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CRITICAL REFLECTION ON THE DEVELOPMENT OF RESTORATIVE JUSTICE AND VICTIM POLICY IN BELGIUM

Tinneke Van Camp and Anne Lemonne



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1822 East Mall, Vancouver, B.C. Canada V6T 1Z1 Tel: +1 604 822 9875 Fax: +1 604 822 9317
E-mail : icclr@law.ubc.ca www.icclr.law.ubc.ca

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Tinneke Van Camp and Anne Lemonne
National Institute for Criminalistics and Criminology

Introduction

The challenges of the criminal justice system, including the needs of crime victims and the growing attention for restorative justice as an alternative to retributive criminal procedures, have attracted the attention of the United Nations Congress in Bangkok (April 2005). This paper unites both interests in analysing the evolution and implementation of restorative justice practices in Belgium in light of the developments concerning the policy in favour of victims in the same country. In this paper, we will essentially analyze the evolution of the position of victims of crime committed by adult offenders. Therefore, the first part of our contribution discusses the victim policy developments in Belgium. The second part deals with the description of restorative justice developments for adult offenders at the level of policy and practices in the same country. Finally, the last part of this contribution focuses on the parallels between policies and practices in both fields and in particular aims to argue how restorative practices for adult offenders and victim policy currently implemented in Belgium answer to the victim's needs and rights, as they have been formulated by the Belgian National Forum for Victim Policy.¹ In addition, we will explore the complementarity between restorative justice developments and the policy in favour of victims, which transcend the Belgian boundaries. Our discussion is mainly based on analyses of national legislation, on results of evaluative research having already been conducted in the field of restorative justice and on ongoing research regarding the consideration of victims in the criminal justice system in Belgium, and on the study of the scientific literature on victim policy and restorative justice. It is therefore to be considered as an inductive process of reflection, which can produce new research questions and more profound empirical analyses.

1. Overview of the Belgian victim policy

1.1. Victim policy: state of affairs

In Belgium, the position of the victim in the penal justice system has been debated upon since the mid 80's. However, it was not until the 90's that a large movement of reform aiming at the recognition and amelioration of the position of the victim in the penal procedure truly emerged. This trend can be related to structural changes identified in most of the western countries (for example, the Recommendations and Declarations enacted at an international level), to conjectural events in Belgium (*Hannut* affair, *Dutroux* affair), which contributed to the increase of political interest, and to the pressure of citizens groups with respect to this issue in this country.² In the last decennium, many

¹ NATIONAAL FORUM VOOR SLACHTOFFERBELEID, *Handvest voor het slachtoffer van een misdrijf*, Federale Overheidsdienst Justitie, Brussel, 1998, 20 p.

² Such as the association of parents of murdered children or of children who died in traffic.

regulations emerged to support the implementation of initiatives towards victims³ and various authorities of the Belgian Federal State became competent with respect to victim policy.⁴ In Belgium, since the 80's several victim services have been created in order to provide general help and support to victims, and to prevent secondary victimization. These services are namely 'assistance to victims' (*bureaux d'assistance aux victimes*) at the level of the police, under the authority of the Federal Minister of Internal Affairs, 'reception of victims' (*services d'accueil aux victimes*) at the level of the public prosecutors services, under the authority of the federal Minister of Justice and 'support to victims' (*services d'aide aux victimes*) at the community level, under the authority of the Flemish and French Community. Moreover, specialized or therapeutic aid is offered by different services, such as 'Centers for General Welfare Work' and 'Centers for Mental Health Care'. Finally, specific services are offered to particular groups of victims, as for instance 'Centers for Victims of Human Trafficking', 'Women and Child Abuse Centers', 'the Centre for Equal Opportunities and Opposition to Racism' and 'the Compensation Fund for victims of intentional acts of violence and for occasional rescuers' (Xavier *et al*, 2003; Nationaal Forum voor Slachtofferbeleid, 2004; Lemonne and Van Camp, 2004). Taking into account that several authorities are competent in victim matters, various cooperation instruments have been implemented in order to insure an optimal cooperation between these authorities.

1.2. Increasing help and support for victims

1.2.1. Implementation of general victim support services

In the 80's psychosocial support for victims was initiated through the creation of centers for victim support (*centres d'aide aux victimes* and *diensten voor slachtofferhulp*), financed by the French and Flemish Community.⁵ Even though the philosophy of work in both parts of the country can be variable, services aim to provide psychosocial help to victims of crime.⁶ These centers were initially

