

Summary

Introduction and objectives

The practice of mediation in criminal justice is gaining ground in the Netherlands. In recent years the Ministry of Security and Justice and various relevant criminal justice actors (the Council for the Judiciary, the Public Prosecution Service, the police, Rehabilitation, Victim Support the Netherlands, ‘Victim in Focus’ (i.e. ‘*Slachtoffer in Beeld*’), and the Dutch federation of mediators (i.e. ‘*Mediatorsfederatie Nederland*’) have voiced their support for the introduction of mediation in criminal justice. As a consequence, in 2013, the Ministry of Security and Justice asked actors in the field to submit proposals for pilot projects on mediation. Five projects received funding. These can be categorized by their connection to the criminal justice process:

- Two pilots in the police phase (pilot 1A and 1B: i.e. *Politiepilot Spijkenisse* and *Vreedzame Wijk Utrecht*), in which mediation is conceived to be an alternative to criminal proceedings;
- One pilot in the prosecutorial/pre-sentencing phase (pilot 2: i.e. *the Prosecutor/Victim in Focus project*) in which mediation is part of the criminal proceedings;
- Two pilots in the post-sentencing phase (pilot 3A and 3B: i.e. *Locatie en Contactverbod* and *Reclassering*), in which mediation is complementary to the criminal proceedings.

Between October 2013 and November 2014 the mediation process was started in 299 cases. The lion’s share of these cases concerned pilot 2 (i.e. *the Prosecutor/Victim in Focus project*), with 254 cases; the other four pilots resulted in 45 cases of mediation. All mediations in pilot 1A (i.e. the *Politiepilot Spijkenisse*) took place before the start of the research. As a consequence, almost all mediations that have been examined in this report concern pilot 2. The two pilots in the post-sentencing phase experienced great difficulty in securing cooperation of participants. Not for lack of trying: in pilot 3A ‘*Locatie en Contactverbod*’ in 22 cases were referred to the pilot; but only in 2 cases (9%) mediation resulted; while in pilot 3B ‘*Reclassering*’ 179 cases were referred, but only in 3 cases (2%) mediation resulted. In the other two pilots potential participants were considerably more willing to take part. In pilot 2: ‘*The Prosecutor/Victim in Focus*’ pilot 559 cases were referred; with 254 mediations (45%) resulting, whereas in pilot 1B (*Vreedzame Wijk Utrecht*) this was the case in 58% (21 out of 36 cases).

The objective of the research is to contribute to the policy framework ‘Mediation in criminal justice’ (*‘Herstelbemiddeling in het strafrecht’*), by providing insights into the lessons learned from the pilots regarding possibilities, impossibilities and necessary conditions of mediation in criminal justice. The present interim report presents an initial review of the experience in the pilots.

Interim report

The present report focuses on the following main questions:

- Who participates in mediation in the criminal law (questions A1 - A3)?
- What are features of mediation in criminal law (questions B1 - B2)?
- What are the effects of participation, also in terms of the opinion of participants (questions C1 - C2)?

The research utilizes a variety of research methods, including a quantitative survey with three waves (T0, T1 and T2) and qualitative interviews with practitioners, victims and (alleged) perpetrators. This interim report concerns the initial results of the first two waves of the quantitative survey (T0 and T1). After its publication the inclusion of respondents in the research will continue. Therefore (preliminary) results presented in this report are still subject to change. They might differ from those obtained after inclusion of respondents has been completed, and therefore should be interpreted with caution.

The first wave (T0) was administered two weeks prior to mediation and the first follow-up (T1), one month post-mediation. The T0-questionnaire contains the following components:

- A. The demographic characteristics of the respondent and key characteristics of the crime experienced by the respondent;
- B. The experiences with the preparation for the mediation;
- C. The motives for and expectations of participation;
- D. Measurement of (psychological) constructs prior to mediation. For victims these entail: posttraumatic stress, anxiety, depression, self-reliance, anger, revenge and forgiveness, feelings of control over the restorative process, trust in the police and judiciary and the belief in a just world. For (alleged) perpetrators these entail: feelings of guilt and shame, empathy for the victim, trust in the policy and judiciary and the belief in a just world.

The T1-questionnaire includes the following components:

- A. The psychological constructs, measured in T0 to make a comparison between T0 en T1 possible;
- B. The participants' subjective experience of the mediation process and its outcome. This will entail reviewing whether mediation contributes to an experience of personal growth will be addressed. In addition the (alleged) perpetrator will be asked about his or her experiences with positive feedback and re-integrative shaming during the meeting.

