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Implementing Conferencing in a Legalistic Country

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INTRODUCTION

In November 2000, an action research started on the implementation of Family Group Conferences in Flanders¹, Belgium. The idea is to set up conferencing, based on the New Zealand model and evaluate whether or not this model is applicable in Belgium, and if so for whom. In this paper we will describe the set up of the program, as well as different challenges that are encountered. We hope this will help other starting programs that might encounter similar problems, and offer them a possible solution to those problems². These practical problems are looked at from an academic point of view: action-research entails co-operation and communication between researchers and practitioners³ and in this paper, the academic reflections on the set-up of the project are presented.

1. THE NEW ZEALAND MODEL

The New Zealand model of conferencing is used in Belgium, which entails private time for the youngster and his family, the attendance of a police officer and an independent facilitator. The Wagga Wagga model on the other hand is used on the level of the police, whereby the police officer is the facilitator. This model was firstly used in Wagga Wagga (Australia) and later also in for instance the US (Real Justice) and the Netherlands. We will not look at the differences between those models in depth, but just want to point out that by opting for the New Zealand model, some peculiarities exist (cf. *infra*).

1.1. Implementation in Flanders: choices to make

1.1.1. Level of implementation

Since the legislation of 1989 in New Zealand, conferencing must be applied for all juvenile delinquents unless the police divert the cases. Police can send youngsters to conferences, and the judge has to send the youngster to a conference before making a judicial decision, unless the youngster denies the facts. When the youngster denies the facts, the regular court procedure is followed to find out whether or not the youngster did commit the offence. When the facts and the involvement of the youngster are proven, the youngster is then still sent to a conference⁴.

In Belgium on the other hand, the project is set up as an experiment and thus no legislation is at hand. Also, diversion at the level of the police is not possible, since the police do not have discretionary powers in a legalistic country. The question then arose whether to implement conferencing at the level of the youth court or the public prosecutor level. Since conferences include lots of people and a lot of efforts, we thought it would be better to reserve it for the more serious cases⁵. The youngster is required to take up his responsibility and is thereby supported by his network. Using the New Zealand model, the youngster and his supporters can have private time in which underlying causes of the crime can be addressed as well. In

¹ The Flemish (Dutch) speaking part of the country. The Ministry of Welfare of the Flemish Community funds this research. The project runs in five judicial districts: Antwerp, Brussels, Hasselt, Leuven and Tongeren. Five mediation services are involved: ADAM, BAL, BAS!, BAAL and vzw Elegast. The research is being carried out by Inge Vanfraechem, member of the Research Group on Juvenile Criminology, Catholic University of Leuven, Belgium, under supervision of Prof. Lode Walgrave.

² We are still searching answers, and thus do not claim to have found the perfect solution. Rather, we are looking for (international) interaction and co-operation in working out a good practice.

³ See for instance Aertsen and Lauwaert (2001), De Bosschere e.a. (1981).

⁴ See for instance Hassall (1996), Maxwell and Morris (2001), Morris et al. (1993).

⁵ Since New Zealand uses conferences for all cases, except for murder and manslaughter, we know it is applicable in serious cases and can be of benefit for the parties involved.

short, one can say that a lot of effort is put into working towards an all-including solution, aiming at the restoration of the victim, the youngster and the broader society.

We chose to set up the program at the level of the youth court for various reasons. Firstly, we are dealing with more serious cases, and working at the level of the youth court partly ensures that serious cases will be referred to conferencing⁶. Secondly, procedural safeguards will be looked after by working on this level, since the youth lawyer is involved and the youth judge can keep an overall view on the proceedings (cf. *infra*). Thirdly, victim-offender mediation is available for juvenile delinquents in Flanders, which can be offered at the level of the prosecutor, as well as the level of the court. Thus mediation could be applied for the less serious cases whereby restoration towards the victim is still important, but when an intense approach or follow-up is not necessary.

1.1.2. Including the police

Following the New Zealand model, we opted to include the police at the conference. Although the police do not have discretionary powers in Belgium and can thus not decide whether or not to accept the agreement reached by the parties, we still believe it might be important to include the police for several reasons. First of all, his presence refers to the fact that the coming together of the parties is because of an offence, which entails that it is a serious matter and that a social norm has been transgressed. For the youngster, it becomes clear that the offence has broader social consequences than just the concrete harm to the concrete victim. Moreover, the presence of the police can support the victim and can enhance the safety feelings of all the parties present. Last but not least, the youngster and his family get to know the police in a different way, which can enhance the view they have of the police as such. These elements are questioned in the interviews with the parties involved (cf. 3).

All police officers participating in a conference get information about what the process entails and what the aim thereof is. That way, they know how to act in a constructive manner at the conference. Including the police is not a self-evident matter in a legalistic country though, since it is the public prosecutor that has discretionary powers to decide what the reaction towards a crime should be.

1.2. The process of conferencing

1.2.1. Introduction

As stated before, we have opted to implement the New Zealand model of conferencing at the level of the youth court, but there is no legal basis for it. This leads to the fact that certain issues have to be addressed. First of all, a good procedure needs to be developed, thereby taking into account the existing Belgian youth protection law. Youth judges have to be made aware of what conferencing is about, and at the same time we have to take into account their comments and suggestions on how to implement it within the limits of the Belgian youth law. In what follows, the process of conferencing is described, which highlights the fact that the New Zealand model is used: the youngster and his supporters have room for private time and a police officer is present.

