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Juveniles At The Cross-Roads Reoffending-Desistance: Role Of Mediation – Example From Poland

Research on juveniles reoffending, especially in respect to restorative justice practices, are being led in certain countries regularly, in other not. Although the last is rather truth for Poland, longitudinal research on careers of former juveniles participating in mediation has been completed in 2013. Firstly, their reoffending has been checked in 1- 2,5 years period after mediation – then the percentage of reoffending was not high (14,4%), even if compared with research in other countries. Ten years after mediation, about one third (36, 2%) of former juveniles has been punished. Most of this part (40%) has committed single and less serious offense (there was more offenses against property). Only in 10% of the examined group criminality was intensified (however in their case there were risk factors – lack of profession or of work). Drop in number of sentenced persons after 24 year of age confirms the phenomenon of aging-out. Foreign research, even if some were evaluated as fragmentary or methodologically imperfect, are convincing, that taking part in mediation influences desistance, and even if not, less offenses are being committed and of less serious character. Results of Polish research, with two-third of those who succeed to desist offending and with high percentage of less serious offenses may support this thesis, however should be confirmed with more complex evaluation.

Research on juveniles reoffending- problems

„In criminology measuring recidivism is an established method for examining the effects of penal interventions.(...) The WODC – Research and Documentation Centre of the MJ in the Netherlands has made an inventory of the studies that are carried out in Europe. It appears that at least 14 countries have recently carried out a study on a national scale”¹. Questionnaire was sent to 44 countries, answers were sent back from 33.

Results of research on juveniles reoffending led in different countries are difficult to compare, firstly because of: definition of recidivism. Most often it refers to reconviction, in some countries however to re-incarceration. Eleven out of 14 countries use records of court appearance - „reconviction”, but in some of them – as in the Netherlands – half of the penal cases are dropped by the Prosecutors office and never reach court and they are not included to the statistics of recidivism, in Germany – such cases are included.

¹B.S.J. Wartna, L.T.J. Nijssen: *National Studies on recidivism. An inventory of large-scale recidivism research in 33 European countries*, February, 2006, WODC-studies on recidivism, fact sheet 2006-1.

Another problem is different observation period. Just few countries monitor recidivism rates over time, as for example in the UK, Switzerland, the Netherlands on yearly basis.

There is lack of self-report studies that would be really needed to explain the scope of reoffending.

Therefore, there are researchers who are at the cross-roads „reoffending studies – desistance studies” - or even against the wall, confronting commonly met statements like „There is a need for further research”, whilst there are problems with constructing complex, randomized and comparable research (money, time, human resources). Evaluation of different programs for juveniles is required, but for what: to prove success, to check cost-effectiveness, to get some knowledge. However, are those who order such evaluative research really interested in scientific clarification?

„To research or to act – that is the question” of individual choice, but it is possible to combine both in the action-oriented research. Value of such efforts is not to be overestimated.

Preliminary results of the survey on juveniles reoffending made in the Institute of Justice by the Polish Ministry of Justice 2012-13

This survey concerned all type of studies – not only led at the state’s level, so one could expect more data. However, number of countries from which answers has been obtained, is low. Therefore many thanks should be expressed towards those who have already completed quite detailed questionnaire. We have got contributions from Czech Republic, Catalonia, Germany, Switzerland, and Belgium. The difficulties in comparing data has appeared as in the research mentioned above, as well as reported often lack of available sufficient information

General reconviction rate varies across the countries – from 53,4% in Northern Ireland, in Germany 41%, in the Netherlands – about 38%, in Great Britain 35,8% , in Switzerland 35%, to 22,4% in Catalonia.

Reconvictions after custodial measures are at quite similar level - Germany 69% (of juveniles released from juvenile prison; 37% was imprisoned, 63% of juveniles after short time detention were reconvicted again), in Northern Ireland it was reported 68,3%, in Catalonia 62,8%.

This is however different with reconviction of those involved in restorative programs - Catalonia 26,4%, Northern Ireland 35,4% (22 after serious harm), Germany 27 (all diverted cases, not only to mediation).

In Poland only partial data on reconvictions are available. As far as it concerns juveniles after custodial measures, another research led in the Institute of Justice study in respect to juveniles released from correctional institutions (by Katarzyna Drapała and Roman Kulma). They show, that 44% of those juveniles were reconvicted in 2 years, in 3 years – 63%; re-incarceration rate was 26%; and suspended sentence - 56%.

There were two research projects in Poland in respect to reconviction rate after taking part in victim - offender mediation program, showing 14,4% of reconviction in 1 – 2,5 year period and 36,2 % in ten years time after mediation. This would be discussed in details later on.

