but also high agreement is to be found for statements concerning the support by the mediator. Most of the interviewees agreed that there was enough consideration of their opinion (m=4,48) and (related to that) that the mediator was not biased (4,41) and offered enough support during the meeting (m=4,19). Looking at the median of these items, the values seem to be mostly at the maximum level of 5. Things are a bit different with regard to the offender-specific items although there as well we see a tendency towards affirming the statements in the positive direction. While there is a quite high agreement to the statements concerning the offender's understanding of the offence as violation of a norm (m=3,7) and the resulting consequences (m=3,9), victims seem to be less satisfied with the extent their questions had been answered by the offender.

Table 18: Evaluation of the VOM procedure

	Mean	Median	Std. deviation
I completely understood what happened during the meeting	4,6	5,0	0,9
The things I said during the meeting will stay confidential	4,6	5,0	0,8
There was enough consideration for my opinion during the meeting	4,5	5,0	1,0
I was treated with respect during the meeting	4,6	5,0	0,98
The offender understood what the consequences were for me	3,9	4,0	1,3
The offender understood he/she violated a norm	3,7	4,0	1,3
The offender offered to pay me compensation	2,9	3,0	1,7
The offender answered all my questions	3,3	3,0	1,5
The offender's participation was entirely his/her own choice	4,1	5,0	1,2
The mediator offered enough support during the mediation	4,2	4,5	1,0
The mediator was objective enough	4,4	5,0	1,1

Direct and indirect mediation

The difference between direct and indirect mediation appears to have quite some impact on the experience of the mediation process and its outcome. 42 victims met their offender face-to-face, while 9 participated in indirect mediation. There is, first of all, a significant higher probability for the mediation being interrupted, i.e. ending without an agreement in case of indirect mediation. We also see that the offender almost never apologises to the victim in the course of an indirect mediation. Only in two cases this happened and both of them are considered as insincere by the victim. Additionally, there is an agreement reached in 88% of all direct mediation cases but only in about half of the cases of indirect mediation (Cramer V: 0,325). While there are no considerable differences between the groups concerning the understanding of the agreement's content as well as the evaluation of the agreement as being fair, 25% of those participating in indirect mediation disagreed with the statement: 'The content of the agreement meets my wishes'. Only 6% of the

participants of direct mediation do so, albeit there is no significant correlation to be identified.

3.3.6. The efficacy of the VOM procedure

Overall, most of the victims agree that the mediation process is an adequate instrument to deal with the offender. The agreement to the contention 'the mediation process held the offender responsible for what he did' is the highest in this sample with a arithmetical mean of 4,05 and the second lowest standard deviation of 1,17. The accusation that VOM as a diversion from the criminal procedure provides an easy way out for offenders is thus refuted by the appraisal of the process by the victims. In addition, a vast majority of victims think that mediation contributed to repair the harm caused by the offence (m=3,81) followed by the victims' agreement that within mediation there was sufficient acknowledgement of the harm they had experienced. Nevertheless, the standard deviation of these items is quite high (1,35 and 1,28) and indicates differences within this group. Regarding the differences between participants of indirect and direct mediation no significant correlations could be identified.

Table 19: The efficacy of VOM

The mediation process...	Frequ.	Mean	Std. Dev.
... held the offender responsible for what he did	51	4,05	1,17
... contributed to repairing the harm caused by the offense	51	3,81	1,35
... will help to prevent the offender from committing crimes in the future	51	3,49	1,14
... and its outcomes are sufficient punishment for what the offender did	51	3,62	1,21
... sufficiently acknowledged what had happened to me	51	3,76	1,28
... changed my perspective on the legal process	51	3,43	1,17

Table 20: The effect of VOM according to type of mediation

The mediation process...	Type of mediation			
	Direct		Indirect	
	N	Mean	N	Mean
... held the offender responsible for what he did	42	4,1	9	4,0
... contributed to repairing the harm caused by the offense	42	3,8	9	4,3
... will help to prevent the offender from committing crimes in the future	42	3,5	9	3,0
... and its outcomes are sufficient punishment for what the offender did	42	3,6	9	4,0
... sufficiently acknowledged what had happened to me	42	3,8	9	3,7
... changed by perspective on the legal process	42	3,3	9	4,0

The study further investigated the feelings of the victims towards ‘their’ offender at the time the interview was conducted, that is: after having completed or interrupted mediation, but also where no mediation had taken place. There we find once more differences as to the type of mediation, direct vs. indirect. Looking at the means of each item (1=strongly disagree, 5=strongly agree), the highest agreement within the group of direct mediation is stated for ‘I have given up my hurt and resentment’ while within the group of indirect mediation the highest agreement is reached for the statement ‘I want him/her to get what he/she deserves’.

Table 21: Feelings of victims towards ‘their’ offender (according to type of mediation)

	Type of mediation			
	Direct		Indirect	
	Mean	Std. Dev.	Mean	Std. Dev.
Even though his actions have hurt me, I have goodwill for him/her	3,6	1,2	2,5	1,1
I want him/her to get what he/she deserves	3,3	1,2	3,9	1,4
I have given up my hurt and resentment	4,0	1,1	2,9	1,1
I wish that something bad would happen to him/her	1,3	0,8	1,1	0,4
Although he/she hurt me I am putting the hurts aside	3,9	1,1	3,0	1,3
I'm going to get even	1,1	0,3	1,1	0,4

Even more explicit differences can be found when comparing completed, interrupted and refused mediation cases. Especially if an agreement is reached, the positively connoted statements receive more support. On the other hand it is interesting to note that no specific pattern emerges when comparing interrupted cases with those where no mediation took place.

Table 22: Feelings of victims towards ‘their’ offender (according to type of case)

	Type of case		
	Completed	Interrupted	Declined
	Mean	Mean	Mean
Even though his actions have hurt me, I have goodwill for him/her	3,6	2,4	1,7
I want him/her to get what he/she deserves	3,2	3,9	3,9
I have given up my hurt and resentment	4,1	2,6	2,9
I wish that something bad would happen to him/her	1,3	1,2	1,2
Although he/she hurt me I am putting the hurts aside	4,0	2,4	3,3
I'm going to get even	1,1	1,0	1,2

3.3.8. After VOM: the influence on the judicial outcome and the general assessment of VOM

Turning to what happened after mediation and pertains to the current situation, we heard that in 47% of the cases the obligations contained in the agreements have been fulfilled; 11% said that the offender had not yet fulfilled the obligations, 30% had no knowledge about it and in 13% of the cases there was no agreement. There is no significant correlation concerning the comparison of indirect and direct mediation. The influence of this agreement on the further proceedings within the CJS are known in only 22% of the cases. All of these 22% are participants of direct mediation, although also in direct mediation the majority of respondents did not know (yet) if the mediation has had an influence on the judicial outcome. But asked whether the victims think that the mediation should have an influence on the judicial outcome at all, 88% of the interviewees answered in the positive way (direct mediation: 24% agree and 67% strongly agree; indirect mediation: 80% agree and 20% strongly agree). Interpreting this result in the light of the qualitative analysis of the interview material, the impression emerges that both victims’ and offenders’ evaluation of criminal policy options is predominantly shaped by their

factual experience of what is presented as the ordinary and therefore the right way to proceed. In other words, people regard as normal and right what they have learned as the one and only way to do things.

Quite informative are the answers to the simple question: would you say that mediation has helped to restore something for you? There one finds 85% of 'yes' answers; for those that had experienced direct mediation this amounts to 87%. It appears once more worth mentioning that 73% of the respondents confirmed the statement 'The mediation process held the offender responsible for what he did'. This is in conformity with the results of previous research of the IRKS on VOM in cases of partnership violence (Pelikan, 2010a, 2010b, 2012). Finally, 61% of victims feel better as a consequence of going through VOM, 20% even a lot better, about 28% feel the same. Six respondents felt somewhat worse; one victim a lot worse. 95% would participate again in mediation (in a similar case) and 90% would prefer mediation to a court procedure.

We will briefly attend to a set of questions dedicated to assess the long-term effect of the mediation experience for victims. In the following table a high value indicates a positive effect of the mediation process and its outcome on the individual. A low value indicates negative effects. The Likert-scale ranges from 1 to 5 with value "3" indicating neither a positive nor a negative effect.⁹ In the overall perspective the values for the mean indicate a moderate positive effect on the victim. Also the standard deviation is quite low pointing to a quite homogeneous sample concerning this set of questions. Especially the positive effect of mediation on the victim's ability to cope with the crime has to be mentioned (m=3,86; s=0,81).

Table 23: The generic effects of VOM on the victim

Positive/negative effects on:	Freq.	Mean	Std. deviation
Your self-esteem	51	3,53	0,91
Your ability to cope with the crime	51	3,86	0,81
Your optimism about the future	51	3,66	0,84
Your trust in the legal system	51	3,53	0,94
Your belief in a just world	51	3,26	0,85

⁹ As perceived by the interviewee, these questions often appeared besides the point: they sounded presumptuous and even a bit ridiculous when read out to the interviewee; therefore they were often omitted. The results reported below confirm this conjecture.

4. Summary: What happens in VOM in Austria? What does VOM do for victims in Austria?

4.1 The position of VOM

The type of cases, the way the offer of VOM is placed and the way the victims are contacted, as well as the reaction to the offer of VOM, the expectations of victims towards VOM and their perception and evaluation of the procedure are to a large extent performed by the way VOM is framed and placed within the Austrian CJS. It starts with the motivation for notifying the police: the desire to have the police intervene on the scene and to convey to the perpetrator that he/she was acting against the law were named as the most frequent motivations; whereas the wish to have the perpetrator punished was relevant for only 36% of the victims. In a similar line, the motivation to participate in VOM is carried predominantly by the desire to let the offender know how one felt, closely followed by the motivation to make sure that there is no further incidence of crime; the way it was translated into German this was understood less as a contribution to individual deterrence but as the wish to have (social) peace restored. On the other hand, a considerable percentage of victims said that they had experienced some pressure to participate and also having been motivated to participate because they thought it was their duty. This can partly be explained by the construction of VOM and by the practices of referral and information that often make the mediation services appear as an authority one has to submit to. Having experienced some pressure increases the tendency to refuse participation.

4.2. Effects on victims

An interesting pattern regarding participation and non-participation can be found along the differentiation according to the main types of crime that are closely linked to the main types of victim-offender-relationship that have been identified. There are, on the one hand, cases of assault/battery where the victims either refused to participate (28%) or – if they agreed to participate – did arrive at an agreement; only 9% of this group ended without an agreement. On the other hand, victims of partnership violence tend to agree to participation in VOM with only 6% refusals. But of those 94% agreeing to participate in VOM a quite high number of 25% did not complete the VOM-process. When trying to assess victims' experiences of the VOM procedure, there was an overall positive opinion prevailing. Both the transparency of the procedure, the attention paid to confidentiality and the respect extended to the parties, as well as the attitude of the mediators, i.e. the support they offered and their neutrality was ranked very high; less so the offender-specific items. But there as well we see a tendency towards affirming the statements in the positive direction. Also a vast majority of victims think that the mediation contributed to repair the harm caused by the offence, followed by the victims' agreement that within mediation there was sufficient acknowledgement of the harm they had experienced.

4.3. *Direct and indirect VOM*

The difference between direct and indirect mediation appears to have quite some impact on the experience of the mediation process and its outcome. 42 victims met their offender face-to-face, while nine victims participated in indirect mediation. There is, first of all, a significant higher probability for the mediation being interrupted, i.e. ending without an agreement in case of indirect mediation. We see also that the offender almost never apologises to the victim in the course of an indirect mediation. Additionally, there is an agreement reached in 88% of all direct mediation cases but only in about half of the cases of indirect mediation.

Looking into the feelings of the victims towards ‘their’ offender at the time the interview was conducted, one finds once more differences as to the type of mediation, direct vs. indirect. The highest agreement within the group of direct mediation is stated for ‘I have given up my hurt and resentment’ while within the group of indirect mediation the highest agreement is reached for ‘I want him/her to get what he/she deserves’. Even more explicit differences can be found when comparing completed, interrupted and refused mediation cases. Especially if an agreement is reached, the positively connoted statements receive more support. Even more to the point is the simple question: ‘Would you say that mediation has helped to restore something for you?’ There we got 85% of ‘yes’ answers; for those that had experienced direct mediation this amounted to 87%.

Another differentiation that served to account for some of the differences in results was constructed – following a first impressionistic assessment of the qualitative material documented. We did discern: 34 one-time conflicts (situational, with friends, colleagues, acquaintance); 21 victims of domestic violence (18 partnership cases and 3 conflicts with other family members including in-laws and step-parents); and 12 neighbourhood cases. The knowledge assembled in the course of the study of the background and the structure of VOM and Austria together with qualitative analysis of the research material was used in order to trace the differences pertaining to this categorisation.

Due to its longstanding practice, predominantly with public prosecutors as gate-keepers and as the main referral agency, a routine of case selection has been developed in the Austrian VOM-practice. These routines apply to the referral of the two main types of cases: one-time conflicts and domestic violence. They are, in fact, quite different albeit both are deemed as most appropriate to be dealt with by VOM according to the views of the public prosecutors. Firstly, one-time incidents of violence of minor or middle-range severity between strangers, acquaintances, colleagues or friends. The fact that these incidents do come to the notion of the public prosecutors at all, and to quite some extent, is due to Austria’s strong principle of legality that does not allow for any margin of discretion for the police. Secondly, partnership and family violence cases happen against a background of a longstanding and intensive relationship, often with previous incidents of

violence. The involvement of the Centres for Protection against Domestic Violence, after an eviction and/or barring order has been issued, can often be observed. There is a third and smaller group: neighbourhood conflicts, where a longer-lasting relationship is also constitutive, as well as previous conflicts and tensions. They are the most difficult cases to handle through VOM. The highest percentage of interrupted cases and of cases where participation was refused by the victim is to be found in this group.

The offer of VOM is highly accepted in the first two groups although the expectations towards the alternative procedure are quite different for them. We can speak of an instrumental versus an expressive use of VOM. The victims of one-time incidents expect a fast and less bureaucratic procedure, also the efficient processing of material compensation and this is what they get to a high degree. The victims of partnership violence go (not always but often) through a process of empowerment, a 'working-through' of the relationship, albeit in a condensed way. In a considerable number of cases they arrive at a new quality of this relationship or at a new life for themselves outside the relationship. Regarding the first type, one could also speak of a second-class criminal procedure. Where participation is refused it is often with the immanent accusation that the victim feels entitled to receive the fully-fledged version of a criminal procedure and not the 'cheap one'. This is not the full story though. As the main achievement in the eyes of the victims appear the arrangements that are made in order to forestall conflicts that might arise from a future encounter. Arrangements of this kind stand also at the end of successful VOM procedures following a neighbourhood conflict that has escalated and resulted in an incident of violence. And they are also an important part of the agreements arrived at in cases of partnership and family violence.

One might venture the contention that in all of these three types of cases VOM owns the potential of a true transformation of situations that have produced criminal incidents that range from 'nuisances to lifetime-catastrophes' (Hanak, Stehr and Steinert, 1989). Transformation means changing the conditions for future encounters on the one hand and a more deep-reaching transformation of relationships on the other. One might further contend somewhat provokingly that this transformation aims at a change of social arrangements. This can and will further impact on people's behaviour. Thus VOM is NOT in the first instance about 'improving' people, offenders and victims but about transforming relationships.

5. Conclusions

The lesson learned from listening to victims in the project is thus a modest and realistic one; it is about the real story of RJ (Daly, 2002). It is not in the first instance about victims (and perpetrators) being re-integrated into society or into the community. The victims we met in VOM and have talked to are not excluded individuals and they have not become excluded as a consequence of the crime. They are included in various social subgroups as becomes especially evident in the accounts the youngsters that have been victimised. The

offer of VOM consists mainly in providing them with a set of (agreed) rules and orientations that will help them to manage future situations without becoming either victimised again or resorting themselves to violence.

This effect is more dramatic where longstanding relationships form the background of the violent incident. Transformation after lifetime-catastrophes changes the whole outlook, it changes life perspectives and an important part of one's reality. Victims have described the painful process of going through this process of transformation that is instigated by VOM. Although it is only a short-time intervention and not to be understood as a therapy it can become the node of such far-reaching efforts by the victim herself together with the support that is elicited from other victim support agencies. The effect of empowerment is then indeed more than a mere transformation of situations; it aims at the 'heart and soul' of the person, the victim.

The preconditions for these transformations are limited, restricted to superficial encounters in the case of the 'situational conflicts' and the deeper-reaching transformation in the case of the partnership violence are the same. It affords being prepared to perceive the other and oneself in a different way, being prepared to change one's perspective. This does not, especially for the victim, imply to downplay or minimise what s/he has experienced, what s/he has suffered. Quite on the contrary, it implies going at the heart and very essence of this experience. This process of 'perceiving differently' is facilitated by the mediator extending understanding, moreover 'recognition' to the victim. Through this recognition the person gains safe ground and from that basis becomes able, firstly to clearly state her needs and demands and secondly, to perceive the other, the perpetrator differently. It becomes conceivable to play a more demanding or a more restrained role when it comes to future conflicts and to more consciously steer the communicative situation.

One has to be aware though that for some victims this readiness to perceive in a new way and the readiness to allow for change is hard to evince. Especially with neighbourhood conflicts that have smouldered for a long time, it seems difficult for victims to believe that they will see and hear something new in the course of mediation. Therefore the refusal to seek confrontation in a face-to-face meeting happens quite often. But shuttle mediation almost never can supplant the potential effect of the immediate story-telling and the potential of seeing and hearing in a new way.

On "refusers"

The number of "refusers" has remained small. It had been the explicit intention of this research to collect information about the types of crime, the personal characteristics of the victims and the kind of victim-offender relationships in those cases where refusals occur, and, of course, about the motivations and the reasoning of the victims for declining the offer of VOM. This attempt has largely failed. We cannot provide systematic well-founded information on these personal and structural traits. A few indications as to the direction

these characteristics take can be derived from the qualitative material. Firstly, if we concentrate on those interviewees that have decidedly declined participation in VOM, their argument runs mostly “VOM might be a nice thing – of course, only for minor crimes – but not in MY case”. Because, either this concrete offender did not show any insight, s/he did not make any attempt to settle things in an informal way, e.g. by apologising, or s/he seemed not to care at all. Or this is a kind of offence that cannot be handled by just making an apology and by shaking hands. It is a break of the public order, or it has happened one time too often. Therefore s/he has to go to court and receive punishment. In fact, two of the victims that had opted for the court procedure ended up with severe disappointment. In one case the charge was dropped after the youngster had been requested by the prosecutor to provide a written apology (that the victim, called deprecatingly ‘a worthless wisp of paper’). In another case the offender was acquitted. There the victim talked in an embittered tone about an error of justice. Several times the procedure had not yet taken place and the victims hoped for a conviction, the conviction being decidedly more important than the punishment. Twice the VOM procedure was characterised as being a money-saving device invented by the CJS to reduce its workload. The undertone was: understandable but this is not the way it ought to be.

Victims' esteem of the diversionary path

These statements have to be contrasted with the high consent expressed by victims when asked whether the outcome of VOM should have an influence on the judicial handling of the case. This implies that according to the legal position assigned to VOM in Austria the charge will (with a very high probability) be dropped when an agreement has been reached. Thus, the diversionary path appears highly plausible and ‘agreeable’ for victims. We have already put forward the interpretation that people regard as normal and right what they have seen and learned to see as the one and only way to do things: the diversionary path has become a matter of ‘What else?’ This is expressed quite convincingly, e.g. thus:

“Yes, of course (it should have an influence) otherwise it would be a contradiction: this is about those who are concerned by crime. And I do not see why the public prosecutor should not comply with this (the outcome of VOM). When there is an agreement and it is evident that it is a voluntary agreement, the charge should be dropped.”

“It says: ‘out of court’ and therefore it should remain out of court and no further court proceedings should happen.”

“If people reach an agreement, the state prosecutors should take notice of that and accept it. Otherwise it would not make sense to participate; it is out of court and if there is a solution and an agreement, a different decision does not make sense.”

“If there is compensation and an agreement that suits both sides, then a court procedure would only be a waste of time and money.”

“Otherwise you need not to go there. You don’t need a court procedure when you have reached a solution - this would just result in costs for the taxpayer.”

Or put in a different way: people like what they get and especially so, when they have a choice and a say in it. VOM does work to the benefit of the victim and victims that have experienced VOM accept to a very high degree the way VOM is bound to the CJS. But only a small part of victims does receive this offer and whenever a survey is executed digging into victims expectations and attitudes towards RJ we see that the majority of respondents shows a preference for the conventional reactions and only very little interest in restorative measures. (Hirtenlehner and Sautner, 2008). Although there is a longstanding experience of VOM in Austria, the knowledge of the public is still thin. Besides, the number of referrals has markedly decreased during the last four to five years. There is a number of reasons for this development that would warrant more detailed and careful analysis.

Those receiving the offer of VOM like it and they often get something beneficial out of it. It is either a sensible way of dealing with a criminal incident that constituted a one-time disturbance of their daily routines, fast material compensation, a fast procedure that appears transparent and gives them a chance to relate their experience and they find understanding and overall consideration of their demands and opinions. Or even more, they go through a deep-reaching discussion of their situation regarding family and partnership relationships, starting from an incident of violence.

There are a number of shortcomings in the organisational set-up of the Austrian VOM. The information sent to the victims, including the flyer often does not succeed in conveying a thorough understanding of VOM’s position in relation to the CJS and an understanding of the role of the mediators. Although strong efforts are made to impart the voluntary character of mediation, the organisational frame of the “*Tatausgleich*” within Neustart, that is better known for its probation work makes it appear for some victims as a branch of the court one has ‘a duty’ to submit to. And there is the fact that the number of referrals is decreasing and general knowledge of this measure is scarce; we have to assume that the overall impact of this diversion on the CJS remains negligible.

References

- Council of Europe, 2002. Follow-up of the Recommendation No R (99) 19 ‘On Mediation in Penal Matters’. Strasbourg: Criminological Scientific Council, Council of Europe.
- Daly, K., 2002. Restorative Justice: The Real Story. *Punishment and Society*, 4(1), 55-79.
- Hanak, G., 1987. Ethnographie der Konfliktbearbeitung. *Kriminalsoziologische Bibliographie*, 14, 9-34.
- Hanak, G., Stehr, J. and Steinert, H., 1989. *Ärgernisse und Lebenskatastrophen. Über den alltäglichen Umgang mit Kriminalität*. Bielefeld: AJZ-Verlag.

- Hirtenlehner, H. and Sautner, L., 2008. Bedürfnisse und Interessen von Kriminalitätsoptionen als Maßstab des Strafprozessrechts. *Österreichische Juristen-Zeitung*, 63(14), 584-592.
- Hofinger, V. and Neumann, A., 2008. Legalbiografien von NeuStart Klienten. Legalbewährung nach Außergerichtlichen Tatausgleich, Gemeinnütziger Leistung und Bewährungshilfe. Wien: Forschungsbericht des Instituts für Rechts- und Kriminalsoziologie.
- Hönisch, B. and Pelikan, C., 2000. Die Wirkungsweisen strafrechtlicher Interventionen bei Gewaltstraftaten in Paarbeziehungen. Der Strafprozess und der Außergerichtliche Tatausgleich. Forschungsbericht des Instituts für Rechts- und Kriminalsoziologie, Wien. (Engl.: Victim-Offender-Mediation in Domestic Violence Cases – A Comparison of the Effects of Criminal Law Interventions: the Penal Process and Mediation). Available at: <http://www.restorativejustice.org>
- Pelikan, C., 1989. Mediation bei Gewaltstraftaten in Paarbeziehungen. Gutachten im Auftrag des Senatsamts für die Gleichstellung. Hamburg.
- Pelikan, C., 1992. Der Sozialarbeiter im Außergerichtlichen Tatausgleich: Auf dem Weg zu einem neuen professionellen Selbstverständnis. *Sozialarbeit und Bewährungshilfe (SUB)*, 3/1992, 4-16.
- Pelikan, C., 2010a. Der (österreichische) Außergerichtliche Tatausgleich bei Gewaltstraftaten in Paarbeziehungen. Replikation einer empirischen Studie nach 10 Jahren, oder: Die Männer werden nicht besser, aber die Frauen werden stärker – stimmt das noch so? *STREIT – Feministische Rechtszeitschrift*, 28, 17-27.
- Pelikan, C., 2010b. On the Efficacy of Victim-Offender-Mediation in Cases of Partnership Violence, or: Men Don't get Better, But Women Get Stronger: Is it Still True? Outcomes of an Empirical Study. *European Journal on Crime Policy and Research*, 16, 49-67.
- Pelikan, C., 2012. Partnership Violence and the Role of Restorative Justice: an Austrian Case Study. In: T. Gavrielides, ed. *Rights and Restoration within Youth Justice*. Whitby: De Sitter, pp. 149-177.
- Watzke, E., 1997. Äquilibristischer Tanz zwischen den Welten: Neue Methoden professioneller Konfliktmediation. Bonn: Forum Verlag Godesberg.

Chapter 2. Victims and restorative justice in Finland

By Päivi Honkatukia

This chapter analyses victims' personal experiences regarding the offer of mediation, the experience of communicating with the offender, the mediation outcome and the judicial context in Finland. In addition, background information on the development of mediation and victim services is provided. Mediation of partner violence is discussed and examined as a widely practiced but also contested issue. This issue has been a notable source of tensions between victim support organisations and mediation services.

1. Background

Mediation of criminal offences has been legally regulated activity in Finland since 2006. It can be either a parallel or complementary procedure to court proceedings. The aim is to provide the parties an opportunity to meet each other confidentially and to discuss in the presence of a non-partial mediator the harm caused to the victim. Mediation offers offenders an opportunity to assume responsibility for their actions. The goal is to achieve an agreement that satisfies both parties. Other members of the community can be involved in the process, even if this rarely occurs. The procedure is facilitated by volunteer but trained mediators.

