



Specific Programme Criminal Justice
European Commission
Directorate-General Justice – Directorate B: Criminal Justice



Key-Practitioners' Report of GERMANY

3E-RJ-MODEL

The 3E Model for a Restorative Justice Strategy in Europe.
Greece, United Kingdom, Bulgaria, Finland, Hungary, Poland, Spain
(including research also in Turkey, the Netherlands, Denmark, Germany)
JUST/2010/JPEN/AG/1534

December 2012

The 3E-RJ- Model
for a Restorative Justice Strategy in Europe
Concerning Act_10 & 11 of the EU "3E-RJ-MODEL" PROJECT

Report on Key Practitioner's Interviews

Germany

Andrea Păroșanu

1. Introduction

In order to gain knowledge of professional experience in the field of Restorative Justice in Germany, six key-practitioners were interviewed in the city of Leipzig¹. It should be noted, however, that experiences and mediation case numbers are different in the federal states in Germany. As the interviews were taken with one practitioner/representative of a professional group, the perspectives given in the interviews are not representative for the professional groups.

The interviewed key-practitioners have the following professional background: a social worker and mediator in juvenile cases, a probation officer and mediator in adult cases, a representative of the juvenile court assistance, a judge, a public prosecutor and a lawyer.²

The first interviewee is a social worker in the field of juvenile justice. The interviewed person is mediator since 1997 and has undergone a special training on victim-offender mediation at the Victim-Offender Mediation Service Office in Cologne. The Service Office is an institution of the German Probation Services and delivers training on victim-offender mediation since 1992. The interviewee delivers mediation in penal matters involving juvenile (14-17 years) and young adult (18-20 years) offenders. Beside mediation, the social worker is also responsible for conducting other measures, e.g. social training courses for young persons.

A further interviewee is a probation officer at the social services of justice within the county court jurisdiction Leipzig. The interviewee conducts victim-offender mediation since 1996 and got special training on mediation in penal matters at the Victim-Offender Mediation Service Office. The respondent delivers mediation services for adult offenders, but is mainly in charge with other probationary measures for adults.

¹ Leipzig is a city with about 530,000 inhabitants in the Federal State Saxony, which is situated in central-eastern Germany.

² A police officer was not interviewed as Restorative Justice schemes like victim-offender mediation are not implemented at his level.

Another interview was taken with the head of the juvenile court assistance in the youth services department at the Office for Youth, Family and Education of the city Leipzig.³ The interviewee is a social worker and a trained mediator. The training was also delivered by the Victim-Offender Mediation Service Office. The respondent has 22 years work experience in the field of juvenile court assistance.

The interviewed judge is head of the juvenile division of the Local Court Leipzig and has work experience in this area since eight years. Overall, the interviewee has 22 years experience as a judge.

The public prosecutor has professional experience since the year 2000 in public prosecution. The interviewee operates in the juvenile department of the public prosecutors office Leipzig and is deputy department head.

A further interview was taken with a criminal defense lawyer with work experience of about 12 years. The interviewee advises the clients in cases considered appropriately for victim-offender mediation to participate in meetings with the victim. The lawyer also conducts mediation sessions with the parties.

The judge, public prosecutor and lawyer have no special training in the field of victim-offender mediation.

2. Report on Key Practitioner's Interviews

2.1. A General Approach of Restorative Justice

2.1.1. On Restorative Justice within the Criminal Justice System

The main form of Restorative Justice in Germany is victim-offender mediation, and in consequence, the report refers to this scheme. The Criminal Code, the Code of Criminal Procedure and the Juvenile Justice Act provide for the legal framework for mediation in penal matters. Most practitioners consider the positioning of this Restorative Justice scheme as adequate, setting out a flexible approach for implementation, as the laws do not set any restriction on categories of offenses. It is left to the practitioners to decide within that legal frame whether mediation in penal matters is appropriate or not. The provision of mediation as a court order set out in the Juvenile Justice Act is seen as inadequate, as voluntary participation is a principle of mediation. However, in practice it is very rarely used. The key practitioners emphasize that willingness of the parties is crucial and has to be present. In most cases, mediation is conducted as a diversionary measure, as provided by criminal law.

