

Act CXXIII of 2006
on Mediation in Criminal Cases
Scope

Article 1

This Act shall apply in the cases where the public prosecutor or the court has ordered mediation proceedings pursuant to Act XIX of 1998 on Criminal Procedure (CP).

Definition and Purpose of Mediation Proceedings

Article 2

(1) Mediation proceedings means an attempt to resolve conflicts resulting from a crime, in an attempt to find a negotiated solution – fixed in writing – between the victim and the author of the offense, mediated by a competent third person (mediator) independent of the court hearing the criminal case, and of the public prosecutor, which might mitigate the effects of the crime and might steer the defendant to abide by the law in the future.

(2) All mediation proceedings shall be aimed to reach an agreement between the victim and the respondent, facilitating the contrition of the respondent.

The Mediator

Article 3

(1) The mediation proceedings shall be conducted by a probation officer engaged in mediation activities of the national probation service of jurisdiction by reference to the seat of the court of trial of the criminal case or the public prosecutor, or by an attorney registered by the national probation service in the register of attorneys engaged in mediation activities (mediator).

(2) The mediator shall be responsible for mediating negotiations between the parties to the best of their abilities in an unbiased and conscientious manner in order to reach an agreement in conclusion of the mediation proceedings. The mediator shall proceed with due respect for the dignity of the parties during proceedings and shall ensure that the parties treat each other with respect as well.

(3) The mediator shall be entitled and required to study the data and information to the extent necessary to discharge his duties. The public prosecutor or the court shall supply to the mediator – together with the resolution ordering mediation or with ruling for the suspension of the proceedings, respectively – the documents of the case in due time and to the extent required to discharge his duties prescribed in this Act. The data processed according to Paragraph (2) of Article 96 of the CP, that are not pertaining to the victim having the status of a witness, may not be disclosed to the mediator.

(4) Unless otherwise prescribed by law, the mediator must handle any and all data, information and facts obtained in the course of mediation proceedings in strict confidentiality.

(5) Mediators shall remain under the obligation of confidentiality following termination of mediation activities.

Article 4

(1) A mediator may not handle a case

a) in which he was previously involved as a judge, public prosecutor or a member of the investigating authority, or if being a close relative of the judge, public prosecutor or a member of the investigating authority who had been or is involved in the case [Act IV of 1978 on the Criminal Code (Criminal Code), Point 6 of Article 137],

b) in which he had been or is involved in the status of the respondent, defense attorney, or the victim, or as a party, the accuser or as the counsel for these, and the close relative of these persons,

c) in which he had been or is involved in the status of a witness, expert or counselor,

d) if having been involved with the respondent or the victim in the capacity of a probation officer in another case within three years previously, or in an ongoing case involving either one of them, not including the probation officer who was asked to prepare a pre-sentence report before the decision ordering mediation proceedings was adopted,

e) he is involved in the case in any other way or if he is biased.

(2) The mediator must immediately report to the head of the county probation service the existence of any grounds for his disqualification.

(3) The grounds for disqualification may be reported by the victim or the respondent, or their representatives and request the mediator to be barred from the proceedings.

(4) The persons referred to in Paragraph (3) shall be entitled to report the grounds for disqualification mentioned in Subparagraph *e)* of Paragraph (1) following commencement of the hearing only if able to verify of having obtained the underlying information following commencement of the hearing, and if reporting it without delay.

Article 5

(1) The head of the county probation service shall adopt a decision without delay for having the mediator barred relying on the grounds for disqualification notified, and to appoint a new mediator.

(2) The head of the county probation service shall render a decision for having the mediator barred within three working days of receipt of the notice for exclusion, and shall appoint a new mediator if necessary. The resolution for exclusion may not be appealed. If exclusion is refused, the victim and the respondent, or their representatives may lodge a complaint to the public prosecutor who has referred the case to mediation before indictment, or may appeal to the court that has suspended the criminal proceedings with a view to referring the case to mediation after the indictment.