1.2.2. The actual process

When a youngster comes before the **youth judge**, the judge can assess whether the case would be appropriate for a family group conference⁷. It is checked whether the youngster

⁶ Since less serious cases will be diverted at the level of the public prosecutor.

⁷ So far, we have not described criteria for the judges to take into account when deciding whether or not a conference would be appropriate. The only two criteria are that the youngster should not deny the facts, and it

denies the facts. If so, the conference cannot take place. The case then goes through the normal proceedings at the youth court. If on the other hand the youngster does not deny the facts, the youth judge asks the social service of the youth court for advice. The social service then assesses the willingness of the youngster to participate, giving more information about what conferencing is. If the case is assessed as being appropriate for a family group conference, this is advised to the youth judge within ten days. The latter can then give the authorisation to the facilitator to start the family group conference.

The **facilitator** contacts the different parties involved: the offender and his supporters⁸, the victim and his supporters, and the police officer.

The offender is contacted first to give some more explanation and to see whom he can bring to the conference as support. Since the social service already checked whether he is willing to participate, this is an issue the facilitator does not have to address anymore. The facilitator does make sure that the youngster does not deny the facts.

The facilitator then contacts the victim to see whether he is willing to participate. Even when the victim does not want to attend, the conference can still take place. The victim can have his views represented, e.g. in a letter or by sending a friend or relative. Of course, the conference will have greater value⁹ when the victim is willing to participate, but it is up to the victim to decide. It is important to note that the victim, like the offender, can bring along all the support he wants to be present at the conference. Victims can feel overwhelmed by the presence of many people supporting the offender, if they are by themselves or having only one support person present at the conference.

This **preparation phase** is crucial for all the parties involved, so they know what they are up to and what they can and cannot expect. For the offenders it is important to know what their rights are, and that if they do not agree with the proceedings, they can choose to stop the process and have their case taken to court. The victims have to know what the process is like, and what they can realistically expect to come out of it, in order to prevent secondary victimisation.

Like in New Zealand, a police officer attends the conference to point out that one is dealing with a crime, which is a serious fact. Also, the attendance of the police offers a sense of security to the parties and reminds everybody of the fact that there is also harm done to do the society as a whole.

The **actual conference** usually develops as follows: first of all, all the parties are introduced and their respective roles are outlined. This is to ensure that everybody knows what their role in the conference will be, for instance to support the offender or the victim. The police officer reads out the facts and checks whether the offender agrees with it. If the offender denies the facts, the conference cannot take place.

Then there is a phase of storytelling, whereby the victim, his supporters, the offender and his supporters explain what effects the offence has had on them. This phase can be seen as the core of the conference, whereby all the thoughts and feelings can be shared and one could come to a mutual understanding of the harm that has been caused by the offence. Often the youngster starts to realise he has also hurt his own family and friends. It can be an emotional

has to be a serious crime. We have noticed that cases are not referred on a regular basis, and thus we are interviewing youth judges to discover whether they use other criteria as well.

⁸ We use the term "he" for convenience, but mean he or she.

⁹ Both for the victim and the offender.

happening: the offender realises the harm he has caused and spontaneously apologises. Retzinger and Scheff (1996, as quoted in Johnstone, 2002) talk about the 'core sequence' of a conference when communication between the parties happens: reintegrative shaming is followed by an apology/forgiveness.

After this communication between the parties, the offender and his supporters can have a private time, during which they discuss possible solutions for the offence, taking into account the needs and wishes of the victim. Underlying causes of the delinquent behaviour of the youngster can be addressed as well, for instance drug use or problems at home.

This proposal of solution is then laid before the victim and discussed until an agreement is reached, if possible. The aim of the agreement can be seen as threefold: repairing the harm to the victim, repairing the harm to society as a whole and preventing that such a thing would happen again in the future. The agreement is written down in a detailed manner so all the parties and the judge know what is to be accomplished, and within what time frame. People taking up a role in either implementing the agreement or providing follow-up of the implementation, as well as the victim, sign the agreement.

This agreement is then brought before **the judge**, who can decide whether or not to accept it. There is the understanding that youth judges in principal accept the agreement, but of course they check whether it is appropriate and they have the final decision power. Since the agreement is brought before the judge, the latter can ensure that all the procedural safeguards are protected, and he can keep an overall view on the proceedings.

Once the agreement is accepted, it can be **put into practice**. The agreement includes means of follow-up and the period within which the agreement should be executed. It is also desirable that the agreement is set up in a very concrete manner in order to make sure that follow-up is possible. After the period within which the execution should take place, the matter is again taken before the youth judge who can then evaluate whether the agreement is executed properly. If yes, the judge will take the proper legal decision. The idea is that judges would close the case and not order the youngster to go through an extra measure. If not, the judge can decide to have a second conference or to impose a different measure. This way, the victim is sure that the youngster will perform his tasks, and the youth judge can close the case in a positive way towards the youngster.

