

Cologne, May 2019

Comment of the Service Bureau for Victim-Offender Mediation and Conflict Settlement in DBH e. V. – Association for Social Work, Criminal Law and Crime Policy

On the Recommendation CM/Rec(2018)8 of the Committee of Ministers to member States concerning restorative justice in criminal matters

The Service Bureau for Victim-Offender Mediation and Conflict Settlement in DBH e. V. welcomes the 2018 Council of Europe Recommendation concerning restorative justice in criminal matters. The recommendation is the most advanced international document for the (further) development of restorative justice in Germany and other European countries.

In comparison to some other European countries, Germany already has a wealth of experience in the implementation and application of restorative justice practices. This includes the safeguard of participants' rights, and maximise the effectiveness of meeting participants' needs. The following achievements should be emphasised:

- an important legal basis concerning restorative justice in criminal matters at any stage of the criminal justice process,
- a well-founded training programme for mediators in criminal matters which has been used for more than 25 years,
- many years of practical experience in the field of victim-offender mediation,
- more than 300 restorative justice services throughout the federal state,
- high quality standards for mediation in criminal matters,
- the nationwide statistics for victim-offender mediation for over 25 years,
- and, last but not least, an important, singular central office to promote restorative justice in Germany since 1992: the Service Bureau for Victim-Offender Mediation and Conflict Settlement.

In many regards, restorative justice in Germany is already taking place in accordance with the new recommendation. Notwithstanding the recommendation draws attention to the fact that further developments must follow in order to enhance restorative justice in the best sense of practice.

Gefördert durch:



aufgrund eines Beschlusses
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There is a particular need to amend some aspects according to the rules in Germany. For example:

Rule 4:

“Restorative justice often takes the form of a dialogue (whether direct or indirect) between the victim and the offender, and can also involve, where appropriate, other persons directly or indirectly affected by a crime.”

Generally restorative justice in Germany takes place in the form of victim-offender mediation between the primary victim(s) and offender(s). Other indirectly affected persons are rarely included. A greater involvement of other (affected) persons in the restorative justice process would be desirable.

Rule 5:

“Depending on the country in which it is being used and the manner in which it is administered, restorative justice may be referred to as victim-offender mediation, penal mediation, restorative conferencing, family group conferencing, sentencing circles or peacemaking circles, inter alia.”

Regarding the involvement of more people in the restorative justice processes, conferencing and circle practices have proven their worth in the international arena and already within the framework of model projects in Germany. Currently, the conferencing practice is offered rarely (e. g. more in Schleswig-Holstein, Lower Saxony, Baden-Wuerttemberg). Circles practices are not offered at all. With this in mind, a development of more and various training courses for practitioners and an additional financial support for restorative justice services that offer various restorative justice practices would be very meaningful.

Rule 6:

“Restorative justice may be used at any stage of the criminal justice process.”

According to the law the use of restorative justice is possible at any stage of the criminal justice process and for all crimes. In practice, however, restorative justice takes place almost exclusively in preliminary proceedings and mostly for minor to medium level crimes – i. e. in prison restorative justice is only offered selectively.

Rule 18:

“Restorative justice should be a generally available service.”

The ability and quantity to obtain restorative justice services varies between regions – for example, restorative justice is hardly offered in Thuringia or other federal states in East Germany.

Rule 19:

“Victims and offenders should be provided, by the relevant authorities and legal professionals, with sufficient information to determine whether or not they wish to participate. Referrals could be made by judicial authorities or criminal justice agencies at any point in the criminal justice process; this does not preclude possible provision for self-referral to a restorative justice service.”

Quality and quantity of information varies from region to region. Restorative justice is just one of many issues of which victims are informed; many offenders are not even informed about it. A comprehensive and sustainable information for all victims and offenders would be necessary in all federal states. According to the German Code of Criminal Procedure, there is a legal obligation to provide information, but there is a need to train judicial and police practitioners on sustainable implementation.

In addition, some restorative justice services are not financed to work with self-referrals (e. g. Bewährungs- und Gerichtshilfe Baden-Württemberg).

Rule 22:

“Where restorative justice is provided within the criminal procedure, policies should be developed. These should, in particular, address the procedures providing for the referral of cases for restorative justice and the handling of cases following restorative justice.”

In the whole of Germany, restorative justice services are dealing with 20,000-30,000 cases annually. The total number of registered offences (approx. 6,3 million) shows that restorative justice is still a marginal phenomenon in the German judicial practice. On the one hand, this is due to the fact that only a few people know about restorative justice. On the other hand, it is related with the few referrals of cases from public prosecutors and courts to restorative justice services.

