

Summary

Promoting Alternative Dispute Resolution (ADR) is part of justice policy in the Netherlands. Mediation can contribute to decreasing the number of court cases. Mediation can also lead to delegating conflicts and has the advantage of keeping parties themselves responsible for their conflict. Within the scope of this policy two comprehensive mediation projects were initiated. One of these projects – the court-based model – aims to investigate whether or not referral to mediation during legal proceedings has significant added value and how this can be best organised and regulated. The other project concerns the referral of clients by the legal aid service. In both projects mediation is proposed in the field of civil and administrative law.

The central questions of the evaluation study are: what results are being achieved with mediation in the judicial infrastructure and what circumstances are important in this process? The evaluation of the projects consists of two parts. The first part focusses on the organisation and the performance of both projects. The other part deals with the quality of the referral procedure and the mediation process as well as the stability of its results: the mediation agreement.

During the course of the court-based project almost 1000 cases were referred to mediation. The legal aid project was less productive due to the fact that the legal aid lawyers were more hesitant to propose mediation and clients were sceptical about the possibility of solving their conflict by mediation.

Important conditions for successful implementation of a structural referral facility within the court or the legal aid system are good management and broad internal and external support. An important condition for reaching an adequate number of mediations is sufficient faith by the referring person in the quality of the mediation process and the mediator. Too strict selection generates an insufficient number of mediations.

In the court-based project 61% of the mediations reached an agreement; in the legal aid project 78% were successful. In the court-based model the mediation sessions averaged 6.3 hours over an average period of 95 days. The mediations in the legal aid project averaged 2.6 hours over an average period of 7 days. In both projects the parties were satisfied with the mediation and with the skills of the mediator and they indicated they would choose for mediation in the future. After a period of three months, the mediation agreements were fulfilled completely in 66% of the cases and partly had been completely fulfilled in 22% cases.

The results of the research indicate, that there is no best practice in the method of referral and no best criterion for selecting cases for referral. The most important condition for reaching an agreement is the willingness of both parties to negotiate. The research makes clear that even administrative and tax law cases can be referred, in spite of the often assumed lack of room to negotiate, as long as

the parties are willing to negotiate and they are not served best by a strictly legal solution.

The conclusion of the research is that there is room for negotiation both before and during a court proceedings. How much room depends on the financial and other conditions of mediation offered to parties. The (policy)question for the future is whether the investment in management, quality and support needed to keep referral to mediation successful, brings the expected benefits.