

## Recommendations on the training of mediators in criminal matters

### Introduction

The general aim of the European Forum for Restorative Justice is to help establish and develop victim-offender mediation (VOM) and other restorative justice practices throughout Europe. Another aim is to assist the development of principles, ethics, training and good practice. This was the starting point for developing recommendations for the training of mediators.<sup>1</sup>

The training of mediators in criminal matters often varies from project to project. Some training programmes are very comprehensive; some mediators, however, are only trained in the basics of mediation; others are not trained at all. The quality of the training of mediators is highly important. Working with offenders and certainly with victims of crime, requires specific attitudes, techniques and sensitivities. It is therefore important that trainers of mediators have an opportunity to come together and to exchange information and views in order to improve their respective training programmes. Different training models need to be evaluated, so that in the long run basic principles of good practice in training can be developed. In this respect, training programmes can be compared and adapted to respectfully reflect the diversity of cultures and countries across Europe.

Through the AGIS 1 project (2003-2004), the European Forum for Restorative Justice was able to make some advance in this issue. A group of experienced trainers on mediation within a criminal context from different countries met twice to exchange information. They compared the models they used and the meetings resulted in drafting recommendations for the training of mediators. These recommendations are intended as a minimum consensus for trainers of mediators within a criminal justice context in the European Forum. Each recommendation is followed by a rationale which amplifies some underlying thoughts.<sup>2</sup>

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<sup>1</sup> The Forum acknowledges that restorative justice is a developing field and that language to describe it is still evolving. Accepting the limitations of language, the Forum currently uses the word 'mediator' since it was used in early European policy documents on this topic (cf for example: Council Framework Decision of 15 March 2001 on the standing of victims in criminal proceedings (2001/220/JHA)). The Forum recognises that other words, such as 'facilitator', are also used to convey the same concept, namely enabling communication to take place safely between a victim of crime and an offender.

<sup>2</sup> Recommendation 8 has already been realised. The first summer school was held in Pilzen in 2005. The next summer school is planned for 2007.

## **Recommendation on the training of mediators in criminal matters**

### **(1)**

There needs to be **transparency** about what can be expected by all parties from the mediator. Therefore transparent training programmes on mediation **should be provided**.

### **(2)**

In every training, **knowledge, skills and personal qualities** should be addressed (see 'Triangle' annex 1).

### **(3)**

We should actively provide a **diverse range of training models**. There should be no hierarchical relationship between the models of training. In each of these, the three pillars in R 2 should be addressed (see 'Complex field' annex 2).

### **(4)**

We should **guarantee** that all mediators have received this kind of training. In practice this guarantee could be made visible by a training certificate or by the fact that the mediator is recognised by his parent organisation.

### **(5)**

We should **distinguish between the responsibilities** of the trainers and the responsibilities of the organisations that employ the mediators.

- a) However self-selecting, the main purpose of training should not be the selection of mediators.
- b) However oriented to practice, training should not be too much determined by practical needs.
- c) However focused on long term effects, the responsibility of the trainer ends when the training is completed.

The employer of the mediator is responsible for the selection of mediators, for developing and monitoring criteria on efficiency, case-load, etc. for day-to-day control on the quality of their work, and day-to-day training on the job.

### **(6)**

Training should be an **ongoing process**. Mediators should be expected to continue their professional development on a yearly basis. Trainees should be encouraged to follow training of other models (see R 3).

### **(7)**

In addition to a proven ability or experience in delivering training, every training programme, even if not necessarily provided completely by experienced mediators, should be provided by people with an **in-depth knowledge and experience of the mediation process**.

As far as is reasonably practicable, the responsibility for the training programme would be that of a **multi-disciplinary team**.

### **(8)**

All these recommendations should be the subject of **review and follow-up** by a group of experienced practitioners, trainers and other experts.

## **Explanations on the recommendations**

### **Ad 1**

The first recommendation is linked to the respect that we should have for victims, offenders, candidate mediators and the structure in which mediation operates.

At the European level, one can see a lot of similarities concerning the definition and the essence of mediation. However, there is a lot of diversity in relation to the position of mediation in the field. The mediators have different relationships with the justice system, with the prosecutors, judges and lawyers. Also, the different stages in which mediation comes into play require that the content of the mediation training is different. The circumstances with which mediators have to deal clearly reflect a wide range of diversity, both concerning the parties involved and the instances every mediator and the whole concept of mediation have to deal with in order to maintain and develop a credible opportunity in a very delicate and seemingly polarised field.