³ Tasks of the juvenile court assistance are to initiate educational measures for young offenders (14-20 years), assist them in criminal proceedings, refer cases to mediation, community service and further measures of assistance and care, support imprisoned young offenders, etc.

Some of the respondents stated that the theoretical framework is a good one but the potential of victim-offender mediation is not being exhausted. As it was taken from an interviewee in the field of mediation, case referrals are linked to the person in charge, and just few practitioners are very committed in initiating victim-offender mediation.

Some practitioners further mentioned that there is a growing trend that criminal defense lawyers conduct mediation sessions (usually as part of preliminary arrangements at court) and that mediation should be preferably carried out by trained mediators from mediation services.

Regarding impact of implementation of Restorative Justice, key practitioners are not stating that mediation has effect on reforming the system in Germany. It was mentioned that knowledge on Restorative Justice/victim-offender mediation should be part of professional training of justice practitioners in order to be more familiar with the measures and increase acceptance towards it.

There is consensus of respondents about the fact that mediation in penal matters is an effective and alternative response to crime. Majority of practitioners do not think that mediation is a cost-effective measure, as the costs are similar to other court procedures. It was mentioned that there would be less costs if civil actions were taken into consideration and resolved through mediation. In this case, the follow-up costs of civil action could be saved. Costs would also be less according to some when applying mediation in penal matters as a diversionary measure.

2.1.2. On the objectives of Restorative Justice

The majority of practitioners do not think that victim-offender mediation the way it is implemented, can help towards community development, as case numbers are rather low and there is little or no involvement of community members. It was also felt that society is rather punitive oriented.

Just a few respondents believe that Restorative Justice schemes like victim-offender mediation have the potential to increase responsibility of community members and contribute to conflict resolution at an early stage, before criminal proceedings start. Emphasis should be laid on involving schools and social networks for instance, according to respondents.

It was further stated that looking at successful case resolution, there are high levels of satisfaction of the parties, which also contributes to promoting tolerance and dialogue in communities. Between the parties to a conflict ("inter partes"), communication and understanding is fostered through victim-offender mediation.

All key practitioners agree on the fact that participation in mediation can support crime victims to express their feelings and their needs and to increase responsibility of offenders. Regarding (juvenile) offenders, one interviewee mentioned that educational tasks at court level through mediation are hard to fulfill as offenders often have a problematic personal history, a difficult family background, have grown up in a difficult environment and educational intervention might not be easy to achieve.

In terms of recidivism, most practitioners are skeptical that mediation can help reduce recidivism or do not know about data/studies on recidivism. Only a few practitioners believe that mediation contributes to reduce recidivism. One practitioner assumed that after participation in mediation, most offenders do not tend to appear again in the service.

2.2. Restorative Justice Frame of Implementation

2.2.1. On levels and forms of implementation

At police level, victim-offender mediation is not implemented. There is no police diversion in Germany. Practitioners share different views on implementation at police level. According to some key practitioners, police is in charge with crime investigation and the ability to deal with mediation should remain with higher authorities, such as public prosecutors. It was mentioned that in principle, mediation can be conducted at this level and will be considered later at prosecution level, in order to dismiss the charge or dispense with punishment. However, it was emphasized by some respondents that police should not decide about case referrals, as there is no legal frame.

It was held by other key practitioners that intervention should be as soon as possible and police could also be in charge with case referrals for mediation. However, it was questioned whether police is willing to take over this task.

At prosecution level, mediation is mainly used as a diversionary measure, and especially with juveniles implementation is considered by respondents as good. It was pointed out by some practitioners that it is optimal to deliver victim-offender mediation at an early stage, and that case referrals at prosecution level function well.

In some cases referred at prosecution level, there was a lack of a personalized victim (e.g. institutions, shoplifting), but as restitution was possible, the cases were dealt with, which was also in the interest of offenders.