1.1. History of mediation in Finland

In Finland, mediation has been developed in connection to two governmental systems: social welfare and criminal justice systems. From the very beginning mediation has been closely related to social work, the prevention of social exclusion and child welfare. Currently, the main responsibility for the national development of mediation services and for the supervision, management and monitoring of mediation services is with the Ministry of Social Affairs and Health. At the same time, mediation fits well in the ideology behind the Finnish criminal policy which is commonly described by attributes such as "rational" and "humane". Unlike in many other western countries, criminality in Finland has not been popularised very strongly in the media and public discussions. Hence, it has not been very much politicised either, which has allowed the criminal political planning to stay in the hands of 'experts': civil servants, researchers and other professionals in the academic field. The Finnish criminal policy has applied general prevention according to the principle that criminal justice should remain the last resort in preventing crime. Criminality is seen as an outcome of marginalisation from the society which should be prevented with measures of social policy instead of relying on severe sentences: 'Good social-development policy is the best criminal policy' is a well-known slogan describing this approach (Lappi-Seppälä, 1996, 329). One of the internationally

celebrated landmarks of this policy is the sharp reduction in the prison population in Finland during the last decades.

In the 1970s the aim and justification of punishment was fundamentally re-evaluated according to the principles that the punishment system should (1) have a moral resonance expressing society's disapproval of the behaviour and (2) that it should be regarded as just, legitimate, predictable and effective. The latter aim was seen to be achieved by keeping the punishment system as simple as possible. Moreover, the division of labour between different authorities was clarified by separating punitive activities (the criminal justice system) from the supporting and reforming ones (the social welfare system) (*ibid.*, 330-332). Therefore, the social welfare and justice sectors are regarded as independent entities both in principle and in practice. The main responsibility among authorities for offenders' socialisation belongs to the social welfare authorities whereas the task of criminal law authorities is to determine the sentence (Marttunen, 2008).

Since the 1970s, and also very recently, it has been questioned whether this kind of clear distinction between welfare and punishment systems is the best possible model, for example in the case of young offenders, and whether the model itself places appropriate emphasis on the activities and responsibilities of the social welfare sector (Nuotio, 2004). In practice, this debate has been accompanied by increased co-operation between the criminal justice system and social work professionals. Consequently, there has been a growing demand for a more elaborate penalty system with non-incarcerating and socially supporting sanctions. Community service and juvenile specific penalties were, for example, introduced as responses to this criticism in the 1990s. Mediation of criminal offences has similarly benefited from the recent criticism towards the neo-classical features of the criminal justice system. Until very recently, this division between welfare and criminal justice has not been explored from the victim perspective.

In addition to the development of national criminal policy, international criminological discussions have had an impact on the expansion of mediation in Finland. First of all, it has been inspired by an abolitionist movement that questioned the whole foundation of the criminal justice system and called for its replacement with community-based restorative justice. This discussion started in the 1970s and early 1980s and was inspired by writers such as Louk Hulsman and Nils Christie. According to them, the state had stolen people's conflicts by defining them as criminal acts instead of paying attention to the parties involved and their conflict. The official criminal justice procedure was regarded as inhuman, too formal and incapable of building well-functioning social relations in the community (Lappi-Seppälä, 1996, 333-334).

Secondly, the development of mediation for young people, in particular, was inspired by approaches such as the Chicago School and interactionist research which during the 1960s and 1970s emphasised that negative social reactions can have stigmatising effects and how official criminal justice interventions can produce deviance. The argument is that criminal intervention should be limited to the minimum as a reaction to young people's offences, since they possibly have criminogenic consequences

on young people's lives (Goldson, 2010, 162-163). Mediation has been perceived as one alternative to heavy criminal justice intervention; it was seen to offer a possibility for positive, e.g. educating and integrative effects on young offenders (Braithwaite, 1989).

These critical discussions sparked off the Finnish mediation movement, which started as a local project aimed at tackling young people's problematic situations outside the criminal justice system. Since then victim-offender mediation has spread all over the country, so that it has an official recognition and co-operates closely with the official criminal justice system even though the process of mediation is still rather informal and facilitated by volunteer mediators. It is not practiced solely among young people any more. By contrast, the share of adults is increasing, and a majority of the victims are adults (see section 1.3).

1.2. Legislation

It has since 1966 been possible to take mediation into account in criminal proceedings in Finland, for example in discontinuing action in the proceedings. Since the 1990s, mediation has been mentioned in the criminal law reforms. Settlement (achieved for example in a mediation process) was introduced in the criminal law in 1997 as a justification for non-prosecution and for waiving penal sanctions. During the 1990s, efforts began to promote systematic legislation and governmental organisation of mediation procedures throughout the country. The Act on Mediation in Criminal and certain Civil Cases (1015/2005) came into force on 1st January 2006. Consequently, from 1 June 2006 onwards mediation services have been available throughout the country. In addition to secure equal access to mediation, the legislation aims to safeguard sufficient government funding for mediation services and to create conditions for their long-term evaluation and development.

Even if mediation is offered outside of the criminal justice system, the outcomes often have a direct impact on criminal proceedings and on the legal standing of the parties. For instance, it can be a significant factor when the prosecutor considers whether or not to prosecute. Mediation may be the basis for restricting the preliminary investigation, waiving possible charges, not imposing a sentence, mitigating punishment or changing the type of punishment. However, it is notable that an agreement does not guarantee a non-prosecution or mitigating punishment and the prosecutor and court do not have to take the mediation into account. In principle, any type of crime can be dealt with in mediation. There are some limitations, such as:

- violence in close relations should be referred to mediation only by the police or the public prosecutor;
- violence in close relations should not be mediated if violence was repeated or when there had been earlier, unsuccessful mediation processes;
- mediation of sexual crimes where a child is a victim is forbidden;
- if no chance of mediation exists, neither should damages be mediated;

- if the case has come for mediation directly from the parties themselves, it must be referred to the police or to the prosecutor;
- if a child under 18 years of age, his/her parent or guardian must give consent.

The mediation programme is most commonly organised and managed by municipal social welfare offices, but sometimes also by non-governmental organisations. Mediators are volunteers, who are led by mediation advisors and persons in charge of mediation services (e.g. directors of mediation offices). Before allowed to act as a mediator, a person has to pass a course of about 30 hours. The mediators should act as unbiased facilitators and they should respect all the parties. The mediators' tasks are e.g. to organise the mediation meetings between the parties; give the parties information on available legal assistance and other services; draw up a document on the agreement reached by the parties in the mediation process and verify it with a signature; and after mediation, submit a report on the mediation process to the mediation office (Kinnunen et al., 2012).

1.3. Mediated cases in Finland

In Finland, mediation is extensively practiced. After passing of Mediation Act in 2006, the number of cases has increased so that in 2013 over 10.000 cases are mediated and the amount is increasing. It has been calculated that about 17% of the offences which can be mediated enter the mediation process (Iivari, 2012).¹⁰ The majority of the mediations relate to criminal offences (12.895 cases in 2011, only 345 were civil cases). Mediation services in Finland have been focused on offences committed by children and young people (45% of the suspected persons in mediation in 2011 were under 21 years). The offences are typically targeted to adults, for example in 2011, 29% of the complainants were under 21 years (Mediation in Criminal and Civil Cases -MiCaCC- 2010, 2011).

The majority of referred cases are violent offences (52% in 2011). The mediation process starts in about 70% of the referred cases. The majority of the processes end up in an agreement (90% in 2010). Most often the agreements deal with financial compensation (37% in 2011) or conduct, apologies or waiving of claims (57% in 2011, Ibid.). Most suspected offenders in mediation are males (79% in 2011). Of the complainants (=victims) 62% were males in 2011. Furthermore, also legal persons such as shops or insurance companies can act as complainants (1.530 legal person in 2011) (Ibid.)

The Finnish criminal and procedural law distinguishes between 'complainant' and 'non-complainant' offences. 'Complainant' offences are minor in nature and their prosecution is a matter for the injured party. In other words, only if the complainant claims a sentence for the suspected offender, the police must then start the preliminary investigation. 'Non-complainant' offences are more serious and subject to compulsory

¹⁰ In this figure offences such as traffic or drug offences are not taken into account, since they cannot be mediated.

public prosecution. Typical complainant offences are minor harms and damage to property, but in an international comparison quite many violent offences are complainant offences (Niemi, 2010). Both complainant and non-complainant offences are eligible for and typically dealt with by mediation. 56% of the cases referred to mediation in 2011 were non-complainant offences (MiCaCC, 2011). However, mediation has rarely been used in cases of serious crimes such as manslaughter or rape.

1.4. Research on VOM in Finland

The Finnish mediation practice has been studied extensively from the beginning. The victim perspective has been part of the studies even if not usually as a specific focus. More strongly the victim perspective has been discussed recently, particularly with the growing interest and discussion on mediation of partnership violence. Several general evaluations have been conducted in Finland on the mediation practice (Iivari, 2010; Järvinen, 1993), including assessments of impact of mediation on recidivism (Eskelinen, 2005; Mielityinen, 1999). Also some specific features of the mediation process have been studied, e.g. the meaning of the moral emotions in mediation and in court (Takala, 1998). Moreover, mediation and restorative justice have been topics of more theoretically oriented works, included doctoral theses (e.g. Elonheimo, 2010; Iivari, 1991). Children's and young people's experiences of mediation have been dealt with in one study, but again not from the victim's perspective (Eskelinen, 2005). More recently, studies on mediation of violence in close relationships have been conducted. Some studies have been part of the developmental process of this kind of mediation (Flinck and Iivari, 2004) whereas others have taken a more critical stand towards it, particularly from the victim perspective (Henttonen, 2012; Qvist, 2010) and yet others have examined the issue from the authorities' point of view (Sambou and Uotila, 2010).

2. Victim support organisations in Finland and cooperation with mediation

2.1. Victim services in Finland

In Finland, the complainant's formal position is strong. Unlike in many other western countries, in Finland and in Sweden the victim's (complainant's) right to institute criminal proceedings has not been totally removed, even though it has been narrowed (Nousiainen and Pylkkänen, 2001, 173-174). Therefore, the Finnish legislation guarantees many procedural rights to victims, e.g. a right to have their voices heard in courts. At the same time, sensitivity towards consequences of victimisation and victims' special needs is not as well developed as in many Western countries, and in practice it depends very much on the expertise of the individual professionals. The services for victims providing mental support, help and advice have been developed from the 1990s onwards, a decade or two later than elsewhere in the Western world. In 2013, there are no national guidelines or

policies that ensure the good treatment of the victims. Like in many other countries, the third sector in Finland has assumed the main responsibility in developing victim services, even though the state finances them and they are therefore to some extent random and vary geographically.¹¹

The scarcity of victim services can be observed e.g. in recent international victimisation surveys. In one of them it was asked whether those victims who had wanted to receive specialised services had actually received them (Van Dijk and Groenhuijsen, 2007). In Finland this share was only 6% and it was one of the lowest rates in Europe. The highest rates can be found in countries such as Scotland or Austria, where it is about 40% (ibid., 373-376). The lack of support services has been raised also in the context of mediation (Iivari, 2010). Similarly, some of the interviewees of this study missed especially long-term interaction with support services.

The main organisation to support victims of crime is 'Victim support Finland'. The services are for victims of any crimes, including witnesses and those near-by the victims. The Federation of Mother and Child Homes and Shelters upholds 14 shelters around Finland (in addition there exist about 20 other shelters in Finland). Moreover, some women-specific services exist: Tukinainen–Rape Crisis Centre supports women and girls who have experienced sexual abuse or their near-bys; Monika–Multicultural Women's Association in Finland helps girls and women with an immigrant background who have experienced violence; the National Women's Line in Finland offers national telephone- and internet-advice as well as peer group activities for women who suffer from violence; the Federation of Mother and Child Homes and Shelters has organised services for men in difficult life situations (Men's Centre) and in dealing with their own violence. The shelters work with children who have been victims of violence or have witnessed violence at home. In addition, diverse NGO's have organised services for different groups (e.g. children and young people, elderly) which are not specifically for crime victims but deal with wider problems and difficult life situations of these groups of people.

The results of a survey of Finnish victim service clients reveal that female victims who have experienced serious violence usually in their intimate relations mostly contact these services (Honkatukia, 2011). The men who contact the services are mostly victims of violence in public places such as streets and restaurants. Very few people contact the services because of other crimes than violence. The criminal victimisations of the service

¹¹ However, the victim perspective has become more prevalent during the recent decades also in Finland. Legal measures have been developed for victims to have the harm caused by the criminal offence compensated primarily by the perpetrator but also by the state or insurance companies. The state authorities have a responsibility to provide an interpreter if needed. Moreover, district courts can admit a legal counsel and/or support person for a person who has been a victim of sexual offence, serious violent act and if the violent act has been committed by a person near-by. The commission is paid by the state in these cases. Also the public legal aid offices can admit free or partly free legal aid for those in a disadvantaged economic situation. In addition, the police have been advised to inform victims on legal matters concerning their case and on the available victim services.

seekers are usually serious: typically, violence with mental and economic consequences. Besides seeking emotional support, clients look for advice on how to handle their case with different state authorities.

2.2. Co-operation between mediation and victim support organisations

Co-operation between mediation and victim services has been rather limited, particularly on the local level. On the national level, the Advisory Board of Mediation has a representative from Victim Support Finland, but so far no other victim support organisation has been represented in the Board. Some cooperation between the mediation offices and legal authorities has been organised locally, e.g. in a form of regular meetings, in which practices and the role of mediation is discussed. However, victim support organisations, social work or school authorities participate less often in these groups (Iivari, 2010, 78-86).

One of the aims of mediation is to refer parties to services based on their needs. In this respect the scarcity and variability of support services has been acknowledged as a problem in Finland. According to an evaluation study, directors of mediation offices wish to develop deeper cooperation with social work, child protection and victim services (ibid., 75-76). The relationship between mediation and victim support organisations is somewhat contentious. Disputes have been most intensive around the question on mediation for partner violence (e.g. Henttonen, 2012, 44-45; Qvist, 2012). Mediation is claimed to be too offender-oriented by some victim support organisations and activists, and coordinators of mediation regard the victim perspective as biased.

3. Interviews with victims: description of the Finnish data and data-collection

3.1. The aims of the study

Victims' and offenders' satisfaction with mediation has been evaluated in earlier studies and many victims tend to be content with their mediation experience. For example, according to a Finnish study 70% of parties were satisfied with the mediation after one year of mediation of violence in close relations (Flinck and Iivari, 2004). Results of a later study indicate that 80% of the parties are satisfied with VOM (Iivari, 2010). It is pointed out that victims do not always neatly fit restorative ideals (e.g. Herman, 2005). Via listening to victims the aim of this study is to form a research account for safe and just outcomes from the victim perspective, without bypassing the needs and rights of the offenders.

3.2. Recruitment of the interviewees

In Finland, the main data were attained in cooperation with seven mediation offices from different parts of the country. The preparatory phase of the study included negotiations and meetings with the staff of these mediation offices as well as applying research permissions from the municipalities or organisations responsible for mediation in each community. It was agreed e.g. that the initial contact to possible interviewees was to be made by mediation offices and victims' contact information was not given directly to the National Research Institute of Legal Policy (NRILP).

In the first phase of the data collection, in August 2011, five mediation offices selected 28 possible interviewees from their clientele according to a detailed inquiry which was based on national statistics on the clients of mediation service. The 28 victims were divided into three categories: those who had reached an agreement, those whose mediation process had been interrupted and those who had been offered mediation but the process had not started. In the inquiry these three categories were further divided in terms of gender and age. Moreover, mediation offices were asked to include also victims who had been in mediation some time ago, in order to get interviewees with experiences of the court dealing as well. The potential informants were sent a letter in which they were invited to volunteer to be interviewed. The meaning and context of the research project was explained together with the ethical principles guiding the data collection and analysis. The potential interviewees were asked to express their consent by normal mail (prepaid letter), e-mail, by phone or via Internet. All these channels were used.

The first round produced only 13 interviews, after which the mediation offices agreed to send a reminder as well as invitation letters to some new potential interviewees. Altogether approximately 300 invitation letters were sent. In addition, some mediation offices contacted by phone those who were sent letters and encouraged them to take part in the research. Even if these phone calls were usually received positively, only a few more informants eventually volunteered to be interviewed. The second round produced 12 to 13 more interviews.

Hence, about 25 interviews were collected from the mediation offices during September-December 2011 which is much less than the original goal. Therefore in February 2012, cooperation was established with two other mediation offices and about 40 to 50 invitations were sent to potential interviewees. In addition to this, mediation coordinators approached some interviewees personally and asked them to be interviewed. Altogether we managed to recruit 37 interviewees via mediation offices, making the response rate to be around ten percent. Each mediation office provided the study with 3 to 7 interviewees.

Because of the slow proceeding of data collection via the mediation offices, cooperation also was established with Victim Support Finland in the Autumn of 2011. The staff in eight regional offices agreed to ask their clients who had experience in mediation whether they would be interested in participating in the interview. Even if Victim Support

rarely encounters victims with mediation experience, eighth informants were recruited through this organisation from four regional offices. A third channel used in the recruitment process were informal networks of the main researcher. Altogether three informants were recruited in this way. Unfortunately the time table and resources of the project did not allow us to continue with the data collection and therefore in the end of April 2012 the total and final amount of the interviewees in the Finnish project was 48.

The interviews were conducted by Päivi Honkatukia (44 interviews) and Marianne Oksanen (4 interviews). They lasted from little less than an hour to two hours. The questionnaire formed the framework for the discussion, but the interviewees usually spoke about their experiences with their own words. 11 interviews were conducted face-to-face and 37 on the phone. Many informants spoke about difficult experiences, such as negative emotions and consequences of victimisation. Therefore, the informants were provided with contact information of Victim Support Finland at the end of each interview.

Even if the recruitment method was rather inefficient, it can be regarded as an ethically sound procedure when no pressure was imposed on potential interviewees to participate. At the same time it should be noted that the data is not statistically representative of the victims in mediation in Finland, even if the breakdown of e.g. offences, gender and age are reminiscent to those of all clients in mediation in Finland (see section 4). By contrast, the sample is self-selected, as the decision to participate was left to the victims themselves. We do not have systematic information of the motives for participation in the interview. As based on the impressions and the informants' accounts it seems as if some wanted to share their criticism towards mediation. Others, by contrast, wanted to reflect their positive experiences as participants in mediation.¹² And yet some had more altruistic reasons for their participation, they sometimes wanted to help the researchers since they had some knowledge of the difficulties in e.g. gathering interview material. Others found it useful to share their experiences: after the interview some thanked us for the opportunity and said it had been useful to reflect the mediation process once again.

¹² It should be, however, noted that the experiences were not often purely negative or positive but often included both aspects.

3.3. *Analysis of the interviews*

With permission of the informants almost all interviews were tape recorded. By the end of June 2012, 30 of these recordings were transcribed verbatim. In addition, of 34 interviews the interviewer wrote a summary of the main observations, reflections and feelings raised by the interview. All interviews were coded with the aid of the SPSS programme. Even if the size of the data is small in quantitative terms, it has a great qualitative value: the interviews strengthen and aid the quantitative analysis by documenting richly subjective meanings, processes and victims' experiences of the different phases of mediation. To have information on how meanings for offences are constructed in RJ processes is crucial, as meanings can have consequences on how the victims experience mediation. If the offence occurs between acquaintances or in a context of a close relationship, also the meanings related to it derive from the history of this relationship. Further, management of meanings relates to power relations in interaction as well as to the capacity of facilitators to support or challenge certain meanings (Kenney and Clairmont, 2009; Stubbs, 2007, 173-174). Due to the small size of the data in quantitative terms, the quantitative analysis remains mainly descriptive: presentation of e.g. frequencies, means and cross tabulations of the main variables. The small sample size did not make use of statistical tests sensible and these were therefore not executed. The qualitative analysis is based on a thematic coding of the transcribed interviews and notes. This entails that the interviewees' accounts in relation to the four main themes of the study will be examined closely and reported (victims' experiences of the offer of mediation, communication process, outcome and judicial context). Results of the quantitative and qualitative analysis will be reported thematically together and in dialogue. As such they hopefully enrich each other in a triangulate way.¹³

¹³ Methodological issues would deserve a deeper analysis, though. Here only one general observation: it seems as if the statistical analysis gives a more positive view of the interviewees' feelings and experiences as compared to what they actually narrated their experiences. It might be that those who had been satisfied did not feel it necessary to explain more concretely why they had been pleased, whereas those who had been disappointed with something were inclined to talk about these issue. Similar observations are made in other studies, e.g. when young people were asked to describe 'good' and 'bad' lives, the descriptions of good life were more general and shorter compared to accounts of bad lives which included detailed descriptions on issues, phenomena and events (Helavirta, 2012, 58).

4. Some main features of the data

4.1 Demographic information

Of the interviewees, 26 were men (54%) and 22 women (46%). Hence, the share of male victims was a bit lower as compared to their share in the national statistics on mediation (62%, MiCaCC, 2011). Different age groups were represented, even if most were middle-aged or older (see table 1). This result is reminiscent to the national statistics and indicates that most offences dealt with in the mediation are targeted to adults.¹⁴ Still, the share of middle-aged interviewees is larger as compared to their share of victims in mediation in Finland: whereas half of the complainants in the whole country are 30 years of age or above, of the interviewees as many as 73% were 35 years or older. Thus females and middle-aged and older people seem to be overrepresented in the data when compared to complainants in mediation in Finland. Most interviewees were either married (46%) or cohabiting (19%), but also almost one in four informants (23%) was single at the time of the interview. Over half of the informants were active in working life (52%). Less than one in four was retired or unable to work (23%, only one informant was unemployed) and 15% were students.¹⁵ The interviewees were relatively well-educated: almost 80% had a professional degree, which was most commonly a college level degree or vocational school degree. Also other degrees, such as a university/university of applied sciences degree were well represented.

¹⁴ In 2011, 71% of the complainants in mediation processes were over 21 years old (MiCaCC, 2011).

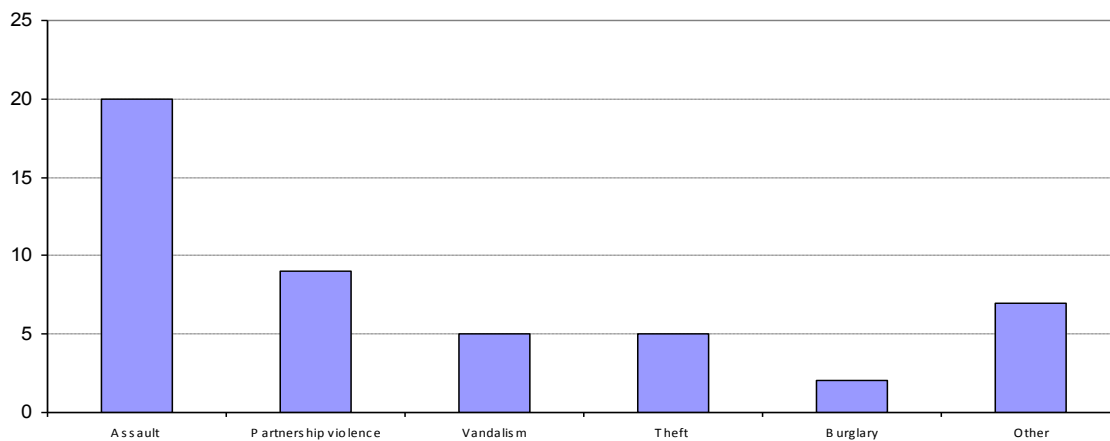
¹⁵ Two interviewees were on a maternity leave at the time of the interview and some were private entrepreneurs.

Table 1. Demographics of the respondents

		N (%)
Gender	Female	22 (46 %)
	Male	26 (54 %)
Age	<18	1 (2 %)
	18-24	2 (4 %)
	25-34	10 (21 %)
	35-49	12 (25 %)
	50-65	17 (35 %)
	65<	6 (13 %)
Employment	Employed	25 (52 %)
	Not employed (unemployed, student, home-maker)	23 (48 %)
Marital status	Single	11 (30 %)
	Married/cohabiting	31 (60 %)
	Divorced	5 (7 %)
	Widowed	1 (3 %)
Ethnicity	Finnish	47 (98 %)
	Non-Finnish	1 (2 %)
Employment	Lower education	10 (21 %)
	Secondary education	28 (58 %)
	Tertiary education	10 (21 %)

4.2 Victimisation experiences

The offences dealt with in mediation were most often assaults (20/48), partnership violence (9/48), vandalism (5/48) or theft (5/48, see figure 1). Some had been victims of offences such as embezzlement, fraud, burglary and slander. Similarly to this data, violence is the most common offence dealt with in mediation in Finland: according to national mediation statistics 52% of the cases dealt with in 2011 were violent offences, 15% vandalism and 12% crimes against property (MiCaCC, 2011). Respective figures in this data follow the same pattern: 63%, 10% and 17%.

Figure 1: The offences experienced by the informants (absolute numbers, N=48).

As mentioned earlier, the research constellation of the study included three subgroups: (1) those who had finished mediation, (2) those whose mediation process was interrupted, and (3) those for whom it did not start. 36 interviewees belonged to the first group, 7 to the second and 5 to the third group.¹⁶ The groups had a gendered composition: most male interviewees had reached an agreement (23/26, for women 11/22), whereas for a considerable share of the female interviewees the mediation process had not resulted in an agreement or not even started (9/22, for men 3/26). The data is very limited to answer the question on whether this results reflects gendered patterns in victimisation experiences dealt with in mediation in general, but at least one clear gendered difference can be observed, namely the victim-offender relationship: the male interviewees had been most often victims of unknown offenders (males 58% vs. females 27%) whereas women were more often victimised by partners or family members (females 41% vs. males 4%).¹⁷ In the context of close relationships, the violence had often been continuous, whereas between unknown people violence had occurred usually only once. Many of the latter cases were assaults which had occurred in bars or after a night spent in a restaurant. Similar results have been gained in Finnish victimisation surveys (Sirén et al., 2010). Moreover, similar but stronger patterns can be found among clients in victim services in Finland (Honkatukia and Kivivuori, 2011). A notable difference between clients of mediation and victim services is, however, that victim services are contacted mostly by women (86%), whereas victims in mediation are more commonly males.