2. PRACTICAL ISSUES WHEN SETTING UP THE PROJECT

2.1. Training the facilitators

When implementing an existing model in a different country, certain issues arise that have to be taken into account. First of all, the dynamics in conferences differ from mediation. Victim-offender mediation has been practised in Belgium for several years, and mediation services are available for juveniles in almost every judicial district in Flanders (Spiesschaert et al., 2001; Van Dijck et al., 2002:98). Instead of developing a new organisation for conferencing, we opted to include mediators and train them as a facilitator. Therefore, Allan MacRae – a well known facilitator from New Zealand – was invited to come to Belgium and provide training for the mediators so they would be acquainted with the practice of conferencing and the group dynamics that play in such a setting. When all the facilitators lead some conferences, he was invited again to offer follow-up training, and suggest some solutions for problems and challenges that occurred in practice. David Carruthers, a youth judge in New Zealand, was invited before the start of the project as well to share his experiences with conferencing.

We found that inviting these people who were familiar with the practice of conferencing in New Zealand on a day-to-day basis, helped showing professionals in Belgium what the value of such a program could be. That way, people could ask questions and raise concerns about setting up such a practice, and receive answers to those concerns.

2.2. Approaching all the professionals of the Criminal Justice System

Different professionals of the Criminal Justice System were approached at the start of the project, to ensure their co-operation with and support for the project. During the experiment, different meetings are set up to ensure continuous information to the professionals, as well as motivating them to participate. Internal documents were written in which their role was described more in detail, so everybody would be aware of their specific role.

2.2.1. Youth judges

Two youth judges¹⁰ got the chance to go to New Zealand and study the conferences¹¹. This enhanced the support for the Belgian project, since they know what conferencing is about and can motivate other judges. Also, they can make the first referrals to the project, thus starting the project from within. These two judges are also part of the general steering group¹² that was set up to guide the experiment and reflect upon the practice.

When setting up the project, contacts were made with all the different professionals involved in the various judicial districts. In these meetings, the idea of and philosophy behind conferencing was explained. These meetings are now set up on a more or less regular basis: in two districts, meetings are held every two to three months to have a look at the actual practice, and reflect on how it can be approved. In these meetings, all the partners are involved and can thus express their doubts and approval. In the other three districts, a meeting is set up to present the project as a whole, as well as the preliminary results of the research. Through these meetings, all the parties involved know what stage the experiment is at, and at the same time they are reminded of the project and motivated to send more cases to

¹⁰ Judge Van De Wynckel from Antwerp and judge Raes from Leuven.

¹¹ With funding from the King Baudouin Foundation.

¹² In this group, different people are involved: youth judges, prosecutors, lawyers, social services, victim assistance, facilitators and researchers.

conferencing. Since we are working at the level of the youth court, the co-operation of the youth judges is crucial, since they refer the cases. We therefore put a lot of effort as a research team in contacting them, explaining the project to them and keeping them updated.

2.2.2. Police

As stated before, including the police is not an evident matter, but we did opt to have them present at the conference. It is then very important to inform them about the purpose of the conference, and more specifically about their role within the conference.

Firstly, a general meeting was organised at the university, where different police officers were invited from all the judicial districts. In this meeting, a video was shown on conferencing, and their role was explained more in depth. After a couple of months it was obvious though that more information was needed. First of all, since the police structure is being reformed in Belgium, a lot of the officers moved into a different position or a different district and could not be involved in conferences anymore. Secondly, since cases were referred at a rather slow rate, it took quite a while before they could be involved in a conference. Therefore, facilitators talk to the police before the conference, to ensure that they clearly know what the conference is about and what they are expected to do. After the conference, the facilitators give feedback towards the police about their role and the general proceeding of the concrete conference.

The comments the police offered to the facilitators, point out that police officers do not feel comfortable with their role at first, since they are not used to it. Therefore, they would first like to observe a conference before attending and participating. Also, they have pointed out that they think it is a positive initiative, in which they themselves can take up a positive role. We are planning to interview the police officers more systematically to find out how they see their role, and what their opinion of conferencing is.

In New Zealand¹³, we found out that the police officers that were not involved in conferences are quite sceptical about conferencing. Once they attend a conference, their opinion changes. Therefore, a facilitator states it is important to train police officers and give them updates on juvenile law and practices. One officer states the aim of the presence of the police is to prevent recidivism and to represent the victim. The advantage of the conference is that causes of the crime can be discovered and addressed. It is about problem solving, not only problem fixing by telling youngsters what to say and do. Another police officer states conferences work well, but they lose their power when the youngster keeps re-offending. Locking juvenile offenders up does not help, since they only learn tricks from one another. Youth Crime Units are set up to deal with the hard core offenders: they are closely followed by police officers, who can react right away when a crime has happened. This seems to work well. Another officer states his role at the conference is to decide whether or not to prosecute. This decision is linked to the satisfaction with the agreement, which entails three elements: satisfaction of the victim, punishment and prevention. The facilitator needs to ensure that the agreement is fair for the youngster, while the police also take the opinion of the victim and the community into account. The police can also ask the juveniles questions so they think about the causes of the crime.

2.2.3. Lawyers

At the beginning, lawyers were made aware of the project and their specific role at the conference. A note was written on the role of the lawyer, which is being revised by a youth

¹³ During a study visit March 16th - April 8th 2002 we interviewed several people: police, lawyers, youth judges, facilitators, social services (Vanfraechem, 2002).

lawyer, to ensure that the role is described in a positive manner. The idea is to disseminate this information to various lawyers, so they are made aware of the project, and can eventually suggest the youth judge to consider conferencing. Lawyers receive ongoing training about various issues, and the idea is to present the document to them once it is finished.

