



Specific Programme Criminal Justice

European Commission

Directorate-General Justice – Directorate B: Criminal Justice



INSTITUTE OF CONFLICT RESOLUTION

SOFIA - BULGARIA

## **FINAL NATIONAL REPORT OF FINLAND**

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

**2013**

## **Restorative Justice Finland**

**by Pirjo Laitinen<sup>1</sup> and Mirva Lohiniva-Kerkelä<sup>2</sup>**

### **A. Introduction**

The criminal justice system in Finland is based on a continental tradition and on concepts of the classical school of penal law<sup>3</sup>. Finland and Sweden has a lot in common also in legislation, because of the seven centuries of the common history. Even during the Russian rule (1809-1917) Finland was allowed to keep most of the Swedish laws in force.<sup>4</sup> The Criminal Code of Finland was published in 1889 (19.12.1889/39) and came into force in 1894. The Code has been totally renewed during last decades, for example the general part in 2004 (13.6.2003/515). Provisions on imprisonment has been renewed 2005 (23.9.2005) and some amendments on penal provisions has also been adopted in 2008 (29.8.2008/578) and in 2011 (8.4.2011/330).

Finland's criminal justice system offers relatively few alternatives to imprisonment, namely conditional imprisonment, community service, juvenile penalty and fine.<sup>5</sup> In 01<sup>st</sup> of November 2011 came into force the act on supervising/control punishment (330/2011). Most effective alternative to imprisonment has been the conditional sentence. Sentences of imprisonment at most two years can be imposed conditionally, provided that the maintenance of general respect for the law does not require an unconditional sentence. A special provision allows the use of an unconditional sentence

---

1 PhD researcher, Faculty of Law, University of Lapland, Finland.

2 LL.D, Senior Lecturer, Vice Dean, Faculty of Law, University of Lapland, Finland.

3 Joutsen, M., Lahti, R., Pölönen, P. 2001: Criminal Justice Systems in Europe and North America – Finland, p. 2.

4 Niemi-Kiesiläinen 2007: Civil Procedure – Finland, in International Encyclopaedia of Laws, Kluwer Law International, p. 14.

5 Lappi-Seppälä 1998: Regulating the Prison Population – experiences from a Long-Term Policy in Finland, p. 6.

for those who have committed the offence under the age of 18 only if certain extraordinary reasons call for it (Criminal Code, chapter 6, section 9.2).<sup>6</sup>

Community service (1055/1996) was introduced into the Finnish penal system in 1991 on an experimental basis in four judicial districts. In 1994 the system was extended to cover the entire country and community service became a standard part of the Finnish system of sanctions. The duration of community service may vary between 20 and 200 hours. It may be used only to replace custodial sentences of up to 8 months (240 days). The prerequisites for sentencing the offender to community service are:

- a) that the convicted person consents to this
- b) that the sentence imposed on the offender does not exceed eight months, and
- c) that the offender is deemed capable of carrying out the community service order.<sup>7</sup>

The juvenile penalty (1196/2004) applies to those who committed their offence between the ages of 15 and 17. The juvenile penalty is a kind of "junior version" of community service and involves a short period (10 to 60 hours) of unpaid work or "other similar activity". The central aim of this reform was to avoid the use of imprisonment by inserting a new step between conditional and unconditional imprisonment.<sup>8</sup>

Main laws for criminal procedure in Finland are the Criminal Code of Finland (19.12.1889/39) and Criminal Procedure Act (11.7.1997/689). In minor cases for example when only fines or maximum 9 months imprisonment will be sentenced, whole procedure can be based on written material and the defendant need not to be present at the court. In the pre-trial stage the defendant has to respond to the demands made against him/her, either in writing within a deadline or orally at a hearing (Chapter 5, section 9). In written procedure only those charges can be conducted, where imprisonment maximum 2 years or fines can be sentenced.

---

6 Ibid p. 6.

7 Ibid p. 13.

8 Ibid p. 16.

The first stage in oral criminal procedure is preparatory hearing and soon after that the main hearing can take place. The prosecutor and the defendant with the advocate are present in the main hearing. Witnesses can be heard and the evidence can be presented in the main hearing in criminal procedure. Finally the criminal court passes the sentence and the convicted and the prosecutor can claim the court decision to the court of appeal.