Where necessary, existing guidelines and cooperation should be improved. In addition, there is a need to raise awareness for restorative justice. First among the police, public prosecutors and courts – and second among the civilian population. The further financing and development of large-scale campaigns and training courses is an important building block here.

Rule 23:

“Procedural safeguards must be applied to restorative justice. In particular, the parties should be informed about and have access to, clear and effective grievance procedures.”

The implementation of an independent complaints office would be useful in this context.

Rule 38:

“Restorative justice services should regularly monitor the work of their facilitators to ensure that standards are being adhered to and that practices are being delivered safely and effectively.”

Many, but not all restorative justice services are working according to the German standards for victim-offender mediation. All participants must always be able to trust that every restorative justice service will work professionally and create a safe environment. For this reason every restorative justice service offering victim-offender mediation should be obliged to work according to the standards.

Rule 39:

“Restorative justice services should develop appropriate data recording systems which enable them to collect information on the cases they deliver.”

Approximately 75 restorative justice services are participating in the nationwide statistics for victim-offender mediation. Those not participating in the nationwide statistics, use internal evaluations, which are partly accompanied by a different method of counting. For the data collection and their comparability it would be useful that all restorative justice services are required to participate in the nationwide VOM statistics.

In addition, the compatibility of public agencies software (which already exists) should be given.

Rule 40:

“Facilitators should be recruited from all sections of society and should generally possess good understanding of local cultures and communities.”

In Germany, well-educated individuals more often conduct the restorative justice practice. Only a few restorative justice services work with trained (volunteer) mediators from differing population groups, cultures and communities. A greater diversity would be more desirable.

Rule 42:

“Facilitators should receive initial training before delivering restorative justice, as well as ongoing, in-service training.”

A majority of those who work in the field of restorative justice have completed the appropriate training. However, many are not trained mediators in criminal matters; especially within some public agencies.

Rule 48:

“Restorative justice should be carried out efficiently, but at a pace that is manageable for the parties. Sensitive, complex and serious cases in particular may require lengthy preparation and follow-up, and the parties may also need to be referred to other services, such as treatment for trauma or addiction.”

In many states, more complex cases (e. g. individuals in detention or convicted of serious crimes, and those involving multiple participants) are not financed separately, which often poses financial and time challenges for the restorative justice services. In these cases, there is a need of special preparation time, which should be able to claim financially.

Rule 53:

“If restorative justice will have an impact on judicial decisions, the facilitator should report to the relevant judicial authorities or criminal justice agencies on the steps taken and on the outcome(s) of restorative justice. Notwithstanding facilitators’ obligations under Rule 49, their reports should not reveal the contents of discussions between the parties, nor express any judgment on the parties’ behaviour during restorative justice “

This is in line with the German standards for victim-offender mediation, but some public prosecutors require the mediators to make their own recommendations for further criminal proceedings. Mediators must be able to act in an impartial manner – i. e. without any judicial requirements. Here, too, there is a need for judicial training on RJ principles.

Rule 54:

“Restorative justice requires adequate human and financial resources to be effectively provided.”

In Germany the financing of restorative justice services is very heterogeneous. Often the private agencies work under unfavorable financial conditions that do not permit multi-year planning (e. g. because of fine financing, case-cost flat rates). Permanent financing models would lead to a better planning security and to more qualitative work in the end.

Rule 59:

“While restorative justice is typically characterised by a dialogue between the parties, many interventions which do not involve dialogue between the victim and offender may be designed and delivered in a manner which adheres closely to restorative justice principles. This includes innovative approaches to reparation, victim recovery and offender reintegration.

To our knowledge, this hardly ever happens, but such innovative approaches are very desirable. In addition, the few existing measures (such as victim-empathy-training for inmates) are labelled as a 'normal' restorative justice practice, which creates the risk to a weakening of the basic principles.

Rule 60:

“Restorative principles and approaches may also be used within the criminal justice system,

but outside of the criminal procedure. For example, they may be applied where there is a conflict between citizens and police officers, between prisoners and prison officers, between prisoners, or between probation workers and the offenders they supervise."

There is a great deal of potential, which can be obtained through further developing mediation between authoritative figures and their counterparts. For example, in Germany mediation between prisoners and prison officers hardly takes place.

From the preceding analysis of the current state of development of restorative justice in Germany, it becomes clear that various implications for action are necessary in order to fulfil the recommendation. The Service Bureau for Victim-Offender Mediation and Conflict Settlement offers is in the advisory and supportive capacity in order to advance the complete implementation of the recommendation and to achieve the most efficient restorative justice practice in Germany.

On behalf of the Service Bureau for Victim-Offender Mediation and Conflict-Settlement in DBH e. V.

A handwritten signature in black ink, appearing to read 'J. Muhl', with a stylized, cursive script.

Johanna Muhl, M. A.