

Finnish Forum for Mediation

The Finnish Forum for Mediation (SSF), founded in 2003, is a Finnish mediation cooperation organization whose ideology is based on the modern mediation movement. Its board represents the entire mediation field through its members' expertise and activities outside the Forum. SSF is a voluntary and independent non-governmental organization, whose goal is to participate and influence society development by reinforcing the civil society and bettering the society's well-being through mediation.

What is mediation ?

Mediation is a voluntary method of conflict management in which an impartial outside party, the mediator, helps the parties of the argument, through a particular mediation process, to come to an agreement that satisfies the arguing parties. The mediator does not take part in finding a solution to the conflict but rather acts as a facilitator in the process. The mediator directs the process which outcome is that the parties themselves find a solution. The mediator does not passively retreat in the mediation dialogue but acts as an active listener. He or she allows room for the processing of emotions as well as for moral consideration and discussion on values. The mediator does not judge but does see to it that the agreement is reasonable for both parties. Mediation is social activity directed at the future. It is used to find sustainable positive solutions. Mediation is a learning process.

The Mediation Theory

One of the most important background theories for the modern mediation movement is restorative justice, in other words restorative conflict resolution. It is best accomplished in facilitative mediation in which all parties personally take part. The values of mediation are respect, tolerance, compassion, trust and forgiveness. In the core of mediation are dialogue, a willingness to learn, the understanding of another's point of view and focusing on the future.

At the mediation conference held in Helsinki in 2006, one of the main speakers was Nils Christie, who has often been called the father of Nordic mediation. His opinion was that mediation will gain ground in societies because it "lacks a sword", meaning the power of punishment and because "the truth" is a relative concept. Mediation is based on including the citizens into processing and solving their own conflicts and on avoiding exclusion, stigmatisation and alienation. The solution gained through mediation is more based on the parties' needs than on their legal rights. The biggest obstacles for mediation are ingrained attitudes, the people's will to punish as well as organization cultures and the fact that experts and decision makers are not willing to give up the power they have.

The Mediation Process

Mediation is neither about finding the guilty nor finding out the absolute truth. The mediation process allows for room to consider the parties' different cultural backgrounds and their possible effects on the process. On occasion, the mediator can use the help of an expert-assistant and the parties the help of a legal advisor. The parties can always have a supporting person present.

The goal should be that the mediator could ask, either on behalf of the parties or with their approval,

for all those to be present in the process, who are somehow touched by the conflict or who can be expected to be helpful in finding a solution to the conflict. This would allow for the parties to also work through the larger social effects of their conflict.

In separate meetings which take place first before the actual mediation, the mediator tries to find out what each party's values, attitudes, views and interests are. Thus the mediator can have an overall picture of the situation. In the common meeting, the mediator tries to create a dialogue between the parties as well as with the possible other people present, by building trust between the parties so that they can understand that they have a common conflict and that they also can solve it together. It is the mediator's duty to see to it that the parties can as creatively and deeply as possible process the conflict in order to find a solution satisfying both of them, regardless of their possibly very different values. An experienced mediator is peaceful; he/she lets the others talk while he/she remains silent. If needed, he/she interprets what the parties have said, makes a summary and also observes his/her own behaviour. Apology, forgiveness, learning and empowerment are all a part of mediation. By empowerment we mean that the party or parties in the future can better stand up for themselves, express their opinions as well as understand better their own and others behaviour.

As the mediation process progresses, new confidential separate meetings can also take place. This can be useful in particular when feelings have negatively overcome in the common meeting or when it is apparent that one of the parties has been overpowered by the other and thus been unable to express his/her opinions. The parties can interrupt the mediation when they wish. When a common understanding and a solution have been reached, all those present take part in defining the mediation agreement and sign it. At this point, it can also be decided that a follow-up meeting will be held within a certain delay.

Mediation training and networks in Finland

The only Nordic mediation professorship is at the Faculty of Law, at the Copenhagen University. Systematic, academic research on mediation is still lacking in Finland. SSF will start negotiations with Finnish universities and representatives of the Finnish state on organising good quality mediation training and research in our country. Training in peer mediation is offered by SSF in the form of the peer mediation project "Verso" which is financed by The Finnish Ministry of Education.