The basic principle of criminal law is the principle of legality defined in The Constitution of Finland (1999/731): "No one shall be found guilty of a criminal offence or be sentenced to a punishment on the basis of a deed, which was not determined punishable by an Act of Parliament at the time of its commission" (section 8; "*nullum crimen sine lege, nulla poena sine lege poenali.*").<sup>9</sup> Prohibition against the retrospective application of a criminal law means that no one can be punished if not in compliance with a law that was in force before the act was committed. Prohibition against to interpret criminal law by analogy is also considered by the prevailing doctrine as operating only in *malam partem*.

The principle of individual prevention (rehabilitation) began to influence criminal law thinking and practice soon after adoption of the Criminal Code in the end of the 19<sup>th</sup> century and in the first decades of the 20<sup>th</sup> century. Equality demands that all cases falling within a specific category are dealt with in the same way without unjustified discrimination (Section 6 of the Constitution). The respect for humanity (or human dignity) requires that no one shall be sentenced to death, tortured or otherwise treated in a manner violating human dignity (Section 7 of the Constitution).<sup>10</sup>

Such basic elements of a due process or fair trial as the right of access to court, independent and impartial tribunal, the presumption of innocence and guarantees of procedural rights have traditionally been recognized in Finnish procedural law. The ratification of the European Convention on Human Rights in 1990 and the reform of fundamental rights guaranteed in the Finnish Constitution have strengthened the

---

9 Joutsen, M., Lahti, R., Pölonen, P. 2001: Criminal Justice Systems in Europe and North America – Finland, p. 4-5.

10 Ibid p. 5.

importance of those principles. The principles of culpability and proportionality require that the sentence shall be in just proportion to the damage and danger caused by the offence and to the culpability of the offender manifest in the offence.<sup>11</sup>

There are different kind of conflict solving forms in Finland: mediation in civil cases e.g. mediation in courts by judges, victim-offender mediation, family group conferencing especially in divorce matters, mediation in schools, mediation by attorneys and mediation in working places. In this chapter the focus will be on mediation in criminal cases which is the most organized form and is based on legislation. The mediation in family cases is mostly based on the Finnish Marriage Law according to which solutions to conflicts and legal questions within the family must primarily be sought in negotiations between those concerned. The new areas of using restorative justice measures in conflict solving are schools and work life which are not ruled by acts. The basic principles of mediation in criminal cases are that system is voluntary, free of charge, confidential and based on the theory of restorative justice. Mediators are not authorities but trained voluntary mediators

The first step of mediation in criminal cases can be traced to year 1982, when Juhani Iivari and his partners Martti Grönfors and Pekka Viirre began experimental mediation project in Vantaa municipality. Juhani Iivari created in his many works the theoretical basis and also practical measures for the future mediation system.<sup>12</sup> In 1990s mediation was experimentally taken in practice first in nine municipalities (Espoo, Jyväskylä, Kajaani, Lahti, Mikkeli, Oulu, Tampere, Turku and Vantaa). Mediation was based on the work of volunteers and the emphasis was put on social work and youth work. The mediation was organized by municipalities in various ways and there were no State supervision for this action.

---

11 Ibid p. 5.

12 Iivari, J. 1985: Sovittelu rikosten ja riitojen vaihtoehtoisena ratkaisuna. Kokemuksia Vantaan Sovitaan-projektin käynnistämisestä vuosilta 1983-84. Oikeusministeriön vankeinhoito-osaston julkaisuja 2/1985. Helsinki.