¹⁶ No mediation cases: (1) neighbours harassing, female, (2) partner violence, female, (3) assault and threats towards daughter by an unknown drug addict, male, (4) robbery by an elderly woman committed by young boys, (5) mobile phone stolen by a young girl, female. Sometimes mediation did not start because the offender was not reached, in other cases the victim did not want to start the process: s/he was afraid or ambivalent in encountering the offender or did not feel that mediation was appropriate to deal with the conflict. In one case the interviewee was not aware why mediation was not organised.

¹⁷ All the women in this category had been victims of partnership violence, whereas the one man in this category had been victim of embezzlement committed by his nephew.

4.3. The severity of the victimisation experience, trauma symptoms and seeking help

As subjective experiences the offences were often regarded serious. The majority (7%) regarded their experience at least quite serious and only two respondents were of the opinion that it was not serious at all. Women tended to regard the offences more often serious than men (means: men 2,92; women 3,36).¹⁸ The following example is one of the gravest in the data:

A male interviewee told me how he had been attacked by his female friend's ex-husband while he was visiting her. The interviewee feared for his life, e.g. that his head will crumble into pieces: 'You don't know what kind of a feeling that is.' The man hit him with his fists, kicked his head and strangled him so that he could not breathe. The interviewee was kneeling and tried to protect his head with his hands. The man did not say a word during the episode. The interviewee's friend (the man's ex-wife) tried to intervene, after which the man hit her again. She ran to bang the neighbour's door and the man escaped after having given the interviewee a karate-kick. The interviewee's friend had lost wads of hair. The interviewee had scratches and a bump size of an egg in his head. They were both shaking and shocked.

Some interviewees described how they had been fearful, timid or anxious after the offence and in some cases the offender had threatened the interviewee afterwards. Feelings of shame and guilt were also commonly described. Traumatic consequences can be experienced also after less serious cases (judged from the outside), as in the case of an elderly lady who was robbed by young boys in the middle of a day in a local shopping centre.

She felt vulnerable because of her physical limitations and regarded therefore the case particularly upsetting (her back hurts, she was unable to run after the boys who had snatched her bag). She finds it outrageous that her weak state was used in this way. In addition, the boys took all the money she had at that moment. But she was relieved not to have been a victim of violence. After the incident she had avoided going to the shopping centre at times when there are not many people. At the moment, she is timid and reports many trauma symptoms.

Almost half of the respondents (48%) had visited a doctor or nurse because of the offence; this included sewing stitches or treating bruising, muscle cracks or other injuries, which had in few cases been possibly life-threatening and required sometimes further medical operations. The question of the severity of the offence turned out to be tricky for some interviewees. Some stated laconically 'these things happen', but at the same time they

¹⁸ Taking everything into account, how serious was the incident for you at the moment it happened? 1=not serious at all; 5=extremely serious.

described different post-traumatic symptoms they had experienced. They could also reflect on this issue both from the society's and an individual's point of view: as a personal experience it was often seen as a serious infringement of integrity or a severe disappointment in the offender, but at the same time many had a lot of understanding towards the 'overloaded' authorities and to the fact that there are issues which need more attention on a societal level. Some interviewees had become aware of the severity of their experience only later, as is the case with an interviewee who had just left a relationship in which she had experienced violence.

PH: How serious do you think the crime against you was, but can you talk about this one (incident) or should we talk about that...?

I: I can't say whether it is serious. Well of course it is serious but when you *look at the big picture* [...] It is so shocking to realise yourself where you have been in. [...] that I have been undervalued through the whole marriage. You need to see the big picture to see what I have been going through. It has been quite shocking to realise where I have been in.

Despite regarding the offence often serious, only a minority (25%) had recently experienced trauma symptoms, such as being upset, physical symptoms, sleeping difficulties, bursts of anger and concentration difficulties at least twice during the last week. Many more explained that they had experienced them earlier, particularly just after the offence or before the perpetrator had been detected. Others, however, did not admit of suffering of the trauma symptoms, but admitted they had despite this engaged in constant risk assessment in terms of the perpetrator's dangerousness (see also Herman, 2005, 595).¹⁹

Table 2: The means of different symptoms experienced at least twice during the last week by the type of mediation

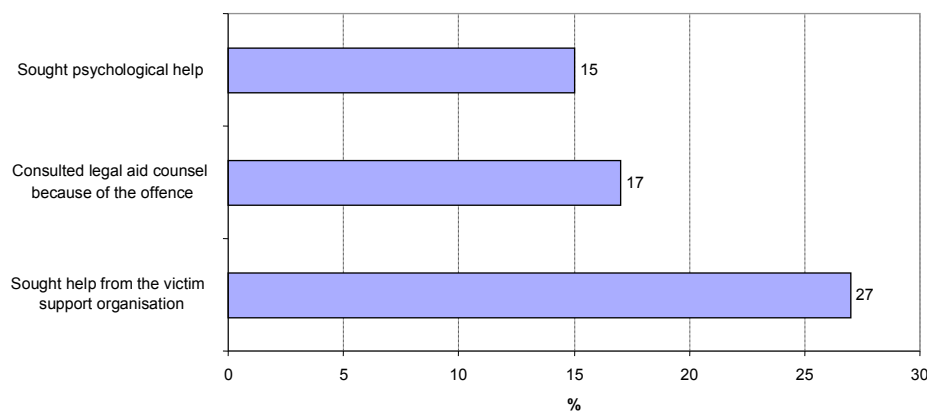
	Mean	N	Std. deviation
Mediation finished	0,04	36	1,18
Mediation interrupted	1,57	7	2,4
No mediation	0,94	5	3,8
Total	0,94	48	2,0

Those who knew the offender had experienced the above-mentioned symptoms more often than those who did not know him/her (on average 1,3 symptoms for those who

¹⁹ Some male interviewees, in particular, were reluctant to talk about this question. Some denied the existence of any of the symptoms before they had even been asked the first concrete question. In relation to this, it was interesting how little some of the male interviewees were willing to reveal about the concrete assault. They wanted to share their experiences of the mediation process, but the intimate details of how they had been assaulted or what they felt at the time, were not easily revealed. Sometimes the interviewee denied the audio-taping of this kind of narration. This might have something to do with the ambivalent relationship between masculine statuses and being a victim of crime.

knew him/her vs. 0,5 symptoms for those who did not). Further, women had experienced them more than men (women on average 1,5 symptoms, men 0,5) and those aged 36-49 years more often than other age groups (means: 1,3 vs. 0,9 in all age groups). Also the means for those whose mediation had been interrupted or if it had not started were higher as compared to those who had finished the mediation (see Table 2). The low symptom-propensity of those who had reached an agreement can be interpreted as a sign of both attractiveness and benefits of mediation to certain kinds of victims, i.e. those who are neither particularly traumatised, nor vindictive towards the offender (see the discussion later on ideal victim of mediation in the conclusions).

Figure 2: Help-seeking among the interviewed victims (% of the respondents, N=48)



More than one in four victims had contacted a victim support organisation due to the offence, 17% had at least consulted a legal aid counsel during the mediation process and 15% got psychological help e.g. in order to cope with troublesome emotions, such as anger or indignation raised by it (see Figure 2). As based on the interviewees' narration it seems as if seeking this kind of "formal" support was related to the fact that they had informal support, were able to find and contact services and/or had a firm idea how they wanted to deal with the offence.

5. Offer of mediation and preparation

In relation to the offer of mediation, the study aimed to find out how victims feel when mediation is offered, what critical factors are when deciding to participate or not and what the perspective of direct contact with the offender means to them.

5.1. The offer of mediation

Most referrals to mediation in Finland come through the police (82% in 2011) or the prosecutors (14% in 2011, MiCaCC, 2011). Similar to this, all 48 interviewees who had been in the mediation process have had their case reported to the police. The majority (81%) had reported the offence to the police themselves. For the rest, it was reported by

somebody else or the police themselves had detected the offence. The most common reasons for reporting were a wish that the police would intervene (54%), a wish to get compensation for the damages (38%) or that the offender should be punished (35%). In addition, some described how they had been angry and upset of being treated unfairly or unjustly: 'I was so pissed off', 'I was filled up of all the unfounded accusations', 'I will never return to him, this relationship is in the end'. Also the fear of the perpetrator or that the interviewee or somebody else (e.g. one's own children) will be (re)victimised were mentioned as reasons to report (24%). Some victims of especially violent offences had sought safety and ways to limit the perpetrator, such as a restraining order.²⁰

Sometimes the interviewee had reported the case to the police only after he had visited a doctor who had encouraged to report it. Another reason for the police report was the practice adopted in some schools according to which all violence against teachers is reported to the police. Some victims of partner violence had made the police report only after the violence had been targeted towards other people, e.g. the children or other people nearby (similar observations e.g. Herman, 2005). One of the youngest informants said he reported the case to the police because his parents had told him to do so. He similarly described the whole mediation process and the court dealing after that, as if adults decided everything on his behalf (for similar observations Iivari, 2010).

Even if many interviewees had difficulties in recalling the exact timing of the mediation proposal²¹, most (77%) recollected that they had first learned about mediation from the police. The rest thought they were informed first by mediators or others such as friends or acquaintances. The police had proposed mediation both in situations in which the report of an offence was made and later when the victim was interrogated. No one regarded the time between the offence and mediation offer as too short, and in general some informants appreciated the quick procedure, which had at best taken only about two months. Over half regarded the offer timing perfect (54%) and according to the rest (44%) it was either somewhat or too long.²² Some of those who regarded the offer timely

²⁰ Over half of the informants were satisfied with their treatment by the police (51%). They appreciated the sensitive treatment, a feeling of being taken seriously and being informed of victim services, among other things. Also the fact that the police had detected the offender had been a great relief for some. Sometimes the interviewees were satisfied, even if everything had not gone according to their wishes, 'all cannot be expected, the police have limited resources and they are not machines'. However, a substantial minority (41%) were dissatisfied and the rest did not take a stand (8%). The informants had been disappointed when they had felt that the police had not taken the case seriously or nothing had happened for a long time after the initial report. A woman who made a police report on partnership violence had to give her statement while her little daughter was listening. In addition, she felt that the police did not take seriously her fear for his ex-partner and her need for a restraining order. Some interviewees regarded the police as too eager to make a criminal report and in asking intimate questions. Others, by contrast, found the label of the offence too lenient.

²¹ The way the question on the time between the offer and the offence was asked was a bit ambivalent leading some respondents to reflect on the time between the offence and the mediation, not specifically the offer.

²² In Finland, experts in violence work have criticised the practice of offering mediation at the moment of reporting an offence, since the victim may not have enough time to reflect on the offer. They would also like

said that if mediation had offered earlier, they probably would not have agreed: 'I was really angry at first. If I had got this invitation to mediation earlier I think that I would have said no to it.'

Since the cases are referred to mediation almost always by the police or the prosecutor, it is crucial how these authorities understand mediation and how they explain it to potential participants. The Finnish legal authorities and directors of mediation offices have claimed that the police do not have enough knowledge on mediation as a process in order to inform about it adequately (Iivari, 2010, 33). Also some interviewees felt that the police did not explain concretely enough about the mediation procedure, which sometimes caused confusion:

PH: Did the police explain to you (what mediation is)?

I: No he didn't. And he didn't explain it to my husband either, so he couldn't really explain what this thing is. Then we got this paper [...] that said that the mediators are volunteers and something.

Echoing this, some police officers have suggested that they could participate in the mediation sessions as observers in order to really learn what happens in them (Iivari, 2010).

5.2. Decision to participate in mediation and preparation

The question as to why the informants agreed to take part in mediation was very often answered by referring to mediation as a handy, easy-going, non-bureaucratic procedure, as a means of getting an unpleasant issue quickly done with and be able to continue one's life. Some wanted to have "fairness", acknowledgment that they had been wronged, not "official justice". Others admitted that they had been afraid of the court dealing which had also affected their decision to accept the mediation offer. The anxiety stemmed from either ignorance of the practices of the legal system, or fear of the offender or that the court dealing would worsen the complex situation further.

The interviewee accepted the mediation offer since she was afraid that her ex-partner would take revenge on her in case she did not accept the mediation offer. She did not want to claim any financial compensation from him, just to get him out of her life. Her only wish was that in the mediation meeting they could agree that he won't contact her again.

to restrict the police's and prosecutor's right to propose mediation since they feel these authorities do not often know enough about the concrete circumstances of each case. They further argue that the mediation should not be offered solely as based on documents but the parties should be met before the decision (Qvist 2010, 36). Furthermore, some interviewees added that the legal authorities should have more education on 'emotional issues and knowledge of human nature' in order to recognise persons who are not fit to engage in a equal dialogue with the another person.

The interviewees who had been victims of offences committed by children or young people, very often agreed to mediation since they regarded it to be good for young offenders: “young people should be given a chance, and it can be an educational process for them.” Thus, they shared a view promoted in the Finnish mediation ideology according to which mediation offers a significant opportunity for young offenders to develop a sense of responsibility, to prevent recidivism and to break the cycle of crime in its early stages (e.g. Eskelinen, 2005; Iivari, 2010, 35-38). Also, more generally many interviewees were reluctant to punish or cause more harm than was seen necessary. Instead, some were inclined to help those in referring them to support systems.²³

Other reasons mentioned in the interviews included e.g. curiosity to see the person who does “such an insane things” or a wish to resolve the conflict in some other way than punishing the offender, e.g. by declining any further contacts with the offender. The following pre-structured statements were most often accepted as reasons for agreeing to mediate:²⁴ it was seen as a means to prevent reoffending, to get answers from the offender or to get an apology (see Figure 3). The interviewees were divided in whether they wanted an apology or not (also Herman, 2005, 586): some would have wanted apology, while others did not value it either because they had been already apologised or it was seen otherwise meaningless, as stated in the following extract from an interview with a woman who had been assaulted by her partner:

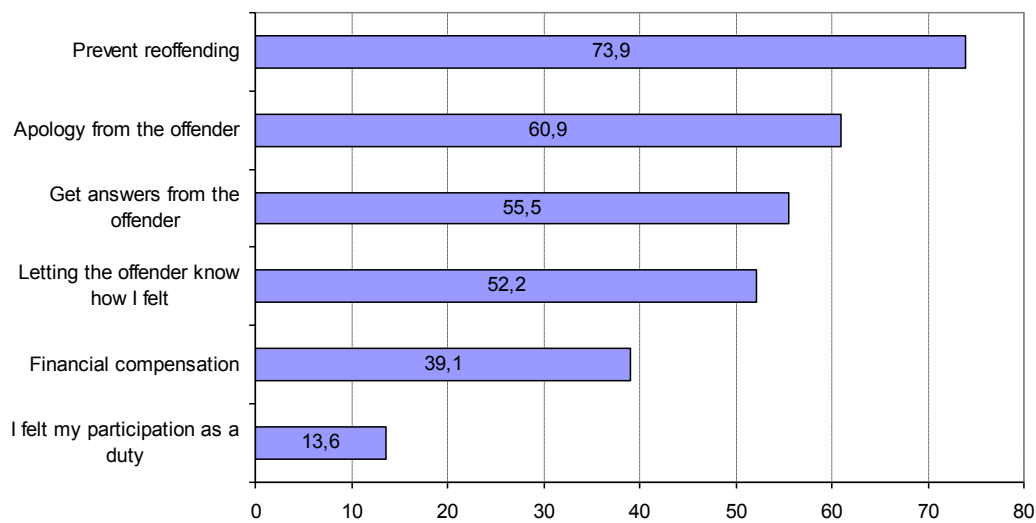
PH: Well what about, did you think that he would apologise? In this process.

I: Yes, but his apologies were wasted because when he wasn't at home after the incident he sent me awful text messages and apologied and blablabla.. But when we saw each other he wasn't sorry anymore [...] So here (in the mediation meeting) the apology felt like he is going to forget it soon anyway.

Over half of the respondents valued the possibility to tell the perpetrator about one's feelings or make the perpetrator understand what s/he has done. A minority, less than 40% stated that they had been motivated by financial compensation and only 14% participated because they felt it as a duty.

²³After the process some of these interviewees were on the one hand disappointed when they found out that the offenders' referral to treatment was not possible in the mediation process. On the other hand, referral to treatment also occurs, even if these services are not available in all parts of the country or they are congested (Iivari, 2010, 77-78).

²⁴ The question of reasons for accepting the offer of mediation often turned out to be difficult for the interviewees. When the pre-given statements were presented to them, many started to talk about their mediation experience already then. Hence, the expectations and the actual experience of mediation were easily mixed in their narration.

Figure 3: Reasons of participating in mediation (very/extremely important, %, N=46)

The above-mentioned statements were evaluated somewhat differently depending on whether the mediation took place or not. Those who finished mediation were less interested in receiving financial compensation than others. In addition, those who did not start mediation were less inclined than others to get answers from the offender, prevent reoffending, receive apologies or let the offender know how they felt. Moreover, men were more interested in receiving financial compensation than women (means 3,08 vs. 2,35), whereas women wanted to prevent reoffending more often than men (means 4,25 vs. 3,73). Those who knew the offender on beforehand were less inclined to receive financial compensation than those who did not know him/her (means: 2,38 vs. 3,25) and more interested in preventing reoffending (means 4,08 vs. 3,80; for similar results see Flinck and Iivari, 2004, 15).

Table 3: Comparison of means of Likert scale; answers to the questions measuring motives for taking part in mediation (1=strongly disagree; 5=strongly agree).

Type of cases		To receive financial compensation?	Receive apologies from the offender?	Let the offender know how you felt?	Get answers from the offender?	Make sure the offender does not commit another similar crime	You felt that it was your duty
mediation finished	Mean	2,44	3,53	3,14	3,36	4,17	1,71
	N	36	36	36	36	36	35
	Std. Deviation	1,7	1,6	1,5	1,6	1,4	1,3
mediation interrupted	Mean	4,00	3,14	3,43	4,00	3,57	1,14
	N	7	7	7	6	7	7
	Std. Deviation	1,5	1,8	1,7	1,5	1,8	0,4
no mediation	Mean	3,67	2,33	2,33	1,00	2,33	3,00
	N	3	3	3	3	3	2
	Std. Deviation	2,3	2,3	2,3	0,0	2,3	2,8
Total	Mean	2,76	3,39	3,13	3,29	3,96	1,68
	N	46	46	46	45	46	44
	Std. Deviation	1,8	1,7	1,6	1,6	1,6	1,3

5.3. Voluntary participation

According to the legislation, mediation may be carried out only between parties who have personally and voluntarily consented to mediation and are capable of understanding its meaning. Before the parties agree to mediation, their rights in relation to mediation and their position in the mediation process must be explained to them. The parties should be able to withdraw their consent at any time during the mediation. This seems to have been clear for the majority of informants, since only four mentioned that they had felt pressure to participate²⁵ and three persons claimed they did not feel able to interrupt the process.²⁶ A rare feeling of being pressured was described by a 24-year old woman who had experienced violence from her ex-partner. Intuitively she did not want to accept the offer but she agreed to start negotiations since she was afraid that not accepting would lead to bad treatment by the police.

²⁵ Three of these informants were females and one male. Two had finished mediation and for two mediation did not start. Two had been victims of partner violence, for one the offender had been unknown and for one an acquaintance.

²⁶ These three interviewees were all male and had finished the mediation process.

PH: Did you feel that you were pressured to accept the mediation offer?

I: Well, yes I did feel like that while talking to the police officer. He used those kinds of words that it would be "really great"... or in the letter he had written "it would be excellent"... and so. When I rang to him, he persuaded me more. So, at least judged from the police it felt like that. From the mediation office, I don't know, no, there was not such pressure. I didn't experience it there. But from the police I experienced pressure.

Sometimes the interviewee had learned from the police that mediation was originally suggested by the offender, which was interpreted as if the offender was given a chance to dominate the criminal process. Also loyalties towards people involved in the same process were mentioned as reasons to accept the mediation offer, even if one's own intuition had been against it.

The interviewee had a contradictory feeling of the possible mediation. He did not want to meet the offender at all, but at the same time he also wanted to be loyal to his friend who was also a party in the case and who was afraid of revenge of the offender (her ex-husband) if the case entered the court. Finally he agreed to consider mediation. He wanted to get the issue done with and therefore eventually accepted the mediation offer.

The youngest interviewee, a 17 year old young man, did not know how he could have withdrawn. Similarly, in a survey to participants in mediation young respondents were most skeptical of their possibilities to influence the end result (Iivari, 2010, 127). Hence, in interaction with young people, attention should be paid to making these issues clear to them. The knowledge and practices of mediation of cases involving children and young people have been recently developed e.g. by describing a "good practice".²⁷

5.4. Preparation in the mediation office

Almost all interviewees recalled they had been contacted by the mediation office by letter or by phone after they had given their initial consent. Most felt that they had received enough information about the mediation procedure (85% of those who had started mediation) and that they had been treated well in this phase, even if those whose mediation process was interrupted seemed to be less satisfied (means 3,43 vs. 4,62 if mediation finished²⁸). At best, the mediation personnel, volunteer mediators and the victim's own activity in searching for relevant information merged positively, as exemplified in the following extracts.

²⁷ <http://www.sosiaaliportti.fi/fi-FI/hyakaytanto/kuvaus/?PracticeId=07b801a2-5804-4806-9501-226aee078b03m>, accessed June 20th, 2012.

²⁸ Likert scale question, 1=strongly disagree; 5=strongly agree.

The interviewee appreciates the way she has been treated by the mediators and the mediation office personnel. The preparation for the mediation meeting had been appropriate, there had been several discussions over the phone, in addition to which the mediation office had sent information on e.g. victim services. The interviewee told us that she is used to searching information on the internet, in addition to which she has a lawyer in a circle of acquaintances with whom she had discussed of the different aspects of this case.

The mediation office personnel had spoken about Victim Support, which the interviewee had also contacted. He received a lot of useful information and support in order to formulate his claims for the financial compensation. He further discussed with his friend who had been in mediation earlier. He had thus learned what happens in the mediation process. Also the mediators had clarified this very well.

A minority of 15% was not, however, satisfied with the information they received. A youngish man whose car had been vandalised by an unknown middle-aged man said he did not get enough information about the meaning of mediation in terms of the criminal process. He was unclear on what happens if he decided not to agree or what happens to the case after the agreement in mediation. He was not certain either whether the case was now with the prosecutor or the police. Similar issues occupied a female interviewee's mind when she recollected the course of events. She had been victim of partnership violence.

She did not quite understand why she had been offered mediation in the first place. What is the meaning of mediation in the whole? She had also been unclear how the issue would have been dealt with in mediation. As based on her experience of the mediation meeting, these issues were even more unclear for her ex-partner. He seemed to have regarded the meeting as a couple counseling session in which he had repeated the issues they had talked about earlier, over and over again.

Moreover, a male interviewee felt to have been treated impolitely when first contacted by the mediator and another male interviewee was disappointed by the passivity of the mediation office in catching up with the offender. The majority of the respondents (75%) agreed/strongly agreed with the statement "I was well prepared to encounter the perpetrator". Only 13% (5 persons) (strongly) disagreed with the statement, and the rest did not take a stand to this statement.

Only one third (33%) recalled that they had been given information on victim services as part of the preparation. A minority (25%) of those who had not been informed believed they would have benefited from this kind of or some other special information, such as fishing rights or land use restrictions. Some informants were quite astonished that such complex issues were put on the shoulders of voluntary mediators (similar observations in Iivari, 2010, 143-144). At least one informant named this as one of the reasons why an agreement was not reached. She did not know whether anyone with

professional expertise would look at the possible agreement. The need to be informed of relevant services has been documented in a client survey for the participants in mediation: both victims and offenders agreed less often with a statement “I got information on other services when I needed it” than with many other statements concerning mediation (ibid., 119-120). A minority of informants have had pre-meetings (6 persons) or discussions on the phone with the mediators (4 persons) before the actual mediation meeting. These were generally seen as useful. Some of those who did not have individual meetings would have wanted to have them (ibid., 147). These pre-discussions were, however, not always seen as successful. Sometimes, they had been held just shortly before the joint meeting with the offender.

6. Communication process in mediation

Regarding the victims’ experience of the communication process, the aim was to study the ways how victims experience the contact and dialogue with the offender in terms of content and quality. Moreover, regarding the experience of mediation in general, it was inquired how victims experience the contact with the mediator, whether principles such as confidentiality and voluntariness are respected and what role support persons play for victims.

6.1. Proceeding of the meetings

Almost all interviewees who had been in mediation had met the offender face-to-face as part of the mediation procedure. Only in two cases was the procedure of so-called indirect mediation used: the mediator had discussed with the parties over the phone. The majority (88%) had met the offender once, usually in the mediation office (83%). The date, time and venue were usually regarded as appropriate. Almost all have had two mediators dealing with their case. The meeting had typically taken from half an hour to two hours (85%). Some sessions had lasted less than 30 minutes (10%) and according to one interviewee’s recollection the discussion had continued two to three hours.

Sometimes rather complex constellations of different offences were dealt with in one meeting and without preparation. One interviewee was involved in a mediation in a case in which he had been assaulted by a person who had been assaulted by another person at the same time. In the mediation meeting he felt that he ended up in the position of an outsider. The offender admitted that he had hit the man but regarded the claim of financial compensation too high. The interviewee felt that the mediators did not help him in negotiating the sum of which he would have been ready to lower.