Including the lawyer at the conference is not an easy issue. On the one hand, a conference is a restorative practice that aims at including the parties involved and having them decide what the outcomes of the case should be in order to get to restoration. On the other hand, critics have pointed out that the legal safeguards are not always protected in restorative or rehabilitative measures¹⁴, and we want to avoid this from happening in the conferencing project. Therefore, we have opted to have lawyers present at the conference, emphasising that their role is to protect the youngster's legal rights. The debate is still ongoing about what their concrete role can be, and whether or not they should be present at the private time of the youngster and his supporters. So far we have noticed that lawyers take up their role in a positive manner, and give the parties the opportunity to come up with their own solution.

Most of the lawyers who participated in a conference so far were interviewed¹⁵. First of all, most of them have the feeling the youngster felt supported by their presence. All lawyers believe the youngster should have a lawyer present at the conference¹⁶, mainly to protect their rights and support them if they cannot express themselves. Some of the lawyers do point out they as a lawyer should stay in the background. Having a lawyer present for the victim is ok, as long as that lawyer understands the idea of restorative justice. That way, the victim can also receive judicial advice.

Most of the lawyers believe conferencing should be organised at the level of the youth court, some of them stating it should be reserved for the more serious crimes. At the level of the prosecutor, victim-offender mediation can then be applied. Conferences can also be organised when there is a multitude of less serious facts, or when it would be good for the youngster. Conferencing is seen as an intensive approach, which leads for some lawyers to the conclusion to reserve it for serious facts. For other lawyers, it would be good to apply it for all juveniles, but not achievable in practice, considering the workload.

Compared to victim-offender mediation, conferences deal with more serious cases, involve the network of victim and offender and more often there is a direct confrontation between victims and offenders.

The lawyers we interviewed in New Zealand, also differ in their opinion on the extent to which they should act in a conference. All of them do agree that the youngster should have legal advice, especially when the case is at the level of the youth court. This is not a problem, since the court then appoints a lawyer, who must act for the youngster. One lawyer believes it should be enough when the youngster receives judicial advice before the conference and eventually before accepting the agreement. Another lawyer is present at the conference and also at the private time, where he gives an idea about what he thinks is appropriate, but then leaves it up to the youngster and his family to decide. Compared to their role at the youth court, lawyers think that at the conference they have a bigger role to play and can support the youngster.

¹⁴ Cf. *infra*

¹⁵ Seven lawyers were interviewed with the help of Lisbeth Gijsemans, a student of Criminology, who wrote a thesis on the role of the lawyer in conferences. Some lawyers participated in several conferences, others in just one conference.

¹⁶ This has been the case in all but two conferences. The lawyers were invited to those two conferences, but were unable to attend.

2.2.4. Social services

In Belgium, social services are linked to the youth court and provide follow-up of the youngsters. We consider it important for them to be included in the project, since they often already know the youngsters¹⁷ and are aware of certain programs that can for instance help the youngster in addressing the underlying problems.

Social services can be involved in the conference itself, when a youngster and his parents agree with their presence. When they are present, they can help in following up the execution of the agreement. They can also further address underlying causes that could not be addressed in the conference itself. We should remember that conferences mainly aim towards restoration of the harm, and addressing the underlying problems is necessary, but not the primary aim¹⁸. A problem that arises, is the fact that social services have a heavy workload and can thus not always be involved in the conference, even though they think it is important to be present.

Degeest (2002) points out that the people of the social service he interviewed, felt they were not properly involved in the project. This is an element that should be looked at more in depth, and therefore interviews with social services deem necessary. We do plan to interview people of the social services that were involved in conference and we are already keeping them informed of the project by involving them in the general steering group, as well as in the local meetings. We have also written a newsletter to keep people informed on the state of art of the project, and this newsletter was sent to social services as well. Again, this points out that when setting up an action-research, it is extremely important to involve the various parties at regular moments and to keep them informed of the project and the accompanying research.

2.3. Setting up a referral model

Working at the level of the youth court entails that a good referral procedure needs to be developed. On the one hand, youth judges need to know they can refer cases in a fairly easy way, thus not having too much work with it since they already have a heavy workload. On the other hand, the procedure needs to take into account the existing juvenile protection law. Since the project is an experiment and there is no legal basis for it as such, a procedure needs to be developed to fit conferencing into the existing law as far as possible, and at the same time making sure the legal safeguards for the participants are protected.

The referral model as such was outlined before: the judge sees the youngster and refers the case to the facilitator after advice of the social service. Once the conference is held, the judge decides whether or not to accept the agreement. After the acceptance, the agreement is carried out and then evaluated by the judge.

2.3.1. Comments of the Court of Appeal

One of the first cases referred to a conference was brought before the Court of Appeal because of civil matters, but the criminal matters were looked at as well. The Court decided that the conference as such was ok, but some elements with regard to the procedure had to be

¹⁷ Since we are dealing with serious crimes or a multitude of less serious crimes, recidivists are referred as well, who have been in contact with the youth court before and are thus known by the social service.

