

# Bulgaria on the road to victim-offender mediation and restorative justice for juveniles

***Tools In Network – TIN***

*An E-Net Approach to Share Mediation Competences*

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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 ]

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- However, after great efforts, the Mediation Act was eventually approved in 2004 (amended in 2006).

# [ 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

# [ Main engine ]

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- 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 ]

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- 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).

# [ Bad news ]

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- In the Penal Procedure Code 2005, enforced in 2006, Victim - Offender Mediation didn't find place.
- Arguments:
  - high crime rate
  - society is not ready yet
  - VOM is new and unknown option etc.

# [ A small portion of optimism ]

- Although the existing legislation does not specifically refer to mediation or any other out-of-court method for settlements between the victim and the offender, it gives an opportunity for the application of these methods.

# [ The status quo ]

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- In so called 'complainant's crimes' the instituted proceedings shall be discontinued if the victim and the offender have reached a reconciliation
- Agreement between the prosecutor and the defence counsel

# [ The status quo ]

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- Current Bulgarian substantive penal law, like all modern legal systems, envisages a number of alternative measures as it seeks to minimize the use of penal repression.
- They all aim the offender's complete or partial release from criminal responsibility while at the same time preserving the punishment's preventative and educational influence.

# [ The status quo ]

- Currently, primary attention is paid to the release of juvenile offenders from criminal responsibility with the substitution of appropriate correctional (educational) measures (measures of public influence), as provided by art. 78 in connection with art. 61 of the Penal Code.
- These are cases in which the offender has committed a crime that is not very harmful to society.

# [ The status quo ]

- The measures are provided for in details in Juvenile Delinquency Act 1958
- Some have a restorative character:
  - apology to the victim
  - attending the educational programmes and consultation having a rehabilitative purpose
  - repairing the damage inflicted, where possible
  - community service (art. 13(1) i.2, 3, 9 and 10).
  - however, mediation is not provided for

# [ The status quo ]

- The implementation agency:
- Central Commission for Combating Juvenile Delinquency
- Local Commissions for Combating Juvenile Delinquency at municipality level
- (similar to the Youth Offending Teams that are a feature of the restorative justice provision for young persons in England and Wales)

# [ In summary ]

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- there is a strong tendency towards the enrichment and development of non-penal methods and instruments for combating crime
- genuine restorative justice practices in their modern sense still remain a topic for the future

# [ Latest developments ]

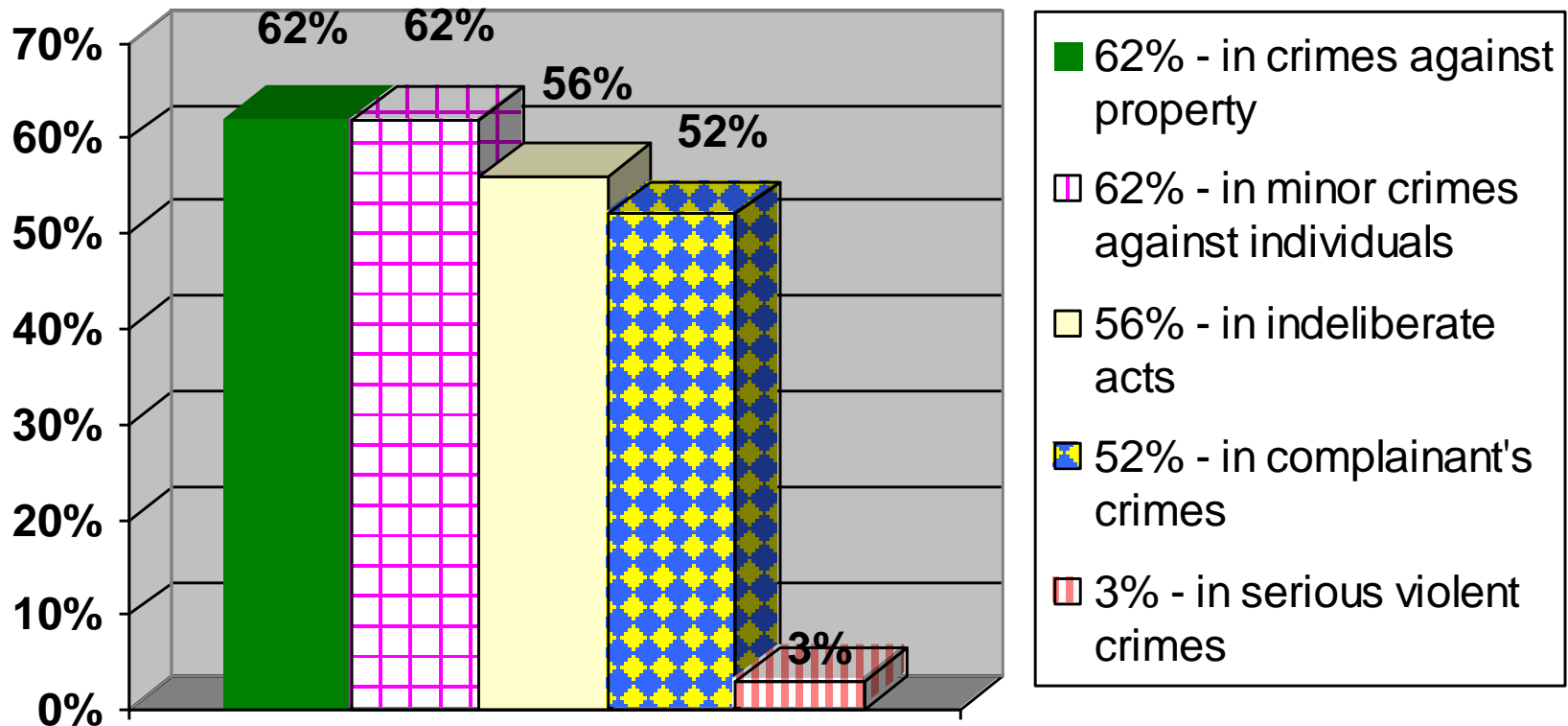
- In 2005-2007 scholars from the South-west University “Neofit Rilski” – Blagoevgrad, the New Bulgarian University – Sofia and the Institute of Conflict Resolution – Sofia, and legal practitioners launched surveys amongst:
    - criminal justice authorities
    - victims
    - offenders
    - random population
- regarding the applicability of mediation in the Bulgarian penal legislation and practice.