(3) The actions of the mediator in the case shall be suspended pending a decision concerning a notice for exclusion.

Opening of Mediation Proceedings

Article 6

Mediation proceedings are opened

a) upon the resolution of the public prosecutor referring the case to mediation [CP, Article 221/A (3)], or

b) upon the court ruling for the suspension of criminal proceedings with a view to referring the case to mediation [CP, Article 266 (3) *c)*].

General Provisions

Article 7

(1) Mediation proceedings may be conducted only upon the victim's and the respondent's own volition. The victim and the respondent are treated equally in the proceedings, they may withdraw their consent for participation in the proceedings, and they shall remain independent in connection with all decisions.

(2) The victim and the respondent shall have the right employ a legal counsel in the proceedings. The legal counsel shall have the right to participate in the proceedings and to make statements on behalf of his client. The victim's legal counsel and the respondent's

defense attorney may act as legal counsels. The power of attorney granted in the criminal proceedings – unless otherwise implied in the said power of attorney – and the appointment of a public attorney applies to the mediation proceedings as well.

(3) The victim and the respondent may request permission for maximum two persons each to attend the mediation session, and to make statements on their behalf. The mediator may refuse to comply only if the presence of the person for whom permission is requested is prejudicial to the purpose of the mediation proceedings. The mediator's decision may not be contested.

(4) If justified by the circumstances of the case referred to mediation, the mediator may request the assistance of an expert if it deemed beneficial for reaching a settlement in the mediation proceedings.

(5) If the victim has been granted diplomatic immunity by virtue of a treaty or some other form of privilege under international law, the public prosecutor or the court, before adopting the resolution under Subparagraph *a*) or *b*) of Section 6, shall contact the minister in charge of foreign policies to obtain the victim's consent for the mediation proceedings.

Article 8

(1) If the victim is of limited legal capacity, the legal representative must attend the mediation proceedings, and if lacking legal capacity, the victim may not take part in the mediation proceedings and shall be substituted by his legal representative. In the event of any conflict of interest the provisions of the Civil Code shall apply.

(2) If in the criminal proceedings the investigating authority, the public prosecutor or the court has ordered to handle the personal data of the victim having the status of a witness [CP, Article 85 (2)] confidentially, separate from all other documents, the provisions contained in Article 96 of the CP shall apply to the mediation proceedings as well.

(3) Mediation proceedings shall be conducted in the Hungarian language. The use of native language or an interpreter shall be governed according to the CP.

(4) If in the course of mediation proceedings the mediator shall notify the public prosecutor or the court if some measures or actions that fall within the competence of the public prosecutor or the court is deemed necessary.

Setting the Mediation Hearing

Article 9

(1) The mediator shall set the time for the first mediation session within eight days of the delivery of the resolution referred to Article 6 to the national probation service.

(2) Mediation sessions shall be held, if possible, in the offices of the national probation service, or in another venue if deemed necessary by the mediator.

(3) The summons to the first mediation hearing shall contain information for the victim and the respondent concerning the essence of the mediation proceedings, any legal consequences, and their rights and obligations.

(4) The mediation proceedings shall be arranged so that a final conclusion can be reached within three months of the initial mediation session, and that the report and the document containing the agreement is delivered to the public prosecutor or the court before the deadline for the suspension of criminal proceedings expires.

Article 10

(1) If the victim or the respondent fails to appear upon the summons being properly served, and if they fail to provide adequate reasons for their absence, the mediator shall proceed to clarify the relevant circumstances, searching out the party in question if necessary, and shall determine as to whether the mediation proceedings can be continued in light of the

withdrawal of consent. If the mediation proceedings can be continued, the mediator shall set another date for negotiations.

(2) If the victim or the respondent once again fails to appear on the session rescheduled according to Paragraph (1), and fails to provide advance notice therefore as soon as possible, or if this is not feasible, immediately upon the next opportunity with substantial reasons attached, it shall be construed as the withdrawal of consent.

