

Justitiële verkenningen

jrg. 26, nr. 9, december 2000

Mediation

Summaries

Current mediation practices in the Netherlands

M.A. Kleiboer

In the last five years more than 1600 mediators have requested to be registered by the Netherlands Mediation Institute. Their number is growing rapidly: in the second half of 2000, each and every month a hundred newcomers have been welcomed. Most of them have a background in law, but recently other professions have entered the field: psychologists, consultants, human resource and interim managers. In what sectors of society do these mediators apply their skills in conflict management? This article presents an overview of mediation practices within civil (i.e. experiments with mediation in the housing and construction sector, divorce and custody mediation, community mediation projects and mediation in business and labour relations) and penal law (family conferencing, restorative justice programs). In the conclusion attention is drawn to a series of questions that begs for an answer when mediation is bound to be institutionalised within the Dutch society.

Mediation along side the courts; execution of the national project 'mediation judiciary'

M. Pel

In March 2000 the project 'mediation along side the courts' commenced. The goal of this research project is to decide whether the structural provision of so called 'court referred mediation' within the existing judicial system is justified, and if so, to determine the most effective way to organise this. The project will run from 2000-2002. In the five constituent parts of the project, cases in civil, family and administrative law will be referred to mediation. Testing will also take place regarding various methods and times of referral. For the duration of the project a fixed group of mediators has been selected and quality standards mandated in respect of both the process of referral and the mediations themselves. Experiences during the project are measured, registered and referred to the various participants. The results are encouraging. Up until now more parties than expected have chosen mediation and the success rate has measured up to expectations. Depending on the results, it will be decided in 2003 if referral to mediation will be given a definitive place within the judicial system.

Community mediation in practice

B. Peper and F.C.P.P. Spierings

In this article the authors discuss their evaluation study of recent experiments with community mediation in the Netherlands. Community mediation is a form of mediation especially designed for neighbours (and other community members) to resolve their mutual conflicts outside the legal system and inside the local community. Neighbour conflicts involve ongoing struggles stretching over a longer period. Based on a survey and interviews with 140 professionals, the authors conclude there is a need and a niche for this non-judicial form of conflict resolution. The practice of three years of community mediation leads to several critical comments as well as recommendations for the future. If one does not overestimate the possibilities of community mediation, it can be valued as a useful policy instrument to enhance the quality of life in neighbourhoods. When combined with the traditional methods of social intervention, community mediation can disseminate a culture of 'people-involved' conflict resolution.

Mediation in the business community

R.W. Jagtenberg and A.J. de Roo

This contribution describes recent initiatives towards institutionalising mediation in the Netherlands. The focus is on dispute areas which have particular relevance for the business community such as business-to-business, intra-company, employment and consumer disputes. Mediation experiences in the past and expectations as to the future use of mediation have been ascertained through a small-scale survey. It can be concluded that the use of mediation by commercial enterprises is growing, that this tendency is expected to continue, that in some specific areas the opportunities for using mediation may be impressive, but that, nevertheless, government authorities should not over-estimate the impact of mediation schemes on court caseloads and the administration of justice.

Mediation in policy conflicts; physical planning and environmental policy

G.J.A. Al

Mediation is gaining acceptance as an ADR-instrument for settling civil law disputes out of court. In my view the instrument also has great promise with regard to policy conflicts, in the fase of policy development as well as in implementing existing policy. Examples can be found in physical planning and environmental policy. Applying mediation in policy conflicts is a logical step in the accepted development of interactive policy making. Applying the principles of mediation in policy development may very well enhance creativity in policy making and lead to a greater acceptance of necessary but impopular policy measures. Careful consideration of the existing set of rules governing mediation is required, especially with regard to questions of mandate and confidentiality. Although policy mediation will probably develop as an activity in the market, a mild form of institutionalisation would help speed up the development of the instrument. The government could further stimulate the development with experiments and pilot projects for this specific application.

The value of modes of conflict resolution; the neutrality of the mediator

C.L.B. Kocken

The current discussion in the Netherlands about the value of different modes of conflict resolution can be improved in three ways. Firstly, the political nature of the conflict resolution debate should be recognized. Secondly, the debate must be held on the basis of comprehensive models of conflict resolution that reflect the central claims professional participants make about their work. The claims can be constructed on the basis of the opinions of the participating professionals, but should also reflect the outcome of philosophical and political debate about the content of claims. Third, the constructed claims must be operationalized and used in qualitative social scientific research. The author discusses the content of one of the central claims of mediation, the neutrality of the mediator, as an example of how to proceed. Although some methodological problems arise the proposed program of research can contribute to a debate on conflict resolution that is both more political and more informed.