³ E.g. the law of august 1st 1985 establishing financial aid by the State to victims of intentional acts of violence and to occasional rescuers; the decree of 1990 of the French Community regarding the social support to clients of the justice system; a circular letter of 1991 of the Federal Minister of Internal Affairs (OOP15) which defines the kind of help to be provided to the victims by the police and which has been revised three times yet; the law of 1992 on the function of police which defines the notion of assistance to victims in article 46 (*'Les services de police mettent les personnes qui demandent du secours ou de l'assistance en contact avec des services spécialisés. Ils portent assistance aux victimes d'infractions, notamment en leur procurant l'information nécessaire'*). Also various laws were voted in 1995 concerning the repression of sexual child abuse, human trafficking and child pornography. Furthermore there is the directive of July 22nd 1997 concerning the research regarding disappearances replaced by the directive of February 20th 2002; the directive from the Minister of Justice of September 15th 1997 stating the implementation of a service for reception of victims at the level of the public prosecutors services; the law of March 8th 1998 which aims to ameliorate the penal procedure at the level of the information and instruction and gives a certain number of rights to victims; the law of Reform of the law of March 5th 1998 concerning the process of conditional release which defines the position of the victim in this process; the directive of September 15th 1998 concerning the last greetings to persons passed away in case of judicial research; the directive of February 1999 concerning the sexual aggression set; the ministerial directive of July 15th 2001 regarding audiovisual recording of the audition of minor victims or witnesses of crime; the circular of the Minister of Justice and the College of general prosecutors of May 3rd 1999 concerning information transmitted to the press by the judicial authorities and police services in the stage of preparatory research.

⁴ Under the Belgian Constitution there are, besides the Federal State, three cultural 'Communities' (the Flemish Community, the French Community and the German Community) and three economic 'Regions' (the Flanders Region, the Walloon Region and the Brussels-Capital Region). The Regions and Communities do not coincide, neither in terms of competencies nor in terms of people falling under their rules. Rules enacted by the Federal State (in matters such as Justice, Social security, Defense, Interior, Finances, ...) apply to the whole territory and to all people living in Belgium, whereas rules enacted by the Communities (in matters such as Education, Youth help and protection, Welfare, Culture, ...) apply to Belgians according to their language criteria and rules enacted by the Regions (in matters such as Economy, Tourism, Environment, ...) apply to all Belgians according to territorial criteria.

⁵ Since care for individuals is a competence of the 'Communities' instead of a responsibility of the Federal State, psychosocial victim support is not a national issue.

⁶ The target group however transcends victims of crime. It also concerns relatives of a person who committed suicide and victims of traffic accidents.

part of the 'Services of Forensic Welfare' in Flanders and of the 'Services for Judicial Welfare' in the French speaking part of Belgium. In Flanders, however, they were reallocated to the 'Autonomous Centers for General Welfare Work' in the 90's, and care for victims was thus separated from the work dealing with perpetrators of crime. Moreover, these Centres work predominately with volunteers. The voluntary engagement of fellow citizens is regarded as contributing to restoring the victims' trust in society, damaged by the offence. In the French speaking part of Belgium, the work with counterpart associations working with perpetrators of crime is less separated and the work philosophy favours professionalism (Van Camp, forthcoming; Devroey, 2003).

1.2.2. Implementation of victim support services at the level of the police and the public prosecutors services

In a 1991 circular letter by the Minister of Internal Affairs and in a 1992 Law on the function of the police, the police are explicitly given the task to deliver first assistance to victims of crime.⁷ Primary assistance merely concerns short term support to victims immediately after a crime occurred or a complaint was posed, the offer of practical information and the referral to other specialized services if necessary and agreed upon by the victim. Every police district should also appoint an officer for victim assistance, responsible for individually assisting victims in a non-psychosocial manner and for structural work, such as the sensitization of and provision of information to the police officers in their district and for the construction and maintenance of contacts and communication with other victim (oriented) services. Nevertheless, victim assistance is, in the frame of these regulations, not regarded as the unique task of specialized services or officers, but rather as a responsibility for every single policeman (Van Camp, forthcoming).

Since 1997 justice assistants and a liaison magistrate are appointed in each court of first instance, as well as an advisor designated in each appeals court to accomplish the implementation of measures with respect to the reception of victims at the level of the public prosecution services (*accueil aux victimes dans les parquets*)⁸ in collaboration with the judicial officers and authorities. This service is based on the need to prevent secondary victimization, which can result due to involvement in judicial proceedings (Rans, 2004; Le Roy, 2004). The justice assistants offer support to individual victims during the entire judicial procedure, from the complaint at the police to the (conditional) release of the offender. Their actual assignments include for instance: providing practical information to the victim in the course of the procedure; guiding a victim when given insight in the criminal file; supporting the victim or their relatives when personal items which have been subject to investigation are handed back; supporting the victim during the proceeding before the court; and assisting victims when greeting the body of the deceased after a forensic autopsy. Moreover, when an offender of a serious and violent crime, such as murder, rape, torture and kidnapping, applies for conditional release, a justice assistant is appointed to complete a victim form, in which conditions for release can be proposed by the victim to the commission on conditional release (Law on conditional release of March 5th 1998). The justice assistants are likewise assigned an important structural task, namely the sensitization and training of the magistrates and the indication of obstacles in developing the victim

⁷ With the creation by the Law of December 7th 1998 of an integrated police force at two levels, a local and a federal police, victim assistance is exclusively assigned to the local police. One of the directorates of the federal police does nonetheless have a supporting and structural function towards the victim assistants at the local police.

