

Restorative justice in Lithuania¹ (up to date until February 2008)

1. Legal base

Mediation is not known in the valid criminal law and the term 'mediation' has not been in use. Article 38 of the Criminal Code of the Republic of Lithuania foresees exemption from criminal responsibility where the offender reconciles with the victim. This is not mediation in the true meaning of the word.

In the Lithuanian scientific discourse, the importance of restorative justice and the possibilities for the implementation of mediation have been discussed for a long time already. Its potential is mainly seen in the context of juvenile criminal cases by way of experimenting by creating a pilot mediation programme in juvenile cases and by extending the experience to adult cases.

In civil cases there is a somewhat different situation. Since January 2006 a pilot project of judicial mediation in civil cases has been in operation. The Council of Courts adopted, on 20 May 2005, Resolution No. 13 P-348 "On a Pilot Project of Justice Mediation", which also approved the judicial mediation rules.² The Council of Courts, by its Resolution No. 13 P-15 "On the Extension of a Pilot Project of Justice Mediation", adopted on 26 January 2007, decided to extend and expand the implementation of a pilot project of judicial mediation in the courts of Lithuania. From 1 January 2008, a pilot project of judicial mediation has been operating not only in Vilnius City 2nd District Court, but also in the Lithuanian Court of Appeal, Kaunas Regional Court, Šiauliai Regional Court, Vilnius City 3rd District Court and some other district courts. This project is aimed at helping the parties to resolve their dispute amicably with the help of one or two mediators.

In the part on "Criminal and Punishment Execution Policy" of the National Crime Prevention and Control Programme of 20 March 2003, approved by Parliament, the strife for the creation of a restorative justice system is mentioned, its aim being to restore the former situation between the subjects affected by a crime – victim, perpetrator and society.³

2. Scope

Reconciliation in the Criminal Code of Lithuania is oriented towards both the offender and the victim. Reconciliation (Criminal Code art. 38)⁴ is foreseen as a conditional type of exemption from criminal liability, releasing the person from criminal liability, imposing a probationary period of one year, if the perpetrator has reconciled with the victim. Reconciliation is not possible in the case of serious and very serious crimes.

Under art. 38 of the Criminal Code persons who have committed a misdemeanour, negligent crime, minor or semi-grave crime may be exempted from criminal liability by court if: 1) they have admitted to the criminal offence, 2) they have voluntarily compensated or eliminated damage to the natural or legal person, or have agreed about the compensation or elimination of the damage, 3) they have reconciled with the victim or a representative of a legal person, and 4) there are no reasons to believe that they will commit another criminal offence. Further, pursuant to art. 38, offenders cannot be released from criminal liability if they have committed an offence within 4 years of another offence for which they have been released from criminal liability due to reconciliation with the victim.

In some cases the release from criminal liability can be reversed, namely: 1) if within a period of one year the person has committed a new intentional criminal offence, the prior decision about

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² National Courts Administration: <http://www.teismai.lt>.

³ Resolution No. IX-1383 "On the Approval of the National Crime Prevention and Control Programme" of 20 March 2003 of the Seimas of the Republic of Lithuania, Official Gazette, 2003, No. 32-1318.

⁴ The Criminal Code was adopted by the Seimas of the Republic of Lithuania on 26 September 2000, Official Gazette, 2000, No. 89-2741. It came into force on 1 May 2003.

the release from criminal liability ceases to be valid and the court will decide on the criminal liability for all offences committed; 2) if a person has committed a misdemeanour or negligent crime or does not meet the conditions and procedure for the compensation of damages without a valid reason, the court can abolish the decision to release the person from criminal liability and decide on the criminal liability for all offences committed (point 3, 4, art. 38 Criminal Code).

