

# **Mediation in Discrimination Cases**

**Recent developments in EC Anti-Discrimination Law**

***Seminar for legal practitioners***

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### Mediation . . . .

*structured voluntary procedure,  
accompanied by independent mediators  
parties to conflict become partners in dialogue  
cooperative resolution or  
conflict prevention by  
seeking a forward-looking solution.*

# Mediation

## The Principles

- voluntary
- attuned to all sides
- involves all relevant parties
- confidential
- power is equally balanced
- forward-looking
- geared to needs and interests
- no predefined outcomes
- the parties take responsibility

# Mediation in Discrimination Cases

## The Setting

Independent equality bodies

Mediation agencies

Equality Commissions

External mediators

Special interest bodies

NGOs

## Examples

Equality Tribunal  
Ireland

**Mediation** is

an alternative method of resolving complaints, seeking to arrive at a **solution through an agreement between the parties**, rather than through an investigation and decision

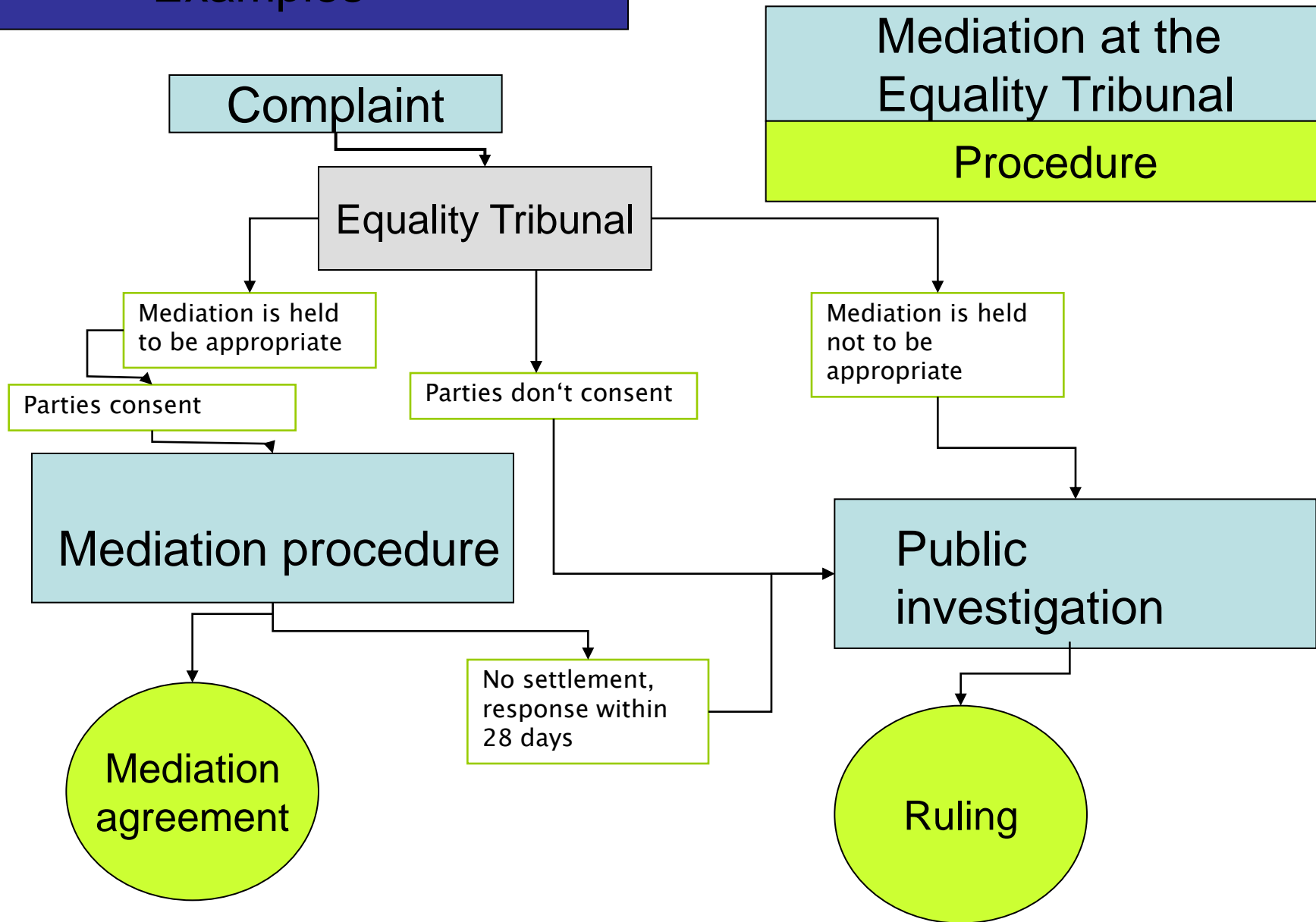
## Examples

### Equality Tribunal Ireland

Employment Equality Act 1998, Section 78:

. . . “if at any time after a case has been referred to the Director . . . it appears to [him/her] that the case is one which could be resolved by mediation, the Director shall refer the case for mediation to an equality mediation officer.”