¹⁸ In practice, it is not always easy to separate these two elements, but the general idea is that conferences aim towards restoration, and should address the underlying problems only in as far as it is necessary to ensure the execution of the agreement.

reviewed. We set up a meeting at the Court of Appeal with judges, youth judges, court clerks, facilitators and the researchers. In this meeting, the project was explained more in depth and adaptations to the referral procedure were made, in order to be more in concurrence with the existing law. We do not discuss these adaptations in depth since this would lead us too far, but we just want to point out that involving various professionals at different levels of the judicial system is crucial: having their support makes an experiment like this happen. It is not a self evident matter to start experiments within a legalistic system, since there is less room for flexibility compared to common law systems¹⁹, but people within the system are willing to co-operate and search for positive ways to react towards crime. It is then crucial to involve the people and keep them informed at all times.

2.3.2. Legal safeguards

As stated before, legal safeguards are considered to be important for several reasons. Firstly we are dealing with serious cases, and thus the youngster's rights need to be protected. Secondly, critiques²⁰ of restorative justice include legal safeguards not being well protected, linked to the rather informal approach within restorative practices.

To protect the legal safeguards, we have opted to set up the project at the level of the youth court. That way, the youth judge can have an overall view on the proceedings and the youth lawyer can be present as well. Different safeguards have to be taken into account. First of all, **voluntariness** of participation is considered to be important²¹. This is ensured by the fact that the conference is an option for the youngster: if the youngster does not want to participate, the conference cannot take place. The idea is that the victim would run the risk of secondary victimisation if the youngster were not willing to take up his responsibilities. The judge offers this option to the youngster, which leads to the fact that sometimes "voluntary" may be an ambiguous term, since the judge represents the system and the legal power: the youngster may still feel he did not really have a free choice to participate²².

Proportionality is also important: the agreement needs to be proportional compared to the crime and the damage it has caused. The fear arises that victims would demand too much and the youngster would not be able to guard himself from these harsh demands. In practice this does not seem to prevail though. On the one hand victims do not tend to ask too much, on the contrary: sometimes other parties involved (especially police and facilitators, but also parents of the youngster) have the feeling they are too soft. On the other hand, the youth lawyer is always present and can intervene when necessary. The agreement has to be brought before the youth judge who can then still check the proportionality of the agreement²³.

Legality is still a problem, in the sense that we are dealing with a pilot project, for which no legal basis is provided so far. But as stated before: a procedure was worked out to fit conferencing into the existing law as far as possible. As a judge at the Court of Appeal stated: there are still some risks with regard to the procedure, but we have to be willing to take these risks if we want to evolve towards restorative justice. The youth protection law in Belgium

¹⁹ See for instance Detry (2001) and Vanfraechem (2001).

²⁰ See for instance Dumortier (2000).

²¹ One can pose the question to what extent this is a legal right, but especially in restorative practices this is put forward as an important element.

²² Interviews will have to show if the youngsters feel free to decide whether or not participate.

²³ Prof. Put (2001) points out that one can question what proportionality is about: compared to what is the agreement proportional? In relation to the crime? The material or moral damages? This is a question that is not easily answered: different elements can be taken into account, and proportionality will mean different things for the parties involved, lawyers and youth judges.

has been under fire, and discussions are still ongoing. We have to wait and see whether restorative practices can find their way into legislation²⁴.

Informed choice is put forward as a necessity. The youngster and his parents are informed by the youth judge, as well as the facilitator. As stated before, it is important they know what their rights are and that they can opt for the normal court procedure if they want to. Victims receive information of the facilitator as well, and can decide whether or not they want to participate. If they do not wish to participate, the conference can still take place since the youngster then gets the chance to take up his responsibility. The victim can go to court and hand in a civil claim if he wishes to do so²⁵.

Lawyers were asked to what extent they think the rights of the youngster are protected. In general they state it is up to the lawyer to protect the youngster's rights. The following elements are then taken into account: the reasonability of the damages claimed; not denying the facts; voluntariness of participation; future-oriented solution; comparison to measures imposed by the youth judge; giving information; and the youngster's right to speak. Most of the lawyers believe the rights of the youngster are protected although some juridical elements are still unclear, for instance: what is the juridical worth of the agreement? What if people do not agree on the amount of damages?

Most lawyers state that by having the youth lawyer present, the rights are protected. One lawyer states the safeguards leave much to be desired, but he does not clarify why.

With regard to the proportionality of the agreement, the following elements are looked at:

- comparison to measures at the youth court;
- issues the youngster has;
- proportionality with regard to the damages, the facts and the victim;
- the opinion of people present at the conference;
- and reparation of the youngster's notion of norms.

When the agreement is considered to be too heavy or too light, lawyers point this out at the conference. The idea that the youth judge still has to evaluate the agreement, does have an influence on this intervention. When the agreement is too heavy they will definitely point it out. When they find it too easy, it becomes more difficult because they are still present for the youngster, who puts his trust in his lawyer.

²⁴ As stated before, victim-offender mediation for juveniles is becoming wide spread, but there is still no legal basis for it as such. This could be reformed though, and maybe then conferences could be included as well.

²⁵ In practice, a problem can then arise for the youngster: if he is willing to take up his responsibility, the civil claim of the victim can derogate from the value of his commitment.

