

English summary

Victim-offender mediation in Sweden in the 21st century

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WHAT IS MEDIATION?

In general terms mediation may be described as a method of conflict resolution whereby two parties to a dispute attempt to resolve their differences together with an independent and impartial mediator. Victim-offender mediation differs from other forms of mediation in that a criminal offence has been committed by one person against another, which also means that what is to be resolved does not constitute a conflict in the conventional sense of the term.

Victim-offender mediation is for the benefit of both parties, and according to Swedish law its goal is to increase the offender's level of insight into the consequences of the offence, at the same time as the victim is provided with the opportunity to work through his or her experiences. The mediator's role is to help the parties to communicate with one another, and to ensure that a balance is maintained and that neither party is given offence.

Victim-offender mediation in Sweden is regulated by the Mediation Act (lag 2002:445 om medling med anledning av brott), which came into effect on July 1st 2002. The Act constitutes a piece of framework legislation and covers mediation organised by the state or by municipalities. The Act is primarily focused on young offenders. According to the Act, the offence must first have been reported to the police, and the offender must have acknowledged his or her guilt before mediation can be initiated. Participation in mediation is *always* voluntary for both parties. This is a necessary condition for a successful mediation meeting. Mediation does not constitute a penal sanction or an alternative to the regular justice system, but rather plays a complementary role. It is however possible for the prosecutor to

take the fact that mediation has taken place into consideration in relation to the prosecution of young offenders.

THE IDEAS BEHIND MEDIATION

Mediation is based on the philosophy of *Restorative justice*. A reparative system of justice, if it existed in practice, would differ from the existing system *inter alia* by making the parties involved the principal persons in the justice process, instead of giving them a secondary role in a process conducted by proxy. The offender acknowledges his guilt to the victim by means of a direct dialogue, and is given the opportunity to repair the damage he/she has caused the crime victim by making amends in some way. The ideas underlying the restorative justice philosophy began to emerge during the 1960s and 1970s in the western world, but have their origins in the methods of conflict management employed by aboriginal populations in for example New Zealand. Mediation is now employed across a large part of the world, both inside and outside Europe. In Scandinavia, mediation has been employed in Norway and Finland since the beginning of the 1980s.

THE EFFECTS OF MEDIATION

There is a good deal of research being conducted around the world into restorative justice and mediation. The experiences that have been acquired to date generally indicate positive effects for the victims of crime in the sense that their experiences of the mediation meetings are positive, and these meetings have served to reduce the negative emotional consequences of the crimes. Research findings show that mediation produces the greatest effect in relation to crimes involving a victim who has personally been violated in some way. The effects on reoffending among the perpetrators of crime are more complex and the research in this area gives a disparate picture, with some studies showing lower reoffending frequencies whereas others do not. Further, there are a number of methodological problems associated with studies of the effects of mediation, including the way different mediation programmes are formulated, the research designs employed and sampling and attrition problems. Taken together, the research conducted to date shows that mediation produces positive effects on reoffending for certain offenders, in connection with certain types of offence, and in certain conditions.

THE MEDIATION PROCESS

It is usually the police, and often the individual who has investigated the offence, who asks if the offender would be interested in mediation. If the youth expresses an interest, the case is forwarded to the mediation project, which is usually run by the municipality. The mediator then contacts the youth in question, describes what the mediation process involves and asks if he/she would consider participating in a mediation meeting. Thereafter, the crime victim is contacted and asked. The mediation meeting is normally preceded by one or more preliminary meetings with the victim and the perpetrator by themselves, during which the two parties are prepared for the

mediation meeting. At the mediation meeting, the crime is then discussed and the parties are given the opportunity to describe their own version of what happened. The offender, for example, is given the opportunity to explain how the offence came to be committed, what he/she was thinking, and also to offer an apology. The victim is given the opportunity to ask questions of the perpetrator and to describe how he/she has been affected by the crime. The possibility exists for legal guardians or other support persons to be present at both the preliminary meetings and the mediation meeting itself.

