

Mediation and restorative justice sanctions in Norway

1. Introduction:

Bio

2. The heading/title of my presentation:

Comment upon “mediation”- restorative justice. There is no discrepancy between the two activities. Mediation is carried out according to the principles of RJ. I am aware that this was a big discussion in UK some years ago, that mediation was different from, and was not RJ. I do not know if this has changed during the last years.

And – it only says “mediation” – not “VOM”. This has to do with two things, I believe: The fact that mediation was introduced as a measure/tool for handling both criminal cases and civil cases – done by the same institution – and – it can also have to do with the Norwegian language – that it language-wise was not natural to choose the equivalent for VOM.

3. What is special about Norway?

What do you need to know, to get a picture of the role RJ has played in Norway? The question of why RJ came about the way it did, and why it has developed like it has, are questions that interest me, and I have reflected upon it during the years. If my reflections are true, or if I have any good answers to these questions, I do not know. Anyhow – I will share my thoughts with you today.

First of all – I want to say that Norway has been, and still is, in a lucky situation. Economically and politically. We are not invulnerable to what is going on outside our borders, but so far we have not been heavily affected by the difficult economic situation in Europe.

Compared to most other countries, Norway is, roughly said, a homogenous society, a society with a high number of equals, and with a well-developed and well-functioning democracy. Also, I would claim, that our society is based on a set of values that there is strong consensus about, only with smaller disagreements. I am aware that this is being contested nowadays with the strong global tendencies including migration and immigration of different sorts, and, of course, organized crime. In the future I think we will sense this even stronger. It will become more demanding to maintain the openness and transparency, and the high degree of basic trust that the Norwegian society is based on.

My point is that the kind of society that Norway is, has no doubt influenced how restorative justice has emerged and developed like it has done, even if it cannot be measured or proved.

4. Characteristics

So – what are the characteristics of RJ and Konfliktrådet - the “RJ organization” in Norway? *Husk Finland!*

- a. The starting point was *a critique of the growing numbers of experts, of professionals in society in general, and in the justice sector in particular* – presented by prof. Nils Christie.

This, I think, was the direct reason for *starting off mediation - 100 % done by laymen. To strengthen the local communities' ability to handle petty crime themselves, and to “give the conflicts back to the people”, without weakening the legal safeguards* – as it was said in the law proposal on/for the Act on Mediation in 1991.

- b. *This special Act on Mediation* – made it mandatory for the municipalities to establish separate, autonomous, Mediation Services. (The law is by now outdated, and is under revision.) Later, in 2004, the Mediation Services became governmental institutions, due to weaknesses in the

former model for organization.

c. Organization and funding

- i. 100 % governmental organization
- ii. 100 % *secure funding on the national budget*

It is today (since 2004) a governmental institution/service, and a fully state funded service – with small administrations – but the chore work, the services itself (mediation and conferencing), are carried out by lay persons, by well suited citizens that have been trained for the task.

- iii. A National, Central Administration that guarantees quality assurance, and equal RJ services to all citizens.

This gives us:

- 1. Arenas for sharing experiences on a regular basis, and for ongoing supervision of the mediators - giving opportunities for correcting and adjusting the working methods and approaches (=quality assurance).

- d. Konfliktrådet – the Mediation Service – **can handle both criminal cases and civil cases**. This, according to my knowledge, is unusual.
- e. **RJ is offered as an alternative** to other (penal) reactions. If the case is successfully solved (agreement is made and fulfilled), automatically the case is closed, *and it will not be noted on the criminal record*.

5. A lucky timing

There was a lucky timing: Nils Christie's appearance on the scene in 1976 coincided with a political urge to reform the criminal justice system, represented by a foresighted – for the time radical - female minister of justice – Inger Louise Valle. Also the civil servants in the Ministry, in cooperation with the political level, did the ground work for the Government's report on Criminal Policy to the Parliament – the Storting – in 1978 – and launched the idea – with many others, of course, to try out victim-offender mediation as an alternative

to a penal reaction for juveniles.

After ten years of unsystematic experimentation (1981 – 1991), the Act on Mediation was passed, and came into force in 1992. The Act made RJ accessible to all citizens, not only to juveniles.

Since 1994 all citizens in Norway have access to RJ services, if they so wish. Today there are 22 Mediation Services spread all over Norway, with small administrations (from 1 till 10 persons), a Central Administration liable to the Ministry of Justice, and, first and foremost, 650 lay mediators.

6. Experiences, developments and the present status of RJ (and the Mediation Services in Norway)

Today the Mediation Services, have become part of the “justice family”, even if it is meant to be an alternative. Most of the cases are referred by the prosecutors. Mediation or a (Family Group) Conference is often the only reaction, and thus replaces a traditional penal reaction. Between 8 and 9000 cases are referred to the Mediation Services annually. We believe that there are a potential for more cases, even if the reported number of criminal cases has dropped the later years.

As in many other countries, we have seen a change from the minor cases – shoplifting, damage to property - to more severe crimes like violence of many sorts, including also a RJ approach in cases with violence in close relationships.

Today RJ is also applied in combination with, or as part of, a traditional penal reaction. (As a condition with a suspended sentence, as part of a community sentence.) And – RJ is slowly moving into the prisons. Here we have some work to do, to clarify the roles of the prison service and the mediation service, to find the best way of cooperation.