Results

Characteristics of participating victims and (alleged) perpetrators

Although participating victims and (alleged) perpetrators share similarities with the total population of victims and (alleged) perpetrators, the results revealed several noteworthy differences:

- *Demographics.* Participants (both victims and (alleged) perpetrators) appear to be relatively older, with a relatively high proportion stating to be in a relationship. The education level of the (alleged) perpetrators in the sample was higher than in the comparison population.
- *Violent crime.* A large majority of participants had been involved in a violent crime. Only a relatively small minority had suffered or (allegedly) committed a property offence. As yet it is not clear whether this finding can also be contributed to policy choices on the part of the mediators or the referring actors and/or the greater willingness and need of victims and perpetrators of violent crime to engage in mediation. Interviews with stakeholders will provide more insight into these questions - this will be covered in the final report.
- *Acquaintances/family.* A large majority of the respondents were acquainted or related to the other party in the mediation before the crime occurred. In this regard, the current findings contrast with research into the victim-offender encounters (*'slachtoffer-dader gesprekken'*), in which a significant majority of the encounters concerned people who were previously unknown to one another.
- *Emotional impact.* Analysis of the psychological measures reveals that participating victims experienced a non-negligible emotional impact of the crime. They report symptoms of traumatic stress, anxiety and feelings of anger about what happened to them.
- *Shame and guilt.* The results indicate that participating (alleged) perpetrators experience higher levels of guilt and shame than non-forensic samples. For a minority, strong feelings of shame and guilt appear to contribute to their decision to participate.
- *Relatively high confidence in the police and the judiciary.* Both participating victims and (alleged) perpetrators reported relatively high levels of trust in actors in the criminal justice process. It is noteworthy that trust levels of (alleged) perpetrators and victims were revealed to be similar.

Expectations and motives

The group of respondents appears to have *little prior experience* with mediation, let alone with mediation in criminal justice. For this reason alone, it is unlikely that participants would have recognized mediation

in criminal justice as a solution to their conflict without active outreach by service providers or referring bodies. A frequently mentioned reason to participate - by more than 80% of respondents - was the simple fact that the opportunity was offered to them. In this respect the currently most important gatekeepers - police and Public Prosecution Service - have an important role to play in informing potential participants of the availability and main features of mediation in criminal justice.

Most participants expect that mediation will result in a solution of the conflict. A majority of participants mentions reasons that correspond with notions of *procedural justice*. This can include taking part in the conversation, decision process and formulation of the solution. Each of these arguments are mentioned by eight out of ten participants as a reason to participate.

A majority of victims hope that participation will prevent recidivism of the (alleged) perpetrator in the future. Preventing future crimes is mentioned by 88% as a reason to participate. A majority also hopes to obtain an apology from the (alleged) perpetrator.

In turn many (alleged) perpetrators hope that participating in mediation will help their victims understand their actions and hope that they will no longer see them as 'bad' people. These motivations can be understood as forms of *value restoration* and can be viewed in line with perpetrators' desire to restore their damaged social and moral image. This desire seems to outweigh the importance of the contribution to the restoration process of their victims. Indeed, the present results suggest that helping the other is a more common reason to participate for victims than for (alleged) perpetrators.

For both parties the *dialogue in itself* is an important motive for participating. A majority views mediation as an opportunity to talk with the other party, to express feelings, to ask questions (victims) and to answer them ((alleged) perpetrators). Regarding *therapeutic jurisprudence*, insofar as the impact of mediation on their own feelings is concerned, motives are correlated with the extent to which one experiences emotions such as fear, shame, and guilt. Victims who are relatively afraid of the (alleged) perpetrator are more likely to report that they participate to reduce fear; (alleged) perpetrators who report high levels of guilt and shame are more likely to report that they participate to reduce feelings of guilt and shame. It should be noted that these last two motives were relatively uncommon, with only a quarter of (alleged) perpetrators mentioning shame or guilt reduction as a reason to participate.

Most participants report that their participation is voluntary. However, compared to the results of research into victim-offender encounters, a larger share of participants report to have experienced pressure to participate, and a small minority experienced participation as a duty.

