

Conferencing in German Juvenile Justice

Prof. Dr. Otmar Hagemann
Kiel University of Applied Sciences
Otmar.Hagemann@fh-kiel.de

Content

First German conferencing project in criminal matters

- “**Gemeinschaftskonferenzen**” (GMK) in Elmshorn, Schleswig-Holstein, as a mediation method
- Mediation in the German Criminal Law, especially in Juvenile Law
- The pedagogical concept: based on confrontation and participation
- Differences between our form of conferencing and victim-offender-mediation
- Conclusion and open questions



Concerning terminology:

- I use **restorative justice** as a notion for the underlying theoretical framework and
- **mediation** as an umbrella term for all kinds of **methods** used in that framework.
- Thus mediation is not restricted to settings where basically only 3 people meet to negotiate a compromise (like in divorce cases or VOM).
- My starting point is a **conflict** (Nils Christie) or a **problematic situation** (Louk Hulsman) which is framed as an offence according to criminal law.

- Unlike Australia or New Zealand, in Germany (and other European countries) VOM is the predominantly used form of mediation.
- Conferencing and Circles are relatively unknown.

Mediation in the German Criminal Justice System

- In 1990, mediation was invented in Juvenile Criminal Law (JGG) after a longer period with model projects.
- In 1994, § 46a was added to the general criminal code (StGB) allowing for mediation in adult cases.
- In 1999, a norm was inserted in the Code of Criminal Procedure (StPO) demanding the Public Prosecution Office and the Courts to check at every stage of criminal court proceeding whether mediation would be promising.
- In the German criminal justice system mediation is not defined : usually it is referred to „Täter-Opfer-Ausgleich“ (victim-offender-mediation)(„TOA“), sometimes generally to restitution, but not to conferencing.
- However, there are still juridical experts who state that mediation is not possible in criminal justice cases (see Delerue & Reeckmann-Fiedler 2005)

What is wrong with TOA/VOM?

- Basically nothing – in many cases TOA is the better alternative compared with the „normal“ court procedure.

But

- Mostly TOA means that one offender meets one victim while one or two mediators are present.
- That implies that there are only very few communication channels. If either the victim or the offender is not very communicative, everything depends on the mediator(s).

Two more aspects

1. Involvement of the community

Many conflicts are not meant personally; instead they emerge from social group contexts and competition (i.e. a „German“ beating up a „foreigner“ or vice versa). This context is lost, if you meet only on a 1-to-1 basis.

2. Psycho-social insight

In a 1-to-1 setting with mediator(s) the offender can promise nearly everything without losing his face. Often the other people present are of no significance for him. In a conferencing setting your family and best friends witness your promises. From this evolves informal social control afterwards.

The pedagogical concept

- In German juvenile law the focus is on education. Therefore we need settings enabling the young people to learn.
- The emotional component of learning is mainly met by the confrontation with the victim.
- Furthermore the juveniles who should take responsibility for their action are treated like all other participants.
- Participation does not mean that a group of adults and professionals imposes something on an offender!

Our Project – the first one in Germany

- In November 2006, a local initiative of some individuals and members of the local council of crime prevention was formed in Elmshorn, a town of 48.000 inhabitants in Schleswig-Holstein.
- Our „Gemeinschaftskonferenzen“ are modeled after the New Zealand Family Group Conferences and Belgian Hergo.
- Our focus lies on more serious offences: assault, blackmail, robbery, burglary, theft accompanied by violence ... whereas victim-offender-mediation in Germany often deals with petty crimes.

