

Law 21/2007, of 12 June

Institutes penal mediation, as required by Article 10 of Council Framework Decision 2001/220/JHA, of 15 March, on the standing of victims in criminal proceedings.

Under the terms of Article 161 c) of the Constitution, the Assembly of the Republic hereby decrees the following:

Article 1 Subject

This law institutes mediation in criminal proceedings.

Article 2 Scope

1 - Mediation in criminal proceedings can take place in when criminal proceedings have been brought as the result of a complaint or private prosecution.

2 - Mediation in criminal proceedings can only take place in proceedings for crimes which are brought only as the result of a complaint in the case of a crime against persons or a crime against property.

3 - Irrespective of the nature of the crime, mediation in criminal proceedings cannot take place in the following cases:

- a) Where the legal type of crime carries a prison sentence of more than 5 years;
- b) In proceedings for crimes against sexual freedom or self-determination;
- c) In proceedings for the crimes of embezzlement, corruption or trading in influence;
- d) Where the victim is less than 16 years of age;
- e) Where summary or highly summary proceedings are applicable.

4 - In cases where the victim lacks the discernment to understand the scope and meaning of exercise of the right of complaint or has died without waiving the right of complaint, mediation may take place with the intervention of the complainant in the place of the victim.

5 - In the cases referred to in the preceding paragraph, references in this law to the victim shall be deemed as made to the complainant.

Article 3 Forwarding of proceedings for mediation

1 - For the purposes of the preceding article, if indicative evidence has been gathered that a crime took place and that the defendant committed it, and if it is considered that this may offer an adequate response to the needs of prevention such as are felt in the case in question, the Public Prosecutor's Office shall, at any stage in the enquiry, appoint a mediator from the lists provided for in Article 11 and forward to him/her the information it deems essential on the defendant and the victim and a brief description of the subject matter of the proceedings.

2 - If both the victim and the defendant request mediation, in cases where this is permitted hereunder, the Public Prosecutor's Office shall appoint a mediator under the terms of the preceding paragraph, irrespective of whether the requirements set out therein are met.

3 - In the cases provided for in the preceding paragraphs, the defendant and the victim shall be notified that the proceedings have been forwarded for mediation, in accordance with the form approved by ministerial order of the Minister of Justice.

4 - When exceptional reasons so warrant, namely in view of the community or cultural milieu to which the defendant and the victim belong, the mediator may transfer the proceedings to another mediator he/she deems to be better suited to conduct the mediation, serving electronic notice of this to the Public Prosecutor's Office and the organization referred to in Article 13, with due grounds.

5 - The mediator shall contact the defendant and the victim in order to obtain their free and informed consent as to participation in the mediation process, informing them of their rights and duties and of the nature, purpose and rules applicable to the mediation process, and shall check that they meet the requirements for participation in the mediation process.

6 - If he/she fails to obtain their consent or finds that the defendant or the victim does not meet the conditions for participation in mediation, the mediator shall inform the Public Prosecutor's Office and the criminal proceedings shall continue.

7 - If the mediator obtains the free and informed consent of the defendant and the victim for participation in mediation, the defendant and the victim shall sign a declaration of consent, setting out the mediation rules, and the mediation process commences.

Article 4

Mediation process

1 - Mediation is an informal and flexible process, conducted by an impartial third party, the mediator, who seeks to bring the defendant and victim together and supports them in an attempt actively to reach an agreement whereby the damage caused by the unlawful fact is repaired and which contributes to restoring social peace.

2 - The defendant and the victim may at any time revoke their consent for participation in the mediation process.

3 - When this may be useful for the successful resolution of the dispute, other parties concerned, such as community leaders and injured parties, may be called on to take part in the mediation process.

4 - The provisions of paragraph 2 shall apply, duly adapted, to participation in the mediation by any civic leaders and injured parties.

5 - The content of the mediation sessions is confidential, and cannot be relied on as evidence in judicial proceedings.

Article 5

Subsequent procedure

1 - If no agreement emerges from the mediation between the defendant and the victim, or if the mediation process is not completed within three months of the proceedings being sent for mediation, the mediator shall inform the Public Prosecutor's Office and criminal proceedings shall continue.

2 - The mediator may apply to the Public Prosecutor's Office for an extension, of up to two months, of the time limit provided for in the preceding paragraph, provided there is a strong likelihood that an agreement will be reached.

3 - If the mediation results in an agreement, the contents shall be drawn up in writing, in a document signed by the defendant and the victim, and transmitted by the mediator to the Public Prosecutor's Office.

4 - In the case provided for in the preceding paragraph, the signing of the agreement is equivalent to the victim desisting from the complaint and to the defendant presenting no defence, and if the agreement is not honoured within the time limit established, the victim may renew the complaint within one month, the enquiry being reopened.

5 - For the purposes of the preceding paragraph, the Public Prosecutor's Office shall check whether the agreement complied with the provisions of Article 6 and, if it is found to be compliant, shall ratify the desistence from the complaint within five days, the secretarial office immediately notifying the mediator, the defendant and the victim of such ratification.

6 - If an email address or fax or telephone number is indicated, the notification referred to in the preceding paragraph shall be effected by these means.

7 - Proceedings in which mediation has taken place and this has resulted in an agreement shall be processed as urgent as from receipt of the agreement by the Public Prosecutor's Office through to conclusion of the procedural formalities referred to in paragraphs 5 and 6.