3. VIEW OF THE PARTIES INVOLVED

Given the fact that cases are not referred at a high speed (29 conferences have been held so far), we do not have too much information as yet on what parties involved in the conference think about the process and the professionals involved. We will present some very preliminary data, keeping in mind that only a few participants have been interviewed so far, and thus generalisations cannot be made but at least some impression can be given.

3.1. View on the police

Victims

- Fifteen victims present at the conference were interviewed so far. Firstly, they were asked whether the police were fair at the conference. Results show all victims thought the police were fair at the conference. The question posed is the following: “Was the police fair during the conference?” (Answer: 1 = not at all to 5 = a lot).

	1 = not at all	2	3	4	5 = a lot
Fairness				5 victims	10 victims

- They were also asked how useful the presence of the police was for them²⁶. Most of them found the presence of the police quite useful. One victim did not think their presence was that useful, since the police did not have a lot of input at the conference.

	1 = not at all	2	3	4	5 = a lot
Usefulness		1 victim	1 victim	8 victims	5 victims

- For most victims, the presence of the police did not influence their safety feelings at all²⁷. We do note though, that they already felt safe at the conference, so it is possible they did not need to have the police present for their safety, since the setting was safe anyway. Two victims did feel the presence of the police influenced their safety feelings. A victim of a violent offence noted it ensured him the offender would not hit him again. Another victim was ensured nothing would go wrong.
- Victims were also asked what they thought of the presence of the police²⁸. Four possible answers were presented, and victims were asked to what degree the answer was applicable. They could also give other opinions if they wanted to add something. In general, one can notice that victims do not think the presence of the police is annoying or interfering. One victim thinks the police are interfering, but they have the right to interfere because of their profession. One victim stated the police explained to the youngster what would happen if he committed another offence. Another victim said the police pointed out to the juvenile offender it would be a lot different if he had to appear before the judge. One victim thought it was useful and supporting to know the ideas of the police, and how they look at such a problem. Another victim saw the police as representing society. Two victims thought the presence of the police was useful so the facts would not be minimised.

²⁶ “How useful was the presence of the police for you?”.

²⁷ After asking "Did you feel safe at the conference", the following question was asked: “Did the presence of the police influence your feeling of safety? If yes, in what way?”.

²⁸ “What did you think of the presence of the police?" "Useful" "Annoying" "Supporting" "Interfering" "Other".

	1 = not at all	2	3	4	5 = a lot
Useful	1 victim	1 victim	1 victim	4 victims	8 victims
Annoying	14 victims	1 victim			
Supporting	1 victim	2 victims	3 victims	2 victims	7 victims
Interfering	14 victims		1 victim		

- As a result of the conference, their respect for the police stayed the same for most victims. Two victims pointed out their respect grew a bit because the police was prepared to cooperate and because he participated in a respectful manner. Two other victims stated their respect grew a lot because the police did not behave in a racist way²⁹, which is often a problem within that district.

Youngsters

Eighteen youngsters were questioned about the fairness of the police. Nine of them were asked the following question: "Why do you think the police was present at the conference?" Various answers are expressed:

- to impress;
- to read out the facts and point out possible consequences;
- to clear out the facts and keep an eye on the whole thing;
- to make sure everything goes well, read out the facts, answer questions, to talk, to prevent a fight and being neutral;
- to read out the dossier and give advice on behaviour;
- to make sure nothing goes wrong and to give advice;
- to give advice about what I (the youngster) could do better;
- to read out the statement and as extra support to make it successful;
- for security;
- to represent the view of the victims;
- for security, to give their opinion since they know about such cases;
- to support the victim, also as mediator, opposite role of youth lawyer.

Apparently, youngsters seem to think having the police present is important for the safety of all parties involved, although often they do mention this would be necessary in conferences were an offender might attack the victim, which they do not consider to be the case for themselves. This is an interesting finding, especially when we look at the answers of the victims who note that the presence of the police does not necessarily enhance their safety feelings, which could be linked to the fact that they feel safe anyway.

- With regard to the fairness of the police, they were firstly asked whether the police was impolite or rude at the time of arrest³⁰. Then they were asked whether the police was fair before the conference, and during the conference³¹. They were also asked whether they think police in general act fairly³². We do notice that with regard to fairness of the police in general, and before the conference, opinions differ, but in general youngsters think police do act fairly at the conference.

²⁹ One youngster was Portuguese, the other Moroccan.

³⁰ "Was the police impolite or rude when you were arrested?"

³¹ "Was the police fair in the period before the conference?" and "Was the police fair during the conference?"

³² "Do you think the police in general act fairly?"

	1 = not at all	2	3	4	5 = a lot
At arrest	9 youngsters	3 youngsters	1 youngster	1 youngster	4 youngsters
Fair before the conference	3 youngsters	1 youngster	3 youngsters	2 youngster	9 youngsters
Fair at the conference		1 youngster	2 youngsters	1 youngster	14 youngsters
Fair in general	5 youngsters	1 youngster	5 youngsters	2 youngsters	5 youngsters

- As to the usefulness of the presence of the police³³, opinions vary.