3. Implementation

3.1. Agencies: establishment and structure

The Code of Criminal Procedure⁵ (p. 5, Art. 212) foresees the termination of pre-trial investigation after the reconciliation of the suspect and victim in the cases specified in Art. 38 of the Criminal Code. In this case the pre-trial investigation is terminated by a decision of the judge of pre-trial investigation⁶, which confirms the resolution of the prosecutor on the termination of pre-trial investigation (Pt 2, Art. 214 of the Code of Criminal Procedure). A person may be exempted from criminal liability after reconciliation with the victim during the preparation of the case for hearing in the court; the case is then discontinued by a court order (Art. 235 of the Code of Criminal Procedure). This may also happen when hearing the case in the court of first instance, appeal and cassation, when discontinuing the case (Pt 5 Art. 254, Pt 4 Art. 303, p.1 Pt 2 Art. 326, p.2 Art. 327, p.2 Art. 382, Art. 383 Code of Criminal Procedure).

Since January 2006, a judicial mediation project has been implemented in civil cases in Vilnius City 2nd District Court. Since 1 January 2008 this project has been carried out in other courts of Lithuania.⁷

3.2. Agencies: practice and intervention types

Under the provisions of the Code of Criminal Procedure, intended for reconciliation of the offender and the victim in the public accusation cases, **the legal authorities have no obligation to initiate** the procedure of reconciliation or to inform victim and offender of the possibility thereof.

In respect to adult persons who have been exempted from criminal liability pursuant to a reconciliation with the victim, following penal measures may be applied: 1) prohibition of the use of a special right; 2) indemnification of damage to property or its elimination; 3) non-remunerated work; 4) contribution to a fund for victimised persons; 5) confiscation of property (only the property that was a tool in committing the crime, or which was the result of the criminal offence; this may be applied to juveniles as well) (Art. 67 of the Criminal Code).

Exemption of criminal liability pursuant to reconciliation between victim and offender is also applicable to juvenile delinquents, although it has to take into account special conditions applying to minors.⁸ According to Article 82 of the Criminal Code, the following measures of educational influence may be imposed on a juvenile who committed a criminal misdemeanour or a crime and who is exempted from criminal liability or punishment: 1) warning; 2) indemnification of damage to property or its elimination; 3) non-remunerated labour of educational value; 4) disposition to the care and supervision of the parents or other natural or legal persons taking care of children; 5) restrictions of behaviour; 6) placement in a special educational institution.

⁵ The Code of Criminal Procedure of the Republic of Lithuania was approved on 14 March 2002 by the Law No. IX-785, Official Gazette, 2002, No. 37-1341, which came into force on 1 May 2003.

⁶ Under article 19 of the Code of Criminal Procedure, the pre-trial investigation judge is the district court judge, appointed by the district court chairman to carry out procedural actions foreseen by the law and to take decisions.

⁷ Information about the project is available on the National court Administration webpage <http://www.teismai.lt>.

⁸ Issues relating to juvenile criminal liability are regulated in Chapter XI of the Criminal Code: "Specific Features of Criminal Responsibility of Juveniles".

Judicial mediation in civil cases is performed by mediators, specially trained judges, assistants of judges or other persons possessing the appropriate qualifications which are included in a list of judicial mediators made by a working group formed by the Council of Judges. It should be underlined that for a long time a mediation **system** was used, according to which **only** judges and assistants of judges were mediators; these circumstances were often evaluated critically in scientific discourses. Judicial mediation takes place in the court and is free.

3.3. Referral numbers and outcomes

According to statistical data, more than one tenth of the investigated criminal cases are terminated through the application of the reconciliation rules (e.g. subject to para.5 of Part 1 of Article 212 of the Code of Criminal Procedure, in 2005, 14.5% of pre-trial investigations were terminated, and 12.0% of the total criminal offences investigated in 2006).⁹

An increase in the number of civil cases dealt with through judicial mediation has been observed.