The interviewee asked whether this was it on his part and the mediators said yes. He left the room in which the offender and the man who had hit her continued their negotiations. The interviewee felt that the woman who had hit him was more interested in talking about her

own victimisation than about what she had done to him. He also regarded the mediators as partial since they had been so sorry for the woman. He felt that his victimisation experience and its' consequences were sidetracked. After the mediation meeting he felt "empty and stupefied." He had the feeling that the mediators were not interested in mediating his issue.

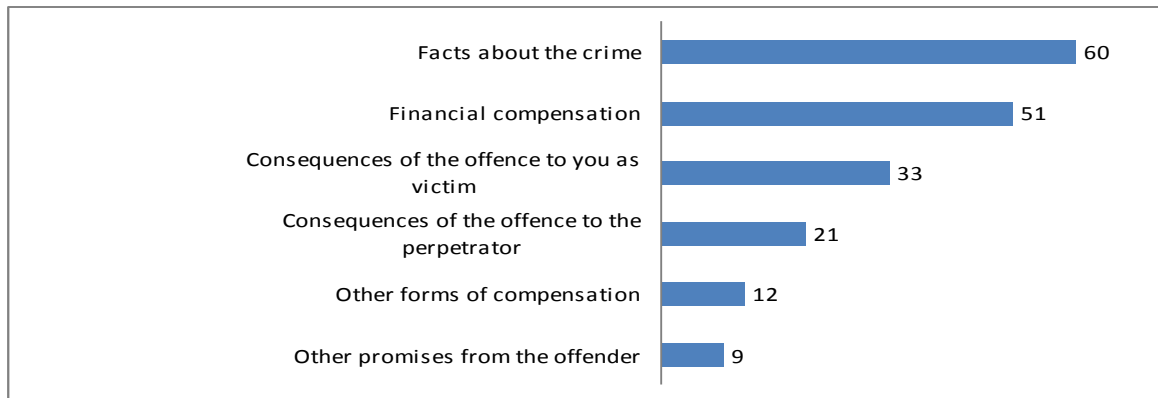
In mediation meetings, the parties are allowed to use assistants or support persons if this does not compromise the progress of the mediation process (Kinnunen et al., 2012). Only 13% of the informants (five persons) brought a support person with them. This person had usually been a support person from Victim Support Finland or somebody nearby. Some interviewees said that in their cases the presence of a legal assistant was not allowed which they regretted. Sometimes the interviewee found it too hard to start negotiating with the offender whether the support person can be present in the meeting.²⁹ Further, in some rare cases the offender has had a legal counsel with him/her in the meeting but the interviewee was by her/himself. Some interviewees claimed that this constellation made the negotiation too formal and sometimes unequal. It is notable that 68% of those who did not have any support person said that they would have not needed that kind of support. Still, almost a third felt that they could have benefited from the presence of a support person in the meeting and those who had the support person were very satisfied with his/her presence.

The frequency of issues discussed in the mediation meetings is presented in Figure 4.³⁰ As based on the interviewees' recollections, the facts about the offence were talked about quite often, as well as the possibility for financial compensation for the victim. Consequences of the offence to the victim were raised less often: in every third case.

²⁹ Sometimes the interviewee had gotten advice from Victim Support, e.g. in forming their claims for financial compensation, even if s/he did not have a support person. This information was usually regarded as useful. Some even pitied the offender who had not gotten this kind of support. Others, however, criticised the Victim Support for advising to claim too big sums, which can kill the possibility of negotiation already in its beginning.

³⁰ The coding is done as based on the narration of the interviewees. The answers, therefore, describe the issues that are subjectively recalled of each mediation session rather than the factual distribution of the issues discussed. The question on the proceeding of the mediation session often raised a detailed and sometimes passionate description, which did not always easily turn into ticks in the boxes in the questionnaire, at least at the time as the interviewer was listening to the story.

Figure 4: Issues discussed in mediation meetings (%; 43 informants who had engaged in mediation)



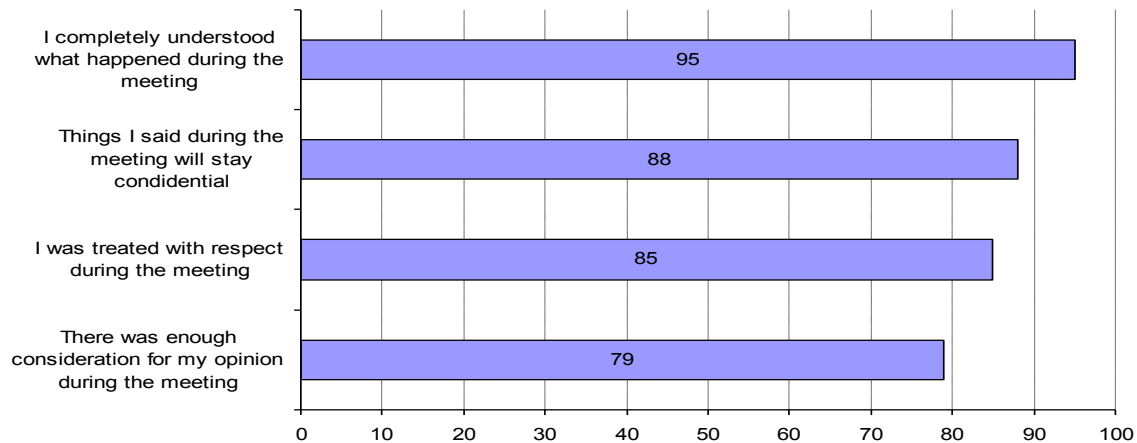
Despite the fact that the consequences of the offence were talked about quite rarely, some interviewees mentioned that strong emotions were shown in the meetings (also Takala, 1998). One interviewee, for example, said he had put his foot down, after which the situation had calmed down and the parties had reached an agreement. The discussion could also have proceeded quite peacefully, even if also sensitive sides were discussed.

The mediation meeting was a success according to the interviewee. Besides him, the offender (a young boy who had been his pupil), his mother and two mediators were present. The discussion brought up new information of the assault and its motives which were rather sensitive. The boy's mother was crucial in verbalising these issues which had been very difficult for the boy. The mediators acted in a professional manner, they talked about the possible consequences of violence to others as well as to the perpetrator. On the other hand they consoled the boy by saying that everyone sometimes makes mistakes. The boy had apologised already before the meeting and repeated this in the meeting. Being sorry and an attempt to make up for it were visible in the boy's conduct also after the mediation: he behaved well and was clearly committed to promises he had made.

Figure 5 describes to what extent the interviewees (strongly) agreed with some statements presented on the mediation session. It seems as if most were satisfied with how their case had been handled. Almost 80% felt their opinions had been taken well into account and almost all felt that they had understood what was talked about in the meeting. A little bit less than 90% believed they had been treated with respect and that the issues discussed would remain confidential. According to the central principles of restorative justice, discussion in mediation processes must be confidential and may not be used subsequently, except with the agreement of the parties. This means that the issues presented during the procedure are not disclosed to persons other than the parties. In some cases the interviewee was a bit confused with this principle, particularly, if an agreement had not reached and possible future processes may follow. Those who had finished their mediation process were more satisfied with the above-mentioned issues

compared to those whose mediation process was interrupted (means of the computed variable³¹: 4,6 vs. 4,0). No differences were found in relation to gender or age of the interviewees, but those who did not know the offender were more satisfied as compared to those who knew him/her (means: 4,7 vs. 4,4).

Figure 5: Statements of the mediation session (% agree/strongly agree, N=40-42)



6.2. Thoughts about the mediators

In general, the volunteer mediators were evaluated quite positively by the interviewees. Almost all (88%) agreed or strongly agreed with the statement “The mediator was objective enough” and 79% were of the opinion that the mediator had offered them enough support during mediation. According to a recent evaluation study parties often regard the mediators as non-partial and professional, even if less often in cases of violent offences (Iivari, 2010, 123). The interviewees in this study appreciated the after-care given by the mediators and also the possibility to reflect the issues and atmosphere of the meetings. Some thanked the mediators’ interaction skills which had aided in finishing successfully even the most difficult situations. Interestingly, mediators were in these cases often referred to as “professionals” even if they were volunteers. Again those who had finished mediation were more satisfied with the mediators as compared to those whose process had been interrupted (means of the computed variable³² 4,5 vs. 3,1). In terms of age, 35-49 year olds were more critical compared to other age groups (mean 3,4, the whole data 4,2). Again, those who did not know the offender previously were more satisfied with the mediator than those who knew him/her (means: 4,4 vs. 4,1).³³

Despite the overall positive feedback on mediators, in some interviews the mediators’ impartiality or neutrality was critically discussed. Some regarded the

³¹ satisfactionmeeting= (VAR073A + VAR073B + VAR073C + VAR073D) / 4. 1=strongly disagree... 5=strongly agree.

³² satisfactionmediator=(VAR073J + VAR073K) / 2; 1=strongly disagree...5=strongly agree.

³³ No gender differences could be observed in this respect.

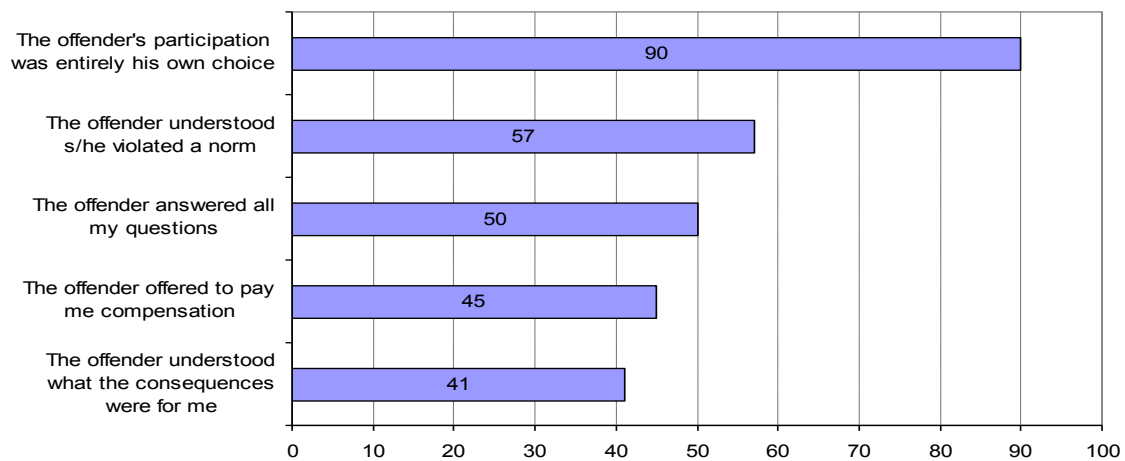
mediators as too passive, not taking the lead of the session or lacking an interest to mediate and negotiate (also Iivari, 2010, 145). This was seen to have given space for the offender to dominate the process, manipulate the system and escape being held accountable (see for similar observations Herman, 2005, 583-584). Others had sensed discrete partiality which was concluded e.g. from the mediators' habit to call the other party by his nickname or engage in an innocent sounding small talk, as in the following case (also Iivari, 2010, 142):

The interviewee was a bit upset by the discussion before the mediation started. The suspected offender was at the time doing his military service and the mediator who himself worked in the army, started to chat with him about the army. The interviewee felt like they had a kind of cronyism and were on the same side.

Sometimes the mediators' features, such as age, gender or life experience were raised as important and critical issues. Some informants on the one hand regarded it as problematic if the mediators were a lot older compared to the parties. On the other hand, others described the longer life experience of the mediators as a positive factor. This positive impression might relate to how mediators acted: they were able to pose relevant questions and provide the victim with valuable, even eye-opening views.

6.3. Thoughts about the offenders in the meetings

Ideally RJ conferences are seen to follow a certain sequence of emotions: indignation of the victim, regret of the offender, remorse and forgiveness. This is seen to empower the victims when they are seen to have the power to withhold or express willingness to forgive. The empirical evidence of this study confirms earlier findings that this ideal is not always achieved in practice (Stubbs, 2007, 175; Takala, 1998).

Figure 6: Statements of the offender (% agree/strongly agree, N=40-42)

It seems as if the positive statements regarding the offenders were less agreed as compared to those of mediators and the mediation meetings in general: even if 90% saw that the offender had participated in mediation on a voluntary basis, only 45% had the feeling that the offender really wanted to compensate for the wrong s/he had caused and only half felt that the offender had answered the questions. Only 41% were of the opinion that the offender fully understood the consequences of the offence to the victim. These results might indicate that not all mediation processes succeed in creating a genuine encounter in which the parties honestly talk to each other about the most emotional aspects of the offence in question. Men seemed to be more satisfied with their interaction with offenders than women (means of the computed variable³⁴; men 3,4, women 2,9). Also those who had finished mediation were more satisfied in this respect than those whose process had been interrupted (means: 3,6 vs. 1,6) and those aged 35-49 years were more critical compared to other age groups (means 2,5 vs. 3,2 in all). Further, victims of unknown offenders were more satisfied than victims of known offenders (means 3,7 vs. 3,0).

Similar results on the emotional encounter in mediation have been reported in another Finnish evaluation study on mediation: according to survey results the parties in mediation were least satisfied with dealing with mental harms and understanding the other party in mediation, especially if the offence had been a violent crime or if the respondent was older (Iivari, 2010, 39, 119-121,160; Takala, 1998). These results may be a reflection of the fact that the Finnish mediation practice has been focused on the need to compensate the harm done to the victim and in this way the emotions related to the offence might have been downplayed (Flinck and Iivari, 2004, 102; Mielityinen, 1999).

³⁴ satisfactionoffender=(VAR073E + VAR073F + VAR073H + VAR073G) / 4. 1=strongly disagree...5=strongly agree.

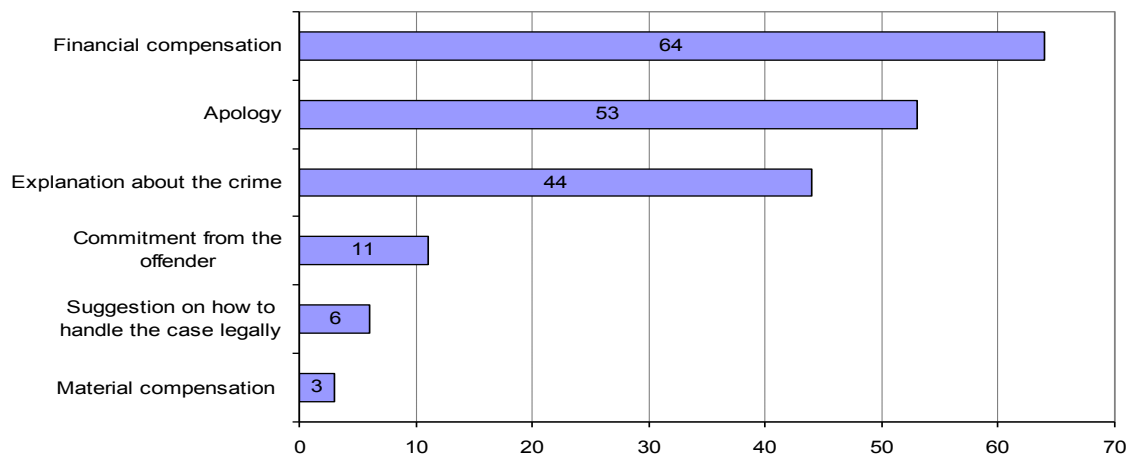
7. The results of mediation

Concerning the mediation results, the focus of the study lies with how victims assess the outcome of mediation and how they experience the (non-)execution of the agreement.

7.1. The agreement/end result

The discussions of the Finnish mediation process often emphasise an agreement as a form of compensation to the victims. Furthermore, agreement in the mediation process is seen as a means to divert cases from the criminal justice system and as such as an inexpensive and effective measure, saving finances in the state economy (e.g. Elonheimo, 2010). Also in the RJ literature more broadly, other outcomes besides reparation are rarely discussed (Stubbs, 2007, 181). The majority of the interviewees (36/48) had reached an agreement with the offender. In all cases the agreement was a written document. According to the interviewees' recollections most often the agreement included statements on financial compensation, such as the amount agreed and the time table of the payment (see Figure 7). Other forms of compensation were mentioned only rarely; apology was mentioned in a little bit over half of the agreements. The exact sums were not inquired in the questionnaire. The Finnish mediation practice has been criticised by victim support personnel in that the victims often content themselves with lower levels of financial compensation than they would be entitled to. Comparative research on this issue is not available but it has been argued that this can be problematic in terms of the victims' legal protection since the agreements are legally binding (Qvist, 2010, 38).³⁵

³⁵ Half of the informants who had reached an agreement in their mediation processes said the offender had also fulfilled the obligations he had committed to in the mediation meeting (47%). The rest did not know that yet, in one case the offender had not done so, and no obligations were set in four informants' agreements.

Figure 7: Issues mentioned in the agreement (% , 36 respondents)

7.2. Diverse meanings of apology

70% of the informants said the offender had apologised to them during the mediation process. The majority of those who had reached an agreement in their mediation process said that had happened (86%) whereas none of those whose mediation had been interrupted. It is however notable that an agreement was reached without the offender's apology in five cases (14% of cases with an agreement). Not all the interviewed victims were after an apology, but still, for some an agreement without apology had been a disappointment or at least a confusing experience. Two-thirds of the apologised interviewees evaluated the apology as genuine or very genuine. Some researchers have analysed the prerequisites of genuineness with the concept of dramatisation of empathy: "[t]he enactment of mutual feelings of victimisation" can make "common ground for empathy to be strategically experienced" (Kenney and Clairmont, 2009, 296). As based on the victims' accounts in the current study, empathy was often related to cases in which the offender was young and the victim usually a middle aged woman. In these cases the victims had a sincere willingness to help and support the offender. This was sometimes due to their own professional knowledge of young people's problematic life situations, their own experiences in their youth or if they had children on the same age as the offenders. The interviewees sometimes expressed a deep compassion towards the offender(s) and recollecting this made the interviews at times very emotional. However, not all regarded the apology as sincere; at worst it was experienced as an attempt to gain community sympathy or the motives of the apology were otherwise questioned (similar observations, Herman 2005, 586-589). Five interviewees (17%) evaluated the apology as very dishonest and yet another five refused to evaluate this aspect. Most of those who had not been apologised to would have wanted the offender to do so.

The interviewee would have expected an apology just after the incident, but didn't get it then. She regarded the apology in the mediation meeting as something he did out of compulsion, because he did not want to go to the court. It was not sincere. She was

disappointed because he assaulted her and because of the way he behaved after that. He did not apologise and did not see that he had done anything, and blamed her of what had happened.

Sometimes in the agreement it was mentioned that “both parties are sorry for what had happened” which not all were happy with.

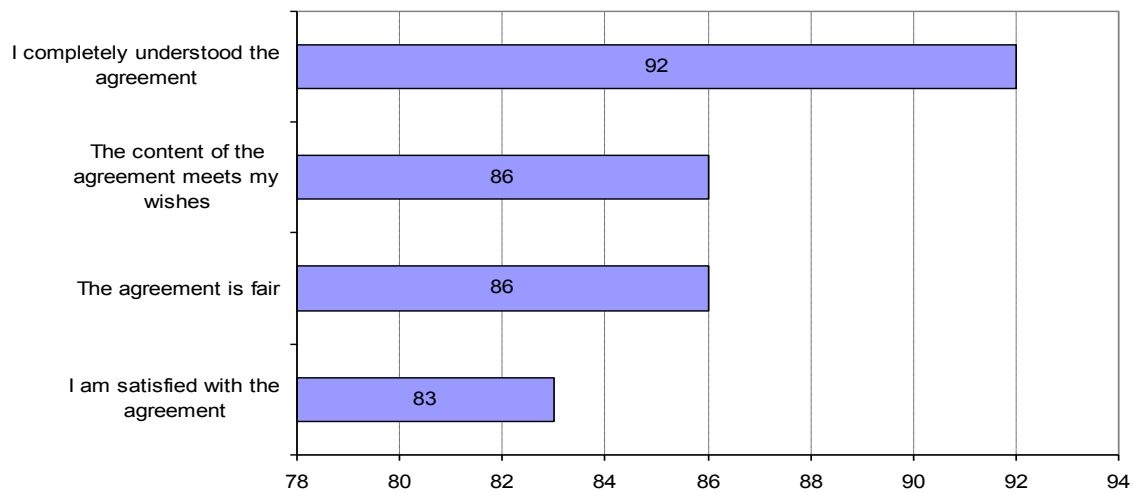
He is disappointed with the process: he had to give up most of his claims and in the end it was written in the agreement: “both are sorry for what had happened.”

The offender’s apology can, at best, be a therapeutic experience from the victim’s point of view. However, in the research literature it is pointed out that forgiveness or remorse should not be pressured, since this can make feelings such as resentment as illegitimate, even though these emotions arise from the need to defend important values such as self-respect or respect for the moral order. Remorse, on the other hand, if hastened, can result in responses which are not genuine. Moreover, certain cultural and therefore normative assumptions may pressurise victims to accept apology. This may be a risk for women and girls, in particular, who through their socialisation are often expected to forgive and be compassionate towards the offender (Stubbs, 2007, 176-178).

7.3. Satisfaction with the agreement

Despite of not always having been sincerely apologised to, most interviewees were quite satisfied with the agreement. Over 90% claimed they fully understood what was agreed, 86% regarded the substance of the written agreement as satisfactory, as many regarded it as fair and almost as many were satisfied with the agreement (see Figure 8). Again the age group 35-49 years was more critical than others (means 3,9 vs. 4,6 in the whole data).³⁶ Moreover, victims of partner violence were somewhat less satisfied with the agreement than others (mean: 3,9).

³⁶ In the comparison of means of the computed variable “satisfactionagreement” (VAR083A + VAR083B + VAR083C + VAR083D) / 4, 1=strongly disagree... 5=strongly agree) no differences between men and women were found.

Figure 8: Satisfaction with the agreement (% , 36 respondents)

Judged from the interviewees' narration, the situation can be more complex as indicated in the above, very positive figures. The following elderly lady who made an agreement with her ex-partner on partnership violence serves as an example. She was satisfied with the agreement but:

While reading through the agreement which she has with her in the interview she admits to have regretted that she had climbed down in many things and did not stick out for her rights. When thinking about the mediation afterwards she feels that she has thought about the issue from the man's point of view, pitied him so much that she had forgotten to take care of her own rights. In the end of the interview she returns to this issue and claims that women are often too benign and give up their rights too easily.

Moreover, many pointed out that "you need to be aware of what you want from mediation" before going to the meeting, otherwise you can end up with a feeling "that you haven't got justice" or "if you cannot defend yourself, you are very vulnerable." Indeed, there were some examples in the interviewees' stories on the successes of this kind of attitude.

The interviewee wanted the young man away from the neighboring apartment. This was also agreed in the meeting. The interviewee was not interested in telling him about his feelings or the consequences of the assault or be apologised. These issues were not discussed in the mediation meeting. The interviewee is satisfied with the end result, even if he is not thinking anything good of the other party. He only wants to get rid of him.

At worst, however, the agreement was experienced as another form of secondary victimisation, as described by the following interviewee:

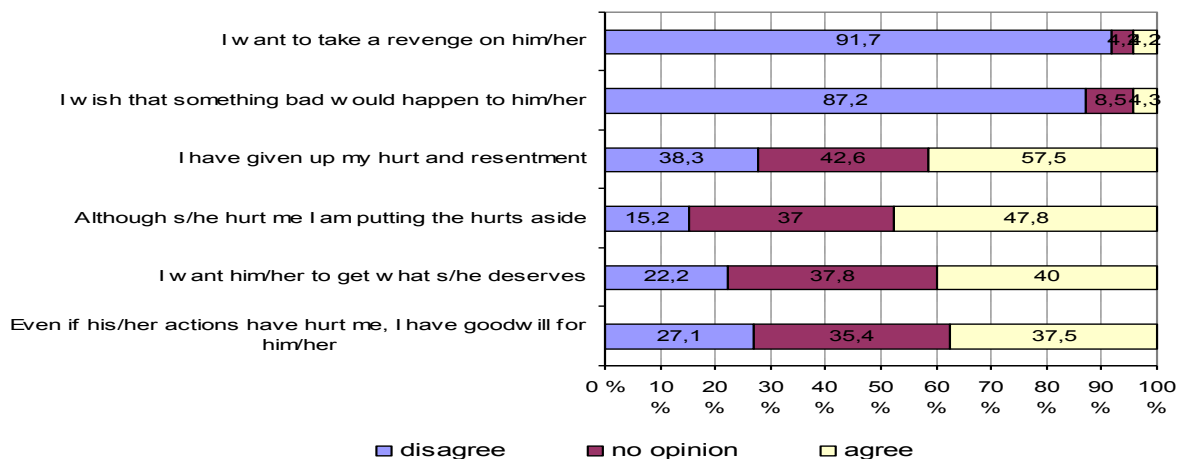
The offender agreed to pay 500 euros for the expenses of medical treatment etc. This did not, however, cover all the costs. The interviewee would have wanted to talk about having a restraining order but it was not discussed. In addition he had to accept that he was regarded

as partly to blame for what had happened, and respectively, the offender did not assume responsibility of what had happened. He felt that the offender dominated the process. He felt like being a victim again.

7.4. Thoughts about the offender after mediation

As based on the interviews it can be concluded that the victims participating in mediation are not particularly revengeful or punitive towards the offenders (see Figure 9). On the contrary, at the time of the interview most interviewees did not want to take revenge³⁷ on the offender or did not want something bad to happen to him/her. A similar attitude has been found in other studies; even if the victims might have vengeful feelings immediately after the victimisation, usually they are not interested in inflicting pain to the offender. Neither do they regard punishment as a value in itself or a kind of a debt to society (e.g. Herman, 2005, 589-590). Opinions on the other statements on offenders varied more. For example, 38% admitted still having feelings of being hurt.

