

## Summary

### **The use of restorative justice by the police in the Netherlands**

Restorative justice implies a different approach to justice than that of criminal law. Within a restorative approach, the needs of the victim and the ability of the suspect or perpetrator to take responsibility for the harm caused and to rectify it where possible take centre stage. Restorative justice often takes the form of mediation, in which parties discuss and, where possible, rectify the consequences of the offense under the leadership of an impartial third party.

In the Netherlands, restorative justice facilities can be applied at all stages of the criminal justice process. The *Policy framework for restorative justice facilities during the criminal justice process* (Beleidskader herstelrechtvoorzieningen gedurende het strafproces) describes which restorative justice facilities are available when a case is settled by the public prosecutor's office or is heard by a judge. The aim of this research is to make a first inventory of restorative justice facilities in the preceding stage, when a case is handled by the police. In this 'police phase' a diversity of restorative initiatives exists. However, it is not clear exactly which initiatives exist and what they entail, how and when they are deployed and how they are regarded by professionals. This report provides an initial inventory and charts the experiences with these facilities.

### **Research questions**

This research focuses on the following questions:

- 1 Which restorative justice facilities are available for adults and juveniles in the Netherlands during the 'police phase' and what do these facilities entail?
  - a What goals are pursued with the use of the facility?
  - b Which target groups are identified? What criteria are used for participation in mediation?
  - c How are potential participants informed about the facility / how does referral take place?
  - d How is mediation organised, by whom is it carried out and on what grounds are mediators qualified?
  - e How does the provision relate to possible criminal proceedings and to other restorative justice facilities?
  - f During the first half of 2020, how often and for which types of offenses was the facility used?
  - g How often has mediation been successful, and what were the consequences for further criminal proceedings (if applicable)?
  - h What are the similarities and differences between different restorative justice facilities?
- 2 How do the professionals involved view the use of restorative justice?
  - a For which victims and suspects do they consider restorative justice suitable?
  - b What do they see as benefits and challenges for police organisation and for their own work process?

## Theoretical background

Restorative justice focuses on the relationships between the suspect or offender, the victim, and the wider community. Victims and suspects play a more active role than in the traditional criminal justice system because they can make agreements together about restoring the relationship and rectifying harms caused. Research shows that participants are often satisfied with their participation in restorative justice facilities. In addition, there are indications that the use of restorative justice reduces recidivism.

Deployment of restorative justice by the police is particularly common in English-speaking countries, often as an alternative to a criminal law approach. Through restorative justice, the police can act more proactively and achieve more sustainable solutions. This increases the effectiveness of police action and can also have a positive effect on the image of the police and the satisfaction of citizens. However, the use of restorative justice by the police is often limited to juvenile suspects and minor cases. Various studies have identified factors that stand in the way of broader deployment. The most important of these are a lack of knowledge and training, a focus on quantitative targets, and a focus on criminal law and on repression and enforcement instead of crime prevention.

The Dutch police uses mediation informally, but so far, a clear policy with regard to restorative justice has been lacking. A few pilot studies on mediation have taken place. In addition, several experiments that deploy 'meaningful interventions' have been conducted: these include tailoring service provision and offering alternatives to criminal prosecution. Research into these experiments shows predominantly positive results.

## Policy background

Restorative justice facilities have a legal basis in Article 51h of the victim title of the Dutch Code of Criminal Procedure. The Public Prosecution Service should promote mediation between victim and suspect; when mediation leads to an agreement, this should be taken into account when imposing a penalty or measure. In addition, victims are entitled to information about available restorative justice facilities upon their first contact with an investigating officer.

The *Policy Framework for restorative justice facilities during the criminal justice process* distinguishes two main types of restorative justice facilities. Mediation (*herstelbemiddeling*) can be used at any time after a police report has been made. It is aimed at emotional and relational recovery; it is unrelated to possible criminal proceedings. Mediations are led by *Perspectief Herstelbemiddeling*, the police can refer interested parties to this body. Mediation in criminal matters (*Mediation in Strafzaken*) takes place on referral from the public prosecutor or judge. Referral is also possible via ZSM (a decision-making body in minor criminal cases). Mediation in criminal matters is part of the criminal procedure: agreements laid down by the parties in a settlement agreement must be taken into account in a decision on the case.

## Research method

33 respondents were interviewed, most of whom work for the police in different regional units. First, project leaders on victims' rights in seven out of ten regional units were interviewed. These interviews focused on gaining a general overview of

the restorative justice facilities that are deployed in the various regional units. Second, police who use restorative justice in their daily work were interviewed in order to obtain further information about the use of restorative justice and to map out experiences. Employees of *Perspectief Herstelbemiddeling* were also interviewed. The findings do not provide a representative picture of how restorative justice is employed within the National Police, its various regional units or different departments. This would require a more in-depth study with a representative sample of stakeholders. The study does, however, show different practices with respect to restorative justice and perspectives on the possible benefits of restorative justice and the challenges it poses to police practice.

