Victim assistance and mediation

Summaries

Professionalizing victim assistance; activities and developments
Y.H. Heslinga

'Slachtofferhulp Nederland', the Dutch Victim Support organisation, emphasizes a broader and more specialised victim care to meet the demand from a growing number of victims of violent crime and traffic accidents. The organisation has principally sincere concerns about the consequences of a possible commercialisation and privatisation of victim care in the Netherlands and urges the government and non-governmental organisations in this field to establish standards for victim care and affiliated services. ‘Victim empowerment’, to stimulate the self-help of victims and equip them with the proper instruments and legal basis, will be the main topics of future victim care. The legislative powers in the Netherlands must be prepared to grant substantial new legal privileges to victims, especially in the penal law-system. Slachtofferhulp Nederland has committed itself to anticipate on new developments, such as Internet and other advanced technologies and explore the possibilities to apply these new achievements into victim care services.

Dutch governmental victim policies; some recent developments
P. van Dijk

This survey contains some eye-catching developments in governmental victim policies in relation to previous discussions. Police officers and public prosecutors have to treat victims according to certain standards. The new victim guidelines remain the same. Only dependent victims of sexual crimes acquired more influence in penal procedures. No rule obliges Dutch public prosecutors to prosecute all cases. Victims have the opportunity to object to non-prosecution. Recent changes in existing legal arrangements will sort no effect whatsoever. Criminal procedures at court, some people claim, have to facilitate room for emotions of victims. Others claim this will cause harsher sanctions for offenders. Where sexual delinquents have to return to their neighbourhoods, the rights of these former delinquents and their victims conflict. In practice local governments have to sort out the problems. There is no sign that the legal position of victims in criminal procedures in general will be strengthened in the years to come. The government tends to give priority to care rather than to legal rights for victims.

Dutch victim policy; a comparative perspective
M. Brienen and E.H. Hoegen

It is widely accepted that victims should be able to participate in criminal proceedings. When it comes to legal rights of victims, guidance has been provided by authoritative documents such as the 1985 Recommendation of the Council of Europe. A comparative implementation study of this Recommendation demonstrates that it has been best implemented in the Netherlands. Four factors contributed significantly to this success. Nevertheless, improvements can still be made by, e.g., introducing the right to a victim advocate, to address the court, or to act as an auxiliary prosecutor. However, the right of victims of sexual and violent crimes to a lawyer may adversely affect the authorities' attention for the rights of other victims. If the introduction of a victim impact statement is considered, thought should be given to its purpose. The right to become an auxiliary prosecutor has our preference and would do justice to the victim's right to participate in criminal proceedings.

The traumatised victim; treatment, interrogation, and memory flaws
E. Rassin

Some crime victims develop post traumatic stress disorder (PTSD). This article discusses possible
predictors of the development of PTSD. Furthermore, treatment procedures for PTSD are discussed. Next, it is argued that police interrogators need to be extra prudent when faced with a witness who was the victim of a (traumatic) crime. Special characteristics of traumatic memory are highlighted. That is, compared to memories in general, traumatic memories are often described as a combination of isolated, intense, and intrusive flashbacks, on the one hand, and extensive amnesia, on the other hand. Police interrogators need to understand these special characteristics in order to prevent them from drawing false conclusions (e.g., suspecting victims who report to suffer from memory loss, or believing victims’ narratives merely because of the perceived clarity and intensity of their memories). Lastly, police interrogators should refrain from acting as ‘therapists’, because the therapeutic role is inherently irreconcilable with the role of fact finder. Also, therapeutic intervention goes far beyond talking about the traumatic event.

**Mediation in relation to criminal procedure**

A.C. Spapens

The author gives a short overview of all the different forms of mediation that are being applied before, during and after the criminal procedure in the Netherlands. The author differentiates between three main forms of mediation: reparation of harm, settlement of conflict and mediation. Apart from the reparation of harm on the basis of the so called *Aanwijzing Slachtofferzorg*, these forms of mediation have not yet developed beyond the project stage. Settlement of conflict is mainly a matter of the police, especially in case of less serious criminal facts. A lot of facts that have not come to the attention of the police, can be appropriately treated in the context of neighbourhood mediation. In that way further escalation can be prevented. As to mediation, according to the author there are some risks. One of them is the aiming at a less severe punishment after a succesful mediation. Another question is whether the police can be a independent mediator. The author states that it is important to elaborate the preconditions of mediation more clearly. In his opinion a national, structured supply ought to be developed.

**Restorative justice or penal law; duet or duel?**

L. Walgrave

According to the author restorative justice has a social-ethical surplus value as compared to penal law. He also states that penal law is an inadequate means for the confirmation of social norms, while punishment has a stigmatizing influence on the perpetrator. He also argues that willfully inflicting harm to others is ethically rejectable. In the concept of restorative justice it is not the punishment but the duty to repair damages that comes to the foreground; inflicting harm can be a secondary result of this duty. As to the applicability of restorative justice, comparisons to penal law procedures show that victims who have been in a mediation procedure are more satisfied about their opportunities to show their emotions, are more satisfied about the respect shown for their victimhood and the fairness of the appointments made in the mediation procedure. Besides, the communicative aspect was more important than the offered material compensation. The author concludes that the option of restorative justice ought to have priority over penal law options, although in many cases the aim of restoration remains secondary to the care for public safety.

**Family Group Conferencing ; some critical remarks**

I. Weijers

At the moment interesting experiments with restorative justice for juveniles can be detected in many western countries. In this article the author criticizes the often too easily adopted idea that Family Group Conferences provide for the best pedagogical reaction to juvenile offenders. His starting point is that the immaturity of young offenders implies a pedagogical task for any criminal law reaction on juvenile offences. The author then provides an analysis of the core of this formula which is the combination of a mediation process between offender and victim and a family consultation. The author is of the opinion that this combination puts a heavy weight on the shoulders of both the young offender and the victim. The author concludes that this formula tends to be at odds with the pedagogical task that is sketched in the first part of the article.

**Criminal procedure or mediation?**

C.P.M. Cleiren
In the article the author compares the criminal procedure to mediation. She wonders if one can do justice without a judicial authority and states that during the mediation process, public control and the satisfaction of public feelings of revenge are not present. Also the mediation results are not made public, so that it can not have a public impact. Concerning the mediation conference itself, the parties involved can not screen themselves off from each other. One party can interfere drastically in the life of the other party. Besides, unequal power cannot be sufficiently compensated or corrected. According to the author, mediation can nevertheless fulfil a legitimate independent role beside the criminal procedure. Especially when the participants involved share the same norms and values, mediation has a good chance of being succesful. The author concludes that both ways of solving conflicts form their own domain and have their own limitations. If one does not acknowledge the ‘singularity’ of both ways of conflict settlement, then its judicial effects and complications may have disadvantages and maybe even risks for the suspect as well as for the victim.