⁸ The implementation of victim support at the level of the public prosecutor's office is recognized through the adoption of a Directive from the Minister of Justice of September 15th 1997, and by various further legislation and regulation, such as Article 3bis of the Belgian procedural code concerning the conscientious and correct care for victims in giving them correct information and referring them to the justice assistants for victim support; the Law on Conditional Release of March 5th 1998; the Law on the preventive placement of juveniles who committed an act described as an offence of March 1st 2001; and several guidelines, such as on greeting the body of a deceased after the autopsy, on the proceeding before the *court d'assisen*, on missing persons, etc.

policy at the level of the public prosecutorial services and the courts. At the outset of creating these services, it was emphasized matter of factly that the final objective of the justice assistants was to ensure that they become 'superfluous'.

1.3. Reinforcement of the victim position in the course of the criminal procedure

In Belgium, a continental criminal law system gives victims the right to constitute themselves as a civil party (*constitution de partie civile*, article 63, 65, 67 of the criminal procedure code) or to directly summon the court (*citation directe*). Since 1998, the rights of the victims to intervene in the criminal procedure have been increasingly developed. Indeed, according to a reform of the procedural code (by the Law of March 12th 1998 *relative à l'amélioration de la procédure pénale au stade de l'information et de l'instruction*) the victim can introduce a 'declaration as aggrieved party' (*personne lésée*) in order to receive information on the proceedings of his file; can ask for complementary acts from the public prosecutor or the examining judge (*juge d'instruction*); can receive a copy from the criminal file; etc. Since the introduction of the Law of March 5th, 1998 concerning the conditional release, the victim is also offered the possibility to give his or her opinion before the decision of conditional release in certain cases. Victims do hence receive more rights in the criminal procedure. However, since these rights are not automatically provided, they have to be claimed by the victim. The public prosecutor can even consider denouncing these rights to victims in certain cases according to the opportunity principle.

1.4. The coordination of initiatives

The cooperation between the victim services at the level of the police, at the level of the prosecutorial services and at the level of general welfare work should officially be framed in an agreement ratified by the Federal State and the 'Communities' and 'Regions' regarding the care for victims. In 1998, the Federal State and the Flemish Community validated such an agreement⁹, but until now, the French Community and Region have not done so, despite the recognition of the need for such a protocol (Van Camp, forthcoming). In addition, the Minister of Justice implemented the National Forum for Victim Policy in 1994. This Forum aims to ameliorate the cooperation between the various authorities competent to deal with victims.¹⁰ It is an important tool as it enhances the cooperation in the field, it is the ultimate provider of information and expertise, and is a place where actors from several services and competent authorities can strive for uniformity. However, it has not yet received a formal status and hence lacks the power to optimally influence the field and policy makers (Van Camp, forthcoming). It is worth mentioning that the Belgian National Forum for Victim Policy essentially views the rights of victims as an issue separated from that of offenders. In this respect, restorative justice programs are not at the forefront of the preoccupations of this forum even though, as we will see in the next section, a restorative justice policy has been developing in Belgium since the end of the 80's.

⁹ In Flanders, the agreement concerns first of all the organization of communication platforms at the level of the judicial districts, in order to shape the implementation of victim policy according to local possibilities and obstacles. Secondly, it prescribes procedures for referral of victims (divided in obliged and facultative categories according to type of offence) to the relevant services.

¹⁰ The Forum is bound to formulate advice regarding to propositions of law or decree, to develop new strategies to improve the position of the victim in criminal justice procedures, to evaluate initiatives, to encourage cooperation in the field, to ensure the compliance between national and supranational regulations and to sensitize the public. The Forum produced various reports on the state of affairs as well as recommendations for amelioration (Nationaal Forum voor Slachtofferbeleid, 1996; 1998; 2004).

2. Overview of the Belgian restorative justice developments

2.1. Restorative justice: state of affairs

The implementation of restorative justice practices in Belgium started with the implementation of mediation practices in the field of justice for juveniles and adults. However, at the beginning, the orientation of this policy was implemented in the framework of a rehabilitative and/or punitive ideal and thus quite disconnected from the real interest towards the victims of crime.

