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MEDIATION IN FINLAND

(Printed in "Victim-Offender mediation in Europe. Making Restorative Justice Work. European Forum for Victim-Offender Mediation and Restorative Justice (ed.), KU Leuven, 2000. Reprinted on Restorative Justice Online by permission)

1. Historical background to the development of mediation in Finland

There are three basic starting points to the Finnish debate on criminal policy in general and on mediation in particular:

- analysis of our neo-classical criminal policy
- criticism of the Finnish system of correctional treatment of prisoners
- International discussion on different approaches to criminal policy with particular reference to the positive results of mediation in the USA and Canada in the 1970s.

The reform ideology in Finland in the 1970s and 1980s was entitled 'neo-classicism' in reference to the renaissance of some of the core values of the old classical school of criminal law theory. Specifically, these values are summarised thus: Punishment is used for expressing, maintaining and strengthening a system of norms. The existence of a penal system is thus based on general prevention. It means that punishment must be seen as just and legitimate. So, neo-classicism emphasises the value of a straightforward penal system. Clarity and simplicity increase predictability and the role of legal safeguards. Consequently, the penal system should be as simple as possible and contain only a few alternatives. Thus the judge passing sentences is not supposed to make assessments of the offender's or victim's need for treatment or rehabilitation (for more information, see Lappi-Seppälä, 1996, 331-334).

However, the classical criminal justice approach came under heavy criticism in the 1970s. This criticism was mostly directed at the fact that the neoclassical ideology of equal treatment obscures the unequal social position of the offenders and fails to take account of the convicts' underprivileged background as a factor in their social behaviour. In addition, the neoclassical ideology of punishment was considered to work in the interests of the power structure in society, while disregarding the needs of the poor (Viirre, 1977; Iivari, 1982).

Moreover, in response to practical criminal policy making, many researchers, social workers and officials in the late 1970s began to ask about the role of rehabilitation and reform work in Finnish criminal policy. One result of the criticism concerning coercive treatment was the requirement that repressive and punitive activities and roles must be separated from the supporting and reforming ones. But this was not enough. In criticizing neoclassicism, attention was paid to the circumstances of crime and the social needs manifested by it. At that time it was strongly argued that punishment was not at all an answer to crime. The prisons continued to be overcrowded in Finland, which on its own had the same number of prisoners as all the other Scandinavian countries put together. There was solid evidence that aspects of rehabilitation had been abandoned and that the real needs of convicted people were rejected in the criminal justice system. In addition, and impacted on by international discussion on different alternatives, some critics among criminal policy makers and the Lutheran Church of Finland began to promote the ideals of abolitionism, and some of them favoured such alternatives as mediation between victim and offender.

Meanwhile, in the late 1970s, a seminar on criminology was held in Norway at which some models of mediation in the USA and Canada were presented. This seminar was attended by people from Finland (Viirre, 1981). Earlier, in 1977, a Norwegian Professor of criminology, Nils Christie, had given a lecture on Conflict as Property. In short, Christie stated that the criminal justice system itself "has stolen the conflicts of people" and that these conflicts must be given back to people, i.e. to the parties involved. In Finland, discussion on alternatives for criminal policy combined these two ideas and suggested that giving conflicts back to the people involved could be very effective in victim-offender mediation (Christie, 1977).¹

Launching and organising the experiment

The first mediation project started in the City of Vantaa in 1983 and 1984 in the form of an action-research project, initially financed by the Academy of Finland and the City of Vantaa. The prime mover behind the project was a three-man team consisting of Pekka Viirre,

¹ Also the Dutch criminologist Louk C. Hulsman and the abolitionism represented by him gained some support among the Finnish developers of mediation. On abolitionism as an alternative see Hulsman, 1979.

Executive Secretary for Pastoral Care of Offenders , Martti Grönfors, Associate Professor of the University of Helsinki and Juhani Iivari, priest of the Helsinki County Prison.

The mediation experiment would take place within the social services department of Vantaa, working under the social board. It was funded by the Academy of Finland, with Associate Professor Martti Grönfors in charge of research. The field work was led by Prison Chaplain Juhani Iivari. A support and follow-up group for the experiment was set up, with representation from the Vantaa police department, the prosecutor's office, the court, the social services department and school authorities, the Probation Association, the Division of Diaconia and Society of the church, the city government of Vantaa and the mediators' representative.

