

Victim-Offender Mediation and other Restorative Practices in Portugal: why not?



International Institute
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Definition

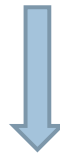


“ Mediation is an informal and flexible process conducted by an impartial third party, the mediator, which promotes closer ties between the offender and the victim and supports them actively, trying to find an agreement that allows the repair of damage caused by the wrongful act and contribute to the restoration of social peace”.

Law 21/2007, Art. 4

Implementation of Victim-Offender Mediation

**Article 10 of the Framework Decision of the
Council of the EU (2001/220/JHA)**
regarding the standing of victim in criminal
proceedings



2004

First experimental project of VOM at the Criminology School of Porto Law University in cooperation with the public prosecutor's Office of Porto.

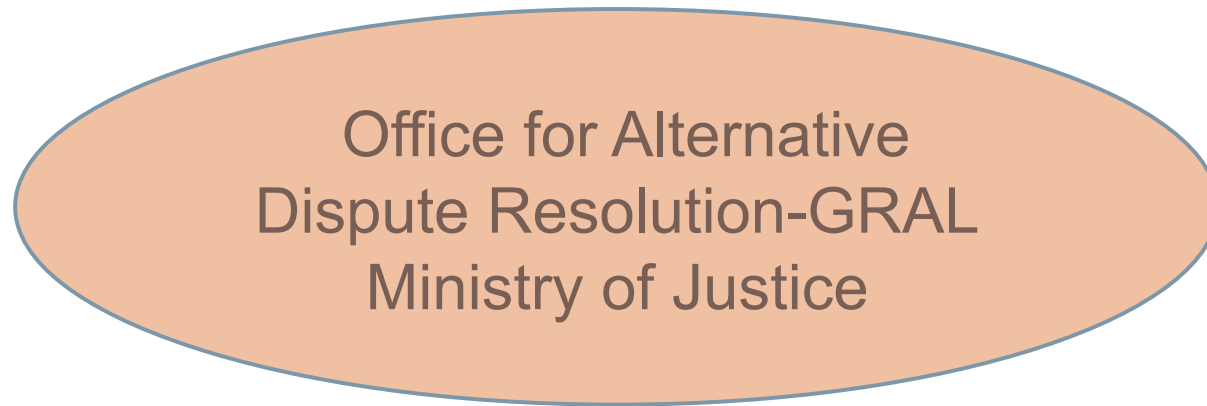
Implementation of Victim-Offender Mediation

Law n°21/2007

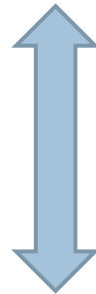
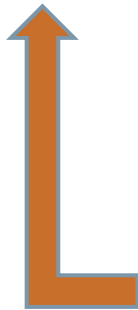
- Fulfills the requirements of the art.10 of the Framework Decision, EU;
- Parliament approved three Decrees (ns.º 68-A/2008,68-B/2008 and 68-C/2008) and a Provision (n.º 216A/2008) to regulate specific aspects of the mediation program;

The penal mediation system began to operate in **January of 2008** during an experimental period of two years in four counties (Porto, Oliveira do Bairro, Aveiro, and Seixal)

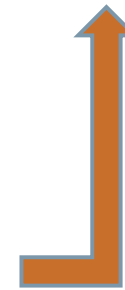
SMP- Penal Mediation System



Public service



Free service



Victim-Offender Mediation

SMP- Penal Mediation System 2011

VOM in 15 Counties



- *Braga*
- *Porto*
- *Vila Nova de Gaia*
- *Santa Maria da Feira*
- *Baixo Vouga*
- *Coimbra*
- *Moita*
- *Montijo*
- *Grande Lisboa*
- *Noroeste*
- *Cascais*
- *Loures*
- *Seixal*
- *Barreiro*
- *Setúbal*
- *Alentejo Litoral*

Referral to Victim - Offender Mediation

Legal Requirements:

- Criminal process in the investigation stage – inquiry;
- Crimes depending complainant or private prosecution, against persons or property which are punishable by prison sentences or a fine, not exceeding 5 years;

Except: crimes against freedom and against sexual self-determination ⇒ mediation never takes place