Saija Järvinen has researched these first attempts to mediation, even more specific in Espoo, Tampere, Oulu, Mikkeli and Kajaani.<sup>13</sup> According to her study mediation has been very dependent on the actions of the authorities: three cases out of four came into mediation from the authorities, primarily from the prosecutors. Most offences coming into mediation according to the entire data had been committed by young people, in particular by young men. During 1990, 16% of all persons suspected of an offence had been under the age of criminal responsibility (15 years). Most of the municipalities had focused solely on offences committed by children and young persons, while in some municipalities also adults were given the possibility of participating in mediation. The offences most often involved were damage to property (30%), assault offences (27%) and thefts and petty thefts (21%).<sup>14</sup>

Legal frame for mediation was first provided in Criminal Procedure Act (11.7.1997/689), chapter 1, sections 7-8 (ROL 1:7-8§) and in Criminal Code of Finland (19.12.1889/39), former chapter 3, section 5 (1990/302, 1996/1060), which ordered that a settlement reached by the offender and the injured party can be basis for the public prosecutor not to prosecute and for the criminal court not to punish the offender. The settlement could also be considered in measuring the punishment, chapter 6, section 6.3 (RL 6:6.3).

According to the study of Ida Mielityinen mediation was arranged in 1997 in 167 municipalities, which was 37% of all the municipalities in Finland. All of the larger cities provided the possibility of mediation. So in 1997 even 75% of the population lived in municipalities where criminal and civil cases could be submitted to mediation. In 1997 3626 cases were submitted to mediation in Finland. 98% of these were criminal cases and 62% of the mediated cases which were subject to public prosecution, resulted in a decision by the prosecutor to waive prosecution.

Most of the policemen and prosecutors interviewed in the study held the opinion that mediation was most appropriate for the petty offences and for offences committed by

---

13 Järvinen, S. 1993: Rikosten sovittelu Suomessa. Sovittelukäytännöt ja vaihtoehtoisuuden arviointi. *Stakes, tutkimuksia 21, oikeuspoliittisen tutkimuslaitoksen julkaisu* 116, with English Summary: Mediation of offences in Finland. Mediation in practice and an assessment of mediation as an alternative to the criminal justice system, p.35, 209-210.

14 Ibid p. 210.

young persons. Persons interviewed also favored, in many situations, the submission of offences committed by adults to mediation. More serious offences were held to be inappropriate for mediation as such, but also these could be submitted to mediation in order for the victim and the offender to agree on compensation.<sup>15</sup>

Current situation in mediation in criminal and certain civil cases in Finland is now based on a general and overall scheme and the law on mediation was enacted 09 December 2005 (1015/2005). Mediation has been taken into consideration also in the new provisions on the waiving of measures.

## **B. Legal Frame of Restorative Justice**

The general legal frame of Restorative Justice in Finland is based on Act on Conciliation in Criminal and Certain Civil Cases (1015/2005), which entered into force 01 January 2006. The main goal of the act was to extend the mediation in criminal cases to cover the entire country so that all customers have the opportunity to obtain good-quality mediation services regardless of their place of residence. Further goals were to safeguard sufficient government funding for mediation services, to organize the national management, supervision and monitoring of mediation services and to create conditions for long-term monitoring and development. The Act also aims at making the procedures observed in mediation more uniform and giving sufficient attention to the legal protection of customers in the mediation.<sup>16</sup>

Criminal Procedure Act, chapter 1, sections 7 and 8 (prosecutor may not prosecute) and Criminal Code of Finland, chapter 6, section 6.3 (the settlement could be considered in measuring the punishment) and section 12.4 (waiving of punishment) are also the main provisions considering the legal frame of Restorative Justice. Earlier restorative measures were applied in Finland only to petty offences, but nowadays even more serious crimes can be directed to conciliation (Act on Conciliation in Criminal and Certain Civil Cases):

---

15 Mielityinen, I. 1999: Rikos ja sovittelu. Valikoituminen, merkitys ja uusintarikollisuus, oikeuspoliittisen tutkimuslaitoksen julkaisu 167, with English Summary: Crime and Mediation. Selection of cases, the significance and meaning of mediation to the participants, and reoffending, p. 187-189.