Figure 9: The interviewees' thoughts about the offender (% , 45-48 respondents)



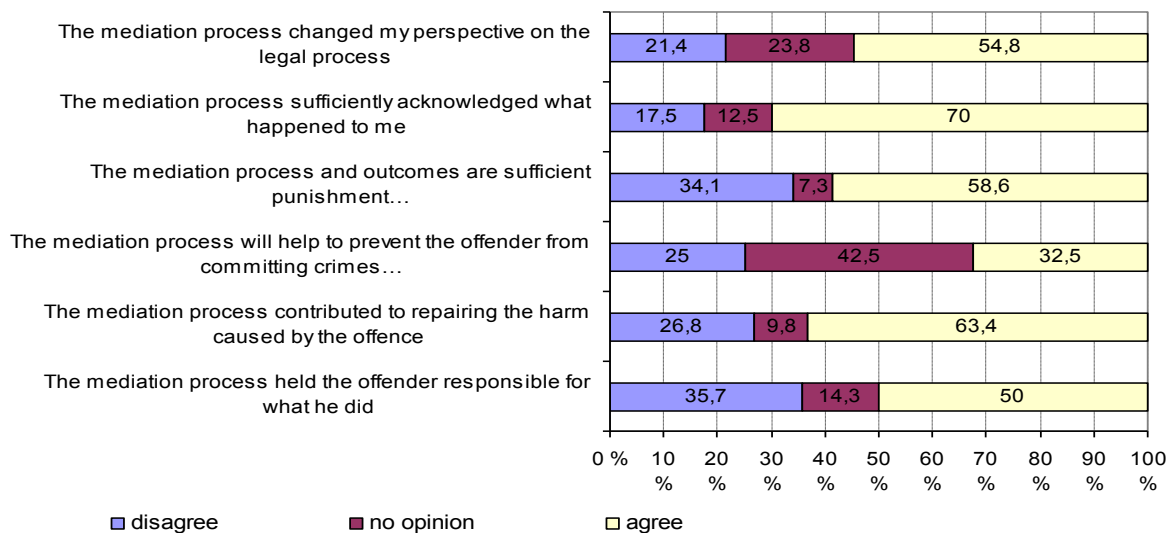
7.5. Reflections on the mediation process as a whole

The respondents' evaluations of the statements concerning the meaning of the mediation as a whole varied to some extent. The informants were divided e.g. in their opinions on how they evaluated the effects of mediation process on the offender. A third (34%) did not see taking part in a mediation process as a sufficient punishment for the offender, whereas 59% did. A third (36%) did not feel that the mediation had made the offender to take responsibility for the offence, whereas half of the respondents felt like that. One in four did not believe that mediation would prevent the offender's further crimes, but one

³⁷ The original formulation of the statement was "I'm going to get even." The Finnish translation, however, emphasised more the revenge, therefore it is translated here "I want to take revenge on him/her."

third was more optimistic in this sense (33%). According to most interviewees (64%) mediation had contributed to repairing the harm caused. Similarly, the majority felt their experience had been accurately dealt with in the mediation (70%). But then again, a substantial minority disagreed with these statements (see Figure 10). Perhaps unsurprisingly, those whose mediation process was interrupted were more critical in evaluating the above-mentioned statements as compared to those who finished mediation.³⁸ Over half of the respondents stated that participation in mediation had changed their idea of the criminal justice system. The described changes were both positive and negative.

Figure 10: Victims' evaluations on the mediation process (% , 40-41 respondents who have been in mediation)



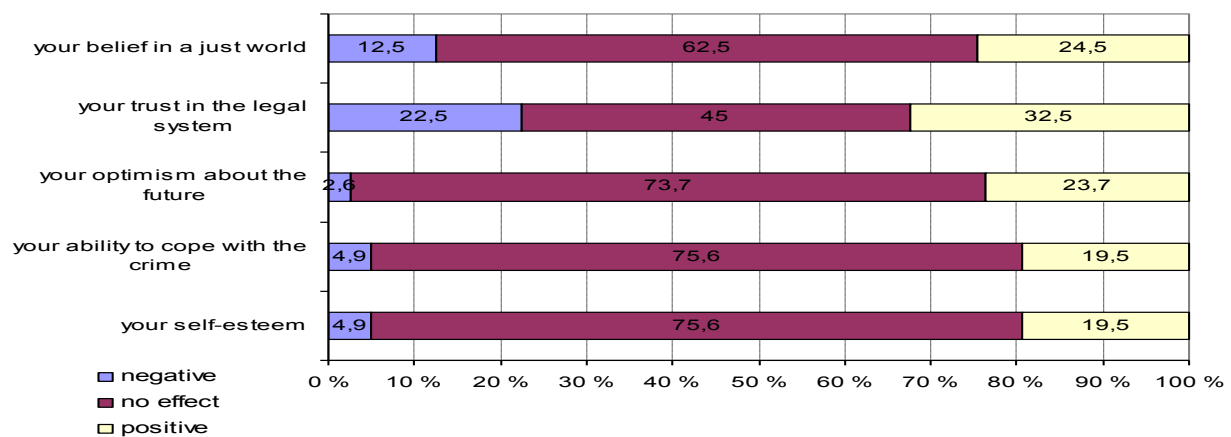
Moreover, the majority (62%) of the respondents thought that mediation had made them feel better (or a lot better) as compared to the situation before. Many described feelings of being relieved, when the difficult issue had been solved and they were able to go on with their lives. However, some interviewees (4 persons, 10% of those who participated in mediation) claimed that mediation had made them feel worse and one in four (12 persons) did not take a stand. The negative experiences were usually connected to a complex web of relational problems, which is very often the case e.g. in partnership violence. In these comments, the mediation process was evaluated e.g. in the following way:

The interviewee regarded the mediation as a pointless process. It intensified her bad feelings and lowered her self-esteem when the offender had accused and spoken evil of her in front of other people.

³⁸ Other systematic differences could not be observed. This analysis was done by comparing means of the responses in the mentioned groups (gender, age, type of case, victim-offender relationship).

Sometimes the feelings concerning the mediation process were quite mixed and the narration was at times contradictory. This exemplifies the difficulty in squeezing the many-sided narration into numbers. These contradictions should not be tidied away since they are interesting in themselves and reveal the complexity of the experiences. For example, a youngish male's car was destroyed by a wealthy, middle-aged offender. He was satisfied with the financial compensation. At the same time he was unclear about the purpose of the mediation and reflected whether it is right that the offender got away by paying, whether it is a sufficient sentence for him and whether justice is done if a wealthy person can pay and a poor person has to serve a sentence (see Herman, 2005, 583 for similar observations). Most interviewees were on the one hand of the opinion that the mediation process did not have very deep effects after all, at least not those that were asked from them (see Figure 11). For example, three-thirds did not see that mediation had any effects on their self-esteem or their views of the future. On the other hand, some respondents admitted that mediation did have positive effects and likewise some saw negative effects. Positive effects were seen most often in terms of trust in the legal system (33%). However, also in this item the interviewees were divided into three groups: besides positive thinkers, one in four evaluated that mediation had negatively affected their view of the criminal justice system and 45% saw no effect.³⁹

Figure 11: The effect of the mediation and its end result on the interviewee (% , 22-24 respondents)



All in all, 82% of the interviewees would agree to take part in a mediation process if they experienced a similar offence again, including all those whose mediation process was interrupted. Those in the age group 35-49 years were somewhat more critical: only 58% were ready for a new mediation and similarly only half of those who had been victims of partner violence would agree to mediation again. Despite the readiness to take part in

³⁹ No differences were detected between genders, age groups, types of mediation experience or in terms of the victim-offender relationship.

mediation again, 60% did not want to offer mediation to all crime victims. Many regarded mediation ideal for minor offences, young offenders and first-timers. Similar opinions have been documented e.g. among the Finnish legal authorities (the police, prosecutors, see Iivari, 2010, 35-36). Moreover, mediation was sometimes seen to offer a noteworthy chance to deal with conflicts between people who have “public jobs” in a more private manner. By contrast, many respondents did not see partnership violence or severe forms of violence as appropriate for mediation. Also situations in which the victim is afraid of the offender should according to some respondents not be dealt with in the mediation process.

8. Judicial context: what happened to the case after mediation?

Questions were asked on the judicial context of their experience. Victims were asked about how they experienced the relationship with the police or the criminal justice system at the selection and referral phase, during the mediation process and after that process, in particular concerning the subsequent judicial decisions. At the time of the interview 24 respondents were not aware of the current phase of their case in terms of the criminal process. Some were expecting the official decision, a part of these informants had been told already in the beginning that probably the case would be taken to court and they were prepared for that, even if often with ambivalent feelings. Yet others wished to receive justice from the court (which they felt they did not get in mediation). The problems in informing the victims have been acknowledged in earlier research in Finland (e.g. Honkatukia, 2011) and were visible in the interviews as feelings of anxiety, uncertainty or even total confusion. Despite being in many ways active and capable, some interviewees have had hard times in getting information on the proceeding of their cases.

The interviewee talks about the criminal process in a professional manner, even if he is not highly educated. He is well aware with whom he has discussed in different phases of the process. Seems to be capable of taking care of his issues, asking and finding out, and demanding for service. He had all the documents with him while we were talking over the phone, and he checked dates and other details. He has called both to the police and the prosecutor and wanted to find out about his case. He has not, however, received much information from them.

Altogether 20 interviewees had already received a decision of non-prosecution at the time of the interview. Some cases had proceeded as in the ideal mediation process: after the parties had reached an agreement, the police or the prosecutor had waived further measures. At best, also the interviewee was satisfied with the end result and the ending of the sometimes long process, as in the following case:

After the mediation meeting the interviewee was relieved, even if it had been a long process. The greatest relief was that it was now over. When the boys had paid the money, the mediation office reported this to the prosecutor who decided not to prosecute. This happened about six months ago. The interviewee said this was the lastest moment to do the interview, later he would not have remembered the details.

In some cases the prosecutor had consulted the victim's opinion on whether the case should be dealt with in the court. This was experienced both positively and negatively. Some felt that the (possible) court treatment in their case was unnecessary since the parties had already agreed and settled the case. But one interviewee was uncomfortable with his feeling of being responsible for on how the case proceeds in the criminal justice system. Another interviewee whose case was at the time of the interview on the table of a prosecutor was relieved that she did not have to be responsible for the juridical outcome: "it is good that the prosecutor will look at it once more." Moreover, the data also includes five cases in which the prosecutor had made a decision of waiving the charges even if an agreement was not reached. One example is slander which is often regarded by legal authorities as a minor offence that should not be dealt with in the mediation process (Iivari, 2010, 66-68). However, a person who experiences to have been victim to this offence, often feels a serious violation of his/her integrity and seeks justice by reporting the case to the police or by entering to the mediation process. In these cases the unsuccessful mediation followed by non-prosecution leaves the complainant in a fragile and hurt state of mind, as was explained by one of the interviewees. She had not been able to leave the difficult issue behind.

After the mediation the interviewee felt more tired than before. She has just received a letter from the prosecutor saying the case is not prosecuted. This decision is a great disappointment for her. There were connotations in the document which according to her indicated that she is at least partly guilty. She feels that she was the real victim who has not gotten justice. She feels as if her case is unfinished but she is too tired to take the case to court by herself.

Only four interviewees have had a court dealing after mediation. It was sometimes experienced a shock at first, but as a good experience later on. Others regarded the trial as a chance to have a closure for the case and meet the offender once again, even if the mediation process as such had been experienced as good. Sometimes the willingness to deal with the case in court had increased during the mediation, even if it did not originally exist or had been ambivalent. This was related to the fact that mediation did not succeed in acknowledging the harm done or ensure protection from the offender (also Herman, 2005, 593). The following example deals with mediation in partnership violence in which the interviewee had reached an agreement but was not satisfied with the end result.

She had been nervous of the court dealing on beforehand, but at the time of the interview she was really pleased with her treatment in court. She almost enjoyed how her ex-partner's storytelling was limited in court. At some point he was told that the things he said are not relevant in the case. He was sentenced to pay a fine and got a restraining order. In contrast to mediation, the court dealing had been good, since she had been believed, she had been supported in presenting her story and in the end the man was convicted.

In these cases it had been important for the victims that they had a legal assistant whom they could trust and who were able to guide them through the process.

References

- Braithwaite, J., 1989. *Crime, Shame and Reintegration*. Cambridge: Cambridge University Press.
- Goldson, B., 2010. The sleep of (criminological) reason: Knowledge-policy rupture and New Labour's youth justice legacy. *Criminology and Criminal Justice*, 10(1), 155-178.
- Elonheimo, H., 2010. *Nuorisrikollisuuden esiintyvyys, taustatekijät ja sovittelu*. Turku: Turun yliopiston julkaisu C 299.
- Eskelinen, O., 2005. "Hermost vapautu ja tuli puhdas olo". Alle 15-vuotiaiden rikosten sovittelun käytännöt ja vaikutukset. Helsinki: Sosiaali- ja terveysministeriö, julkaisu.
- Flinck, A. and Iivari, J., 2004. *Lähisuhdeväkivalta sovittelussa. Tutkimus- ja kehittämishankkeen realistinen arviointi*. Helsinki: Stakes, FinSoc Arviointiraportteja 5/2004.
- Helavirta, S., 2011. *Lapset hyvinvointitiedon tuottajina*. Tampere: Acta Universitatis Tamperensis 1669.
- Henttonen, R., 2012. *Jatkuuko parisuhdeväkivalta sovittelussa? Sovittelun ihanteiden ja käytännön kohtaaminen*. Helsingin yliopiston yleisen valtio-opin pro gradu - tutkielma. Toukokuu 2012. Unpublished manuscript.
- Herman, J.L., 2005. Justice from the Victim's Perspective. *Violence against Women*, 11(5), 571-602.
- Honkatukia, P., 2011. *Uhrit rikosprosessissa. Haavoittuvuus, palvelut ja kohtelu*. Helsinki: Oikeuspoliittisen tutkimuslaitoksen julkaisu 252.
- Honkatukia, P. and Kivivuori, J., 2011. *Rikosten uhrit tukipalvelujen asiakkaina – kyselytutkimuksen tuloksia*. Helsinki: Oikeuspoliittisen tutkimuslaitoksen verkkokatsauksia 19/2011.
- Iivari, J., 2010. *Oikeutta oikeuden varjossa. Rikossovittelulain täytäntöönpanon arviointitutkimus*. Helsinki: Terveiden ja hyvinvoinnin laitos, Raportti 5/2010.
- Iivari, J., 2012. Oral communication. 24 September.

- Järvinen, S., 1993. Rikosten sovittelu Suomessa. Sovittelukäytännöt ja vaihtoehtoisuuden arviointi. Helsinki: Oikeuspoliittisen tutkimuslaitoksen julkaisuja.
- Kenney, J. S. and Clairmont, D., 2009. Using the Victim Role as Both Sword and Shield: The Interactional Dynamics of Restorative Justice Sessions. *Journal of Contemporary Ethnography*, 38(3), 279-307.
- Kinnunen, A., Iivari, J., Honkatukia, P., Flinck, A. and Seppälä, J. 2012., Comparative Study of National Legislation. Finland. In: D. Miers and I. Aertsen, eds. 2012. *Regulating Restorative Justice. A comparative study of legislative provision in European countries.* Frankfurt am Main: Verlag für Polizeiwissenschaft, pp. 120-145.
- Lappi-Seppälä, T., 1996. Finland. In: S. Walther ed. *Wiedergutmachung im Kriminalrecht. Internationale Perspektiven. Beiträge und Materialien aus dem Max-Planck-Institut für ausländisches und internationales Strafrecht Freiburg.* Herausgegeben von Albin Eser. Band 5 57/1.
- Marttunen, M., 2008. Nuorisorikosoikeus. Alaikäisten rikosten seuraamukset kriminaalipoliittisesta ja vertailevasta näkökulmasta. Helsinki: Oikeuspoliittisen tutkimuslaitoksen julkaisuja 236.
- Mediation in criminal and civil cases 2010, 2011. Statistical Report 19/2011 [pdf]. Available at: http://www.stakes.fi/tilastot/tilastotiedotteet/2011/Tr19_11.pdf [Accessed 16 June 2012].
- Mielityinen, I., 1999. Rikos ja sovittelu. Valikoituminen, merkitys ja uusintarikollisuus. Helsinki: Oikeuspoliittisen tutkimuslaitoksen julkaisuja 167.
- Niemi, J., 2010. Koti – vaarallisin paikka vai rauhan tyyssija? *Lakimies* 108(7-8), 1249-1265.
- Niemi-Kiesiläinen, J., 2004. Rikosprosessi ja parisuhdeväkivalta. Helsinki: WSLT.
- Nousiainen, K. and Pylkkänen, A., 2001. Sukupuoli ja oikeuden yhdenvertaisuus. Helsinki: Helsingin yliopiston oikeustieteellisen tiedekunnan julkaisuja.
- Nuotio, K., 2004. Nuorisorikosoikeus? *Lakimies*, 102(3), 1235-1266.
- Qvist, T., 2010. Parisuhdeväkivallan sovittelu Suomessa. Näkökulmia sovitteluperiaatteiden ja -käytäntöjen välisiin kysymyksiin. *Naistutkimus*, 23(4), 33-43.
- Qvist, T., 2012. Mitä parisuhdeväkivallan sovittelu on Suomessa? Sovitteluperiaatteiden ja -käytäntöjen kohtaamattomuuden aiheuttamat jännitteet. *Oikeus*, 41(3), 441-451.
- Sambou, S. and Uotila, E. 2010. Victim–Offender Mediation in Cases of Intimate Relationship Violence—Ideals, Attitudes, and Practices in Finland. *Journal of Scandinavian Studies in Criminology and Crime Prevention*, 11(2), 189-207.
- Sirén, R., Aaltonen, M. and Kääriäinen, J. 2010. Suomalaisten väkivaltakokemukset. Helsinki: Oikeuspoliittisen tutkimuslaitoksen tutkimustiedonantoja 103.
- Stubbs, J., 2007. Beyond apology? Domestic violence and critical questions for restorative justice. *Criminology and Criminal Justice*, 7(2), 169-187.
- Takala, J.-P., 1998. *Moraalitunteet sovittelussa.* Helsinki: Oikeuspoliittisen tutkimuslaitoksen julkaisuja 151.

Van Dijk, J. and Groenhuijsen, M., 2007. Benchmarking victim policies in the framework of European Union Law. In: S. Walklate, ed. *Handbook of Victims and Victimology*. Cullompton: Wilan Publishing, pp. 363-379.

Chapter 3. Victim-offender encounters in the Netherlands

By Malini Laxminarayan, Kim Lens and Antony Pemberton

1. Introduction

This chapter describes and analyses the results of the Dutch leg of the 'Victims and restorative justice project'. It reports the experiences of victims of crime with the Dutch victim-offender encounters programme, which is run nation-wide by the charity Victim in Focus. The research used the same questionnaire and the report of the findings follows the same trajectory as the other country reports. The layout of the chapter is as follows. Section 2 contains a description of the main features of the Dutch victim-offender encounter programme, followed by previous research on this programme (section 3). The results of the research are the subject of sections 4 through 7, covering the background of the participants, the preparation of mediation, the mediation (both direct and indirect forms) itself and the experience of those who opted to participate but were not able to do so. The final section offers an evaluation in retrospect of the respondent's experience.

2. Key characteristics of the victim-offender encounters

2.1. *Victim in Focus*

Victim in Focus (Slachtoffer in Beeld) is a Dutch non-governmental organisation, which is independent from, but has close ties with Victim Support in the Netherlands.⁴⁰ Victim in Focus was founded in 1990 and was initially tasked with the delivery of a course with the same name to young offenders. In this educational measure ('leerstraf') young offenders were confronted with the consequences of their actions with the goal of increasing their empathic abilities. The Council for Child Protection was the main referring organisation to the Victim in Focus-measure. After a re-evaluation of measures for young offenders over the course 2008 and 2009, the measure however was suspended.

From that moment onwards, the primary task of Victim in Focus was the delivery of the victim-offender encounters. In 2013, the organisation has 10 full-time staff members and a pool consisting of 35 to 40 mediators whose primary means of employment is elsewhere. Victim Support is the main organisation charged with referring victims, while a variety of organisations tasked with the care of offenders also refer cases (Child Protection, Probation). It is noteworthy that initially only organisations tasked with the care of juveniles were actively involved, but from 2009 onwards the offender-initiated referrals also included adult offenders.

⁴⁰ The latter is visible in the fact that the CEO of Dutch Victim Support is also the director of Victim in Focus and the fact that the central office of Victim in Focus is housed in the same building in Utrecht, as the head office of Victim Support.

2.2. *Victim-offender encounters: main characteristics*

The victim-offender encounters programme is in many ways similar to restorative justice projects in Europe, although the design of the programme is distinctive in a number of ways. In the first place, the programme is clearly positioned within victim policy. The victim-offender encounters are linked to the new 'victim'-section of the Dutch Code of Criminal Procedure (CCP). Article 51h CCP considers mediation between victims and offenders, although it does not specify the form and shape this can or should take, nor does it specify the extent to which victim-offender encounters should or should not be a factor in prosecutorial and judicial decision-making.

Secondly, and related to the first feature, the victim-offender encounters were intended to service victims (and offenders) of more severe crimes. This is evident in the department of Justice policy plan 'Slachtoffers Centraal'.⁴¹ One of its main features is diversification of services rendered to victims of crime, with a wider array of possibilities and rights for victims of severe, violent crime. This is explicitly stated in the conditions for the right to submit an Oral Victim Impact Statement and eligibility for Criminal Injuries Compensation, but the gist of the policy plan suggests this is also the case for victim-offender encounters.

The emphasis on victims of severe crimes can impact the purpose of the encounter between victim and offender and the relationship with the criminal justice system. Groenhuijsen posited that in these cases the encounter is likely to be a complementary measure (Groenhuijsen, 2000; see also EFVS, 2005) and this is also apparent from the fact that the encounter can take place before, during or after the criminal procedure and the fact that victims can initiate victim-offender encounters. Overviews of restorative justice practices indeed reveal that where restorative justice is implemented as an alternative to (parts of) the criminal justice system it does so with an upper limit concerning the cases involved (see Vanfraechem, Aertsen and Willemsens, 2010). Unlike most instances of victim-offender mediation, the encounter is not intended to result in a mediated agreement that may be taken into account in the outcome of the criminal justice process.

Some connection to the criminal justice procedure however cannot be avoided. The fact that the encounter may precede the trial necessitates this. Where this is the case, the prosecutor is notified of the occurrence of the encounter, as he may take this fact into account in his demands in the case. The complementary position of the encounter has led to criticism that the Dutch programme fails to meet the requirements of the Framework Decision as to penal mediation and in fact should not be considered to be restorative justice at all (see Blad and Lauwaert, 2010). Nevertheless, focusing on victims is in the spirit of the Framework Decision, considering that its overall aim is to improve the position of victims of crime (Groenhuijsen, 2001). In similar vein, the importance of targeting more severe crimes follows the Framework Decision's call for additional

⁴¹ See <http://www.rijksoverheid.nl/onderwerpen/slachtofferbeleid/documenten-en-publicaties>,

measures for victims who are particularly vulnerable. Although it does not specify the meaning of vulnerability in this context, victims of severe, violent crime, are often considered to belong to this category (see also Groenhuijsen and Pemberton, 2009).

3. Previous research on victim-offender encounters

There is a lot of interest from the Dutch academic community in restorative justice in the Netherlands, even to the extent that some quip that more papers than mediation sessions have been produced. For an overview of previous empirical research we refer to Blad and Lauwaert (2010). Here we focus on the recent evaluations of the process and effects of the victim-offender encounters programme, by respectively Van Burik et al. (2010) and Zebel (2012).

3.1. *Process-evaluation (Van Burik et al., 2010)*

The Dutch Department of Safety and Justice tasked the research-group van Montfoort with the process-evaluation of the victim-offender encounters programme. The main goal of the research was to review whether the programme had been implemented as planned and whether improvements in the organisation of the programme were necessary. The evaluation's results were largely encouraging: the programme had achieved national coverage within the space of two years, with the amount of referrals increasing significantly. In 2009, 1.100 cases were referred to the programme.⁴² Acceptance and support for the programme amongst referring organisations was high and mediators were positive about the programme. Other main findings may be summarised as follows:

- Considering the victim-oriented background of the victim-offender encounters programme, it is striking that organisations working with offenders account for a large majority of referrals. Referrals from organisations such as the Council for Child Protection and the Youth Probation Service make up 84% of the 1.100 cases that comprise the annual workload.
- Staff and volunteers of Dutch Victim Support are aware of Victim in Focus and the possibility of referral to the programme, but do not succeed in referring more than 1 in a 1.000 of the 150.000 victims serviced by the organisation. According to Van Burik et al. (2010) this cannot be attributed to principled opposition to Victim in Focus and the victim-offender encounters programmes as acceptance and support for the programme among victim support staff is on equal footing to the offender-oriented organisations. In practice however, it appears to be difficult for Victim Support staff to find the time and a way of conveying the information about the encounters to their clients.

⁴² According to current figures of Victim in Focus this number is 1.200 in 2011.

- As Pemberton (2012) concludes, this could in large part be due to the differences in target groups between victim support and restorative justice organisations, which is also related to the time-frame of contact. According to Van Burik et al. (2010) this leaves Victim Support in something of a Catch-22: the best possibilities for increasing the number of registrations lie in raising the subject at a different, later time, but by then most victims are no longer in contact with Victim Support.
- A key feature of the programme is that the stage of the criminal justice process does not influence the possibility of an encounter. Encounters are supposed to run independently of the criminal procedure. However, where encounters precede the trial, the prosecutor is notified of its occurrence (but not of its content) and may take this into account. Therefore the encounter may have an impact on the criminal justice process, but it is unclear to what extent and in what way. The extent to which the encounter is then truly independent of the criminal justice process can be called into doubt and this point is also problematic in the communication with possible participants.