# Examples



## Examples

Mediation at the  
Equality Tribunal

Outcomes

Agreement that visual impairment will not diminish future career prospects

Creation of a new post

Retrospective promotion

Assumption of counselling fees and compensation

Apology

Donations to victim associations

Voluntary cash payments, vouchers, etc.

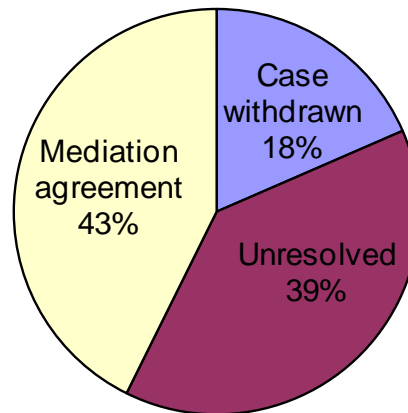


# Examples

Cases dealt with in 2008: 157

Mediation at the  
Equality Tribunal

Evaluation



Source:  
Equality  
Tribunal,  
Mediation  
Review 2008

## Examples

### Mediation in Austria

Mediation is . . .

an activity conducted by the parties on a voluntary basis, during which a properly qualified **neutral mediator** uses recognised methods to **promote communication between the parties** systematically with the aim of facilitating a **solution to the conflict** for which the parties **take responsibility themselves**.

## Examples

### Mediation in Austria

Disabled Persons Employment Act, Sect. 14 (1)

The head office of the Federal Social Services in each state shall make available mediation procedures in matters relating to equality for people with disabilities . . . and equal treatment in employment for people with disabilities . . .

# Examples

Complainant

Advocacy group  
(KlaV, BIZEPS, ÖGLB)

Mediation body  
Federal Social Services

If mediation  
fails -

Court

Mediation in Austria

Procedure

Complainant

## Examples

Mediation in Austria

Outcomes

Construction of ramps

Apology and admission of discrimination

Revision of discriminatory wording

Job profiles

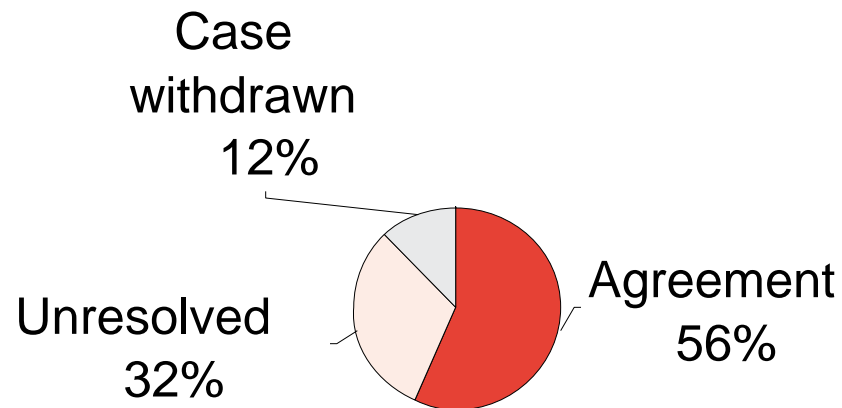
Appointment/Acceptance on training course

# Examples

Mediation in Austria

Evaluation

## Cases dealt with in 2008



# Mediation in Discrimination Cases

## Benefits

1. Effective
2. Low costs
3. Ability to deal with emotional factors in discrimination cases
4. Awareness-raising potential
5. Guilty and victim roles can be overcome
6. Accessible for people who experience discrimination
7. Parties have control over the process
8. Needs-oriented objectives
9. Opens up a win-win solution
10. Forward-looking

# Mediation in Discrimination Cases

## Drawbacks

1. Lack of legal remedy against decisions
2. Lack of public scrutiny (confidential)
3. Lack of legal security
4. Limited power to initiate social change
5. Low potential for combating mechanisms of structural discrimination
6. Weak contribution to the development of law (no case law)

Mediation  
database



# Mediation in Discrimination Cases

## Scope of application

Mediation in Discrimination Cases:

Labour market

Access to goods and services

Victimisation and harassment?

# Mediation in Discrimination Cases

## Stumbling Blocks

The role of established law

Independent bodies: ability to grasp all perspectives

The voluntary principle

Imbalance of power

## Mediation in Discrimination Cases

Mediation in discrimination cases . . . .

is an opportunity, **without lavish resources**, to guide situations towards a **needs-oriented** solution which reflects the best potential options for **all** parties, helps to **raise awareness** and can create a context for **creative** problem-solving to unfold.

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