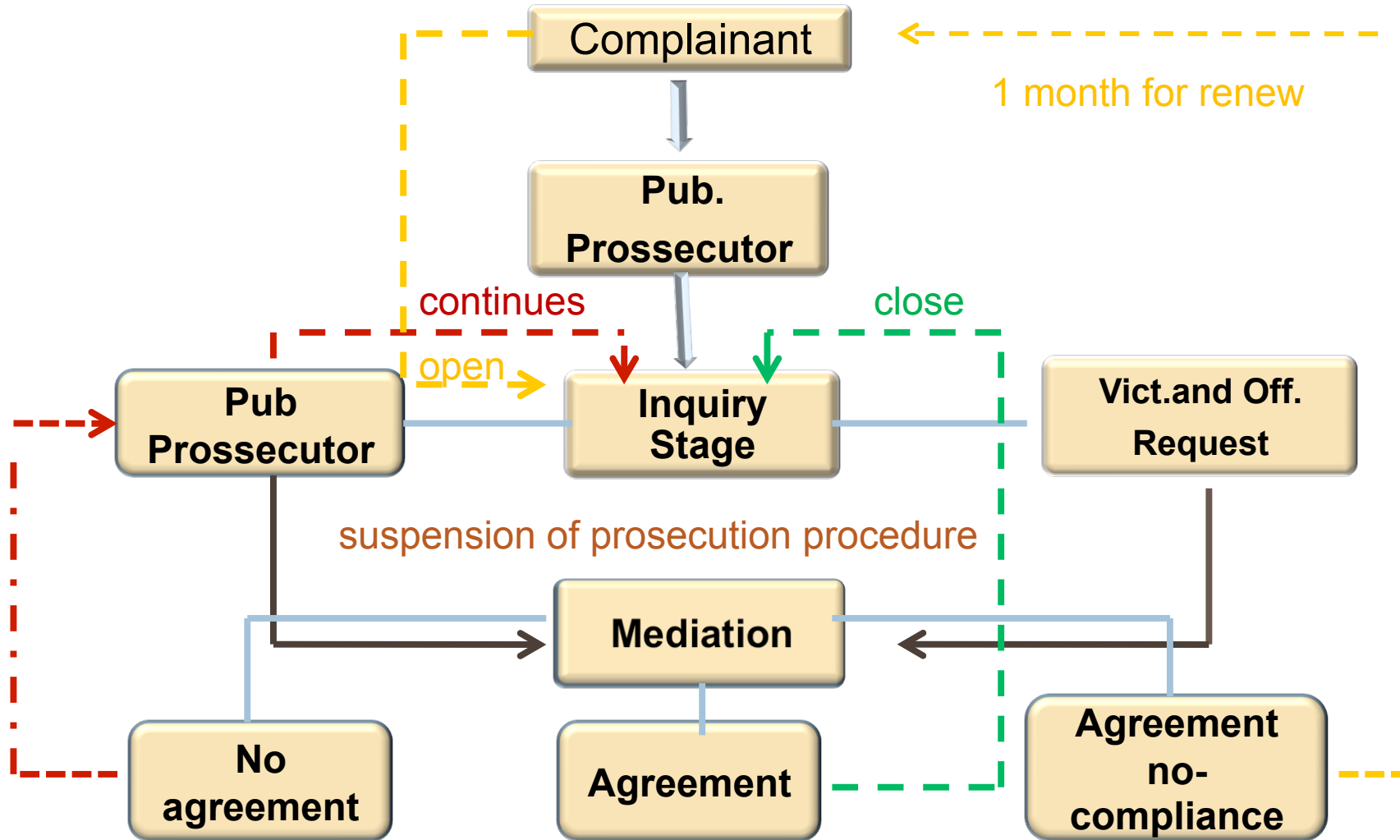
Referral to Victim-Offender Mediation

- The offender can not be less than 16 years old;
- The form of the process can not be the form of special process (*ex: summary process*).

Crimes eligible for mediation, among others:

Verbal offenses, simple physical offenses, robbery, fraud, threat, damage, defamation, trust abuse.

