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# HAIP (GERMANY) AND ATA (AUSTRIA): AN OVERVIEW OF THEIR SPECIAL METHODOLOGY TO AFFRONT MEDIATION IN CASES OF VIOLENCE AGAINST WOMEN



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**Introduction:** The convenience to extend to gendered violence victims all the possibilities that mediation can offer is a controversial theme. The discussions (promoted by experts and practitioners involved in the programs) focus, specially, on the conditions and guarantees that should preside the programs, and on the function that mediation should develop in the frame of the legal and social resources orientated to prevent and confront the problem.

According to critics, admitting these cases in the penal mediation programs would mean the consideration of gendered violence as a matter that belongs to the privacy of the pair (as a communication problem), not deserving a more serious response. Additionally, the aggressor could take advantage of the meeting in order to repeat the violent behaviour, in particular when he tries to maintain the control (for example when the violence is exercised during the first year of separation or when is the woman who is trying to separate).

Their most frequent and repeated argument is the one related to the patriarchal model that presides the pair relations: the battered women have a limited expression, transaction and decision capacity. Consequently mediation would not serve to confront the structural and psycho-social existing imbalance between the author and the victim. This fear of a possible abuse of the victim is what inspired the prohibition to mediate in these matters established by the Spanish Law (art. 87 ter LOPJ).

Supporters of restorative proceedings in this field focus on two arguments: the programs implemented in Europe, North America, Australia and New Zealand prove that it is possible to adapt the classic principles of penal mediation to the specialities of these cases; and the mediators can in some cases correct the power imbalances and reinforce the position of the disadvantaged part (Council of Europe Recommendation of 15 September 1999, N R (99) 19).

**Objectives:** In this paper we want to analyse some aspects of the practical execution of the programs, those related to the lack of personal, familiar and social autonomy of the victim (during and after the mediation proceeding). Additionally we want to provide an image of some the Austrian and German specialized intervention projects that work with cases with this background.

**Methodology:** By examining bibliographic and informative materials related to the programs we have identified some aspects of their practical execution of the programs. We have summarized and organized in tables the proceedings orientated to correct the power imbalances and reinforce the position of the disadvantaged part.

**Criticizing Mediation practices: the dynamics of violent relations:** It is generally accepted that, in the case of penal mediation with gendered violence victims there are two factors that could invalidate the proceeding: the helplessness of the victim (Table 1) and her fear to be (re)victimised (Table 2).

Supporting mediation would ignore the dynamics of violent relations and would result in an effective renounce of the victims to the exercise of their rights.

**Key concept:** Empowerment. The cases of continued violence, with consolidated power and control structures, are not suitable for penal mediation. The work field of these programs is integrated by cases in which, in spite of the existing control and subordination elements, it seems to be possible to reach the necessary balance and symmetry to obtain a satisfactory agreement (empowerment strategies).

The German and Austrian programs incorporate some special rules in order to adapt the proceedings of penal mediation to the specialities of gendered violence cases. It means introducing changes in several aspects: the duration of the sessions and intervention times, the support of both parts at the moment of presenting their interests, the incorporation of result controls and of the indirect (shuttle) mediation, the incorporation of probation periods and of balance dialogs... In Austria this adaptation implies the substitution of the idea of neutrality of the mediator by another concept: the positive protection of the interests of both parts (*Allparteilichkeit*). This positive protection includes the empowerment of the victim and the consideration of the violence as a not excusable conduct.

The aims of these empowerment methods are: liberating the victim of possible pressures (coming from the author), removing the victim of the “fire line” and reinforcing her (personal and social) resources during the dialog.

**Main empowerment techniques used in Austria’s ATA Program and in the most representative German project (HAIP):**

TABLE 3: CONTACT WITH THE VICTIM

- Its meaning is checking the possible existence of a situation of danger or threat, as well as the determination of her demands and wishes.
- The mediators have the possibility to finish the proceeding when they consider that the autonomy of the victim is not preserved in front of possible pressures coming from the aggressor.
- If the victim rejects taking part in the mediation or giving her consent to contact with the aggressor, the case will be remitted to a penal process. In this case, the function of the mediator will be offering different psycho-social or juridical support alternatives.

TABLE 4: THE “MIXED DOUBLE”

- First phase: separated interviews between each mediator and each part.
- Second phase: the mediator summarize what was explained in the individual interviews, giving to the parts the opportunity to introduce corrections or comments.
- “Reflecting Team”: every part can hear both versions of the facts -the own version and his pair’s version- narrated by the mediator, obtaining this way an “external” vision. Each part obtains a “distancing-effect”.

TABLE 5: COORDINATION WITH OTHER AGENCIES

- Reparation agreements will frequently incorporate the participation of both parts in family therapies and of the aggressor in rehabilitation programs.
- The programs must be always coordinated with the institutions and agencies that can offer the “resources” to reinforce the social links of the victim inside the community.
- This cooperation represents a second aspect of the empowerment, referred to the impulse given to the victim in order to organize her own safety network.

TABLE 1: HELPLESSNESS OF THE VICTIM

- Lack of confidence in the possibility of finishing with the violence by means of assertive actions.
- Major suggestion capacity in reaction to the words, signs or looks of the aggressor .
- Minor aptitude for a verbal confrontation with the aggressor.

TABLE 2: FEAR TO BE VICTIMIZED

- Tendency to adapt the own needs to those of the aggressor (in the attempt for avoiding more violence).
- Reduced capacity of articulating the own interests and incorporating them to the reparation agreement.

**Conclusions and Challenges of Penal Mediation in Cases of Violence against Women:**

a) cases of isolated and slight aggressions suffered by victims with enough social and personal resources (who have denounced the facts or taken other decisions to finish with the situation of violence) are suitable for mediation; b) the need to count with rigorous screening-proceedings, directed to control the concurrence of all the conditions that justify the suitability of the case for mediation, and the coordination protocols with other support and assistance instruments are the big challenges of restorative justice; c) the access of the mediators to a specialized formation in the power and interpersonal control dynamics and in the methods for detecting the presence of violence in the relation will be determinant to develop the mediation .