8 - When the Public Prosecutor's Office finds that the agreement does not comply with Article 6, it shall return the proceedings to the mediator, who is then required to make good the illegality with the victim and the defendant, within 30 days.

Article 6 Agreement

1 - The content of the agreement shall be freely fixed by the parties to the proceedings participating in mediation, without prejudice to the provisions of the following paragraph.

2 - The agreement shall not include penalties comprising detention or duties which offend against the dignity of the defendant or where performance will extend over a period of more than six months.

3 - In the event of renewal of the complaint under the terms of Article 5 (4), the Public Prosecutor's Office shall check that the agreement has been breached, and may to this end have recourse to the social reintegration services, the criminal police and other administrative bodies.

Article 7 Suspension of time limits

1 - When proceedings are forwarded for mediation, the time limit provided for in Article 283 (1) of the Code of Criminal Procedure and the time limits for the maximum duration of the enquiry provided for in Article 276 of the Code of Criminal Procedure shall be suspended.

2 - The limitation periods for criminal proceedings shall be suspended as from the forwarding of the proceedings for mediation through to their return by the mediator to the Public Prosecutor's Office or, when the mediation results in an agreement, to the date set for performance of the same.

Article 8 Presence of lawyers at mediation sessions

The defendant and the victim shall attend mediation sessions in person, and may choose to be accompanied by a lawyer or trainee lawyer.

Article 9 Costs

No costs are payable for mediation processes, the provisions of book XI of the Code of Criminal Procedure and the Court Costs Code applying in all other respects.

Article 10

Penal mediators

1 - In the performance of their duties, penal mediators shall comply with the duties of impartiality, independence, confidentiality and diligence.

2 - A penal mediator who, for reasons of law, ethics or good professional conduct, cannot or can no longer assure his/her independence, impartiality and lack of bias shall refuse or interrupt the mediation process and notify the Public Prosecutors Office, which shall replace him/her in accordance with the provisions of Article 3.1.

3 - Penal mediators are subject to the duty of professional secrecy in relation to the content of mediation sessions.

4 - Penal mediators are bound by judicial secrecy in relation to the procedural information to which they have access as a result of participating in mediation processes.

5 - Penal mediators shall not intervene, in any form, namely as witness, in any proceedings subsequent to mediation, such as judicial proceedings or psychotherapeutic care, whether or not an agreement has been reached and even if such proceedings are only indirectly related to the mediation conducted.

6 - The work of penal mediators shall be supervised by the commission provided for in Article 33 (6) of Law 78/2001, of 13 July.

Article 11

Lists of penal mediators

1 - The mediation services of the justices of the peace shall organize lists containing the names of persons qualified to act as penal mediators, their respective professional domiciles, email addresses and telephone numbers.

2 - The Ministry of Justice shall:

- a) Develop the procedures for enrolling mediators in the lists;
- b) Maintain and update the lists, and make them available to the services of the Public Prosecutor's Office;
- c) Create a system which guarantees that mediators are appointed sequentially by the Public Prosecutor's Office, without prejudice to the provisions of Article 3 (4).
- d) Make the lists of penal mediators available on the official webpage of the Ministry of Justice.

3 - Inclusion on the lists shall not confer on penal mediators the status of civil servant or assure payment or any fixed remuneration by the State.

Article 12

Persons qualified to act as penal mediator

1 - The lists of penal mediators shall be filled through a selection procedure, and applications may be received from persons:

- a) no less than 25 years of age;
- b) in full enjoyment of their civil and political rights;
- c) who hold higher education degrees (*licenciatura*) or have appropriate professional experience;
- d) qualified by having successfully completed a penal mediation course recognized by the Ministry of Justice;

- e) suitable for the task of penal mediation;
- f) having a command of the Portuguese language.

2 - Amongst other circumstances, the fact that the applicant has been convicted of a wilful crime shall be deemed to indicate unsuitability for the task of penal mediation.

3 - The criteria for grading applicants and the terms of the selection procedure shall be approved by ministerial order of the Minister of Justice.

Article 13

Remuneration of penal mediators

The remuneration payable for the services of penal mediators shall be contained in the table fixed by dispatch of the Minister of Justice, and shall be borne out of the sums allocated in the budget of the Ministry of Justice body responsible for promoting alternative dispute resolution services.

Article 14

Trial period

1 - As from the date on which this law enters into force and for a period of two years, penal mediation shall operate on a trial basis in the judicial districts to be designated by ministerial order of the Minister of Justice, which shall also set out the other terms on which penal mediation services are to be provided in these districts.

2 - During the trial period, the Ministry of Justice shall adopt the measures required to monitor and assess mediation in criminal proceedings.

3 - On completion of the trial period provided for in paragraph 1, extension of penal mediation to other districts shall depend on a ministerial order from the Minister of Justice.

Article 15

Application over time

This law shall apply to criminal proceedings brought after it enters into force.

Article 16

Entry into force

This law shall enter into force on the 30th day after publication.

Approved on 12 April 2007.

The President of the Assembly of the Republic, Jaime Gama.

Promulgated on 30 May 2007.

Publish.

The President of the Republic, ANÍBAL CAVACO SILVA.

Countersigned on 31 May 2007.

The Prime Minister, José Sócrates Carvalho Pinto de Sousa.