3.2. *Evaluation of impact of participation (Pemberton, 2012; Zebel, 2012)*

Over the course of 2009 and 2010 Sven Zebel, a former staff member of Victim in Focus, examined the effects of participation in the victim-offender encounters, using a quasi-experimental design, with a pre- and post measurement.⁴³ Fifty-nine victims took part in the study; each had sought participation in the programme on his/her own initiative. This does not imply that an encounter actually took place; the surveyed group also contained respondents whose offender did not want to meet. This enabled Zebel to review the changes in anxiety and anger between victims who had an encounter and those that did not. The main findings are as follows (see also Pemberton, 2012).

- *Respondents were (very) satisfied with the encounter.* The results reveal that participants are (highly) positive about the entire process and the mediator. Almost unanimously, participants feel that their perspective received sufficient attention during the procedure.
- *Anxiety and anger in participants was reduced.* Zebel measured victims' anxiety and anger before and after the process was completed. Those who had had an encounter were significantly less angry and anxious afterwards than before the meeting took place. This phenomenon was not visible in victims who had requested participation, but had not had an encounter. Zebel therefore concluded that the encounter reduced anxiety or anger, although the results may also be explained by the detrimental effects of requesting but not receiving an encounter (see Winkel, 2007).

⁴³ The results were presented at a symposium, during which a variety of restorative justice experts offered their own interpretation of Zebel's results. The results are collected in Weijers (2012).

- *Anxiety and anger scores were (very) low, at pre-test.* Of great importance moreover, is the fact that anxiety and anger scores were low before the encounter. On average victims were “a little angry” at their offender, and “even less than a little afraid” of their offender. The impact of victimisation was slight and the reduction of anxiety and anger should be viewed in the light of this finding.
- *No evidence of secondary victimisation.* The findings do not confirm concerns about restorative justice causing so-called secondary victimisation (see Pemberton, Winkel and Groenhuijsen, 2007). The term only gains full meaning in the context of severe traumatisation (Frazier and Haney, 1996; Pemberton and Reynaers, 2011), where the negative impact of justice procedures on victims’ well being may amount to re-traumatisation. For most participants in the victim-offender encounters, this scenario is largely hypothetical. The impact of victimisation was small, which negates the possibility of *re*-traumatisation: the victims were not traumatised to begin with. Even with this proviso, the findings that (nearly) all victims were satisfied and the absence of evidence of the encounter increasing victims’ anger or anxiety, suggest that secondary victimisation is not a likely consequence of participation in a victim-offender encounter.

The results of Zebel’s research confirm the international literature on this subject: participating victims are (very) satisfied with their participation and participation appears to be associated with reduced anxiety, anger and stress (Angel, 2005; Sherman and Strang, 2007). Correct interpretation of these results however, includes the acknowledgement that participating victims were not very angry or afraid to begin with, indeed they largely meet the requirements of the so-called ideal victim of restorative justice (Pemberton, 2010).

3.3. Summary: differences between policy and practice

By and large the evaluations of the victim-offender encounters reveal differences between the practice of victim-offender encounters and the intentions underlying the programme. They have in common that they reduce the extent to which the Dutch programme differs from other mediation schemes across Europe. The following observations are relevant:

- As a matter of policy, the Dutch scheme has a strong victim-orientation. In practice however organisations working with offenders account for the majority of referrals, while cooperation with Victim Support shares some of the complexities that are visible elsewhere in Europe. Antagonism towards restorative justice amongst victim support staff is not a likely explanation for the lack of a substantive number of referrals. Staff was largely positive about the programme.
- Instead the differences in characteristics of participants in restorative justice programmes and victim support schemes are more likely to explain this phenomenon. Zebel’s results show that emotional impact of victimisation on

participants in the encounters was slight. Pemberton (2012) contrasts this participation “as a function of low impact”, with the typical client of victim support schemes: a victim who has recently experienced a (relatively) severe form of crime, and whose use of the scheme is an indicator of high rather than low experienced impact.

- In similar vein, where the Dutch programme initially was intended to focus on victims of more severe crimes, the results of the evaluations suggest that instead most referred cases concern relatively less severe crimes, mostly involving juveniles. This is in line with the experiences in other European jurisdictions. The fact that most referrals were offender-initiated rather than victim-initiated and the fact that initially the offender-oriented organisations were concerned with juveniles is undoubtedly related to this finding.
- Finally, the intended complementary nature of the encounters programme towards the criminal justice system may be called into question. The fact that an encounter has taken place is mentioned to the prosecutor where the encounter precedes trial. This may have an impact on the prosecutor’s subsequent actions, although it is unclear to what extent and in which way.

4. Background of the survey participants

4.1. Response rates/methods of inclusion

Respondents for this study were recruited through the national office of Victim in Focus. Potential respondents, victims who had participated in the programme in the months before contact, were approached by mail by Victim in Focus. The letter informed the victim of the possibility that they would be contacted by the researchers, with further information about the study and offered them the possibility to return a no-contact answer slip, in which case they would not be contacted by the researchers. In the event no answer was received from the potential respondent after two weeks, the researchers attempted to contact them by phone. The initial contact consisted of offering information about the research; if the respondent consented to participate a subsequent telephone appointment was agreed. In total 370 letters were disseminated. 112 potential respondents could not be reached by the researchers, after a maximum of five attempts. In 11 of these cases the contact details were missing or obviously incorrect (for instance telephone number with insufficient digits). Of the 258 remaining respondents, 14 did not meet the criteria set for the research (for instance they did not meet the minimum age requirement) and 76 returned the no-contact answer slip and were removed from the database, leaving 168 respondents that were contacted by the research team. 110 of these respondents consented to participate. However, 28 of this group dropped out before they completed the survey.

Table 1: Overview of response

Gross-sample (1)	370
Non-contact	112
Ineligible	14
Gross-sample (2)	244 (66% of gross sample1)
No-contact answer	76
Refusal after contact	58
Refusal total	134
Net-sample (1)	110 (30% of gs1, 45%of gs2)
Drop-out during study	28
Net-sample	82 (22% of gs1, 33% of gs2)

4.2. Demographics

82 victims were interviewed concerning their experiences with the victim encounter program. 59 of the respondents had a direct (41) or indirect (18) encounter, 23 did not. The latter group consisted of victims who applied for an encounter and would have wanted to participate, but due to external reasons, for instance the unwillingness of the offender to participate, did not. These two groups will be referred to as the encounter group and the no-encounter group throughout the text. Where relevant, results of the encounter and no-encounter group will be compared, while in sections 6 and 7 the results of the direct and indirect encounter group will be compared. Table 2 provides an overview of the demographics. A majority of participants was female (55%) and about half was currently employed (48%). 12% of participants was under 18, 12% between 18 and 24, 9% between 25 and 34, 22% between 35 and 49, 34% between 50 and 65 and 12% over 65 years of age. A large majority (94%) is of Dutch origin, 39% has never been married, while 36% is still married. 32% completed tertiary education, 57% secondary education and 9% primary education. No significant differences in demographic characteristics were found between those who participated in the encounter and those who did not.

A comparison with Dutch statistics and previous victimological research in the Netherlands reveals that the participants have a relatively higher age than is common to studies of victims. The average age is higher than the Dutch population as a whole, while victimological research as a rule reveals lower averages, on account of the fact that young people run a relatively higher risk of becoming victims of crime (Van Dijk, Van Kesteren, and Smit, 2007). This may also be the explanation for the fact that marital status more closely mimics Dutch averages, while most victimological research (see e.g. Lens,

Pemberton and Groenhuijsen, 2010) reveals the non-married category to be overrepresented in victim populations. Similar reasoning applies to the relatively low education status. There is a strong and negative association between age and education level in the Netherlands.

Table 2: Demographics respondents

		N (%)
Gender	Female	44 (55%)
	Male	32 (45%)
Age	<18	9 (12%)
	18-24	9 (12%)
	25-34	7 (9%)
	35-49	17 (22%)
	50-65	26 (34%)
	65<	9 (12%)
Employment	Employed	37 (48%)
	Not employed (unemployed, student, home-maker	40 (52%)
Marital status	Single	30 (39%)
	Married	27 (36%)
	Divorced	6 (9%)
	Widowed	6 (8%)
	Other	7(8%)
Ethnicity	Dutch	72 (94%)
	Non-Dutch	5 (6%)
Employment	Lower education	7 (9%)
	Secondary education	44 (57%)
	Tertiary education	25 (32%)

4.3. *Victimisation experience*

Type of crime

The respondents may have suffered more than one crime at once. Altogether the 82 respondents in our sample suffered 98 crimes (see Table 3). The lion's share involved some form of violence; property amounted to under 20% of the crimes experienced. Violent crimes like robbery, assault and threat accounted for nearly half of all the crimes experienced, while six respondents experienced some form of sexual violence. 13 respondents experienced a traffic accident/crime involving vehicles, while 5 cases concerned the co-victim of homicide. In comparison to both victim surveys and police statistics in the Netherlands, non-violent crime is underrepresented as these types of crime encompass roughly 80% and 90% of the total crime volume in the Netherlands.⁴⁴ A different benchmark is provided by Victim Support statistics: 32% of victim support clientele suffered a property crime, 47% a violent crime, 3% sexual violence and 14% a traffic accident/crime involving a vehicle.⁴⁵ The respondents in the current survey thus appear to form a rough approximation of victim support clientele. In addition, Table 3 reveals differences between the respondents who did and did not participate in mediation (chi-square=17,7, df=9, p<0,05). Inspection of the table suggests that participants were more likely to have experienced non-violent crime or a relatively less severe form of violence (robbery, threat), while non-participants were more likely to have experienced assaults, sexual violence or a traffic accident.

⁴⁴ See www.wodc.nl

⁴⁵ See www.slachtofferhulp.nl

Table 3: Experienced crime (multiple response)

	Mediation (indirect and direct)	No mediation	Total
<i>Non-violent crime</i>			
Theft	5 (8%)		5 (6%)
Burglary	6 (10%)	3 (13%)	9 (11%)
Vandalism	5 (8%)		5 (6%)
<i>Violent crime</i>			
Robbery	15 (25%)	1 (4%)	16 (20%)
Threat	6 (10%)	1(4%)	7 (9%)
Assault	16 (27%)	9 (39%)	25 (30%)
<i>Traffic crimes</i>	6 (10%)	7 (30%)	13 (16%)
<i>Sexual violence</i>	3 (5%)	3 (13%)	6 (7%)
<i>Homicide (co-victim)</i>	4 (6%)	1 (4%)	5 (6%)
<i>Other</i>	3 (5%)	4 (17%)	7 (9%)
Total N	59 (100%)	23 (100%)	82 (100%)

Relationship to the offender

A large majority of participants (70%, n=81) did not know the offender before the offence occurred. This is in stark contrast with victimological findings showing a majority of victimisation experiences to occur in existing relationships (Van Dijk, 2007). In an evaluation of the Dutch victim impact statement programme, for instance, 61% of victims knew their offender before the offence. This could be in part explained by the fact that intimate partner violence is excluded from the victim-offender encounters, but even this cannot explain the full magnitude of the difference.

Table 4: Relationship to offender

	N (% , total=81)
Friend/ neighbour/colleague/ family	24 (30%)
Stranger	57 (70%)

Repeat and multiple victimisation

The respondents were asked if they had previous victimisation experiences, either of the same type of crime (repeat victimisation) or of other types of crime (multiple victimisation, Fattah, 1991). A majority (73%) had not been criminally victimised before. The minority that had previous experiences, suffered for an average of four additional instances of criminal victimisation, see Table 5.

Table 5: Repeat and multiple victimisation

Repeat/ multiple victimisation	N (% , total=82)	Mean number of additional instances of victimisation
Yes	22 (27%)	4,0
No	60 (73%)	-

Time passed since offence

Between 6 and 12 months had passed since the offence in the case of 54% of respondents, while this period was more than a year, but less than three years, for an additional 31%. For 12% of respondents the crime had happened more than 3 years ago, while in 2 cases less than 6 months had passed.

Table 6: Time since offence

	N (% , total=81)
Less than 6 months	2 (2%)
6 to 12 months	44 (54%)
13 to 36 months	25 (31%)
More than 36 months	10 (12%)

Consequences of crime

Respondents were queried concerning the most important consequences of the crime. Most respondents mentioned emotional consequences (fear, anger, anxiety, sadness and the like) and to a lesser degree physical consequences (physical harm, damage), while financial or social consequences were only mentioned by a small minority. The non-participants were more likely to find physical consequences to be more important.

Table 7: Most important consequences of crime

	Mediation	No mediation
Emotional consequences	73%	52%
Physical consequences	21%	39%
Financial consequences	4%	9%
Social consequences	2%	

Respondents were asked to recall the severity of the impact of their victimisation in the immediate aftermath of the crime.⁴⁶ Most respondents found the impact to be extremely or very serious, see Table 8. It is noteworthy that the participants who did not participate in mediation found the incident to be more serious than those who did get the opportunity to participate ($t=2,665$, $df=79$, $p=0,02$). This is in line with the finding presented in Table 3, that the type of crime experienced by non-participants was more severe.

Table 8: Seriousness of crime

	Mediation (n=59)	No mediation (n=23)
Not serious at all	5%	
A little bit serious	14%	4%
Quite serious	24%	17%
Very serious	25%	21%
Extremely serious	31%	57%

Current symptoms of trauma

The extent to which the impact of the crime is still felt today is less apparent however. The questionnaire reviewed the psychological characteristics of participants. To place these findings in perspective, we also included the findings of research into the (oral and written) victim impact statement (VIS) in the Netherlands (Lens, Pemberton and Groenhuijsen, 2010; Lens, Pemberton and Bogaerts, 2012). This compared participants in VIS with non-participants, who were eligible to participate. In the Netherlands VIS is only open to victims of relatively severe violent crime. One of the comparisons entailed symptoms of trauma measured with the Trauma Screening Questionnaire (Brewin et al., 2002). The TSQ has 10 items, taps trauma symptoms experienced over the past two weeks, like involuntary memories of the event, trouble sleeping, heightened irritability, each measured by one yes/no item. The items are summed, yielding a score from 0 to 10, with 0 meaning no symptoms present and 10 meaning all symptoms present. The cut-off score for indications of post-traumatic stress is 5.

Table 9 reveals that the participants in VIS present high levels of traumatic stress symptoms compared to those who are eligible but decline to participate and the research found that this traumatic stress is the most important predictor of participation in VIS. The comparison of the results of the victim-offender encounters programme reveals that the profile of those wanting to participate in this programme is largely equivalent to non-participants in VIS. The mean score in the current sample is 2.8, with 23% reporting

⁴⁶ A question adopted from the ICVS was used: 'Taking everything into account, how serious was the incident for you at the time it occurred?' Answers were measured on a five point scale, from 'not serious at all' to 'extremely serious'.

traumatic complaints above the cut-off score. In the research into the victim impact statements the non-participants reported a mean of 2.6, with 23% above the cut-off score, while participants reported an average score on the TSQ of 6.3.

The finding that the initial experience of the crime was severe but that for most of the respondents has subsided, is in line with general findings about traumatic complaints (see Bonanno et al., 2011). Initially 70 to 80% of victims of traumatic events will report traumatic complaints, which in most cases subside over the course of the first year following the traumatic event: between 10 and 20% will report ongoing, chronic complaints which often last for years. Seeing the period between the crime and the survey it appears that the current sample has largely followed the former pattern, while Lens and colleagues (2010, 2012) concluded that the participants in VIS in general appeared to fall into the latter category. On the basis of similar findings Pemberton (2012) concluded that this suggests that the overlap in target groups of these instruments is small.

Table 9: Reported traumatic complaints in respondents compared with results of research into Victim Impact Statements

	Research into VIS (Lens et al., 2010, 2012)		Current research
	VIS (n=123)	No VIS (n=47)	(n=78)
Mean	6.3	2.6	2.8
% above cut-off score (5)	73%	23%	23%

4.4. Experience with assistance and criminal justice

Reporting victimisation

A large majority of the participants (88% in the mediation group, 83% in the no mediation group) had reported the crime to the police. In both groups the most important reason for doing so was because 'the offender deserved to be punished', which was mentioned by 8 out of 10 respondents (see Table 10). This is in line with pilot findings of the Dutch Quality Monitor, in which the most important determinant of victims experience with criminal justice agencies was the extent to which they solved the crime and prosecuted the offender (Van Mierlo and Pemberton, 2009). Roughly three-fifths of respondents needed the police to intervene, while less than half reported to receive compensation or out of fear the crime would be repeated. A significant difference emerged between the mediation and the no-mediation group in the extent to which the victim reported the crime out of fear of the offender (16% (n=51) versus 50%, Chi-square= 6,69, df=1, p<0,01). This is in line with the findings reported in Tables 3 and 8, suggesting a difference in severity of crime experience between the mediation and no-mediation group.

Table 10: Reasons for reporting victimisation

	Mediation	No mediation
Because the offender deserved to be punished	80%	79%
Needed the police to intervene	61%	56%
To receive compensation	43%	44%
Fear of repeat	33%	44%
Because the victim was afraid	16%	50%
To be referred to other agencies	5%	22%

Contact with other (criminal justice) agencies and satisfaction with treatment

Overall victims were satisfied with their treatment by criminal justice agencies. 57% of the respondents were (very) satisfied with their treatment by the police, versus 24% who was not satisfied. A comparison with the International Crime Victim Survey's (ICVS) results suggests that the respondents were more satisfied in this research than in the 2005 wave of the ICVS. According to Van Dijk, Van Kesteren and Smit (2007) 58% of Dutch victims were satisfied with the treatment by the police, but 42% were not satisfied (different answer categories). Roughly one in three of the respondents (31%) had also had contact with other criminal justice agencies, almost invariably (83%) the prosecutor, with whom the respondents were in a large majority (very) satisfied (86%). An overwhelming majority of respondents (85%) received support from an agency specialised in the aid of victims of crime. 80% of these respondents were (very) satisfied with this support, versus 10% who were (very) dissatisfied. Both the percentages receiving support from an agency as well as the satisfaction rates are higher than is common in victimisation surveys (compare e.g. Van Dijk, Van Kesteren and Smit, 2007).

Table 11: Contact with agencies and satisfaction with treatment (n=80)

	(Very) satisfied	(Very) dissatisfied
Police (N=77)	57%	24%
<i>Contact other criminal justice agencies</i>	31%	
<i>Of which prosecution service</i>	83%	
Prosecution service (n=25)	86%	4%
<i>Contact specialized agency</i>	85%	
Specialized agency (n=68)	80%	10%

Assistance after victimisation

The respondents were asked whether they had received a number of different forms of assistance in the aftermath of their victimisation, such as medical, psychological, financial and legal assistance. A comparison between the mediation and no-mediation group

revealed that the latter group had a significantly larger need for assistance than the former: medical assistance: 24% versus 57%, psychological assistance: 35% versus 73% and legal assistance: 12% versus 36%. The difference in financial assistance (23% versus 46%) only reached marginal significance ($p=0,08$), but was in the same direction. This finding is in line with the results reported in Tables 3, 7 and 8, which suggest that victims in the no-mediation group on average suffered more severe forms of crime than those in the mediation group.

Table 12: Assistance after victimisation

	Mediation (n=57)	No-mediation (n=22)	Chi-square
Medical assistance	24%	57%	7.2, df=1, $p<0,01$
Psychological assistance	35%	73%	7.6, df=1, $p<0,01$
Financial assistance	23%	46%	2,9, df=1, $p=0,08$, n.s
Legal assistance	12%	36%	4,5, df=1, $p<0,05$

Finally, the respondents were asked whether they had discussed their victimisation with their surroundings and if so, how satisfied they were the support they received from their own social network. 92% of respondents discussed the crime with their social surroundings. Of those that did, only one person was very unsatisfied, with 88% being (very) satisfied.

Table 13: Support from social surroundings

	Yes	No
Discussed offence with social surroundings (n=79)	92%	8%
	(Very) Satisfied	(Very) Unsatisfied
Satisfaction with reaction	88%	1%

4.5. Summary

This section described the background characteristics of the victim-respondents in the Dutch sample, including demographics and the victimisation experience. We compared the results to other relevant Dutch victimological data, derived from registrations or previous research. The key findings of this section may be summarised as follows:

- *Comparable features to victims serviced by Victim Support.* The comparison of crime experience in the current group with other data suggests a likeness with the population that utilises the services of Victim Support. A large proportion suffered a form of violence, while smaller groups suffered property offences and traffic

crimes. Police data and victimisation surveys have far higher percentages of property offences than in the current sample. The fact that a large majority of respondents had been in contact with 'a specialised agency providing victim services', which in the Netherlands as a rule is synonymous with Dutch Victim Support, bears further witness of the close resemblance of the sample to victim support data.

- *Moderately severe victimisation experiences.* The majority of respondents in the sample reported that initially they found the impact of their victimisation to be very to extremely serious. This is in line with the finding that a majority of victims with similar experiences report traumatic complaints in the immediate aftermath of their victimisation. The level of current traumatic symptoms however suggests that most respondents in the sample displayed 'healthy' coping, in which high levels of complaints in the immediate aftermath dissipate over the following weeks and months. The comparison with participants in Victim Impact Statements was revealing in this respect: the results reported by the respondents closely mirrored the group of victims that were eligible to deliver a victim impact statement – which is only open to victims of relatively to extremely severe forms of violence in the Netherlands – but chose not to. This differentiates participants in victim-offender encounters from those in victim impact statements (displaying high levels of current symptoms) but also confirms the overlap between the respondents and much of the clientele of Dutch victim support (see also Pemberton, 2012).
- *High satisfaction with and service access to other organisations.* Satisfaction rates with criminal justice agencies in the sample were higher than in other victimological research and the group was able to access both formal and social support. The relevance of this finding is that it appears to suggest that the group of victims serviced by victim-offender encounters is also receiving help and support from elsewhere, rather than offering an avenue to receive support for victims who would otherwise have to do without. The encounters therefore rather offer an *additional service* to a group of *victims*, rather than a *service* to an *additional group of victims*.
- *Differences between the encounter group and the no-encounter group.* Finally, the results of the comparison of the group of victims that did and did not finally participate in the victim-offender encounters programme suggests that the latter group suffered more severe crimes than the former. It is not clear what caused this difference. The fact that the most often cited reason for the failure to meet each other was that the offender did not want to, might provide a clue: is the refusal to meet the victim's request a function of the severity of crime? And if so, why? Does the offender feel too ashamed in these cases or afraid of the victim? Or does the severity of the crime stand in the way of the offender taking responsibility for his actions?

5. Preparation phase

5.1. The offer of mediation

Initial contact with victim-offender encounters

The victim-offender encounters programme is a relatively recent creation. It is not surprising then that only one respondent had previous experience with the programme. 42% of respondents was told about the programme by Victim Support, 26% by the police and 18% by the mediator. Victim in Focus usually initiated contact. In 70% of cases Victim in Focus contacted the respondent first, while in 15% of cases the respondent contacted Victim in Focus on their own initiative.

Table 14: Initial contact with victim-offender encounters

		N (%)
First time (n=81)	Yes	80 (98%)
	No	1 (1%)
First heard of encounter (n=77)	Police	20 (26%)
	Mediator	14 (18%)
	Victim support	33 (42%)
	Other	10 (13%)
Contact with Victim in Focus (n=79)	Respondent contacted ViF	11 (14%)
	ViF contacted respondent	55 (70%)
	Third party	13 (16%)

Social surroundings' response

83% of the respondents discussed the possibility of participation in an encounter with their immediate surroundings. Of those that did, 68% found the response to be positive, 23% neutral and 9% negative. There were no differences between the encounter and no-encounter groups.

Table 15: The response of the social surroundings

		N (%)
Discussed with family and friends	Yes	65 (83%)
	No	13 (17%)
Reaction of social surroundings	Positive	45 (68%)
	Neutral	15 (23%)
	Negative	6 (9%)

Timing offer and pressure to accept

A large majority of respondents felt that the offer to participate was well timed. 83% thought the timing of the offer was perfect, 11% would have liked it to come sooner, while 6% would have preferred the offer at a later date. There was no difference between the mediation and no-mediation group. Three respondents (N=79) felt some pressure to accept the offer. 96% of respondents did not feel any pressure at all.

Table 16: Timing offer and pressure to accept

		N (%)
Timing offer	Perfect	64 (83%)
	(Far) Too long	9 (12%)
	(Far) Too short	5 (6%)
Felt some pressure to accept	Yes	3 (4%)
	No	76 (96%)

5.2. Reasons for participation

Most respondents participated in the programme because they wanted to receive answers from the offender and to let the offender know how they felt. The average importance attached to both reasons was 3.9 in the mediation group and 4.4 in the no-mediation group, implying great importance.⁴⁷ Receiving apologies and ensuring the offender does not commit a similar crime also influenced the decision of many participants, with respective averages of 3.6 and 3.5 in the mediation group and 4.2 and 4.2 in the no-mediation group. The results show that receiving compensation was hardly a factor in the mediation group (mean score 2.0), but somewhat more so in the no-mediation group (mean score 3.2). There were mixed results as to the extent to which respondents felt it was their duty to participate (mean scores of 2.8 and 3.6 respectively).

⁴⁷ Answers were measured on a five point scale, from 'not at all important' to 'extremely important'.

