

Bulgaria on the road to victim-offender mediation

FINAL AGIS SEMINAR- SOFIA, BULGARIA

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[Background information:]

- Although in the last decade mediation in all fields (civil, labour, penal matters etc.) has had numerous proponents in academic circles and non-governmental organizations (NGOs), and has won recognition in wider society, it only recently began to attract the attention and support of policy makers and members of Parliament, and not without a push from outside.

[Background information:]

At the same time, generally recognised was the fact that the existing justice system in Bulgaria:

- is far from efficient,
- does not function in a satisfactory way, and
- is in need of a change.

[Background information:]

- However, in 2003 the Government adopted a Strategy for Judicial System Reform representing a *condicio sine qua non* (a prerequisite) for the Bulgarian membership to the European Union.
- A notable point in this strategy was the establishment of a whole system for alternative dispute resolution (ADR).

[Good news:]

- Almost at the end of the mandate of the 39th National Assembly, and only following great efforts, the Mediation Act (2004) was eventually approved.

[Rationales for delaying:]

- resistance encountered from some legal operators - there remains considerable opposition within the judiciary toward alternative dispute resolution methods, based on a fear that legal practitioners will have to surrender some of their professional territory and practical power;
- lack of information;
- lack of financial and human resources, etc.

The same applies to restorative justice practices.

Catalysts of the process:

- Council of Europe recommendations on mediation in penal, civil, family and administrative matters and the relevant EU and UN instruments;
- Regular progress reports of the European Commission on judicial reform (leading up to Bulgarian accession to the EU);
- Support received from some international NGOs (EFVOMRJ and AGIS Project).

[Main engine:]

- NGOs;
- Academics:
 - who had already done considerable research work and started pilot projects and training within a legislative vacuum,
 - in the face of resistance from many legal professionals.

[Mediation Act (2004)]

- is an enabling, organizational act - it allows mediation practice to enter into many areas of the Bulgarian legal system.
- According to article 1, mediation is a legitimate alternative method for resolving legal and non-legal disputes.

[Scope:]

- Mediation can be used in civil, commercial, labour, family and administrative disputes; disputes related to consumer rights and other disputes involving natural and/or legal persons.
- NB!!! Mediation shall be performed also in cases envisaged in the Penal Procedure Code (victim-offender mediation).

[By-laws:]

- As the Mediation Act is itself relatively short, a number of by-laws were issued in order to create all the necessary prerequisites for the implementation of mediation in practice.
- The Training Standards for Mediators, Procedural and Ethical Rules of Conduct for Mediators and Rules Pertaining to the Unified Register of Mediators have been recently approved by the Minister of Justice responsible for the implementation of the law.

[Follow-up steps:]

- Whilst mediation in civil, commercial, labour and family law can be immediately applied even without extra legislative interventions, mediation in penal matters cannot be practiced yet.
- Further amendments to the Penal Code and Penal Procedure Code will first be necessary.

[Follow-up steps:]

- Concerning the forthcoming adoption of the new Penal Procedure Code, a team of scholars from the Southwest University “Neofit Rilski” – Blagoevgrad, the New Bulgarian University – Sofia and the Institute for Conflict Resolution – Sofia, and legal practitioners launched a survey amongst the criminal justice authorities regarding the applicability of mediation in the Bulgarian criminal justice legislation and practice.

