Mediation for Reparation: The Victim’s Perspective

1. MEDIATION AND RESTORATIVE JUSTICE

The purpose of this essay is to present a brief analysis of a project on ‘mediation for reparation’, an experiment that started on 1 January 1993 and which has become, since 1 January 1996, a regular practice of criminal justice in the judicial district of Leuven, Belgium.3 The study puts the emphasis on the victim’s perspective. While the offender is the focal point of action in most mediation projects, victimological research was the inspiration for the Leuven project.4 The needs and problems of the victims of criminal violence were studied both quantitatively and qualitatively. Action research was used to detect which tasks should be given to mental health centres in taking care and offering specialized help for victims of serious violence.5 Applied scientific research has been carried out in relation to the police tasks and duties in victim care.6 The victimological knowledge resulting from this type of research raised a lot of questions about the actual system of criminal justice. It revealed not only the weak position of the victim of crime in a criminal procedure and the obstacles in the way of getting compensation for the material damage suffered, but especially the complete lack of attention given to the many immaterial needs of the victim. These revelations became the guiding principles in the conception and elaboration of the mediation for reparation project.

A thorough analysis of the criminal justice system reveals its dominant retributive orientation towards the offender. He mainly serves as a lightning rod, and is not allowed to take any social responsibility or to play a role in solving the problems he created. Offender help, support and treatment were central to the rehabilitative model. However, the model was able to produce only a marginal change in the retributive approach to crime. In contrast, restorative justice is a model which, from the outset, focuses on tackling the problem by involving both the offender and victim in finding a remedy to what went wrong. The criminal justice system

3. A shorter version of the first part of this article has been published in Dutch 39, Tijdschrift voor Criminologie (1997/4) pp. 372-383.
is seen here as the legal institutional context in which problem solving by the parties involved has to be reached in full accordance with the legal principals and legal safeguards.7

Attention to, and care for, the interests of the community are a primary concern of restorative justice. Nevertheless, this also includes maximum latitude and pro, active support to the parties in their search for a solution to their conflict. The police, the judicial system and corrections have to play a major role in urging offenders and victims to reach a settlement in accordance with the law and the interests of the community. Criminal Justice and custodial sanctions, which cannot always be avoided, have to serve as a platform for restorative action and for problem solving in order to give a new content and meaning to the socio-judicial action. In this framework, victim-offender mediation is a valuable method and approach.

Within many other sectors of social life mediation is self evident.8 Labour conflicts are almost always first addressed through mediation. Those who care about family conflicts, problems in schools and those active in consumer organizations welcome mediation as a creative problem-solving mechanism. Bonafé-Schmit9 defined it as a mild justice ("une justice douce").

In the following, we will examine the position of the victim in the restorative approach. Mediation for reparation is a specific type of mediation which is reserved for more serious crimes and its key ingredient is the communication between offender and victim. Mediation raises a number of questions: to what extent is the victim interested in this informal approach? Can the needs and concerns of victims be met through mediation? How does the process of mediation work, what are its results and how does it relate to the criminal justice process? To answer these questions, the analysis and the results of the project on mediation for reparation will be discussed in the framework of other foreign research reports.10

2. THE VICTIM'S PART IN MEDIATION

2.1. Design and organizational context of the mediation for reparation project

The project ‘mediation for reparation’ was conceived at the Catholic University of Leuven and was set up in close collaboration with the Leuven Prosecutor’s Office and the Leuven Service for Judicial Welfare. The latter organization is a private welfare service financially supported by the Flemish Community. It provides help and service for crime victims as well as for offenders. In the first two years (1993 and 1994) the ‘mediation for reparation project’ received financial support from the King Boudewijn Fund. Since 1995, the Ministry of Justice has provided the necessary financial resources. As mentioned above, the ‘mediation for reparation’ project grew out of critical reflections on the criminal justice system. How crimi-