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Mediation in Lithuanian Criminal Justice

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The article offers analysis of the Lithuanian model of mediation in criminal justice, the aspects of its development and implementation. Additionally, the authors consider the place of mediation within criminal justice in the general institutional framework of mediation. The model of mediation in probation services is further revealed, its practice and perspectives are discussed, analysing the advanced practice of European countries in the application of mediation in criminal justice. The authors also assess the existing legal framework in Lithuania and the need to change the current regulatory framework for the implementation of mediation in criminal justice in the legal system.

Keywords: mediation, mediation in the probation system, mediation in criminal justice, probation.

Contents

Introduction 133
1. Possibilities of applying mediation in criminal justice 134
2. Mediation in the Lithuanian Probation Service 135
3. Mediation in the Lithuanian Prison Service 138
4. Analysis of foreign practices of mediation in criminal justice 139
5. Guidelines for establishing mediation in criminal justice 143
Summary 146
References 147
Bibliography 147
Normative acts 148
Case law 148

Introduction

The Lithuanian practice of mediation in criminal justice is unique in the context of other EU countries, as mediation practice in Lithuania has been introduced and

developed in civil and later administrative justice. Only later did separate mediation practices emerge in criminal justice. Although mediation doctrine shows that it was mediation in criminal justice, especially for juvenile offenders, that was the starting point for the introduction and development of a general mediation system.

Thus, mediation in criminal justice in Lithuania has taken different forms, with attempts being made to apply mediation in the cases of juvenile offenders in police institutions,[1] episodic mediation in the application of the provisions of the Law on the Minimum and average supervision of the child, and in the activities of the probation service.[2]

However, it has to be admitted that mediation in criminal justice is fragmented, and present only in a narrow range of applications, and the main reasons for this are insufficient legal regulation and the absence of a unified policy on the issue.

The article presents the practice of applying mediation in the probation service, which is unique and innovative, as it is the first model of applying mediation in criminal justice in Lithuania, where a system of mediation services at the level of the institution has been developed and implemented. Mediation in the probation service is defined as an effective way to resolve conflicts arising from offences, allowing for conflict solutions that meet the needs of both parties (the victim and the offender), as well as enabling the reduction of over-involvement of persons in formal criminal justice procedures and acting as a preventive measure to reduce the risk of recidivism.

The object of the study – the implementation of a mediation service model in criminal justice.

The aim – to present proposals for the maintenance and development of mediation in the probation system in criminal justice.

The objectives:

- to provide an overview of the possibilities of applying mediation in criminal justice;
- to analyse and present a model of mediation in the probation system;
- to identify the factors for the development of mediation, the legal basis for its application and its sufficiency;
- to present the practice of mediation in criminal justice in foreign countries.

1. Possibilities of applying mediation in criminal justice

The introduction of mediation into the probation system was not accidental. The decision was based on the advanced practice of European countries (e.g., the Czech Republic,[3] Latvia[4]), where mediation has been used in probation services for more

[1] Note: The progressive project "Strengthening the capacity of police officers to ensure an effective impact on juvenile delinquent behaviour through the implementation of restorative justice models", implemented by the Police Department under the Ministry of the Interior and the Crime Prevention Centre in Lithuania, is part of the European Union's Special Programme "Prevention of and Fight against Crime" 2007–2013.

[2] According to data provided by the National Education Agency's Education management information system. Available: https://www.svis.smm.lt/ [last viewed 19.07.2025].

[3] The probation and mediation service began operating in 2001. See, for example, *Matoušková, A.* Supporting victims of crime and offenders through probation and mediation. Justice Trends, 2022. Available: https://justice-trends.press/supporting-victims-of-crime-and-offenders-through-probation-and-mediation [last viewed 19.07.2025].

[4] Mediation in criminal justice has been used in Latvia since 2004 and served as a basis for the subsequent implementation of mediation in other sectors. See, for example, *Tvaronavičienė, A., Kaminskienė, N., Rone, D.* and *Uudeküll, R.* Mediation in the Baltic States: Developments and Challenges

than a decade. It is also based on the need to have a system for dealing with conflicts arising from the commission of criminal offences on the basis of restorative justice, which is programmed in the Probation Act[5] (PA), where Article 4 defines one of the fundamental principles of restorative justice, whereby restorative measures are applied during the execution of the probation, which ensure reconciliation between the victim and the probationer, and mediation for the purpose of making reparation for the damage caused by the criminal offence.