According to one respondent from the field of mediation, the presidents of county courts could have more influence on public prosecutors offices and courts in order to improve

information and promote the use of mediation. The same applies to the Ministry of Justice in the Federal States, which could further promote mediation.

In terms of implementation at court level, it was stated that at every stage of the proceedings the use of mediation in penal matters should be assessed. Some respondents found that there was still more potential at this level to apply mediation, as very few cases (estimated 5% to 10% of all cases in adult cases) were referred at court level to mediation services.

The majority of practitioners did not know about the implementation of mediation at correctional level, but agreed on applicability at this stage and in general welcomed the idea. Mediation at this level could contribute to reduce recidivism and victims' feelings of fear. It was also pointed out that beside mediation, community conferences were a matter of interest at this level. One practitioner, a mediator, was aware of the fact that mediation was conducted especially with juvenile prisoners in individual cases in correctional facilities in the Federal State of Saxony.

Finally, it was emphasized by a mediator, that victim-offender mediation could be more expanded to all levels, and all law practitioners should get trainings in this field.

2.2.2. On categories of crimes

In principle, no category of crime is excluded by law in Germany. However, guidelines on diversion in juvenile justice were elaborated, which provide orientation for practitioners regarding the use of victim-offender mediation. The guidelines include suitable cases for mediation and refer to less and middle serious offenses (e.g. assault, property damage). Although more serious offences are not excluded, practitioners are guided by these principles, focusing on minor and medium severity offenses. A few respondents see the risk that serious crimes are generally left out when assessing suitable cases. They held that the decision to participate in mediation in any case should be given to full extent to the parties. There should be more discussions within the society and communities to take responsibility for crime and conflict resolution and to empower communities.

Most interviewees agree on the fact that mediation should in principle not be used in cases of serious offenses, such as sexual offenses, homicide. Especially sexual offenses should be excluded when children were involved, as the procedure would not be appropriate in this case. According to one interviewee, it is already a huge burden for victims of serious offenses to testify at court, and there is a need for distance to the offender. Victims are often traumatized and seek for safety. One respondent talked about an individual case of mediation following a rape offense, which was requested by the victim. This was however an exceptional case. Another practitioner stated that individual cases of aggravated assault were

dealt with through mediation, and that experiences were good. It was further argued that the circumstances of the individual case have to be taken into consideration. The more serious the crime, the more difficult is the implementation of victim-offender mediation. It was also invoked that special attention should be given to the seriousness of the guilty plea when mediation would be taken into account in criminal proceedings. Real remorse of the offender should be present, otherwise mediation would be difficult to acknowledge, especially in more serious offenses.

As shown by the experience of key practitioners, mediation in penal matters is most often applied in cases of minor or medium severity offenses. Examples listed were offenses such as assault, robbery, theft, extortion, libel, stalking, etc.

2.2.3. On children and young offenders

Legal and practical implementation of victim-offender mediation for juveniles and young adults is considered by most practitioners to be a good one, especially as a measure of diversion. Few respondents pointed out that there is more potential for case initiation at prosecution and court level. Expansion at correctional level addressing young offenders was considered a good idea. At police level, there are well trained youth officers who come into contact with young persons, but due to reorganization at police the number of specialized staff remained very low.

Practitioners in the field of juvenile justice agree that the management of mediation and the assessment of its applicability through the juvenile court assistance is an optimal solution. It is pointed out that juveniles are more willing to engage in mediation processes than adults. Some key practitioners mentioned that regarding juveniles, provisions in the social welfare legislation (Social Code VIII) are applied to victim-offender mediation, which are crucial for financing of the measures. The underlying approach is an educational one, whereas for adults victim-offender mediation falls within the justice scheme regarding delivering of services. One practitioner held that the focus is clear, but it is questionable whether this differentiation would be useful. According to judiciary, victim-offender mediation has to be considered as one measure of assistance of education and youth welfare services are in charge of the scheme. However, there is no consensus between judiciary and academics about this issue. It was taken from some interviewees that better clarity and definition whether mediation is a service of youth assistance would be desirable. Competences should be better divided and internal communication improved. Another practitioner argued that (implicit) positioning of mediation in penal matters in the Social Code, which is offender oriented, is contrary to the principle of victim-offender mediation as a neutral procedure.

