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**NEW LAW ON VICTIM-OFFENDER MEDIATION IN
FINLAND; ADVANTAGES AND RESTRICTIONS**

**Presentation of Victim-Offender Mediation in Finland including
new legislation, institutional framework of mediation and
Some statistics**

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Briefly on history

- First mediation project started in the City of Vantaa in 1983 (financed by the Academy of Finland, Ministry of Justice, City of Vantaa and Lutheran Church)
- Ideas from Norway, USA/Canada – based on Nils Christie's ideas
- Criticism towards the classical criminal justice approach, the lack of rehabilitation and reform work (punishment was not at all an answer to crime)
- At the time Finland had its own the same number of prisoners as all the other Scandinavian countries put together
- services mainly by cities and municipalities – other organisations (NG's) also provided mediation services, paid by the municipalities under various arrangements

Expansion

- 1990; 25 cities and municipalities, 1991; 40, 1994; 120 and 1996; 175 → 75 % of the Finnish population had a chance to engage in mediation
- since 2000 the numbers came down; cities financed mediation **voluntarily** and all cities couldn't provide it; every fourth case was mediated in Helsinki
- *Startpoint to the legislation? → State Prosecutor protested 2001 that the availability of mediation was unfair; some residents had opportunity to mediate and some didn't*
- *There were also protested on quality on mediation; truly there were not enough staff in mediation offices and training of mediators was insufficient*

Legislation on Mediation

- → **The purpose of the new Law in Finland is to extend mediation to cover the entire country so that it is possible to have the opportunity to obtain good-quality mediation service regardless of the place of residence**
- **THE LAW ON MEDIATION IN CRIMINAL AND CERTAIN CIVIL CASES (1015/2005) since 1.1.2006**
- The Victim-offender-mediation is for now being organised by the State Provincial Offices (five in total)
- Generally administered and monitored by the Ministry of Social Affairs and Health.
- The services are provided by municipalities or any other public or private service providers according to a commission agreement made with the State Provincial Office.
- The law guarantees that all citizens have possibility to mediate

Availability of mediation

- By the law mediation in penal matters should be a generally available service and mediation should be available at all stages of the criminal justice process
- In practice, in Finland, mediation has rarely been used after the court handling



25 mediation offices in total →
there are about 90-100
mediation co-ordinators
or advisors working
as recruited staff members.
The number of volunteer
mediators is currently
about 900

Financing and Aims

- The annual budget of the mediation service is 6,3 million €
- It will be distributed for central regional offices (17) according the population, crime rates and geographical distances
- 12 000 mediation cases per a year
- 2500 well-trained mediators

How does the mediation process start?

- If the police or the prosecutor assesses that any case, which they are dealing with, is eligible for mediation, and if the general conditions are filled, they are, according to the law, *obliged to inform the parties of the possibility of mediation and also refer the case to mediation.*
- A part (or their parents) in a criminal case or a dispute may also take the initiative by contacting mediation officials or informing the police officers that they are willing to mediate
- Social workers refer certain cases for mediation

Restriction 1: Preconditions

- ” Mediation may be carried out only between parties that have personally and voluntarily expressed their agreement to mediation and are capable of understanding the meaning of mediation and the solutions arrived at in the mediation process. Before the parties agree to mediation, they must be explained their rights in relation to mediation and their position in the mediation process”

Restriction 2. cases

- **Basically no limits how serious cases, ages etc.**
- **BUT:**
- **In domestic violence (family violence) mediation is allowed only in cases referred by the police and the prosecutor**
- **If domestic violence is repeated or parties are striving for mediation repeatedly in these kind of cases, mediation is denied**
- **Sexual crimes, where a child is a victim, mediation is absolutely denied**

Restriction 3: damages and disputes

If case is such that there is no chance to mediate also mediation on damages is denied in this case

In disputes mediation is allowed only in cases where another party is a person and the case is slight

If the case has come for mediation directly from the parties themselves the case must be always referred to the police or to the prosecutor

RESTRICTION 4: CHILDREN IN MEDIATION

- If a child under 18-years or a minor person who have a trustee is a would-be party of mediation he/she must have a consent for mediation from his/her parent or guardian
- If a child under 15 years have got a consent for mediation a parent or a guardian have a definit right to participate mediation session
- Young person (between 15 and 17 years) can participate mediation session without parent or guardian - but a parent / a guardian have right to participate
- If parties do not find consensus on participation the mediator decide the question

RESTRICTION 4: CHILDREN IN MEDIATION

- **If a parent / guardian does not accept the decision made by the mediator he/she can appeal to the administrative court**
- **If parent or guardian disturbs or offends mediator somehow in above-mentioned cases he/she must be pull out of mediation session**
- **In all "minor-person" cases a parent or a guardian must sign mediation agreement - without this an agreement is not valid/official**

DUTIES FOR THE MEDIATION OFFICE

- 1) Nominate a mediator who is suitable for the task on the basis of his/her experience and personal characteristics and is not incapable in the manner referred to the Administrative Procedure Act
- 2) With the relevant parties' agreement, obtain documents necessary from the police or prosecuting or other official authority
- 3) Decide if the case is valid for mediation

DUTIES FOR THE MEDIATION OFFICE

- 4) Register written decision on mediation, either positive or negative. In case of negative decision unsatisfied parties can appeal on the decision to the administrative court
- 5) Ensure the provision of an interpreter or translator if a party does not have a knowledge of language or for some other reason cannot understand the discussions held in the mediation process
- 6) After mediation, inform the police or prosecuting authority on the mediation process and its outcome, notwithstanding the provisions on secrecy.

