

Results of the mediation referral system in the Netherlands judiciary

In April 2005, a mediation referral system was pioneered in some courts in the Netherlands. At the start of January 2007, 22 courts could refer cases for mediation (18 district courts, 3 appeal courts and the Trade & Industry Appeals Tribunal). The system will be implemented in the remaining four courts in the first half of 2007.

Data from the mediation records

The tables below contain data on the mediations which were initiated and concluded in the past trimester and data on 2006 as a whole. The data are based on information submitted by the mediation offices at the various courts.

The implementation of the system in nine courts led to a considerable increase in the number of referrals in the past trimester. A total of 994 cases were referred for mediation between September and December 2006 (compared with 571 in the previous trimester); 926 of these actually went ahead; 438 mediations were concluded in the same period.

As most of the referrals by the pioneering courts in the last trimester of 2006 took place in November and December, the number of active cases at the end of 2006 was relatively high. A steep rise is therefore expected in the percentage of concluded mediations in the first months of 2007.

September - December 2006

	Number of initiated mediations	Number of concluded mediations	Number concluded with full agreement	Number concluded with partial agreement	Number concluded without agreement	Percentage of mediations concluded with (partial) agreement
Total	926	438	236	29	173	60.5%

<i>Percentage of referrals that resulted in the initiation of a mediation procedure</i>	93.2%
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<i>Percentage of mediations concluded with full agreement</i>	53.8%	} 60.5%
<i>Percentage of mediations concluded with partial agreement</i>	6.6%	
<i>Percentage of mediations concluded without agreement</i>	39.5%	

<i>Active cases initiated between September and December 2006</i>	488
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<i>Total number of active cases to be carried over to 2007</i>	832
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The table below lists the key figures for all mediations which were initiated and/or concluded in 2006.

January - December 2006

	Initiated mediations	Concluded mediations	Concluded with full agreement	Concluded with partial agreement	Concluded without agreement	Percentage of mediations concluded with (partial) agreement
Total	1943	1297	700	94	503	61.2%

Nationwide, 2133 cases were referred for mediation in 2006. This resulted in the initiation of 1943 procedures. At the end of 2006 a total of 1297 mediations had been concluded. The percentage which was concluded with full or partial agreement was 61%. In comparison, 720 mediations were initiated in 2005, 357 of which were concluded before the end of the year. The average success rate at that time was 55%. The rise in the average success rate coincides with the results of earlier research which found that, after

initial implementation, as the referees and mediators gained more experience, the success rates ascended gradually from around 40% to over 60%.

Information from the mediation monitor

The courts feed data on all concluded mediations into a database: the mediation monitor. The courts collect this information on monitoring forms which are filled in by the referees, the administrative office, the parties, the lawyers and the mediators. The monitor sheds light on why the referees, the parties and their lawyers opt for mediation and provides information on success rates, throughput times, and satisfaction with the mediation process and the mediator.

The monitoring data presented below relate to the mediations which were entered in the mediation monitor between 1 April 2005 (the implementation date of the system) and 31 December 2006. To facilitate comparison, the data from the past period are placed alongside the figures that were known at the end of the second trimester. As some of these numbers are still on the small side, they have not been split per quarter.

The tables below are therefore based on mediations which were concluded *and entered* in the database. The picture may be somewhat distorted, as not all the concluded mediations had been entered in the database at the time of publication. Mediations for which the information in the media monitor was (as yet) incomplete are also omitted from the tables.

1 Total number of mediations

At the end of the third trimester of 2006, the media monitor contained 1107 cases, 64% of which had been wholly or partly successful (56% and 8% respectively). This success rate more or less matches the figure from the previous report (April 2005 till the end of the second trimester of 2006: 64% success rate; 57% wholly and 7% partly).

District	Up to the end of the first trimester 2006	Up to the end of the second trimester 2006	Up to the end of the third trimester 2006
Total	239	723	1107

2 Total number of mediations per sector

Both the sector and the result are recorded for 1070 mediations. The majority of these were civil cases (71%, previously: 73%).

