

MEDIATION IN PENAL MATTERS

Conflict resolution can be better than an appearance in court

WHAT IS MEDIATION IN PENAL MATTERS?

Mediation in penal matters is possible at each stage in the criminal proceedings. The public prosecutors' office or the court instructs **NEU**START**** to carry out mediation in penal matters.

... Mediation in penal matters aims to reconcile the accused party and the victim.

... Mediation in penal matters aims to achieve an out-of-court settlement which is fair and acceptable to all the parties involved by working together with an impartial mediator.

... To prepare for the mediation meeting, the mediator holds talks with all the parties involved (the victim[s] and the accused party).

... The settlement and mediation agreements between the victim[s] and the accused party are recorded in writing.

... Mediators report to the public prosecutor or the judge about the mediation agreements and the extent to which they have been met.

... In most cases, a trial is not held after a settlement has been achieved through mediation in penal matters.

... If mediation in penal matters remains unsuccessful, the public prosecutors' office or the court decides whether to continue the criminal proceedings in a formal trial.

... With the exception of the report, mediators are sworn to preserve confidentiality.

... Participation in mediation in penal matters is entirely voluntary for all parties involved.

INFORMATION FOR ACCUSED PARTIES

Mediation in penal matters offers the accused party the opportunity to reach an out-of-court settlement for an offence which he is alleged to have committed. Pre-conditions for successful mediation in penal matters are:

... the willingness of the accused party to deal with the incident in question as well as its causes and consequences and to take responsibility for these;

... the willingness of the accused party to talk to the victim and pay compensation for damages;

... payment of a total sum of no more than EUR 250 to cover costs (providing that this does not jeopardise the livelihood of the accused party).

If the case is dismissed it shall not be recorded in the register of convictions but remain on file as a notice within the judicial system for a period of ten years.

Mediation in penal matters requires the consent of the accused party. Until the case is dismissed, the accused party always has the right to request continuation of the criminal proceedings.

Accused parties can always have their lawyer present or use other advisory and counselling services.

In the case of young persons accused of committing the offence, the legal guardian has the right to submit a statement. Any legal transactions conducted outside the legal capacity of young people require the consent of their legal representative as well as custodial approval.

INFORMATION FOR VICTIMS

Mediation in penal matters offers victims the following avenues of support:

- ... the opportunity to talk about the offence and its impact;
- ... the opportunity to speak in confidence about matters, requirements and expectations of compensation for the crime committed;
- ... help in safeguarding their interests such as compensation for damages;
- ... the opportunity to speak to the accused in a talk chaired by the mediator.

Victims can always be accompanied by a person they trust or their lawyer. The mediator shall also inform them of recourse to other third-party assistance for victims.

In the case of underage victims, consent to mediation in penal matters must first be obtained from the legal guardian.

In the case of accused parties who have reached adulthood, the reaching of a settlement depends on the agreement of the victim, unless this is refused for reasons which would otherwise not be taken into consideration in criminal proceedings.

The decision to set aside criminal proceedings rests with the public prosecutors' office or the court.

PLEASE NOTE

For mediation in penal matters to operate successfully it is important that you are completely well informed. This is a basic outline of mediation in penal matters. Our social workers are happy to answer more detailed questions. Further information in English is available at www.neustart.at.

Women and men require our support. The balanced mix of male and female staff makes us an expert organisation in dealing with the consequences and causes of crime. For the sake of greater clarity and readability we have used the masculine form for pronouns throughout this brochure.