

Summary

Monitor Mediation 2008

Interim report

Objective and methods

In 2005, the ministry of Justice implemented policy to promote the use of mediation. Firstly, referral facilities were created at the Legal Counters and at the Courts. These referral facilities enable these two organisations to refer cases to mediation. Secondly, two types of financial facilities for parties were introduced to bear part of their mediation expenses. Parties who qualify for subsidized Legal Aid can apply for a mediation Legal Aid permit (mediationtoevoeging). For which they maximally pay a contribution of €92. When parties are referred to mediation via the Courts, they can apply for an incentive contribution (stimuleringsbijdrage). This contribution covers both parties' expenses for the first 2.5 hours of mediation.

This interim report provides an overview in figures of the 2007 state of affairs regarding the referral facilities and the resulting mediations. In 2007 the first interim report described the period of April 2005 until December 2006. The current interim report elaborates on this and describes:

- 1 the demand for financial facilities;
- 2 the use of mediation and the familiarity with mediation inside the referral facilities;
- 3 the length and results of and the satisfaction with referred mediations;
- 4 the availability of mediators and the satisfaction with mediators.

In addition, this report describes a few trends over the period of April 2005 until December 2007. Furthermore, this research provides a (limited) impression of mediations that were realized outside the referral facilities. In the period to come the researchers will conduct more in-depth and theoretically informed research. The results of which will be published in a final report in 2009.

Data are collected with questionnaires that mediators and parties completed after the mediation was finished. The administrations of the Courts, the Legal Counters and the Councils for Legal Aid also provided data of referred mediations. In addition, the Netherlands Mediation Institute provided data of mediations outside the referral facilities.

Results

Appeal to financial facilities

- The demand for financial facilities increased each year. In 2005 150 incentive contributions were paid for mediations referred via the courts, in 2007 this amount increased to 1,050. Between 2005 and 2007 a total of 3,074 incentive contributions were paid. The number of mediation legal aid per-

mits increased from 356 in 2005 to 4,071 in 2007. Since 2005, the Councils of Legal Aid issued a total of 6,980 mediation legal aid permits.

- The incentive contribution and the mediation legal aid permit limited the costs of mediation for most parties. About 43% of the Court-referred parties did not have any extra costs. Parties receiving a mediation legal aid permit maximally paid €92.

Use and familiarity

- The number of referred mediations increased from 996 in 2005 to 5,245 in 2007. Since 2005 the Courts and the Legal Counters referred a total of 9,509 mediations. The Legal Counters referred 3,716 mediations and the Courts 5,793.
- Additionally since 2005 1,059 mediations started outside the referral facilities in which at least one mediation Legal Aid permit was issued.
- Some of the parties who took part in mediation had heard about it beforehand (21% with the Legal Counters and 45% with the Courts and 25% who were not referred via the Legal Counters or the Courts).
- Parties obtained their information on mediation mostly from the referring authority. Another important source of information on mediation for parties was their lawyer or legal aid representative.
- Referrers most often proposed mediation when they believed that parties need to work together in the future. Furthermore, mediation officials at the Legal Counters often attached great importance to the speed of mediation, while judges often referred parties to mediation when they did not expect a court decision would solve the real problem.
- The key reason parties gave for accepting the mediation proposal were that they expected that mediation would benefit the future relationship with the other party. Moreover, parties at the Courts attach great importance to a judge's advice and parties at the Legal Counters attach great importance to the speed of mediation.

Length and results of and satisfaction with referred mediations

- The mean length of mediations and the extent to which agreement is reached with mediation did not change very much between 2005 and 2007.
- During the entire research phase parties reached full agreement in 73% and partial agreement in 6% of the mediations referred via the Legal Counters. Of the court referred mediations 52% concluded with full agreement and 8% with partial agreement.
- Mediations had an average duration of 60 days. In that time parties had on average three sessions with a mediator.
- Administrative cases were settled faster than civil cases (on average 33 days against 61 days). More than half of the referred administrative cases settled during the first mediation session, mostly with full agreement.
- Like in 2005 and 2006, parties were on average satisfied to very satisfied about the duration, the financial costs and the outcome of the mediation in 2007. Generally, legal aid representatives were also satisfied to very satisfied with these aspects of mediation. When no or partial agreement was reached, parties and legal aid representatives were less satisfied – but still satisfied – with mediation. On average, parties were not satisfied with the result of mediation when the mediation did not lead to full agreement.

- In general, parties would be prepared to opt for mediation again in the event of similar future conflicts, particularly when they reached (partial) agreement with mediation. When they did not reach agreement, parties doubt whether they would opt for mediation again in the future.

Availability of mediators and satisfaction with mediators

- A sufficient number of mediators is available inside the referral facilities. Parties can only appeal to financial facilities when a mediator who is registered with the Councils for Legal Aid guides their mediation. The number of mediators registered with the Councils for Legal Aid increased slightly; 596 mediators were registered in 2007.
- In general, parties and legal aid representatives were satisfied to very satisfied with the mediators, regarding their accuracy, impartiality and the manner in which the mediator guides the mediation.

Restrictions

This second interim report describes the current state of affairs concerning the use of and familiarity with mediation in the referral facilities. This report provides only a limited overview of mediation outside the referral facilities.

Conclusions

This report shows that the use of the financial facilities and the use of mediation at the Courts and the Legal Counters increased between 2005 and 2007. To what extent the general public is familiar with mediation is unknown. At any rate, the proportion of parties who were familiar with mediation beforehand did not increase in 2007 compared to previous years. Parties reach agreement and are satisfied with the mediation in the majority of mediations. As was the case in 2005 and 2006, sufficient mediators are available and parties are satisfied with their performance.