(3) The provisions of the CP shall apply to the aforesaid summons, service of process and justification of failure to show, with the exception that no application for extension shall be accepted after three months, substituted service of process by way of posted notice may not be applied, penalty may not be imposed, and no writ of habeas corpus may be issued.

(4) The application for extension shall be resolved by the mediator. The decision for the approval of the application for extension may not be appealed, whereas the person lodging the application for extension or his representative may lodge a complaint to the public prosecutor who has referred the case to mediation before indictment, or may appeal to the court that has suspended the criminal proceedings with a view to referring the case to mediation after the indictment.

The Mediation Hearing

Article 11

(1) Upon the opening of the mediation hearing the mediator shall establish the identity of the victim and the respondent, and shall ask them if they understand the information they received in writing concerning the essence of the mediation proceedings, the legal consequences, and their rights and obligations, and shall offer an explanation in connection with any part that is not understood.

(2) In the course of the mediation hearing, the mediator shall allow the victim and the respondent to elaborate their case. The mediator may interview the victim and the respondent in the presence and also in the absence of one another. The victim and the respondent may state their opinion concerning the case verbally, and may present documents.

(3) If the mediator interviews the victim and the respondent separately, the information obtained in this fashion may be conveyed to any other victim or respondent participating in the mediation proceedings, or their representatives, so as to allow the victim or respondent in question to formulate and present his opinion in light of the information received, unless the victim or respondent from whom the information originates expressly prohibits the information to be disclosed to any other victim or respondent, or their representatives.

(4) If the victim is of limited legal capacity, the mediator shall interview this victim, and shall convey the respondent's statement directly to the victim in this case as well. The legal representative of the victim with limited capacity shall attend the hearing of the victim.

(5) The victim – and the legal representative when applicable– and the respondent, and also the authorized representative if the victim is not a natural person shall be present when the agreement concluded and for the signature of the agreement. The absence of the legal counsel shall have no bearing on the mediation hearing, however, the session shall be rescheduled if so requested by the victim or the respondent.

The Memorandum

Article 12

(1) The event of the mediation hearing shall be recorded by the mediator in a memorandum.

(2) The memorandum shall contain:

a) the name of the national probation service conducting the mediation proceedings, the case number and the name of the respondent,

- b)* the name and case number of the court or public prosecutor's office that has referred to case to mediation,
 - c)* the venue of the mediation hearing, and the time of opening and closing the session,
 - d)* the names of the mediator, the victim, the respondent, the representatives, and any other person participating in the mediation hearing, and during the first session the address of the victim and the respondent from which they can be summoned.
- (3) The memorandum shall briefly illustrate the events of the session, in a manner to identify and permit control of the relevant rights and obligations, and compliance with procedural regulations.

The Agreement

Article 13

- (1) An agreement in mediation proceedings is deemed valid if it contains the mutual understanding of the victim and the respondent concerning any compensation for damages resulting from the crime or any or any other form of restitution.
- (2) The agreement shall expressly indicate:
- a)* that the respondent is to provide compensation for damages resulting from the crime during the period of suspension of the criminal proceedings or the period of postponement of indictment in one lump sum, or in installments at specific intervals, or to provide any other form of restitution,
 - b)* the party who is to cover the costs of the proceedings.
- (3) The commitments fixed in the agreement must be within the framework of the law, they shall be reasonable, and they shall not be contrary to public morals.
- (4) The mediator shall fix the agreement between the victim and the respondent – in compliance with what is contained in Paragraphs (1)-(3) – in written document, that is to be signed by the victim – and the legal representative if applicable – and by the respondent. The mediator shall provide a copy of this document to the victim, the respondent, and their representatives if present, or shall deliver it to the representative if not present. The document made out on the agreement is treated as an authentic instrument.
- (5) The documents of mediation proceedings may not be used as evidence in the criminal proceedings to which it pertains, with the exception of the document containing the agreement reached in conclusion of the proceedings and the report of the mediator.

