

Designing a Master's Program in Mediation - Context, Concept, Challenges -

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1. Introduction

When in early 2002, two of my colleagues¹ and I decided to establish a Master's program in mediation, we did not really know what we were getting ourselves into. Back then, we first and foremost felt that the time was right for expanding our extensive practical training activities in the field of mediation into the academic realm – and to complement and enrich the practical skills aspects of mediation with a scholarly foundation.

All three of us had previously experienced university courses in mediation in the United States² and were greatly inspired by the vibrant mixture of skills- and knowledge-based contents as well as the professional profile of scholar-practitioners who were mostly (and most convincingly) teaching these mediation classes.

Last but not least, we were motivated by the (finally) growing interest in mediation in Germany – hoping that an accredited academic Master's program in mediation would both support the establishment of mediation as a respectable procedural alternative and foster a lively, well-grounded discourse on the subject matter.

So we contemplated how we wanted to mix and blend the seminal texts of well-known US mediation pioneers with the growing number of original German contributions on the topic. First we discussed teaching concepts and later on we planned how to address different groups of potential students, we needed to fill our chosen discourse-based teaching concept with life.

What we did *not* think about in these early months of conceptualizing our program were legal provisions and budgetary restrictions, application and accreditation procedures, negotiations with (potential) staff members and with the university administration ... and the many, many extra hours of work that it would take to finally bring our ideas into life.

Now, ten years later, we have experienced all of the above – and we are still glad that we undertook the endeavour.

On the basis of a brief overview of the different levels of integration of mediation into academia in Germany (*chapter 2*), this article will describe in more depth and detail the concept and development of one specific Master's program as we have installed it at the *European University Viadrina* at Frankfurt (Oder) (*chapter 3*). I will then discuss some selected challenges and design questions that we have encountered over the years and that might be of relevance for others as well (*chapter 4*) and conclude with a – positive – outlook (*chapter 5*).

For those colleagues who are considering to launch a Master's program in mediation at their university, I hope that this piece can serve as encouragement; to those colleagues who are

¹ My fellow pioneers were Lars Kirchhoff and Stephan Breidenbach – both very unusual jurists and extraordinary mediators.

² Namely at the University of California at Berkeley, at Stanford University and at Yale Law School.

responsible for an already existing program this article is intended as an invitation to an open exchange and discussion of experiences – with the aim of collaboratively advancing our mission of “*mastering mediation education*”.

2. Context: The Integration of Mediation Courses in Academic Education in Germany

Over the last decade, mediation courses have steadily been added to the curricula of German universities. Nowadays, in subject areas akin to mediation, such as psychology, pedagogy, communication studies and particularly law, an increasing amount of universities offer at least an introductory course in mediation. In addition to undergraduate courses there are advanced courses in mediation at graduate/postgraduate level.

2.1. Mediation Courses at the Undergraduate Level

To begin with, the overview will look at the range of undergraduate courses in mediation. Hereby, the article will focus solely on courses offered at law departments as a more extensive study, including other academic disciplines, would exceed the scope of this outline. Also, looking at the establishment of mediation as a “respectable academic subject”, the legal education is of particular interest in Germany: The foundations of the academic curriculum of legal education are regulated by federal law and legal education has so far opened to new developments rather slowly – for both reasons, the formal integration of mediation in the legal education can be regarded as a milestone for the acceptance of mediation into academia.

Mediation has gained significant consideration in the field of law since the reform of the legal education in 2003. The changes to the code governing the legal education in Germany (*Deutsches Richtergesetz*³) now call for all students to obtain so-called “key qualifications”.