It should be noted that the Ministry of Justice has prepared and approved the Concept for the Development of the Mediation System,[6] which singles out mediation in the criminal justice system and provides for measures for its development, including its support in the penal enforcement system.

The international standards that have been used as a basis for the development and implementation of the model of mediation in the probation system, i.e. Recommendation No. R(99)19 of the Committee of Ministers of the Council of Europe of 15 September 1999 on Mediation in Criminal Matters), as well as the European Parliament and the Council of 25 October 2012 Directive 2012/29/EU establishing minimum standards on the rights, support and protection of victims of crime.

It is also important to mention the possibility of implementing the Council of Europe Committee of Ministers' Recommendation CM/Rec(2018)8 of 3 October 2018 on Restorative Justice in Criminal Justice, given that Lithuania signed the Declaration of the Ministers of Justice of the Council of Europe on the Role of Restorative Justice in Criminal Matters (the 'Venice Declaration') on 14 December 2021, thereby confirming its commitment to implement the Recommendation and to work towards the establishment of an effective victim-centred mediation process in the criminal justice system.

2. Mediation in the Lithuanian Probation Service

The results[7] of the survey of statistics and mediators of Lithuanian probation services show that in 2023, 5 mediators provided mediation services. In addition, the probation service has a specialist assigned to mentor mediators through 3 regional offices covering the whole country. In one year, one mediator carries out about 100 to 120 mediations.

of Implementation. Access to Justice in Eastern Europe, 4(16), 2022, pp. 68–86. Available: https://ajee-journal.com/upload/attaches/att_1668601012.pdf#:~:text=in%20civil%20and%20commercial%20cases%2C,these%20reasons%2C%20the%20first%20mediators [last viewed 19.07.2025].

5 Law on Probation of the Republic of Lithuania, 22 December 2011. XI-1860, Valstybės žinios, 2012-01-06, No. 4-108.

6 Order of the Minister of Justice of the Republic of Lithuania No. 1R-268 of 17 September 2015 Concept of Development of the Conciliatory Mediation System.

7 Note: data collected and compiled by the authors. Data source: annual reports of the Lithuanian Probation Service. The annual reports of the Lithuanian Probation Service are available on the service's website. Available: https://probacija.lrv.lt/lt/apie-lietuvos-probacijos-tarnyba/statistika/metines-ataskaitos/ [last viewed 19.07.2025].

Table 1. Use of mediation in the Lithuanian Probation Service in 2019–2023

No.	Year	Number of mediations
1.	2019 m.	719
2.	2020 m.	626
3.	2021 m.	516
4.	2022 m.	415
5.	2023 m	484

An analysis of the statistics on mediation in the Probation Service shows that there has been a decrease in the number of mediation cases since 2019. The decrease in the number of mediations is due both to the limitations on the use of direct mediation during the COVID pandemic and to changes in the Probation service. It should be mentioned that in 2016, after the introduction of mediation in the probation system, 12 mediators were recruited, later the number of mediators was reduced to 10, but the higher number of mediators has led to an increase in the volume of mediation services, especially the part of the mediations that were "externally" mediated, that is, mediation initiated by the courts, the police, the prosecutor's office and other social partners. This practice is no longer applied today, and more emphasis is placed on mediation cases involving prisoners under the supervision of the Lithuanian Prison Service.

The analysis of mediation cases in the Probation Service in 2023–2024 showed that 78% of mediation cases dealt with restitution, i.e., compensation for damages, 17% with violence between the convicted person and the victim, and 5% with other issues, which mostly ended with the convicted person's admission of guilt and a sincere apology.

Thus, mediation practice has shown that in 17% of cases, mediation is implemented in conflicts arising from domestic violence. There is no unanimous opinion on this issue, as the use of mediation carries an increased risk of secondary or even repeat victimization. However, without denying the potential risks for the victim, it should be stressed that in the cases mentioned above, a specific form of mediation and tactics are used. Mediators use the possibilities of distance mediation, as well as a whole range of safety measures aimed at protecting the victim (e.g., calling the parties to the mediation at different times, while avoiding pre-mediation conflicts; comediation; organization of individual caucus meetings, etc.).