In the light of the complexity outlined above, and out of respect for the candidate mediators, the potential clients and the structure in which mediation operates, we should provide transparency regarding the integrity of mediation training. This will help to provide the various stakeholders with security and clarification regarding expectations and outcomes. Those participating in mediation should get a clear idea of what can be expected and required from the mediation process and from the trained mediator. And the candidate mediator should be offered a clear, transparent course outline showing how the work requirements will be met, how he/she will be trained and enabled to establish him/herself truly as a mediator and to be recognised as such by others.

### **Ad 2**

#### **Contents of training<sup>3</sup>:**

##### **➤ Personal qualities:**

A mediator should be someone who is relatively open to discuss personal values and should have the capacity to reflect on his/her own way of dealing with conflict. Having the capacity for personal growth, i.e. being able to develop as a person, is important. The mediator needs to be supported and helped to deal with issues of personal growth during training. He/she should have the capacity for openness and sharing (for example, talking about his/her own values, about how he/she reacts, about his/her own vulnerabilities, about what kind of influence this could have on the mediation process, etc.). It is important during training to be exposed to one's own capacity to manage oneself in the mediation process, i.e. how to combine one's role as a mediator and as an individual. Another important element is to be able to give and accept feedback.

Training should also include the skill of self-management with particular regard to working with one's own prejudices and perspectives. One principle aim in training is to broaden the perspective of the mediators and to deepen their capacity to grow as people who are willing to explore their own strengths and vulnerabilities. The value of this depth of training lies in enabling the mediator to develop capacities for congruence and empathy with clients.

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<sup>3</sup> See 'Triangle' in annex 1.

➤ **Knowledge:**

Any mediation course needs to contain specific themes on conflict, law, psychological and social processes and something specific about applied mediation.

➤ **Skills:**

There are five main skills: to maintain impartiality, to remain neutral, to be accepted in one's role, to be able to keep confidentiality, and to ensure that participation in the process is voluntary. These are the skills that distinguish mediation from other forms of dispute resolution, e.g. arbitration.

Other skills that should be addressed during training include:

- How to act in the different stages of the mediation process.
- How to show empathy.
- How to create a 'safe environment'.
- How to organise the practical work.
- How to react on certain situations during the mediation process.
- How to collaborate with other agencies.

### **Ad 3**

There are a lot of similarities concerning the definition and essence of mediation, and there is a lot of diversity in relation to the place of mediation in the field. Also, the different contexts for the application of mediation require different course contents.<sup>4</sup>

In general people agree on the definition of mediation, the content of training and the competences of the mediator. It is important to bear in mind, however, that we are not only dealing with mediation in criminal matters, but also with all the things contingent with that, e.g. the fact that the mediator is part of an organisation that has its own tradition, expectations, culture and co-operation agreements with other organisations. There are organisational guidelines on mediation and financial and recourse issues affecting the application of mediation. Around the victim, you find his/her social network, culture, etc. The same goes for the offender with the added implications of the judicial process and the use of mediation in relation to the justice system.<sup>5</sup>

These considerations call for a range in training programmes, taking into account the diversity in terms of culture, structure and function within which the mediators have to operate, even within the same country.

We posit at least three possible emphasises in training (all of them necessary) depending on the particular situation in which the mediator will have to work:

- An emphasis on knowledge (for example for dealing with technically complex cases or for mediators who have to be an ambassador for the idea of restorative justice).
- An emphasis on skills (for example for mediators who have to deal with a large number of cases or who are under pressure to meet targets regarding outcomes and efficiency).
- An emphasis on the person of the mediator. Here we can distinguish two aspects:

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<sup>4</sup> See 'Application of mediation' in annex 3.

<sup>5</sup> See 'Complex field' in annex 2.



- 1) mediators working with cases that are emotionally highly charged;
- 2) where mediation is used as a way to build up communities (for example, focusing on group-interaction, team-building, etc.). By way of developing this community aspect, some countries train volunteers as mediators. This has been found to be an effective way to safeguard communities. In effect, there are no significant differences for training and supervised practice between using volunteer mediators and professional mediators.