Indeed, the first programs were primarily initiated in the youth protection justice field, in the framework of a pedagogical ideal.¹¹ In the 90's, a 'penal mediation' program (mediation at the level of the public prosecutor, before prosecution) was introduced in the field of adult justice. Penal mediation is still nowadays the only mediation program benefiting from a legal basis.¹² Other restorative justice initiatives are however implemented as pilot-projects. Today, mediation practices for adults are also implemented at the police stage (local mediation), at the level of the public prosecutor after prosecution (mediation for redress), and even mediation during the execution of a penal sentence, usually in prison settings (mediation at the stage of execution of punishment) (Aertsen, 2000). In addition, another restorative justice application in the field of criminal justice for adults is the structural implementation of restorative justice principles in prison since 2001.¹³ Moreover, several legislative changes are now in the pipeline. In 2004 a proposition was made regarding the construction of a legal basis for mediation for adults, which should allow for mediation at every stage of the criminal justice process, including the execution of punishment.¹⁴ Moreover, a current judicial effort in promoting restorative justice in Belgium is the development of restorative principles in the frame of the decisions made by the expert Commission on the legal position of inmates *intra muros* (Aertsen and Beyens, 2005; Commission Holsters, 2003).¹⁵ In this sense, the Belgian State progressively complies with the standards regarding the implementation of restorative justice set out by the Council of Europe (namely Recommendation N°R(99)19 of the Committee of Ministers to Member States concerning Mediation in Penal Matters) and with article 10 of the framework decision of the 15th of March 2001 on the standing of victims in criminal proceedings.

¹¹ These experiments were initiated by several non-profit organizations (Oikoten in Leuven, Arpège in Liège, G.A.C.E.P. in Charleroi and Radian in Brussels), and were inspired by the experiences of these organizations with community service. For juveniles, mediation is applied before prosecution according to a decision taken by the public prosecutor and before and after judgment in the framework of a provisional and definite decision taken by the juvenile judge. Besides mediation, other restorative justice initiatives have been implemented in the framework of the Belgian youth protection law. For instance, one can mention the existence of a provincial restoration fund for juveniles since 1991 and the introduction of a pilot-experiment of family group conferencing for juveniles since 2002.

¹² Article 216ter, introduced in the Belgian Code of Criminal Procedure by the Law of February 10th, 1994.

¹³ Initiated in 1998 by the Catholic University of Leuven and the University of Liège as a pilotproject and later in 2000 generalised by the Minister of Justice to all Belgian prisons (Christiaensen, et all, 2000 ; Aertsen, et all, 2003). This project materialized in the implementation of restorative justice consultants appointed to work in prison settings. One of the missions of these restorative justice consultants is to develop collaborations with services working outside the prisons and focusing their efforts on the relationship between victims and detainees.

¹⁴ *Projet de loi introduisant des dispositions relatives à la médiation dans le Titre préliminaire du Code de Procédure pénale et dans le Code d'Instruction criminelle* of January 19th 2005. This proposition of Law is now being debated upon in the Parliament.

¹⁵ The youth protection law is now also the purpose of reform, initiated by the Minister of Justice (*Projet de loi modifiant la législation relative à la protection de la jeunesse et à la prise en charge de mineurs ayant commis un fait qualifié infraction* of November 29th 2004), in which both mediation and family group conferencing should be prominent.

2.2. Two applications of restorative justice in the adult field and their evaluation

2.2.1. The introduction of mediation as a means of reaction against petty delinquency

In 1994 article 216ter on penal mediation was introduced in the Belgian code of criminal procedure by the Law of February 10th 1994. This law emerged from the recommendations of a parliamentary commission inquiring into several high profile criminal affairs¹⁶, which focused on reviving the trust of the public in the official institutions. The reform of both police and justice services was insisted upon in order to create a strong policy in security matters. Moreover, arguments were developed in the federal parliament claiming that it was necessary to accelerate the judgement of petty and repetitive delinquency. The inadequacy of the traditional system to react to this kind of crime was highlighted and considered as problematic, because it fuelled a general feeling of impunity within the public opinion. Penal mediation was considered as an intermediary measure.

According to article 216ter the public prosecutor can formally dismiss a case under certain conditions, namely when the offender fulfils a condition to participate in mediation with the victim on compensation or reimbursement, to enter medical treatment or therapy, to accomplish a community service and/or participate in training.¹⁷ In the framework of this implementation, three new structural functions have been created: (1) the justice assistants who handle the individual files for penal mediation; (2) a liaison magistrate in each judicial district responsible for the selection of cases and the supervision of the justice assistants; and (3) an assistant advisor in each of the appeals courts appointed to evaluate, coordinate and supervise the implementation of penal mediation (Peters, 2001).