3.4. Other interventions

A special course on "Theoretical and Practical Problems of Mediation" is being taught at the Criminal Law Department of the Faculty of Law of Vilnius University. It is aimed at acquainting students with mediation and the problems of its application in Lithuania and other countries. It deals with the specific features of conflict settlement and restorative justice, problems in the mediation process in the foreign practice, international standards in the application of victim-offender mediation, and analysis of foreign experiences.

The social and legal protection programme of crime victims is one the programmes carried out by the Centre for Crime Prevention in Lithuania. The programme has the following goals: to improve the legal and social protection of victims, to provide timely information on victimisation processes, to solve problems of assistance to crime victims, to encourage crime victims to participate more actively in settling conflicts arising out of criminal acts, and to create victimological preventive measures.

The Ministry of Justice is in charge of considering applications for compensation for damages caused by violent crimes. The Law on Compensation for Damage Caused by Violent Crimes of the Republic of Lithuania (Official Gazette, 2005, No. 85-3140) identifies cases where the state compensates property and non-property damage caused by violent crimes and the procedure for the compensation. It is only applicable in cases where the person responsible for the damages does not indemnify them. The objective of the law is to defend the rights and legal interests of the victims of violent crimes. The law created the Fund for Crime Victims and determined the destination of the Fund and the source of funds. This law also ensures the implementation of the EU legal acts referred to in the Supplement to this law (namely European Union Council Directive relating to Compensation to Crime Victims of 29 April 2004, 2004/80/EC).

4. Evaluation

4.1. Context

The institute of exemption from criminal liability following reconciliation between the victim and the offender has existed in Lithuanian criminal law since 1993. The institute of reconciliation in public accusation cases [allowed the officials, taking into consideration the approaches of the victim and the offender to decide whether criminal prosecution is necessary. In the new Criminal Code of Lithuania the provisions for the reconciliation between victim and offender were expanded. However, this is not mediation in the true meaning of the word. Mediation is not known in the valid Lithuanian criminal law and the term 'mediation' has not been in use. Article 38 of the Criminal Code of the Republic of Lithuania foresees exemption from criminal responsibility where the offender reconciles with the victim.

⁹ IT and Communications Department of the Ministry of the Interior of the Republic of Lithuania, <http://www.vrm.lt>.

Since January 2006, mediation is applied in civil cases in Lithuanian courts as a pilot project. The interim results of the judicial mediation project show that the public's knowledge of mediation and reconciliation is increasing, the number of agreements is increasing, and that people are acquiring knowledge about mediation and reconciliation skills.

4.2. Current evaluation

Mediation is one of the so-called alternative measures, the purpose of which is to formulate an agreement between offender and victim with regard to compensation for the victim for the wrongdoing and damages, and for the offender to take responsibility for the consequences of his act. It is necessary to underline that mediation should be applied on a constitutional basis **only**, in compliance with the requirements of the **Constitution of the Republic of Lithuania** .

One of the problematic issues relevant to the implementation of mediation is the relationship between the criminal justice system and the mediation process. Cases are referred to mediation from the criminal justice system. Mediation may be seen as one way to increase the efficiency of the justice system. In addition, mediation programmes may work only when the accused has been identified, this being dependent on the efficiency of the police and other procedural institutions. Therefore, on the basis of the results of empirical research and the provisions of mediation, mediation should be functionally related to the justice system, while they should be implemented by social services (institutions not belonging to the criminal justice system).

4.3. Future direction

At an academic level, the need to introduce and start applying pilot mediation programmes in juvenile criminal cases is underlined. After an evaluation of the experience with mediation in juvenile cases, it would be possible to gradually introduce mediation in adult criminal cases.

When considering the implementation of mediation in Lithuania, it is of special importance that society and political parties would approve such an initiative and collaborate actively in its implementation. Representative investigations of various strata of society and victims, conducted in many states, show that society is open to accept new tendencies in the approach to juvenile delinquency. Experts of the science and policy of criminal law are convinced that the process of reconciliation between victim and offender, currently the real alternative to penal measures, will still gain in importance in the future.

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