Conditions for acting as a co-ordinator

- “Persons in charge of mediation services and mediation advisors must have **an appropriate academic degree**. If there is a special reason, other persons with good knowledge of mediation services and of related planning and supervision may be accepted for these duties. Persons who have completed introductory training in mediation services and otherwise have the education, skill and experience required for the appropriate handling of the duties may also act as co-ordinator”
- For example in Helsinki there’s a head of mediation unit, social worker, 6 councillors, secretary and an attendant for security

Voluntary mediators

- **Different backgrounds; all ages, women and men, highly educated, students, office workers, pensioners, immigrants etc.**
- **They must have at least a basic training course of 30 hours for mediation and such skills and experiences which are inevitable for taking care of the cases correctly (recommendation: studies in e.g. jurisdiction, social sciences, psychology or social work)**
- **Activity varies based on how much time they have – how they can engage**
- **They have several interests; some take family violence cases, some cases of young offenders, refugees, multicultural cases etc.**

Voluntary mediators

- **They must mediate at least 5 cases per year – some take even 50 cases**
- **Aim is that they always mediate in pairs**
- **Expenses are covered – (also travel expenses for example in Northern Finland - in areas of long distances)**
- **Motives: they want to engage in order to complete their education and "jobskills" and in order to get a new social society for themselves**

DUTIES OF MEDIATORS

Mediators must:

- 1) arrange mediation meetings between the parties;
- 2) conduct the mediation without bias and respecting all parties;
- 3) help the parties to find mutually satisfactory solutions concerning the crime in order to redress the mental and material harm the victim has suffered because of the crime;
- 4) give the parties information on available legal assistance and other services;
- 5) draw up a document on the agreement reached by the parties in the mediation process and verify it with a signature; and
- 6) after mediation, submit a report on the mediation process to the mediation office.

Confidentiality of mediation

- **Mediation sessions are not open for the general public**
- **All participants in mediation are obliged to professional secrecy**
- **Parties of mediation are not allowed to appeal or inform anybody on anything what has been said in mediation - except if another party gives a consent for this**

Confidentiality of mediation

- Parties cannot summon mediator to court as a witness
- If mediator commit against these rules he/she will be summoned to court for committing malfeasance (= "offence in office" according criminal law)
- And finally: only a prosecutor can summon mediator to court as a witness if this will be advantage for offender (in complicated cases where guilty of offender is uncertain or obscure)

Influence of mediation

- **Mediation does not resolve the question of guilt. The question of guilt is always determined finally in the court proceedings.**
- **In referring cases for mediation police and prosecutor consider that the case is quite clear**
- **The outcome of mediation **can** have a remarkable impact on the legal standing of the parties**

Influence of mediation

- Before understanding this we must know that we have two basic categories of crimes in Criminal law:
 - a) **complainant crimes** and b) **crimes under public prosecution**
- **Complainant crimes e.g.:** slight thefts, shoplifting, slight vandalism, slight battery, insulting somebody's honour (=slander)
- **Crimes under public prosecution: others than mentioned above i.e. more serious crimes**
- If a victim in complainant crime waives prosecution e.g. because of successful mediation, the prosecutor does not have power to prosecute

Influence of mediation

- Since 1997 mediation agreements might constitute grounds for waiving prosecution also in crimes under public prosecution
- Argument for this: Law on process in criminal cases (**1. Chapter, 8 §**) **An agreement between offender and complainant can be taken into account in considering the charge**

Influence of mediation

- Mediation is also laid down as a factor **mitigating** or **change the punishment** or **waive the sentence** in the court when the provisions concerning the general principles of the Penal Code are revised (Act Amending the Penal Code, 515/2003).

