

Victim- offender mediation in Flanders, Belgium: An example of a well developed good practice

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1 Current Belgian law regarding Juvenile Justice

Juvenile justice in Belgium is administrated by the Youth Protection Act of 1965. This law was modified in 2006: the restorative philosophy was introduced by law and all the projects of restorative measures that grew over the last 20 years and that contained a restorative character, got a legal base. Today restorative measures can be applied in those cases in which a young person aged 12/14¹-18 years performs an act which penal law considers a crime.

Since 2006 every judicial district in Belgium has a service that organises all restorative measures for minor offenders. Every organisation provides (1) *victim- offender mediation*, (2) *restorative group conferencing*, (3) *community service* and (4) *educational programmes*.

2 What is Victim Offender Mediation for minor offenders?

Victim Offender Mediation makes it possible for the minor offender to get into contact with his victim(s) and vice versa. Through a mediation process the offender and the victim get the opportunity, with the help of a neutral mediator, to talk about what happened according to their own opinion, to let know which *consequences* the crime had for them and the way they feel about it. Through dialogue and negotiation both parties search for a mutual agreement on how the minor will *repair* the losses the victim suffered, taking into account not only *material*, but also *emotional* losses.

A mediation can take place through a *direct confrontation* between both parties, though this is not a condition to mediate. It is also possible that the communication takes place indirectly, with the mediator passing on messages.

3 Opportunities of Victim Offender Mediation

Opportunities for the offender:

- The offender can understand the full impact of what he did;
- The offender is encouraged to take his responsibility and actively repair the emotional and/or material damage he has caused to the victim;
- The offender can offer direct apologies towards the victim;
- The offender can show another side of himself;
- The offender develops problem solving skills.

Opportunities for the victim:

- The victim can let the offender know what the full impact/ consequences were for him;
- The victim can get answers to his questions, satisfying or not;

¹ A measure can only be applied for minors that committed a crime from the age of 14, though a mediation is possible from the age of 12.

- The victim can explain his expectations regarding to the restoration of the damage;
- The victim can participate in an active way in the outcome of his case;
- A mediation can contribute to the process of handling with what happened.

4 Principles of mediation

First of all, a mediation is voluntary and any party can withdraw from the process at any time. Secondly, the mediator ensures to remain *neutral* through the whole process and to treat both parties fairly and with respect. The mediator does not arbitrate and does not suggest any possible solution. Another important principle implies that the mediator conducts the mediation on a *confidential* basis and will not disclose information without the consent of each party. Finally the mediator will *inform* all parties, including all the alternative ways of conflict resolution.

5 Procedure for Victim Offender Mediation for minor offenders

5.1 Referral

The Belgian Youth Protection Act of 1965, modified in 2006, provides that during the *stage of inquiry* the *public prosecutor* is obliged to consider to propose a mediation for every minor that has committed a criminal act, this on the condition that a victim is clearly identified. If not proposing a mediation, the public prosecutor will have to motivate this decision. During the *jurisdictional stage*, a *juvenile judge* can also propose a mediation, and with the same condition that a victim is identified. The file will be send to a mediation service.

5.2 Introduction

The mediator approaches both parties by writing them a letter. An appointment at the mediation- service is suggested. In some cases the appointment takes place at the home of the victim/offender. During a first meeting the mediator will explain what a mediation is, what the *possibilities* are, what the role of the mediator is and which *principles* the mediator will respect. The mediator checks the *willingness* and motivation to mediate of both parties. When both parties want to participate in the mediation process, the mediator checks if they want to meet each other *directly* (face to face) or *indirectly* (via our service). For the minor offenders, as well for minor victims, it is required that the parents participate in the mediation process.

5.3 Exploration phase

Both parties get the chance to tell their story from their viewpoint. More than focusing on the facts, the focus is put on how parties experienced the criminal act and the consequences. In this phase it is important that a certain level of reciprocal understanding and recognition is achieved. At all times the mediator has to guarantee a safe and constructive atmosphere.