# [ Some findings of criminal justice personnel survey ]

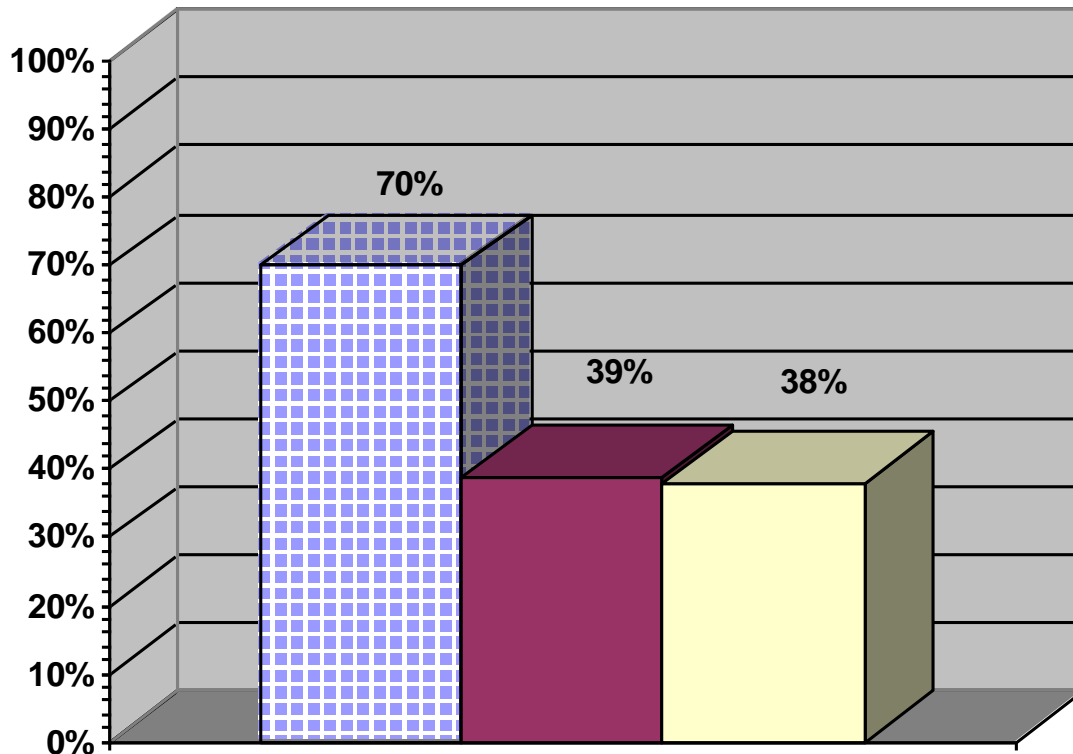
Question 1:

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

# a/ Concerning the type of crime:

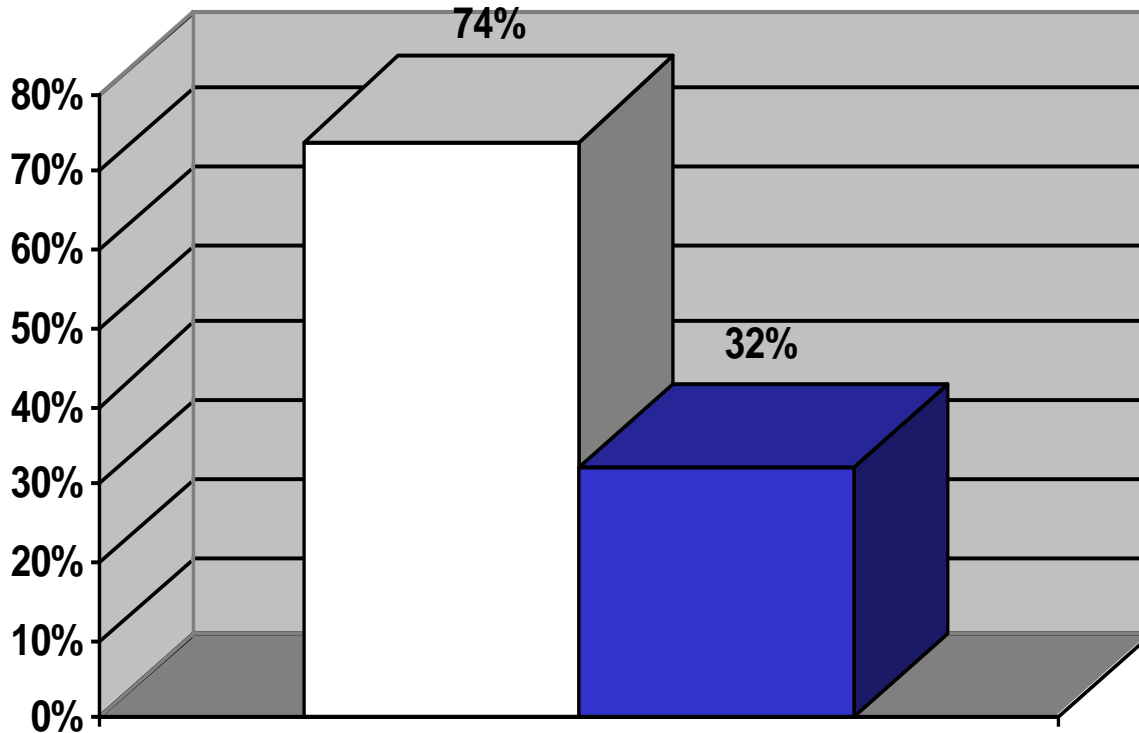


## b/ Concerning the offender:



- 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:

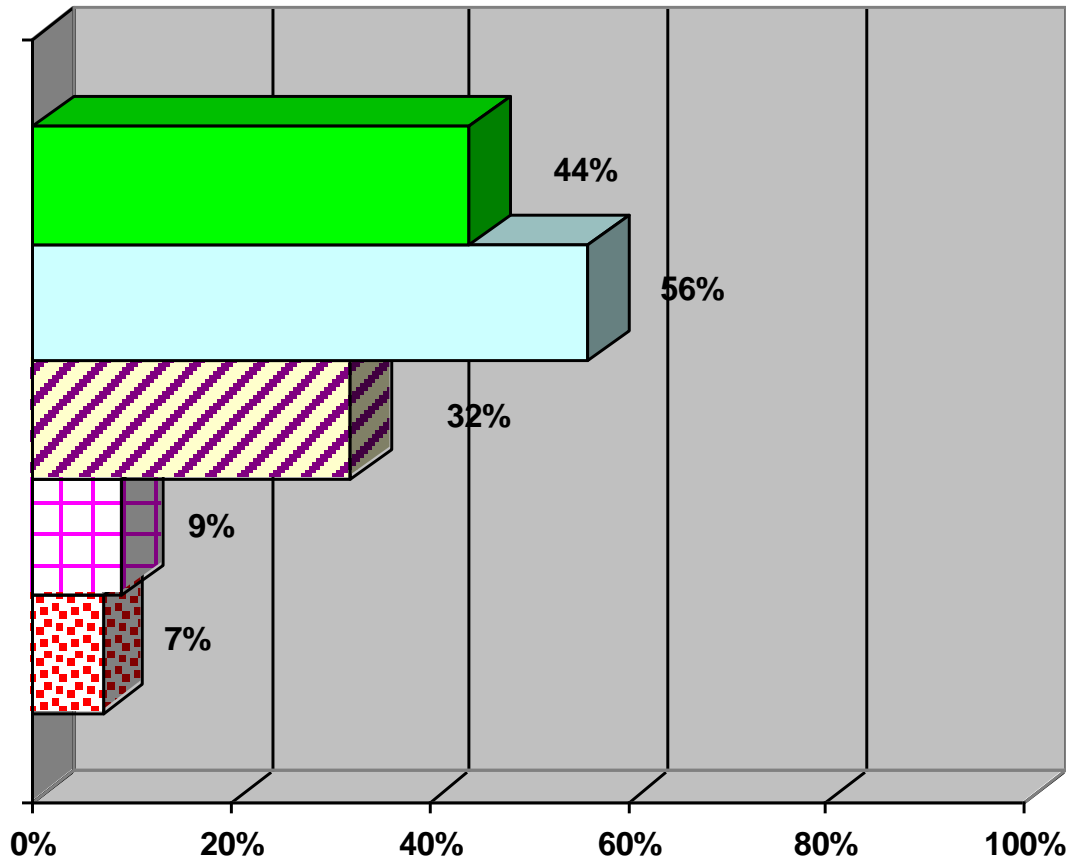


□ 74% - when primarily material damages have been inflicted on the victim

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

## Question 2:

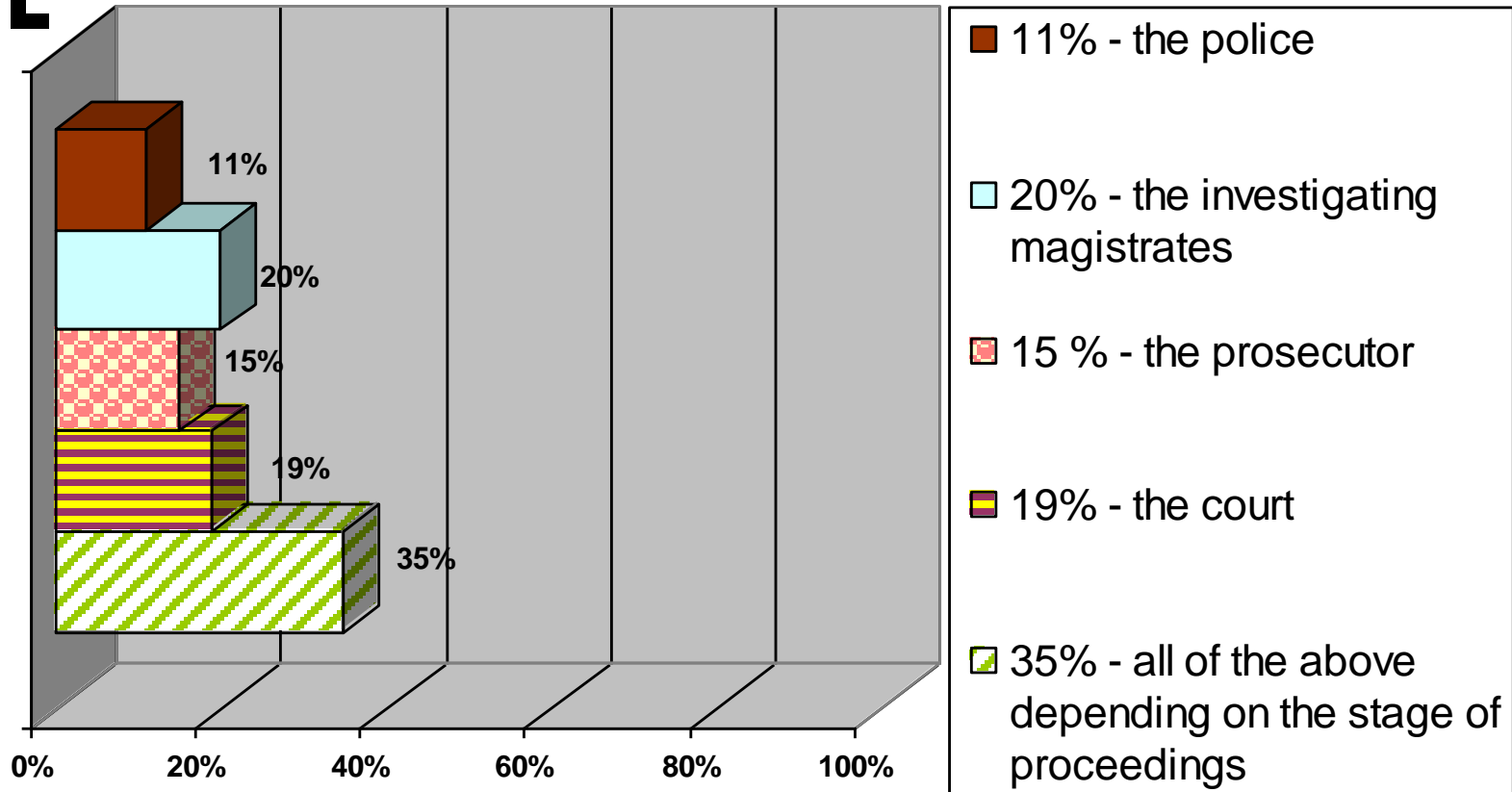
When in time can a given case be referred to mediation procedure?