In addition, specific guidelines have been drawn up on the subject, which stress that mediation in cases of violent crime is possible with emphasis on the specific training and specialization of the mediator(s), the pre-mediation analysis of the situation and possible risks, the use of specific interviews, the gathering of prior information, and the victim's informed consent to participate in the mediation, including the right to withdraw from the process. It is also stressed that mediation in cases of domestic violence is (mostly) used and produces positive results when the violence is of a psychological and economic nature and when the victim does not suffer serious health problems. The model of mediation (in cases of domestic violence) does not focus on reconciliation of the parties, but rather on an adequate, rational solution to the conflict between the parties.

Another important aspect of the model is that mediation in cases of violent crime is combined with specific approved motivational (e.g., EPP – Behaviour-Change-Transformation) and behaviour change programs (e.g., Domestic Violence

Intervention Program) for convicted prisoners, which create a favourable environment for the implementation of mediation.

Thus, one of the most important aspects of the mediation doctrine is the effectiveness of mediation in terms of timely intervention, de-escalation of the conflict between the parties and its impact on both parties: For the victim, by ensuring restitution, removing the factors that contribute to feelings of insecurity, and avoiding secondary or repeated victimization, whereas for the perpetrator, avoiding stigmatization and criminal records, while at the same time creating conditions for reparation.

As mentioned above, mediation in Lithuanian criminal justice is applied narrowly and in the context of court-imposed sentences. It should be noted that the current legal framework is not adequate to ensure the smooth application of mediation throughout the criminal prosecution process. The transfer of mediation cases to the probation service is exclusively based on cooperation between law enforcement authorities, on service assistance and on an understanding of appropriate trust and confidentiality of information.

A further analysis of the fragmented practice of mediation reveals some cases where mediation can be applied prior to the pre-trial investigation (the "front door" model). Following is not a description of the basis for the use of mediation as such, but characterisation of the possibilities to use mediation as a tool for resolving a conflict or dispute. Thus, the circumstances which make criminal proceedings impossible are Article 3(1)(3) of the Code of Criminal Procedure if the person who committed the offence was under the age of criminal responsibility at the time of the commission of the offence, Article 38(1)(3) if the person has reconciled with the victim, Article 3(1)(4) in the absence of a complaint by the victim, where proceedings can only be initiated on the basis of a complaint by the victim.

The "Grounds for imposing measures of minimum and medium supervision of the child" are also highlighted, where the mandatory application of mediation is possible for a minor who has committed an act that has the characteristics of a criminal offence or a criminal misdemeanour, but who has not yet attained the age of criminal responsibility under the criminal laws (Article 8(1)(1) of the Law on the Minimum and Average Care of a Child).[8]

Mediation practice has shown that mediation can also be used during pre-trial investigations or trials. There are the following distinct legal grounds for this: 1. Exoneration from criminal liability where the perpetrator and the victim reconcile. Article 212(1)(5) of the Code of Criminal Procedure applies when the suspect and the victim reconcile in cases provided for in Article 38 of the Criminal Code; 2. Exemption from criminal liability of a minor, where a minor who has for the first time committed a reckless crime or a minor or a light crime or a trivial intentional crime may be released from criminal liability by the court if he has apologized to the victim and has compensated or repaired, in whole or in part, the property damage caused by his work or by means of money (Art. 93 of the Criminal Code).

[8] Law of the Republic of Lithuania on Minimum and Average Care of a Child. Valstybės žinios, No. 80-3214, 2007.

3. Mediation in the Lithuanian Prison Service

The systematic use of mediation in Lithuanian prisons started in 2018 with the adoption of a special procedure on the use of mediation in prisons[9], although the practice itself was not extensive, with up to 20 mediation cases per year. It should be mentioned that in 2023–2024, the use of mediation in Lithuanian prisons was expanded, as the Lithuanian Prison Service and the Probation Service signed a cooperation agreement,[10] in which one of the points is the use of mediation in prisons. It is also worth to note para. 19.1.4 of the Lithuanian Probation Service's Strategic Guidelines for 2024–2030,[11] where the development of mediation services is indicated, with particular emphasis on social partnership.