Within a few years programmes had expanded rapidly over the country, from large cities to towns and municipalities. In 1990 projects were underway in 25 municipalities, and in 1991 the number had risen to 40. In 1994 mediation was carried out in 120 and 1996 in 175 cities and other municipalities (Finland has 450 municipalities). Remarkably enough, these cities and municipalities are the biggest ones in Finland. This means that at the moment about 75 % of the Finnish population have a chance to mediate. The main reason for the rapid expansion was that Finnish criminal policy and social services, especially as regards children and young people, were perceived as lacking alternatives at that particular time. Various parties considered that mediation offered a new resource to solve problems experienced as difficult and involving young offenders, including child welfare cases.

The practice of mediation expanded steadily throughout the 1980s until the mid-90s. Mediation activities have been launched in cities and municipalities on a voluntary basis. At the moment, the expansion of these activities has clearly come to a halt, but it is hard to give any precise reason for this. One possible explanation is considered to be the more stringent municipal economy resulting from the recession. Another reason is the absence of centralized resources to expand and develop mediation.² This state of affairs may be reflected in failure to motivate non-participating municipalities to take action.

² In the 1990s, the Finnish Ministry of Social Affairs and Health has had three broad working groups on mediation, one of which will continue until the end of the year 2000. However, these working groups have not had the necessary resources for nationwide organization and support. Instead, they have worked as bodies planning the development of mediation giving recommendations only.

To put it simply, the basic philosophy of mediation is to seek an alternative to legal proceedings and an effort to pursue 'better justice'. When the Finnish mediation system was initially launched, there was much debate about the so-called community mediation approach, where the communities would be responsible for implementing mediation, recruiting and training mediators and for acquiring cases for mediation. The idea was that the role of the authorities be as minimal as possible. Nevertheless, this model did not succeed, but mediation in Finland started to follow the Anglo-American victim-offender model with good co-operation with social welfare and justice authorities. This collaboration has proved crucial to recruiting cases for mediation and illustrates the positive impact that mediation has had on the cases processed in the criminal justice system. In addition, co-operation has facilitated financing and organisation as the activities are mainly funded by municipal social services departments.

2. Legal context

Firstly, unlike Norway (*lov om megling*), Finland does not have a separate law on mediation, but legislation has specifically recognized the value of mediation in Section 15a of the Decree on the Enforcement of the Penal Code. The fact that no special proceeding within the realm of prosecutorial functions have been institutionalized raises the question of how such a mediation should be furthered. The process of organizing mediation is left to institutions outside the criminal justice system. The role of criminal justice officials, especially that of the prosecutor, is limited to referring cases that he or she deems suitable for mediation to the proper institutions.

Secondly, no formal conditions for non-prosecution have been laid down as regards the results of the mediation process. Mediation itself may well serve as a reason for non-prosecution. The process may also fail due to an unwilling victim even though the offender would like to mediate. In addition, the prosecution may well take account of sincere attempts to start a mediation process. Formally a failed mediation is not described by the wording "mediation between the offender and victim" but by the wording "the action taken by the offender to prevent or remove the effects of his/her offence" (Lappi-Seppälä, 1996, 358-359).

In principle, the courts may similarly take into account mediation, or the action taken by the offender to mediate, in considering the waiving of sentence or measuring the sentence.

3. Policy and implementation

No actual standards or recommendations concerning mediation have been specified in Finland. However, the corresponding principles, the high ethical standard of mediation, fairness, the unbiased and equitable treatment of the parties as well as the exactitude and legal protection of mediation activities have been clearly emphasized in the elementary and supplementary training of mediators. These principles were incorporated in the memoranda and other documents drawn up by the working groups on developing mediation, appointed by the Ministry of Social Affairs and Health. These principles have also been expounded in the mediator's handbook and the elementary and supplementary training material provided by the Finnish mediation association.

The mediators are selected as follows: co-operating with adult education centres, the municipal or organizational employees in charge of mediation arrange elementary courses for mediators in the locality. Having completed a 30-hour course, the participants can volunteer for mediation. The practice of selecting mediators varies from one locality to another. In some municipalities all volunteers are accepted, while in others the applicants are interviewed and subsequently either selected or rejected.