16 Act and the summary of the preamble, The commentary at the beginning of the English translation of the Act is a summary of the preamble to the original Act in Finnish, to be found: <http://info.stakes.fi/sovittelu/EN/legislation/index.htm>

### Section 3 – *Issues dealt with through conciliation*

- (1) Conciliation may deal with crimes that are assessed as eligible for conciliation, taking into account the nature and method of the offence, the relationship between the suspect and the victim and other issues related to the crime as a whole. Crimes involving underage victims must not be referred to conciliation if the victim needs special protection because of the nature of the crime or because of his/her age. If a crime cannot be referred to conciliation, issues related to compensation of the damage caused by it must not be referred to conciliation either.*
- (2) Civil cases may be referred to conciliation if dealing with them through conciliation can be considered expedient.*
- (3) Even if a case is dealt with and decided by a police or prosecuting authority or in a court of law, this does not preclude conciliation.*

This means that in principle restorative justice measures provided by the legal frame apply all kind of crimes. However a crime must not be referred to mediation if the victim is underage and has a special need for protection. According to the preambles of the act<sup>17</sup> this means that for example sexual offences against children as well as offences against very young victims must be excluded from mediation.

However according the special regulation (section 13 Act on Conciliation in Criminal and Certain Civil Cases) only police or prosecuting authority has the right to propose mediation if the crime involves domestic violence (violence that has been directed at the suspect's spouse, child, parent or other comparable near relation). According to the preambles of the act cases involving domestic violence must not be referred to mediation if the violence in the relationship is recurring or if the parties have already been through the mediation dealing with domestic violence.

---

<sup>17</sup> Hallituksen esitys Eduskunnalle laiksi rikos- ja eräiden riita-asioiden sovittelusta (HE 93/2005) (Government proposal for an Act concerning mediation in criminal cases, summary in English can be found: <http://info.stakes.fi/sovittelu/EN/legislation/index.htm>).



Measures apply both to juvenile and adult offenders although at the beginning the focus was more on offences committed by children and young people.

The initiative to mediation can come from several directions:

#### Section 13 – *Referral to conciliation*

- (1) Conciliation may be proposed by the crime suspect, the victim, the police or prosecuting authority or some other authority. If the suspect or the victim is underage, his/her custodian or other legal representative has the right to propose conciliation. In cases involving a legally incompetent adult, the person supervising his/her interests may also propose conciliation.*
- (2) However, only the police or prosecuting authority has the right to propose conciliation if the crime involves violence that has been directed at the suspect's spouse, child, parent or other comparable near relation.*
- (3) When the police or prosecuting authority assesses that a case at hand is eligible for conciliation as laid down in section 3(1), it must inform the suspect and the victim of the crime of the possibility of conciliation and refer them to conciliation, unless otherwise provided in subsection 2 of this section. If the suspect or the victim of the crime is underage, the information on the possibility of conciliation must also be given to his/her custodian or other legal representative. In cases involving a legally incompetent adult, the information must always be given to both the person him/herself and the person looking after his/her interest.*

Restorative justice provisions are available at all the stages of criminal proceedings in Finland. Restorative justice processes are applied as an alternative to the traditional criminal justice procedure but they can also be used or seen as completing part of traditional criminal justice system and its measures<sup>18</sup>. Victim-offender mediation stands

---

18 Iivari, Juhani: Oikeutta oikeuden varjossa. Rikosseittelulain täytäntöönpanon arviointitutkimus. Raportti 5/2010, Helsinki 2010. Justice in the Shadow of Justice. An Evaluation Study of the Implementation of the Act on Mediation in Criminal Cases. National Institute for Health and Welfare [www.thl.fi](http://www.thl.fi) Report 5/2010. Helsinki 2010, p. 103.

formally outside the criminal justice process but can still have direct influences on the criminal proceedings if succeeded. It is also possible that both (mediation and traditional criminal procedure) goes on side by side.