Scope of Mediation Procedure



Scope of Mediation Procedure



Public Prosecutor

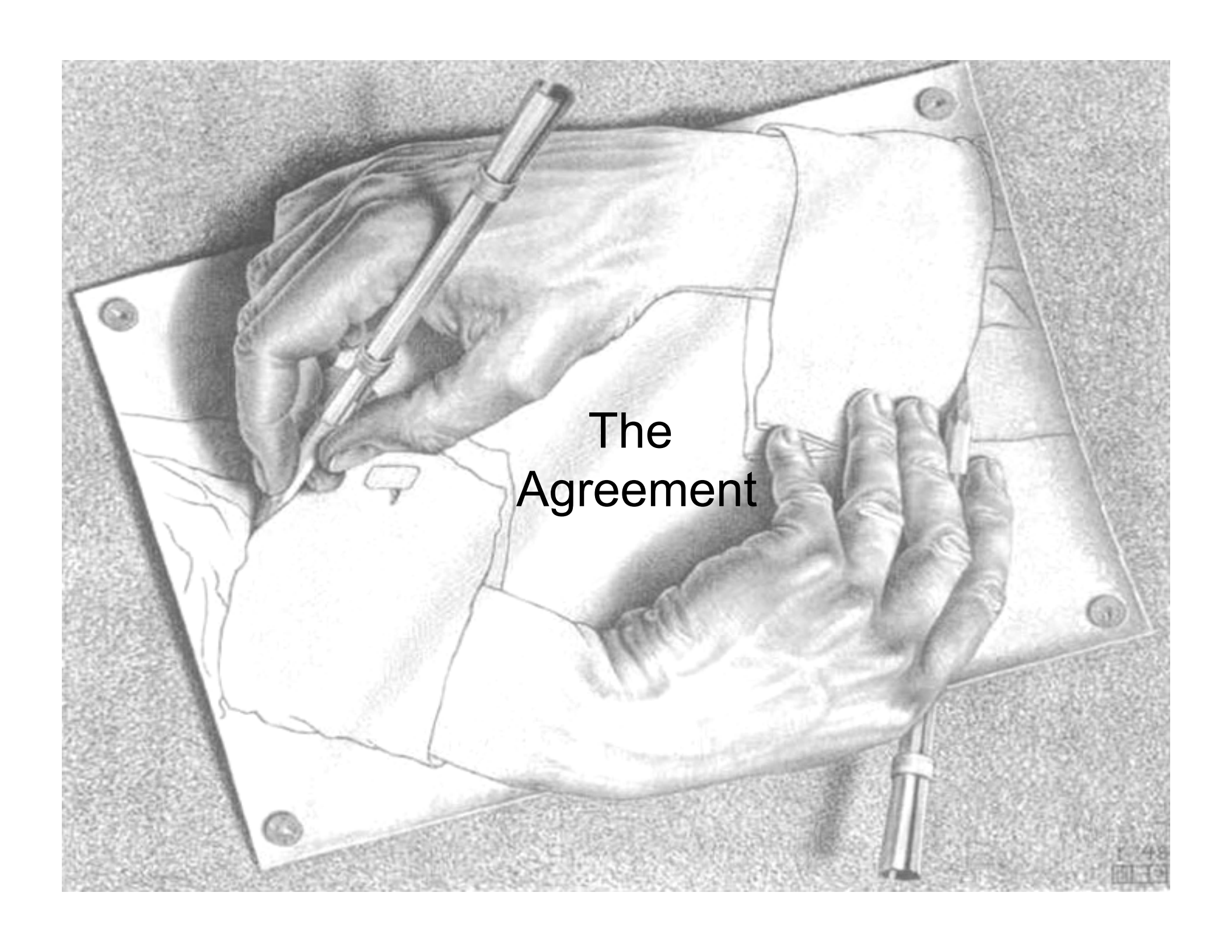


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graph TD; A[Public Prosecutor] --> B[Mediator]; B --> C[Offender and Victim]; C --> D["Mediation process: 3 months, extended max. of 2 more months"]
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Mediator

Offender and Victim

Mediation process: 3 months, extended max. of 2 more months

A black and white photograph showing a close-up of a hand holding a pen, poised to sign a document. The document is held flat by a metal plate with four corner fasteners. The hand is wearing a light-colored, possibly white, glove. The pen is a simple, cylindrical ballpoint pen. The background is a textured, grey surface. The text "The Agreement" is overlaid in the center of the image in a bold, black, sans-serif font.

The
Agreement

The Agreement

The content of the agreement is free, provided that does not include:

- penalties involving deprivation of freedom;
- duties that offend the dignity of the offender;
- duties which extend in time by more than 6 months.

The agreement may consist of:

- payment of a financial compensation;

The Agreement (Cont.)