Those differences should not refer to any hierarchical relation amongst types of mediation or mediators; they only reflect different needs depending on circumstances. Any training model should address the overall notion of the mediator's function. Any training model should also contain cognitive elements, practice skills and personal qualities as referred to in ad 2.

On a more formal level, the following is recommended for every model of training:

- **Length of training:** This differs depending on whether the training is provided by an external agency or is done 'on-the-job'. Basic external training requires a syllabus. Training 'on-the-job' requires a variety of methods, for example, observation by the trainee of an experienced mediator, then progressing to co-mediation and receiving feedback afterwards from an experienced mediator based on observed practice.
- **Number of participants:** A maximum of 12 trainees per trainer is recommended. Group interaction is crucial and only possible if the group is neither too small nor too big.
- **Methods to be used:** The group process should facilitate self-development, skills training, the creation of a safe learning and working environment and group interaction.
- **Necessary material:** Clear and well-structured handouts are necessary.
- **Costs of training:** The cost should not prohibit suitable candidates from being trained. The situation where training is only available for those who can pay for it is to be avoided on the grounds of providing equality of opportunity.

#### **Ad 4**

Given the fact that there is a great diversity in how certification and accreditation is dealt with in the different countries, this recommendation reflects the idea that a certificate can be a useful tool to provide a certain (partial) guarantee of the basic capacity of the mediator. On the other hand, the notion of a 'parent organisation' taking responsibility to provide the mediator with some kind of controllable proof of basic capacities and some kind of recognition could be seen as a useful alternative.

However, in the long term, it should be cleared out what exactly is meant by 'parent organisation' and what kind of agency can be entitled to provide training certificates.

#### **Ad 5**

The ideal scenario is to consider dividing the responsibilities for training and for employing mediators. The reality, however, is often different and dependent on resources. In some countries training is provided by specific training organisations and in others it is done by mediation organisations themselves. The tension between these two approaches is acknowledged.

Two concerns should be highlighted:

1. using training solely as a selection mechanism
2. training programmes being unduly influenced by immediate organisational needs.

Mediation organisations have a responsibility to be clear about the distinction between quality training provision for mediators and the necessary duties and obligations of the day-to-day work environment.

- Ad a) A training programme should not be established to select mediators. It should address training needs and reflect the values of restorative justice. It should cover a broad range of topics.
- Ad b) There are different learning types: the theorist, the activist, the reflector and the practitioner or 'doer'. The needs of these types should be addressed by different training methods and materials.
- Ad c) It is good practice for trainers to have a contract covering training expectations.

#### **Ad 6**

Mediation training is an ongoing process. Mediators need to be encouraged and/or even obliged to follow training in other countries and to exchange with mediators in other areas. The purpose of this ongoing training and exchange is to stimulate continued development at every level. It is a constant challenge to maintain and develop the capacity to mediate. The identity of the mediator also implies personal change, and personal change requires support. Training is not something imposed on the mediator from the outside; it is a self-motivating process of lifelong learning.

#### **Ad 7**

In comparing the different ways of how training is organised in the countries consulted on these recommendations, it became obvious that there again is a vast range of different models. In some countries mediation tends to be akin to a quasi academic degree; in others there is some kind of external package where training is provided by several experts. In still other countries there is a great deal of practice-oriented 'training on the job' or at least external training given by experienced mediators.

These different training concepts require different types of trainers. A good, experienced lawyer or judge can explain the cognitive parts of law and theory, and a professor in psychiatry can explain a theory on personality issues. A therapist can provide some contributions on how to handle a conflict and on aspects of the supervision of mediators.

However, all these possibilities do not overrule the general concern that the basic, unifying aspects in all this should be experience and an in-depth knowledge of

mediation. Therefore, every training programme should ensure as a kind of safeguard against any derailments that the in-depth knowledge of mediation should be prominently present in any team providing training for mediators to provide an overall kind of synthesis. Mediation can require some psychotherapeutic elements, but it is not psychotherapy. Mediation can require a lot of knowledge about law or social sciences, but a mediator is not a lawyer or a brilliant scientist. The specification lies in the synthesis which is experienced in the every-day mediation practice.

