



# HUMAN RIGHTS IN ARMENIA

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## INTERVIEW

### Mediation: Armenia has to go its own way

01.08.2016



consuming and less complicated process, it doesn't cost as much as legal aid and it promotes lasting solution of the dispute.

The institute of financial mediation and the possibility of court ordered mediation in certain civil cases has been recently introduced in Armenia. The Law on Probation, regulating the activities of a newly created State Probation Service, also envisages possibility of victim-offender mediation as a special function vested in the Service.

**Www.hra.am** presents an exclusive interview with the mediator-conciliator **Georg Albers**, the professor of the University of Applied Sciences and **Dirk Splinter**, the mediator-conciliator, trainer and educator of the "Inmedio" consulting institute (Berlin). The mediation experts spoke about the German experience in this field. In cooperation with the Civil Society Institute NGO Mr. Albers and Mr. Splinter organize mediation training courses for the specialists from different fields, where mediation skills are most needed.

#### What do you think, why mediation is important in criminal justice system and what is the role of mediation in this sense?

**Dirk Splinter**- There is lots of evidence that putting people in prison is a sort of punishment that basically makes them more criminal and increases the likelihood of future offences. So trying to reach some sort of reconciliation and develop different forms of compensation that would also help to change the minds of the offenders and this is most important for peaceful and just society. That's where mediation comes in.

**Georg Albers**- I think that every society needs an appropriate answer to deviant behavior that does exist in every society. But how to deal with this kind of behavior is important because all those people committing crimes are still members of society, you can't push them out and you don't want to push them out. So somehow to integrate them again is a big challenge for every society. Here the mediation comes into play because it's one part of the answer to this kind of problems. To have a wide range of potentially good answers to social problems that is where societies make an improvement. This is the main reason why justice system should develop appropriate and differentiated answers.

#### On what kind of issues should one pay attention when working with offender-victim reconciliation. What is the most important in this type of mediation?

**Georg Albers**- In the mediation process in terms of development of this kind of services on the pre-mediation phases it is very-very important to find out whether a case is appropriate for mediation or not and if it does make sense for the victim and the offender as well. Only if it serves both sides it will make sense to do mediation. So to find a way to install mediation in not appropriate cases is one of the biggest challenges.

#### What is the German experience in this field? What the mediation system was established, what were the challenges, the difficulties at the beginning and nowadays?

**Dirk Splinter**- I think the experience is very positive. It has not been so long ago, about 12 years or so, that victim-offender mediation started in Germany with small pilot projects trying to see whether it works. It was a challenge to convince people in legal system (judges, public prosecutors etc.) that it would be helpful. But meanwhile I think we have it on a broader scale. One can have access to the victim-offender mediation throughout Germany and there are thousands of cases successfully mediated.

#### And who was the "pusher" and advocate of this system?

**Georg Albers**- Of course, civil society, scientists, and a couple of political activists as well. Yes, mainly people coming from civil society background convinced state authorities that it would be necessary, that it would be helpful. And to be honest that's still a challenge. Organizations running mediation services in victim-offender area still do have constantly to convince judges and lawyers and prosecutors that this is a good idea, because it is quite unusual for people usually working in a legal system, that this kind of alternative dispute resolution makes sense. This is because it is very much depends on the perspectives and perceptions of those individual conflict parties. So judges usually think of themselves as

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20.06.2017

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neutral and objective and making their decision according to the law. It's a new idea usually for them to think that one should take the individual's perception into account and that this is a rights way to deal with the case. But cases where civil society succeeded to convince those judges, lawyers, prosecutors, it's really positive and successful practice. Therefore, the active position of civil society representatives draws the main threshold between unsuccessful and successful organization of mediation.

**And nowadays in which fields does mediation work, in which relationships? And how does it works?**

**Dirk Splinter-** So, victim-offender mediation, as I think, regarding the number of cases is the biggest field in Germany. Most likely, the second biggest is the family mediation, where we have a lot of cases in particular when it comes to divorce and disputes about child custody. Number 3 is mediation in organizations. Disputes within the staff being it business or non-profit organisation those are the cases where mediators would be called in. Number 4 most likely are disputes between organizations and between companies.