Aims

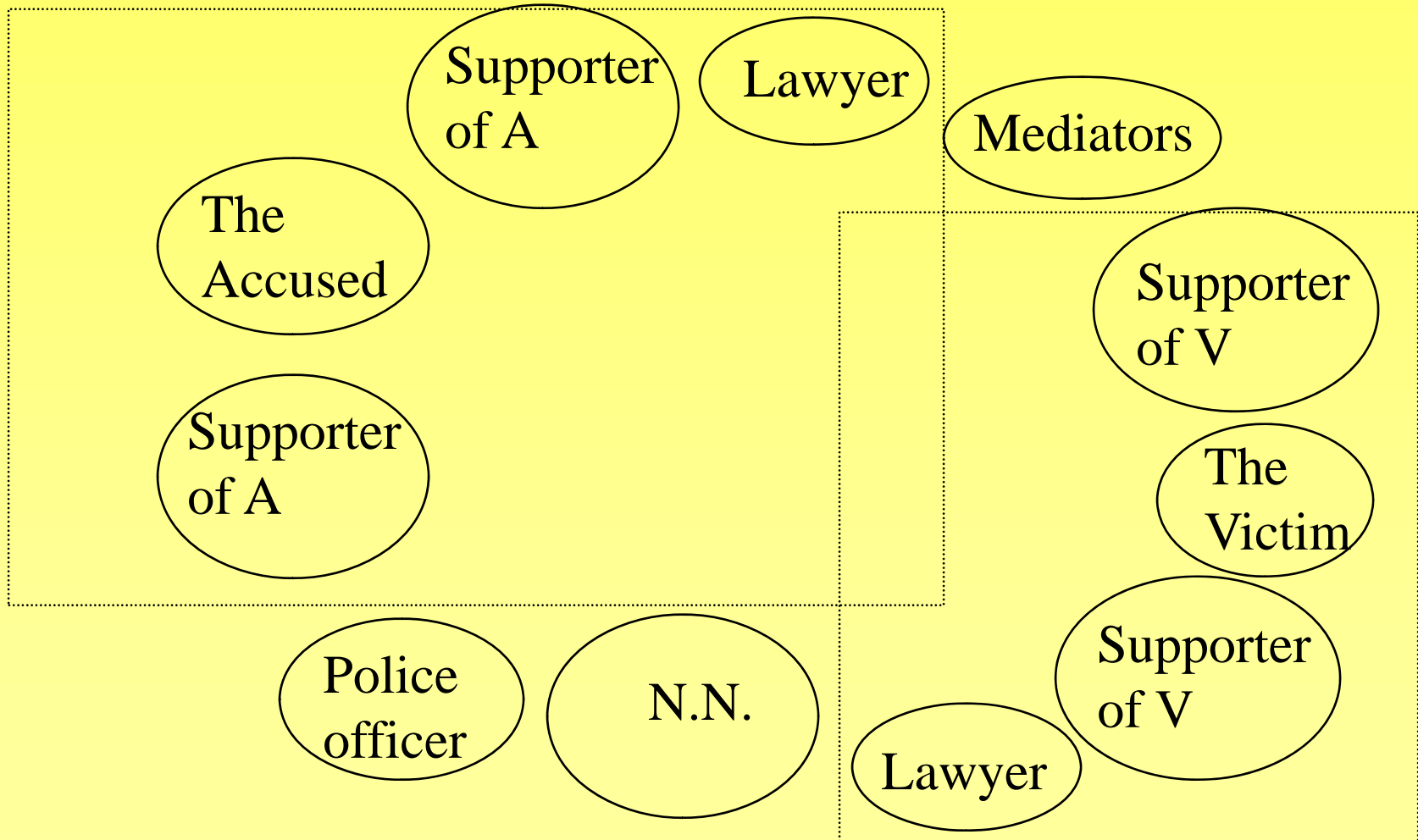
- Central involvement of victims
- Offender(s) should take responsibility.
- Tertiary prevention: the local council of crime prevention ask for effective dealing with young offenders to prevent future offending.
- Preventive effects on other juveniles in the community are welcome (secondary prevention aiming at „peers“).
- Involvement of the community as a third party of many conflicts.

What is „Gemeinschaftskonferenz“ (GMK)?

