

Mediation slowly gains acceptance

Advocates say the process could relieve overburdened courts

By Vanessa Bulkač
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Mediation, a way to settle penal affairs out of court to the satisfaction of both victim and offender, can take pressure off a badly overburdened judicial system and help foster joint-party solutions within a much shorter time period. Skepticism on the part of the general public, judges, police and prosecutors, however, is making this potentially beneficial service underutilized, according to some experts.

The concept of mediation has existed in an official manner for less than a decade in this country. Last year, out of 30,000 court cases filed, only 1,200 were diverted to mediation.

"Reaching a consensual solution between both sides, i.e., between the offender and the victim, is something many policemen, prosecutors and judges still have to come to terms with," said Pavel Stern, Director of the Probation and Mediation Services Department (PMS) of the Justice Ministry.

Lenka Ouradnickova, project manager and vice chair of the Association for Probation and Mediation in Justice, agreed.

"There are two or three companies in the Czech Republic offering private mediation services, but they don't get enough business," Ouradnickova said. "People trust lawyers more than mediators."

Ouradnickova's organization was involved in establishing the pilot program for mediation services in conjunction with the Justice Ministry, in the mid-1990s. Despite battling continued skepticism, the industry has experienced some growth since its birth, according to Ouradnickova.

"Mediation has grown a lot in 10 years," she said. "The philosophy toward helping and providing social services has changed tremendously in the country in the last decade."

Stern said, "We Czechs should learn how to solve conflict situations in a more consensual way in general than we do at present, which would ultimately lead to an increase in mediation."

Raising awareness

But according to Barbara Ashley Phillips, an American mediator living in Alberta, Canada, and founder of the North American Institute for Conflict Resolution, some West European countries such as Germany have also only introduced mediation into the judicial process in the last decade. Germany faces the same issues as the Czech Republic, in terms of gaining momentum for use of the services.

Both Ouradnickova and Stern see some practical ways to get more parties to choose mediation. "Good cases where all parties were satisfied need to be publicized," she said. "It's surprising, but victims and offenders are usually quite happy to meet each other and talk in criminal mediation cases."

Stern agreed it is beneficial for offenders and victims to meet one another. "Mediation can serve a significant correctional role for offenders because they are directly confronted with the consequences of their actions," he said.

Stern also cited the need for the involvement of the entire judicial system. "The information should be provided by all branches of the judiciary, not just PMS." Stern went on to point out some recent improvements in interdepartmental coordination, stating, "Our cooperation with the police has greatly improved. The police now inform both offenders and victims about mediation much more than they used to."

Phillips agreed that overcoming "institutional drag" is one of the first steps to gaining greater acceptance for mediation services.

"If you had to devise a system to get a dispute from the filing stage to resolution, would you have invented the justice system? You can't answer yes to that question," she said, adding that there are many ways courts can be supportive of the process, such as when judges suggest mediation or ask people why they have declined to use the service.

One issue that must be dealt with before there can be a significant increase in the use of mediation services is the lack of available staff in PMS to deal with new cases.

"The PMS has 174 specialists for the mediation of penal affairs," Stern said. "Last year we had more than 1,200 cases diverted from the court system [to mediation or probation]. This staffing does not allow for an increase in any type of mediation cases."

Help may be on the way, though, as new Justice Minister Pavel Nemeč has cited the strengthening of probation and mediation services as one of the ministry's top priorities.

Phillips said there is reason to be optimistic. When you get to start the system from scratch as in the Czech Republic, she said, "You don't have to make the same mistakes everybody else did. You can shape the field ... and create a process that benefits the people the most."

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