Table 17: Importance of reasons for participation⁴⁸

	Mediation Mean (SD)	No-Mediation Mean (SD)	T-test
Let the offender know how you felt	3,9 (1,2)	4,4 (0,7)	-1,7, df=75, p=ns
Get answers from the offender	3,9 (1,2)	4,4 (1,0)	-1,7, df=76,p=ns
Receive apologies from the offender	3,6 (1,4)	4,2 (1,1)	-1,6,df=76, p=n.s
Make sure the offender does not commit another similar crime	3,5 (1,4)	4,2 (1,1)	-1,9, df=73, p=0,05
You felt that it was your duty	2,8 (1,3)	3,6 (1,3)	-2,1, df=72, p<0,05
To receive financial compensation	2,0 (1,3)	3,2 (1,6)	-3,2, df=76,p<0,01

It is apparent from Table 17 that the mean scores were higher in the no-mediation group than in the mediation group. On closer inspection, through t-tests, the differences were only marginally significant for the reasons 'to let the offender know how I felt', 'to get answers from the offender' and 'to receive apologies from the offender'. There were significant differences for the reasons 'to make sure the offender does not commit another similar crime', 'you felt it was your duty' and in particular 'to receive financial compensation'. To further review patterns in the answers of respondents we performed a principal component analysis (PCA) with orthogonal rotation (Varimax rotation) on the reasons to participate in the mediation group.⁴⁹

⁴⁸ Answers were measured on a five point scale, from 'not at all important' to 'extremely important'.

⁴⁹ A principal component analysis is a technique to identify groups or clusters of variables, with the aim of understanding the structure of a set of variables. Prior to performing the PCA, the suitability of data for factor analysis was assessed. First, the sample size was examined. Although there is little agreement among authors concerning how large a sample should be (Pallant, 2001), with a sample size of 59 we were able to approximate the most stringent standard of a 10 to 1 ratio, that is 10 cases for each item to be factor-analysed (e.g., Nunnally, 1978). Second, we examined the strength of the relationship among the items. Inspection of the correlation matrix revealed the presence of many coefficients of .3 and above, which indicates medium to large correlation effects (Cohen, 1988). Furthermore, the Kaiser-Meyer-Olkin value was 0.63. This exceeds the recommended value of .5, which means the sample is sufficiently large to conduct a PCA. Finally, Bartlett's Test of Sphericity (Bartlett, 1950) reached statistical significance, supporting the factorability of the correlation matrix. The PCA initially revealed the presence of two components with eigenvalues exceeding 1, explaining 45.2 per cent and 19,4 per cent, of the variance respectively. Using Cattell's (1966) scree test, it was decided to retain three components for further investigation. To aid in the interpretation of these components, Varimax rotation was performed. The rotated solution (presented in Table 18) revealed the presence of simple structure (Thurstone, 1947), with all components showing a number of strong loadings and all variables loading substantially on only one component.

Table 18: Principle component analysis reasons for participating

	Component 1: Self-oriented	Component 2: Other-oriented
To receive financial compensation		0,75
Receive apologies from the offender	0,36	0,58
Let the offender know how you felt	0,94	
Get answers from the offender	0,89	
Make sure the offender does not commit another similar crime	0,64	0,39
You felt that it was your duty		0,75

Inspection of the two components revealed coherent underlying dimensions. In our view the second-component concerns other-oriented reasons, either relating to the offenders actions or to society more generally, while the first component concerns self-oriented reasons, concerning the feelings and emotions of the victim him- or herself (see Bolivar, 2012 for similar findings). In combination with the findings presented in Table 17 the results suggest that the self-oriented dimension is the strongest determinant of participation.

5.3. Evaluation preparation

The mediation group was asked what their opinion was of the preparation for mediation. Invariably, participants were positive about the preparation phase. Only one respondent disagreed with the statements that the information given about the encounter was sufficient and that the participant was well prepared for the meeting. Mean scores for the statements were 4.1 and 4.0 on a five point scale. Further analysis revealed that the scores on both items were highly correlated, $r=.83$ ($p<0,001$).

Table 19: Evaluation of preparation for the meeting

	Mean (SD)
The information given about the encounter was sufficient	4.1 (.79)
I was well prepared for my meeting with the offender	4.0 (.86)

5.4. Summary

The victim-offender encounters programme has yet to be widely known in the Netherlands. For this reason hardly any respondent stated previous experiences with the programme. The main results of this section may be summarised as follows:

- *Lack of pressure to participate.* The respondents did not feel under any pressure to participate. An explanation for this lack of pressure, that will also crop up with other findings, is the supplementary nature of the encounter. The lack of influence on the criminal procedure reduces the stakes involved in the encounter, which in turn reduces the extent to which the victim may feel obliged to participate: either for his or her own instrumental reasons (for instance to receive compensation) or for reasons related to the offender (the impact on the criminal case).
- *High satisfaction with offer and participation.* Nearly all respondents reported high levels of satisfaction with the preparation for the encounter and the information given. In addition, the timing of the offer met the victims' wishes in most cases.
- *Reasons for participation.* The most important reasons for participation were to get answers from the offender and to let the offender know how the victim felt. Receiving compensation was not important, which can be explained by the fact that it is not a likely outcome of the encounter. A principal component analysis revealed that the reasons for participation can be broken down in two dimensions: a self-oriented dimension including getting answers and expressing feelings; and an other-oriented dimension including receiving apologies and preventing the offender from committing further crimes. In this sample the first dimension was the most important one, while a similar pattern is visible in the evaluation of participation. Furthermore, there was a significant difference between the encounter and the no-encounter group in that the latter invariably found all reasons for participation to be more important. It is not clear why this is the case, but a possible explanation is that the actual experience of participations dampens the expectations of some participants. The fact that the reasons for participation were asked in hindsight leaves open the possibility that the evaluation of the encounter itself retrospectively influences the recall of the importance of reasons to participate.

6. The encounter

6.1. Key characteristics of the encounter

73% of the mediation-group had an direct encounter, in 15 cases an indirect encounter took place, which was due to the victims' express wishes in 10 out of 15 cases. One mediator presided over the encounter in all but two of the cases. In the cases where there was an encounter it lasted longer than an half an hour in 80% of cases and longer than an hour in 30% of cases. One-third of the respondents had a support person present, the

other two-thirds did not. A peculiar feature of the Dutch programme is that it is not intended to reach a mediated agreement, nor influence the judicial process. It is apparent from the results that this was also the experience of the participating victims: nearly unanimously they found that the encounter had not resulted in a mediated agreement (96% of cases), while only one respondent found the encounter to have influenced the judicial process. It is noteworthy though, that nearly one third of participants was unsure whether the encounter had influenced the process.

Table 20: Key characteristics of the encounter

	N (%)
Face-to-face encounter	73%
Indirect encounter	27%
One mediator	96%
More than one mediator	4%
Less than 30 minutes	20%
31thru 60 minutes	50%
Longer than 60	30%
Support person present	35%
No support person present	65%
Resulted in agreement	4%
Did not result in agreement	96%
Encounter impacted the judicial process	2%
Don't know	30%
Encounter did not impact the judicial process	68%

Nearly all respondents felt free to withdraw at any point in the process (96%), while hardly any respondent recalled receiving information about further support services (4%). The latter result should be viewed in the light of the fact that most respondents were already in contact with an organisation offering support and assistance. In a large majority of cases, the time and place of the meeting was convenient (88%, resp. 90%). This is connected to the fact that respondents were consulted about these matters beforehand.

Table 21: Views on the process ⁵⁰

	Percentage yes
Felt free to withdraw (n=55)	96%
Time convenient (n=50)	88%
Place convenient (n=51)	90%
Information about further support services (n=55)	4%

6.2. The experience during the encounter

Topics discussed during the encounter

Nearly all encounters included a discussion of the facts about the crime and the personal and social consequences for the victim. This was reported in respectively 92% and 90% of the cases. The consequences for the offender were also discussed in a majority of cases. This could pertain to the personal/social consequences for the offender, in 70% or the legal consequences, in 51% of cases. Compensation or other reparative actions on the part of the offender did not figure in the majority of encounters as topics of discussion, although they were reported by 26% and 14% of cases respectively.

Table 22: Topics discussed during the encounter (n=51)

	N (%)
Facts about the crime	47 (92%)
Personal and social consequences for the victim	46 (90%)
Personal and social consequences for the offender	35 (70%)
Legal consequences (e.g. sentence)	26 (51%)
Financial compensation	13 (26%)
Other reparative actions on the part of the offender	7 (14%)

Apology

Various authors have underlined the importance of apologies within restorative justice (Bennett, 2006; Duff, 2003; Strang, 2002), although questions have been raised about the extent to which victims find the apologies offered to be sincere (Daly, 2008; Pemberton, Winkel and Groenhuijsen, 2007). The results of the study bear evidence of the importance

⁵⁰ For indirect encounters these questions relate to the meeting with the mediator alone rather than with the offender.

of apologies, with 80% of encounters including the offer of an apology, which overwhelmingly (88%) viewed as sincere. Where the apology was not offered the victim would have welcomed the offer of an apology.

Table 23: Apologies

	Yes, N (%)
Was an apology offered?	44 (80%)
If yes, was apology sincere?	35 (88%)
If no, would have wanted?	8 (73%)

6.3. Evaluation of the encounter process

The views on the encounter process

Respondents were highly positive about the encounter and their treatment by the mediator. The latter was seen to be objective (4.3) and supportive (4.2). Participants felt treated with respect (4.1) and felt they completely understood what happened during the meeting (4.2). The confidentiality of the meeting was not in doubt (4.2) and there was enough consideration of the respondents opinion, during the meeting (4.1). Respondents were positive about the effects of the encounter on the offender, albeit to a slightly lesser degree than their evaluation of the mediator and their own input during the encounter. Nevertheless the respondents felt that the offender participated of his own accord (3.7) and understood he violated a norm (3.7). More particularly the respondents stated that the offender answered all the victims' questions (3.7) and understood what the consequences were for the victim (3.5). Not many offenders offered to pay the victim compensation (2.1), which confirms the findings that compensation is not an important concern for participants.

Table 24: Evaluation of the encounter

	Mean (SD)
The mediator was objective	4.3 (.56)
The mediator offered enough support during the mediation	4.2 (.73)
I completely understood what happened during the meeting	4.2 (.67)
The things I said during the meeting will stay confidential	4.2 (.67)
There was enough consideration for my opinion during my meeting	4.1 (.71)
I was treated with respect during the meeting	4.1 (.71)
The offender understood what the consequences were for me	3.5 (.98)
The offender understood he/she violated a norm	3.7 (.92)
The offender offered to pay me compensation	2.1 (1.26)
The offender answered all my questions	3.7 (.93)
The offender's participation was entirely his own choice	3.7 (.79)

Underlying structure of evaluation

To further review patterns in the answers of respondents we performed a principal component analysis (PCA) with orthogonal rotation (Varimax rotation) on the evaluation of the participation in mediation.⁵¹ The results revealed an underlying structure of two components. Further inspection of the results revealed that the two components can be described as self and other-oriented. More precisely, the first component can be interpreted as aspects of the experience of procedural justice (e.g. Tyler, 2003). Values like respect, objectivity, voice and understanding are reliably found to be important factors in the experience of victims of crime (Laxminarayan, 2012). The second component related to the behaviour of and the impact on the offender. This can be viewed in light of the fact that it can be important to victims of crime that the offender recognises the harmfulness and wrongfulness of his behaviour and renews his allegiance to the shared norms and values in society or in other words contributes to value restoration.

⁵¹ Prior to performing the PCA, the suitability of data for factor analysis was assessed. First, the sample size was examined. The sample size (59) was 5 times the size of the number of items, which does not meet the criterion of the sample being 10 times the sample size, but nevertheless is common practice in much published research employing a PCA (Osborne and Costello, 2004). In addition, the KMO value was 0.66 and Bartlett's Test of Sphericity (Bartlett, 1950) reached statistical significance, which both support the factorability of the correlation matrix. The PCA initially revealed the presence of two components with eigenvalues exceeding 1, explaining 44.2% and 29.6%, of the variance respectively. To aid in the interpretation of these components, Varimax rotation was performed. The rotated solution revealed the presence of simple structure (Thurstone, 1947), with all components showing a number of strong loadings and all variables loading substantially on only one component.

Table 25: Principal component analysis evaluation encounter

	Component 1: self-oriented, procedural justice	Component 2: other-oriented, value restoration
I completely understood what happened during the meeting	,82	
The things I said during the meeting will stay confidential	,83	
There was enough consideration for my opinion during the meeting	,86	
I was treated with respect during the meeting	,88	
The offender understood what the consequences were for me		,93
The offender understood he/she violated a norm		,92
The offender offered to pay me compensation		,51
The offender answered all my questions		,88
The offender's participation was entirely his own choice	,49	,48
The mediator offered enough support during the mediation	,91	
The mediator was objective enough	,92	

6.4. No encounter group

In 23 cases, the respondent reported that no encounter (either direct or indirect) with the offender had taken place. In this sample this was not due to the victims' wishes: over 90% of the respondents would have wanted to meet the offender.⁵² Instead it was mostly the offender him/herself that refused to participate: in 75% of cases the victim reported that the offender was not willing to participate. In one case the victim reported wanting him/herself, but succumbing to pressure of his or her surroundings to forego participation. Like the encounter group, the no-encounter group found the information offered by Victim in Focus to be sufficient. 77% of the respondents agreed this was the case, while only 18% disagreed.

⁵² Here difficulties in recruiting samples of victims that did not want to participate play a role.

Table 26: Reasons for and experiences of no-encounter group

	N (%)
Victim wanted to participate	20 (90%)
Victim did not want to participate	2 (10%)
Offender did not want to participate	15 (75%)
Offender was not able to participate/ unknown	2 (10%)
Offender denied the crime	1 (5%)
Victims surroundings were negative	1 (5%)
Reason unknown to victim	1(5%)
Satisfied with information	17 (77%)
Not satisfied with information	4 (18%)

6.5. Summary

The mode of participation (direct or indirect) did not influence victims' views in this sample, which is probably due to the fact that it was the victims' express wish to have an indirect encounter in most cases. The most important results of this section may be summarised as follows:

- *A large degree of unanimity in the experience of the encounter.* In 96% of cases the encounter was led by one mediator, 96% did not result in an agreement and 96% of respondents felt free to withdraw at any time. In only one case did the respondent think that the encounter had influenced the judicial process. More than 90% of cases included a discussion of the facts of the case and the personal and social consequences for the victim. A large majority further felt that time and place of the encounter was convenient.
- *The experience of the no-encounter group.* 90% of the no-encounter group had wanted to meet the offender: the most cited reason for the failure to meet the offender was that the latter did not want to. The results of this group should be interpreted in this light: willing but not able respondents. The group unwilling victims was apparently more difficult to include in the sample. As a rule, the no-encounter group was satisfied with the services Victim in Focus offers.
- *Relative sincerity of apologies.* The results underline the importance of apologies to victims of crime. Most respondents received an apology and those who did not, would have wanted to. In addition, compared to previous research (Daly, 2003; Strang, 2002) the apologies were largely judged to be sincere. The lack of any apparent instrumental reason for offering an apology on the part of an offender,

may have strengthened the extent to which the victim believed the offender, although other explanations for this finding cannot be ruled out.

- *Two dimensions of evaluation of encounter.* The findings concerning the evaluation of the encounter mirrored the findings of the reasons to participate. Two dimensions underlie the evaluation: a self-oriented dimension concerned with typical aspects of procedural justice and an other-oriented dimension concerned with the impact of the encounter on the offender. Treatment by the mediator, confidentiality, respect, voice: the results confirmed the importance of these features of victim's participation in justice procedure. The fact that the offender understood what the consequences were for the victim, that he had violated a norm and contributed to the encounter by answering the victim's questions, were central aspects of the second dimension.

7. Views on participating and effects of participating in the victim-offender encounters programme

7.1. Assessment of victim-offender encounters programme

Overall view on the programme

Nearly all respondents were positive concerning their experience with the victim-offender encounters programme. Of those that participated in the encounter, 83% would participate again and this was 86% in the no-encounter group. Similarly, 79% of the encounter-group and 91% of the no-encounter group finds that the encounter should be offered to all victims in a similar position to themselves. Not only do these results show that victims are largely positive about participation in the victim-offender encounters programme, but it also suggests that the end-result of no encounter is not experienced as secondary victimisation. If anything the no-encounter group is more rather than less supportive of the programme.

Table 27: Overall evaluation of the programme

	Encounter	No encounter
Would participate again	83%	86%
Mediation should be offered to all victims in a similar position to me	79%	91%

Self-assessment of the impact on victims' well-being

51% of the encounter group thought that the encounter made them feel better, with only 6% (2 respondents) finding that the encounter left them feeling worse. 50% felt that the encounter helped them cope with their experience, 35% thought it strengthened their self-

esteem and 29% that it increased their optimism about the future. 16% thought it increased their trust in the law and 10% that it contributed to their belief in a just world. It should be recognised though that for most of these aspects the prevailing opinion was that participation had not had an impact.

Table 28: Self-assessment impact participation

Encounter	Agree	Not agree/ disagree	Disagree
Made respondent feel better	51%	43%	6%
Improved self-esteem	35%	62%	4%
Helped coping	50%	50%	-
Contributed to optimism about the future	29%	51%	5%
Aided trust in the law	16%	80%	4%
Contributed to belief in a just world	10%	86%	4%

7.2. Views on the results of the programme

On average, the respondents find victim-offender encounters to be effective to hold offenders responsible for their actions (3.6) and value the level of acknowledgement of the harm they suffered (3.7). Less support was given to the notions that the encounter repaired the harm caused (3.1) and the extent to which the encounter will prevent the offender from committing similar crimes in the future (3.1), although on average respondents were slightly positive about these possible effects. The respondents' opinions on the extent to which the encounter served as sufficient punishment and/or changed their opinion about the legal process revealed mixed, but mostly negative results, with average scores of 2.4 and 2.4 respectively.

Table 29: Respondent views on the impact of the encounter⁵³

	Mean (SD)
The encounter sufficiently acknowledged what happened to me	3.7 (.9)
The encounter held the offender responsible for what he did	3.6 (.9)
The encounter contributed by repairing the harm that was caused	3.1 (1.0)
The encounter will help the offender from committing crimes in the future	3.1 (.8)
The encounter and its outcomes are sufficient punishment for what the offender did	2.4 (1.2)
The encounter changed my perspective on the legal process	2.4 (.9)

7.3. *The position of the victim-offender encounter versus the criminal justice process*

The respondents were asked to consider the position of the encounter versus the criminal justice system. More specifically, they were asked to what extent they prefer an encounter over a court case and to what extent they prefer an encounter combined with a court case. From the results, it is clear that the respondents prefer the combination of encounter and court case to a greater degree than the replacement of the court case by an encounter. 17% of those who had an encounter agreed with the statement that they preferred an encounter to a court case (19% in the no-encounter group), while 70% (76% in the no-encounter group) disagreed. This was in stark contrast to the support offered for an encounter in combination with a court case: the percentages were almost exactly the opposite. Here 67% agreed with the statement and 17% disagreed (71% versus 19% in the no-encounter group). These findings should be interpreted against the backdrop of the actual situation in the Netherlands, in which the possibility of having an encounter instead of a court case does not exist at the national level at this moment.

Table 30: The position of the encounter towards the criminal justice system

	Encounter-group	No encounter-group
	N (%) Agree	N (%) Agree
For the type of crime that I suffered, I prefer an encounter above a court case	(17%)	(19%)
For the type of crime that I suffered, I prefer an encounter in combination with a court case	(67%)	(71%)

⁵³ The answers were measured on a five point scale, from strongly disagree (1) to strongly agree (5).

7.4. Summary

Nearly all respondents were positive concerning their experience with the victim-offender encounters programme, whether or not the encounter actually took place. A large majority would participate again and felt participation in the programme should be offered to other victims in the same position. The positive evaluation of the no-encounter group suggests that the risk of secondary victimisation for this group should not be overstated. The following observations further summarise the findings in this section:

- *The positive impact of the experience is largely viewed in terms of coping rather than feelings of justice.* About 50% of respondents thought the encounter made them feel better. There was larger support for the impression that the encounter had helped coping, contributed to self-esteem and contributed to optimism about the future, rather than shaped trust in the law or the belief in a just world. On all items, there was hardly any support for the notion that the encounter made the respondent feel worse, which is in contrast with the victims' self-assessment on these items following involvement in the criminal justice procedure (Laxminarayan and Pemberton, 2012).
- *The results of the programme are viewed in terms of procedural justice and value restoration, rather than prevention or sufficient punishment.* When asked about the results of the programme, the respondents were largely supportive of its effects as a means to achieve acknowledgement; more ambivalent about the extent to which the encounter will prevent the offender from committing further crimes and its contribution to repairing the harm caused, and largely negative about the extent to which it amounts to sufficient punishment for the offender and its impact on the way the respondent views the legal process. The latter findings, of course, have to be seen in the light of the fact that the victim-offender encounters do not intend to reach these goals.
- *Preference for supplementary position.* In similar vein, the fact that there was large support for the position of the encounter alongside or outside the criminal justice system should be viewed at least in part as an instance of the phenomenon that people like what they get. The encounter is supplementary to the criminal justice process and it stands to reason that participants in the programme agree with this position, as disagreement may well lead to non-participation. Nevertheless the results do confirm that the supplementary encounter fulfils these respondents' needs: not only are supportive, but the results of the impact of the encounter largely mimic results of similar processes elsewhere.

8. Concluding observations

The Dutch victim-offender encounters programme is both similar and different to other restorative justice schemes in Europe, with the most conspicuous difference being the complementary nature of the scheme versus the criminal justice process. In this concluding section, we reflect on the key questions concerning the participation of victims within the scheme. In particular, we consider what the results tell us about *who* participates, *why* they participate and *what results and effects* participation may have and subsequently consider what the results imply for the main distinguishing feature of the victim-offender encounters programme.

Who participates?

The crimes experienced by respondents (both in the mediation and no-mediation group) mimic the features of the population that utilises the services of Victim Support. A large proportion suffered a form of violence, while smaller groups suffered property offences and traffic crimes. In line with this, a majority of respondents in the sample reported that initially they found the impact of their victimisation to be (very to extremely) serious. The results suggest that the programme is not of interest to victims of minor crimes or put differently, the experience has to make a sufficient impression on victims of crime for them to feel the need to meet and discuss the crime with the offender. This is in line with the suggestion of Sherman and Strang (2007) that restorative justice may be of particular interest to victims of violent crime. However, the level of current traumatic symptoms suggests that most respondents in the sample displayed 'healthy' coping, in which high levels of complaints in the immediate aftermath dissipate over the following weeks and months. This is in contrast to the experience of participants in Victim Impact Statements who displayed high levels of current symptoms. This is an important finding. High levels of symptoms of posttraumatic stress are not only related to similarly high levels of anxiety, but also to anger, hostility and vengefulness towards the offender (e.g. Pemberton, 2012). Anxiety concerning the offender may act as barrier towards meeting the offender in person, while the feelings of anger and vengefulness are at odds with constructs relating to restorative justice (like reconciliation). The latter emotions are in sync with a more retributive stance, to which delivering a victim impact statement may contribute (Lens, Pemberton and Bogaerts, 2012).

Why do they participate?

According to the respondents, the most important reasons for participation were to get answers from the offender and to let the offender know how they felt. Receiving

compensation was not important, which can be explained by the fact that it is not a likely outcome of the encounter. The key finding was that the reasons for participating could be distinguished in a set of self-oriented reasons including getting answers and expressing feelings, and an other-oriented dimension, including receiving apologies and preventing the offender from committing further crimes. These reasons for participation were also, in the view of the respondents, the eventual results of participation. The results did not reveal any pressure to participate, nor did they show dissatisfaction with other agencies. By and large, the group that participates in the victim-offender encounters is also satisfied with criminal justice agencies and with the services provided to them. Moreover the victims' personal surroundings were seen as being largely supportive in the aftermath of their victimisation. This suggests that the programme is not so much an alternative to other avenues for victims to cope with their experience, but rather an additional option for victims who are dealing relatively well with their experience already and also have access to other means of support.

The results/effects of participation

The results reveal expectations of participation to be met by their actual experience of the encounter: there was close correlation between reasons for participating and the experience of meeting the offender and conversely victims were highly satisfied with participation. When asked to self-assess the effects of the programme, about half of respondents thought the encounter made them feel better (see similarly Daly, 2003). There was larger support for the impression that the encounter had helped coping, contributed to self-esteem and contributed to optimism about the future, rather than shaped trust in the law or the belief in a just world. On all counts, there was no evidence that the encounter made the respondent feel worse. Here the self-selection involved in voluntary participation appears to have successfully neutralised any risk of secondary victimisation. The research suggests that, as a rule, participating victims were not heavily afflicted by their victimisation: victim participation in the scheme is a function of low emotional impact. This in itself reduces the chances of any real negative impact of the encounter, while the self-selection also provides a match between victim needs and the encounter experience.

The complementary nature of the programme

The results of the research into the impact of victim-offender encounters closely mimic positive results found elsewhere (e.g. Daly, 2003; Sherman and Strang, 2007), which suggests that the 'working element' of victim-offender mediation lies in the encounter itself, rather than its mediation status. The meeting itself serves as acknowledgement of the harm experienced by the victim, irrespective of its position versus the criminal justice

process, and the results again confirm the viability of a complementary programme. Victim-offender encounters are clearly in the interest of those who choose to participate. Indeed, participating victims preferred the combination of the encounter with the criminal justice system, which confirms the co-occurrence of retributive and restorative needs, but also should be viewed as an instance of the phenomenon that people like what they get, particularly if they have chosen this option. This is surely part of the explanation for differences with the results of the other country studies, where respondents favoured the connection between mediation and criminal justice. Nevertheless, the lack of evidence confirming the risk of secondary victimisation opens up additional avenues to explore tighter integration with the criminal justice process as well. Ensuring the voluntariness of participation appears to be an effective shield against negative experiences. Particularly if victims have recourse to both encounters and mediation, negative impact of participating in the latter will be reduced to a minimum.