As a rule, a person must complete the 30-hour elementary course in order to become a mediator. The elementary course provides the participants with basic information about theories behind mediation, the position of mediation in the criminal justice system, operations of the police, prosecutor and the court, the crisis approach as well as the prerequisites and conditions of co-operation between mediators and the authorities. After the elementary course, the mediators receive further training both locally and at national seminars providing mediators with lectures on e.g. law amendments, law of contract, drawing up contracts, the functioning of the criminal justice system and the role of the mediator as the party enabling mediation. In some localities, work guidance is given to mediators.

The elementary courses usually comprise lectures on the same subjects irrespective of the locality, but there are considerable differences in the provision of further training. Most localities do not provide supplementary training; this mainly takes place at national events. Another shortcoming in further training is that regular work guidance is provided for mediators in a few localities only.

Smooth co-operation with the authorities from the beginning has meant that, for example, the police, prosecutors and courts now have a very positive attitude to mediation and collaborate with mediation offices at several levels. Open and honest negotiations on the terms and rules of mediation, especially at the initial stages of mediation, have impacted positively on co-operation with the authorities. Since the parties have honoured these terms and especially because the authorities have seen the positive results, it is natural that mutual trust has been reinforced.

In the absence of specific studies, there is no accurate information on how the general public have reacted to mediation. Nevertheless, it seems to be the case that the public have adopted a positive attitude towards mediation, one indicator being that no criticism has been directed at mediation among citizens. Presumably, public opinion has been influenced by the widespread and positive coverage of the issue in the Finnish media.

4. Mediation programmes

As mentioned above, mediation is practised in 175 municipalities, accounting for 37 % of the Finnish municipalities. Because almost all major cities are included, mediation is available to 75 % of the population.

Mediation activities have no legal status in Finland, but at the moment the working group on the development of mediation, appointed by the Ministry of Social Affairs and Health, has decided to propose that a law be passed to regulate and finance mediation.³

³ This question will be discussed in more detail in Chapter 8.

The mediation offices are primarily maintained by municipalities, but other organizations also provide mediation services, paid for by the municipalities under various arrangements. In addition, federations have been formed by small municipalities for the joint purchase of these services from a neighbouring large municipality. In addition, an organization operating in a major city may sell mediation services to smaller municipalities nearby.

The offices do not generally have adequate resources at their disposal. In a big city, the offices may have as much as three employees, executive manager and two clerical personnel, but often the staff consists of an executive manager and a clerk. In some localities, the office only has one employee, who may also perform other municipal duties, such as debt counselling, youth work or welfare for substance abusers. The meagre resources available for mediation is a problem which affects the quality and development of mediation activities in Finland.

The mediation offices of municipalities or organizations can decide independently what kind of cases they deal with, and practices vary from one locality to another. In some municipalities, the focus is on young offenders, while elsewhere also adult offenders may be eligible for mediation. Crimes involving domestic violence are considered a high priority in some localities, while some other municipalities refuse to take on such cases at all.

Depending on the case, mediation may be linked to other authorities, communities or organizations as well. In acts of vandalism, mediators co-operate with the city real estate office, insurance companies and housing companies in order to implement work service to compensate for the damage done.

5. Mediation practice⁴

Mediation is a procedure where victim and offender meet each other, assisted by a neutral third person, the mediator, and resolve their conflict without legal proceedings, whenever possible. So, the central characteristics of the process are voluntariness and community participation. No one is forced into the mediation process without his/her consent. Mediation is in practice handled by unsalaried voluntary laymen from the community. The idea is that

⁴ I follow here the presentation by Lappi-Seppälä, 1996, 395-396.

two mediators are appointed to each case, but in practice, cases are occasionally dealt with by one mediator only.

The mediation process is not dependent on the criminal process. Thus it may start at any level between the commission of the offence and the execution of the sentence. The process is briefly described in the following schema:

An offence is usually followed by a report to the police. After the hearing conducted by the police, the case is taken to the prosecutor. The following are all the possible stages at which to start the mediation process: (i) The victim or the offender may contact a mediation office immediately after the offence, whereupon the mediation office contacts the other party. (ii) The parties may contact the mediation office during the police hearing - either on the advice of the police or on their own initiative. (iii) At the third stage – as is often done in some municipalities – the prosecutor, after receiving the files, may inform the parties that they have a certain amount of time (e.g. eight weeks) to resolve the problem between themselves. This announcement does not mean that a settlement will definitely lead to discharge, but it entails a very strong presumption that this will be the case.