5.4 Negotiation phase

The mediator will help both parties to inventorise possible ways of restoration. Both parties can propose solutions. When both agree on the way the minor will make up for what happened, the mediator will formalize this in a written agreement. The agreement, signed by all parties, including the parents, will be sent to the public prosecutor or/and juvenile judge in order to get their official approval (*homologation*).

A mediation can lead to several *types of restoration*. It can include *non- financial arrangements*, such as apologies, answers to questions, explanations, promises (not to approach the victim anymore, not seeing his (criminal) friends anymore,...), restoration of material damage (in the original state), volunteer work or the engagement to follow an educational training, writing an article for a local newspaper,... *Financial restoration* can contain that the parents agree to pay or that the minor himself pays with pocket money or savings. The minor can also apply for work in order to get a compensation from a community fund. In some cases the insurance intervenes. Most mediation agreements include a combination of modalities of restoration.

5.5 Executing phase

The mediator checks if the offender realises his intentions, that were formalised in an agreement. If necessary, the mediator can offer an active support: He can arrange payments, he can facilitate finding a job (e.g. volunteer work). At the end the mediator informs the public prosecutor/ judge if the agreement was carried out or not. He will not give any more information about the content of the mediation. The judicial authorities cannot deny the mutual agreement: they will have to take into account the accord in their jurisdiction.

6 Victim offender mediation in Flanders: some results

Based on the outcome of a Flemish registration base, managed by OSBJ

6.1 Referral

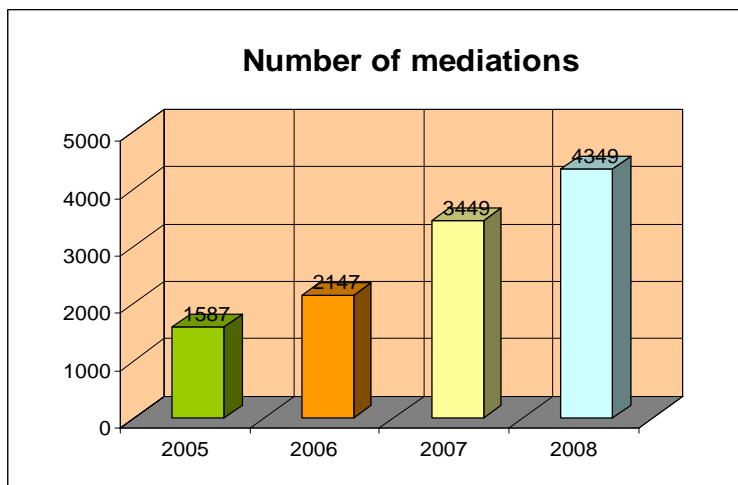


Table 1: Evolution of the number of mediation processes in Flanders 2005-08

Since the modification of the Youth Protection Act in 2006 the number of cases that were **referred** to the mediation services increased significantly. After the increase of 62 % in 2007, 2008 still showed a rise with 27 %.

	N	%
Property offence: damage, theft,...	4397	70,9
Person offence : assault, rape, threats, stalking,...	1602	25,8
Other (traffic offence, drug related offence)	200	3,2
Total	6199	100,0

Table 2: Type of crime

From all cases that were referred to the mediation services, the majority concerns property offences, such as damage, theft, theft with violence, theft by night or handling stolen goods. One out of four cases regard a person offence, such as rape, assault, threats, extortion or stalking.

6.2 Characteristics of the offender- victim

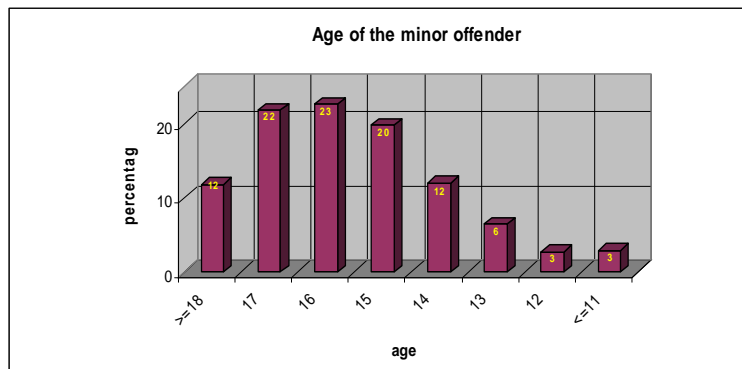


Table 3: Age of the minor offender

The average age of the minor offender is 15-16 years.