Key qualifications are defined as skills, capabilities and proficiencies that are not related directly to a specific, disparate practical activity, but rather

- a) are suitable for a large number of positions and functions as alternative courses of action, and
- b) are helpful to overcome a sequence of (mostly unforeseeable) changes of requirements in the course of a (professional) lifetime.⁴

Key qualifications like the ability to make good decisions, the ability to communicate well or the ability to organize one’s work flow efficiently are thus understood as the general competency to generate or optimize specific (professional) activities and actions according to the circumstances and needs of a specific situation. Therefore, key qualifications are meant not to replace but to complement the more traditional vocational skills.⁵

The legal education reform was aimed at aligning the education of future lawyers with the actual needs of the legal practice. Prior to the reform, the education was strongly modelled around the profession of the judge. It neglected the fact that only a relatively small amount of

³ Acronym: *DRiG*

⁴ *Mertens*, Schlüsselqualifikationen – Thesen zur Schulung für eine moderne Gesellschaft. In: Sonderdruck zu Mitteilungen aus der Arbeitsmarkt- und Berufsforschung, 7. Jg 1974, pg. 40.

⁵ *Reetz*, Duales System zwischen Tradition und Innovation. In: Wirtschafts-, Berufs- und Sozialpädagogische Texte, Sonderband 4, 1991, pg. 28 f.

law school graduates actually went on to become judges whereas most ended up as attorneys. Beyond structural changes the reform sought to generate graduates who in addition to their legal knowledge had command of soft skills. Therefore, all law students are now required to take at least some key qualification courses such as courses in negotiation, rhetoric, communication skills or mediation.⁶

In reaction to this reform all law departments now offer courses teaching key qualifications. Accordingly, nearly every law school also has at least one course in mediation on offer.⁷ Most of these courses give an overview over the principles and the structure of mediation and raise awareness of mediation as genuine alternative to court proceedings. In addition to these predominantly introductory general mediation classes other more specialized courses focus on mediation in a particular legal field, such as family law or labour law.⁸

Due to these developments every law student in Germany will most likely have at least heard of mediation during his or her time at law school and many will have realized the opportunity to take a course in mediation.

Furthermore, in terms of legal policy, the inclusion of the term “mediation” in the legal education code (*Deutsches Richtergesetz*) has had a signal effect. By explicitly making mediation a part of the legal education the legislature acknowledges mediation as an important and valid procedure to resolve (legal) conflicts. Now lawyers are not only free to consider mediation at their own accord but they are explicitly encouraged to do so.⁹

A few universities give students the opportunity to go beyond introductory courses and offer advanced mediation programs already at undergraduate level. The *Centre for Negotiation and Mediation (Centrum für Verhandlung und Mediation, CVM)* at the *Ludwig-Maximilians-University* Munich stages a variety of lectures, discussion groups and workshops on Alternative Dispute Resolution (ADR) and mediation. The *Humboldt University* in Berlin and the *Bucerius Law School* in Hamburg have each organised international summer schools on mediation (partly in combination with negotiation).

2.2. Professional Certificate Programs and Graduate Programs in Mediation

Graduates and professionals who want to intensify their knowledge in mediation have the chance to do so in various academic postgradual trainings and professional certificate programs. At present, a total of 17 universities and 7 universities of applied sciences offer such programs (alongside numerous private advanced training institutions outside the academic realm).

The **university certificate programs** are characterised by a shorter duration of study in comparison to a full Master’s degree and do not necessarily require a university degree as entry criteria. The courses are mainly aimed at professionals who seek advanced or additional training in the area of mediation/ADR. The courses vary considerably in their structure, cost and duration. Usually, programs require professional experience and/or a university degree as prerequisites. Most courses allow for individual preferences so that participants can select

⁶ § 5a III S. 1 DRiG. For the significance and concept of key qualifications in legal education see also *Ponschab/Schweitzer (eds.)*, Schlüsselqualifikationen, München 2008.

⁷ *Süße*, Die Integration der Mediation in eine anwaltsorientierte Juristenausbildung, pg. 189.

⁸ *Süße*, Die Integration der Mediation in eine anwaltsorientierte Juristenausbildung, pg. 189.

⁹ *Süße*, Die Integration der Mediation in eine anwaltsorientierte Juristenausbildung, pg. 264.

certain modules of interest and thus take into account their field of already existing professional expertise or future professional practice. The duration of these part-time courses varies between 200 and 300 hours, divided into weekly or monthly sessions over one or one and a half years.