Article 14

- (1) The agreement made out in writing in conclusion of the mediation proceedings shall not be legally binding beyond the purpose of the mediation proceedings.
- (2) The agreement reached in conclusion of the mediation proceedings shall have no bearing in terms of the victim's right to seek compensation outside the criminal proceedings for his claims resulting from a crime in another court, or by way of arbitration or some other proceedings.
- (3) The following shall be inadmissible in court or arbitration or any other proceedings initiated after the conclusion of the mediation proceedings conducted in accordance with this Act:
- a)* any statement or recommendation made during the mediation proceedings conducted in accordance with this Act by a party in connection with a potential solution for the dispute, and
 - b)* any statement of acceptance or disclaimer made by a party in the mediation proceedings conducted in accordance with this Act.

Conclusion of Mediation Proceedings

Article 15

(1) The mediation proceedings are deemed concluded

a) on the day when the respondent has provided compensation to the victim for damages resulting from the crime or when provided any other form of restitution,

b) on the day when the respondent started to carry out the commitments made in the agreement reached in conclusion of the mediation proceedings,

c) on the day on which the victim or the respondent declare in front of the mediator their request to close the mediation proceedings,

d) on the day when the victim or the respondent has withdrawn his consent, or if his failure to appear shall be construed as the withdrawal of consent under this Act,

e) on the day when the statement made by the respondent clearly indicates that the requirements prescribed in Article 221/A (3) *b)* or *c)* of the CP are no longer satisfied,

f) if the three-month period from the first mediation hearing failed to produce any results.

(2) If the mediation proceedings are concluded according to Subparagraph *b)* of Paragraph (1), the national probation service shall monitor compliance with the performance of the agreement following conclusion of the mediation proceedings. If the respondent is in default, or if the agreement cannot be performed for reasons attributable to the victim's conduct, the national probation service shall so inform the public prosecutor or the court.

The Report

Article 16

(1) Within fifteen days following conclusion of the mediation proceedings the mediator shall prepare a report on the mediation proceedings, and shall send it to the public prosecutor or the court together with the document underlying the conclusion of the proceedings, as well as to the victim and the respondent and their representatives.

(2) The report shall contain:

a) the name of the national probation service conducting the mediation proceedings, the case number and the name of the respondent,

b) the name and case number of the court or public prosecutor's office that has referred to case to mediation,

c) the time of the opening and closing of the mediation proceedings,

d) the outcome of the mediation proceedings, and

e) the mediator's name.

Costs

Article 17

(1) The costs of mediation proceedings shall not comprise a part of the costs of criminal proceedings, and shall be borne by the respondent unless there is an agreement to the contrary. The victim shall cover his own expenses [legal counsel, travel, the fees of the person referred to in Article 7 (3)], unless the victim and the respondent has agreed to the contrary.

(2) If the respondent was awarded exemption by the court or the public prosecutor before referring the case in question to mediation, the fees and the travel expenses of the appointed defense attorney shall be covered by the state. The state shall also bear the costs incurred in connection with any hearing or visual impairment of the respondent, or due to his lack of command of the Hungarian language.

Amendments

Article 18

Article 19

Article 20

Article 21

(1)

(2)

(3)

(4)

Article 22

(1)

(2)

(3)

Article 23

(1)

(2)

Entry into Force

Article 24

(1) This Act shall enter into force – subject to the exception set out in Paragraph (2) – on 1 January 2007, and simultaneously Paragraph (1) of Article 283 of Act LI of 2006 on the Amendment of the CP shall be repealed.

(2) In Paragraph (1) of Article 3 of this Act, the passage “, or by an attorney registered by the national probation service in the register of attorneys engaged in mediation activities” shall enter into force on 1 January 2008.

(3) The minister in charge of penal administration is hereby authorized to decree the qualification requirements for probation officers engaged in mediation activities, and the regulations for handling the documents of mediation proceedings.