Specific provisions by making a differentiation between juveniles and adults:

a. Mediation at the police level (pre-charge);

There are no specific rules. According to the Act on Conciliation in Criminal and Certain Civil Cases section 13) if the police assesses that the case is eligible for mediation, and if general conditions are filled, it is obliged to inform the parties of the possibility of mediation and also refer the case to mediation. In Finland it is also possible that crimes committed by persons under the age of 15 can also be subject to mediation even though the age of criminal responsibility is 15 years. These cases are referred to mediation by child welfare authorities as a part of child care which is regulated in the Child Welfare Act (417/2007).

b. Mediation at prosecution level;

Prosecutor can waive prosecution on the basis of a settlement reached by the offender and the injured party, Criminal Procedure Act, chapter 1, section 8. Here is no separation between juveniles and adults. So successful mediation is a legitimate ground (likewise is also e.g. young age) to waive the prosecution but does not automatically lead to the waiving of the prosecution.

c. Mediation at court level;

Criminal Code of Finland, chapter 6, section 6.3; the settlement can be considered in measuring the punishment and section 12, ground for waiving of punishment. There are also special punishments for persons younger than 18 like the juvenile penalty. Conditional imprisonment, community service and juvenile

---

penalty as non-custodial sentences should be used for persons younger than 18. The unconditional sentence of imprisonment shall not be imposed for an offence committed when the perpetrator was less than 18 years of age, unless this is demanded by weighty reasons, Chapter 6, section 9.2.

d. Restorative Justice at the correctional level;

Act on Imprisonment 767/2005, chapter 5, section 2, persons under 18 shall be placed in prisons, where it is possible to keep them separate from adult prisoners. All kind of the reparative acts shall be available during the imprisonment for young persons as for adults.

### **C. Actual Situation of Restorative Justice**

In Finland Restorative justice programs are organized mainly by state, especially by the Ministry of Social Affairs and Health. The general supervision, management and monitoring of mediation is under the responsibility of the Ministry of Social Affairs and Health. The actual responsibility of monitoring and developing the area inside the Ministry lies in the National Institute for Health and Welfare. In the ministry there is also The Advisory Board on Mediation in Criminal Cases.

Each State Provincial Office is obliged to arrange mediation services and ensure that they are available in appropriately implemented form in all parts of the province. The mediation services then are provided either by municipalities or by some other public or private service providers.

In Finland almost all the programs and services are financed by state.

There are also non-governmental organizations like Finnish Forum for Mediation ([www.sovittelu.com/english/index.htm](http://www.sovittelu.com/english/index.htm)) which has been founded in 2003. This forum is a Finnish cooperation organization. Also Finnish Bar Association offers mediation especially in commercial affairs, work relations and family affairs.

Earlier services were quite offender focused in Finland, but nowadays they are developing more towards both offender and victim focused.

Services of the Restorative Justice are free of charge for the parties so costs are lower than the cost of the traditional criminal justice services. Of course in Finland it is possible to have a free of charge process in criminal court when economic circumstances of the offender or the injured party it demands.

As far as it concerns the time needed for the process to be completed the conciliation process should be shorter in comparison to the traditional process, but other opinions are also expressed.

Statistical data is available:

- National Institute for Health and Welfare, [www.thl.fi](http://www.thl.fi).
- Mediation in Criminal and Civil Cases 2010, Statistical Report 19/2011, National Institute for Health and Welfare, [www.thl.fi](http://www.thl.fi).

Empirical research:

- Elonheimo, Henrik: Nuorisorikollisuuden esiintyvyys, taustatekijät ja sovittelu. University of Turku. Turku 2010. (Youth Crime, Prevalence, Predictors, Correlates, and Restorative Justice) <http://urn.fi/URN:ISBN:978-951-29-4242-8>
  - o Academic theses which main objective was to study psychosocial childhood (age 8) predictors and late adolescence (age 18) correlates of juvenile crime (ages 16 to 20). Concerning restorative justice, the aim was to explore how the Finnish victim-offender mediation practices live up to the high standards set by the restorative justice theory, and how mediation should be developed.

The material has been collected in different ways. Finnish mediation practices were studied through observation of 16 cases of victimoffender mediation by law students in the city of Turku between 2001 and 2003.

- Iivari, Juhani: Oikeutta oikeuden varjossa. Rikossovittelulain täytäntöönpanon arviointitutkimus. Raportti 5/2010. Helsinki 2010. Justice in the Shadow of Justice. An Evaluation Study of the Implementation of the Act on Mediation in Criminal Cases. National Institute for Health and Welfare [www.thl.fi](http://www.thl.fi) Report 5/2010. Helsinki 2010.
  - o Evaluation study which explores mediation in criminal cases in Finland and presents the results of interviews with key police and prosecuting officials and mediation offices. The other part of study is a questionnaire based on the results of the interviews, and sent to mediation clients, that is, injured parties of criminal acts, suspected offenders, and their family and support persons (N=952).
  