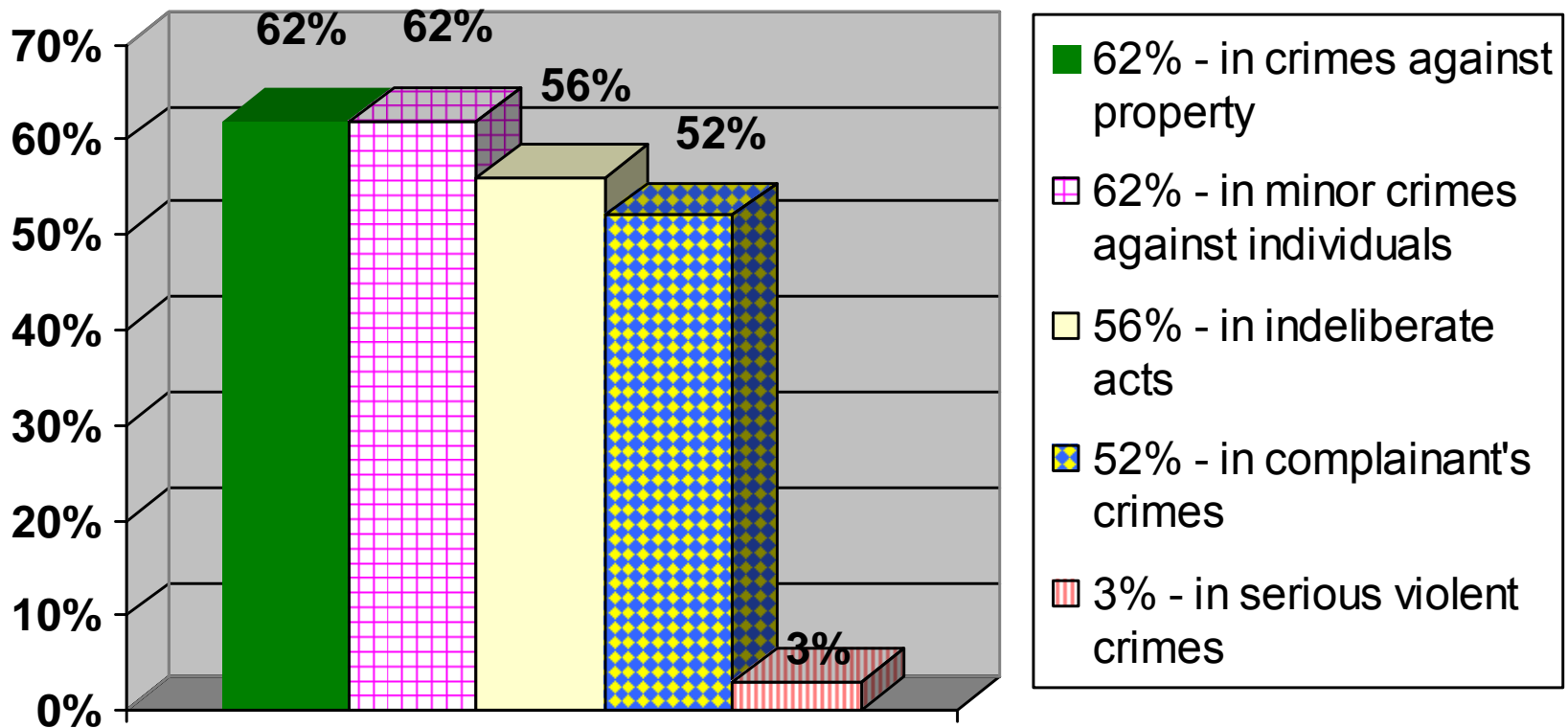
[Survey:]

- The survey, conducted in the period June-July of 2005, covered 100 judges, prosecutors, investigating magistrates, preliminary investigators and lawyers from Sofia, Blagoevgrad, Plovdiv and Varna and the respective court districts.
- Summary of the responses:

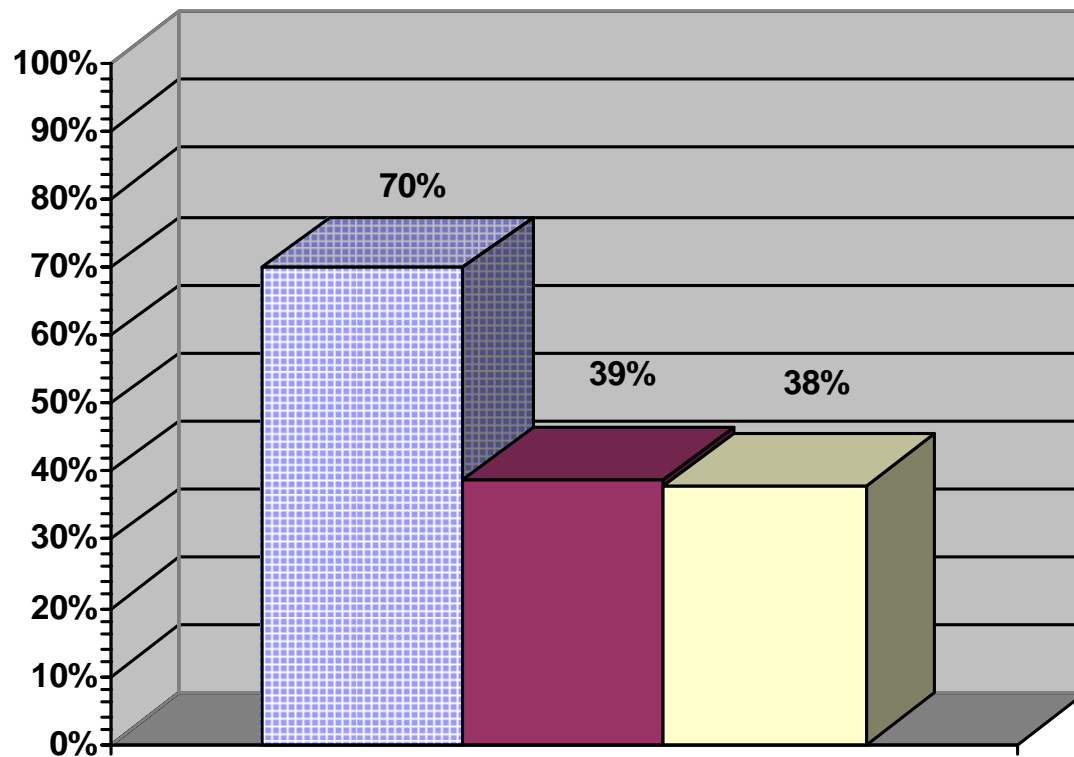
[Question 1:]

- Which types of cases are appropriate for resolving through mediation between the victim and the offender?

a/ Concerning the type of crime:



b/ Concerning the offender:

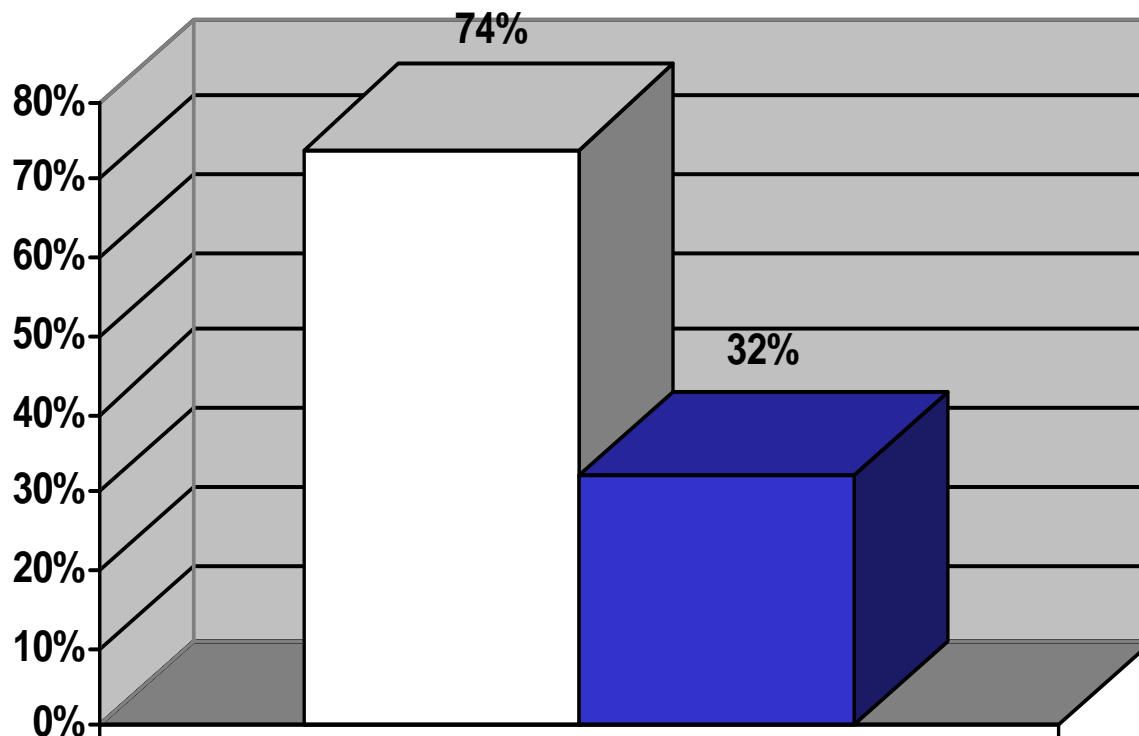


■ 70% - when willingness and possibility for the restoration of the harms of the crime are present

■ 39% - when the crime is the first anti-social act of the offender

■ 38% - when the offender is juvenile

c/ Concerning the victim:

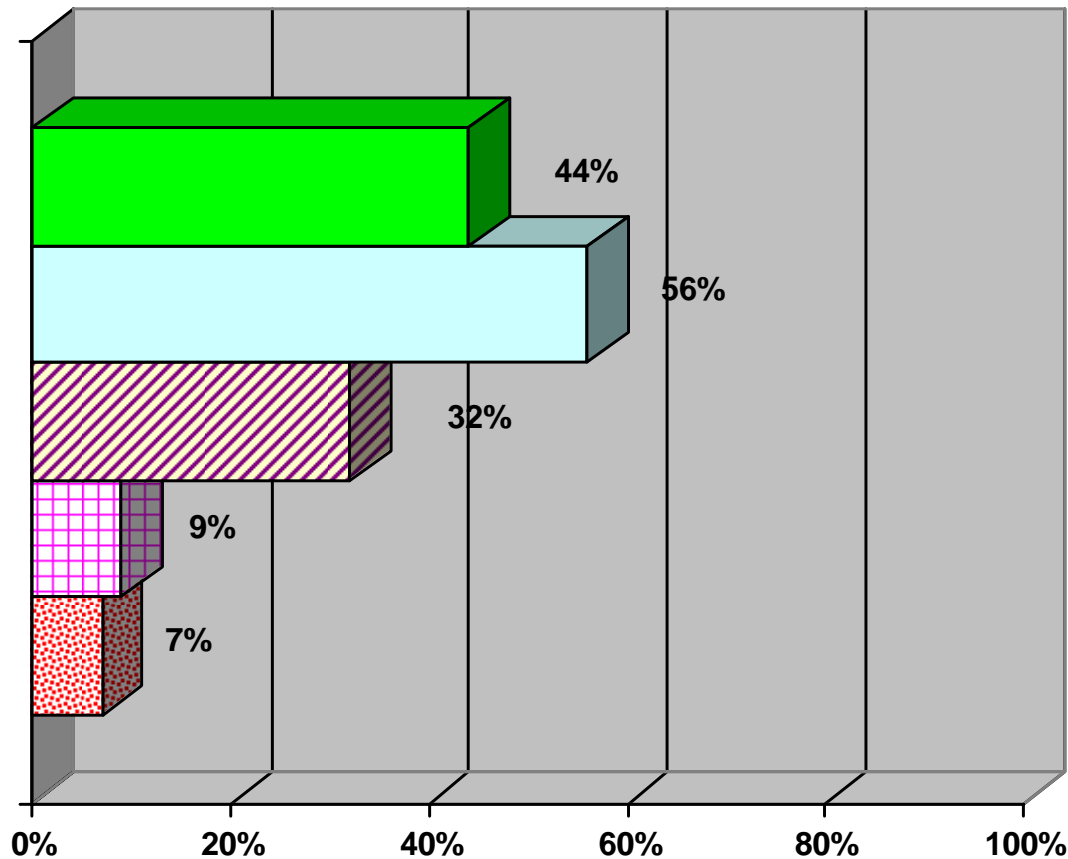


□ 74% - when primarily material damages have been inflicted on the victim

■ 32% - when the victim has undergone emotional and psychological stress

Question 2:

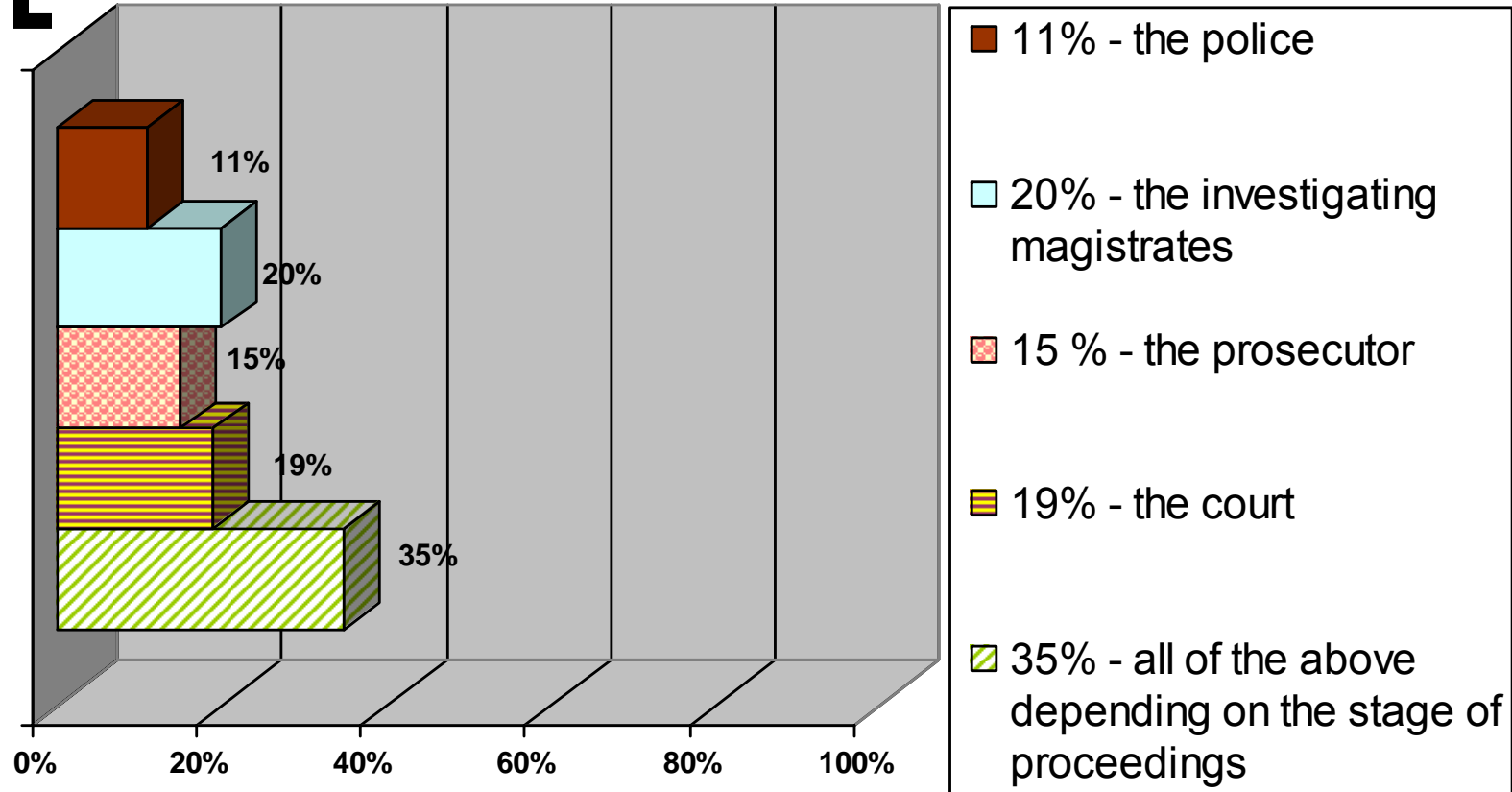
When in time can a given case be referred to mediation procedure?