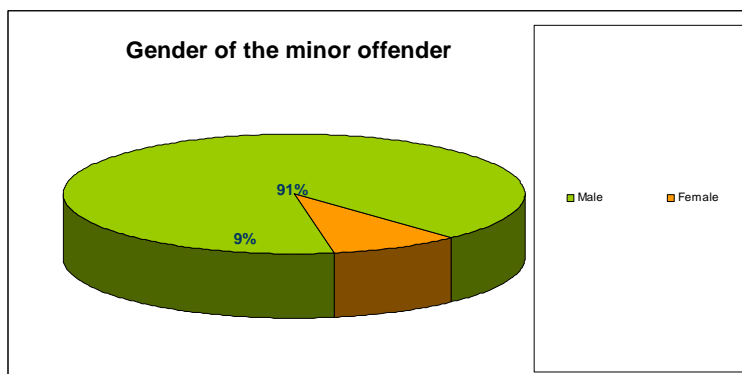


Table 4: Gender of the minor offender

Nine out of ten mediation cases concern boys.

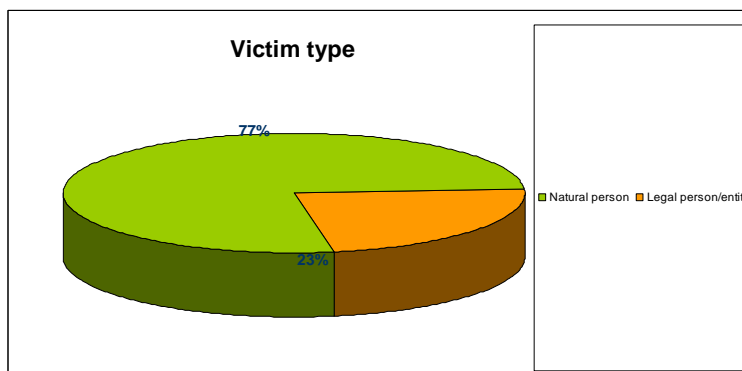


Table 5: Victims: Natural versus legal person/ entity

77% of all victims are natural persons. Almost one out of four victims are legal entities e.g. shop, supermarket, the city council or public transport company.

6.3 Outcome of the mediation processes

These numbers are based on all mediation cases that were *closed* in 2008. The numbers are counted on *interaction level*, that is a one- on- one relationship between victim- offender. Example: a mediation process between 1 offender and 3 victims is counted as 3 interactions.

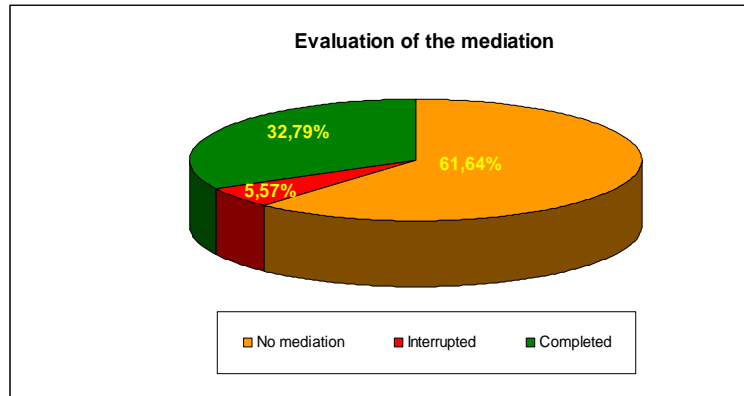


Table 6: Evaluation of the mediation process (N=5459)

In 61 % of all cases in which a mediation was suggested, the actually mediation process never started. In 38 % of all cases a mediation between the victim took place.