Master's degree courses relating to mediation are still relatively rare in Germany. So far, only two universities, the *Fernuniversität Hagen* and the *European University Viadrina* in Frankfurt (Oder)¹⁰, offer specific Master's programs in mediation. At Hagen one can obtain a so-called "Master of Mediation (M.M.)", the *European University* awards a Master of Arts (M.A.). Both of the programs are assigned to the law department but are also open to applicants with other disciplinary backgrounds.

The *Dresden International University* and the *University of Applied Sciences¹¹ Niederrhein* also offer Master's degree courses with a mediation focus as part of more general Master's programs. Dresden offers a specific module focusing on mediation as part of its Master's program titled "*Human Communication – Psychology of Communication and Management*". At the *University of Applied Sciences Niederrhein* the department of social and health services offers a Master's program in "*Psychosocial Care and Mediation*". The curriculum is divided equally between courses covering mediation and those focusing on psychosocial care.

The course at the *University of Applied Sciences Niederrhein* is full time, whereas all the other Master's programs are part-time. The average duration of study is three to four semesters.

All of the described Master's programs are accredited which means that an independent accreditation institute has thoroughly reviewed the concept, structure, contents and organisation of the course and has approved that certain standards of academic quality have been met.

3. Concept and Development of the Master's Program in Mediation at the *European University Viadrina at Frankfurt (Oder)*

Our decision to launch a Master's program in mediation had sprouted from a fertile environment: In 2002, even before the reform of legal education, the *European University* pioneered with a broad soft skills program for law students. Also, since the year of 2000, there had been a then unique, EU-funded mediation clinic in operation that offered a free-of-charge mediation training of 200 hours to students and citizens in exchange for volunteer services as a community mediator after the completion of the training.¹²

Naturally, the teaching experiences we had collected in these arenas influenced our concept of mediation in general and thus also poured into the design of the Master's program.¹³

¹⁰ For a detailed description of the program, see below in chapter 3.

¹¹ In relation to universities so-called universities of applied sciences (*Fachhochschulen*) offer a shorter duration of study and are highly practice-orientated.

¹² See *Gläßer*, Die Mediationsstelle Frankfurt (Oder) - Ein Modellprojekt mit vielen Gesichtern, ZKM 2002, S. 124 ff.

¹³ Here I want to thank specifically Monia Ben Larbi and Kirsten Schroeter, two esteemed colleagues and co-trainers, for inspiration, encouragement, conceptual input, loyalty and the ongoing provision of interdisciplinary perspectives.

3.1. Constitutive Design Aspects

There were a number of overall goals that we had in mind when we conceptualized the program:

- We aimed at advancing well-founded and differentiated discourse and research activities on mediation and ADR on an academic level.
- We wanted to bring forward the permeation of theory and practice of mediation – by offering a high quality practical mediation training based on a solid theoretical foundation and by encouraging students to look at their own experiences of conflicts in their professional and private lives through the eyes of researchers.
- We hoped that the existence of the Master's program would boost the general acceptance and the practical use of mediation / mediative methodology in society.
- And – on a different level – we wanted to develop the program as a learning organisation embodying mediative principles in the everyday interactions between staff, trainers and students.

In order to realize the discourse- and experience-oriented concept of the program we needed a student body comprised predominantly of experienced professionals from different disciplinary backgrounds. Also, we thought it would be highly rewarding to offer the program to newcomers to mediation as well as to already trained mediators who sought to complement their practical knowledge with a theoretical foundation.

Therefore, we advertised the new Master's program broadly in a variety of professional contexts as well as in the mediation community – and we are glad to have been welcoming students from a broad range of disciplinary backgrounds ever since (see also below in subchapter 3.3.).

