

# Kluwer Mediation Blog

## Victim-Offender Mediation in Youth Criminal Matters: the Geneva Solution

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Since 1 January 2007, the law governing the criminal status of Youth (youngsters) has introduced the possibility of mediation. In Geneva, the Youth Court may delegate certain matters to mediation pursuant to a "Directive".

Such a process allows the victim and the offender to participate voluntarily and actively in the resolution of the offense or its consequences, with the assistance of a neutral, the mediator. Through mediation, people address the consequences of the ongoing criminal proceedings, explore or plan their own solutions and can reach a settlement out of the Criminal Court (Youth Court).

The Directive sets the framework and modalities for the implementation of the mediation in the Canton of Geneva. The purpose of this post is to examine its content.

Mediation in the Youth Court is a process whereby the Judge appoints a qualified, responsible and autonomous person, the mediator, who organises meetings in order to enable a solution freely negotiated between one or more injured persons (Victim(s) ) and one or more prosecuted persons (Offender(s) ) of whom at least one is a young adult ( hereinafter referred to as the "participants"), as a result of a conflict resulting from facts constituting a criminal offense (Directive, Article 2 – Definition).

In order to perform his function and duties, the mediator must be entered on the Roll of Mediators sworn in by the Council of State of Geneva (Switzerland) and be specialized in criminal mediation for youngsters. The mediator undertakes to abide to the applicable Rules of Ethics that encompass matters of independence, impartiality and confidentiality. In addition, the mediator must provide proof of a recognized and certified training in the field of mediation, be knowledgeable in criminal law concerning youth and having a professional experience and skills specific to the accompaniment of youngsters. The mediators that meet such qualifications may apply for inclusion on the list established for this purpose by the Youth Court within its full discretion (Directive, Article 3 – the Mediator).

The mediation process can be set in motion by the judge at any stage of the proceedings, either at the opening, during the trial or in the trial stage. Mediation temporarily suspends criminal action (Directive, Article 4 – Principle).

Judge may resort to mediation when the following conditions are met:

- a person aggrieved or victim has been identified;
- the facts constituting the offense are essentially established;
- these facts have been globally recognized by the author;
- there is no need to take protective measures or the Civil Authority already ordered appropriate measures;
- where conditions for sanctions exemption are met.

Before resorting to mediation, the judge may seek the opinion of the mediator (Directive, Article 5 – Delegation Criteria).

In instances where the judge considers that mediation is appropriate, he notifies in writing the participants and, if there are youngsters, their legal representatives. Subsequently, the mediator notifies the participants and, if there are youngster, their legal representatives; he also draws their attention to their rights in relation to this process, its voluntary nature, its specificities and possible consequences of the criminal proceedings in their decision to participate (Directive, Article 6 – Information to Participants).

The mediation process formally begins by the transmission of copy of the criminal file to the mediator. The file will be returned to the Court at the end of the mediation, regardless of its outcome. The judge grants to the mediator a reasonable time – generally from one to three months – to conduct the mediation, taking into account the specificities of the case, in particular the nature of the offense and the personal circumstances of the participants. This period may be extended upon a reasoned request submitted by the mediator to the judge. Throughout the process, the judge is master of the criminal proceedings. He may, at any time, inquire into the state of progress of the mediation (Directive, Article 7 – File Transmission).

As regards the mediation process, the mediator, as a general rule, invites initially the participants to a private meeting and, if they are youngsters, their legal representatives, in order to determine and clarify the meaning of mediation. The mediator strives to create the conditions under which mediation could take place. For this purpose, he may call upon others significant persons who are not implicated in the procedure. In cases of multiple participants, group meeting(s) may be held for the same purpose (Directive, Article 9 – Preliminary Meetings).

Mediation then goes on with the active search for solution by making further meetings, usually in the presence of all participants in dispute. The meetings are held in camera in a location chosen by the mediator. Each participant and, if any youngster, his legal representatives, are free to terminate the process. However, the mediator will be notified promptly in writing or during a meeting. Similarly, the mediator may interrupt the process at any time for just cause (Directive, Article 10 – Mediation Proceeding).

Both during preliminary meetings that during the mediation itself, the participants may, if they wish, be assisted by a person of trust and a legal counsel. The participation of these different people will be discussed at the beginning of the process (Directive, Article 11 – Assistance).

If mediation leads to a settlement, it shall be signed by each participant and, if they are youngsters, countersigned by their legal representatives. When the offense is prosecuted upon complaint, the complainant and, where appropriate if a youngster, his legal representatives, may submit to the judge, acting through the mediator, a withdrawal of the complaint. If the mediation is unsuccessful, the mediator informs the judge accordingly (Directive, Article 12 – Mediation Outcome).

The mediator reports regularly in writing to the Court on the state of progress of the mediation process (Directive, Article 13 – Report to the Judge).

Participants are responsible for the execution of the settlement agreement that they have been entered into, within the period determined. However the mediator ensures the implementation of the execution of the agreement before reporting to the judge. Upon receipt of the mediation settlement agreement, the judge terminates the criminal proceedings (Directive, Article 14 – Performance of the Agreement).

The procedure for mediation is free for participants (Directive, Article 15 – Mediation Costs).

The mediator's fees are paid by the Youth Court, on the basis of a detailed statement of activities, based upon the costs of legal assistance (Directive, Article 16 – Mediator's Fees).

Between January 2011 and February 2012, 61 cases were sent to mediation one third of which have been successful. The average time of those matters was three months.

The undersigned has conducted three of them within that period with the same rate. In all cases it has been a very interesting and lively experience, both from a human than process perspective. The good cooperation between the judges and the mediator must also be pointed out.

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