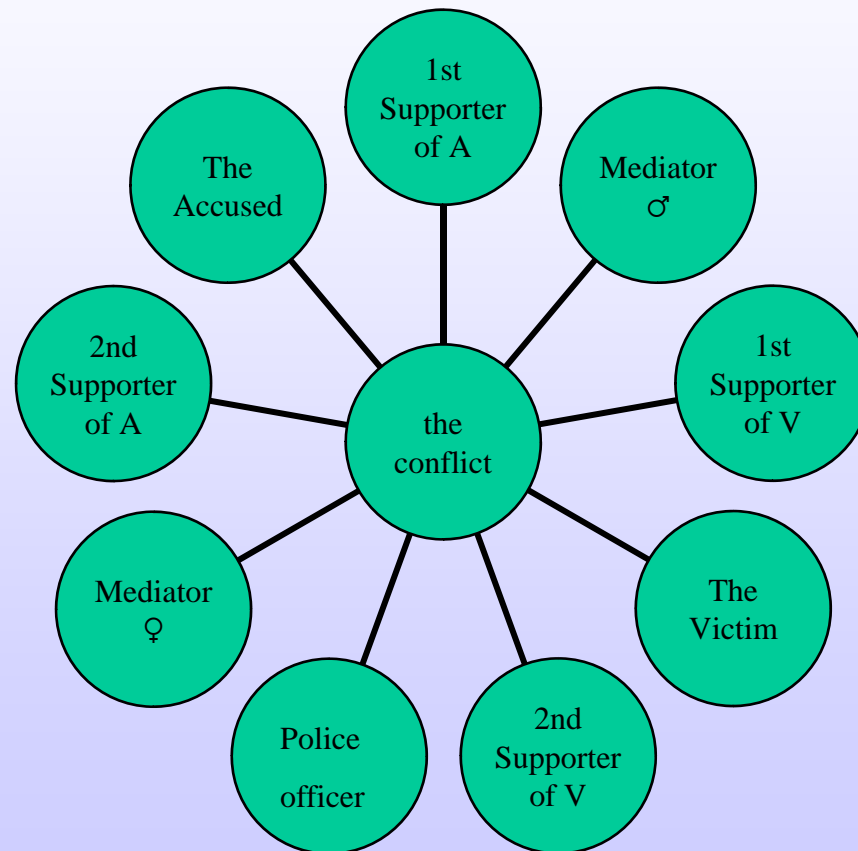
- literally translated it would be community conference.
- In New Zealand it is called Family Group Conference (FGC); the Belgian name Herstelgericht Groepsoverleg (Hergo) means a group process aiming at restoration.
- This type of conference is a forum, where people are dealing with conflicts and wrongdoing.
- Every participant is allowed to speak, to express feelings and to influence the outcome.
- Such a community conference is a democratic experience, where those who are mostly affected by a problem decide upon the way how to deal with it.

Who should take part in such a conference?

Participants of a Gemeinschaftskonferenz (GMK)



The conflict as a connection in conferencing



Findings from first GMK

- Participants worked together constructively.
- All five GMK ended with a consent which was supported by all participants. The results have been gained with decisive participation (partly suggested by the accused).
- In three cases suggestions of the accused have been taken up that were aiming at a future contact between him and his victim
- The GMK serves directly the interests and needs of victims. Victims express content with procedure and outcome.
- The atmosphere was conducive to a rapprochement between police and „young rebels“.
- Our future task would be to define precisely which cases should be dealt with in VOM, in a conferencing setting or in court.

Suitable and non-suitable cases

- Very suitable are cases which affect a greater number of people in the community or neighborhood exceeding the direct participants or where the action was not meant personally and the typical juvenile behavior of challenging the rules of the society.
- Not suitable are cases, in which one of the parties can not decide upon compromise i.e. because he/she represents an institution and needs the consent to concessions of people not present.
- One case was in principle suitable, but not regarding the specific constellation which includes the refusal of supporters.

Conclusions

- Our procedure has met the requirements. The discussion of concrete agreements for the final plan to be implemented emerges as the most intensive phase.
- The process rests on many shoulders. The principal participants benefit from the inclusion of the police and caring others.
- Main advantages:
 - Due to communication channels the procedure is quite robust
 - Group dynamics works in favour of a win-win-outcome
 - because duties are not imposed on someone but he/she was involved in finding the solution commitments evolving from the conflict-resolution seem to be more sustainable.

A long road

- Although in juvenile justice innovations are easily applicable on a case level, in practice we face some obstacles.
- Despite theoretical persuasiveness, enthusiasm of our small group and the consent of institutional actors our project still suffers from a lack of referrals.
- Data protection regulation formed a big obstacle, especially concerning the discreetness of supporters. We need a lot of signatures.
- Some practical problems have to be solved, like finding a suitable date for all participants, allowing adequate office time for participation of police-officers and social workers.

Open questions and aspects to be addressed

- In an individualistic society it is a challenge to convince the principal participants to bring supporters with them (probably even to find adequate supporters).
- Some victims refused to take part. Of course, this is their right and must be accepted. However, this can be a result of misinformation and not in their own interest (because the victim has to show up as a witness in court).
- The current punitive societal climate may contribute to fear of the offender and a lack of interest in social peace.
- Minor problems: suitable rooms, money ...

The End:
Thank
you!