From the described overall goals and primary target group, the following constitutive aspects resulted for the design of our Master's program:

- In terms of concept and contents, the program was to be based on an **interdisciplinary approach** to conflict and conflict resolution. It also was to be open to graduates from all disciplinary backgrounds.
- In order to enable busy professionals to take part, the program had to be **part-time** with a **blended-learning concept** consisting of long-distance and presence-based study elements. The students can choose to go through the full program in three semesters or to add an additional fourth semester to have more time to write their master's thesis.
- As faculty, we mostly recruited **scholar-practitioners** – experienced mediators who also published on methodological questions etc.
- To account for the different levels of pre-existing mediation experience we installed **two different tiers** of the Master's program: Group A was meant for the students who wanted to go through the full practical training as well as the academic part of the program; Group B was designed for the students who applied with a background of at least 120 hours of practical training. Group B students get credit for the completed practical mediation training so that they have fewer days of required-attendance classes.
- In our experience, practical mediation training becomes more fruitful when its structure allows group dynamics to unfold. These processes – with the potential conflicts between group members – can and should also actively be used as a joint learning experience. Also, practical mediation training requires personal reflection – and it is much easier to open up in a trusting atmosphere. In order to provide a safe

enough environment for such learning, for intensive discussions and for personal mentoring, we decided to **limit** the **group size** of each student year to 26 persons and to make **attendance mandatory** for all classes except the electives.

3.2. Structure of the Program

3.2.1. Attendance-based Seminars

The **basic practical mediation training** for the student group A consists of six three-day-seminars over the course of the first two semesters. The single seminars introduce the working methods of mediators on the basis of the phase structure of mediation.¹⁴ Each of these seminars is taught by a trainer tandem (mostly a male-female, lawyer-non lawyer-combination). After each seminar one of these co-trainers is replaced by a new trainer whereas the other colleague stays on for another seminar (so-called “*zipper-principle*”) to provide both for continuity and a variety of perspectives.

Instead of the full 18-day-basic training, the student group B takes part in a three-day seminar that is dedicated to the **comparison of different “schools” and styles of mediation** that the students have experienced so far. This seminar’s aim is to make it clear that there are hardly any self-evident issues in mediation and therefore, terminology as well as intervention strategies should be explicitly and carefully discussed – especially before starting to work with a new colleague/co-mediator.

In addition to these described seminars there is one seminar in which we introduce basic skills (not only) for mediators/facilitators such as **visualization techniques and aspects of intercultural communication**. This seminar ends with a day of **Open Space**¹⁵ in which the students can work on mediation-related topics of their own choice.

In the third semester, there are seven **electives** on offer – ranging from business or family mediation to strategies of peace mediation or the design of conflict management systems. The students have to choose at least two of these seminars.

This practical level of the program is complemented by three attendance-based “**theory-seminars**” in which certain texts, models and approaches are discussed in depth and critically examined in terms of their suitability for practical mediation work. In order to ensure a high level of discourse the students are held to prepare for each of these seminars by working through reading materials and by writing a preparatory essay on a topic of their choice within the thematic range of the seminar.

3.2.2. Self-Organised Learning

Besides the attendance-based seminars there is a significant workload to be mastered via long distance learning. The central structure for this part of the study system is an **online platform**

¹⁴ We use a model of five mediation phases: 1. introduction, 2. survey of information, positions and topics, 3. working the deeper layers of conflict and clarifying the interests, 4. creative and systematic search for an interest-based solution, 5. closure

¹⁵ For an introduction to Open Space Technology, a fascinating large group facilitation method that is, much like mediation, strongly based on self- motivation and -determination of the participants, see *Owen, Open Space Technology – An User’s Guide*, 2nd ed., San Francisco 1997 or www.openspaceworld.org.

where students find a large number of courses to work through – e.g. on philosophical backgrounds of mediation, on mediator ethics or on the role of power in mediation. All online courses are designed according to the “*original source principle*”: They consist of selected original texts with corresponding introductions and subsequent questions.

3.2.3. Course-Work and Final Exam

The “presence-theory-seminars” are accompanied by **Preparatory Essays** (see above) – the practical skills seminars are followed up by so-called “**Mediation Journals**” in which the students are encouraged to reflect on their experiences with the seminar content both in and out of the classroom context.