Current practice shows that there are around 30 mediations a year in Lithuanian prisons. In addition, among the mediators working in the probation service, there are mediators who specialize in working in prisons, as this is related to the specifics of the application of mediation, its objectives and the outcome, which are important:

- The convicted person demonstrates by real actions, concrete decisions that his attitude and behaviour are changing, which is crucial for the assessment of his risk of re-offending, e.g., when convicted persons start to compensate for the damages awarded to the victims, answer questions, show that they take responsibility, do not deny their guilt, then there is a basis for the assessors of the resocialization process to revise the level of risk;
- The principle of progressivity of the sentenced person's sentence is realized when he demonstrate a change in his behaviour and, at the same time, a change in the conditions of serving the sentence, and may be transferred to a semi-open or open place of detention;
- The issues at stake are family matters, the convicted person's immediate environment, i.e., marriage, child support and property obligations;
- It has a positive impact on the resocialization process, as mediation creates a space to meet directly and resolve persistent conflicts and misunderstandings in the immediate environment, and has a preventive effect.

In summary, the place of mediation in the penal enforcement system is defined both in the Penal Enforcement Code and in the Probation Act, and its scope is dictated by the realization of the principle of restorative justice, i.e., by compensating the victim for the damage, by re-establishing a constructive and cooperative relationship between the parties to the conflict, and by giving the convicted person an opportunity to demonstrate positive change and to have it evaluated in terms of his resocialization.

It is important to underline that even if a unified institutional framework for mediation is created, which will include mediation in criminal justice to its full

[9] Order of the Director of the Prison Department under the Ministry of Justice of the Republic of Lithuania of 19 October 2018 "On the Approval of the Description of the Procedure for the Organisation and Conduct of Conciliatory Mediation in the Institutions of Deprivation of Liberty Places". Document No. V459, TAR, 19-10-2018, No. 16397. Available: https://eseimas.lrs.lt/portal/legalAct/lt/TAD/41905440d3d611e8a3fadd00a256c61a?positionInSearchResults=11&searchModelUUID=d87d1f9f-ace1-43f1-ac76-8add998f7fe1 [last viewed 08.02.2025].

[10] Cooperation between Lithuanian prisons and probation services is being strengthened. Available: https://kalejimai.lrv.lt/lt/naujienos/stiprinamas-lietuvos-kalejimu-ir-probacijos-tarnybu-bendradarbiavimas/?utm_source=chatgpt.com [last viewed 18.07.2025].

[11] Order of the Director of the Lithuanian Probation Service No. V-29 of 19 January 2024. On the approval of the Strategic Guidelines for the Lithuanian Probation Service 2024–2030. Available: https://probacija.lrv.lt/media/viesa/saugykla/2024/2/5tkM6-jwtNQ.pdf [last viewed 08.02.2025].

extent, it will not eliminate the need for mediation and other restorative justice models in the penal system. Restorative justice is the fundamental principle on which the modern Lithuanian penal enforcement system must be based, focusing on changes in the behaviour of the convicted person and the satisfaction of the victim's needs and interests.

4. Analysis of foreign practices of mediation in criminal justice

This part of the article offers the analysis of mediation in criminal justice in foreign countries, which shows that the models used by countries can be divided into two main groups: (i) those that apply a partial model of mediation in criminal justice, and (ii) those that apply a full model of mediation in criminal justice.

The difference between mediation models is mainly related to the stage of the process at which the parties can initiate mediation. In a partial mediation model, the parties are restricted as to the point at which mediation is initiated, whereas in a full model the parties are free to initiate mediation at any stage of the process.

As examples of the full model, the authors of article will use the examples of Belgium, the Czech Republic, Germany (partially), Spain, Croatia, Cyprus, Poland, Sweden and Finland, as these countries apply the latter model in their criminal proceedings.

The Ireland, Denmark and Hungary will be used as examples of the partial model.

In all full-model countries, mediation can be introduced at any stage in criminal proceedings. That is, both before, during and after the trial. The consent of the members of the process, especially the victim, is an important criterion. In some countries applying the full model, e.g., Belgium,[12] Czech Republic,[13] Germany,[14] Cyprus,[15] the process is not possible due to the role/power differential, which means a potentially unequal position of the parties in the process, which may affect both the process and the outcome.