The mediation process starts with preliminary contacts. The mediation office or one of its mediators contacts both parties separately, asking whether they are willing to take the matter into mediation. If all parties are agreed, the first mediation session will be held. For the majority of the cases this will suffice, but if needed, more sessions are arranged. During these sessions the mediator's principal role is to mediate; he/she does not try to lead the parties into one direction or another, but tries to mediate between them so that they both, understanding one another's viewpoint, can come to an agreement. However, more precisely, the role of the mediator depends on the situation. Especially in cases where the parties are unequal in terms of negotiating resources and when it is apparent that the outcome will be unfair to either of the parties (as compared to the probable outcome in court), the mediator intervenes and tries to balance the situation. If mediation is successful, a written contract is prepared. The contract includes the item (offence type), the content of the settlement (how the offender has consented to repair the damage), place and date of restitution as well as the consequences of a breach of contract.

Handling of the case in the judicial system

What happens after a successful mediation depends largely on what category the offence belongs to (complainant offence/noncomplainant offence), how serious the offence was, and who is the acting prosecutor.

In complainant offences, a successful mediation automatically means that the prosecutor drops the charges. In noncomplainant offences, however, the situation is more complicated. In Finland, the principle of legality prevails in prosecution, but there are exceptions to this rule. It is at the discretion of the prosecutor whether he/she is willing to drop the charges bearing in mind the outcome of the mediation. In this decision, the type of offence as well as its gravity play a central role.

Even if the prosecutor does not drop the case, the mediation process still has a legal significance. In the first place, a signed agreement frees the court from examining the matter as regards compensation for damage. In other words, the court officially confirms the agreement to be followed as a binding document. In addition, mediation may affect the sentencing decision of the court. It can totally refrain from sanctions, if the requirements are at hand. It can also mitigate the sanction.

An essential aspect of mediation concerns supervision of the contract. The mediators authenticate and sign the contract. The contract may also be authenticated in court, making it valid and ready to be executed. In addition, the contract stipulates that the mediators act as supervisors of the execution of the contract. For example, in case of failure to comply with the payment schedule, the mediators contact the offender and negotiate a new payment schedule. If the party neglects his/her obligations entirely, the victim may demand that the contract be implemented and the sum be collected.

If both or one of the parties fail to reach an agreement, the contractual proceedings are terminated, and the parties are notified that they may deal with their case through the official court process.

Relation to other mediation paradigms in Finland

Mediation in Finland is provided for the solving of marital crises and divorce situations as well. Actual co-operation between victim-offender mediation and marriage counselling has only recently begun in certain localities, especially after the family group conferencing approach was introduced. In some localities, representatives of victim-offender mediation have participated in family group conferencing sessions as mediators. Business mediation activities are also about to commence in Finland, developed by the Finnish Bar Association. Of the developers of victim-offender mediation, Juhani Iivari has lectured and given consultation in training sessions for lawyers arranged by the planners of business mediation.

6. Research and empirical data

Experiences of mediation have been studied from the beginning both locally and nationally. However, research efforts have not been systematic, and in the absence of annual monitoring or research, no constant time series on the trends in mediation are available. Nevertheless, there is general information about the trends in mediation cases from the mid-1990s.

Mediation has mainly been studied at the National Research and Development Centre for Welfare and Health (STAKES) and the National Research Institute of Legal Policy. These investigations have assessed the initial experiences and theoretical basis of mediation as well as its position in the criminal justice system (Iivari, 1985, 1988 and 1991)⁵, processing of mediation cases by the authorities and the related alternatives (Järvinen, 1993), costs of mediation (Aaltonen, 1998), the essence of mediation, especially facing moral notions and the significance of restitution (Takala, 1998), and the processing and selection of mediation cases as well as the value judgments of mediation formed by the parties involved (Mielityinen, 1999). In addition, some articles on mediation have been published in international periodicals in the field (e.g. Grönfors, 1989; Iivari, 1992; Lappi-Seppälä, 1996).