Certain mediation cases are concluded with an agreement on how the offender may make amends. This may involve some form of economic compensation, compensation in the form of work conducted by the offender, or a contract relating to future behaviour.

As a rule, mediation is conducted within the framework of the work of the social services, and social workers often carry out the tasks of the mediator as part of their routine work. Some mediation projects also employ laymen who are paid a fee for mediating on a per case basis.

THE TASK OF THE NATIONAL COUNCIL FOR CRIME PREVENTION

The Government has commissioned the National Council for Crime Prevention (Brottsförebyggande rådet – Brå) to develop mediation activities in Sweden so that they are conducted to a high quality and will in time become available throughout the country. This commission was assigned to the Council in 2003, and has since been renewed to cover 2004 and 2005. The National Council's task involves distributing financial support to municipalities to initiate or to develop existing mediation projects, to provide training for mediators and to assume responsibility for improvements in the methods and quality of mediation. The Government has to date devoted a total of 42 million SEK (approximately 4.5 million Euro) to this work.

THE STATE OF MEDIATION IN SWEDEN TODAY

The first mediation projects in Sweden were initiated at the end of the 1980s, but up until the end of the 1990s, mediation was conducted on only a limited scale. A trial scheme was initiated in 1998 which provided financial support to develop victim-offender mediation work in approximately 30 projects across the country. The trial scheme was directed by the National Council and was evaluated subsequent to the conclusion of the trial period.

Mediation is at present conducted in 154 of Sweden's municipalities, covering over two-thirds of the national population. Mediation projects vary both organisationally and in terms of their size – from small, individual municipalities to collaborative projects organised at the regional level. The mediation projects involve different collaborative partners, such as the police, for example, prosecutors, the social services, other local authorities, schools and victim support agencies. Cases are usually forwarded to mediation projects by the police or the social services.

Of the cases initiated by mediation projects, 74 per cent have been seen through to completion. In those cases where mediation is discontinued, this is usually because one of the parties changes his/her mind and does not wish to continue with the mediation process. The most common offence types in mediation cases are shoplifting, assault and vandalism. Other common offence types include various categories of theft, threatening behaviour, robberies from shops and muggings.

Most commonly, the cases involve an offender who has committed a crime against an individual victim. The majority of the offenders who have participated in mediation are between fourteen and seventeen years of age. Half belong to the group prioritised in this area by the legislator, i.e. those aged fifteen to seventeen. Two-thirds are boys/men, and one-third girls/women. The high proportion of girls/women is in part associated with the large number of shoplifting offences. In approximately 40 per cent of mediation cases, the victims have been private individuals. In the remaining cases, the victims have comprised companies, shops and stores or other public establishments. The crime victims comprising private individuals have been aged between six and 88 years. Slightly over half are boys/men, among whom the offences are most commonly assault, harassment and threatening behaviour. Of the cases going to mediation, 40 per cent have been concluded with some form of contractual agreement. The majority of these contracts relate to future behaviour, but contracts specifying financial compensation or work are also common. Contracts involving financial compensation most often relate to compensation for objects that have been destroyed or stolen.

MEDIATION IN THE FUTURE

Many municipalities are too small to be able to conduct a mediation project of their own. In order to produce a high-quality and effective mediation organisation, it would be appropriate for small municipalities to establish collaborations with one another. It is also important to find good, sustainable structures that are not dependant on a single individual to carry out this work. Police and prosecutors are very important for the establishment of mediation and it is therefore important to find functional ways of collaborating with these actors. The Mediation Act allows for the use of mediation in relation to the majority of offence types, although victimless crimes, sexual offences, and serious acts of violence against close relations are deemed to be less appropriate. Scientific studies show that the best results are produced in relation to offences where there is a victim who has personally been violated by the offence. This means that mediation projects should primarily be focused on offences of this kind.