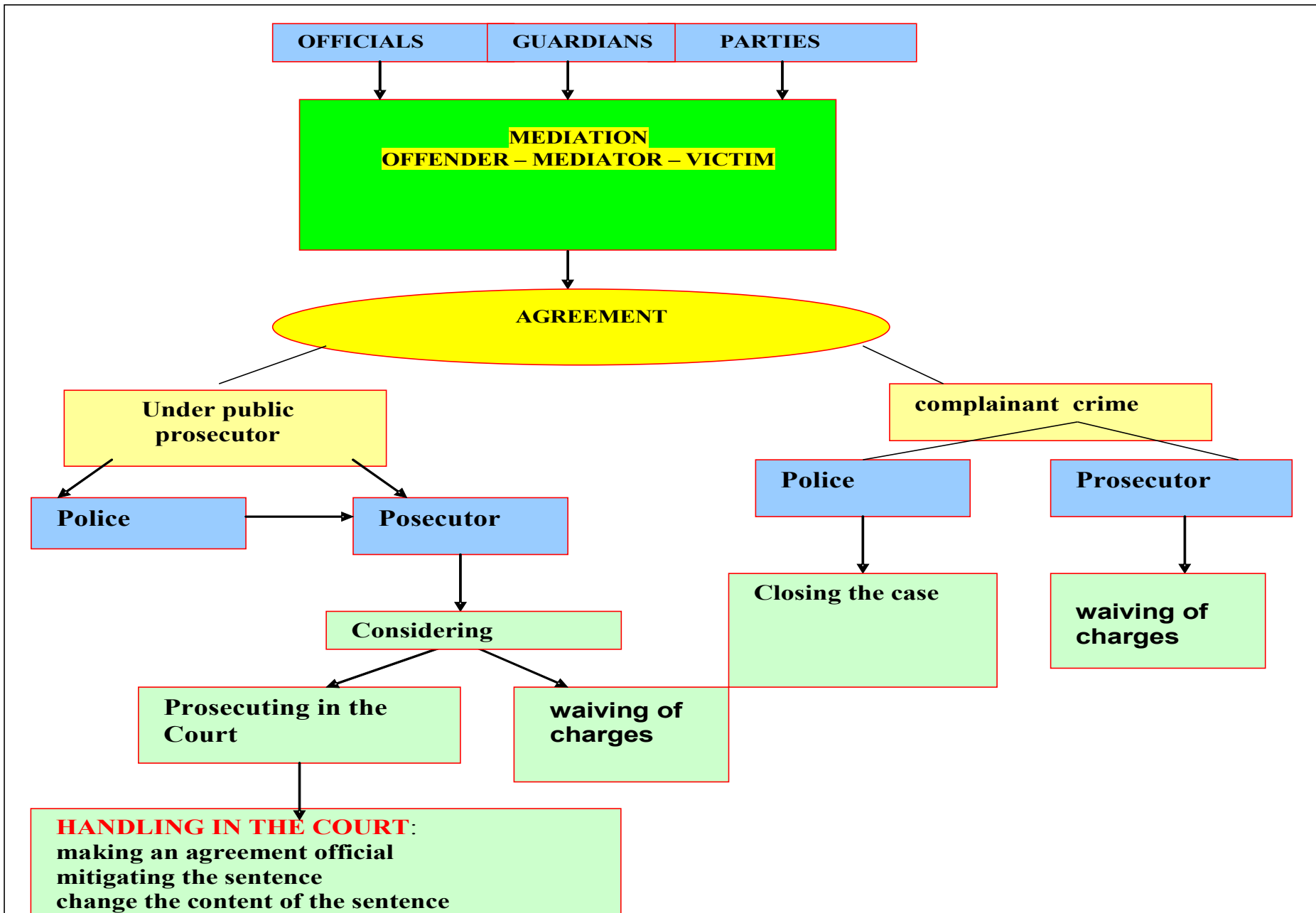
So,

Mediation **CAN** be taken into account; not **MUST** be taken into account in crimes under public prosecution

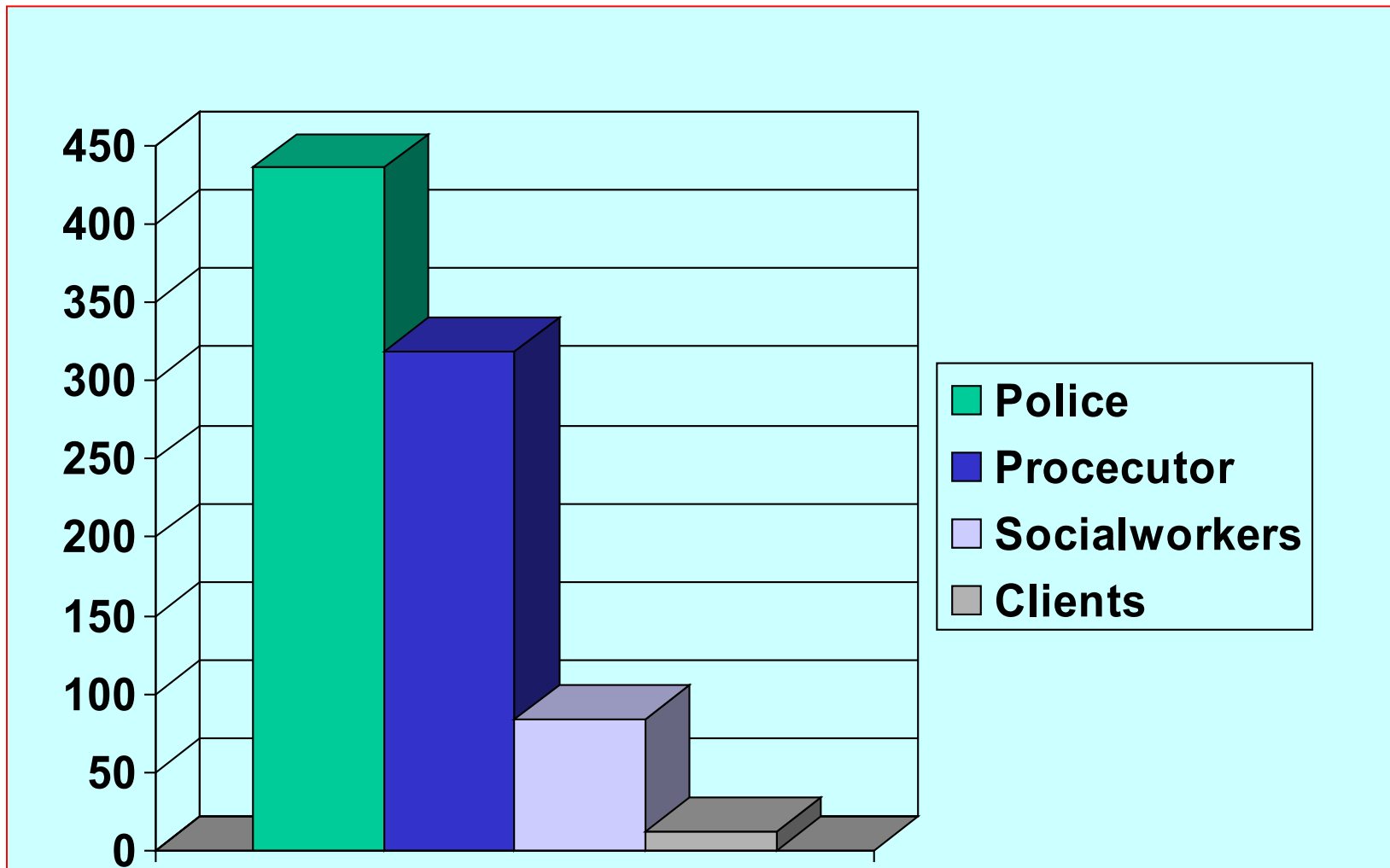
Influence of mediation

- Mediation process does not overrule the right of decision of the prosecutor or the court.
- So, mediation service can **never** make “a promise” to the offender that the case will be dismissed or the sentence will be mitigated although the mediation process would be successful.