Restorative justice and preventing reoffending

Linking both mentioned above seems to be natural and expected. Searching the question „Is Restorative Justice Effective in Reducing Crime” gives 51 900 results; when we ask „Does Restorative Justice Reduce Crime” we get even 82 500 results. On the other hand, some authors complain, that there is global lack of literature on the effectiveness of restorative justice in a crime preventive perspective².

In the final report of the European project „Restorative Justice and Crime Prevention” presenting a theoretical exploration, an empirical analysis and the policy perspective, is stated, that a primary focus of crime prevention (by its very nature) and restorative justice (in its restorative outcomes) is on ‘governing the future’ by directing, steering and influencing prospective behavior rather than merely accounting for and holding individuals responsible for past conduct. Yet whilst crime prevention has an exclusive future-orientation, restorative justice seeks to marry the past (and hold individuals responsible for past actions) with the future goals and aspirations of reparation and reintegration³. In this report lots of detailed information can be found in respect to countries as well as international organizations documents.

One side of the coin there is many research on impact of restorative justice on reoffending, that were presented in the report mentioned above, and in other publications. Lawrence W. Sherman and Heather Strang⁴ have analyzed much research of different kinds, also of randomized experiments, with the key finding that restorative justice may work better with more serious crimes than with less serious crimes, contrary to the conventional wisdom. Kathleen J. Bergseth and Jeffrey A. Bouffard in their meta-analysis have examined whether a restorative justice program for juvenile offenders had differential impacts on recidivism across various offender characteristics. Results generally support the effectiveness of the program for many types of offenders⁵.

Other side of the coin is that many of research have been found methodologically imperfect, as for instance by authors of the research carried out in Northern Ireland. They has pointed out, that despite the increasing use of restorative justice programs as an alternative to court proceedings, no systematic review has been undertaken of the available evidence on the effectiveness of these programs with young offenders. Results failed to find effect for restorative justice conferencing over normal court procedures. They think that there is currently lack of high quality evidence regarding the effectiveness of restorative justice

² *Restorative Justice and Crime Prevention. Presenting a theoretical exploration, an empirical analysis and the policy perspective*, April 2010, http://euforumj.org/assets/upload/Restorative_Justice_and_Crime_Prevention_Final_report.pdf , p.42; accessed at October 24, 2013

³ Ibidem, p. 3.

⁴ L. Herman, H. Strang: *Restorative justice. The evidence*, The Smith Institute 2007, p. 16 – 18 and 68-71

⁵ K. J. Bergseth , A. Bouffard: *Examining the Effectiveness of a Restorative Justice Program for Various Types of Juvenile Offenders* , International Journal of the Offender Therapy and Comparative Criminology XX(X) 1–22 , 2012.

conferences. The effects may be potentially being more evident for victims than offenders. They also point out the need for further research in this area⁶.

Most recently, at the end of June 2013, International Expert Consultation on Restorative Justice for Children in Bali highlighted the need to use diversion and alternative measures as key strategies to prevent and protect children from all forms of violence in the justice system. Experts focused on positive developments, promising practices, as well as shortcomings and challenges in the use of restorative justice processes for children⁷.

Research project – evaluation of the experimental program of VOM in juveniles' offenders cases (1996-1999)

The evaluative research was planned as a part of this experimental program. Financial sources for the research were granted by the National Committee for Scientific Research. Evaluation was carried out in the Institute of Law Studies of the Polish Academy of Sciences. It was aimed at providing information for the juvenile law reform, verifying and improving the mediation program, developing guidelines for mediation also in adult's cases and estimating possible role of mediation within, or as an alternative to, the criminal justice system. In the research team except from researchers were mediators from the Polish Mediation Centre, students, and family court judges. It is worth to mention, that the whole team had completed mediation training. Several methods were used – detailed reports on each mediation case (course, changes of emotions etc.) prepared by mediators only for the research, interviews with victims and juveniles, analysis of court files, than checking in certain period reconviction of juveniles in the court register.

As it was action-oriented research, there were certain advantages, like direct influence on the course of experimental program and possibility to modify it, better understanding practical problems. There were also disadvantages, such as threat of being non- objective or lack of distance.

The research proved very good results of the experimental program: 83% of juveniles have accepted mediation proposal, 93% of them have reached the agreement and 95% of agreements have been fulfilled. It was important, that 90% of victims and 95% of juveniles have been satisfied with mediation and its results.