In a collective report, the assistant advisors expressed several significant considerations on the implementation of penal mediation for the period 1994-1995 (Hanozin *et al.*, 1997; Houchon, 1997). The advisors claimed that penal mediation is a promising measure.¹⁸ They also stressed that although various conditions are offered to the public prosecutor for the formal dismissal of cases in the framework of this law (mediation between the parties, community service, training and therapy), mediation between parties was applied in more than 50 percent of the cases. The advisors however regretted the strong variations among the different districts, not only in the criteria applied to case selection but also in the philosophy driving the implementation of the penal mediation. Where the condition of mediation between the parties occupied a central place in the policy in some districts, in others the public prosecutor did not call the victim to the penal mediation procedure, or he selected essentially cases without (identifiable) victims. Also in most prosecution services the meeting between the offender and the victim seemed to be a purely formal matter and could be seen as a mini-trial. The advisors concluded that the rationale of restorative justice was not sufficiently recognized and applied. Magistrates mostly envision penal mediation as a way to primarily punish petty crime offenders (Adam and Toro, 1999). Other evaluations have confirmed that the general focus of the procedure is not on communication (Beyens, 2000). The practice reflects a philosophy of administrative settlement rather than promoting a communication process between the conflicting parties. Reparation also

¹⁶ For instance the massacres in the province of Brabant wallon (organized crime) and terrorist attacks by the 'Cellules Communistes Combattantes' in the 80's.

¹⁷ This legal provision applies to all types of criminal offences committed by adults, if the offence is not punishable by a penalty greater than two years of imprisonment. Penal mediation is not legally possible when a court judges the case, when an investigating judge initiates an inquiry into the case or when a victim has already adopted the status of civil party in the process. Participation to penal mediation is voluntary on the part of the victim and the offender. The offender however must at least acknowledge the offence and recognize his responsibility. If the offender disagrees with the proposed conditions or he does not live up to them, the prosecutor is free to dismiss the case or prosecute the offender (Vanneste, 1997; Lemonne, 1999; Goosen, 2001).

¹⁸ In a period of 13 months since its implementation, 5393 cases have been referred to penal mediation. This shows the fast development of the measure and the increasing interest given to its implementation.

usually only concerns the financial aspects of the offence (Aertsen, 1999). Furthermore, findings show that the condition of mediation and reparation to the victim is frequently combined with other measures. This indicates that mediation is considered as a weak measure by the magistrates (Adam and Toro, 1999). The procedure of penal mediation, institutionally linked to the criminal justice system and made up of a potpourri of different measures, can be considered as a mixed model with punitive, rehabilitative and restorative components (Aertsen, 1999).

Despite a circular letter of April 30, 1999, issued by the College of general prosecutors and the Minister of Justice, which aimed at bringing more uniformity in the application of penal mediation, at improving the understanding of this concept, and at promoting the selection of cases with identifiable victims, the application of penal mediation is still heterogeneous and not true to the restorative principles (Goosen, 2001). It is more oriented towards the outcome of the negotiation rather than towards a real process of mediation, in which the issues to be dealt with are determined by the conflicting parties themselves. Furthermore, its use remains peripheral. The Belgian penal justice system is still based on a retributive approach, the traditional trial as well as the use of imprisonment and fines constituting by far the favorite solution to the criminal problem.

2.2.2. Mediation for redress: an increasing attention for victims

In 1993 the Catholic University of Leuven started an action research on mediation in serious crime cases.¹⁹ Inspiration was derived from victimological research revealing the weak position of the victim in the criminal procedures, the obstacles they encounter in getting compensation and the deficiency in attention to their immaterial needs. In contrast to penal mediation program, mediation for redress was not meant as a diversion type of approach. As a matter of fact the project was determined to only address serious crime cases, for which the public prosecutor had already decided to prosecute. Also in contrast to penal mediation, the mediation process is conducted by mediation organizations, operating from outside the criminal justice system, while the selection of cases is performed by the prosecutorial services (Aertsen and Peters, 1998; Devriendt, 2001).²⁰ In the frame of a national project initiated by the Department of Justice in 1997, mediation for redress was introduced in other judicial districts. The basic idea was to provide a possibility to the parties to handle their conflict, independently of an offer of diversion made to the perpetrator. In 1997 a non-profit organization, named *Médiate, Forum pour une Justice Restauratrice et la Médiation* decided to introduce mediation for redress in the French Community in 1997. In 1998 its counterpart in Flanders, *Suggnomé, forum for restorative justice and mediation*, was created. Today, mediation for redress for adult offenders is operational in 10 of the Flemish and 5 of the French speaking judicial districts. For programs both in Flanders and in the French speaking part of the country, case referral is initiated by the public prosecutor or by the investigating judge. The victim and offender receive a letter from the referring body in which mediation is offered. Later, the mediator will contact the victim and the offender to check whether mediation is appropriate. Only in a minority of cases a face-to-face encounter is reached. Mostly the process of communication is limited to indirect conversation in which the mediator acts as a go-between. Around 800 mediation cases have been dealt with in 4 French judicial districts between 1998 and 2002 (Buonatesta, 2004a: 244). Suggnomé reports that there was a decline in the number of

¹⁹ The pilot project was evaluated through reconstruction of case studies on the internal reporting by the mediator and through independent interviews with victims and offenders involved in the project (Aertsen, Van Garsse and Peters, 1994; Aertsen, Van Garsse and Peters, 1996).