Serious debate about mediation has been ongoing in academic circles in Finland. This is partly due to the discussions on mediation in connection with the reform of the Penal Code, carried out by the Ministry of Justice, and in reforming legislation on mediation as a reason for waiving other proceedings, especially in the 1990s. Mediation has recently resurfaced in

⁵ On theoretical discussion of mediation, see esp. Iivari 1991, where mediation of offences and conflicts is analyzed in the concept of reflexive justice.

academic debate because of the growing international interest and its application to various types of conflict (victim-offender mediation, business mediation, peer mediation, family group conferencing).

6.1. Some empirical data

A rough estimate of **the total number of cases** in all mediation schemes from recent years gives an average of over 3,000 referrals a year, and the rate is constantly increasing. For example, in 1995 there were 3,030, a year later 3,604 and in 1997 a total of 3,626 referrals to mediation (Mielityinen, 1999).

Co-operation with the authorities usually runs smoothly as seen in table 1.

Table 1. Initiators of mediation in 1990's⁶

Year	Police		Prosecutor		Social officials		Parties	
	%	N	%	N	%	N	%	N
1990	16	117	46	337	6	46	11	26
1995	30	720	44	1056	7	168	14	336
1996	30	1002	49	1659	5	169	11	363
1997	39	1384	45	1590	5	184	8	276

Source: Mielityinen, 1999.

At present on average 46 % of the cases to be mediated are referred by prosecutors, 30 % by the police, 6 % by the social welfare authorities and 11 % by members of the public. In practice, the state officials have a leading role in recruiting cases. As seen in 1996, 84 % of the cases came from the police and the prosecutor, while only 8 % came directly from the parties (victim/offender); the rest of the cases were referred by the social welfare and other authorities. The role of the parties has declined in most projects, whereas the involvement of the authorities - especially that of the police - has increased.

⁶ There are certain inexactnesses in the referred total rates if calculated per year. E.g. in 1997 there were 3626 cases all in all as seen above, but if the referrals are calculated together according to the initiator in table 1, there are only 3484 referrals. This varying and repeating difference table by table is due to the fact that some municipalities are referring cases including several crimes, others are referring only a number of cases (not including all respective crimes) while some others refer persons (offenders).

As seen in table 2, the majority of the cases involve criminal offences, whereas minor disputes account for some 2–3 % of the cases.

Table 2. Referred cases by quality

Year	Complainant offences		Non-complainant offences		Disputes	
	%	N	%	N	%	N
1990	29	212	70	515	1	5
1996	40	1366	57	1936	3	89
1997	44	1518	54	1862	2	70

Source: Mielityinen, 1999.

The projects may independently decide which type of offence they wish to deal with. In the year 1997, 44 % of the cases were so-called non-complainant crimes (i.e. minor offences, vandalism, disturbances of domestic peace etc.), and 54 % of cases were non-complainant offences (i.e. assault and battery including family violence, robbery, fraud and property crimes). The remaining 2 % of the cases involved disputes and quarrels. Mediation schemes are not only targeted to conflicts between private individuals: in almost half of the cases, there was a corporate victim (e.g. shopkeepers or municipalities).

Mediation is usually confined to minor matters, but every now and then also felonies are included. We can see this better if we look at crime categories detailed in table 3.

Table 3. Mediated cases by crime categories

Year	Assault and battery		Theft		Damage		Illegal usage (of cars)		Others	
	%	N	%	N	%	N	%	N	%	N
1990	27	195	21	152	30	220	6	44	16	116
1995	32	967	24	727	26	788	4	121	14	424
1996	38	1362	20	717	21	769	4	130	18	637
1997	38	1472	17	667	21	826	3	116	21	798

Source: Mielityinen, 1999

As shown, the number of assault and battery cases has increased as the biggest group of mediated offences during the 1990's. This explains, too, the growth of adult offenders in

mediation, as we can see later. But there are differences in mediated crime cases between municipalities especially in this category: In Helsinki assault and battery cases make up 57 % of all the mediated crime cases and in Tampere the amount of family violence crimes in mediation is 31 % of all assaults. At present family violence is the most rapidly increasing crime in mediation in big cities –as well as being the most severely debated.

The offender's age has been among the most important criteria for selecting cases for mediation. Several projects focus on young offenders and offenders under the age of criminal responsibility (15 years in Finland). In recent years this has changed as can be seen in table 4.

Table 4. Ages of offenders in 1996 and 1997

Age	1996		1997	
	%	N	%	N
Under 15	13	648	14	669
15-17	32	1556	35	1696
18-20	*	*	15	736
21-29	55	2668	14	689
Over 30	*	*	22	1045

* Data missing.