The tables below show the figures from April 2005 till the end of the third trimester of 2006 and (in brackets) the total from April 2005 till the end of the second trimester of 2006.

District	Sector	Number per sector		Total
Total	Civil	759	(491)	
	Admini- strative	311	(38)	(673)

In the civil sector 57% of the cases were wholly or partly successful (previously: 58%). The corresponding figure for the administrative sector is 83% (previously: 80%).

3 Total number of mediations per court classification

The courts were split into three classifications 'local', 'civil (including family) and administrative' and 'appeal'. The court classification and the result are known for 1060 mediations. Most of these stem from 'civil and administrative' (88%, previously: 86%). Local courts accounted for 8% (previously: also 8%). Fifty-nine percent of the mediations from local courts were wholly or partly successful (previously: 60%). The success rate for 'civil and administrative' was 66% (previously: 66%). Almost half the mediations from the appeal court were wholly or partly successful (48%, previously: 50%).

4 Case characteristics per sector

The type of case and the result are known for 792 mediations. Family generated the largest number of mediations compared with the other sectors. Less than half the mediations fall into this category (41%, unchanged since the last report). Most of these concerned divorce and subsequent financial settlements. The success rate for such cases was 61% (previously: 62%). The success rate for other family cases was 47%. The figures for the other categories are still too low to allow sound conclusions.

Sector	Type of case	Percentage of total	
Administrative	Ex-Arob cases other than subsidies (AROB = Act on administrative jurisdiction over government decisions)	4	(2)
	Provisional arrangement ex-arob	3	(3)
	Social insurance, others	3	(3)
	Provisional arrangement National Assistance Act (<i>Algemene Bijstandswet</i>)	1	(1)
	Provisional arrangement public administration cases	1	(1)
	National Assistance Act	1	(1)
	Invalidity Insurance Act (<i>Wet Arbeidsongeschiktheid</i>)	1	(1)
	Ex-arob subsidies	<1	(<1)
Civil	* Divorce, others	28	(29)
	Family, others	8	(5)
	* Maintenance	6	(7)
	* Partition settlement/maintenance after divorce	4	(2)
	Civil, others	4	(5)
	* Partition settlement	3	(3)
	Summary procedure	3	(3)
	Employment	3	(3)
	Neighbours	2	(2)
	Contract rights/agreement/purchase-exchange/business	2	(2)
	Inheritance rights	1	(1)
	Rent	1	(2)
	Dissolution of a legal person/winding up an estate	1	(1)
	Consumers	<1	(<1)
	Health rights	-	(-)
Tax		22	(21)

*Divorce-related

5 Satisfaction with the mediator

Most of the parties who participated in mediation were satisfied or very satisfied with the mediator, even if no agreement had been reached. To calculate satisfaction levels the 'satisfied' and 'very satisfied' groups were combined. Irrespective of the result, an average of 88% of all parties were (very) satisfied with the impartiality of the mediator, 86% with the way in which he/she conducted the proceedings and 88% with the attentiveness of the mediator. When the average satisfaction level was calculated for all the parties, all three aspects scored an average of 4.1. These scores match those in the previous report. The table below differentiates between satisfaction with mediations which were wholly and partly successful and with mediations which concluded without agreement. As might be expected, the highest figures were, on average, recorded for parties in a wholly successful mediation (>90% satisfied or very satisfied). The percentage of (very) satisfied participants in the other two categories was around 80%, but it should be stressed that the number of cases in which mediation was only partly successful is still quite small.