### **Findings: Restorative justice facilities in the 'police phase'**

#### *Pilot studies and police-led mediation*

According to the interviewees, restorative justice facilities are not frequently used. The results show that there are four more structured facilities: two pilot studies in Amsterdam and Hoeksche Waard and two facilities offered by individual police officers in Amsterdam and Utrecht. All facilities are available to both adult and juvenile victims and perpetrators.

These four facilities primarily aim to achieve a sustainable solution that meets victims' needs. The emphasis is on restoring fractured relationships. An additional benefit is that the use of restorative justice can save the police and the Public Prosecution Service work. As a result, cases that would otherwise have been dismissed can be taken up. Both the Amsterdam pilot study and the police mediator in Amsterdam focus on minor cases with low police priority. No target group was determined in advance for the pilot study in Hoeksche Waard. The police mediator in Utrecht focuses specifically on (threats with) honour-related violence and domestic violence.

Cases are selected during or immediately after the filing of a police report. Both pilot studies opted for the deployment of an external criminal law mediator, the two police mediators mediate their own cases. In all cases, mediation takes place at the police station. The procedure involved first talking with both parties separately, followed by a joint conversation, in which in some cases third parties are also involved. With the exception of the Amsterdam pilot study, participants also have the option of indirect mediation. Agreements reached are recorded in a separate settlement agreement or in the police file, after which criminal charges are usually dropped. In the Amsterdam pilot study, mediation was applied in six cases between January and September 2020. In all six cases, a final settlement agreement was reached; in four out of six cases the parties adhered to the agreements made. Between January and August 2020, the Amsterdam police mediator received 83 cases, of which 10 resulted in a mediation with a signed settlement agreement and 20 resulted in indirect mediation with agreements recorded in the police file. For the other two facilities, no data are available.

#### *Informal mediation*

In addition, ad hoc and informal mediation takes place either by police officers themselves or through referrals to external parties. Informal mediation is often combined with other restorative practices in which there is no mediated contact between victim and suspect, such as police cautions or referrals to care professionals.

Informal mediation also aims to achieve sustainable solutions that meet victims' needs. In addition, it was often deployed when victims wanted material compensation. Police officers either mediate themselves, refer cases to community police officers, or refer to external parties including initiatives for neighborhood mediation, *Perspectief Herstelbemiddeling*, and mediation in criminal cases. Respondents mainly see added value in minor cases and in longer-term conflicts in which the parties know each other and may continue to encounter each other in the future, such as neighbour quarrels and family conflicts. These cases have a low priority for the police and/or have a low criminal success rate. In addition, according to respondents, victims sometimes benefit more from restorative justice interventions than criminal proceedings. Informal mediation is not pursued in more serious offenses or when the suspect denies the allegations or is a repeat offender. Location, form of the mediation (direct or indirect) and parties included depend on the case in question, often no fixed working methods are used. When agreements are recorded, this is done in the police file. Mediation is often used as an alternative to filing a police report or starting a criminal case.

### **Attitudes towards restorative justice among the police**

Whereas the academic literature consider restorative justice to be suitable for all types of cases, respondents in this study mainly see advantages for victims in minor cases and in cases where the parties know each other. Restorative justice allows such victims to settle cases faster, to achieve tailored solutions, and to process the case emotionally. Police respondents argue that restorative justice facilities are not suited to victims of more serious offenses. Consequently, in these types of cases a criminal law approach is chosen from the start.

For suspects, the opportunity to avoid prosecution or to receive a reduced sentence is seen as the most important advantage. Respondents with more experience in restorative justice also point to other benefits for suspects, such as the opportunity to apologize and make amends.

Respondents identify a number of risks and challenges for the use of restorative justice facilities by the police. These concern a work culture that is mainly focused on quantifiable output, a lack of guidance and support from managers and the Public Prosecution Service, a high workload as a result of which respondents do not have time to investigate alternative interventions, and the perceived tension between building a strong criminal case and employing restorative justice. Respondents also describe an organizational culture that is partly opposed to restorative justice. Restorative justice can be at odds with the job perception of police officers, their sense of justice, and their job satisfaction. High working pressure also offers opportunities: if restorative justice is applied early on, this can save time. In addition, successful use of restorative justice can contribute to job satisfaction.

### **Conclusion**

The Dutch National Police is interested in wider use of restorative justice and is currently in the process of developing a policy on this subject. However, restorative justice is still relatively unknown within the police force and is only employed incidentally.

This study has looked at police officers who have an affinity with the theme of restorative justice. It therefore stands to reason that the respondents of this study

think more positively about restorative justice than the 'average' police officer. In addition, the research identified differences between respondents: those who know more about restorative justice and have more experience applying it in their work express more positive attitudes. Respondents whose experience with restorative justice is incidental harbored more doubts and objections. Clearly, there is still much to be gained in terms of knowledge about restorative justice and its potential benefits for police practice.