²⁰ The researchers realised that the dominant orientation on the offender in the criminal justice services could obstruct the referral procedures and hence cause a lack of files regarded as fitting for mediation. In anticipating on this risk, the Chief Prosecutor enlisted specific instructions to be followed by the prosecutors. He also emphasised a proactive way of selecting cases. Finally, a liaison magistrate was installed (Aertsen and Peters, 1998).

referrals to the Flemish mediation for redress services in 2003²¹ compared to 2002, probably due to the reduction in mediators²² and the drop in the amount of referrals from the public prosecutors office.²³ Only in a couple of cases the victim himself approached the mediation service. In the new and ongoing files in Flanders, crime against property constitute the biggest number of cases in which mediation for redress is conducted, although 1 in 5 cases concerns intentional physical violence. In the French speaking part of Belgium, it is the opposite, where violent crime against people constitute the biggest number of cases, around 70% of the referrals. If an agreement is reached (in 64% of the mediation processes in Flanders and around 66% of mediation processes in the French Community), it is sent to the prosecutor and the mediator performs follow-up. If no agreement is available, the prosecutor receives only general information on the mediation process. The prosecutor is then free to use the outcome of the mediation process in his further decisions concerning the crime case. Unfortunately, the figures do not offer a clear view on the way the judge bares these agreements in mind (Médiante, 2002; Médiante, 2003; Suggnomé, 2003; Paquet, 2004).²⁴ In Belgium no evaluation has been conducted concerning the influence of mediation on re-offending or on cost-effectiveness (Willemsens, 2004).

Since 2000, mediation for redress is also provided for by Médiante and Suggnomé in the context of the execution of punishment. This initiative emerged from the implementation of restorative justice principles in prisons (see above). In Flanders, mediation for redress at the stage of the execution of punishment is available in two judicial districts. In the French speaking part of the country, the programme is available in all prison settings. Recent evaluation (Buonatesta, 2004:a) indicates that since the beginning of the project in the French speaking part of the country 138 victims and 101 inmates took part in mediation. About 60% of the mediation processes are opening to an informal or formal agreement concerning material or relational damages. Data mentions however that 72% of mediations are indirect. Only in a minority of the files, direct communication between victim and offender was possible (28%). A written or oral agreement is seldom reached. In Flanders, 95 new referrals were counted in 2003 and in 61 of these referrals (64 %), an actual mediation process was conducted. In both parts of the country, the majority of requests (77% in Flanders in 2003 and 82 % in the French speaking part of the country from October 2002 to September 2003) came from the offender. In only a small minority of cases it was the victim or a victim service that addressed the mediator (14% in Flanders and 18 % in the French Community). From the total amount of cases in Flanders 40% concern property crime, 35% violent crimes (of which 32% are murders and 52% are assaults) and 25% sex offences. Also in the French speaking prisons mediation deals with serious offences. A majority of cases concern thefts with violence and murders but there is an increasing attention devoted to sex offences. (Suggnomé, 2003; Buonatesta, 2004a).

3. The relation between restorative justice and victim policy developments : complementarity or conflict ?

The analysis of empirical data related to the Belgian situation allows us to explore an issue that transcends the Belgian boundaries, *i.e.* the complementarity between restorative justice developments and victim policy and the ability of restorative justice to address victims' needs. Literature often identifies several needs which victims from either petty crime or serious offences experience. First of

²¹ They counted 337 new files in 2003 in Flanders.

²² Compared to the year 2001 there is an increase in the number referrals. In 2001 the mediation services worked with the same number of full-time equivalents as in 2003.

²³ Both in Flemish and French judicial district the need for sensitization action towards magistrates is emphasized.

²⁴ However, from the outset of the project the prosecutors conformed to the idea that not reaching an agreement does not automatically motivate further penalty (Aertsen and Van Garsse, 1994).