Since 2001, there has been an optional course in mediation in criminal affairs at the Turku Faculty of Law. At the Helsinki Faculty of Law, Juhani Iivari's lecture series on restorative justice and social work is on its third year. As for written work on Finnish mediation, there are: Juhani Iivari's doctoral thesis on mediation in criminal cases, Kaijus Ervasti's and Gisela Knuts' recent doctoral theses on court mediation as well as Mr Ervasti's book on the same subject. In 2006 was also published a book on mediation in commercial disputes by Risto Koulu as well as Maija Gellin's "Peer mediation method as experienced by peer mediators". The SSF board member and Valio's training manager Timo Pehrman is preparing his doctoral thesis at the University of Lapland on mediation in work communities.

The Finnish Forum for Mediation's website is under constant development. The address for our homepage is www.ssf-ffm.com. On our school mediation pages, the peer mediation project "Verso" has the pages for pupils and teachers to inform not only the development of the school mediation in Finland but also in Europe.

Arenas of mediation

Mediation in criminal cases

If something gets broken, it needs to be fixed. It is very seldom that the best consequence for a crime would be, from the victim's or the offender's point of view, a conviction.

The law on mediating criminal cases and some disputes in Finland became effective in January 2006 and was taken into practice on the 1st of June 2006. Responsible for the organization and costs of mediation as a practice, is the Finnish state which acts according to mandates made with municipalities and other organizers.

By mediation in criminal cases is meant a free service, in which the suspect and the victim of the crime are given the opportunity, in the presence of an impartial mediator, to encounter each other confidentially. Such issues as the victim's mental and material injuries can then be addressed and an agreement on how these injuries could be compensated for, can be reached independently.

Mediation in criminal cases saves the society's resources. It has been seen to have humane importance to both the victim and the offender as well as educational importance to especially young offenders. At its best, mediation in criminal cases diminishes or even erases the harm caused by the crime and prevents crime renewal. It is a goal for SSF that mediation be used also in hard crime cases as well as family violence conflicts, as a means of lessening the psychological consequences of them. SSF also aims to influence the authorities in such a way that Finland could, as an example to other countries, see to it that more influence would be given to the victim in a crime trial within the European Union.

School mediation

The Finnish law on basic education says that a child has the right to a safe studying environment. Schools have the duty to stop violence and bullying.

Peer mediation in Finland started with a Finnish Red Cross project in 2000. In 2005, The Finnish Ministry of Education granted a funding of 210 000 euros to The Finnish Forum for Mediation for a peer mediation project for the years 2006-2007. For the years 2008-2009 the project has got the financial support of 270 000 euros from the Finnish Slot Machine Association. Peer mediation means an approach in which pupils, after receiving the appropriate training, mediate conflicts, e.g. bullying, between other pupils. It is the most popular school mediation method in Europe as well as everywhere in the world and is being used in thousands of schools. Peer mediation has always adult support within the school. The project aims to spread peer mediation into all the schools in Finland.

The peer mediation project will, with all of its consequences, change the Finnish society culture. The project has been followed-up by questionnaires and the peer mediation approach has been and is being studied by students of education and special education. During the year 2007, an impartial evaluation will be made on the effectiveness of the approach. Since the new law on mediating criminal cases has become effective, cooperation between local mediation offices and schools is being developed in order to ensure safety and peace in schools.

School mediation is the key to all mediation, for the basis of behaviour culture is created in schools. Thus, mediation needs to be a part of the school culture. SSF's school mediation project aims at this. School mediation needs to be continuously developed and the adults in schools need to be more trained in mediation. For example, in Norway and the Great Britain also teachers are being trained to mediate the most difficult bullying cases. These bullying cases as well as conflicts between a teacher and a pupil are mediated by a teacher and a pupil together. Peer mediation alone

is not a sufficient method to ensure safety and peace in schools. To accompany it, a meditative approach needs to be a part of all methods that seek to ensure them. Thus mediation will become a method used by all members of the school community. The wide spread use of for ex. mediation in criminal cases, mediation in work communities and family mediation as means of conflict resolution depends upon us having a functional mediation culture in our schools.

Mediation in work communities

Harassment and bullying at work are prohibited by law, but there are very few ways to intervene in such cases. Mediation is one of these ways. In Finland, mediation in work communities has only been used at the Finnish Dairy product giant Valio.

Representatives of the Finnish Forum for Mediation have had negotiations on future projects with a great number of labour organisations ranging from The Finnish Ministry of Labour, The Central Organisation of Finnish Trade Unions, and The Federation of Finnish Enterprises to the National Conciliator, The State Treasury, The Finnish Work Environment Fund and many in between. The Forum has suggested that mediation in work communities would be applied in Finland in especially workplace bullying cases and that a two year pilot project in two different organisations would be started. The Finnish Ministry of Labour organised on the 8th of January 2007 a meeting amongst the different instances in order to discuss the possibilities of implementing the Forum's suggestion in practise. On the basis of this meeting, SSF decided to apply for funds from the Finnish Work Environment Fund and the State Treasury in order to finance the project. Members of the projects scientific board are professors Esa Poikela and Seppo Koskinen from the University of Lapland, special researcher Maarit Vartia from The Finnish Institute of Occupational Health and professor Juhani Wikström. The State Treasury and the Finnish Work Environment Fund have granted the funds for the project.