	1 = not at all	2	3	4	5 = a lot
Useful	4 youngsters	2 youngsters	4 youngsters	6 youngsters	2 youngsters

- For most offenders (12) their respect for the police stayed the same³⁴. One youngster's respect diminished a bit because the facts were wrongly presented. Another youngster's respect grew a bit, because the police reacted in a nice way at the conference. For another youngster, his respect grew a lot trough the conference because the police treated him well.

Parents

- Nineteen parents of young offenders that participated in a conference were asked what they thought of the presence of the police. The following results are available:

	1 = not at all	2	3	4	5 = a lot
Useful	5 parents		1 parent	3 parents	6 parents
Annoying	4 parents				2 parents
Supporting	7 parents	1 parent	2 parents	1 parent	2 parents
Interfering	10 parents		1 parent		2 parents

Note that some data are not available, which is linked to the fact that at the start of the project, we opted to offer parents a written questionnaire, which was to be sent back to the researcher. After a while, we experienced that data were missing or questions being misunderstood, and thus we now interview parents in person when possible.

In general, one can conclude that the parents' view of the police differ. Some people might not think the presence of the police is supporting or useful, but this does not imply that they think the presence is annoying or interfering. On the other hand, we notice that parents who do find the presence annoying and/or interfering, believe the police officer did not know the case or the youngster, or did not prepare properly for the conference. One parent knew the police officer on beforehand and already had a problem with him.

- Ten parents³⁵ were asked what according to them the role of the police was at the conference. Four parents saw his role as reading out the facts or follow-up of the file. One parent thought the presence of the police was useless, another parent did not think the police played a role but he just sat there. One parent stated the presence had an influence on the

³³ "How useful was the presence of the police?"

³⁴ "As a result of the conference, has your respect for the police..." 1=gone down a lot, 2=gone down a little, 3=not changed, 4=gone up a little, 5=gone up a lot.

³⁵ This question was added after deciding to interview the parents in person.

youngsters and showed that the conference was not just small talk: the police supported what was said. Another parent thought the role of the police was to protect the victim, represent the society and to not minimise the facts. This parent felt supported by the police since they know about juvenile delinquents. He also thought the police was fair at the conference. One parent saw the police as guaranteeing the safety, another as representing the victim and yet another as mediator.

3.2. View on the lawyers

Victims

Only one of the fifteen victims present at the conference had his lawyer present, and he thought this presence was useful. Most of the other victims did not think they would have found it useful to have a lawyer present, for various reasons:

- it was not needed;
- the support person could defend the victim;
- the damages were not too great;
- it is a human happening, not with judicial rules;
- representing a firm, he was not a personal victim.

One victim would have found it quite useful, since it would have offered him an extra feeling of security, assurance. Another victim would have found it very useful since a lawyer would have more knowledge about certain issues.

Three people thought it was quite useful to have the lawyer of the juvenile present. One victim mentioned it is important for the youngster to have a contact person. Five victims were asked what they thought of the presence of the youth lawyer³⁶. One victim said he was assertive enough to state his opinion, but some people might need it. Judicial information and assistance are important. Another victim stated it is necessary to have a look at judicial elements, and having the lawyer present helps to talk about the problems.

	1 = not at all	2	3	4	5 = a lot
Neutral	2 victims		1 victim	1 victim	1 victim
Supporting	3 victims	1 victim	1 victim		
Information ³⁷	2 victims			2 victims	
For juvenile	3 victims	1 victim			1 victim
Unbalance	4 victims				1 victim

Youngsters

The youngsters were asked how useful they thought the presence of their lawyer was for them³⁸. Apparently most of them found the presence very useful. One youngster stated it was

³⁶ “What did you think of the presence of the lawyer of the youngster?” Answers possible: “You felt neutral about it”, “It was supporting, also for yourself”, “He took the youngster’s side”, “He gave important information”, “It created an unbalance because you did not have a lawyer present”, “Other”. This question was added later. We do realise this limits the value of the answer since not all respondents have answered the question, but because referrals were rather slow at the beginning, it took us a while to test the questionnaire and find out what questions are important for the research. The slow referral also leads to the fact that more qualitative information should be gathered from the interviews, rather than purely quantitative information. At the beginning of the project, more referrals were foreseen and thus the questionnaires included more questions on quantitative data.

³⁷ One person did not answer this.

useful because he could ask questions to the lawyer, and the lawyer unexpectedly offered support with regard to the follow-up.

	1 = not at all	2	3	4	5 = a lot
Useful	1 youngster	2 youngsters	1 youngster	2 youngsters	12 youngsters

3.3. View on the conference compared to the criminal justice system

Victims not present at the conference

All eight interviewed victims not present at the conference believe conferencing should be offered to all victims³⁹, for various reasons. One victim states it depends on the case: he did not want to participate, but for some victims it would be good, especially if they are emotionally affected by the case. Other reasons include:

- good support, you can talk about it;
- victims can then themselves decide whether or not they want to participate;
- it can help some people, e.g. by asking questions;
- you can co-decide on the punishment;
- it is an option for juveniles;
- other solutions ought to be possible, a closed institution is no solution.

Six victims would choose for a conference⁴⁰,

- to receive some money;
- because it is more personal for the youngster, and for the youngster to do something;
- because you get good support.

Two victims would not choose for the conference because the youngster should get a punishment, or because a financial agreement would have been enough.