Interim Report (45 pages in German) at:

www.fh-kiel.de/fileadmin/data/sug/pdf-

[Dokument/Hagemann/Zwischenbericht_GMK.pdf](http://www.fh-kiel.de/fileadmin/data/sug/pdf-Dokument/Hagemann/Zwischenbericht_GMK.pdf)

The participation of supporters shows good results

- 4 of our 5 GMK show that people are willing to commit themselves to the solution of conflicts which are not their own. They spend approximately 2 hours of intensive conferencing time. In addition they are prepared to support the wrong-doer and the victim in the longer term.
- Due to emotional stress which impedes openness and receptivity it seems essential that there are supporters on the side of the accused.
- If these are missing on the victim's side the victim will find support at least by the police officer.
- Supporters did not show up in one case, in two other cases the accused refused to nominate them. Support provides security. Moreover it increases creativity at searching for adequate solutions. As restraints and justifications expressed by the wrong-doer would hardly be accepted by the victim, people not involved in the victimization incident could probably be listened to more openly and easier.

The victims

- The commitment of the victims follows mainly their own benefit (clarification and closure, reduction of fear, atonement ...)
- Some victims are reluctant or refuse to participate either because of the petty character or the severity of the offense and their way of coping.
- The GMK serves directly the interests and needs of victims, who want to regain control and freedom of movement, overcome anxieties, getting reparation for damage, want to influence their offender and would help to avoid others becoming victims of this offender. Sometimes they want the offender to be punished or on the contrary not to be punished.
- However the dialogue and to be able to confront the offender with the consequences of his behavior seems to be more important because victims want to achieve a learning effect on the part of his/her oppressor.

The accused / wrong-doers

- “Offenders” showed significant signs of stress and their contributions covered a great range from helpless attempts of explanation via destructive self-justifications to taking full responsibility.
- Due to emotional stress which at some time impedes openness and receptivity it seems essential that there are supporters on the side of the accused.
- In two cases the accused refused to nominate supporters. If this hurdle can be overcome, the accused will benefit from the GMK procedure, because support provides security but involves creativity at searching for adequate solutions, too. As sensed restraints and justifications expressed by the wrong-doer would hardly be accepted by the victim, people not involved in the victimization incident could probably be listened to more open and easier

Which outcomes?

- Among the agreements are payments to restore the damage or as an atonement to the benefit of a charity organization.
- Furthermore presents, invitations to have dinner together and some non material agreements (apologies, explicit expression of mutual respecting each other) could be listed.
- Participation in a social training course, in drug counseling or exercising sports regularly – partly supported by the youth welfare office (Jugendamt) form another type of outcome.

Participation of the police

- The participation of the police stood the test, too. The police officer was the one who brought the moral dimension in if others did not.
- Especially in youth cases the opportunity to discuss norms and guidelines of behavior in living together or generally in the social sphere and clarifying their value and meaning for the community, gives voice for a pedagogical dimension of conferencing for the benefit of all participants (not only the accused).
- Furthermore the presence of the police officer symbolizes the seriousness of the mediation and it may decrease the fear on the victim's side to meet with the offender [neutralize the power] and instead establish a feeling of safety. This is indicated by the very orderly progression of the procedure despite all emotions

Court assistance in juvenile courts (JGH)

- The JGH is the official agency taking part in all juvenile cases.
- Some of its staff – like the representative of the police – is involved in the conception and process evaluation of this project.
- In two cases an JGH agent adds some well dosed efficient contributions.
- Regarding the future we should think about the JGH – not the police – facilitating conferences (like in New Zealand). However this implies to guarantee that the awareness for victim's matters and needs and neutrality is ensured. At the moment JGH is generally seen as an offender-oriented institution and there has been some critique in the context of victim-offender-mediation (which is carried out by JGH in juvenile cases) in Germany.

Community Conference

Decisions, recommendations
and implementation plan

Person accused:

Accused of:

Date of birth:

File-number:

Conference date:

Victim(s):

Supporters of the victims:

Supporters of the accused:

Mediators:

Representative of police:

Other participants:

Continuation Decisions, ...

	Agreement	Person, who supervises	Date of completion	Checked by
1.	Restitution for the victim			
	Aspect a			
	Aspect b			
	Aspect c			
2.	Restitution for the community			
3.	Working on himself			
4.	...			

Before a conference

- It starts with a referral of a case from the juvenile judge. The principal participants (the accused and the victim) are contacted on a voluntary basis.
- Before a FGC can take place there are preliminary talks of the mediators with the principal participants and – if possible – with their supporters.
- The idea of the FGC is explained to them. Possible advantages and perceived disadvantages are discussed.
- After a positive statement including the promise of confidentiality / discreetness (in written form) we are looking for supporters.

Progression of the meeting in detail

1. The mediators open the conference and introduce all participants. Once again they give some information concerning the course of action and some rules of behavior during the conference and - very important - recall that everybody is obliged to handle information confidentially (participants do sign a written consent form).
2. The police officer presents the facts from the file.
3. The accused gets the opportunity for a statement concerning the accusation.