- request of an apology;
- reparation of damage property;

Agreement → Public Prosecutor

Legal

Equivalent to withdrawal of complainant by the victim and no opposition from the offender

Not legal

Public prosecutor send back to the Mediator to rectify the illegality with the victim and offender

The Mediator

Requirements for the function:

- To have more than 25 years old;
- To be in full possession of their civil and political rights;
- To have a degree or appropriate professional experience;
- To be enabled with a penal mediation course recognized by the Ministry of Justice;
- To be a suitable person to exercise the function

The Mediator (cont.)

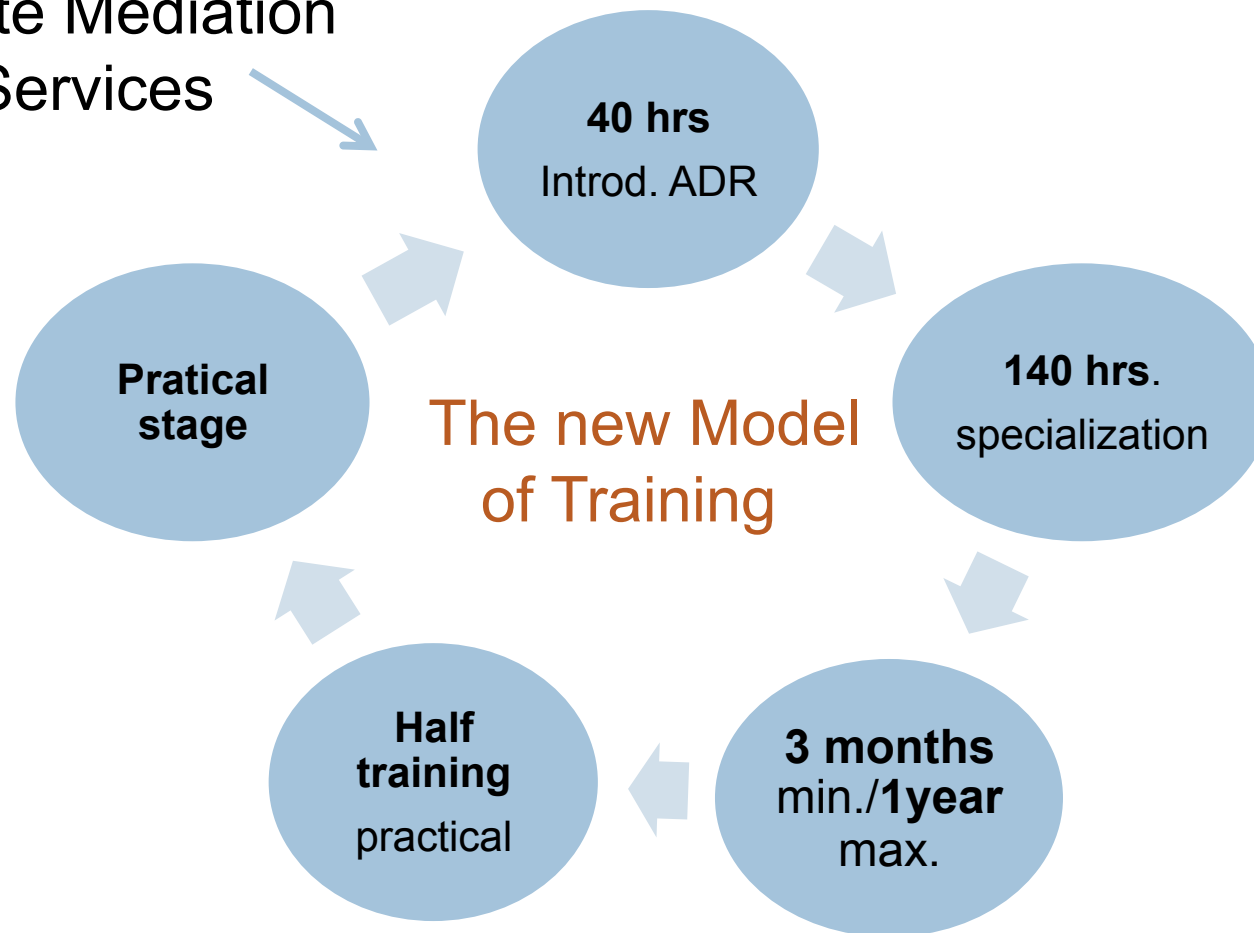
- To have proficiency of the Portuguese language;
- Being enrolled in the public lists of the Ministry of Justice.

