

MEDIATION IN BELGIUM: LAW OF 22 JUNE 2005 IMPLEMENTING MEDIATION IN THE CODE OF CRIMINAL PROCEDURE

According to the Belgian law of 22 June 2005, a mediation process can be started on the demand of persons who have a direct interest in a criminal procedure, and this is possible during the whole criminal procedure. Also mediation after trial, during sentence, is not excluded.

The explanatory memorandum of the new Belgian law refers to the attention for this matter on European level as we can see in the Recommendation N°R(99)19 of the Council of Europe. More in detail the explanatory memorandum refers to the Council (of the European Union) Framework Decision of 15 March 2001 on the standing of victims in criminal proceedings, stating in article 10 that "each Member State shall seek to promote mediation in criminal cases for offences which it considers appropriate for this sort of measure.", and that "Each Member State shall ensure that any agreement between the victim and the offender reached in the course of such mediation in criminal cases can be taken into account." Article 17 of the same Framework Decision states that "Each Member State shall bring into force the laws, regulations and administrative provisions necessary to comply with this Framework Decision, and more specific concerning article 10 before 22 March 2006:"

The law is based on the above mentioned European guidelines and the experimental practice of victim-offender mediation in Belgium since 1993, which has developed and established itself, during the years, nearly over the whole country as well in Flanders as in Wallonia. Driving power behind this evolution was the work of the non-governmental organisations "vzw Suggnomè" (for Flanders) and "asbl Médiante" (for Wallonia), both financed for the most part by the Federal Department of Justice and as to "vzw Suggnomè" also partly by the Department of Welfare of the Flemish Government.

Definitions of Mediation in the Belgian law of 22 June 2005

Mediation is a process that allows people involved in a conflict, if they agree voluntarily, to participate, actively and in full confidentiality, in solving difficulties that arise from a criminal offence, with the help of a neutral third person and based on a certain methodology. The goal of mediation is to facilitate communication and to help parties to come to an agreement by themselves concerning pacification and restoration.

Policy lines in the Belgian law of 22 June 2005

The documents and statements made during the mediation process are confidential, with exception of those matters in which the parties agree to notify the judicial authorities. When a judge is notified of certain elements with the agreement of the parties, he has to mention this in his verdict. The judge can take into account these elements and in this case also has to mention it in his verdict (notice the resemblance with article 10 of Council of the European Union Framework Decision of 15 March 2001 on the standing of victims in criminal proceedings).

Confidential documents and statements made during the course of the mediation that are communicated to the judicial authorities without the consent of both parties or on which one party bases its argumentation will be kept out of the judicial debates.

The mediator can't make public any facts that he takes cognizance of during the mediation process. He can't be called up as a witness in any criminal, civil, administrative or any other procedure concerning the facts that he has taken cognizance of during the course of the mediation process.

The Public Prosecution Service and the Judges see to it that all persons involved in a criminal procedure will be informed of the possibility to take part in a mediation process.

Deontological Commission and recognition of the mediation services

Mediators are embedded in mediation services that will be recognized by the Minister of Justice. A Deontological Commission will be founded to watch over a uniform conduct for all recognized mediations services.