Early intervention through mediation by involving the juvenile court assistance is considered a good practice. Juveniles and young adults may be more sensitive to the needs of victims when participating in a mediation session and meeting the injured party. Often, offenders invited to participate in mediation do not have large criminal records, and especially regarding juvenile offenders conflicts are considered normal during their development and disappear again. Therefore, it was stated, pedagogues should be more trained in the field of conflict resolution and intervene at an earlier stage. A part of the cases would not enter the criminal proceeding stage if conflict resolution measures would be conducted at school level, according to one key-practitioner.

Furthermore, it was stated that it would be valuable to involve parents and social workers in the process. A respondent emphasized that it is often difficult to get involved parents, because various processes run in parallel, for instance civil action and proceedings, insurance and damage claims, procedures at school (e.g. suspension from school). Sometimes, parents tend to prefer criminal proceedings and to leave it to the judge to decide upon the case. Parents sign the mediation agreements but in nearly half of cases they impede the process and prevent the agreement, according to a key practitioner.

Another practitioner reported that the involvement of parents, other family members and friends was supportive and helpful in the process. Lawyers do participate very rarely to provide the legal perspective.

One practitioner observed the trend that in recent years, less juvenile offenders give statements and less young people contact the police, so there is in general less contact with young persons.

2.2.4. On victims and offenders

Most of respondents stated that in the region/Federal State there are adequate mediation services both for juvenile and adult offenders and equal access to services is provided.

Key practitioners agree on the fact that in general, victims and offenders are well informed on the mediation process. At police and prosecution level, there are information brochures on victim-offender mediation (procedure, principles, services) available. It was however mentioned that assessment could be more intense, at police level, but also at the level of juvenile court assistance and at the other levels. It was invoked that there was a lack of human resources to further analyze cases.

According to the practitioners, the rights of victims and offenders are in principle well protected during the implementation of victim-offender mediation. One practitioner mentioned the issue that problems may arise when juvenile offenders are not able to fulfill the mediation agreement, such as financial damage compensation. Mediators should take

ensure that the agreements concerning juveniles can be met, otherwise their rights might be affected. Training for mediators should focus more on juvenile law.

Another aspect stated is access to victim data at public prosecution or court level. In order to protect victims' rights, the provision of data on victims is not easy to access. There might be a possible risk of influencing the proceedings if victims are contacted. However, according to a respondent, access to victim data would be necessary to assess whether cases are suitable for mediation. There are no rules/directives which regulate access to such data up to now, which would however be desirable for practitioners.

Another practitioner mentioned that partnership conflicts and the protection of women's rights might be a sensitive issue. In order to protect women and safeguard their rights, women's shelters or other associations for women care sometimes prevent women from meeting their partners in a mediation session (as assumed in their best interest).

All practitioners consider the time frame as adequate. There is enough time for victim and offender to decide about participation in mediation and also to conduct the mediation process. Usually, parties can decide within three months if they want to participate, sometimes the period is limited to six weeks. When the period to decide for victim-offender mediation is too short, mediators ask for extension of time which is granted without problems. There is also enough time to consult with the lawyer. However it was seen critically by a practitioner in the field of adult mediation, that the period until the parties are contacted for the first time by a mediator is too long. Usually, investigation proceedings take two or three months and afterwards mediators are allowed to contact victim and offender.

2.2.5. On Restorative Justice process and services

Respondents emphasized that key practitioners ensure that the parties are willing to participate in mediation and do not put pressure on the parties. When referring a case, practitioners assure voluntary participation in the process. It was pointed out that offenders must have confessed their guilt. It was also held that willingness to participate in mediation should be assessed at an early stage, preferably at prosecution level.

As previously reported, the court order to impose mediation in penal matters on juveniles is considered to be inadequate, since it is contrary to the principle of voluntariness. The legal framework is viewed critically. In practice, according to respondents, this measure is imposed very rarely by the court.