Professional *status* of the Mediator

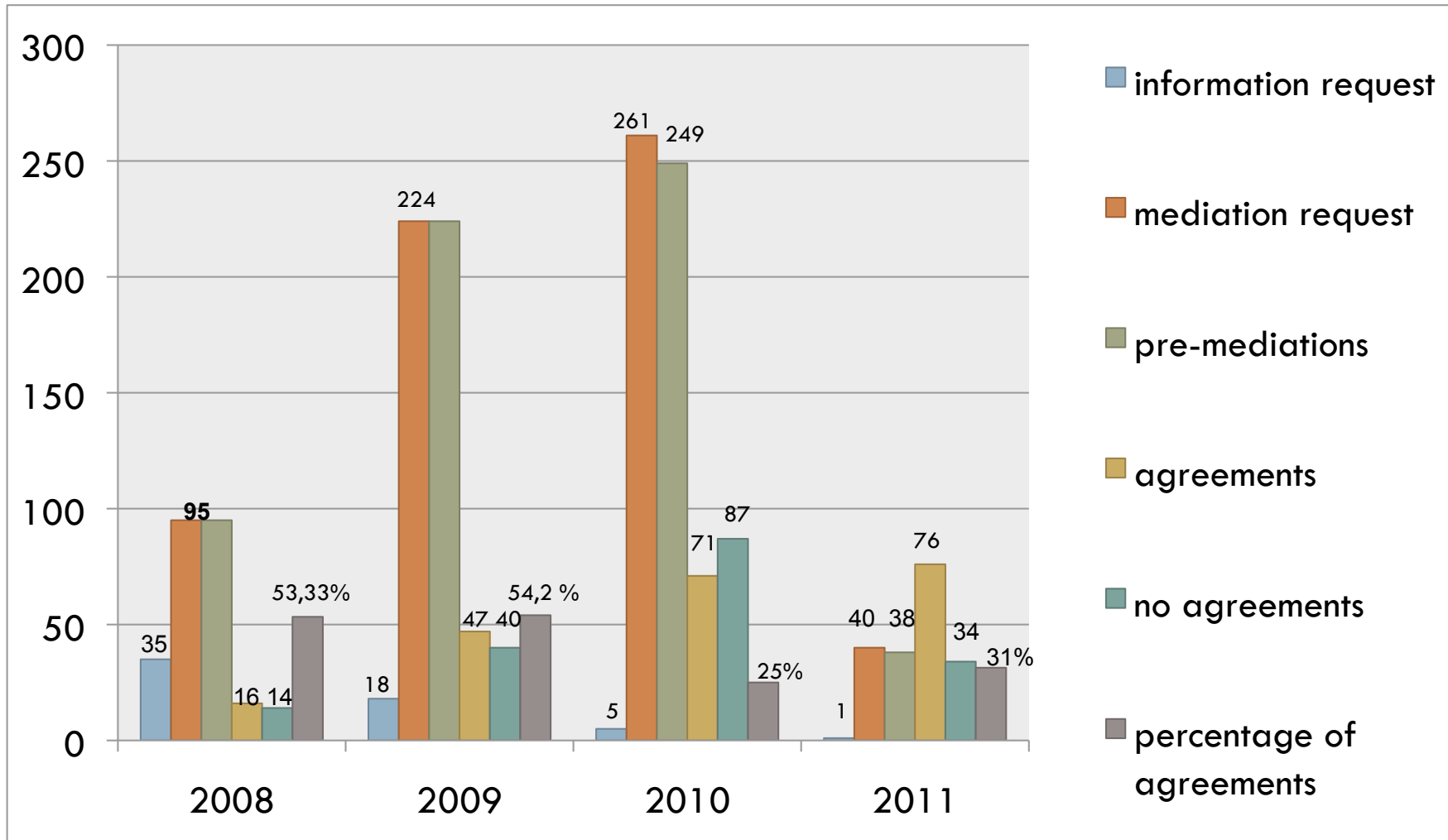
- Independent worker integrated in the mediators public lists of the Ministry of Justice.

The Mediator (cont.)