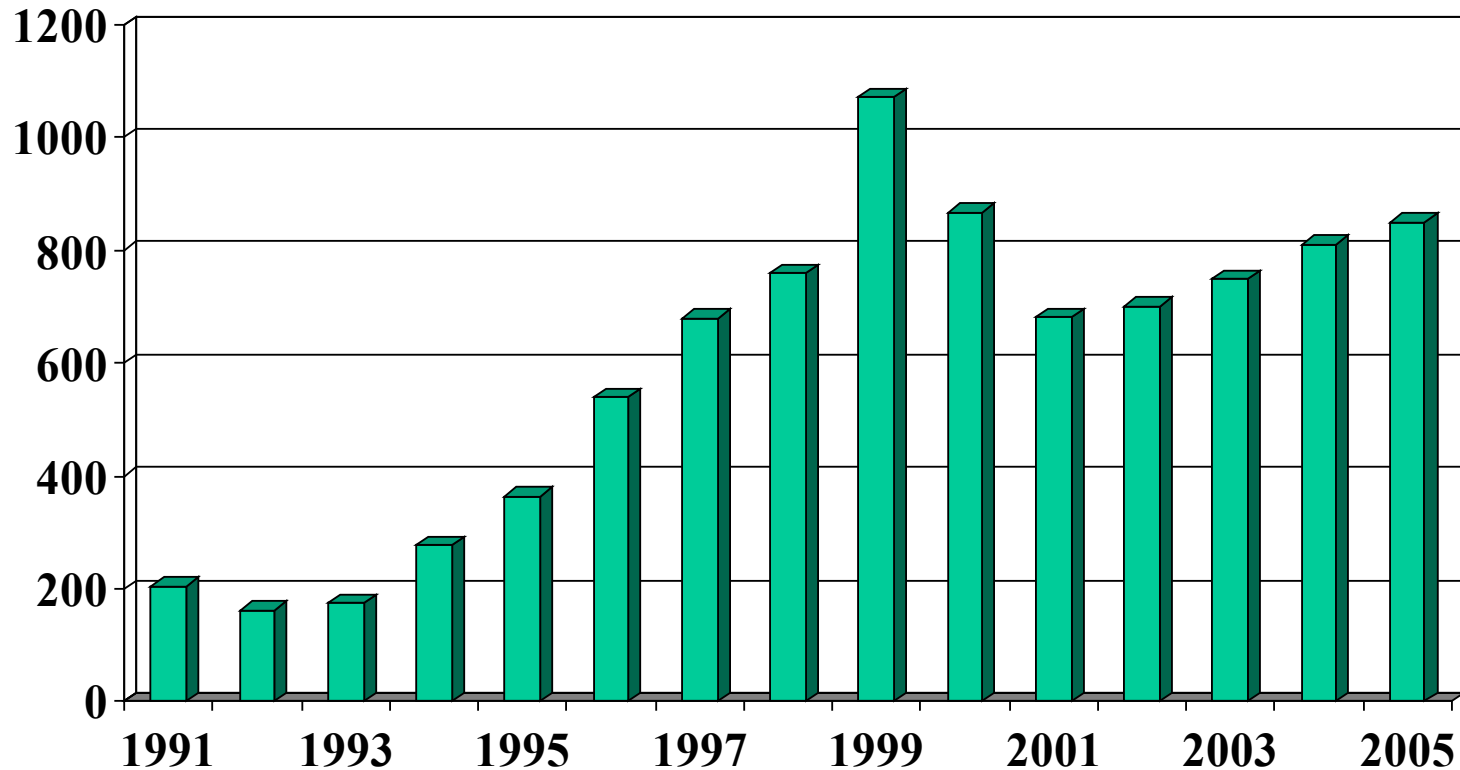
PROCESS OF MEDIATION - SCHEME



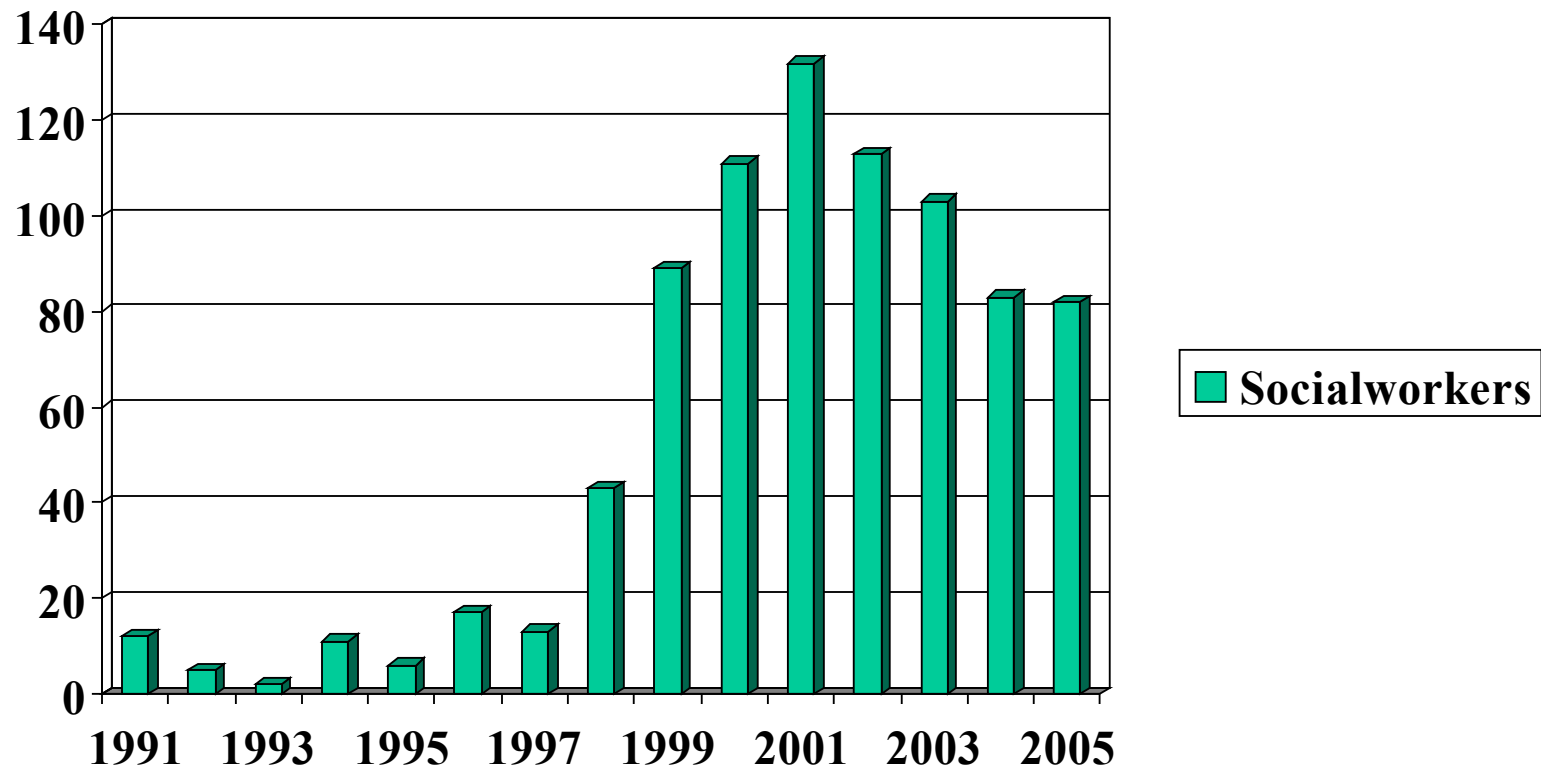