References

- Angel, C., 2005. Crime victims meet their offenders. Testing the impact of restorative justice conferences on victims' post traumatic stress symptoms. PhD Diss., Pennsylvania: University of Pennsylvania.
- Bartlett, M.S., 1950. Test of significance in factor analysis, *British Journal of Psychology*, 3, 77-85.
- Bennett, C., 2006. Taking the sincerity out of saying sorry. Restorative Justice as Ritual. *Journal of Applied Philosophy*, 232, 127-143.
- Blad, J.R. and Lauwaert, K., 2010. Evidence based policies? Empirical research on restorative justice in the Netherlands. In: I. Vanfraechem, I. Aertsen and J. Willemsens, eds. Restorative justice realities: empirical research in a European context. The Hague: Eleven Publishing, pp. 175-205.
- Bolívar, D., 2012. Victim-offender mediation and victim's restoration. A victimological study in the context of restorative justice. PhD diss., Leuven: KU Leuven.
- Bonanno, G.A., Westphal, M. and Mancini, A.D., 2011. Resilience to loss and potential trauma. *Annual Review of Clinical Psychology*, 7, 511-535.
- Brewin, C.R., Rose, S., Andrews, B., Green, J., Tata, P., McEvedy, C., Turner, S. and Foa, E.B., 2002. Brief screening instrument for post-traumatic stress disorder. *British Journal of Psychiatry*, 181, 158-162.
- Cattell, R.B., 1966. The scree test for the number of factors. *Multivariate Behavioral Research*, 12, 245-276.
- Cohen, J., 1988. Statistical power analysis for the social and behavioural sciences. New York: Lawrence Earlbaum.
- Daly, K., 2003. Mind the gap: restorative justice in theory and practice. In: A. von Hirsch, J. Roberts, A.E. Bottoms, K. Roach and M. Schiff, eds. Restorative justice and

- criminal justice: competing or reconcilable paradigms? Oxford: Hart Publishing, pp. 219-236.
- Daly, K., 2008. The limits of restorative justice. In: D. Sullivan, and L.L. Tifft, eds. *The handbook of restorative justice: a global perspective*. New York: Routledge, pp. 134-145.
- Duff, R.A., 2003. Restoration and retribution. In: A. Von Hirsch, J.V. Roberts, A. Bottoms, K. Roach and M. Schiff, eds. *Restorative and criminal justice: competing or reconcilable paradigms*. Oxford: Hart Publishing, pp. 43-59.
- European Forum for Victim Services, 2005. *Statement on the position of the victim within mediation*. Lisbon: EFVS.
- Fattah, E., 1991. *Understanding criminal victimization*. New Jersey: Prentice Hall.
- Frazier, P.A. and Haney, B., 1996. Sexual assault cases in the legal system: Police, prosecutor, and victim perspectives. *Law and Human Behavior*, 20, 607-628.
- Groenhuijsen, M.S. and Pemberton, A., 2009. The EU Framework Decision on Victims. Does hard law make a difference? *European Journal on Crime, Criminal Law and Criminal Justice*, 17, 43-59.
- Groenhuijsen, M.S., 2000. Victim-offender mediation: legal and procedural safeguards. Experiments and legislation in some European jurisdictions. In: *The European Forum for Victim-Offender Mediation and Restorative Justice*, ed. Victim-Offender Mediation in Europe. Making Restorative Justice Work, Leuven: Leuven University Press, pp.69-81.
- Groenhuijsen, M.S., 2001. Hervorming van het strafprocesrecht met het oog op belangen van het slachtoffer: We ain't seen nothing yet. *Delikt en Delinkwent*, 31, 645-659.
- Laxminarayan, M.S., 2012. *The heterogeneity of crime victims: variations in legal preferences*. PhD Diss., Tilburg: Intervict.
- Laxminarayan, M.S. and Pemberton, A., 2012. Victims justice preferences in a collectivist, informal setting: The case of Bhutanese refugees in Nepal. *International Journal of Law, Crime and Justice*, 40(3), 255-269.
- Lens, K.M.E., Pemberton, A. and Groenhuijsen, M.S., 2010. Het spreekrecht in Nederland: een bijdrage aan het emotionele herstel van slachtoffers? Tilburg: Intervict.
- Lens, K.M.E., Pemberton, A. and Bogaerts, S., 2012. Heterogeneity in Victim Participation: A new Perspective on Delivering a Victim Impact Statement. *European Journal of Criminology*, 10(4), 479-495.
- Nunnally, J.C., 1978. *Psychometric Theory*, 2nd Edition, New York: McGraw-Hill Book Company.
- Orth, U. and Maercker, A., 2004. Do trials of perpetrators retraumatize crime victims? *Journal of Interpersonal Violence*, 19(2), 212-227.
- Osborne, J.W., and Costello, A.B., 2004. Sample size and subject to item ratio in principal component analysis. *Practical Assessment, Research and Evaluation*, 9. Available at: from <http://PAREonline.net/getvn.asp?v=9andn=11> [accessed 27 November 2012].
- Pallant, J., 2001. *SPSS survival manual*. Buckingham: Open University Press.

- Pemberton, A., 2010. *The cross-over: an interdisciplinary approach to the study of victims of crime*. Apeldoorn/ Antwerpen: Maklu.
- Pemberton, A., 2012. De slachtoffer-dadergesprekken: een victimologisch perspectief. In: Weijers, I., ed. *De slachtoffer-dadergesprekken: in het schaduw van het strafrecht*. Den Haag: Boom Juridische Uitgevers, pp. 45-58.
- Pemberton, A. and Reynaers, S., 2011. 'The controversial nature of victim participation: therapeutic benefits in victim impact statements'. In: E. Erez, M. Kilchling and J. Wemmers, eds. *Therapeutic jurisprudence and victim participation in criminal justice: international perspectives*. Durham: Carolina Academic Press, pp. 229-248.
- Pemberton, A., Winkel, F.W. and Groenhuijsen, M.S., 2007. Taking victims seriously in restorative justice. *International Perspectives in Victimology*, 3(1), 4-14.
- Sherman, L. and Strang, H., 2007. *Restorative justice: the evidence*. London: Smith Institute.
- Strang, H., 2002. *Repair or revenge: Victims and restorative justice*. Oxford: Oxford University Press.
- Thurstone, L.L., 1947. *Multiple factor analysis*. Chicago: University of Chicago Press.
- Timmermans, M., Tromp, E. and Homburg, G., 2011. *Justitiële slachtofferondersteuning verbeterd? Amsterdam: Regioplan*.
- Tyler, T., 2003. Procedural justice, legitimacy and the effective rule of law, *Crime and Justice: a review of research*. In: M. Tonry, ed. *Crime and justice: a review of research*. Chicago: University of Chicago Press, pp. 283-358.
- Van Dijk, J.J.M., 2007. *World of crime*. Thousand Oaks: Sage.
- Van Dijk, J.J.M, Van Kesteren, J. and Smit, P., 2007. *Criminal victimization in international perspective. Key findings from the 2004/2005 ICVS and EU/ICS*. The Hague: Boom.
- Van Burik, A., Heim, M., Hoogeveen, C., de Jong, B.J., Slump, G.J. and Vogelvang, B., 2010. *Evaluatie slachtoffer-dader gesprekken*. Woerden: Van Montfoort.
- Vanfraechem, I., Aertsen, I. and Willemsens, J., 2010. *Restorative justice realities: empirical research in a European context*. The Hague: Eleven Publishing.
- Van Mierlo, F. and Pemberton, A., 2009. *Van tevredenheid naar kwaliteit*. Tilburg: Intervict.
- Winkel, F.W., 2007. *Posttraumatic anger. Missing link in the wheel of misfortune*. Inaugural lecture Tilburg University. Nijmegen: Wolf Legal Publishers.
- Zebel, S., 2012. Een quasi-experimentele studie naar de effecten van de Nederlandse slachtoffer-dader gesprekken. In: Weijers, I. ed. *De slachtoffer-dadergesprekken: in het schaduw van het strafrecht*. Den Haag: Boom Juridische Uitgevers, pp. 21-41.

Chapter 4. Drawing conclusions: findings, reflections and challenges for practice, policy and research

By Daniela Bolívar

This final chapter aims to summarise and discuss the main findings of our research project. The main challenge of this chapter is to make sense of all collected data and to formulate some reflections on the development of restorative justice (RJ) in Europe from a victim perspective. In the first section, we review the research questions. In the second section, the main findings are summarised and discussed. The third section discusses implications for practice and research. In the final section, reflections regarding the EU Directive on victims' rights developed. For a more comprehensive view on the position of the victim within RJ, this conclusions should be read in combination with Vanfraechem, I., Bolivar, D. and Aertsen, I., eds. 2015. *Victims and Restorative Justice*. London: Routledge.

1. The research questions

RJ is an approach to justice that, throughout the last four decades, has been widely applied in many European countries (Miers and Aertsen, 2012; Vanfraechem et al., 2010). This development has been encouraged by European and international recommendations, particularly Recommendation No. R (99)19 of the Council of Europe concerning Mediation in Penal Matters, and the United Nations Basic Principles on the Use of Restorative Justice Programmes in Criminal Matters (2002). Concerning victims in particular, the EU adopted a Framework Decision in 2001, where Member States were asked to promote mediation where appropriate and more recently (25 October 2012), the European Parliament and the European Council approved a Directive on the rights, support and protection of victims of crime, in which RJ has also been taken into account (Lauwaert, 2015).

Despite the wide use of RJ and the availability of research findings indicating positive effects on its participants (for a European overview on empirical findings see Vanfraechem et al., 2010), there are still questions concerning the experiences of victims. In particular, concerns and doubts have been raised in relation to the extent to which RJ practices (that is, the "real" application of RJ) are appropriately meeting victims' needs. The main intention of this European research project was therefore to gain empirical evidence that could, to the extent possible, offer responses to these unanswered questions. Our general objective was, as a consequence, "to gain more insight in the needs, experiences and position of victims when participating in RJ programmes". In other words, this research project aimed, on the one hand, to identify sources of satisfaction, dissatisfaction and, eventually, secondary victimisation, and, on the other hand, to identify to what extent RJ is adequately involving victims in its implementation.

These two aspects gave origin to two sub-studies: the “micro” and the “macro” research. The “micro-research” focused on assessing victims’ experiences in RJ, particularly in “victim-offender mediation”.⁵⁴ Data was collected in three countries (Austria, Finland and the Netherlands), since these countries implement RJ from three different institutional settings: probation, welfare service and victim support. The intention behind this methodological design was to compare victims’ experiences and to conclude whether different institutional settings could make a difference in this regard. In the three countries, victims’ experiences were assessed using the same questionnaire with open and closed questions. In this sub-study, a total of 197 victims of crime were interviewed (Austria, 67 cases; Finland, 48; the Netherlands, 82). The process of selecting participants aimed to reach three different groups of victims: (a) participants of a completed RJ process, (b) participants of an interrupted RJ process and (c) non-participating victims (i.e. victims whose cases were not initiated at all, for whatever reason).

Table 1: Number of participants per country

	The Netherlands	Finland	Austria	Total
Completed processes	59	36	42	137
Interrupted processes	-	7	9	16
Non-participants	23	5	16	44
Total	82	48	67	197

The research areas this sub-study aimed to answer were: (a) effects of the offer of mediation on the victim, (b) victims’ perceptions of the characteristics of the communication process, (c) victims’ assessments of the outcomes, and (d) victims’ opinions on the judicial context.

⁵⁴ For findings related to the “macro-research”, see Bolivar (2015).

2. Victims' experiences in Dutch, Finnish and Austrian RJ programmes

Despite methodological limitations, findings shared in this report offer rich information about victims' experiences within the three evaluated RJ programmes. To facilitate the analysis of our findings, this section is structured according to the sub-questions of the micro-research: the offer of mediation, the communication process, the outcome of the RJ process and the judicial context of RJ. We have also added in this section the topic type of crime and victimisation since it is an aspect that needs to be taken into account for its practical implications.

Type of crime and victimisation

Our sample was mainly composed of victims of interpersonal violence. However, the three national sub-samples were not homogenous. They shared commonalities but also particularities. Regarding the commonalities, the three samples contained a relatively big group of physical assault and battery cases. In terms of peculiarities, we found that while some of the Dutch victims had suffered quite violent forms of victimisation (e.g. indirect victims of homicide and victims of sexual offences), Austrian and Finnish samples were characterised by the inclusion of cases of partner violence. Importantly, this variability did not prevent most respondents in the three countries from classifying their case as "serious". In addition, around a quarter of the three sub-samples together presented at least one of the symptoms of the Trauma Screen Questionnaire. This reminds us that legal criteria in order to construct categories (e.g. "minor" or "serious" offences) should not be the only ones to be considered in order to estimate the effects of a crime on a victim.

The offer of mediation

- *General conclusion:* Most victims felt comfortable with how and when mediation was offered to them. This finding could be observed for victims of the three countries.
- *Timing:* In general terms and despite the fact that victims could have heard about mediation from different actors of the criminal procedure (depending on the country), respondents were satisfied with the moment (timing) that mediation was offered.
- *Reasons to participate:* When asked about the reasons of their participation in mediation, "to let the offender know how you felt", "to get answers from the offender" and "to receive an apology" were the most common answers. These findings are in line with previous research. However, we could also observe that the institutional setting in which mediation takes place can influence victims' expectations. For example, victims participating in diversionary schemes tended to emphasise, as reasons for participation, the effect that mediation could have on the

offender. On the contrary, victims who participated in a programme set up independently of the criminal justice system (the Netherlands), tended to stress more, as a reason for participation, what they could say and share in the meeting. In the case of diversionary schemes (Austria and Finland), motivations such as “to avoid the court proceedings” and “curiosity to meet the offender” also appeared.

- *Preparation:* Victims tended to be satisfied with the preparation they received. This finding was observed in the three countries, despite their differences in terms of how such preparation was carried out. This means that victims considered they had enough information and felt prepared to meet the offender, even when such preparation was short or did not involve a preparatory face-to face meeting with the mediator.
- *Differences between countries:* Unlike Dutch respondents, Austrian and Finnish victims were more satisfied with the amount of information they received prior to the RJ process than with the extent to which they felt prepared for the meeting. These findings may mirror differences between the countries in terms of processes of preparation (e.g. some Finnish and Austrian respondents mentioned no preparation or short preparation prior to the meeting), which may relate to their different relationships with the criminal justice system (coincidentally, Austrian and Finnish mediation services operate as diversion programmes).
- *Other relevant findings:*
 - A relationship was found between type of crime and victims’ participation in RJ in the Netherlands. Victims participating in RJ tended to experience less severe forms of crime than non-participating victims. Reasons of such association are not clear.
 - In the Netherlands, victims of unknown offenders tended to participate more in direct mediation.
 - In Finland, victims were more willing to participate in mediation when the offender was young.
 - In Finland, comparisons among groups (completed, interrupted and non-participants) revealed different motivations. While completed-mediation victims were less interested in financial compensation, non-participants were less interested in getting answers, preventing re-offending or receiving an apology.
 - In Austria a correlation was found between feeling pressure to participate in mediation and victims’ refusal to RJ.
 - In Finland, victims of interrupted cases tended to be less pleased with the preparation procedure.

The communication process

- *General conclusion:* In general, victims tended to assess the communication process that took place during the RJ experience positively. This was observed among victims whose cases had been led by either a volunteer or a professional facilitator, and among participants of different RJ's institutional contexts.
- *Support people:* Such a communication process usually took place between the offender and the victim only. Support people from the victim's side were present in a minority of cases. In fact, most respondents were of the opinion that bringing support people was unnecessary (Austria and Finland).
- *Mediator:* In the three countries, the mediator was generally assessed positively by the interviewees. They were seen as supportive and objective, and victims felt respected in the way the mediator handled the case. In Finland, where the mediation programme operates with volunteers, victims presented the same opinion. However, Finnish qualitative data suggests that victims' positive evaluations may be endangered by a particular attitude and gestures of the mediator, such as having small talks with the offender minutes before starting the mediation session or calling the offender by his nickname.
- *Meeting:* In general, respondents tended to agree with the time, moment and venue of the meeting. Our findings also suggest that most victims understood what happened during the face-to-face encounter.
- *Offender:* Even though most victims tended to be positive about the effect that the meeting could have on the offender, respondents tended to be more satisfied with the mediator and the mediation process than with the effect that the encounter could have on the offender. This means that positive evaluation of the encounter may go together with a pessimistic (or not so optimistic) view of the offender.
- *Voluntariness:* In general, victims felt their participation in the mediation process was voluntary. Most of them were aware they could withdraw at any time.
- *Differences between countries:* Even though always a minority, percentages of victims feeling pressure to participate were higher in those schemes that had a closer relationship with the criminal justice system. Interestingly, and according to Finnish data, victims could also feel forced to participate by outsiders of the mediation process (e.g. police). In addition, topics discussed during the encounter were importantly shaped by the institutional context of the RJ programme. While financial compensation was one of the topics most discussed in Austria and Finland (giving "the consequences for the victim" a secondary place), in the Netherlands, "the consequences for the victim" was one of the most discussed topics during the victim-offender encounters.
- *Other relevant findings:* Qualitative findings, well documented in the Finnish report, show that the communication process often involves mixed and contradictory

feelings, which indicates the complexity of the process involved. This may happen even when the victim may express general satisfaction with the process.

The outcomes of RJ processes

- *General conclusion:* In a general way, victims expressed satisfaction with the agreement reached in a RJ process. Moreover, most respondents believed that RJ was an appropriate way to hold the offender accountable. Importantly, most victims did believe in the offender's intention to apologise. However, our findings also suggest that RJ seems to be less successful in making victims feel better, helping them to cope with the consequences of the victimisation experience and in feeling that "their harm has been repaired".
- *Apology:* In the three countries, most cases concluded with apologies and in most cases victims assessed them as sincere.
- *Agreement:* In Finnish and Austrian mediation services, most victims expressed satisfaction with the agreement. In the Netherlands, RJ encounters do not encourage the achievement of an agreement, so this aspect was not applicable to the Dutch sample.
- *Victims' overall evaluation of the RJ process:* In general, victims had no doubts about the confidential nature of the RJ process. In addition, they agreed with RJ as an appropriate way to deal with offenders that could lead to feelings of acknowledgment and recognition. According to most of our respondents, the meeting succeeds in holding the offender responsible for his/her act. Nevertheless, the idea that the meeting could help the offender to prevent new offences from happening was only weakly supported. Victims tended to feel that their opinions had been taken into account throughout the mediation process. Most victims also agreed with the idea that RJ should be offered to all victims.
- *Effects on victims' personal dimensions:* More modest results were found when asking whether mediation helped respondents to feel better. Other dimensions that were hardly affected or influenced include optimism about the future, self-esteem and trust in a just world. Findings also show that, at the moment of the assessment, victims tended to present a low degree of negative feelings toward the offender.
- *Differences between countries:* Our findings suggest different perceptions on the extent to which mediation had repaired the harm. In Austria and Finland, more victims felt that mediation had repaired the harm, in comparison with the Netherlands. The question arises of how "reparation of the harm" was understood. If the institutional setting of Austrian and Finnish mediation tends to orient victims towards the outcome it is possible that, in the questionnaire, respondents associated this aspect with financial compensation.

- *Other relevant findings:* In the Netherlands, it was observed that most victims would be willing to participate again if they had the chance. Interestingly, this includes both participants and non-participants.

The judicial (and institutional) context of RJ

- *General conclusion:* When asked whether RJ should be complementary or independent of the criminal justice system, it is noteworthy that victims tended to agree with the system they knew. This way, while Austrian and Finnish respondents preferred a complementary role; Dutch victims preferred an independent one.
- *Victim support:* Our figures show that the percentages of victims receiving victim support in the three countries mirrors the development of victim services in each country. In the Netherlands, a country with a strong victim policy, an important majority of victims received victim support. Instead, a minority of Austrian and Finnish victims rather searched for such help.
- *Effects on the judicial procedure:* Our data indicate that the information offered to victims about what happens after the mediation process is still a weak part of the procedure. A substantial minority (depending on the country, around one third or one fourth of the cases) were unsure about the effects of the RJ process on the criminal procedure, even in the Netherlands, where the programme is expected to have no effect on the judicial procedure at all.
- *Other relevant findings:* In the Netherlands, the no-mediation group felt an increased need for specialised support, in comparison with the mediation group.

Non-participants

- *General conclusion:* Despite methodological problems (small sample size and variability of the non-participant group in the three samples), we can conclude from our quantitative data that there were no signs of secondary victimisation among victims who either decided to refuse mediation or among those victims whose offender was not willing to participate. However, more research is needed to better understand differences found between participants and non-participants.

Concluding thoughts

Our findings indicate that, as already observed by former studies, most victims interviewed were satisfied with their experiences in RJ, including the offer of mediation, the communication process and its outcome. This fact was observed in all countries. However, our findings also suggest that, even when victims could show similar *quantitative* measures of satisfaction, the *qualitative* nature of this experience may vary

from programme to programme. A second conclusion relates to the remarkable fact that, despite victims' positive assessments of the RJ process and the sincerity of the offender's apologies, respondents were less optimistic in terms of the effects that such an intervention could have on the offender as well as on the long-term effects for themselves (such as repairing the harm and coping with the victimisation experience). How can this finding be explained? Perhaps mediation may be a useful tool to deal with certain aspects of the victimisation experience, but not all of them. More qualitative information is needed to observe in detail the internal dynamics of RJ for victims of crime.

3. Implications for practice and research

One of the key challenges in our research project was to learn which institutional setting of RJ can better serve victims' needs. The answer seems to be that all settings may be considered positive by victims, but the characteristics of their experience may vary from programme to programme, depending on how RJ has been implemented. However, we have also seen that institutional settings of RJ programmes do shape the experience and even the expectation of those victims who participate in them. So the question arises: if victims tend to agree with what they get, how can we know how to better meet victims' needs? To answer this question, the following pieces of data need to be taken into account:

- In our study, a small but still present minority expressed dissatisfaction with certain issues of the RJ process. This group tended to be bigger in diversionary schemes.
- Our findings suggest there is no trace of secondary victimisation in non-participant victims, either because they have refused or because the offender has refused. In addition, other findings suggest that victims value being able to opt for RJ, even when they do not consider the offer appropriate for their own personal case (Bolivar, 2012; Vanfraechem, 2007; Wemmers and Van Camp, 2011).

The conclusions formulated in this chapter confirm the principle that "organisation does matter" and therefore we believe that policy makers and practitioners could play an important role in this regard. On the one hand, RJ practitioners need to be aware of the hazards implied in the practice and take them seriously into account in their daily practice. Establishing quality and ethical standards, monitoring the daily practice as well as offering permanent and ongoing training may be critical measures in this regard. On the other hand, policy makers (as well as referring institutions) need to become aware of the critical issue of access to RJ for victims of crime. In order to meet victims' needs, availability of diverse RJ options (complementary and independent of the criminal justice system) could be a wise option. This way, the victim would be able to choose which RJ approach suits him best. As commented earlier, both diversionary and independent

schemes seem to be satisfactory for victims of crime, but they may be responding to different types of needs.

4. Final reflections: EU Directive on victims' rights, support and assistance

The recently approved Directive on victim's rights, support and assistance defines RJ as "any process whereby the victim and the offender are enabled, if they freely consent, to participate actively in the resolution of matters arising from the criminal offence through the help of an impartial third party" (article 2). According to this definition, we cannot longer refer to RJ when the process does not include a victim actively taking part. The Directive also considers the obligation of the EU Member States to inform victims about the available RJ services and their outcomes. However, at the same time, it proposes safeguards for victims and requires that factors such as "degree of trauma, the repeat violation of victim's physical, sexual or psychological integrity, power imbalances and the age, maturity or intellectual capacity of the victim, which could limit or reduce the victim's ability to make an informed choice or could prejudice a positive outcome for the victim, should be taken into consideration in referring a case to the restorative justice services and in conducting restorative justice processes" (recital 46). Our findings suggest that RJ does not seem to run important risks in terms of confidentiality, voluntariness and neutrality. In none of the three countries in which victims were interviewed did respondents have doubts about the confidentiality of the experience; neither about the voluntary nature of their decision nor about the neutral role of the mediator. On the contrary, most victims described the mediator as supportive and impartial. Once again, even though only in a minority of cases, diversionary schemes presented a slightly higher percentage of victims feeling pressure or dissatisfaction with the mediator. More problematic seems to be the right to information after mediation. This is a stage not always included in the daily work of RJ programmes. In fact, our findings show that approximately a quarter of the victims did not have information about the effects of mediation on the criminal justice proceedings.

References

- Bolivar, D., 2015. The local practice of restorative justice. Are victims sufficiently involved? In: I. Vanfraechem, D. Bolivar and I. Aertsen, eds. *Victims and restorative justice: needs, experiences and policy challenges*, London: Routledge, pp. 203-238.
- Lauwaert, K., 2015. European criminal justice policies on victims and restorative justice. In: I. Vanfraechem, D. Bolivar and I. Aertsen, eds. *Victims and restorative justice: needs, experiences and policy challenges*, London: Routledge, pp. 239-272.

- Miers, D. and I. Aertsen, eds. 2012, *Regulating Restorative Justice. A comparative study of legislative provision in European countries*. Frankfurt am Main: Verlag für Polizeiwissenschaft.
- Vanfraechem, I., 2007. *Herstelgericht groepsoverleg voor ernstige jeugddelinquentie*. Bruges: die Keure.
- Vanfraechem, I., Aertsen, I. and Willemsens, J. 2010. *Restorative justice realities: empirical research in a European context*. The Hague: Eleven Publishing.
- Wemmers, J. and Van Camp, T., 2011. *The Offer of Restorative Justice to Victims of Violent Crimes: Should it be Protective or Proactive?* Montréal: CiCC, Université de Montréal. Available at:
<https://depot.erudit.org/bitstream/003511dd/1/Rapport%20de%20recherche%20n4%20Wemmers%20Final.pdf>

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