Regarding rights during the process, both victim and offenders can withdraw their consent at any time, according to practitioners. The parties' rights to consult with their lawyer are ensured.

Supervision of mediators is considered important by key-practitioners. It was pointed out that more funding by justice departments for supervision in the field mediation would be desirable. Practitioners deem there are adequate seminars on victim-offender mediation. Mediators had trainings organized by the Victim-Offender Mediation Service Office (linked to German Probation Services). One interviewee pointed out (legal) topics with juveniles might be more involved in training courses. Besides trainings for mediation practitioners, it was also felt to be useful that trainings for criminal law practitioners include more issues on mediation in penal matters.

Evaluation of the outcomes of mediation is considered by most respondents to be important. Communication of the positive results of victim-offender mediation was considered to be a crucial point for a Restorative Justice process to achieve its objectives.

Practitioners assumed that the number of trained staff in mediation services is adequate. Most practitioners suppose that mediators should be professionals and not trained citizens. Few interviewees think that persons with special training and pedagogical experience (when involving juveniles) could also work as mediators. Important would be their practical experience.

Interviewees agreed on the fact that there exist adequate victim-offender mediation services in the region/country. Social and cultural issues are taken into consideration. Persons with disabilities (e.g. deaf persons) and persons with a different cultural background are involved according to their needs. When participants do not speak the German language (very well), interpreters are called. Financing has to be provided for the interpreter or other necessary persons. However, a practitioner pointed out that all costs for the process need to be calculated and due to lower financing in the past it has to be balanced whether certain cases may be conducted or not. Hence, financial issues might influence decision-making of the authority. A further social issue especially for young offenders might be the fact that travel expenses cannot be raised. In this case, juvenile court services may decide to cover the costs to ensure participation in the scheme. Decisions depend on the budget of the services. If necessary in a case, costs for co-mediation can be allocated by the decision-making body. Regarding cooperation between public and private services, most respondents agreed that cooperation is good.

2.3. On Restorative Justice Obstacles and Good Practices

2.3.1. Restorative Justice obstacles

All respondents assume that the legal framework is not restraining and provides flexibility. There is no need for legal restrictions and the correct application is left to key practitioners, which is a good solution according to a justice practitioner.

Respondents' perspectives whether there is limited local experience in the field of victim-offender mediation are controversial. Half of practitioners believe experience of this scheme is limited, others do not. In terms of active community involvement, most key practitioners do not think that involvement of community members is necessary. It was argued that criminal justice processes focus on victims and offenders and restorative processes shall be conducted by professional mediators. However, most respondents agree on the fact that there is a lack of public awareness and of social acceptance towards Restorative Justice (in form of victim-offender mediation). A justice practitioner mentioned that there is increased awareness in recent years and also attitudes of justice officials such as prosecutors have changed positively. Yet, another practitioner in the field of mediation stated a lack of interest in communities in Restorative Justice measures. Politicians could promote and support Restorative Justice more and contribute to enhanced community involvement.

In terms of financial and human resources, practitioners' perspectives are different. Half of interviewees find that human and financial resources in mediation services are sufficient. A judicial practitioner believes that there is a lack of such resources. Due to financial shortage jobs in the area of youth services, juvenile court assistance and mediation services for youth were cut and not filled again. More staff is needed to provide intensive support for the parties, as processes take time. Financial cuts also affected various measures involving offenders such as community service, according to the judge. Other practitioners (in the area of mediation and youth services) believe that there is adequate staff, but funding is a problem. Especially since the years 2002 and 2005, services were restructured due to a shortage of financing.

It was also argued by a key practitioner that there is no consistent funding for victim-offender mediation in the country. It is assumed to be a problem that there is no legal provision regarding (youth) criminal proceedings. Authorities are dependent on municipal decisions.

A practitioner in the field of juvenile court assistance reported high case numbers and a limited time frame to deal with the cases. It was assumed that cases are becoming more complex, and the problems in the background are important to identify (e.g. familiar situation). A practitioner in mediation stated that limited spatial conditions would negatively affect working in mediation, as rooms have to be shared with other social workers responsible for conducting other measures.