Victims present at the conference

For nine victims, their respect for the justice system stayed the same, which is linked to the fact that they did not expect anything from it, or because it took too long before the system reacted. For four victims, their respect grew a bit because it is a new way of handling things and the juvenile gets another chance; youngster and victim can be positively influenced; you have more of a say; and recidivism can be diminished. Two victims' respect grew a lot because a conference is very human and offers opportunities⁴¹.

Six victims do not think conferencing should be offered to all victims because it depends on the crime. One person thinks it should be up to the victim to decide, but it should not give the victims an opportunity to swear at the youngster. The other eight victims do think it should be offered to all victims, because

- people can benefit greatly from it, but they should be free to choose for it;
- it is good to solve problems by talking about them;
- it can quickly solve a lot of problems, it diminishes recidivism, talking is a good therapy;
- you can clarify how you are doing;

³⁸ "How useful was the presence of the lawyer?"

³⁹ "Do you think conferencing should be offered to all victims, so they can participate on a voluntary basis?"

⁴⁰ "If you had to do it all over again, would you choose to participate in a conference or go to court?"

⁴¹ "As a result of the conference, has your respect for the justice system..." 1=gone down a lot, 2=gone down a little, 3=not changed, 4=gone up a little, 5=gone up a lot.

- it is more humane than punishing.

Thirteen victims would choose for the conference again because

- it is a very humane approach and offers chances to the youngster;
- it is more personal;
- it can be of help for the victim;
- you can talk about it with the offender;
- the court is impersonal while the conference goes more in depth, more concrete;
- it goes faster and brings about less damage for the parties involved.

One victim thinks the court and a conference complement each other. Another victim would choose for the court because he thinks the conference was too amicable: for his case the youth court would have been better for the youngster because he got off too easy, which was linked to the fact that he had a lot of support present.

Youngsters

For most of the juveniles (12), their respect for the justice system stayed the same after the conference⁴². One youngster states that in general an offender is not heard by the system: when you commit a crime, you are automatically a bad person. The reasons behind the crime are not looked at. Four youngsters state their respect grew a bit, for several reasons. One youngster says it had an influence on himself and he could talk to the victim, which enhances the insight in your own mistake. Another juvenile thinks it is a positive way to punish someone. He now realises you have to get arrested when you do something wrong and you are able to learn from it. Two youngsters state it gives you a second chance. For two youngsters, their respect grew a lot, because they got a lot of explanations from kind people who comfort you.

With regard to whether or not all juvenile offenders should be offered the option to participate in a conference on a voluntary basis, opinions differ. Nine youngsters believe it depends on the type of crime: for really serious cases or “crazy” people, it should not be applied. The other youngsters think it should be offered to all youngsters, since it gives you a second chance and you can have an influence on the decision. Some also mention it is good to hear the story of the victim and take up your own responsibilities.

All but two would participate in a conference if they had to go through it again⁴³. The two youngsters who would go to court, think it is easier to just go to court. For the others, choosing for a conference is linked to the fact that you can have a say in the decision; the court is too harsh; you can talk about the future; you are listened to; you can take up your responsibility; you can look for different solutions; the victim is comforted and you can understand how victims feel about the whole thing; you can rebuild your life; you can help the victim.

Parents

Fifteen parents would participate in a conference again⁴⁴, for various reasons:

- you can talk about it, it was good;
- confrontation with the victim;
- it was good to hear everybody’s story;
- you are guided and can search for a decent alternative;

⁴² “As a result of the conference, has your respect for the justice system...” 1=gone down a lot, 2=gone down a little, 3=not changed, 4=gone up a little, 5=gone up a lot.

⁴³ “If you had to do it all over again, would you choose to participate in a conference or go to court?”

⁴⁴ “If you had to do it all over again, would you choose to participate in a conference?”

- you can decide;
- prevention of recidivism: if the youngster is confronted with the victim, it impacts his future actions;
- you get to know more and achieve better results, the judge does not know the youngster;
- alternative punishments are positive, more is discussed and the victim can be involved;
- it is positive to talk together and get to a solution;
- the youngster realises he is responsible for what he has done;
- to make up for the victim, to make sure it does not happen again.

One parent states he would not participate in a conference if the facts were really serious. Another parent would not participate again, since it was only about material damage. For another parent the conference was too heavy for the family and he found he did not have a choice: the judge decided it would be a conference.

4. CONCLUSION

In this paper we have outlined the set up of a conferencing program (based on the New Zealand model) in a legalistic country. This implies that certain issues have to be looked at, for instance the level of the implementation and the involvement of the police at the conference. Considering the fact that it is an experiment, set up as an action research, it is important for the research team to stay in close contact with the various professionals, keeping them informed about the project and at the same time co-deciding with them. It is still crucial to keep your distance at certain moments, in order not to lose your position as a researcher. We have explained how we set up the project by contacting the partners of the justice system, giving them information at the beginning of the project, as well as during the development of the whole experiment. Since conferencing is linked to the justice system, it is crucial to get everybody's support and thus disseminating information is necessary.

We also presented some very preliminary data derived from the interviews with the participants in a conference. Although generalisations cannot be made at this point in time, it does give a first impression on how people participating in the conference view the police, the lawyers present and the conference in comparison to the youth court.

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