- Mielityinen, Ida: Rikos ja sovittelu. Valikoituminen, merkitys ja uusintarikollisuus. Oikeuspoliittisen tutkimuslaitoksen julkaisuja 167, with English Summary: Crime and Mediation. Selection of cases, the significance and meaning of mediation to the participants and reoffending, Helsinki 1999.
  
- Järvinen, Saija: Rikosten sovittelu Suomessa. Sovittelukäytännöt ja vaihtoehtoisuuden arviointi. Stakes, tutkimuksia 21, oikeuspoliittisen tutkimuslaitoksen julkaisuja 116, with English Summary: Mediation of offences in Finland. Mediation in practice and an assessment of mediation as an alternative to the criminal justice system. Helsinki 1993.

The projects of Finnish Forum for Mediation including training and research:

- Project concerning school mediation: based on the idea of peer mediation project "Verso" financed by the ministry of Education and the Finnish Slot Machine Association. (<http://www.ssf-ffm.com/vertaissovittelu/index.php?id=35>)

- Project concerning mediation in work communities with Ministry of Labour and great number of labor organizations
- About to start project in facilitative family mediation

#### **D. Informal Referrals and Informal Initiatives**

The new areas where initiatives have been made are peer mediation in schools and in working communities. The active organization in these initiatives has been The Finnish Forum for Mediators which has launched several projects concerning these areas. It's typical for the Finnish system that most of these actors and projects get their funding from public sector and they are fulfilled in cooperation with governmental organizations (e.g. ministries). And for example the restorative justice initiatives at schools are combined with developing the education. The search for new models to solve problems in schools is also bound to the fact that according to Finnish legislation a child has a right to a safe study environment. So it is the duty of school authorities to guarantee that.

There has been also some research about these kind of new areas (for example doctoral thesis of Pehrman, Timo (2011): *Paremmin puhumalla. Restoratiivinen sovittelu työyhteisössä*. Acta Universitatis Lapponiensis 212. Rovaniemi (Better to talk. Restorative Justice in work communities).

Traditionally the church in Finland has offered family mediation services especially in divorce situations.

#### **E. The Key-Practitioners of Restorative Justice**

The role of the police and the prosecutor is most important, because they direct main part of criminal cases to the conciliation, over 90 % in Finland<sup>19</sup>. Judges and lawyers

---

19 *ibid* p. 103.

prefer in their work the punishments like conditional punishment, community service and juvenile service especially for young offenders and so promote the use of reparative measures for offenders.

The social workers are connected to the criminal justice procedure already from the beginning i.e. already at pre-charge level, when suspect is under 18 years old. They are usually present in interrogations and at court sessions, when offender is younger than 18.

Mediators are mainly volunteers in Finland and they have their official network called Sovitteluforummi. There are professional and ethical standards for mediators in Act on Conciliation in Criminal and Certain Civil Cases, chapter 2, section 10 – *Competence requirements for persons engaged in the provision of conciliation services*

*(1) Persons in charge of conciliation services and conciliation advisors must have an appropriate academic degree. If there is a special reason, other persons with good knowledge of conciliation services and of related planning and supervision may be accepted for these duties. Persons who have completed introductory training in conciliation services and otherwise have the education, skill and experience required for the appropriate handling of the duties may also act as conciliators.*

*(2) Further provisions on the competence requirements for persons referred to in subsection 1 may be given by Government decree.*

## **F. Case Study**

The process of conciliation has its legal base on the Act on Conciliation in Criminal and Certain Civil Cases (Chapter 3 Mediation procedure) and in many cases mediation and criminal procedure goes on side by side.