Then, reconviction rate in the period from 1 to 2,5 years was low - 14,4%, especially with comparison with results of other research, of. H. Kołakowska-Przełomiec and D. Wójcik, who proved, that 22,3% of juveniles, whose cases had been dropped in family court, were sentenced again.⁸

It was compared with some foreign research. L. Forsythe⁹ reported reoffending of

⁶N. Livingstone, G. Macdonald, N. Car: *Restorative justice conferencing for reducing recidivism in young offenders (aged 7 to 21)*, Cochrane Database of Systematic Reviews 2013, Issue 2. Art. No.: CD008898. DOI: 10.1002/14651858.CD008898.pub2, accessed October 24, 2013

⁷ The IJJO at the International Expert Consultation on Restorative Justice for Children, Friday 26th of July 2013, <http://www.oijj.org/en/news/ijjo-day-by-day/the-ijjo-at-the-international-expert-consultation-on-restorative-justice-for-ch>, accessed: October 24, 2013

⁸ H. Kołakowska-Przełomiec, D. Wójcik: *Selekcja nieletnich przestępców w sądach rodzinnych*, Warszawa 1990, s. 151

⁹ L. Forsythe: *An Analysis of Juvenile Apprehension Characteristics and Reapprehension Rates*; after E.G.M. Weiterkamp, *Research on Victim-Offender Mediation. Finding and Needs for the Future*, (in) *Victim-*

20% of juveniles whose cases have been submitted to mediation (much lower than others in comparison group – 48%), H. Schulz¹⁰ proved reoffending of 14% juvenile participants of mediation in 3 years vs., 33% of juveniles that have been fined. M. Ferrer reported reoffending of 26,1 % of juveniles involved in mediation programs in Catalonia in 2011¹¹, and according to F. Dünkel, 27% of diverted juveniles, not only to mediation, were reconvicted in 3 years period¹². T. Chapman shown, that in Northern Ireland reoffending after youth conferences (quite often used there) has reached 35,4% but was in cases of serious harm for nearly 14% less¹³. All the research mentioned above are hard to be compared.

Polish research results correspond however with foreign ones, who reported, that juveniles subject to mediation commit later less crimes and less serious (J. Unell, A. Leeming, T.F. Marshall, S. Merry)¹⁴.

The role of the evaluative research of experimental program of mediation in introducing VOM into the law and practice is not to be questioned. (already in 1997 in the new criminal codes and in 2000 in juvenile law). It was important, that Ministry of Justice representatives, some members of Parliament participated in the team meetings. Preliminary results of the research were presented during seminars, meetings of the parliamentary commissions. Some of team members took part in legislative work on regulation regarding mediation, using the research results as arguments. Involvement of local self-government in few towns helped to set up mediation centers, and involvement of judges helped to get more cases. Regular meetings of the research team created opportunity to maintain interest and feeling the common goal.

Careers of juveniles participating in mediation program- longitudinal research' 2012-2013

Research project „Criminal careers of juvenile offenders” have been carried out in the Department of Criminology of the Polish Academy of Sciences, directed by Professor Irena Rzeplińska. It was financed by the Ministry of Science and Higher Education.

Several questions have been asked. Have former juveniles whose cases had been submitted to mediation reoffended in adulthood? If so – were there offenses of the same kind?

Offender Mediation in Europe. Making Restorative Justice Work, The European Forum for Victim-Offender Mediation and Restorative Justice 9ED), Leuven 2000, p. 107

¹⁰ H. Schulz: *Die Rückfallhäufigkeit nach einem Ausergerichtlichen Tatsausgleich bei Erwachsenen* – after Ch. Pelikan, *Victim-Offender Mediation in Austria*, (in): *Victim-Offender Mediation in Europe...*, p. 148-149

¹¹ Recidivism in the Programme of mediation and reparation for minors (executory report), by M. Capdevila Capdevila, M. Ferrer Puig, Barcelona 2011, accessed on October 24, 2013

http://www20.gencat.cat/docs/Justicia/Home/%C3%80mbits/Formaci%C3%B3.%20recerca%20i%20do%20cum/Recerca/Cat%C3%A0leg%20d'investigacions/Per%20ordre%20cronol%C3%B2gic/2011/reincidencia_programa_mediacio/reincidencia_program_mediacio_inform_executiu_ang.pdf

¹² See F. Dünkel: *Germany*, p. 574 and F. Dünkel, I. Pruijn, J. Grzywa: *Sanctions systems and trends in the development of sentencing practices*, with further references, p. 1639, both in: F. Dünkel, J. Grzywa, P. Horsfield, I. Prin (eds.): *Juvenile Justice Systems in Europe*, Forum Verlag, Godesberg, MG 2010

¹³ T. Chapman: *Restorative justice in Northern Ireland: Conflict and accommodation*, unpublished presentation.

¹⁴ J. Unell, A. Leming: *An Evaluation of The Mediation and Reparation Schemes in Coventry and Wolverhampton*, Unpublished Report to Home Office, London 1988, after R. Rudrick, *A Court-Referrred Scheme*, (in): M. Wright, B. Gallaway (ed) *Mediation and Criminal Justice: Victims, Offenders and Community*, London 1989, p. 97.; T.F. Marshall, S. Merry: *Crime and Accountability*, London, HMSO 1990, p. 196-197

What was their criminal career? Could mediation influence desistance and prevent reoffending? Have criminal careers of former juveniles participating in mediation and those treated in „traditional way” differed?