To receive credits for the online courses, the students have to write and send in **course summaries** on their insights gained by the specific reading materials.

The most laborious part of the written course work is the **Master’s thesis** of 60-70 pages. Here, we encourage the students to choose a thesis topic that really matters to them and that might be helpful for their future mediation practice.

The last step of the study program is the **final oral exam** which tests theoretical and practical knowledge: Students are asked to analyse and actively demonstrate mediator intervention techniques, to give a short presentation on their master’s thesis and to develop a differentiated theory-based discussion of controversial mediation topics with references to relevant literature and models.

3.3. Development of the Master’s Program

Even though one other Master’s program on mediation had just been launched¹⁶, we were lucky that our concept obviously met the demand so that we were “booked out” from the start of the program in 2004. Today, we are running the sixth cycle of the program¹⁷ and we can still record three times as many applicants as we can offer places¹⁸.

Our students come from a broad range of different professional backgrounds: A good third are legal professionals (mostly judges, attorneys and notaries). Another third come from a corporate or consultancy job. The remaining third are an eclectic mix of architects, (former) army members, ethnologists, NGO managers, physiotherapists, priests, psychologists, theatre directors etc.

Most students have fulfilling jobs when they apply for the program; they hope to bring another quality to their work once they have gone through the mediation training. Only a minority seeks to more radically change their professional career path and look for a new job after graduation.

¹⁶ The *Fernuniversität Hagen* had started its Master’s program in mediation in the autumn of 2003.

¹⁷ For reasons of adequate attention and thorough mentoring, we have decided not to start with a new cycle of students before the previous student group has graduated. Therefore, with the regular length of the program being three semesters, a new study cycle only starts every one and a half years.

¹⁸ This has been consistently true for the student group A. Naturally, for the student group B requiring an already finished mediation training there are a fewer applicants.

So far, our students have come not only from all over Germany, but also from a number of other European countries such as Austria, Belgium, the Czech Republic, Denmark, Great Britain or Switzerland.

There are somewhat more women applying to the program than men.¹⁹

The age of our students ranges from the mid-twenties to the late sixties – with an average between 40 to 45 years.

Regardless of the considerable workload that is not always easy to handle alongside a demanding job, we observe a consistently high level of motivation amongst our students: Many students take more than the obligatory two elective subjects in the third semester. And a high number also take part in self-organized study groups that meet outside of the official study program to get additional practice through mediation skills exercises and role-plays.

Accordingly, we are grateful to record a very low drop-out rate (between 0 – max. 5 % per study cycle). Almost all cases of interrupted or discontinued participation were caused by external reasons like longer illness, severe professional trouble (like impending structural changes or bankruptcy) or pregnancy.

Towards the end or even after completion of the program, many students also report remarkable personal developments. This is “verified” by the fact that we can register a certain number of cases in which professional partners/colleagues or family members applied for a subsequent study cycle themselves due to their observation of wondrous changes in the attitude or conflict behaviour of a (former) master’s student.

Another positive development is the Master’s program continuously growing network – due to increasing collaboration with colleagues nationally and internationally as well as expanding alumni activities. This allows us to shape some of our elective subjects as symposia²⁰ and invite guest lecturers and alumni who serve testimony to the variety of professional pathways one can pursue with a solid mediation background.²¹

Over the years, we have registered a significantly growing interest in empirical research in mediation. As requests for long-term concomitant research could hardly be met within the organisational frame of an academic program already working to capacity with its central teaching mission we eventually decided to establish an additional academic “player”: The Institute for Conflict Management.

3.4. Excursus: Institute for Conflict Management

Founded in 2008, the *Institute for Conflict Management* at the *European University Viadrina Frankfurt (Oder)* is committed to further refine and establish interest-based methods of

¹⁹ Exploring the reasons why mediation training seems to be especially attractive to women would be an interesting field of research in itself.