- 44% - right after the receiving of preliminary information
- 56% - at any stage of the pre-trial proceedings
- 32% - at any stage of the trial proceedings
- 9% - after the trial proceedings
- 7% - at any stage

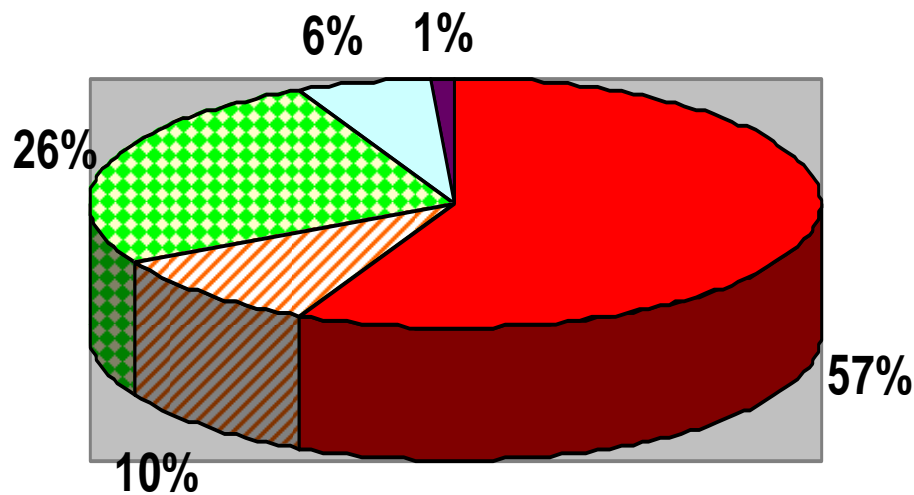
Question 3:

Who should have the authority to decide whether a given case is appropriate for mediation?



Question 4:

When in time do you see mediation introduction into the Bulgarian criminal justice system?



■ 57% - immediately

▨ 10% - in 1-2 years

■ 26% - in 5 years

■ 6% - in 10 years

■ 1% - I cannot say

Many other questions were
also asked:

- The responses, the majority of which definitely supported mediation, were summarized, analyzed and submitted to the attention of the Ministry of Justice and Parliament.

[Publicity:]

- A comprehensive article was published in the national daily newspaper “Trud” on September 12, 2005, which discussed the advantages of the implementation of VOM.

[Proposals de lege ferenda:]

- Based on the survey and the academic research of the members of the Institute for Conflict Resolution, proposals for the future legislation regarding VOM introduction were developed.

[Further steps:]

- The proposals were officially filed with the Bulgarian Parliament, incorporated in the main draft of the Penal Procedure Code and are subject to consideration.
- Lobbying in support of VOM is ongoing.

[In a way of conclusion:]

- It is certainly time for great excitement and promise for victim-offender mediation in Bulgaria!

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Thank you for your attention!!!