Aspect of the service	Result	Satisfied or very satisfied in %	
Impartiality on the part of the mediator	Wholly successful	93	(95)

	Partly successful	81	(75)
	Unsuccessful	80	(82)
Leadership by the mediator	Wholly successful	93	(93)
	Partly successful	82	(75)
	Unsuccessful	75	(78)
Attentiveness shown by the mediator	Wholly successful	91	(91)
	Partly successful	88	(84)
	Unsuccessful	79	(82)

6 Satisfaction with the mediation process

Average satisfaction levels for the mediation process are lower than for the mediator. Only a slender majority was (very) satisfied with the costs and the result (55% and 57% respectively), while 68% were (very) satisfied with the duration. When the average satisfaction was calculated for all the parties, duration and costs each scored 3.6 and result scored 3.3. These figures also correspond with those in the previous report. In the table below satisfaction is split according to result. In the scores for the mediation process the differences between the group for whom the mediation was wholly or partly successful and the group for whom it was unsuccessful are greater than in the previous table. As might be expected, satisfaction with the result is closely related to success. Surprisingly enough, 7% were satisfied with the result when the mediation was *unsuccessful* – 2% of whom were even very satisfied.

Aspect of the mediation process	Result	Satisfied or very satisfied in %	
Costs	Wholly successful	63	(63)
	Partly successful	40	(30)
	Unsuccessful	39	(41)
Duration	Wholly successful	82	(80)
	Partly successful	38	(28)
	Unsuccessful	44	(45)
Outcome	Wholly successful	84	(83)
	Partly successful	29	(29)
	Unsuccessful	7	(6)

7 Second time around

Over 90% of the parties said that they definitely or perhaps would opt again for mediation if faced with a similar conflict situation in the future (53% said definitely; previously: 51%). Over 80% of the parties in an unsuccessful mediation indicated that they would again opt for mediation in the future (35% definitely and 46% perhaps); 20% said that they would not. This more or less corresponds with the picture for partly successful mediations. As might be expected, in the successful cases, a higher percentage said that they would again opt for mediation (97% (64% definitely and 33% perhaps)); 4% said that they would not, despite the successful outcome.¹

Result	Mediation again	Percentage*	
Wholly successful	Yes	64	(64)
	Perhaps	33	(32)
	No	4	(4)
Partly successful	Yes	37	(32)
	Perhaps	46	(52)
	No	18	(16)
Unsuccessful	Yes	35	(32)
	Perhaps	46	(47)
	No	20	(21)

¹ Rounded-off figures, so the total is not exactly 100%.

* **Rounded-off figures, so the total is not exactly 100%.**

8 Legal aid

More than half the parties said that they took part in mediation on the basis of legal aid (28%, compared with 31% in the previous report). Forty-two percent of the successful cases and 24% of the unsuccessful cases were based on legal aid

Result	Assigned	Percentage	
Successful (wholly/partly)	Yes	42	(34)
	No	50	(61)
	Unknown	8	(5)
Unsuccessful	Yes	24	(24)
	No	68	(69)
	Unknown	8	(8)

9 Mediation venue

Most of the mediations were conducted at the mediator's premises rather than in the court building or a combination of the two. Slightly more than half of the successful and the unsuccessful mediations were conducted at the mediator's premises.

Result	Mediation venue	Percentage*	
Successful (wholly/partly)	In the court building	31	(37)
	At the mediator's premises	56	(47)
	Both	13	(15)
Unsuccessful	In the court building	36	(41)
	At the mediator's premises	54	(44)
	Both	9	(11)

* **Rounded-off figures, so the total is not exactly 100%.**

10 Throughput times

The average throughput time between the first and the final mediation session was 49 days (previously: 42).² Fifty-eight percent of mediations that were started and concluded on the same day were successful. The average throughput time for administrative cases was 24 days, with the longest case taking 328 days (previously: 250); half the cases were concluded on the start day (no change) and over 70% within two weeks (no change).

The average throughput time for civil cases was 52 days (previously: 47), in which 21% were concluded on the start day (previously: 21%). A little less than half the cases were concluded within a month of the starting date (46%, previously: one half) and 29% within 14 days (previously: one third).

11 Number of sessions per mediation

An average of 2.8 sessions were held for each mediation (previously: 2.7). In administrative cases the average was 2.0 (previously: 1.7) with a maximum of 11 sessions (previously: 7). One session was needed in half the administrative cases (previously: one third).

An average of 3.2 sessions were held for civil cases (previously: 3.0) with a maximum van 13 sessions (no change). Half the mediations were settled at the third session (no change).