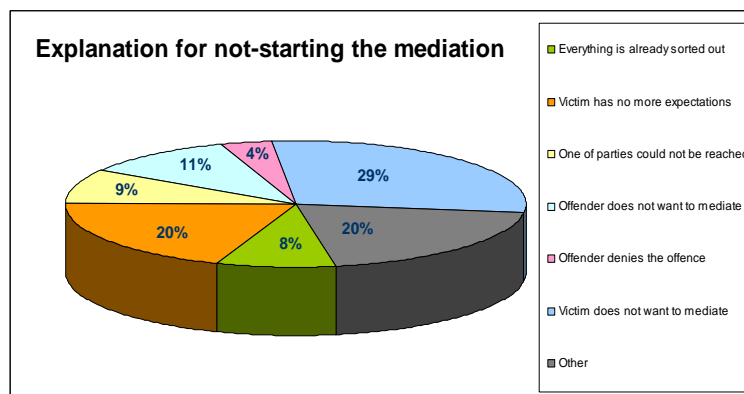


Table 7: Explanation why a mediation process did not start (N=3365)

Possible reasons wherefore a mediation did not start are that everything was already sorted out between the victim and the offender (8%) or that the victim does not have any more expectations of the minor (20%). 29% of all victims declare that they do not want to have a mediation with the offender. Almost 1 out of 7 offenders does not want to mediate or denies the criminal act.

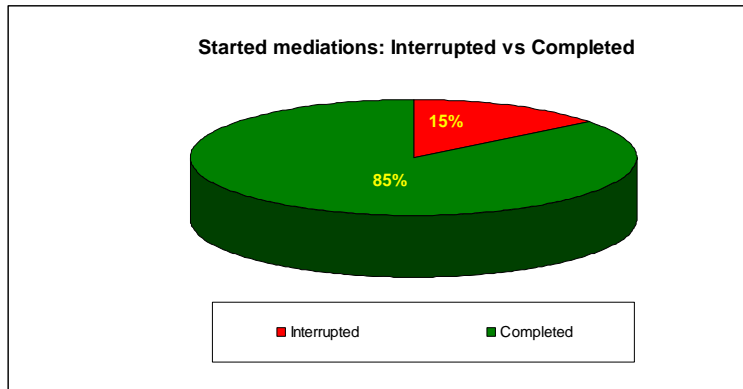


Table 8: Results of the mediation processes that were initiated (N=2094)

From all mediations that began, only 15 % could not be completed.

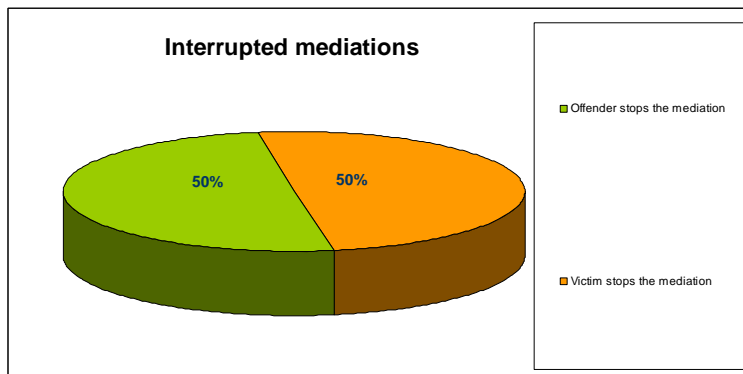


Table 9: Explanation why a mediation process was interrupted (N=304)

Interrupting the mediation can be the victim's decision, as well as the offender's choice.