**Georg Albers-** I think in terms of cases school mediation is a big field, too, especially if you call every dispute among pupils which need peer mediator. So, if you call that a case then, I think, it's one of the biggest. However, that is hard to count because there is no statistics about that.

**Dirk Splinter-** Yeah, true, and it is also started in the mid 1990s and I think now we have about thousands schools maybe in general that use this kind of mediation.

**Georg Albers-** I think even more but it's hard to tell because there is no official data on that. But when it comes to schools, roughly estimated, one per five schools has a mediation programme. And in some federal states, it might even be more, so today it's quite usual practice in schools to have peer mediation conflict management. And the idea behind that is that it is not teachers or social workers or physiologists who perform the mediation but the pupils are trained to mediate the cases among other pupils, usually the older ones mediating for the younger ones. That's a very special approach to that, very-very successful.

**What is the aim of your visit to Armenia? What meetings do you have? And what results do you see? Do Armenian officials, authorities have commitment to develop the proper mediation in Armenia. And what would you advise as professionals, how to start?**

**Dirk Splinter-** First of all, we are very happy to see that Armenian Ministry of Justice has newly created Probation Service and that new regulations about victim-offender mediation and reconciliation are in place. We are happy to see that civil society organizations and CSI in particular are ready to support the Ministry in implementing this victim-offender mediation. It's a great step forward.

So we want to bring in the expertise and practice of other countries regarding how this works and share it with the Armenian actors. We hope that this will be beneficial for the Armenians in their process on making decisions on how this is supposed to work in Armenia in the nearest future.

Basic recommendation that we have is to make sure that those people who mediate between victims and offenders are seen as trustworthy and neutral because if people are afraid that whatever they say in mediation might somehow find its way to the ears of the judge in the court proceedings, they will not be ready to do it and the whole system would not work. So the most important part we feel is to make sure that the mediators are really trustworthy and trusted by the parties and will keep all the confidential information acquired during the mediation process in secret.

**So the first main thing is that we need professionals in this field ready to act as mediators.**

**Dirk Splinter-** Yes.

**Georg Albers-** It's impressive how much motivation and readiness for this kind of alternative ways of deal with conflict is there, that's good news.

**From the authorities or civil society?**

**Georg Albers-** Both, within the civil society and among state authorities because both is needed. They have to cooperate in order to develop a working program. And I think that's one of the main recommendations, so every part has his/her own role and objective but the establishment of a working system of mediation in different fields needs cooperation between all those actors. And it is sometimes not easy to achieve this result because there are different perspectives, different interests, different needs, but only if they work together I would think it makes sense. That's again one insight, one experience from development of mediation not only in Germany but in the other countries where mediation is established as well. In particular in United States, Great Britain and other countries, Austria for instance.

**Do you want something to add that you think you want to mention about this new establishing system in Armenia?**

**Georg Albers-** Armenia has to go its own way, of course, it makes sense, to have a look at other countries or experience of other countries but at the end of the day, all stakeholders here have to decide what is their top priority and that nobody from outside can predict or recommend. So, I would think that that is the main challenge, that the actors have to make up their minds here and take from the international experience what they need but adapt it to the Armenian reality and Armenian needs. So I would think this is the most important what exactly you take from outside and what you have to develop on your own; and that's very much due to what is needed here.

**Dirk Splinter-** I, maybe, like to share one story about a lady that I know. She has a child handicapped and mentally ill and in some public place there was a person who started to bully and insult the child, which was very hurtful for the lady. Because she was very upset, she decided to sue that guy and the judge in this case came up with a sort of a conciliation session. So, rather than asking the person who insulted this lady to pay money that would be an official payment for this sort of offence (not directly to her but to the government) they

came up with an agreement that the guy would go to a public place with the lady and for 1 day would accompany that mother with her child in order to see and learn what it means for mother to raise this kid. That's what they did. I think this gentleman learnt so much more for his future life and only a fine would never teach him why it was a mistake what he did. I think this is an encouraging example why it is important to include mediation in justice system.

Interview` by Mery Aleksanyan

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