Some statistics 1: from where the cases come?



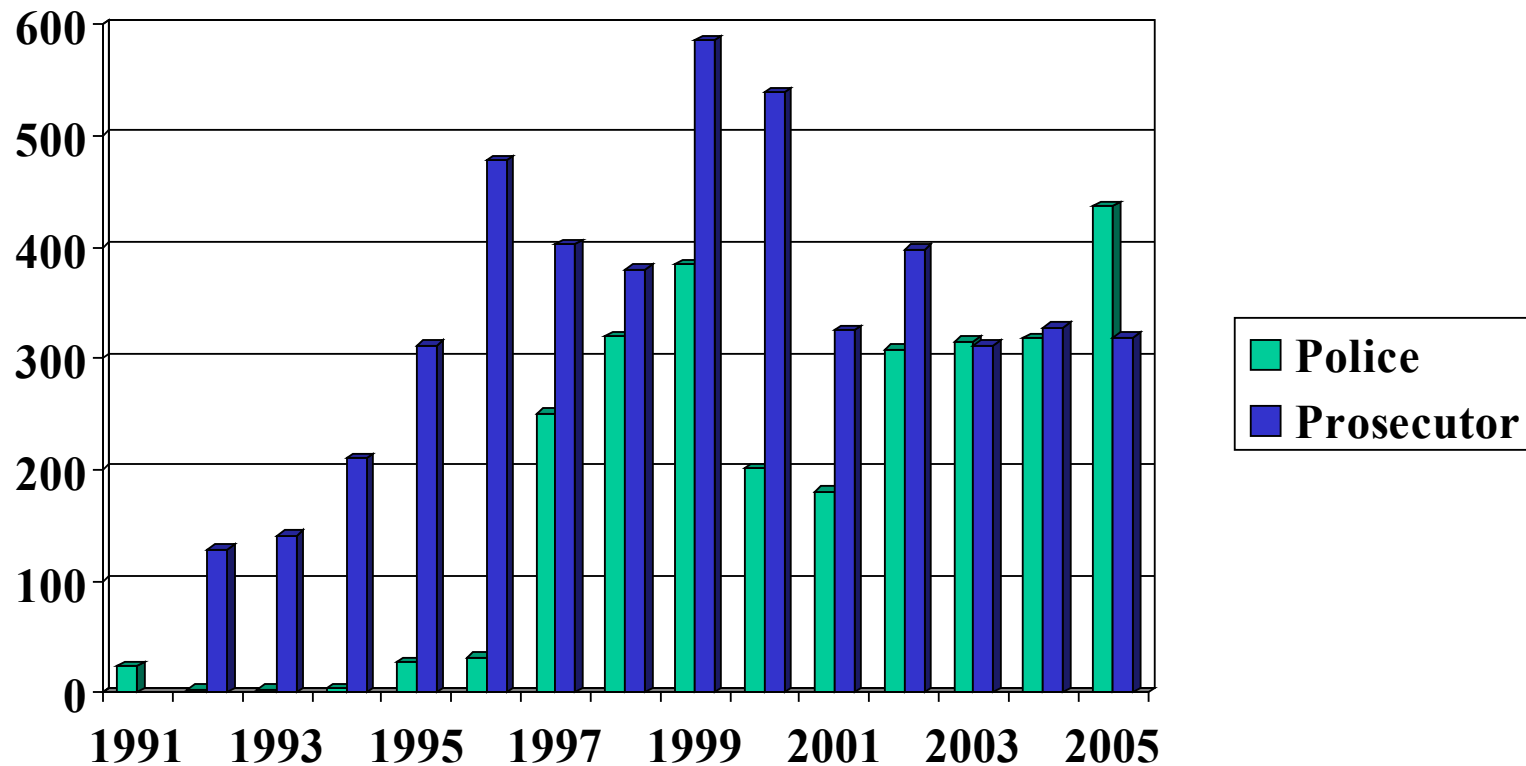
Some statistics 2: All cases 1991-2005 in Helsinki