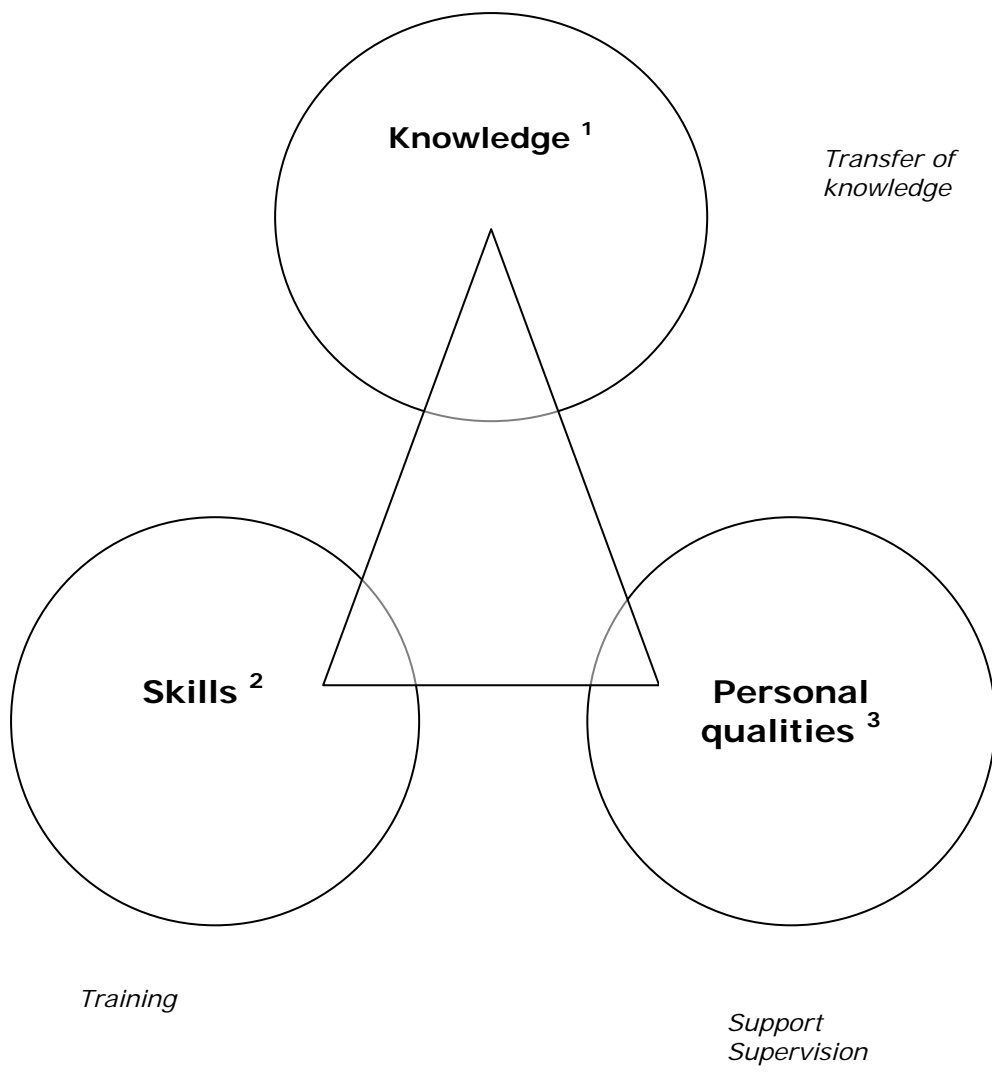
Trainers need to be encouraged or even obliged to continue their own training on a yearly basis. The experience and knowledge arising from mediation practice compel the trainer to do this.

### **Ad 8**

Several ideas came up in order to provide some follow-up to this recommendation. For instance, to meet at a kind of summer school to be organised in various countries. Participants should be provided with an opportunity to gain insight into the training concepts of different countries, update their existing knowledge and exchange views with their colleagues. A stimulating environment and leisure time should enhance creativity and spontaneity.

Another idea is to have annual meetings of a group of experienced practitioners and trainers to work on the basis of this recommendation with the long-term vision of creating some kind of European standards of training or some sort of European accreditation system.