Private Mediation
Services



V.O.M Statistical Results



V.O.M Statistical Results

- Average of the mediation process : 58 days
- Concluded processes: 536
- Countie with more agreements : Baixo Vouga

Main types of crimes referred for mediation:

- *Simple physical offenses* : 284
- *Threat* : 62
- *Damage* : 48
- *simple larceny* : 47

System of VOM: Opinion Surveys

| Questions | Values | Answer |
|-------------------------------|-----------|------------------------|
| Sex | 58 % | Male |
| Age | 25% | 21 to 30 |
| Instruction | 32% | H. school |
| Knowledge of VOM | 69% | Court/ Prosecutor |
| Legal advice | 54% | No |
| Lawyer in mediation | 71% | No |
| Information given by SMP | 46% | Very good |
| Knowledge about SMP | 42% | Good |
| Acess to mediation facilities | 45% | Good |
| Quality of the facilities | 45% | Good |
| Duration of the mediation | 93% | Necessary |
| Participation of the Mediator | 60% | Very good |
| Satisfation with the process | 60% + 23% | Satisfied+ very satisf |
| Recomendation of SMP | 90% | Yes |

Other Restorative Practices



Restorative process:

“Means any process in which the victim, the offender and/or any other individuals or community members affected by a crime, actively participate together in the resolution of matters arising from the crime, with the help of a fair and impartial third party”.

UN Declaration 2002/12- of Basic Principles on the use of RJ
Programmes In Criminal matters

Other Restorative Practices : focus on *Conferencing*

European Forum for Restorative Justice

Developed a project titled “ *Conferencing: a way forward for RJ in Europe*” that began in 2009 with a duration of 2 years.

Objectives:

- What extent has *conferencing* been developed internationally;

Other Restorative Practices : focus on *Conferencing* (cont.)

- What are the processes used in and outcomes achieved by *conferencing*;
- How could *conferencing* practices be developed in Europe;
- Developing a practical guide on setting up Conferencing programmes.

Restorative Approach in Portugal

No training or practice in Conferencing and Circles



Follow-up of the European Forum and others NGO`s activities, to achieve knowledge and ways of implementation.



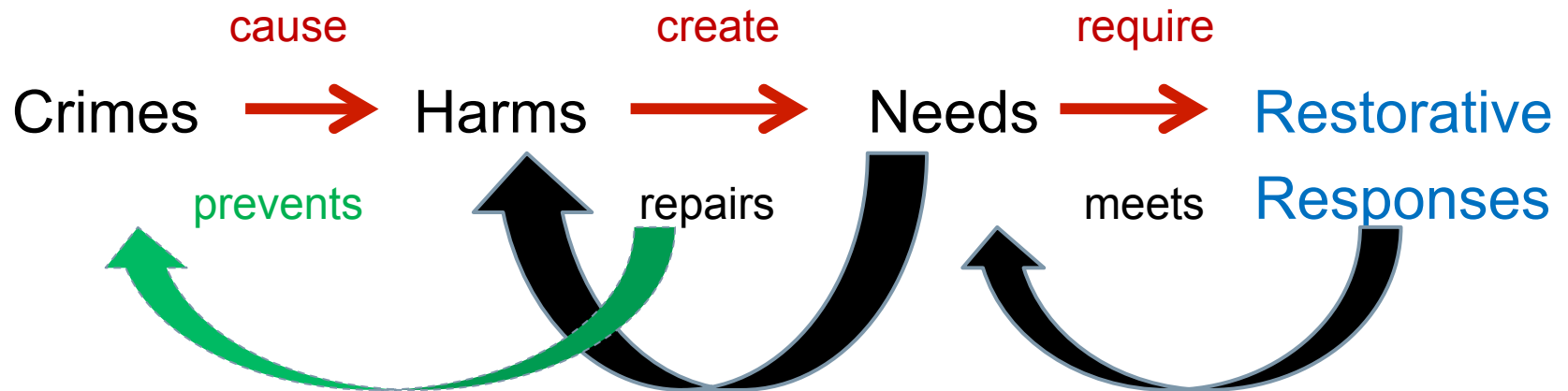
Juvenil mediation project in 2011, by the public Office-GRAL, as an approach to Conferencing.

