



AN OUTSTANDING JUDICIAL  
ALTERNATIVE: MEDIATION INSTEAD  
OF LEGAL PROCEDURE. *Jean-Pierre Rammant,*  
*vennoot Inter Partes Mediation*

*Belgium has an unusual high amount of judicial procedures; this leads to important costs for companies. An alternative for dispute resolution exists, to avoid the legal procedures effectively with lesser costs and faster: mediation!*

**Belgium at the top in Europe for number of judicial cases per resident:** each year, 7 on 100 residents start a judicial procedure, only for civil or commercial disputes. This number does not count the family conflicts (divorces) or social conflicts (dismissals) and also not the collection of unpaid invoices. Our surrounding countries have different statistics: in Germany there are 2 judicial cases per 100 residents, in Netherlands this is even less: 1 upon 100 residents. Consequently there are many more lawyers in Belgium, approximately 15 per 1.000 residents, more than double than the number in the neighboring countries.

The federal government, led by the minister of Justice Koen Geens, wants to decrease drastically the judicial costs. Koen Geens: “I want to give mediation a fully fledged role within jurisdiction. Mediation as a method for dispute resolution needs our support. A stimulus at various levels is necessary and will get my support. The conflicting parties must know the alternative dispute resolution technique. We need to lower access to mediation”.

When the parties come into dialogue to resolve a conflict, instead of claiming a judgment at a court, the negotiated solution has a lot more strength. The outcome is a compromise between the parties themselves, and not an imposed solution by a judge. Mediation leads to well-balanced sustainable solutions for conflicting interests.

*How does mediation work in practice?* The mediation methodology is applied to achieve a friendly settlement out of court by a series of conversations and negotiations between the parties in front of a mediator.

**The basic principles of mediation** consist in: the parties stay a negotiation course at their own free will; all discussions are confidential; the parties engage themselves to actively participate in a constructive way; the counseling is done by an independent, impartial and neutral mediator.

**The mediation process consists of joint conversations of the viewpoints of the conflicting parties;** the interests of each party (conflicting, parallel or reconcilable) are put on table, the options to get alignment are discussed, the solutions are worked out and a final agreement is signed.

In a mediation process a lot of **conflicting viewpoints and emotions** are put on table. Therefore it is important that a well trained mediator is steering the mediation process (not the solution, which has to come from the parties themselves). He applies various **negotiation techniques** and **stimulates the communication** between the parties.

Each party (also the mediator) may leave the table at any moment if it appears that one of the parties does not respect the principles of the mediation process. During the process the dispute can be adjourned (e.g. due to a judicial procedure). If the mediation process fails, then the legal procedure (or claim) can be continued or started. The information, gathered during the mediation talks, cannot be applied in a legal procedure.

Each party may be accompanied by a trusted representative, most likely a lawyer or a technical advisor. A judicial mediation with a signed agreement has the same importance as a court order, since upon homologation the agreement is enforceable by law.

## **Is mediation leading to success? What does it cost? How much time takes mediation?**

A mediation barometer was developed by bMediation, the University of Ghent and the Federal Mediation Commission. A recent poll (February 2016) has learnt this:

- 75% of the mediations are voluntary between companies, the remaining 25% are imposed by a judge.
- Practically 70% of all mediations in commercial conflicts lead to a signed agreement and thus solution of the conflict. The solution is accepted by each party, there are no winners or losers.
- The mean duration of a mediation is 2,5 months, from the start of the mediation till signing the agreement (or ending the mediation); mediation is a matter of months while judicial procedures before a court takes ... years.
- The mean time that parties sit together at the mediation table is 12 hours.
- The total cost of a mediated solution is less than half, even often only a fraction of the cost of a legal procedure before a court.

Resolving a dispute by mediation is many times more favourable than following a judicial court case. The short duration of the conflict is important for companies since they get certitude of the outcome of the conflict. In many cases the relationship between the conflicting parties is restored during the mediation, through which a new business cooperation is possible again.

### **Experience from abroad?**

Following the example of the USA, U.K. and Netherland have promoted intensively mediation for alternative dispute resolution. Since 2008 an European Guideline exists that imposes each European country to take mediation in the national legislation. The low number of judicial court cases in Netherlands is the excellent results of applying mediation. In France and Germany the trend is following ... now it is time for Belgium.

**How to start?**

At first it is advised to take up in the general terms & conditions for business transactions that in the case of conflict in the first place a voluntary mediation is started, supported by an external registered mediator (or mediation team). If a conflict ends up before a court, then a company can always propose a mediation process to the opposite party. If a mediation does not succeed, each party can proceed with a legal court case.

More info is to be found on this website or contact Jean-Pierre Rammant / [jp.rammant@interpartes.be](mailto:jp.rammant@interpartes.be) the author of this text and partner in Inter Partes Mediation.