Number of sessions	Percentage of administrative cases	Percentage of civil cases	Percentage total
1	53 (33)	18 (22)	28 (24)
2	24 (38)	24 (30)	24 (31)
3	8 (13)	23 (20)	18 (19)
>3	15 (15)	35 (29)	29 (26)
Total	100	100	100

² A few extreme values have been omitted, viz: 445, 495, 1146 and 1841 days.

* **Rounded-off figures, so the total is not exactly 100% .**

The table below shows the success rates per number of sessions. Mediations comprising more than 3 sessions appear to have the highest success rate. The nine mediations comprising 10 or more sessions were all successful.

Number of sessions	Percentage of successful mediations	Percentage of unsuccessful mediations	Percentage total
1	64 (58)	36 (42)	100
2	53 (53)	47 (47)	100
3	65 (66)	35 (34)	100
>3	71 (79)	29 (31)	100

12 Reasons for referral

The reasons for referral were given in over one third of the cases. These are cases which were specifically referred; they did not come to mediation through written invitations or at the initiative of the parties. The main reason why these cases were referred for mediation was that the parties would have to cooperate in the future. In 70% of them the referee indicated that this was the sole reason.³ Cases that were referred for this reason had the highest success rate (61%), although the success rates for cases that were referred for the other three reasons were not far behind. The second reason was that a court decision would not solve the problem (60%). Mediations requested by the parties were in a minority (12%).

Reasons of the referee	Percentage of mediations in which this was the sole reason	Percentage of successful mediations in which this was the sole reason
The parties had to cooperate in the future	70% (70%)	61% (67%)
A court decision would not solve the problem	60% (63%)	59% (66%)
Mediation leads to a faster solution	37% (39%)	58% (64%)
The parties requested mediation	12% (12%)	58% (60%)

13 Characteristics of the conflict according to the referee

The referees were asked to gauge the prevalence of three characteristics in the case. They could choose from low, neither high nor low, and high. The table below shows that escalation was high in 42% of the realised mediations. Despite this, 50% of them were successful. The referees said that the other two characteristics – scope to negotiate and willingness to negotiate – were less common but, as expected, delivered a higher success rate.

Characteristics according to the referee	Percentage of mediations in which this characteristic was present at a high level	Percentage of successful mediations in which this characteristic was present at a high level
Escalation level of the conflict	42% (40%)	50% (56%)
Scope to negotiate	26% (26%)	56% (56%)
Willingness to negotiate	20% (19%)	63% (66%)

The following table shows that the success rate was *lower* if the escalation level was high.

Escalation level	Percentage	Success rate
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³ The referee could choose from solely applicable, partly applicable and not applicable.

	of mediations	
Low	7% (8%)	64% (65%)
Neither low nor high	50% (52%)	64% (65%)
High	42% (40%)	50% (56%)
Total	100%* (100%)	

* **Rounded-off figures, so the total is not exactly 100%.**

The pattern for the other two characteristics is also in line with expectations: the success rate was *lowest* when scope to negotiate and willingness to negotiate were *low*.

Willingness to negotiate	Percentage of mediations	Success rate
Low	10% (10%)	47% (67%)
Neither low nor high	70% (72%)	50% (63%)
High	20% (19%)	63% (66%)
Total	100%* (100%)	

* **Rounded-off figures, so the total is not exactly 100%.**

Scope to negotiate	Percentage of mediations	Success rate
Low	6% (4%)	45% (60%)
Neither low nor high	68% (70%)	60% (66%)
High	25% (26%)	56% (56%)
Total	100%* (100%)	

* **Rounded-off figures, so the total is not exactly 100%.**

These results suggest that judges are able to accurately assess the characteristics of a conflict.

14 Method of referral

Slightly less than half the realised and concluded mediations were referred by a judge. One third received a written invitation to engage in mediation. Again we see that 13% of the parties took the initiative to switch from a court procedure to mediation (see Section 12 in which the reason for 12% of mediations is that the parties themselves suggested it). Referral by written invitation appears to have the best success rate: over two thirds of these cases were wholly or partly successful.