Source: Mielityinen, 1999

At present we can see that more than half of all offenders are over 18 years old and in 1997 the proportion of those over 30 years has increased in numbers remarkable enough to argue that the inevitable context of mediation being applicable largely to youngsters is broken. But notwithstanding this, I want to accentuate that the emphasis of mediation is still on young offenders. In some localities, the mediation offices that are based in social services departments work in close collaboration with the child welfare authorities and the police. One example of this is the mediation activities in the City of Tampere, where the police will automatically refer all cases involving young offenders (aged 15–17) or children under 15 (criminal responsibility is applied to persons 15 years of age or older) to the social welfare department, which subsequently contacts a mediation office. The office in turn provides a mediator to participate in the preliminary investigation of the young person suspected of an offence. Having taken part in the interview, the mediator, who represents the social welfare authorities, decides whether the case is suitable for mediation. On this occasion or at a later date the mediator may suggest mediation to the person undergoing interrogation.

One success criterion for mediation programmes has been the outcome of the cases referred. In 1997, 70% of all the cases referred for mediation resulted in mediation being started. Of all the mediation negotiations commenced, 60 % ended up in an agreement. Of all the contracts, some 68 % were fulfilled. An additional success criterion for the above-mentioned process is how the official criminal justice system has handled the criminal cases under public prosecution. In the beginning there were only a few referrals under public prosecution that were dismissed in court because of successful mediation. According to Mielityinen (1999), 62 % of all the referrals under public prosecution have now been waived. Considering the nature of mediation as an alternative, this is an encouraging development.

On compensation

Table 5. Agreements in compensation categories

Year	Monetary		Work		Other ⁷		No compensation	
	%	N	%	N	%	N	%	N
1990	64	554	14	124	21	182	*	*
1996	62	1455	17	393	3	78	18	426
1997	59	1732	11	315	9	278	21	610

* Data missing.

Source: Mielityinen, 1999

The majority (more than 60 %) of the agreements involved monetary compensation. Work done for the victim was included in 15 % of the cases. In 20 % of the cases the victim had no financial claims. Also non-material or symbolic compensation was used, such as an apology or a promise not to repeat the offence. The average monetary compensation was FIM 400 (some 67 euros).

Several studies referred to here (Iivari, Takala, Mielityinen) have investigated the experiences and attitudes of the parties regarding mediation. A consistent result was that both victims and offenders were satisfied with the mediation process, the mediators and compensation for the

⁷ Other compensation consists of apology, a combination of monetary and work compensation, a promise not to commit a crime again and giving back the stolen thing or property.

damage. Moreover, reports on many different mediation cases show that the feelings of hostility and suspicion between the parties dissolved, sometimes even during the mediation session. The victims were able to explain the difficulties, damage and injuries caused by the offence openly and face to face with the offender. The offenders, for their part, reported that mediation showed them the consequences in concrete terms and increased their willingness for reparation. Most offenders also stated that mediation had discouraged or at least postponed their committing new offences (Iivari, 1988).

It is difficult if not useless to estimate the average length of the mediation process because processes and their duration vary depending on the nature of the case. It is possible to solve simple cases quite rapidly, sometimes during the same day that a mediation office is informed about a case, whereas more complicated cases, such as crimes involving gangs or multiple victims and parties suffering damage, may take months (sometimes 12–18 months) to mediate.

6.2. On research at a more theoretical level

In the domain of academic research and debate on mediation, a doctoral dissertation from 1991 can be mentioned. It charts the role of mediation in the evolution of justice and analyzes its position in relation to the criminal justice system against a background of broad international material (Iivari, 1991).

An important theoretical point of departure and framework for the study was provided by the development of the so-called modern law in Western countries. In this, Max Weber's concept of the formal rationality of modern law and its move towards material rationality is a natural basis for an analysis of the evolution of modern law. The evolutionary theme, which, since Weber, has been analysed by those who study and interpret law, also provides an interesting framework when attempting to understand the resurgence of alternative approaches in respect of the mediation of crimes and legal conflicts as part of the 'historical' continuum of legal development. In earlier societies, mediation as informal justice was discursive justice. Thus, what is of particular interest in Jürgen Habermas's interpretation of modern law from the viewpoint of the study is his concept of communicative rationality and, through this, his answer to the problem of the legitimacy of law. From the point of view of the study, Jürgen Habermas provides another interesting perspective with his views on the nature of the law of a social state. These views are connected with the “colonialization thesis”: the system colonizes, smothers and alters the needs

of the world of life to become the needs of the system itself. Habermas analyzes these concepts, and in doing so formulates the points of departure and parameters in society for the participation of members of the public in justice. A facet of the development that is very topical for alternative mediation is the attempt to expand the independence of mediation as an institution.