The Holistic view of Justice



Restorative Process Diagram

(*Mc. Cold*)



Restorative Practices: Difficulties in the Field



Influence of the *Legality Principle* and mandatory prosecution in the legal and judicial culture



Public Prosecutors and Judges



traditionally bound to the law and to criminal proceedings
in a non negotiable way

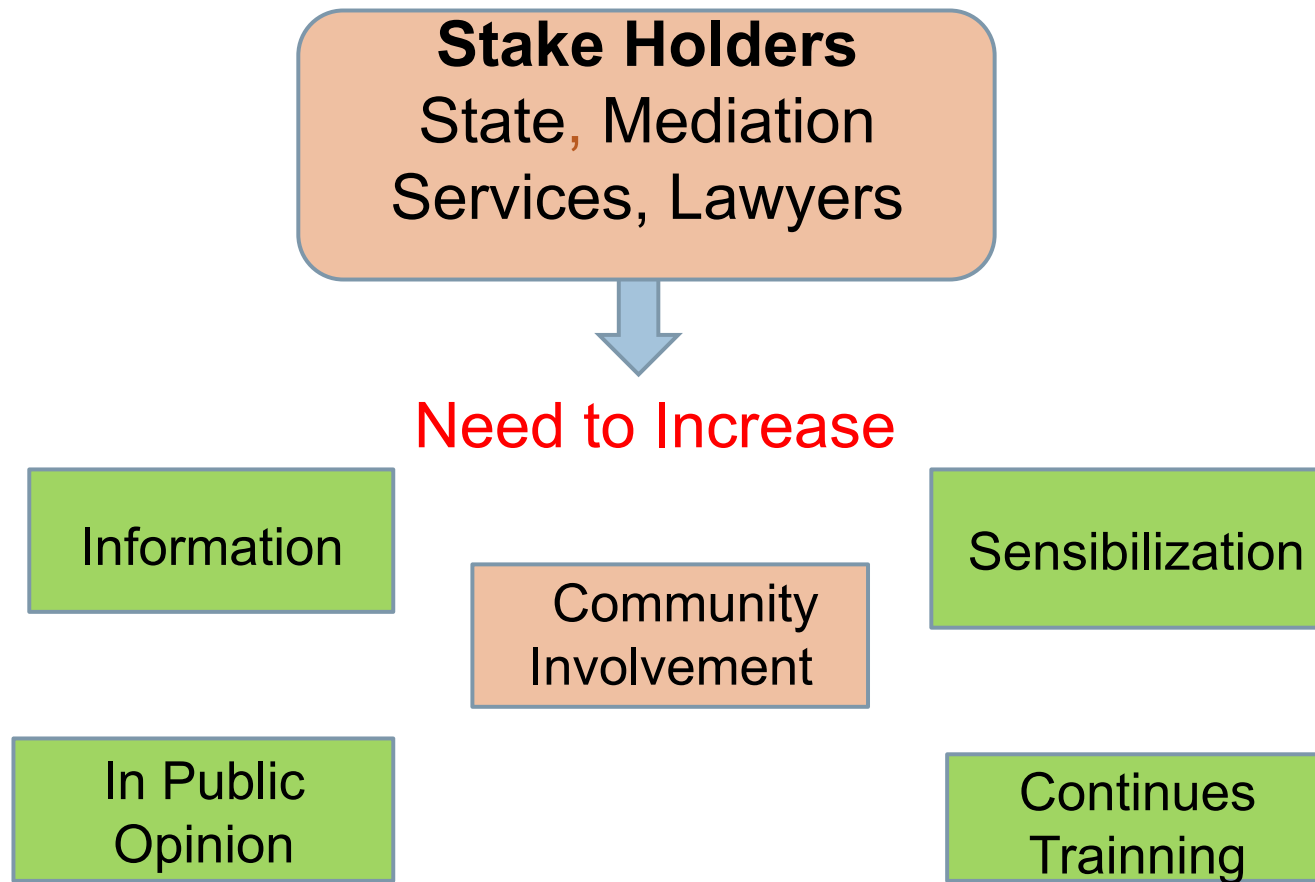
Restorative Practices: Difficulties in the Field

Police , Public Prosecutors, Judges
Lawyers, Community



- not always fully informed of mediation procedures;
- nor aware of the potential advantages of mediation;
- no addressed in their training or indeed in the course of their professional activity;

Reflexions for the Future of RJ in Portugal



“I want justice to be so pervasive that it will be taken for granted, just as injustice is taken for granted today”.

Gloria Arroyo

THANK YOU!



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