- 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

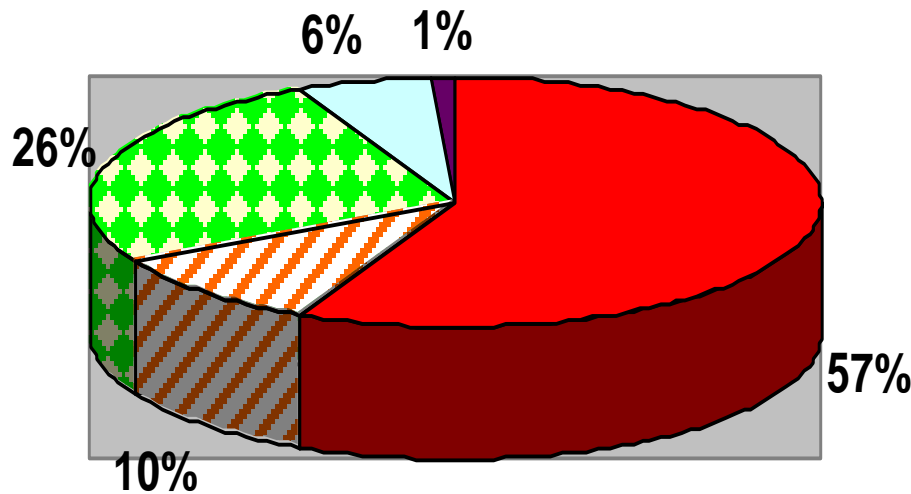
### Question 3:

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



#### Question 4:

When in time do you see VOM 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

# [ Findings from other surveys ]

- Correspond, more or less, with the presented results
- Definitely support introducing of VOM in Bulgaria, emphasizing on its applicability towards juveniles
- Have been discussed widely and have received public support
- Have been submitted to the attention of the Ministry of Justice and the Parliament.

# [ Follow up steps ]

- In December 2007 a National Round table discussion on Perspectives of Victim-Offender Mediation was organized by the National Association of Mediators
- A Concept for legal regulation of VOM was adopted
- The Consultative Council on Penal Policy to the Minister of Justice asked NAM to develop proposals *de lege ferenda* for introducing of VOM in Bulgarian legal system

# [ Follow up steps ]

- A Working group was established to develop these proposals
- The idea is to set up provisions for VOM in the Penal Code, Penal Procedure Code and Juvenile Delinquency Act
- The process is ongoing

# [ Follow up steps ]

- As the Mediation Act is itself relatively short,
- Ordinance No 2 of 15 March 2007 on the Conditions and Procedure for Approval of Organizations Providing Training for Mediators; on the Training Requirements for Mediators; on the Procedure for Entry, Removal and Striking off Mediators from the Unified Register of Mediators; and on the Procedural and Ethical Rules of Conducts for Mediators was issued by the Minister of Justice, responsible for the implementation of the law.

# [ Follow up steps ]

- The infrastructure of mediation was created:
- Unified Register of Mediators
- Mediators associations and centers
- National Association of mediators as an umbrella organization

# [ Follow-up steps ]

- Different research and academic institutions and NGOs offer programs on mediation and training of mediators ( basic and specialized)
- Currently we have a pool of around 500 trained mediators
- A very limited number of persons have received training on VOM and restorative justice and those do not include criminal justice professionals and other practitioners working with juveniles
- The need of such a training is widely recognized

# [ In a way of conclusion: ]

- We believe TiN project will meet urgent needs in Bulgaria and will accelerate our preparation for VOM and other restorative practices application, particularly towards juveniles, where they are mostly needed.
- It is certainly time for great excitement and promise for victim-offender mediation and restorative juvenile justice in Bulgaria!



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**Thank you for your attention!!!**