



# The Interrelation of Victim Offender Mediation and Criminal Justice in Finland

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## Introduction

Restorative justice practices such as victim- offender mediation have been widely researched in the Nordic countries during the last decade. The implementation of victim- offender mediation is in constant dialog with the everyday execution of criminal policy, as it may pave the way out from the criminal procedures; in Finland, it is possible for victim- offender mediation to have a mitigating effect on the judicial decisions. However, information on what judicial outcomes individual cases receive after they are mediated is scarce. How does victim- offender mediation affect the criminal procedures in practice? In what ways is it taken into consideration by criminal justice officials? My thesis strives to offer answers and propose more questions regarding the interrelation of restorative and criminal justice. This essay presents an early look into my thesis plans, and foremost a general overview of this interrelation. I begin with presenting the theoretical field of restorative justice. I then discuss the placement of victim- offender mediation alongside the criminal procedures. Following this, I present some theoretical and practical implications of this placement, as well as the baseline of my thesis. Finally, I reflect on what my thesis can offer to expand our knowledge on this topic.

## 1. Restorative justice and victim- offender mediation

Practices that form an alternative to the criminal justice system such as *restorative justice* reconstruct the concept of crime as harm, focusing on pathways to amending it (Zehr 2015). Criticizing the criminal justice system as overly retributive, impersonal and unable to deliver on victims' needs, restorative justice practices have aimed to address the harm caused and the needs of those who have been hurt. The movement of restorative justice is wide. As it has originated in questioning socially constructed concepts of punishment and control, it is likewise prone to critically address the definition of itself. During recent years, topics that have been discussed include reworking the narrative surrounding the history and origin myths of restorative justice, as



well as addressing challenges and opportunities of its broad and interdisciplinary nature (Tauri 2014; Daly 2016; Gade 2018; Walgrave et al 2021). While restorative justice is applied varyingly, most interpretations tend to share three aims according to James Dignan. The first aim is to amend the harm done by the crime. The second aim is to allow the victim to seek reparations and the perpetrator to take responsibility for the crime, while the third aim requires this process to be voluntary. Both the victim, the offender and the community are seen as stakeholders in the restorative process (Dignan 2005, pp. 1-8; Ervasti & Nylund 2014, pp. 490).

In the Nordic countries, critics of criminal justice have strongly advocated for the rights of victims and offenders to »own« their conflicts and respond to them as self-serving agents (Christie 1977). The thinkers mostly attributed to the theoretical backbone of restorative practices here include the Norwegian criminologists Nils Christies and Thomas Mathiesen, as well as the Dutch sociologist Louk Hulsman. Based on their abolitionist views, Victim- Offender Mediation (VOM) has emerged as a growth-oriented form of addressing harm. As a restorative practice, VOM aims to provide a space for the victim to be heard and the offender to take responsibility by allowing them do encounter the harm with a neutral mediator. In Finland, VOM was initiated as a local experiment in 1983 during a rise of a criminal policy more conscious of alternative pathways to crime. VOM has developed with influences from community values and restorative values (Grönfors 1992). From a pilot project in the city of Vantaa, VOM has since its implementation grown to be a nation-wide provided service established through both law and official guidelines. Governed by the ministry of health and welfare, Finland currently has 18 VOM centers, with roughly 13 000 yearly cases sent to VOM during 2019-2020 (Elonheimo & Kuoppala 2021).

## **2. The interrelation of victim- offender mediation and the criminal procedures**

The relation of VOM and the crime process varies in Nordic countries. In Norway, VOM serves as an alternative to the waiving of prosecution, fines, and suspended sentences. A criminal case that reaches a mediation agreement can only be reinstated to criminal proceedings if the agreement is breached. In Denmark and Sweden, VOM may be initiated, but does not serve as an alternative to the criminal procedures (Lappi-Seppälä & Storgaard 2015). In Finland, VOM is not complementary to the criminal procedures; a successful mediation may have a mitigating influence on the decision-making of police, prosecutors and judges. The decision-making of criminal justice officials regarding mediated cases rest on the legislation covering VOM and the criminal procedures. The legislation includes the Act on Mediation in Criminal and Certain Civil Cases, the pre-Investigation Act, Criminal Procedure Act and

the Criminal Code. In addition, all officials also use their own discretion to interpret the application of VOM on a case-by case basis.

In what ways can VOM influence the judicial decision-making? To understand the role of VOM within the judicial process in Finland, it is necessary to outline the occurrence of VOM during criminal procedures. This is illustrated with the process chart below.