In the National Criminal Register data on 160 (out of 174) juveniles, whose cases were submitted to mediation, have been found. 59 person have been sentenced again, so reconviction rate in ten years was 36,2% .It appears to be lower than reconviction rate of juveniles subject to other measures in few previous research in respect to juveniles subjected to other measures (average reconviction rate was over 43%)¹⁵. and also than reconviction rate of juveniles transferred exceptionally to adult court in ten years – 48,8%.¹⁶ This last is not surprising bearing in mind worse prognosis of those juveniles, especially with others, whom mediation was proposed. $\frac{3}{4}$ of those last were not maladjusted, their family situation was slightly better than average (looking at family structure and emotions and problems such as alcohol abuse), and only in case of 1/5 of juveniles whose cases were submitted to mediation the cumulation of unfavorable developmental factors which may be conducive to reoffending and disturbing rehabilitation has been found. Their punishable act was also usually not very serious (even if aggression was met more often than in all juveniles casus and some were serious – planned, brutal).

Out of 30 girls whose cases had been submitted to mediation, just 3 were convicted in adulthood. It is too small number to compare their reconviction rate of 10% with the result for girls subjected to other measures, that is 12,7% in ten years period¹⁷.

Former participants of mediation in the moment of research were young, in the age of highest criminal activity. In the moment of first conviction in adulthood they were mostly 18, 20 and 21 years of age. Just few were older than 25. Number of sentenced drop down after 24 birthday; the same situation was with second conviction – there were no one after 26. These results are consistent with the phenomenon of aging out.

Forty % of those who reoffended were sentenced just once (23 out of 59)

Those sentenced for more offenses were mostly of those in the age 25-29 and few just on the beginning of adulthood. It is not possible to predict how many offenses would be committed in future by those who are in the moment younger than 25.

Out of 59 persons who reoffend 17 (less than 29%) was sentenced twice, 12 – 3-5 times, and two even eleven times. Most sentences was for one or two offenses (22% and 34%), but over every fourth (26 %) concerned more than 5 offenses.

One fifth (21 %) of convictions was for offenses of the same kind. Every second was against property (among them 1/3 were more serious, with violence). Rate of acts against property in this group when they were under 17 was much higher - 64%). Offenses against life and health were committed by 16 perpetrators – about 27% (in the juvenile age there was more such offenses - 32%). Fourteen person were sentenced for drunken driving (5 of them

¹⁵ For example 43,8% in seven years in The research of Z. Ostrowska and D. Wójcik: *Młodzież nieprzystosowana społecznie (badania katamnestyczne)*, „Archiwum Kryminologii” 1960, t. I, s. 141 – 188 and 43,2% in five years - I. Rzeplińska: *Sylwetki społeczne nieletnich – późniejszych dorosłych sprawców przestępstw*, „Archiwum Kryminologii” 2009, t. XXIX-XXX, s.409 – after D. Woźniakowska-Fajst: *Nieletnie dziewczęta 10 lat później – badania katamnestyczne*, „Archiwum Kryminologii” t. XIII/2011, s.170

¹⁶ I. Rzeplińska: *Kariery kryminalne nieletnich skazanych w warunkach art. 10 par. 2 kk*, (w): A. Michalska-Warias, I. Nowikowski, J. Piórkowska-Flieger (ed): *Teoretyczne i praktyczne problemy współczesnego prawa karnego. Księga jubileuszowa dedykowana Profesorowi Tadeuszowi Bojarskiemu*, Lublin 2011, s. 749-753.

¹⁷ D. Woźniakowska-Fajst: op.cit.

was on bike).

Most often suspended sentence was given (73 times, 53 with probation officer supervision because of the young age), but in 43 cases this penalty executed (quite a lot!).

Deprivation of liberty was used 35 times, but in 14 cases for less than 1 year and in most cases it was up to 2 years.

Restriction of liberty was used 15 times, fine – 18 times, restitution – 10 times and ban on driving – 18 times.

Conclusions

Longitudinal research on former juveniles participating in mediation career has shown that ten years after mediation, about one third of former juveniles (36, 2%) has been punished. Most of sentenced person (40%) has committed single and less serious offense (there was more offenses against property). Only 10% of the population reoffended more intensively (however in their case there were risk factors – lack of profession or of work). Drop in number of sentenced persons after 24 year of age confirms the phenomenon of aging-out.

Foreign research, even if some were evaluated as fragmentary or methodologically imperfect, are convincing, that **taking part in mediation influences desistance**, and even if not, less offenses are being committed and of less serious character.

Polish research results with two-third of those taking part as juveniles in mediation who succeed to desist and high percentage of less serious offenses committed by those who did not manage to give up offending, appears to support this thesis, however it should be confirmed with ... (again) „more complex evaluation”.