Method of referral	Percentage of mediations	Success rate
Written invitation	34% (32%)	69% (63%)
By a court, interlocutory judgement	6% (5%)	52% (67%)
By a judge at a hearing	47% (54%)	56% (61%)
At the initiative of the parties	13% (9%)	59% (61%)

15 The reasons for the parties' decision

The parties were asked to state their reason(s) for opting for mediation. They indicated the importance of each of the reasons in their own case.⁴ The main reason was 'better for the future relationship with the other party'. This was followed by 'advised by the court' and 'expected a faster or better solution'. The success rates did not differ much for the different reasons.

Reasons for the parties' choice	Percentage of mediations where this reason was important	Success rate for mediations where this reason was important

⁴ Possible alternatives: important, somewhat important, not important, not applicable.

Better for the future relationship with the other party	61% (62%)	70% (70%)
The judge advised mediation	57% (59%)	66% (68%)
Expected the solution to be <i>faster</i> than in a court procedure	55% (55%)	68% (67%)
Expected the solution to be <i>better</i> than a court decision	55% (54%)	67% (67%)
Wanted to stay in control of the solution	39% (39%)	72% (70%)
The first 2.5 hours of mediation are free	37% (39%)	72% (72%)
Cheaper than a court procedure	28% (30%)	72% (72%)
Lawyer advised mediation	27% (29%)	66% (70%)
The other party suggested mediation	13% (12%)	69% (67%)

16 Financial implications

(The financial implications of the concluded mediations were most often between €500 and €5,000 (25%) or over €45,000 (19%). The 'lower than €500' category had the highest success rate but was fairly small. This category will probably remain small because mediation in those cases is relatively expensive. The category with the highest costs (€45,000 and above) had the lowest success rate.

Financial implications	Percentage of mediations	Success rate
Lower than €500	7% (5%)	83% (72%)
€500 to €5,000	25% (23%)	73% (66%)
€5,000 to €20,000	15% (17%)	65% (64%)
€20,000 to €45,000	11% (11%)	76% (77%)
€45,000 and above	19% (20%)	56% (59%)
Not known/not applicable	23% (25%)	61% (65%)
Total	100%	

17 Contact hours

The average number of contact hours for all the mediations put together was 5.7 (previously: 5.5), with a maximum of 60. Half of all the mediations were concluded in 4.3 contact hours (previously: 4.0). The table below lists the average number of contact hours, the maximum number of contact hours, and the median (number of hours in which half the cases were concluded) for some sectors and courts. On average, the civil cases needed twice as many contact hours as the administrative cases (6.6 as opposed to 3.0 hours).

Sector/ type of court	Average number of contact hours	Maximum number of contact hours	Median contact hours
Civil	6.6 (6.3)	60 (60)	5.4 (5.3)
Administrative	3.0 (2.7)	19 (15)	2.3 (2.6)
Local court	6.2 (6.1)	20 (20)	5.0 (4.3)
Appeal court	6.1 (7.2)	16 (16)	5.0 (4.0)

18 Moment of referral

Over one third of the cases were referred during a hearing or oral proceedings or a personal appearance of the parties. The other moments of referral are equally distributed.

The best results seemed to be achieved when the referral came immediately after receipt of a notice of appeal/petition or documents and a statement of defence: more than three quarters of mediations in this category were wholly or partly successful.

Moment of referral	Percentage of mediations	Success rate per moment of referral
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Netherlands court-connected mediation agency

Immediately after receiving summons/petition	4% (5%)	65%
Immediately after receiving a notice of appeal /petition	13% (14%)	78%
After an answer	5% (6%)	60%
After oral proceedings/personal appearance of parties	9% (10%)	58%
After receipt of documents and statement of defence	3% (1%)	86%
After an interlocutory judgement	4% (5%)	59%
During a court procedure	6% (7%)	78%
During oral proceedings/appearance of parties	37% (37%)	54%
Others	20% (15%)	-
Total	100%*	

*** Rounded-off figures, so the total is not exactly 100%.**