

Restorative justice for road traffic offences in Europe

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Start as project member in march 2017.

Literature, working visits, interviews : resulted in first paper. Wil be presented her.

Ready for publishing.

Content

1. **Why offering RJ in RTO?**
2. Needs of victims/offenders of RTO regarding RJ
3. Possible outcomes
4. Good practices in Europe
5. Challenges and opportunities



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Why offering restorative justice in road traffic offences?

Variety of RJ-practices



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Vb: VOM, circels, panel reparation programs, restorative trainings,...

Vb : roadcrashes but also minor offences like : driving without licence, insurance,...

Why offering restorative justice in road traffic offences?

Variety in RTO



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Why offering restorative justice in road traffic offences?

RTO are good cases for all kind of RJ-practices!

- Traffic situations/traffic offences are “familiar” to us
- Most RTO are unintentional
- Road Crashes : often shared traumatisation
 - Shock-effect of the crash
 - Emotional harm
 - Bodily injuries
- High impact of RTO's on various levels
 - Victims
 - Offenders
 - Society



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personal opinion, few scientific research on this topic.

Familiar: we all are frequent users of traffic. All of us committed already some kind of RTO or at least we all are sometimes imprudent.

Compare to other crimes : vb. Assault or rape or murder : is not familiar to us. It's more easy for us to identify with the phenomenon.

Unintentional : more chance for mutual understanding

Shared traumatisation : bodily injuries,

Victims:

- Financial
- Medical
- Rehabilitation
- Emotional
- Dead/ bereaved families

Offenders:

- Financial
- Medical
- Rehabilitation
- Criminal procedure/record

Society:

- High rate of RTO's
- Huge consequences : health costs, economic losses, mobility, road safety,...
- Only punishment is not effective
- Call for prevention

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Needs of victims and offenders regarding RJ

- 10 interviews
- Participants in victim-offender mediation after road crash
- Reasons to participate
- Often similar for victims and offenders



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7 victims; 3 offenders
All participants in VOM, Belgium

Preliminary: the importance of contact/dialogue after the crash/offence

- Victims are harmed
- Victims seek recognition
- Victims generally expect to hear “something” from the other side
- Recognition : 3 central aspects
 - Assuming responsibility
 - Showing empathy
 - Doing something to restore the damage



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Preliminary : from the interviews, own experience,...
Something : simple act of empathy, an apology,

Preliminary: The importance of contact/dialogue after the crash/offence

Offenders can feel:

- Shame
- Fear
- Guilty/responsible

Offenders often want to contact the other party, but...



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- Discouraged by police, insurance, lawyers
- Privacy rules

Preliminary: The importance of contact/dialogue after the crash/offence

Professionals argue:

Contact shortly after the crash/offence:

- Less polarized image of the other
- Smoother settlement of damage by insurance companies
- Smoother process of mediation



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Reasons to participate

1. Related to the crash



"Our son died as a passenger, but the driver of that car was a stranger to us and our son. We had to know why our son stepped into the car of a stranger. We had so many questions. For us it was extremely important to get some answers."



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Often combination of reasons

- Making the puzzel
- Additions to the police statement

Reasons to participate

2. Related to oneself



"I wanted to put a face on him. I wanted to know what kind of person he is, how he reacts and whether he shows regret or not? That was important for me."



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Tell your story, how you feel about it, the consequences,
Feeling morally obliged
Feeling guilty (offender)
Feeling the need to correct the image created by the crash

Reasons to participate

3. Related to the other party



"Partly, I participated because of the offender. I wanted to confront her with the fact that she was drunk while driving. I hope she will be more conscientious about that in the future."



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Out of concern

Facilitating something

Showing empathy

Wanting to know how he/she deals with it , to have information

Confronting the other with his driving behaviour

Avoiding problems in future: vb. when parties are living in same neighbourhood

Reasons to participate

4. Other reasons



After my previous crash, I did not hear anything from the other party. The fact that nobody told us how to deal with this, has certainly encouraged me to participate now. It continued to haunt me for a long time. If I had heard something from the other party, I think that would have helped me. Looking back, this has determined my life for a while.



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Communication to the judicial system

Previous experiences

Deceased person should have approved of encouraged it.

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Possible outcomes

In general :

- High rates of satisfaction among victims/offenders : 70 to 85%
- Victims experience:
 - Sense of fairness
 - Sense of control
 - Anger-reduction
 - Restoration of self-esteem



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Shapland 2011

Bolivar : 2017

Possible outcomes

In the interviews:

- Positive outcomes

- Focus on restorative process
- Focus on restorative outcome

"For us, it was a very good solution. Through the mediator we could ask our questions. She went to talk with him and came back with information on how he was and thought about the crash. Let's say, that made him more human. If we hadn't done it, we would hold onto all our frustrations. It gave me some kind of rest. I'm still angry because he took my child, but I can also see the human part of him. "

"I could see that she felt guilty and that she was sorry about what happened"



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Again : combination of outcomes

Examples:

Process : Getting the chance to express emotions, becoming less bitter, having a changed image of the other

Product: getting answers, being able to confront, mediator agreement,

Possible outcomes

Negative outcomes

- Unanswered questions
- Unanswered expectations
- Disappointment

"I wonder whether it was really sincere, just show or an attempt to reduce sentence?"

"I had expected more. I wanted to save her. She was crying. That inhibited me to ask more. I thought she would tell more, spontaneously, but that didn't happen."



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Good practices in Europe: examples from Belgium, The Netherlands, Hungary and Ireland.

