1-1-2005

Victim offender mediation and restorative justice in Europe – a short overview

Thomas Trenczek

Recommended Citation
Available at: http://epublications.bond.edu.au/adr/vol7/iss6/5
Victim offender mediation (VOM) is a process which is offered to the parties of a dispute arising from the commission of a crime so that they can talk about and deal with the offending behaviour. With the assistance of a neutral third party (the mediator) the parties identify the disputed issues, develop options, consider alternatives and endeavour to reach an agreement, which often involves restitution. The mediator has no advisory or determinative role in the dispute or the outcome of its resolution. VOM is not a completely new or unique process. It finds its roots in the way many indigenous cultures traditionally dealt with deviant, disruptive or victimising behaviour within their communities.

VOM is just one, and in the present European context the most important, model of restorative justice. Restorative justice is seen as a broad approach to crime oriented towards repairing as far as possible the harm which it causes. In ‘modern’, ‘western’ societies the criminal justice system defines crime in terms of violation of the laws of the state. Therefore, the state alone becomes responsible for determining punishment, and the accused is protected from the personal revenge or retribution which might be exacted upon them by a victim or victim supporters. The function of the criminal justice system is to protect rights, to determine guilt and to decide punishment. Therefore the focus is on due process and a fair trial. However, victims often feel that they are left out of, or even used by, the system rather than it attending to their needs. When victims are included in the procedure it is usually to act as witnesses in the contest between the accused and the state. In this role their story of victimisation is often questioned and consequently victims often report feeling re-victimised by the court process.

Restorative justice places the victim with the offender at the centre of the process. Instead of defining crime in terms of the breaking the law, it defines crime in terms of violation of one person by another. The point of interest is not the abstract violation of the peace under the law but rather on the problems of the persons directly involved: victim and offender. This is a revival of the understanding of crime as a cause, expression and consequence of a conflict, of difficulties and problems of and between victim and offender. Instead of understanding justice simply in terms of guilt and punishment, the restorative justice framework attempts to understand justice in terms of responsibility and reparation. From this perspective justice is achieved through offenders accepting responsibility for their actions and taking steps to make amends. The goal is that the victim, the offender and therefore also the community are restored to well-being.

The active participation by the victim, the offender and possibly other parties concerned forms a core element of restorative justice. Restorative processes are characterised by a meeting of victim and offender. Discussion exists on which other parties should be involved, and in particular whether criminal justice officials – as representatives of the community or the state – should play a direct role in restorative justice processes. The discussion is most relevant for the more community-oriented models of restorative justice, such as community conferencing or family group conferencing. The conferencing approach strengthens aspects of restorative justice, following evolutions in New Zealand, Australia,
From a qualitative point of view, however, many small-scale experiments and programs provided conclusive evidence that this way of responding to crime contained strong innovative potential.