From the viewpoint of this problem, an interpretation that is even more important than that formulated by Habermas is the one presented by the German Günther Teubner on the evolution of law. In the theory of reflexive law developed by him, the justification of situation-linked solutions at a certain stage of self-government becomes important. The view that law evolves towards diverging and increasingly independent partial systems and sub-systems is an interesting point of departure for the development of mediation.

Finally, the study tentatively analyzed the theoretical confrontation between the mediation approach and the punishment approach. The components of special prevention and general prevention are imbued with new meaning in mediation: from the point of view of mediation, an important indicator of special prevention is the individual treatment of offenders, treatment which minimizes the experience that the activity in question is punishment, and where the individual needs of the offender and the victim are taken into consideration. Mediation as a preventive approach is carried out as an interactive solution to a conflict where the offender compensates the victim. From the viewpoint of general prevention, mediation should be able to help in fostering and strengthening the idea in the mind of the public that mediation is a way of restoring social peace and the value of the norms that have been violated. It is unclear to what extent the experiences that have been gained so far with the different types of mediation achieve the goals described here. Ultimately, the solution to this question is connected with the publicity received by the entire system of mediation and with the degree to which it is accepted by the public at large.

7. On policy-relevant discussion on mediation

The development of a policy of mediation has been the object of research and evaluation. Despite the several separate aims and divergent viewpoints regarding Finnish mediation, the projects have been successful in practice. The popularity of mediation work in municipalities

and the willingness among community members to do unsalaried work has been a positive surprise. Secondly, the number of cases referred to mediation has in most cases exceeded expectations.

What is the relationship between mediation and diversion? With regard to complainant offences, mediation has had a significant divertive effect. As regards non-complainant offences, much depends on the policies of the criminal justice officials. Be that as it may, the relative share of non-prosecution was quite high: 62 % of mediated non-complainant crimes, as shown above (see also Lappi-Seppälä, 1996, 405-406).

A few years ago we had a very lively discussion on mediation and net widening. Those who were suspicious of mediation argued that net-widening will occur because there are many mediation cases involving children under the criminal responsibility age of 15. Another argument was that mediation is conducive to 'a double system', because a proportion of non-complainant offences end up in court despite successful mediation.

To provide critical responses to these theses, one must analyze the concept of net-widening. Firstly, such a response depends on how the concept is defined. In complainant crimes, successful mediation will stop the process, but if mediation fails, the victim will usually refer the case to a court of law. So, in this category, successful mediation does not mean net-widening.

In non-complainant crimes, the situation is different. Despite successful mediation, cases are often referred to the court. In this respect, mediation means net-widening, because it entails 'double participation'. But can this definition be taken at face value? If mediation can help victims and offenders towards a successful agreement, although the case is referred to the court, where and what is the logic of net-widening? It seems that the logic of a double system cannot in itself be the final definition of net-widening. Eventually, the definition must in some way depend on the substance of mediation, and it must be connected with the question of treating cases better or worse. This starting point is pertinent to children under the responsibility age of 15 as well. As long as we can point out positive results on the personal level of experience in mediation cases, it is difficult to argue for net-widening. We must also recognize that some crimes coming into mediation, such as the ones involving violence, must always be handled in court because of the seriousness of the crime. This is also connected to

cases where the victim is eligible for damages from state funds (Iivari, 1992; Cf. Lappi-Seppälä, 1996, 406).

There has been a lot of discussion on mediation as a part of social work, not least because mediation in Finland mainly takes place as a form of social services provided in municipal social welfare departments. This makes it possible to take account of the rehabilitative and preventive effect of mediation and its significance as crisis work. However, success in this respect is difficult to estimate. The effects on the offenders' attitudes and their future behaviour are more or less speculative. Nevertheless, isolated reports of individual cases convey a lot of encouraging information, as mentioned above, but their scientific reliability is hard to confirm (Lappi-Seppälä, 1996, 407).