The settlement agreement and the content of agreements

Respondents report a settlement agreement is reached in 70% of mediation cases. With few exceptions these settlements concern written agreements. The content varies: in approximately half of the cases the agreement entails an explanation about the origin of the conflict, and in one third of the agreements the (alleged) perpetrator explicitly acknowledges culpability. Approximately 40% of agreements concern agreements about future interactions, and 20% include a promise to the other party. Financial compensation is part of the agreement in more than 25% of the cases and a suggestion regarding the future course of the judicial process in approximately one third of all cases. Almost all respondents (90%) report to have understood the agreement. Generally respondents are satisfied with the agreement. Approximately 70% of respondents report to be satisfied with the agreement, 20% is not.

Currently 30% of participants reports to have failed to reach an agreement. A minority of the 70% who did so reports that their wishes were not sufficiently reflected in the agreement (20%). The share of respondents who have reached an agreement that reflects their wishes sufficiently therefore only just exceeds 50%.

The experiences with mediation

Participating victims and (alleged) perpetrators report positive experiences with regard to the mediation process. Participants agree they have been treated with respect, have been given the opportunity to provide input, felt that the time for the meeting was sufficient and that confidentiality of the meeting was guaranteed. Mediators also received positive evaluations. Participants agreed they were objective, took participants' wishes into account, and provided sufficient support. They also agreed they had been given sufficient information prior to the mediation and a significant majority agreed information provision was good. A small minority felt their participation in mediation has had an effect on the course of the criminal procedure. In addition, most participants found that mediation allowed them to contribute ideas and be involved in the decision regarding the solution of the case. This holds equally for victims and (alleged) perpetrators.

At the same time a minority of participants reported that their experience with the mediation process did not live up to their expectations. A substantial minority of participants was dissatisfied with the course of the mediation. In part this could be due to the interaction with the other party. For instance, victims' participation was often motivated by a desire to prevent recidivism. However, in hindsight relatively few victims have the impression that the mediation process contributed to this goal. In addition a small majority of victims received an apology from the (alleged) perpetrator and a small majority of these apologies were felt to be sincere. However taken together this means that only one third of participating victims received a

sincere apology. As for (alleged) perpetrators, their hope and expectation of increased understanding for their actions did not come to fruition in many cases. In hindsight less than one third felt their participation in mediation was successful in this regard. Furthermore, few (alleged) perpetrators reported to have received positive, re-integrative feedback. On the other hand, negative shaming also hardly ever occurred.

Items mapping the interaction with the counterparty showed varying results. The share of participants that agrees with statements such as *I experienced reduced anger towards the (alleged) perpetrator*, *I think that the (alleged) perpetrator has gained more insight*, and *I have received answers to all my questions* is comparable to the share of participants that disagrees with these statements. Similarly the share of (alleged) perpetrators that agreed with statements such as *I have experienced an increased understanding on the part of the victim*, *I have gained more insight into the other party* and/or *helped the other party* is comparable to the share that disagreed.

Effects and results of mediation

The answer to the question what effects and results participants have experienced through mediation is two-sided.

Regarding the comparison between psychological-emotional constructs pre-mediation and post-mediation the main conclusion of this interim report is that it is important to continue collecting data. The sample of respondents is too small to track differences. For now the present data confirm the expectation that mediation at best has a small impact on traumatic stress, fear, anger (in the case of victims) and feelings of remorse, guilt, and pride (in the case of (alleged) perpetrators). However, it is not possible to determine the size of this effect, and whether or not it is negligible. The current sample size is too small to achieve statistically meaningful findings to answer these questions.

The participants' subjective judgements suggest a greater therapeutic value of participation. According to 40% of the victims mediation helped to restore the damage and to cope with the experience of the crime. A fair share (approximately 40%) of victims and (alleged) perpetrators reports to feel better after mediation, including experiencing increased personal strength and reinforcement of relationships.

It should be noted that experiences of (alleged) perpetrators and victims vary. Equal shares of victims agree and disagree with statements such as *the process entails sufficient acknowledgment of what happened to me*, *the process holds the (alleged) perpetrator responsible for his/her actions and/or contributes to a just outcome*. Similar patterns emerge regarding the way in which (alleged) perpetrators look back on the mediation. An important question to answer in the final report concerns to what extent positive and less

positive results are imbedded in experiences of certain respondents. And subsequently in what way features of the mediation – specifically interaction with the counterparty – correlate with these experiences.

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