

Restorative justice in Luxembourg¹ (up to date until February 2008)

1. Legal base

1.1. Adults

A law of 6 May 1999 introduced victim-offender mediation by amending Article 24(5) of the Code of Criminal Procedure. A regulation coming into effect on 31 May 1999 regulates the mediation procedure and the accreditation of the mediators.

A law of 8 September 2003 modified the law of 6 May 1999.

The law of September 8, 2003 on domestic violence amends the law on the victim-offender mediation in the sense that it excludes the possibility of recourse to the mediation by the Prosecutor when the authors and the victims cohabit.

1.2. Juveniles

There is no explicit legal reference to victim-offender mediation with juveniles. Referral takes place as an exercise in prosecutorial discretion, in the context of the law of 10 August 1992 relating to juvenile protection.

2. Scope

Article 24(5) provides that “the prosecutor may, prior to his decision on further action, decide on mediation if it seems to him that such a measure would ensure reparation of the damage caused to the victim, or put to an end the trouble resulting from the offence, or contribute to the rehabilitation of the offender. However, the recourse to the mediation is excluded in the presence of infringements with regard to the people with whom the author cohabits. The mediator is bound by professional secrecy”.

The law was largely inspired by Article 41(6) of the French Code of Criminal Procedure introduced in 1993 (see section 7).

Victim-offender mediation applies at the pre-prosecution stage only. The decision to refer a case to mediation lies entirely at the prosecutor’s discretion. There are in theory no restrictions concerning the type of offences that are amenable to mediation. In practice, cases referred to mediation concern mainly assault and battery, injury and threat, neighbourhood and family disputes. Whatever the outcome of the mediation may be, it will be reported to the prosecutor, whose decision whether to prosecute or to dismiss the case remains. The mediator is bound by a duty of professional confidence. No information concerning the content of the mediation sessions may be reported to the prosecutor.

While victim-offender mediation with adults is possible throughout the country, victim-offender mediation with juveniles is only carried out in the judicial district of the city of Luxembourg.

3. Implementation

3.1. Agencies: establishment and structure

As a result of the debates on the Bill, the law of 6 May 1999 provides that only individuals may be appointed as mediators. The Ministry of Justice is responsible for the mediators’ appointment procedures. The law requires that the candidate must satisfy the conditions of respectability, competence, training, independence and impartiality. No regulations have been made which further specify these requirements. By the end of June 2003, the Ministry of Justice had appointed 42 mediators. Of these, 22 work for the NGO *Centre de Médiation a.s.b.l.* They have differing professional backgrounds; for example, educators, lawyers, psychologists and social workers. The other 20 mediators work independently; most of them are lawyers.

The mediators receive a fixed fee per case which cannot exceed 500 Euro.

Those provisions only apply to victim-offender mediation with adults. Concerning juveniles, victim-offender mediation is carried out by the *Centre de Médiation a.s.b.l.* to which cases are

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referred by the prosecutor's office of the judicial district of Luxembourg city. There are no official regulations concerning victim-offender mediation with juveniles.

3.2. Agencies: practice and intervention types

In accordance with the regulation of 31 May 1999, the prosecutor suspends his action when he refers a case to mediation. The first mediation session must take place no later than three months after the mediator receives the case. The prosecutor must be informed no later than eight months after the referral of the outcome of the mediation. Under exceptional circumstances, the mediation process may be extended for a further four months. The prosecutor may ask the mediator to conduct the follow-up of the mediation for a period not exceeding six months.

The mediator must inform the parties of their right to be assisted by a lawyer. He may see the parties together or separately. The regulations provide that the mediator "suggests a solution to the conflict". At the end of the mediation, the mediator must inform the prosecutor of the outcome.

There are no other requirements concerning the conduct of the mediation process. This means that practice may vary from mediator to mediator.

3.3. Referral numbers and outcomes

Statistics concerning the use and results of victim-offender mediation are difficult to obtain. The following referral numbers are available.

	Judicial district	2000	2001	2002
Adults	Luxembourg	21	Not available	Not available
	Diekirch	5	28	Not available
Juveniles	Luxembourg	81	88	81
	Diekirch	Not applicable	Not applicable	Not applicable

The primary outcomes obtained are reparation and apology. Reparation may take various forms: financial compensation, donation to a charity fund and the completion of community service.

3.4. Other interventions

None known at this time.

4. Evaluation

4.1. Context

The development of victim-offender mediation in Luxembourg began in the mid-1990s. The main reasons for its promotion were to reduce the substantial number of cases where no action was taken by the prosecution, to strengthen the role of the victim in the criminal procedure and to make the offender – notably juveniles – more responsible for their actions. It had become increasingly difficult to convince victims and the public at large that the failure to take action in many cases was justifiable. Not every minor case could be prosecuted, but where the offender could easily correct the harm, it seemed perverse not to require it.

At the same time, the National Youth Service was coming under increasing pressure from its client group (dispossessed young people) to find alternatives that would help them come to terms with their social exclusion. Mediation was seen as one way in which connections to their communities could be re-established.

The first pilot project in the field of victim-offender mediation with juveniles commenced in September 1997 with the creation of the *Centre de Médiation a.s.b.l.* Following initial encouraging experiences, the public prosecutors of the two judicial districts of the Grand Duchy suggested the formal introduction of victim-offender mediation for adult offenders in the Code of Criminal Procedure. On 18 February 1999, the Minister of Justice introduced a Bill concerning penal mediation to Parliament. The Bill was passed two months later on 21 April 1999.

4.2. Current evaluation

No information is available.

4.3. Future direction

On 15 July 2003, the Luxembourg Parliament adopted a law concerning domestic violence. This law, which will come into force on the first day of the month following the publication, amends Article 24(5) of the Code of Criminal Procedure. It provides that mediation be excluded from cases where the offender cohabits with the victim. The reason for this exclusion is concern about the significant risk that the offender will exert pressure on the victim in order to push her to accept the principle of mediation or the proposed reparation of the harm caused. This risk is real in cases of domestic violence where the offender occupies a dominant position, preventing the victim from giving a free and voluntary consent to the mediation process.

It remains to be seen how prosecutors will apply this first restriction concerning the referral of cases.

5. Contact

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