

The foundations of a coherent restoration-oriented and victim-oriented criminal justice policy

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This research project explores the foundations of a more restoration-oriented and victim-oriented criminal justice system. Attention is given to initiatives in the different phases of the criminal justice system and to both classical formulas and new experimental approaches. The project was carried out by researchers from the Katholieke Universiteit Leuven, the Vrije Universiteit Brussel and the Université de Liège. Supervisors were Prof. T.Peters (K.U.Leuven, co-ordinator), Prof. S. Snacken (V.U.B.) and Prof. Kellens (U.Lg)

#### Part 1: The partie civile: legal rights and reality for the victims

First, a theoretical reflection on the partie civile (claiming of damages by a plaintiff) is presented. A first reflection concerns the dangers inherent in contemplating a new orientation to the criminal justice system. These dangers include giving too much weight to the emotional responses to a crime ('une justice des emotions'), the danger of abuse by the partie civile and the danger of a system of justice that not only represents but also identifies itself with the victim, leading to an erosion of the State monopoly in criminal affairs. A second reflection concerns the relation between civil and penal action.

Next a list is presented of problems that relate to the legislation on and the functioning of the partie civile. This list is based upon a number of surveys that were conducted with witnesses and experts. Obstacles to the use of the partie civile are the large deposit needed, the obligation to file a complaint against X in cases of intentional violent offences and the many formalities required. There appears to be an increasing abuse and manipulation of the partie civile by, for example, insurance companies and others. The evaluation tables used to determine victim compensation often do not correspond to the cost of the actual damage. Probably the biggest problem is the recuperation of the compensation awarded from sentenced offenders, especially when they are in detention. One solution might be the establishment of a compensation fund that would pay the victims. Legal mechanisms, such as the transaction, endanger the prevention of a later constitution of partie civile by the victim(s). Finally, the problem of the criminal liability of legal persons is discussed.

#### Part 2: Experimental forms of victim reparation

The experimental forms of victim reparation treated in this study are three mediation projects conducted in Leuven: mediation for minor crimes at the police level, mediation with juvenile offenders who have committed minor crimes and mediation for redress employed in cases of rather serious offences. A short description of the three projects is given. In the course of the project, the researcher was especially engaged in the assistance and guidance of the most recent project, mediation at the police level. The 'mediation for redress' project was followed up via assistance at the weekly staff meetings. A satisfaction measurement was carried out on the 'mediation with juvenile offenders' project. The report focuses mainly on the results of this satisfaction measurement:

The objectives of the 'mediation with juvenile offenders' project seem to coincide broadly with the expectations had by the respondents with respect to the judicial response to the offences that they were involved in (reparation of material and immaterial damage, giving the offender a chance to take responsibility by active involvement in damage reparation, obtaining information on the facts and the personality of the offender and influencing the judicial response to the offence). The overall satisfaction with mediation was high, but victims seemed more content than offenders. Victims and offenders see mediation as a serious and fully-fledged response. Although insight into aspects such as the facts, the personality and the feelings of the other party did increase for almost half of the respondents, much cannot be expected from mediation on this level as it is conducted with

juvenile offenders. Almost all respondents positively evaluated the possibility of the offender obtaining money from a compensation fund (in exchange for work) in order to compensate the victim. Their positive reaction stems from the opinion that this way of proceeding allows the offender to take responsibility for what he has done. All offenders and almost all victims indicated that they found mediation a better way to handle the case than the classical judicial way of proceeding.

Work needs to be done to enhance the informing of victim and offender of the final judicial decision in the case, to decrease the duration of the mediation and to advance the starting date. According to the experiences and attitudes of the respondents, there seems to be room for more direct mediation, which could begin at an earlier point in the mediation process.

One needs to be careful in generalising the above results. The number of respondents interviewed was limited (70 people). The files concerned minor crimes committed by juveniles with whom successful mediation had been conducted and in which the juvenile had worked to earn money to compensate the victim. Nonetheless, the conclusions of this research largely coincide with the results of a similar satisfaction measurement performed concerning the 'mediation for redress' project.

### Part 3: Victims and restoration-oriented detention

In this part, a research campaign was undertaken to explore the creation of a detention setting in which redress is possible and viable from the first moment of detention and in which offenders can participate in restorative activities. In three Flemish prisons a field worker was present in order to test different initiatives. One researcher at the K.U.Leuven assisted and guided these activities.

Initiatives were taken with respect to the prison personnel (prison directors, psychosocial personnel, guards, administrative personnel), the prisoners and with respect to external organisations. The prison personnel were informed of the project, involved in discussions and working groups and educated concerning victim-related issues and the theme of reparation. Concerning the prisoners, work was done on the *partie civile* (informing them of their civil sentence; distributing legal information on *partie civile*; reflection on ways to counteract the problem of prisoner insolvency such as the creation of a fund; creation of a working party that establishes structural, legal and administrative obstacles to the proper functioning of the *partie civile*) and on the theme of victimisation and reparation (information, discussion and training initiatives). Concerning external organisations, a consultative platform was created with representatives both of services working with victims and services working with offenders. The purpose of the platform is to find out ways to work together and to address questions concerning their respective positions, ethics, methodology, exchange of information and division of tasks.

The research campaign resulted in the establishment of a number of basic conditions necessary for detention to be victim oriented and reparation oriented. First, these conditions concern the need for criminal policy as a whole to be restoration oriented (attention for this aspect in the different phases of the criminal justice system, collaboration between prisons and services present in society), the adaptation of the prison structure (employment and training for the prisoners, sufficient and trained staff) so that there is the possibility for prisoners to engage in reparation-oriented initiatives and the creation of an adapted prison culture (a culture of mutual respect, communication and a climate that invites self-fulfilment).

Finally the researchers call for prudence. A too hasty implementation would lead to resistance in the field. The orientation towards restoration should not lead to the victim being the new legitimisation of the prison sentence. Nor should reparation become the new norm according to which all prisoners are evaluated (e.g. in view of parole). This could lead to a purely opportunistic approach to restorative initiatives.

### Part 4: Parole

In this part of the study, research was done concerning how far an orientation to restoration

and the victim is present in the special parole procedure that was introduced in 1996. In this procedure, victims in sensitive files are informed when a parole decision is being considered and they can suggest victim-oriented conditions for the release of the prisoner. The evaluation was carried out by studying 52 files and surveys with the psychosocial services in the prisons and the services for reception of victims at the prosecutor's offices.

Research results show that the special parole procedure is applied primarily to sexual offences, of which incest and abuse of minors constitute a major part. This victim-oriented procedure requires a delicate balance between interests of victims and offenders, as they often appear to belong to the same physical and social environment. The need for clear and accurate information is felt to be the primary condition for all persons involved, in each phase of the penal procedure, to attain a restorative and victim-oriented perspective. This supposes a structural collaboration between all services, in which the prosecutors should play a pivotal role.