In terms of cooperation between courts, public prosecutors offices, juvenile court assistance, mediation services and lawyers, practitioners share different views. While some practitioners (justice officials) state that cooperation is good, others in the field of mediation or defense see cooperation more critically. Cooperation of public and private services with prosecution is

considered to be more constructive than with courts. Regular meetings are organized by the Regional Working Group on Victim-Offender Mediation to sensitize justice officials. It was also argued that cooperation between private organizations and public institutions has been negatively affected by financial cuts. For in depth information on cooperation given by each respondent, see annex on practitioners.

Most practitioners (mediators, juvenile court assistance) mentioned another important issue: in recent years, case referrals for victim-offender mediation are decreasing. Although it was assumed that justice officials know about this issue, no effective measures in order to promote inter-institutional cooperation and exchange were taken.

2.3.2. Good practices in Restorative Justice

Some practitioners felt that more contact with schools in the field of conflict prevention/resolution would be of advance. A good practice model would be based on the active involvement of representatives of schools, recreational facilities, and professionals in the field of conflict resolution to resolve conflicts at an early stage. Professional mediators should be widely involved at school level.

In the field of victim-offender mediation, networks for exchange such as the Federal and Regional Working Group on Victim-Offender Mediation exist, which regularly organize round tables and seminars. The Federal Working Group (at the Victim-Offender Mediation Service Office) organizes every two years an exchange inviting professionals all over the country. The Regional Working Group meets twice a year in the Federal State of Saxony to promote an exchange on mediation in penal matters.

Nationwide campaigns and other forms of publicity on victim-offender mediation could further contribute to the promotion and increased acceptance of this Restorative Justice scheme, as pointed out by a respondent. The frame of Restorative Justice could be further expanded if there would be more knowledge in this field. It was stated that Restorative Justice should be part of professional training in criminal justice.

An important issue according to practitioners is good financing of the private and public organizations delivering mediation services.

Case referrals through juvenile court services are considered a good practice model. Services operate within a wide catalogue of measures which are available for young offenders and can choose the most appropriate scheme.

Some practitioners mentioned that up to 2005, a counseling center existed at police level in the city of Leipzig, which was responsible for case referrals for juvenile and young adult offenders. Afterwards, the center did not operate any more due to reorganization at the police. According to the practitioners who knew about this center, the centralized office was

a positive practice model and should be implemented again. It was also referred to the "Intervention and Prevention Project" in the city of Dresden in the same Federal State, which is operating since five years. Police can assess whether there are suitable cases for victim-offender mediation and can promote the applicability of mediation.

3. Some concluding remarks

As can be taken from the interviews, key practitioners agree that principally there is a good legal framework for victim-offender mediation in criminal law (except for the court order set in juvenile criminal law). Some practitioners consider that provisions in social law referring to victim-offender mediation involving juveniles may create confusion and better clarity and distinctiveness is needed.

Perspectives on implementation vary among respondents. Especially mediators suppose there is more potential to refer cases at prosecution and court level. As it was also pointed out, the initiative for case referrals often depends on individual law practitioners.

While most key practitioners assume that implementation at police level is not necessary, few interviewees pointed out that early intervention would be of advance and police should be more involved and trained. Involvement of (trained) police officers seems to be a reasonable suggestion, and the practice models with police have shown good results as it was reported by key practitioners. One crucial point seems to be consistency with contact persons to ensure sustainability of cooperation.

More information on mediation in penal matters provided for justice officials – and for community members in general - would be of advance, in order to increase awareness and acceptance towards mediation. Obviously, there is a need for enhanced inter-institutional communication and cooperation. The fact mentioned by practitioners that mediation case referrals are declining since a few years is worrying. It is not clear whether this trend is ongoing and what the exact reasons behind the tendency are.

Financial constraints in communities and job cutting in fields linked to victim-offender mediation are a further matter of concern.

Finally, the proposal to promote cooperation with schools and relevant community organizations focusing on juveniles (but not only) is supported, as a broad and early focus on conflict prevention and resolution is certainly of advance and fosters community members' commitment.