Mediation may be proposed (remembering the restrictions concerning domestic violence) by the crime suspect, the victim, the police or prosecuting authority or some other authority. If the suspect or crime victim is an underage, his or her parent or guardian or

other legal representative also have the right to initiate mediation. In matters concerning a legally incompetent adult, mediation can also be sought by his or her representative. The police or prosecuting authority has a duty to inform the possibility of mediation in some cases. If the suspect or the victim of the crime is underage, the information on the possibility of mediation must also be given to his/her custodian or other legal representative. In cases involving a legally incompetent adult, the information must always be given to both the person him/herself and the person looking after his/her interests. (Section 13)

The referral to mediation must be made to local mediation offices. Proposals concerning mediation are then processed by the mediation office in whose area one of the parties lives and in which the mediation can take place flexibly, giving due consideration to the circumstances of the partners. Proposals may also be processed by the office in whose area the crime has taken place. Anyhow parties can always submit a proposal concerning mediation to the mediation office in whose area they live. If the mediation office receiving the proposal decides not to deal with it, it must transfer the case without delay to an office it deems suitable for processing the proposal. There are also specific rules concerning investigating the conditions for mediation and deciding the mediation. (Section 14)

When a mediation office accepts a case for mediation, it must nominate a conciliator for the mediation process that is suitable for the task on the basis of his/her experience and personal characteristics and is not disqualified. Mediation office also with the relevant parties' agreement, obtain documents necessary for mediation from the police or prosecuting authority, courts of law or other parties. It has also a duty to ensure the provision of an interpreter or translator if a party does not have a command of the language to be used in mediation or because of a sensory or speech defect or some other reason cannot understand the discussions held in the mediation process or be understood in it. Finally after mediation it informs the police or prosecuting authority of the mediation process and its outcome, notwithstanding the provisions on secrecy.

The named conciliator arranges mediation meetings between the parties. He/she has a duty to conduct the mediation without bias and respecting all parties; help the parties to find mutually satisfactory solutions concerning the crime in order to redress the mental



and material harm the victim has suffered because of the crime; give the parties information on available legal assistance and other services; draw up a document on the agreement reached by the parties in the mediation process and verify it with a signature; and after mediation, submit a report on the mediation process to the mediation office. There are also specific rules about how to arrange the mediation and mediation meetings (especially concerning the underage).

Mediation can be interrupted for example if party withdraws its agreement or if there is reason to suspect that the agreement has not been given voluntarily. Mediation must also be interrupted if there is a justified reason to suspect that a party to the mediation process cannot understand the meaning of mediation and the solutions to be made in the process or if continuation of the mediation process is clearly against the interests of a party that is underage.

Mediation ends up to the agreement if the parties reach the mutually agreed solution; if not the mediation process is terminated.

The effects of mediation to criminal proceedings can vary. In lesser crimes successful mediation may result in discontinuance of the criminal proceeding or it may also lead to non-prosecution, waiving of sentence or to a more lenient punishment.

## **G. Current Reforms**

One of the most discussed issues in using restorative justice measures or mediation has been applying of it to domestic violence situations. At the moment it is possible but restricted. Finland had elections in 2010 and in the government program there is a clause according to which: "The use of mediation in conflict resolution in different civil and criminal cases will be promoted to speed up the judicial proceedings. Due to its short length and lower costs, mediation is especially well suited to custody disputes. However, in cases involving domestic violence, the use of mediation must be limited, as

the mediation processes in such offences include elements that may endanger the legal protection of the victim.”<sup>20</sup>

## **H. Evaluation and Recommendations**

Conciliation in criminal cases has not achieved the state of the real alternative for criminal justice system, for example 90% of cases are directed to conciliation by police and prosecutors. Conciliation can compensate criminal justice procedure for example in assault cases, where prosecutor has decided not to prosecute because of the settlement reached in mediation between the offender and the injured party. Completing significance can be seen in written procedure, for example when prosecutor makes a decision not to prosecute or when the criminal court makes a decision to waive a punishment or to reduce the punishment on the basis of the settlement. According to the results of the questionnaire by Juhani Iivari, the key objectives of mediation – expertise, objectivity, confidentiality and justice – were met in the majority of cases. The main conclusion from the interviews with police and prosecutors was that referral to mediation in cases of domestic violence should be expanded to allow heads of mediation offices and municipal social workers more discretion to decide which cases are referred. Some of the interviewed officials wanted to increase the discretionary power of prosecutors in referring aggravated cases to mediation.<sup>21</sup>