all, victims generally seek some kind of restitution since they endure financial, material and emotional damage. Their sense of safety, trust in society and self-esteem can also be negatively affected by the offence (Peters and Goethals, 1993). Hence they need protection and psychosocial support. In the course of the criminal justice proceedings, they want information on the proceedings in their case, practical information on the judicial procedures and respectful treatment by the judicial actors (Yantzi and Brown, 1980). Finally, every victim desires to be recognized.²⁵ BRIENEN and HOEGEN²⁶ stated that in Belgium the attempts of the federal and communitarian government to meet victims' needs and to give the victim a certain status in the criminal justice have been enormous as well as exemplary (Brienen en Hoegen, 2000). There is indeed sufficient reason to be satisfied and positive about the efforts delivered to adapt regulations to the needs of victims and to create victim services. The policy developed since the mid-eighties tries to improve the response to the right to respectful treatment, to receiving and providing information, to judicial support, to financial restoration, to psychosocial support and to protection of and respect for privacy.²⁷ In the criminal justice system these victims' rights are outlined in the 'Charter for Victim Rights' published by the National Forum for Victim Policy²⁸ (Nationaal Forum voor Slachtofferbeleid, 2004). However, an analysis of the impact of the victim-oriented legislation at the practical level prompts us to temper this enthusiasm. Firstly, routine or real policy in this matter has not yet permeated to the level of practitioners, taking into account the resistance or caution of some actors (judicial and police officers, authorities) to the implementation of a victim policy in the penal justice system. Magistrates and police officers often fail in taking up responsibility in providing primary support to victims. Currently, care for the victim is still mainly considered as a speciality of victim services working within the police or prosecutorial departments. These services are flooded with individual files and are not able to accomplish the structural task of sensitization and training of police and judicial officers as stated in the founding documents of these services. Secondly, the improvement of the position of the victims in the penal procedure is still conditional, meaning victims have to claim their rights to be respected and police or judicial authorities can on certain grounds deny their rights to them. Thirdly, instances of cooperation in the field of victim policy are missing authority and legitimacy. Despite the supposed existence of cooperation protocols between competent authorities, the strategic and global approach still does not exist (Lemonne and Van Camp, 2004; Van Camp, forthcoming).

As for the ability of restorative justice to answer victim needs, theoretical arguments are encouraging. In opposition to the retributive and rehabilitative criminal justice models, restorative justice aspires a balanced approach to meet the needs of victims, offenders and community by actively involving these parties (Aertsen and Peters, 1998). According to FATTAH only a paradigm shift from retributive to restorative justice can satisfy victims' needs because it '*recognizes their plight and affirms their*

²⁵ A Flemish association of parents of murdered children summarizes quite well the basic needs of victims when confronted with the criminal justice system: the need for a respectful attitude of police officers and magistrates, the reduction of the time required for criminal justice proceedings, support by the environment, respect for privacy by journalists, support and guidance during the criminal justice proceedings, recognition in the frame of several modalities of execution of penalties, judicial information and advice, out reaching by the psychosocial services and compensation (Aertsen, 1992).

²⁶ Brienen and Hoegen conducted a research concerning the implementation of recommendation (85)11 of the Council of Europe on the position of the victim in the framework of criminal law and procedures, covering the policy evolutions in European countries from 1985 to 1999 (Brienen en Hoegen, 2000)

²⁷ These rights do not necessarily reflect all the needs victims sense nor do all victims wish each and every one of these rights to be fulfilled.

²⁸ These rights are based on the Statement of Victims' Rights emanating from the European Forum for Victim Services (European Forum for Victim Services, 1996). They are also partly recognized by the recommendation No.R(99)19 of the Committee of Ministers to Member States Concerning Mediation in Penal Matters and by the framework decision of the 15th of march 2001 on the standing of victims in criminal proceedings, which promotes the use of mediation at every stage of criminal justice as well as the right of victims to financial compensation (including the possibility for the victim to communicate with the offender about compensation and the need for communication and accessibility to information).

rights' (Fattah, 2004 : 17). Restorative justice offers the victim the guarantee of receiving proper information on the proceedings in the case and the opportunity of submitting objective and subjective information on the offence to his file. Moreover, a victim is more likely to receive financial or material compensation during this process as opposed to the traditional justice system, in which the payment of judicial costs and fines are still prior to a compensation to the victim. Finally, restorative justice provides opportunities to participate in a direct or indirect manner in the justice process. The victim is in other words recognized and involved in the search for a solution to the offence (Wemmers, 2002).

In practice, it seems however that not all restorative applications lead to victim satisfaction. Penal mediation, as described above, does not seem able to respond to victims' rights. First of all, victims are seldom actively involved in the process. Secondly, penal mediation is meant to be a diversionary program in which mediation between victim and offender is only one of the possible conditions for the formal dismissal of a case by the public prosecutor. Research results show that the condition of mediation with the victim is underused. This confirms that the name given to the whole procedure is a 'misuse of language' (Hanozin *et al*, 1997). The procedure of penal mediation has been proposed in urgent response to the big crisis encountered by the government and demonstrates its eagerness to provide some appropriate answers to it. Under these conditions, the implementation of penal mediation has largely been determined by a willingness of the criminal justice system to react quickly to the petty offences in general (seen as the main source of insecurity), and by the need to decrease the caseload of the court through diversion of some infractions from the traditional criminal justice system. Responding to the needs and rights of victims is thus secondary. This provides us with a warning regarding the improper use and absorption of restorative justice applications by the traditional criminal justice system, resulting in instrumentalization of the paradigm. A mediation program is here serving other aims than those defined by their initiators. The pre-eminence of other logics in the justice system (such as punitive or pedagogical logics) circumvent the objectives of the mediation work, including the benefits for the victims. The development and protection of a restorative framework is therefore important if one wants to secure its potentialities (Fattah, 1998). Likewise, we point out the danger of misusing victims in determining the severity of punishment to the offender or of using the victim in the service of the offender (Ashworth, 2000) and the danger of the political manipulation of the victim (Crawford, 2000).

