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## MEDIATION WITH JUVENILES - EDUCATIONAL GUARDIANSHIP LAW

- **1999: reform of the law that governs juveniles**
- juvenile offenders: **educational guardianship law (Law 166/99)** re-oriented from a protective approach to an approach focused on responsibility, educational welfare and reparation
- applicable to **young persons between 12 and 16 years old** who commit acts defined by law as crimes
- **offender-focused**: the purpose is to educate the minor in the field of law and not on retribution for committed crimes



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## MEDIATION WITH JUVENILES - EDUCATIONAL GUARDIANSHIP LAW

- **Institute for Social Reinsertion** (public body responsible to the Ministry of Justice) - Mediation Implementation Programme – January 2002
- first years of activity: around 200 cases/year
- young offender's profile: male, 16 years old, 4th grade of education, student, no systematized extra-curricular activities, integrated in the family of origin, poor social-economic background and first-time offenders
- larceny, damage, off. against the person, robbery, driving without a license

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## ADULTS - PENAL CODE AND PENAL PROCEDURE CODE

Although Penal legislation doesn't consider any mediation mechanism, we can find some "entry doors":

- Discontinuance where sentencing is not necessary
- Temporary suspension of proceedings
- Summary Proceeding
- Suspension of prison sentences



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## SCHOOL OF CRIMINOLOGY OF THE LAW FACULTY OF OPORTO

- First victim-offender mediation project in Portugal
- protocol with the Oporto District Attorney Services – 16 July 2004
- scientific reseach + mediation service
- oportunity principle – mediation within the frame of temporary suspension of proceedings and discontinuation of cases where sentencing is dispensed with



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## VOM IN THE PORTUGUESE POLITICAL AGENDA: CONTEXT

- implementation of alternative dispute resolution schemes
- Framework Decision of the Council of the European Union on the Standing of Victims in Criminal Procedure (2001)

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## MEDIATION LAW - FIRST PROPOSAL (2005)

**crimes punishable with prison sentence up to 5 years  
or with a fine:**

- public crimes – referral under the discretion of the prosecutor
- complainant crimes – mandatory referral to mediation

**mandatory acceptance of the agreement:**

- temporary suspension of the process (public crimes)
- dropping the charges by the victim (complainant crimes)

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## MEDIATION LAW - FIRST PROPOSAL (2005)

### Some criticisms:

- lack of power of prosecutors to act (in the case of complainant crimes) in relation to the referral of cases to mediation and the agreement
- possible use of mediation in cases of domestic violence
- doesn't include the requirement of admission of responsibility



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## MEDIATION LAW - MAIN FEATURES

cases concerning crimes against persons and crimes against property subject to semi-public prosecution procedures, and cases concerning all types of crimes subject to private prosecution procedures, punishable with 5 years of imprisonment or less, or with a fine, can be referred to mediation

### **Exceptions:**

- the victim is under the age of 16
- the defendant is a legal person
- crimes against sexual freedom or self-determination



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## MEDIATION LAW - MAIN FEATURES

- in case evidence has been collected indicating that a crime has occurred and that the defendant was its agent, the Prosecutor can, at any time during the inquiry stage, refer the case to mediation;
- if an agreement is not reached, or in case the mediation procedure is not concluded within 3 months, the mediator shall inform the Prosecutor thereof, and the criminal procedure shall proceed;
- the signature of an agreement is equivalent to the victim dropping his or her charges and to the defendant not opposing;



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## MEDIATION LAW - MAIN FEATURES

- if the agreement is not fulfilled, the victim may renew the charge within one month, and the inquiry shall be re-opened;
- the agreement may not include duties whose fulfilment should extend for more than six months;
- the parties must attend mediation sessions in person and they can be assisted by a lawyer;
- the content of mediation sessions is confidential and it can not be examined as evidence in criminal proceedings;



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## MEDIATION LAW - MAIN FEATURES

- no costs for the intervenients
- who can be a mediator? persons above 25 years of age with adequate academic degree or professional experience, and with a victim-offender mediation course recognized by the Ministry of Justice
- facilities: small complaints courts

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## MEDIATION LAW - SOME CONTROVERSIAL POINTS

- admission of responsibility
- confidentiality, presumption of innocence and secondary victimization



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## MEDIATION IN PORTUGAL: SOME KEY FACTORS FOR A SUCCESSFUL IMPLEMENTATION

- training
- awareness-raising among magistrates
- evaluation and research