Weaknesses in conciliation are unclear agreements, long mediation process and different quality of services in different parts of country. Prosecutors saw many benefits in conciliation compared with the traditional criminal justice procedure like possibility to really help people, easier for prosecutor to waive measures, possibility to offer a real

---

20 Government Programme, Programme of the Finnish Government, 22 June 2011, <http://www.vn.fi/hallitus/hallitusohjelma/en.jsp>

21 Iivari, Juhani: Oikeutta oikeuden varjossa. Rikossovittelulain täytäntöönpanon arviointitutkimus. Justice in the Shadow of Justice. An Evaluation Study of the Implementation of the Act on Mediation in Criminal Cases. National Institute for Health and Welfare, Report 5/2010, Helsinki 2010, p. 103.

new alternative and finally to reach the real settlement between the offender and the injured party.<sup>22</sup>

Recommendations considering general resources for conciliation and further intensive training for mediators and the introduction of a requirement of certification for voluntary mediators are the most important questions in discussion today in Finland.<sup>23</sup>

## **I. ANNEX**

### **Bibliography:**

Elonheimo, Henrik: Nuorisorikollisuuden esiintyvyys, taustatekijät ja sovittelu. Youth Crime, Prevalence, Predictors, Correlates and Restorative Justice. University of Turku, Turku 2010.

Iivari, Juhani: Sovittelu rikosten ja riitojen vaihtoehtoisena ratkaisuna. Kokemuksia Vantaan Sovitaan –projektin käynnistämisestä vuosilta 1983-84. Oikeusministeriön vankeinhoito-osaston julkaisuja 2/1985. Helsinki 1985.

Iivari, Juhani: Oikeutta oikeuden varjossa. Rikossovittelulain täytäntöönpanon arviointitutkimus. Justice in the Shadow of Justice. An Evaluation Study of the Implementation of the Act on Mediation in Criminal Cases. National Institute for Health and Welfare (THL), Repot 5/2010, Helsinki 2010. [www.thl.fi](http://www.thl.fi)

Joutsen, Matti, Lahti, Raimo, Pölonen, Pasi: Criminal Justice Systems in Europe and North America – Finland, Helsinki 2001.

Järvinen, Saija: Rikosten sovittelu Suomessa. Sovittelukäytännöt ja vaihtoehtoisuuden arviointi, Stakes tutkimuksia 21, oikeuspoliittisen tutkimuslaitoksen julkaisuja 116, with English Summary: Mediation of offences in Finland. Mediation in practice and an assessment of mediation as an alternative to the criminal justice system. Jyväskylä 1993.

Lappi-Seppälä, Tapio: Regulating the Prison Population. Experiences from a Long-Term Policy in Finland, National Research Institute of Legal Policy Research Communications 38, Helsinki 1998.

Mielityinen, Ida: Rikos ja sovittelu. Valikoituminen, merkitys ja uusintarikollisuus. Oikeuspoliittisen tutkimuslaitoksen julkaisuja 167, with English Summary: Crime and

---

22 Ibid p. 107.

23 Ibid p. 10.

Mediation. Selection of cases, the significance and meaning of mediation to the participants, and reoffending. Helsinki 1999.

Niemi-Kiesiläinen, Johanna: Civil Procedure – Finland, in International Encyclopaedia of Laws, Kluwer Law International 2007.

Rikos- ja riita-asioiden sovittelu 2010, Mediation in Criminal and Civil Cases 2010, Statistical Report 19/2011, National Institute for Health and Welfare, [www.thl.fi](http://www.thl.fi)

**Links:**

[www.finlex.fi](http://www.finlex.fi)

[www.thl.fi](http://www.thl.fi)

[www.sovittelu.com](http://www.sovittelu.com)

[www.om.fi](http://www.om.fi)

[www.optula.fi](http://www.optula.fi)