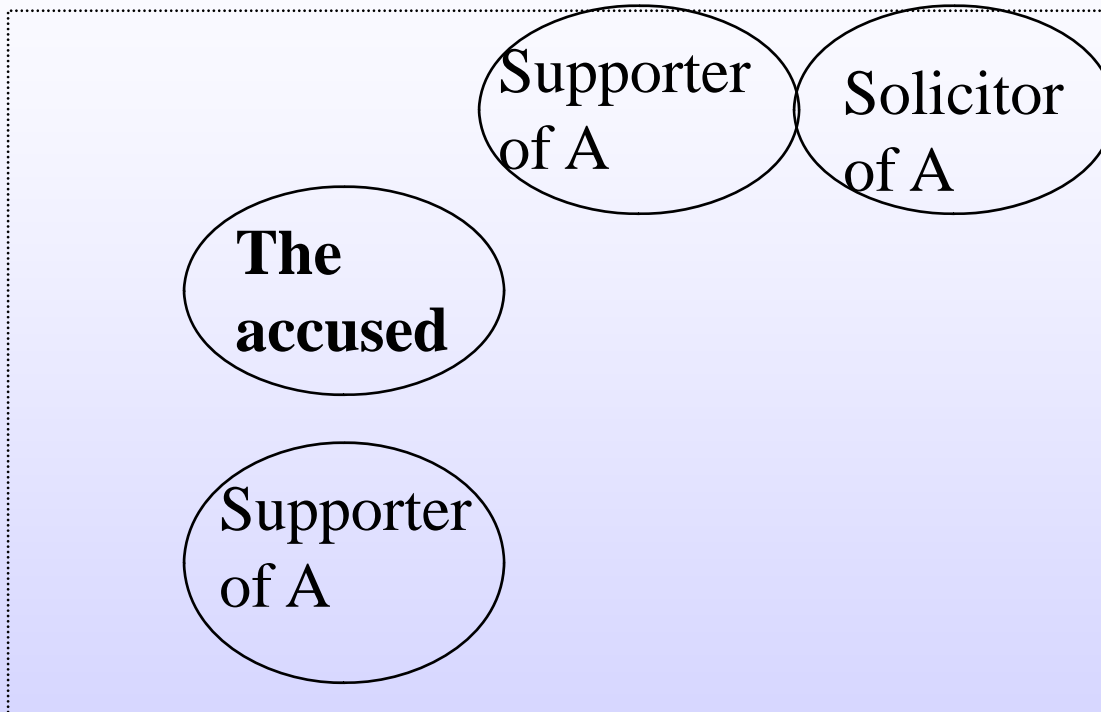
If the accused person refuses fully his participation in the incident the conference cannot be continued.

4. The victim has the opportunity to describe the incident and its consequences from his/her perspective.
5. Following is a general discussion of the conflict and its consequences. The task of the mediators is to secure that only one person talks at a time and that every person is able to make one or more contributions and by doing so to express every aspect which seems important for him/her to be said.
6. After everybody has had enough opportunities to make statements the mediators ask every person about his/her wishes and expectations concerning the conference. Thereby, both the problem and the aim or different aims, respectively become clear for everybody. This is followed by a break.

7. During the break the offender and his/her supporters work on the task of developing one or more proposals for a solution. (They are prepared for this by the previous preliminary talk, but now they must take the statements of the victim side into consideration). They return to the circle with a proposal. *(During the break there is no conversation about the incident or the conference between mediators/other professionals and the victim's side. There may be small talk and some refreshments and cakes are offered.)*
8. After listening to the proposal from the offender's side the victim and his/her supporters have the first opportunity to comment on it. Later the police officer and other professionals (but not the mediators!) can also make their comments.

9. It may be that the proposal is discussed more broadly or that modifications or even alternative proposals are thrown into the discussion. At the end - in the case of an agreement - undisputed tasks that represent the consensus of all participants are formulated (written form).
10. In this case all participants (but not the mediators) sign the protocol thus documenting their consent.
11. The mediators will send the protocol to the judge and prosecutor. The protocol includes a supervision procedure and the court will be kept informed about the realization of the agreement. If that comes true, the case can be closed or the successful conferencing process may be acknowledged within the main hearing / trial

First a look at the wrong-doer / accused:



The accused
(A) and his /
her supporters

Then a look at the sufferer of wrong-doing / victim:

The victim (**V**)
and his / her
supporters