²⁰ We have regularly held such symposia on the subject matters of court mediation, peace mediation, and international mediation and arbitration.

²¹ We hope that it is inspiring and encouraging to our students to find some of their predecessors in positions like manager of the Dispute Resolution Services of the *International Chamber of Commerce (ICC)* in Paris, coordinator of a new state wide court mediation program or ombudswoman of the *Deutsche Bahn AG*.

conflict resolution in different fields of society, both nationally and internationally.²² Adhering to an action-oriented concept of science, the *Institute for Conflict Management* provides evaluation research, trainings and practical suggestions for a methodological improvement of conflict resolution activities in four core areas: The judiciary, the business context, international peace processes²³ and the field of research and science. The institute is working for and/or cooperating with institutions such as several state ministries of justice, the Round Table for Mediation and Conflict Management²⁴, the Federal Foreign Office, several international mediators' organisations, the European Union and the United Nations.

These activities and interconnections, of course, have proved beneficial not only for the scope of the institute's work but also for the Master's program: We were able to attract new experts to lecture in the program, students could participate in larger research projects while writing their master's theses, sometimes opportunities arose for internships etc.

4. Challenges and Formative Questions

Having run the Master's program for almost a decade now, we have encountered a number of challenges and formative questions – often appearing in the dilemmatic form of conflicting goals.

One constantly recurring and quite complex challenge is the **task of “quality insurance” of mediation training** – interlinked with the **necessity (and curse) of grading in an interdisciplinary academic context**:

- Knowing that individuals need different amounts of time to develop their practical mediation skills and wanting to encourage students to take the time needed, we have to ask if it makes sense to “grade” their practical performance (and/or reflection of the such) whilst they are still involved in the learning process.
- Emphasizing the importance of practical skills development as an important part of the course of studies and at the same time knowing that a “good mediation intervention” can hardly reliably be produced on the spot, we discussed at length how testing for practical skills can be included in the design of the final oral exam.
- Wanting to ensure commitment and fair treatment of the students on the one side and some necessary flexibility for exceptional professional or personal circumstances on the other, we had to find our way to deal with students who failed to meet deadlines for more or less plausible reasons.
- Welcoming students from all kinds of academic backgrounds with all kinds of discipline-specific grading standards or habits, we encounter widely differing expectations on what constitutes a good mark.²⁵ Thus, we have to find a middle ground where we do not produce ongoing disappointment or even frustration on the

²² For detailed information (in German) see www.europa-uni.de/ikm.

²³ In this area, the institute's activities are run by a sub-institution called the *Center for Peace Mediation*; see www.peacemediation.de.

²⁴ This organization comprises of more than 40 large German corporations and serves as an exchange platform for improving conflict management strategies in the area of business; see www.rtmkm.de.

²⁵ For example, to German law students the mark „good“ is hardly awarded (less than the top 1 %), whereas amongst students of psychology or physics “good” rather signifies a less than average performance.

one side and still give enough incentives for investment in the course work on the other side.

On a different level, wanting to foster German “mediation culture” and therefore teaching (and publishing) predominantly in German, we find it not easy to provide for the desirable **international connectivity** of the program. As this problem should be relevant for academic mediation programs in all countries where English is not the mother tongue, it surely would be worth the effort to join forces and become creative on this matter.

Last but not least, it has not been easy to win the **acceptance and support of our more “classically oriented” colleagues** from the law department. For a long time mediation had been regarded as a rather exotic if not esoteric subject – and only now on the background of the EU mediation directive and the subsequent national legislation efforts mediation is slowly being acknowledged as a valid and worthy academic subject.

5. Outlook

Looking back, I am happy to be able to state that our vision of the Master’s program as a “learning organisation” has come true: The program has developed as a living organism, and we are learning as much with and from our students and alumni who bring in a plethora of practical backgrounds, problems, questions and activities, as they learn from us.

Looking ahead – and despite all the troubles along the way –, I predict that chances are good that by deciding to invest in this program I got myself into something that might be exciting and fulfilling for many more years to come.

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