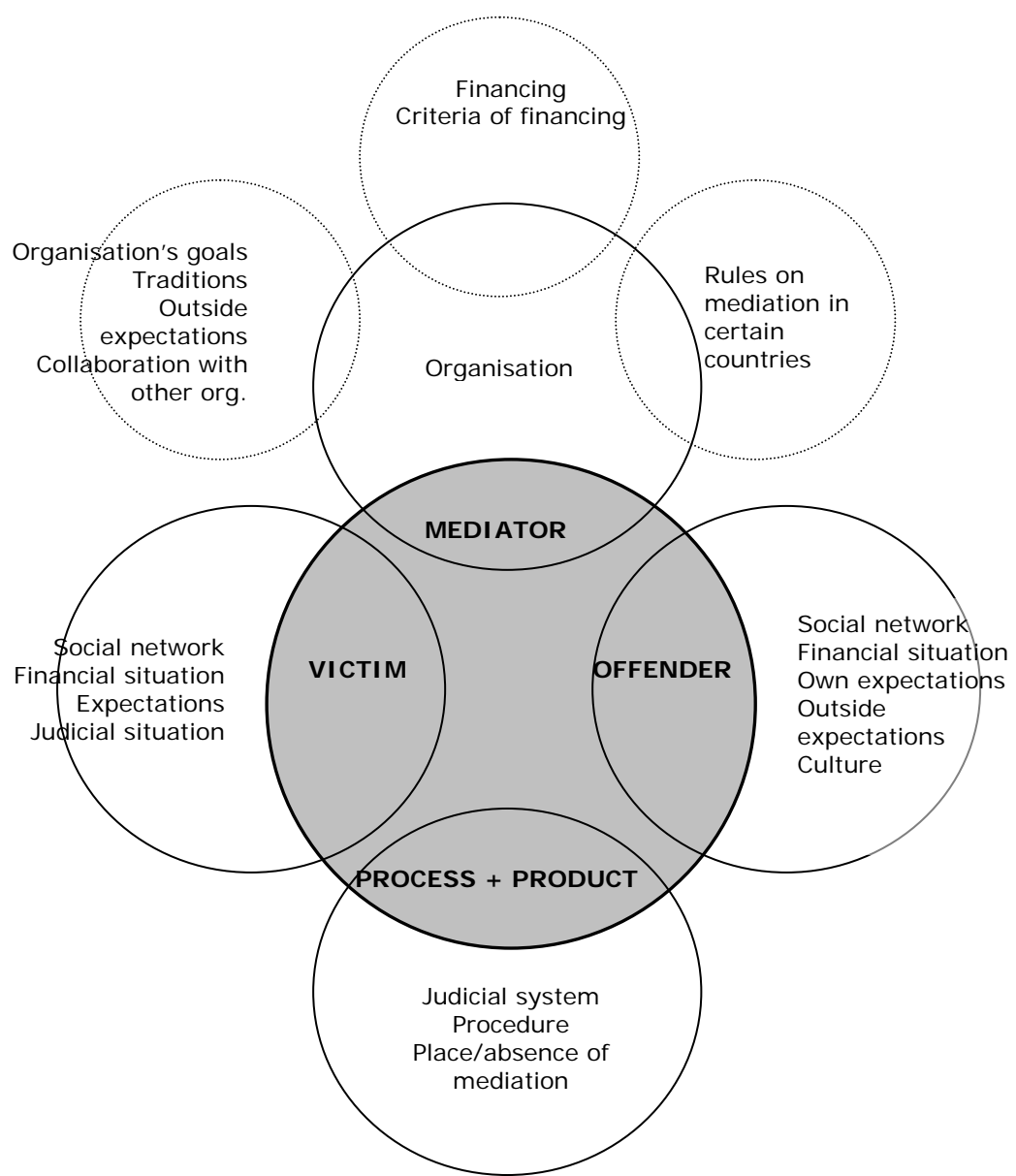
**Annex 1: The Triangle**



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1 Knowledge includes e.g. law, conflict management, theory of restorative justice, etc.  
2 Skills include e.g. showing empathy, communication, etc.  
3 Personal qualities include e.g. capacity of showing vulnerability, own dealing with conflicts, etc.

**Annex 2: Complex field**



### Annex 3: Application of mediation