The encouraging experiences we have had with peer mediation lead us to believe that also mediation in work communities could be led mainly within the workplace by training representatives for employees, managers and employees to become mediators. One of the challenges for good management will in the future be to meet employees in situations based on equivalency (Restorative management). In very difficult bullying cases, an outside mediator should perhaps be available. Mediation in work communities is a way to intervene with bullying and harassment at work, to add to the employees' well-being and to promote the security in and the productivity of the work community.

Mediation in family conflicts

According to the Finnish Marriage law, solutions to conflicts and legal questions within a family must primarily be sought in negotiations between those concerned. For the time being, modern facilitative mediation is not used in Finnish family mediation. It is one of the goals of SSF to participate in the creation of a new mediation approach that focuses on children's interests. In practise, this means a voluntary, facilitative approach in which the parties themselves, led by a trained mediator, make the agreements on custody and visiting rights. Both the parents' and the children's needs are taken into consideration so that the parenthood of both parents may continue even after the separation.

The Finnish Forum for Mediation is about to start a project in facilitative family mediation (FASPER) in cooperation with other associations. SSF is also developing cross-professional family mediation training.

Since the new law on court mediation became effective, also mediation in custody disputes can be practised in court. In such cases, the judge would primarily be assisted by a social worker.

Environmental mediation

There have been many encouraging experiences in environmental mediation in Europe. In mediation can citizens, whose lives construction projects affect, participate in eliminating harmful effects and solutions can be found quickly and cost-effectively. In environmental cases, mediation should take place at an early stage, for example when a permit is being applied for, or even earlier in the project's planning phase. For example in the US, a hotly contested water dispute was referred to mediation by the US Supreme Court.

The process could be such that a municipality or an environmental authority asks a mediator to mediate. In a case with wide spreading consequences, the mediator could put up an advisory work group and make a suggestion on the mediation process. After a successful mediation, an agreement would be signed and put before the approval of the municipality or the environmental authority. SSF is seeking a pilot project, in which environmental mediation could be tried in practise.

International or Peace Mediation

International mediation is not altogether very different from other types of mediation. It is often used in difficult international conflicts, especially when the hostilities are deep and long-lasting and when the parties' own attempts at reconciliation have failed. Mediation is based on avoiding violence and is ultimately not binding. The main goal of the mediator is a decrease in violence and a peaceful solution. When a solution has been found, the mediator leaves the conflict arena.

Because mediation neither criticises nor judges, it fits well with the reality of international relations where states and other actors jealously guard their own autonomy and independency. Mediation offers both parties an opportunity to gain a good result without the hostile parties necessarily having to negotiate directly with each other. It is also a process in which the final decision on the outcome is left to the parties themselves. All of these aspects make mediation a tempting method in resolving difficult conflicts.

Court mediation

The law on mediating disputes in the general Finnish courts became effective in January 2006. The mediator is a judge at the court that processes the case. The advantages of mediation compared with the traditional dispute proceedings are mediation's rapidity, low costs and the right that the parties themselves have to manage and control the conciliation agreement. To ensure the needed expertise, the mediator is free to bring in an assistant. The mediation is confidential; if the case is not settled and moves on to a court trial, the mediator may not judge the case.

We consider that by this law the Parliament is saying that the primary means of conflict resolution in our society should always be mediation, even if conflicts go as far as the court, and that a court trial is only a secondary option.

Mediation by Finnish Bar Association

The Finnish Bar Association offers mediation especially in commercial affairs, work relations, and family affairs. In the procedure, an impartial lawyer acts as a mediator and assists the parties in affirming a settlement. This type of mediation is really negotiation aiming at settlement with the help of a third party.

Also mediation by the Finnish Bar Association is voluntary and confidential. The mediator is not a judge and he/she cannot give parties binding orders or solutions. It is also not the mediator's task to give legal advice to the parties.

The Finnish Bar Association has for several years now had a mediation training programme for lawyers. A list of these lawyers, as well as other information on the association can be found on the association's website at: www.asianajajaliitto.fi. On the website there is also a model for the mediation agreement as well as the Bar Association's mediation rules.