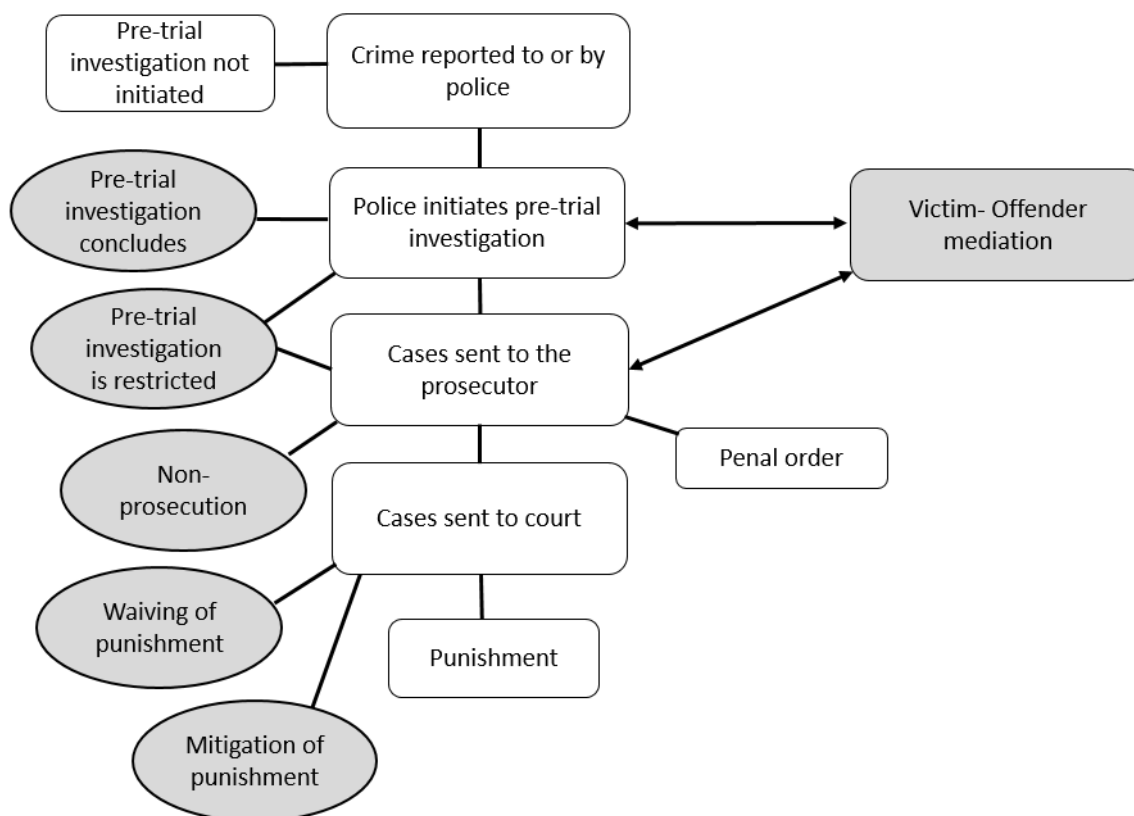


Figure 1: The crime process and victim- offender mediation

Criminal cases can be sent to VOM by the parties involved or affected by crime themselves, authority officials such as prosecutors and the police, as well as social workers. Of all yearly cases sent to VOM, at least 80 % is sent by the police, while 10 % is sent by the prosecutors (Elonheimo & Kuoppala 2021). VOM can be suggested at any time of the process, and can be initiated despite completed criminal procedures. Once sent to VOM, the outcome of the encounter can have an effect on the decision-making of criminal justice officials. This mainly depends on if prosecution rests on the complainant or is subject to public prosecution. Based on the Criminal Procedure Act, *complainant* cases can only be prosecuted if the injured party requests a demand for punishment. If the mediation is successful and the injured party withdraws this demand, the criminal procedures are discontinued. This means that the pre-trial investigation by the police is concluded, and the prosecutor



loses their right to prosecute the case. In *non-complainant* offenses, the right to prosecute rests on the prosecutors. Under specific grounds stated in the Criminal Procedure Act, the prosecutor can decide to conclude the pre-trial investigation at the proposal of the police. This is referred to as a restriction of the pre-trial investigation. The grounds cover a variety of aspects, such as insignificance and young age, but also mediation; if the trial and punishment is deemed unreasonable considering a mediation agreement has been reached, or other actions have been taken by the suspect to amend the consequences of their crime, pre-trial investigation can be justified on *grounds of reasonability*. This ground can be applied unless it is of public or private interest to proceed with prosecution. The decision of non-prosecution can also be based on these grounds. In court, the punishment can be waived or mitigated under certain conditions. Based on the Criminal Code, a mediation agreement or other action taken to address the consequences of the crime can serve as a ground for mitigating the punishment and mitigating the sentence range. Penal measures can be waived in court on grounds of reasonability as well (Lappi-Seppälä & Storgaard 2015).

### 3. Theoretical and practical implications

The implications of this mitigating effect are topical for the development of criminal policies and restorative justice. Firstly, the sooner the case is sent to VOM, the more all-encompassing its role can be in redefining both the crime and its consequences. In cases where the case is diverted following a successful mediation, VOM may fulfill its role as an alternative path for restoration for those who desire it. In practice however, some cases can proceed through the criminal procedures despite reaching a mediation agreement. One long-discussed topic is whether it would signify an extension of the criminal justice system's social control, or *net-widening*, and in what ways that could be harmful or beneficial (Iivari 1992, pp. 145).