The application of RJ in combination with or as part of a traditional penal reaction with severe crime has not been self-evident. I think this can have something to do with mediation being introduced as an alternative to a penal reaction. The DGPP restricted the use of this alternative to minor crime or misdemeanors, which made it difficult to see that it could also very well be applied in combination with a traditional punishment in severe cases. In other countries where RJ as a pure alternative was not an option, this has developed differently (Austria).

Change in methods: Conferencing, and to a small degree, circles, have been added to the RJ toolkit.

Why a separate, autonomous organization?

- It was meant to be an alternative!

I think labeling theory was at play here.

- Fresh thinking - being able to keep up the good alternative/RJ spirit, and not be overruled by traditional, rigid, conservative dogmas in the criminal justice system – such considerations were part of the picture when the Mediation Services were born.

7. New Restorative Justice based developments within Juvenile Justice

It has not been an easy task to establish RJ in Norway. Still it takes persistent, hard work to inform, explain and remind the judiciary about the RJ approach and how, or in what contexts, it can be suitable.

Still, Norway has been blessed with a unanimous political will to implement RJ, and most of all, we have had more Ministers of Justice that have been dedicated in their efforts to strengthen and extend the application of RJ.

I will now inform you about the latest RJ-based developments in

Norway, pertaining to juveniles. The precursor for this development is based on an initiative from a local Mediation Service, and also inspired by international developments. A local project was established, evaluated positively, and today this initiative has developed into a new alternative to imprisonment for juveniles.

There is, again, a political consensus about keeping juveniles – children – out of prison. This is as it should be, in accordance with the CRC (Convention on the Rights of the Child), that prison should only be a measure of last resort and alternative sanctions should be used to the extent possible. The number of children in prison is low – 10 – 15 at any given point, and mostly for a short period of time. To reduce the number of imprisoned children even more, a new alternative to imprisonment of children has been introduced, a so-called ‘Juvenile Sanction’, approved by Parliament in December 2011.

This sanction is based on Restorative Justice Principles and makes use of Conferencing as the RJ tool, combined with a strict follow-up plan. The offender’s consent is a requirement.

The offender’s private network; as well as different institutions and public bodies such as school, the child welfare services, health care services, etc. will be involved and the follow-up plan will be individually tailored for each offender; according to his or her special needs.

The victim may also be involved in the Conference, if he or she so wishes. The ambition is to increase the offender’s apprehension of the effects of the crime committed, and, for the victim, to experience some kind of closure; as a restorative element.

As a part of the follow-up plan, the offender will be obliged to work actively to abstain from committing crime; as well as from using alcohol and drugs. Thus, the sanction is, to a large extent, much more demanding for the offender than a prison sentence.

Well-functioning multi-agency cooperation is a critical pre-condition for a successful accomplishment in this regard. This cooperation will be guided by a so-called 'Juvenile Coordinator'.

Here we come to a contested matter. Which institution should be responsible for the execution of this alternative sentence? You might think, maybe most of the people present in this room will think, that it naturally belongs to the probation service, or the correctional services.

Our politicians wanted it differently: For them, it was important that the reaction should be based on RJ principles. The Mediation Services are, so far, the main carrier of these principles. Let me say that I do hope that this will not be the situation in the future. Not that the Mediation Services should stop doing RJ. What I have in mind, is that I would like to see the RJ principles become the preferred guiding principles for the CJS's way of handling and reacting to crime, and traditional punishment and imprisonment being the last resort.

But back to the present situation: It will be the Mediation Services that will be responsible for the execution of the mentioned reaction, when it will come into force, hopefully next year. Some more resources are needed, to prepare the organization for this new task.

We have already quite some experience in applying and executing this kind of reaction – with less serious crime. The same method, with a RJ conference and a follow-up plan based on multi-agency cooperation has been implemented with 13 (of 22) Mediation Services during the last 3,5 years.

So – what is new about this reaction? It is the combination of the RJ principles and practices and the planned, persistent cooperation

between sectors, the public and private network. Our clear experience is that the RJ approach – a conference, or it could be a circle – gives a unique basis for an open-minded binding, cross- sectorial cooperation for the best of the child. This insight is important. Our clear experience is that if we do not stick to the RJ principles, the level of success is not the same, also cooperation-wise. In addition a personal engagement in the juvenile, a reliable relationship, is of utmost importance for succeeding. In practice this means that each *juvenile coordinator* must not have more than 15 youngsters to follow up at the same time. This number is possible to handle in a good way, and makes it possible to keep a personal relationship with the young ones, and not slip into a distanced, impersonal, assembly-line way of working with them.

8. Conclusion

I will claim that even if RJ still have a long way to go to take a bigger seat in the CJS, we have experienced during some decades that it has become quite accepted, that it has become something that is being reckoned with. I could have said that this is the result of dedicated, zealous work from the RJ practitioners, policy makers and also researchers - and that's it. I do not say that they have not played a role, but my personal opinion is that the RJ approach, for the good and the bad, resonates well with the contemporary societal, global developments. RJ has almost become “good Latin”, if you understand me well. It fits into a world where authority is based more upon sensibility, argumentation, negotiation, dialogue – than social position or authoritarian power. The negative side of it could be that we go too far in individualizing the responsibility for crime at large, not only restricting the individual's responsibility to the concrete actions or offences, and forgetting about the structural aspects. Maybe this happens because it is convenient, a more easy way out, and clings well with the philosophy of New Public Management that still dominates the public sector.

That said, I close with a future wish for a balanced RJ approach in the justice sector.

Thank you.