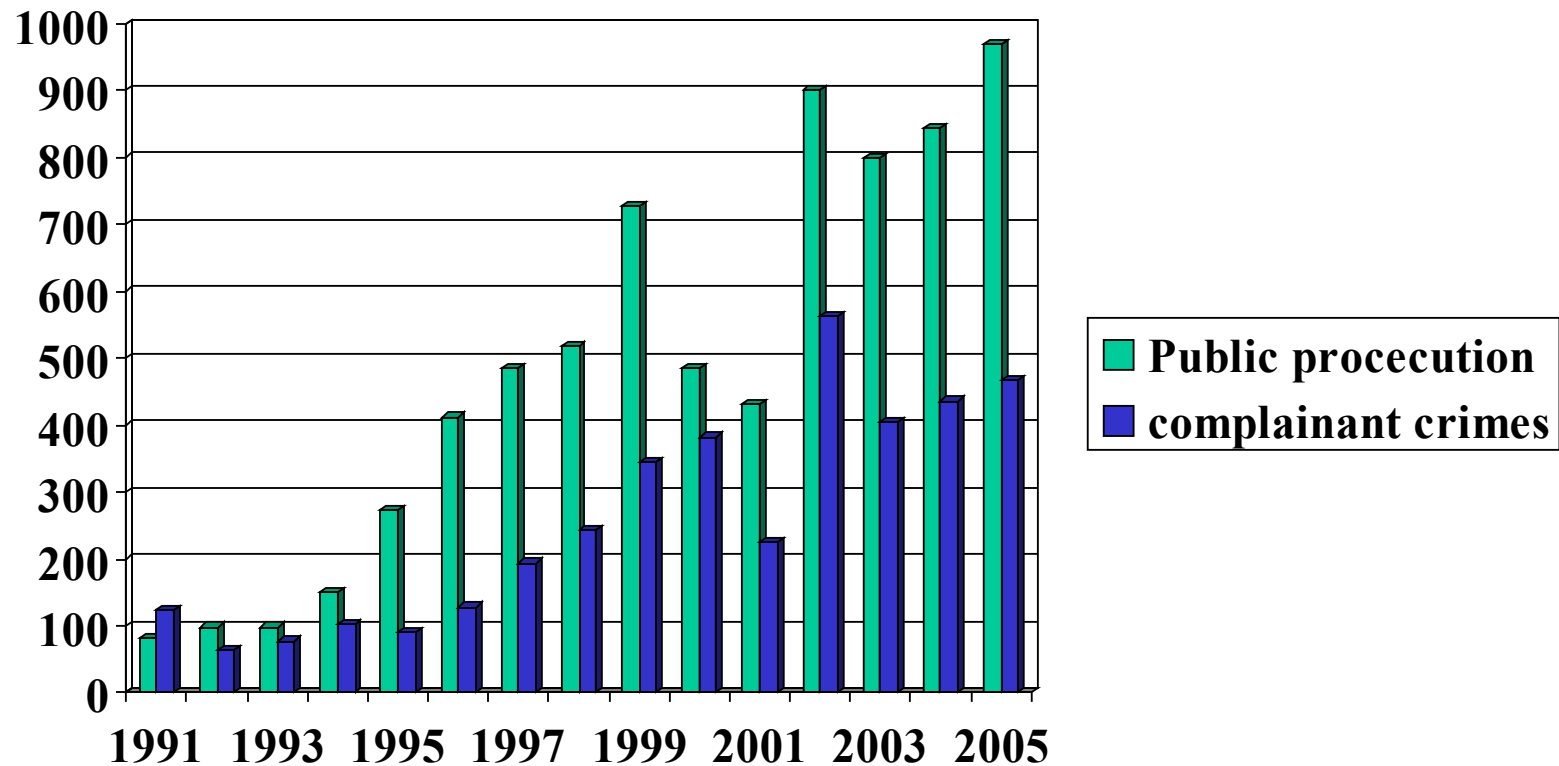
Cases from socialworkers 1991-2005



Some statistics 3: cases from police and prosecutor in Helsinki 1991 - 2005



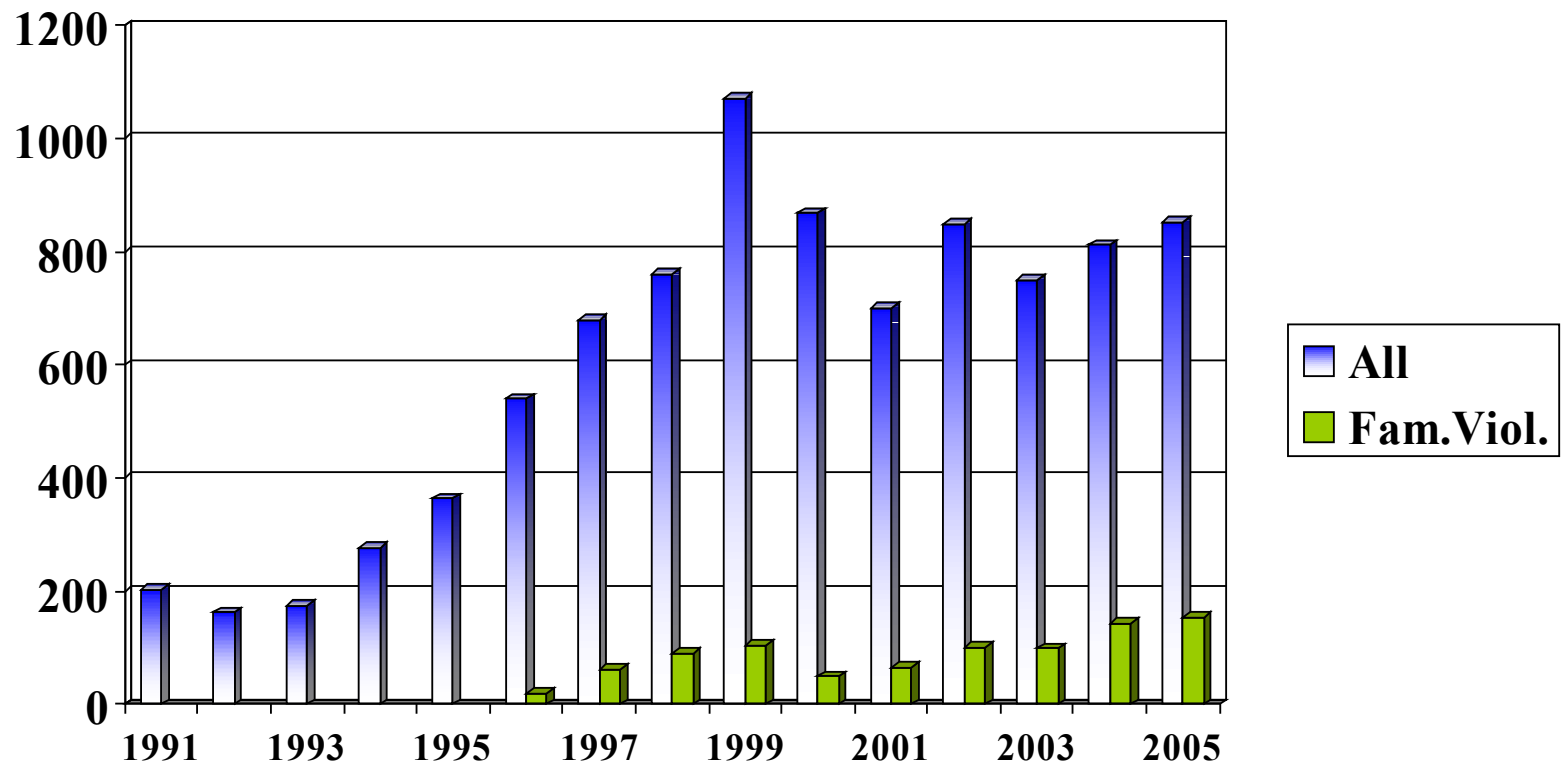
Some statistics 4: Complainant crimes and crimes under the public prosecution 1991-2005 in Helsinki



Some statistics 5: Typical crimes 2005 in Helsinki



Some statistics 6: Family violence cases in mediation comparing all cases 1991-2005 Helsinki



Some other statistics from the country

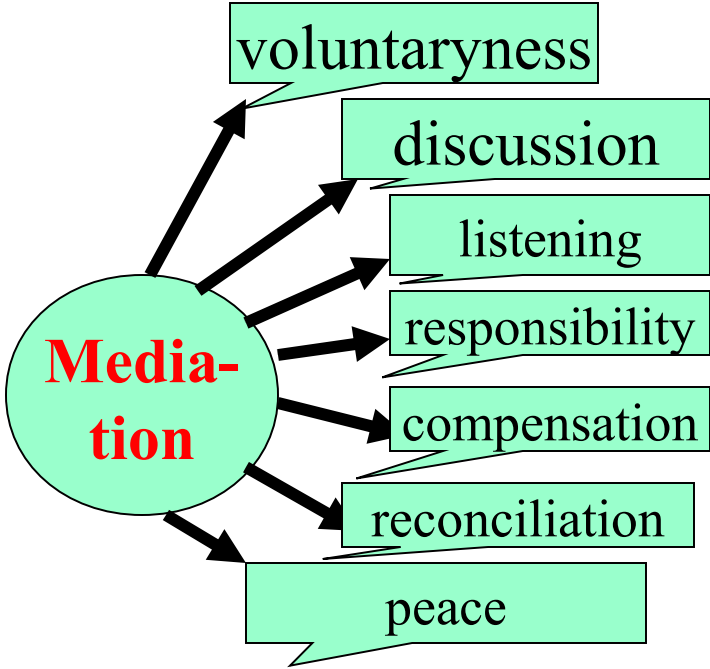
- 1. Altogether over 3000 cases were referred to mediation in 2005**
- 2. Clear majority of cases came from the police and the prosecutor (> 90%)**
- 3. Majority of cases included violence crimes, vandalism and crimes against property were one third and disputes 5 %**
- 4. 15% of offenders were under 15 -years old, and 41 % were 15-20 years old; respectively 44% were over 21 years**
- 5. Mediation started in 90 %:ssa of all referred cases.
Of these 96 % led to the agreement and agreements were fulfilled in over 80 % of cases**
- 6. About 75-80 % of victims and offenders were satisfied on mediation session**
- 7. 66 % of victims and offender were satisfied for mediators in family violent crimes**