- Variety of RJ-practices in Europe
 - Relation to criminal justice system
 - Type of crime
 - Outcome
 - Methodology
- Few specific examples on RTO
- 4 examples, focus on the particularities



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Vb. in of complementary
All offences or specific offences
Diversionary or not
Methodology : most widespread is VOM

Practices complementary to the judicial procedure: Belgium and The Netherlands

- Victim-offender mediation (direct/indirect)
- Pre- and post-sentence
- Mostly in severe road crashes (not always offences)
- Focus on the emotional consequences of the crash
- Carried out by independent NGO's
- Specific flyers, section on website
- Free access for victims and offenders



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Procedure continues

Belgium

- Both parties are informed at the same time: mostly through personalized information letters from the prosecutor's office
- Information is repeated at different stages of legal procedure
- Since 2009 : pilot in severe RTO's :
 - Fatal crashes
 - Crashes with severe injured persons
 - Often combined with aggravating circumstances like hit-and-run or alcohol/drug abuse
- Agreements between local mediation services and prosecutors
 - Nature of the case
 - Timing of the information letter
- Communication to judicial authorities by mediation-agreement



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Neutral offer

Whole country, but more elaborated in Flemish part

Mediation agreement : settlement of damage or reflection on the mediation process

Belgium

Data

- 12% of all cases are RTO's
- 98% of all RTO-cases started in pre-trial phase.
- In 80% of all RTO-cases, people were informed by the prosecutors letter
- 37% of the parties react.
- Most mediation are indirect (64%)
- 75,5 % of all mediation processes were completed entirely.



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F2f : is more than in all types of offences : 20%
Compared to all types of offences : 61,7%

The Netherlands

- Strong focus on the victim's side
- Strong and structural cooperation with Victim Support
- Start always from one side (victim or offender)
- Mediation-agreement is possible, but not common



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Founded in 1990 as a sister organisation of Victim Support: training programmes for (juvenile) offenders. Since 2006 : VOM

Vb. Implementation policy in victim support : training of victim support workers and volunteers to talk about the other party.

The Netherlands

Data

- 7% of all cases are RTO's , 14% of all cases (when only adult offenders included)
- 16% of all cases are referred by Victim Support!
- 41% of all RTO are referred by Victim Support
- 10% of all victims/offenders in RTO reaches PH without intervention of a professional
- 56% of all applications in RTO lead to mediation



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14% when only included adult offenders (like in Belgium)

Diversionsary practices: Hungary and Ireland

- Aim to influence the judicial procedure
- Only pre-trial or trial phase
- Offender-initiated
- No free access for victims/offenders
- Focus more on repairing the harm: compensation
- Always communication to judicial authorities
- Follow-up of the agreement/contract



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Discretion of prosecutor or judge
Procedure is suspended temporarily

Hungary

- Restricted legal framework, but RTO are preferable offences to be referred.
- Mostly traffic crashes with bodily injury caused by a motorized vehicle
- Fatal crashes are (still) excluded
- Referrals mainly by prosecutors
- Embedded in probation service
- Nationwide
- VOM (always and immediately face-to-face encounter)
- Parties can apply (through lawyers), but prosecutor or judge has to approve
- Strong cooperation with lawyers/insurance companies



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In

Hungary

Data

- 98% of the cases are pre-trial
- 38,6% are traffic cases
- 80% of all cases: agreement
- 90% of the agreements fulfilled



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38,6% traffic cases : only adult offenders. 6% for juvenile offenders.
% increased: due to activity of lawyers requesting for mediation.

Ireland

- No specific legal framework
- Typical offences: driving without insurance, tax or licences, dangerous driving, drunk driving,....
- NGO (subsidized through Probation Service)
- Not nationwide available
- Referrals by courts
- Panel Reparation program: Road Safety Panels
- Combination with VOM is possible
- Focus: preventing future offending and restoring harm
- Community always present as victim
- Cooperation with Victims Crime Helpline



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- Small and recent innovative practice!

Ireland

Data

- 2016: 71 offenders referred to RSP (30% of all referrals)



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Opportunities and challenges for RJ-services in RTO's

Opportunities:

- Often unintentional offences: more mutual understanding
- More willingness to face-to-face encounter
- Involvement of community
- Involvement of volunteers (to give voice to victims)



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- RJ can make the differences for parties
- F2F: always more authentic, intense, real,
- Community : most RJ practices focus on victim/offender, forget about the community
- Volunteers: most RJ practices: only possible when a match : other possibilities

Opportunities and challenges for RJ-services

Challenges:

- RTO and Road Crashes are often forgotten
- Direct access for victims of RTO
- Legal framework
- Find supporters!
 - Sensitize policymakers!



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Similar like victims of RTO are also often forgotten

Direct access: is in many practices not possible:

Legal framework : Can make it possible/impossible to include RJ for RTO: vb. crash without offence

Supporters: refer to multidisciplinary conferences in 2006 Belgium : good breeding ground, raising awareness among policymakers

Opportunities and challenges for RJ-services

Challenges:

- Inform broadly through cooperation with other stakeholders
 - Health-services
 - Insurance companies
 - Victim-volunteer associations
 - Road safety authorities
- Train and coach professionals and victim-associations to discuss RJ with victims



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ROPPONT
Aanpak van geweld en
overlast



Inform through cooperation with other stakeholders : not the classic ones : like victim support, lawyers, prosecutors,...

It's not easy done!

See the example of The Netherlands