The relation of mediation to reparation is interesting in many respects because the criterion of success may have both material and emotional sides to it. Mediation has undoubtedly proven its value in material compensation, as shown above. In addition, and perhaps even more importantly, mediation may serve as a means of repairing some of the emotional and psychological harms caused by crime (Lappi-Seppälä, 1996, 407-408). Although psychological benefits are hard to measure, some mutually independent studies have shown consistently that mediation between victim and offender has lessened the victim's fear and aggression (Iivari, 1991; Järvinen, 1993; Takala, 1998).

When mediation started in Finland, the so-called community-related aims were at the forefront: strengthening communal ties and solidarity, teaching co-operative methods of peace-making and promoting constructive conflict resolution skills. These aims, too, are difficult to estimate. However, there has been a strong personal involvement on the part of the victims, offenders and mediators, and in many municipalities mediators have formed active and positive subgroups in the community. The macro-level effects in the social structures of municipalities implementing mediation are much more uncertain (Lappi-Seppälä, 1996, 408).

8. Challenges, obstacles and expectations for the future

Mediation has established itself in Finnish society, and it now encompasses crimes committed by adults as well. In particular, mediation is perceived as an effective means of intervening in offences and vandalism perpetrated by young people. The development of mediation in crimes committed by young people was also mentioned in the Platform of the present Finnish government.

On the other hand, mediation in Finland is currently facing new challenges, to which the present system cannot adequately respond. An effort should be made to rectify the situation where the expansion of mediation activities has stopped and the position and use of mediation varies from one municipality to another. The fact that cases entering mediation are becoming more severe, including, for example, domestic violence, and the increasing need for training for mediators present challenges requiring new solutions. These factors, among others, have been the reason why it is considered important to find ways to safeguard the development of mediation activities.

At present, localities providing mediation cover some 75 % of the population, but in terms of the number only 37 % of the municipalities are involved. This number has not increased much in recent years. In some localities, mediation activities have been discontinued on account of declining municipal finances. It appears to be the case that within the present system the geographical coverage of mediation will not increase.

As indicated above, about 25 % of the Finnish population today live in areas where mediation is not available. Since mediation clearly serves also the interests of the offender, equality before the law requires that everyone willing to engage in mediation have this option at their disposal. It also seems evident that the state authorities require some sort of institutionalized and standardized procedure in order to accept and trust the system. In addition, informal systems need support from the formal ones in order to survive the present social and political situation.

Appointed by the Ministry of Social Affairs and Health, the broad working group on developing mediation has set out to find a model to ensure the accessibility of mediation across the country, with the necessary financing and development of these activities.

8.1. Law on providing mediation

The working group has tentatively outlined the prospects of mediation financing and development. In this model, the state is responsible for financing the operations while other organizations, mainly municipalities, provide social services based on administrative agreements, as stipulated in Paragraph 2, Section 2 of the Act on municipalities. This procedure will ensure that mediation can continue in the present form, provided by municipalities and other organizations. Intermunicipal co-operation is possible as well.

If mediation were provided by the state, relevant legislation would have to be passed. According to the working group, legislation should only address the structures of the activities, resources and responsibilities. It is the contention of the working group that the actual substance of mediation should not be regulated by law. This approach is consistent with the present practice in the rest of Europe.

According to the working group, the feasibility of the model should be thoroughly investigated. However, because the working group does not have the resources to conduct such an investigation, it suggests that the Ministries of Justice and of Social Affairs and Health appoint two rapporteurs and a research assistant for a period of about six months. The task of the rapporteurs is to: 1) chart the present scope, costs, needs and organization of mediation at present; 2) study and assess the viability of other corresponding state-municipality models in organizing mediation activities, including international experiences; and 3) make a proposal as to how mediation should be arranged in order to achieve equitable coverage throughout the entire country.

8.2. A standing committee to develop mediation

Irrespective of the possible changes to be made in the organization or financing of mediation activities, national support for parties in charge of mediation should be provided. Therefore, the committee proposes that the Ministry of Social Affairs and Health appoint a committee on mediating criminal cases and other disputes. The committee should have a permanent secretary. The committee would be in charge of the tasks thus far assigned to temporary

working groups. The main duties of the committee would include research and training, communication, international co-operation and making proposals to develop mediation.

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