In contrast, according to the evaluative research from the Belgian experiment on mediation for redress, there is a high level of victim satisfaction. Victims are given the opportunity to be actively involved, to receive information about the circumstances of the crime, to express their emotions in the aftermath of the crime and to get restoration for the material and immaterial damage they suffer. More interestingly, victims indicated that they were pleased with the mediation process even though no agreement was established with the offender (Aertsen and Peters, 1998). This seems to indicate that the communication process and the opportunity to express their concerns are more important than the actual outcome of the process. It confirms WEMMERS' statement that the victim's need for recognition does not equal a demand for decision-making power: '*(...) they want a voice to be heard but they don't want to bear the burden of decision-making power*' (Wemmers and Cyr, 2004 : 270). Restorative justice does hence not pose a threat to the rights of the offender. In such a way, it counters the fear of opponents to restorative justice concerning the arbitrariness of the sentencing when giving the victim a voice in dealing with a crime. Mediation for redress seems thus to succeed in combining the perspective and interests of the offender, the community and the victim and to meet victims' rights such as recognition, receiving and providing information on the offence and (financial) restoration.

Finally, despite similarities in the objectives of restorative and victim policy developments, current Belgian policy in favour of victims and certain applications of restorative justice are mainly envisioned ‘univocally’. Neither the National Forum for Victim Policy nor the government seem to fully apprehend the potential of restorative justice for the victims of crime. This sometimes leads to paradoxes in which mediation services and victim services are in conflict instead of in collaboration to the benefit of the victims. One example is the unsatisfying recognition of the role of the victim in the course of penal mediation, as discussed above. Another illustration is the coexistence of mediation services working at the stage of the execution of punishment and victim services within the frame of the Law on conditional release of March 5th 1998 (see above). According to this law, victims of certain delicate crimes as murder, rape, kidnapping, etc. are invited to express their expectations concerning the conditions of release of the offender when he is admissible to conditional release. The victim can only mention conditions preserving his own legitimate interest. This context is quite painful for the victims because they live in a situation of anxiety with respect to the future release. Moreover, the conditional release commission will often not be able to respond to these expectations, resulting in secondary victimization. On the other hand, mediation at the conditional release level could allow the victim to evolve towards more realistic and better-handled expectations because these would be derived from a communication process with the offender (Buonatesta, 2004b). The complementarity of both applications is nonetheless not recognised in practice.

Conclusion

In theory, restorative justice and victim policy are complementary in their aim to recognise and involve the victim in the criminal justice system. In Belgium, though they were developed simultaneously, restorative justice and victim policy in practice remained parallel. They affect each other in rare applications, such as in the frame of mediation for redress. Moreover, sometimes they have been combined only for the mediation or the victim to be instrumentalized in serving another purpose, such as diversion and net-widening instead of the need to recognize the victim or to promote communication (*e.g.* in penal mediation in which neither victims’ rights nor the purpose of communication between the parties involved are fully considered in practice). In other occasions, restorative justice applications and victim-oriented initiatives remained in concurrence, although the combination of both policies would benefit some victims, such as in the context of the conditional release.

Hence, in Belgium, the use of mediation is still peripheral. In practice only some victims of crime benefit from this approach, depending either on the availability of the program, or on the willingness of the magistrate. This is probably why it is agreed upon that a general restorative vision on crime and criminal justice should be developed and key actors sensitized and involved in order to optimally develop restorative justice applications. However, WEMMERS considers it ‘*unacceptable that in practice, the only option for victims to participate in the criminal justice system is through restorative justice programs*’ (Wemmers and Cyr, 2004 : 271). Comparable reflections and concerns were expressed by actors of the victim support services on article 10 in the framework decision of March 15th 2001 concerning the standing of victims in criminal procedures. Mediation should not be ‘promoted’, as stated in article 10, but rather be made available for the victim to make use of as considered suitable by the victim (Suggnomé, 2004). Ideally, victims of any kind of offence should be offered the opportunity to be involved in a restorative way of dealing with the aftermath of the crime, but victims should always be free to choose to either walk the restorative or the traditional path. A victim knows best what he benefits from.

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