Compliance with the Acquis

Article 25

This Act contains regulations that may be harmonized with Article 2 (1), Article 9 (2) and Article 10 of the Council Framework Decision 2001/220/JHA of 15 March 2001 on the standing of victims in criminal proceedings.

Act IV of 1978
on the Criminal Code

Chapter III
Obstacles of Criminal Prosecution
Voluntary Restitution

Article 36

(1) Any person who has committed a crime against another person (Chapter XII, Titles I and III), a traffic offense (Chapter XIII) or any crime against property (Chapter XVIII), punishable by imprisonment of up to three years, shall not be liable for prosecution if he has agreed to compensate the injured party for the damages caused by the criminal act, or to provide any other form of restitution by way of a meditation process.

(2) The punishment may be reduced without limitation in connection with the crimes mentioned in Subsection (1), if punishable by imprisonment of up to five years, if the perpetrator has agreed to compensate the injured party for the damages caused by the criminal act, or to provide any other form of restitution by way of a meditation process.

(3) Subsections (1)–(2) shall not apply if the perpetrator:

a) is a repeat offender or a habitual recidivist;

b) committed the crime in affiliation with organized crime;

c) committed a crime resulting in death;

d) has committed a willful crime while on probation as a result of suspension of a prison sentence or, in consequence of the commission of a willful crime, after being sentenced to serve a prison term and before he has finished serving his sentence, or while released on probation or during the period of postponement of accusation.

Act XIX of 1998
on Criminal Procedure
Mediation Proceedings

Article 221/A

(1) Mediation proceedings may be conducted upon the victim's and the respondent's initiative or upon their own volition in the course of criminal proceedings conducted for crimes against another person (Chapter XII, Titles I and III), a traffic offense (Chapter XIII) or any crime against property (Chapter XVIII), punishable by imprisonment of up to five years.

(2) The objective of mediation proceedings is to mitigate the effects of the crime and to steer the defendant to abide by the law in the future. All mediation proceedings shall be aimed to reach an agreement between the victim and the accused, facilitating the contrition of the accused. Any case may be referred to mediation in the course of criminal proceedings on one occasion.

(3) The public prosecutor shall suspend the proceedings for maximum six months either *ex officio* or upon the request of the accused, the defense attorney or the victim, and shall refer the case to mediation, if

a) the case can be dismissed or punishment may be reduced without limitation under Article 36 of the Criminal Code,

b) the accused made a statement of confession in the course of investigation, and agreed and able to compensate the victim for damages resulting from the crime or to provide any other form of restitution,

c) the accused and the victim agreed to participate in the mediation proceedings, and

d) in view of the nature of the crime, the way it was committed and the person of the accused court proceedings are not required, or there is substantial reason to believe that the court will take into account the contrition of the accused as a mitigating circumstance.

(4) The resolution adopted in conclusion of the mediation proceedings shall be communicated to the victim, the person filing the complaint and the person who filed the private motion, as well as to the county (Budapest) office of justice vested with powers and competence for the mediation proceedings. The resolution ordering the suspension of proceedings and referring the case to mediation may not be appealed.

(5) The statements made by the accused and the victim during the mediation proceedings may not be used as evidence in the criminal proceedings to which it pertains. The outcome of the mediation proceedings may not be used against the accused.

(6) The mediation proceedings shall be conducted by the by a probation officer engaged in mediation activities; the detailed regulations of mediation proceedings are laid down in specific other legislation.

(7) If the mediation proceedings are successful, and if Article 36 (1) of the Criminal Code shall be applied, the public prosecutor shall drop the charges; if Article 36 (2) of the Criminal Code applies, the public prosecutor shall make the indictment. If the accused started to carry out the commitments made in the agreement reached in conclusion of the mediation proceedings, however, his punishability is not terminated, the public prosecutor may postpone the accusation for a period of one to two years for a crime that is punishable by up to three years imprisonment.