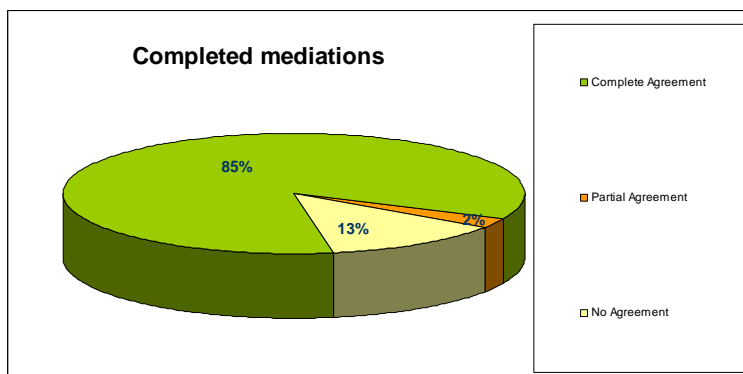


Table 10: Results of the mediation processes that were completed (N=1790)

6 out of 7 of the mediations that end, lead successfully to a mutual agreement. In few cases this can concern a partial agreement e.g. when the victim desires a reservation of future damage. This means that in only 1 out of 7 cases parties were not able to find a consent about the outcome of their conflict.

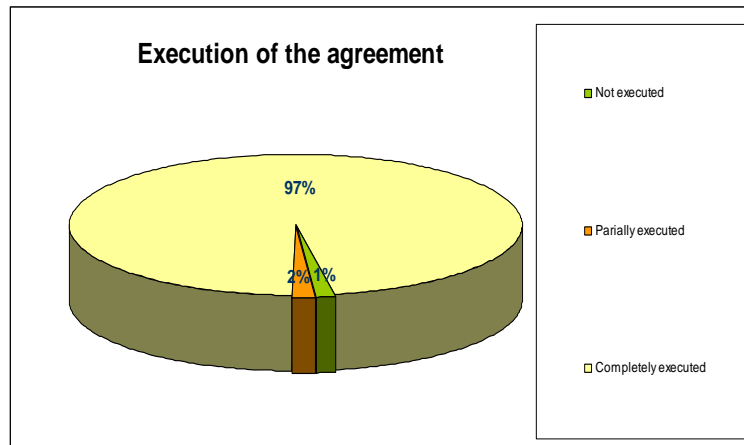


Table 11: Execution of the agreement, resulting from the mediation process (N=1492)

The majority of agreements is being completely executed by the minor. This can be explained by the legal obligation that the mediator has to do a follow up of the case. He has to let the legal authorities know the outcome of the mediation.

6.4 Mediation process

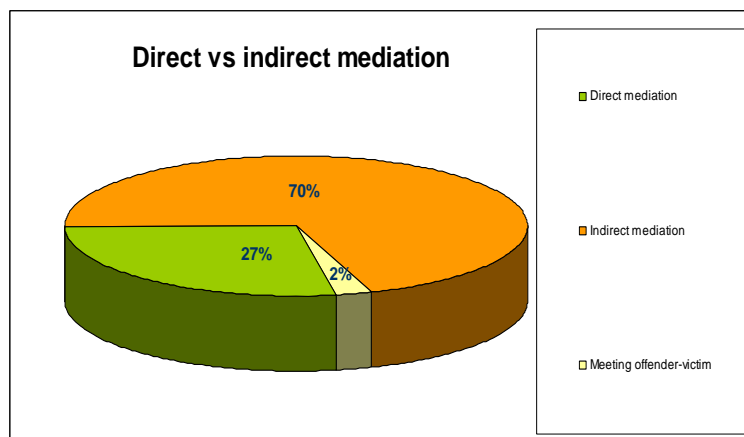


Table 12: direct versus indirect mediation process

In only 30 % of all cases the offender and victim decide to meet each other. That means they possibly talk with each other in presence of the mediator or that they decide to meet (e.g. repairing the damage at the victim's place, offering a letter with apologies in person) There is a multitude of possible explanations why parties decide not to confront: type of relation between the victim- offender, persistent feelings towards the other party such as shame or fear, language barrier or methodological approach of the mediator.

Sources for this paper:

-, 2008, **Annual report ADAM 2008**, Antwerpen, 320p.

Balcaen, L., Van Rumst, S. and Verlinden, V., 2009, **Herstelrechtelijke en Constructieve Afhandelingen in Vlaanderen Cijfernota 2008**, Brussel, 33p.

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