Another topic regarding the mitigating effect is the value given to resources. A recurring argument from a policy perspective is that mediation saves both time and financial resources otherwise used for the criminal procedures. This argument is used in Finland's latest government programme, for example (Osallistava ja osaava Suomi 2019). While encouraging the use of VOM serves both the criminal justice and restorative justice systems, there is a critical assessment to be had if the encouragement is mostly based on economic gains. If cases are sent to VOM and diverted from the criminal justice system to balance their resources, it may risk lessening the quality given to investigating these cases.

Thirdly, the mitigating effect appears to be most utilized in cases where the complainant withdraws their demands for punishment following a written mediation agreement (Kinnunen 2019). A written agreement thus seems to



have greater value as a concrete ground for diverting the case from the crime process. The written agreement is not necessarily the end in itself for a restorative process though, as a »successful mediation« can consist of a meaningful encounter despite inability to reach an agreement (Ervasti & Nylund 2014, pp. 502). While it is likely that the complainant rarely withdraws their demands for punishment unless an agreement is reached, it does raise questions on whether the emphasis on written agreements lessens the value of the encounter itself.

All concerns discussed above have something in common; the judicial decision-making regarding cases sent to VOM. The daily decision-making by criminal justice officials is at the heart of shaping criminal policy in action (Frände 2013). Likewise, the decisions made regarding VOM directly reflects the role that VOM and restorative justice are given in practice, as the decisions made can both enhance and limit the agency of the service (Rasmussen 2020a). To understand the role of VOM as an alternative to the criminal justice system, it is thus necessary to understand the system that shapes the pathway of this alternative. In other words, a closer look into the decision-making that affects VOM is where I start my thesis.

#### 4. My PhD – Preliminary plans

The primary aim of my research is to produce a statistical overview of the criminal cases sent to VOM and their outcome within the crime process. As such, I am interested in outlining and discussing a selected dataset covering the process and outcome of VOM cases. This concerns presenting the distribution, frequency and trends of VOM cases processed by the police, prosecutor and judge, as well as outlining associations and predictions in relation to the criminal case and their mediation outcome. I thus aim to enable a broad descriptive overview of the case procedures and outcomes of VOM within the crime process. The data will also allow for observation of outcome patterns and association between variables. To cover the scope and process of VOM cases within the criminal justice system, I plan to gather data on VOM cases from the police, VOM officials, prosecutors and the court. The initial plan is to follow a set of cases sent to VOM during the year of 2019. The specifics of what types of crimes to focus on, and whether to limit the sample to specific municipalities is still under review. Ideally, a data set spanning over more than just one year would be more befitting for observing larger trends in the interrelation of VOM and the criminal process. While I occasionally sigh with relief over the expansion of documentation on VOM compared to previous decades, my thesis plan is not without its challenges on this matter.

While the ministry of health and welfare has produced comprehensive statistical overviews on cases sent to VOM since 2006, their reports do not cover their outcome in the crime process. There are no statistics produced



separately on this matter. This means that producing such a data set means collecting and piecing together various data sets from the representatives in the crime process mentioned above, with various definitions for our variables of interest. As such, the data will aim to cover one year.

Due to the aforementioned challenge, the previous statistical research coverage on this area is also scarce, as early studies report on challenges in collecting statistical data due to a lack of a standardized documentation on the entire crime process. However, smaller samples covering a specific set of municipalities report on an increase in cases sent to VOM resulting in non-prosecution over during 1990 and 1997, as well as findings of cases diverted by the police (Järvinen 1993; Mielityinen 1999; Maksniemi 2006). Previous research suggests that while cases sent to VOM are diverted during pre-trial investigation and prosecution, the mitigating effect seems to be less prominent when it comes to the courts waiving of punishments. Additionally, research on legal and non-legal contributors to variation in sentencing suggests that there may be regional differencing stemming from local sentencing cultures (Kääriäinen 2019). Although this topic requires further research, it may apply to variation in the police and prosecutor decision-making as well. Regarding variation in decision-making, previous studies including interviews and surveys with police and prosecutors have found differing opinions on when and on what grounds VOM cases should be mediated and diverted. While studies indicate that criminal justice official's decision-making is more agreeable regarding minor offenses and youth crime cases, their views on the suitability of more serious offences and cases of intimate partner violence vary (Mielityinen 1999; Iivari 2010; Lähisuhdeväkivallan sovittelun selvitysryhmä 2019).

All methodological, practical and theoretical challenges discussed in this essay need to be accounted for in order to provide new knowledge on this topic. While challenging, this topic has a lot to give to our field both nationally and internationally, as international comparative studies have a rich history in both Finland and the Nordic countries. Understanding the system behind the interrelation of VOM and the criminal justice system is also vital for future Nordic criminology, as currently the cases sent to VOM have been in decline in both Sweden, Denmark and Norway even prior to the pandemic (Jacobsson et al. 2018; Rasmussen 2020b; Konfliktrådet 2020). To understand the place of VOM within the criminal justice system, a statistical outline of this system in its entirety is thus crucial. Viewing the aforementioned theoretical and practical implications through a larger set of cases can help confirm and develop our current understanding of the mitigating effect VOM can have on the crime process. Finally, understanding what this system looks like in Finland may also provide motivation for more ambiguous international statistical overviews in the future.

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