**UTILIZING MEDIATION IN
THE CRIMINAL JUSTICE
SYSTEM**

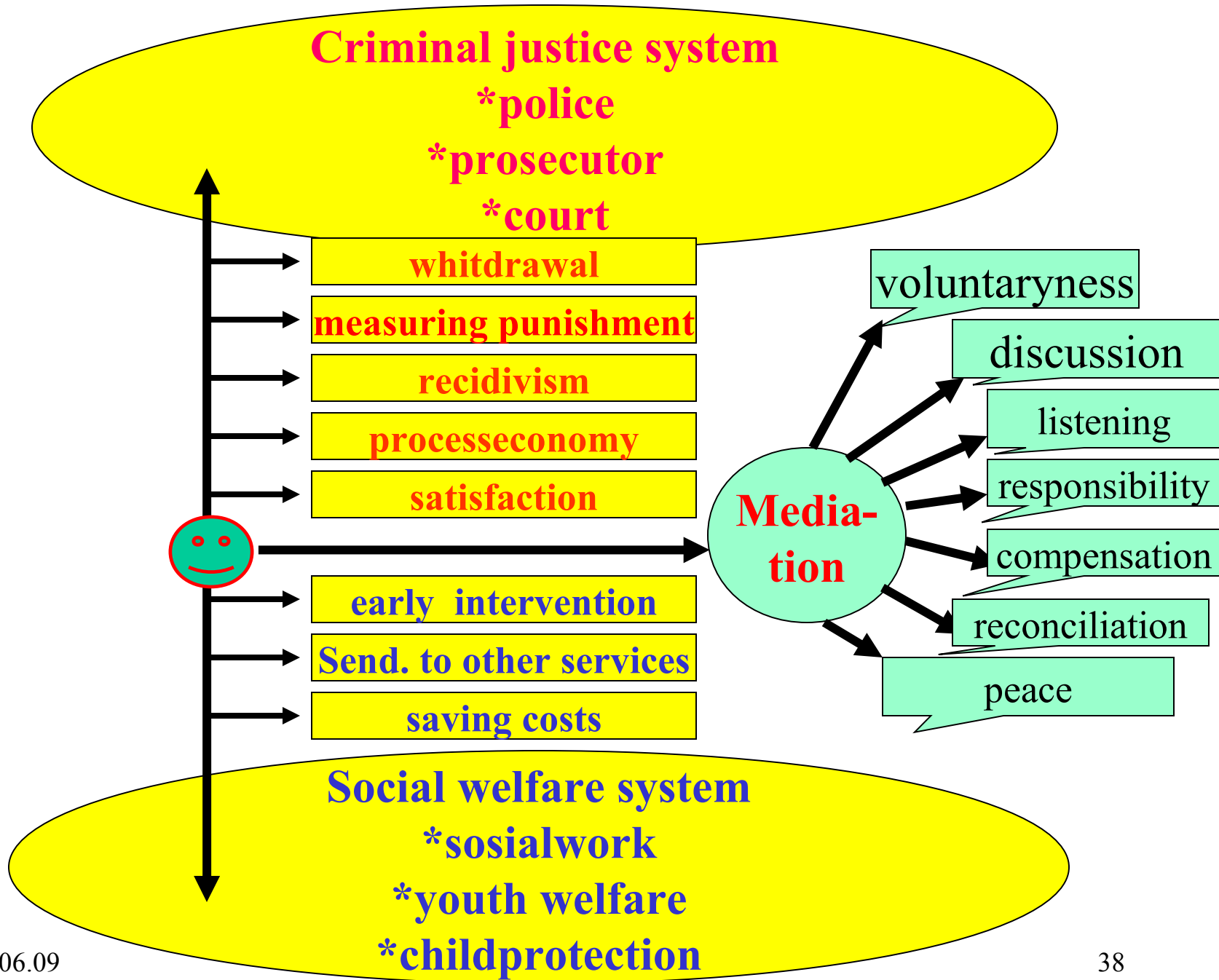
AND

**IN THE SOCIAL WELFARE
SYSTEM**

Criminal justice system
*police
*prosecutor
*court



Social welfare system
*socialwork
*youth welfare
*childprotection



Challenges for the future

Follow-up: evaluation research:

- how and who refers cases for mediation
- rates of cases
- complainant crimes, crimes under public prosecution, disputes
- parties: victims and offenders
- agreements
- fulfillment of agreements
- impact of mediation on decision-making by the police, prosecutor, the court
- different ways of implementing the law on mediation
- acts of officials in different areas (diversity; uniformity etc.)
- attitudes and values of officials of the CJS
- effectiveness of mediation

Challenges for starting the mediation programme

- 1. Collaborative basis involving appropriate partners: criminal justice agencies, social service agencies, non-governmental organisations, community associations etc.**
- 2. Effective communication strategy in order to create proper organisational structures for mediation: financing, staff, offices.**
- 3. Relation to the CJS: additional, compensatory, inside-outside?**
- 4. Clear criteria for referring cases for mediation - police, prosecutor, social officials, others, citizens directly from the public?**
- 5. Voluntary or not as mediator? Training standards for them?**
- 6. Evaluation of the programme.**