In Belgium, the Czech Republic, Germany, Croatia,[16] Cyprus,[17] and Sweden,[18] mediation cannot be used for serious and violent crimes. In Belgium, the list is extended to include crimes that threaten the state, and in Spain[19] and Croatia for crimes of public interest. In the case of Germany,[20] it is further elaborated by stating that mediation is not available for public law disputes in which one of the parties

[12] Mediation in EU countries. Available: https://e-justice.europa.eu/topics/taking-legal-action/mediation/mediation-eu-countries/be_en?BELGIUM=&member=1 [last viewed 08.02.2025].

[13] Ibid.

[14] Ibid.

[15] Ibid.

[16] Mediation in EU countries. Available: https://e-justice.europa.eu/topics/taking-legal-action/mediation/mediation-eu-countries/be_en?BELGIUM=&member=1 [last viewed 08.02.2025].

[17] *Plevri, A.* Mediation in Cyprus: theory without practice. The Cyprus Review, 30(1), 2018, pp. 127–148.

[18] Mediation in EU countries. Available: https://e-justice.europa.eu/topics/taking-legal-action/mediation/mediation-eu-countries/be_en?BELGIUM=&member=1 [last viewed 08.02.2025].
Jacobsson, M., Wahlin, L., Fromholz, E. Victim offender mediation in Sweden: an activity falling apart? Nordic Mediation Research, 2018, pp. 67–79;
Jacobsson, M., Wahlin, L., Andersson, T. Victim – offender mediation in Sweden, Is the victim better off? International Review of Victimology, 18, 2018, pp. 229–250.

[19] *Martell, R. P., Vilalta, A. E.* Overview of the new normative on mediation in Spain. Available: Overview_of_the_new_regulation_in_Spain_UK_02062012.pdf (ama.asn.au) [last viewed 08.02.2025].

[20] *Dendorfer-Ditges, R.* Mediation in Germany: 2019. Available: https://www.lexology.com/library/detail.aspx?g=cce08f79-a8c8-43a3-9da0-f0dc861fc2bb [last viewed 08.02.2025].

is the State (one of the institutions). In Poland,[21] there is no statutory limitation on the cases in which mediation in criminal proceedings would not be possible, so in theory mediation can be requested in any case and regardless of the nature or gravity of the case. However, in Poland, the final decision to refer a case to mediation is taken by the court or the prosecutor, regardless of the will of the parties, and the only limitation is the duration – mediation cannot last more than one month. In contrast, the Finnish model[22] does not contain a strict and mandatory prohibition of mediation in certain crimes, but rather requires mediation to be used more cautiously in some cases, and does not recommend mediation at all in sexual offences or crimes against children. The identification in the legislation of crimes for which mediation is not possible can be regarded as reasonable, particularly in view of the type of crime and the protected values that have been attacked. However, the practice in Poland of leaving the right to decide whether mediation is possible to the judge or the prosecutor, rather than to the parties themselves, is to be criticised as potentially having negative consequences in terms of discrimination or corruption.

Mediation is not allowed in Spain, Croatia and Cyprus for criminal cases of domestic violence, and in Spain for non-transferable rights (e.g., transfer of custody). Thus, cases involving family law relations in the context of criminal law relations limit the possibility of a mediation process.

Another crucial condition for the mediation process is the existence of legal capacity. If a person is incapacitated due to illness, age or other conditions, mediation is not possible in criminal proceedings. This condition applies in the Czech Republic, Germany and Finland. Capacity to act is seen as a crucial element, as only a person with capacity can take decisions with an understanding of their content, consequences and impact on the person's legal position.

In Belgium and the Czech Republic, mediation in criminal proceedings is also not available in cases where the trial needs to take place as soon as possible, and in Croatia in cases where the mediators are not qualified in the relevant disputes or where the subject matter of the dispute is unclear.

As mentioned above, unlike the full model, the partial model does not allow mediation to be initiated at any stage of the criminal proceedings, i.e., there are clear criteria for which stages are allowed and which are not. However, as in the full model, in the partial model, even if the criterion on the stage at which the parties may request the initiation of mediation is met, there are some offences for which mediation is not allowed.

In Ireland[23] mediation cannot be used when a trial is underway and a final judgment is imminent. However, it is up to the parties involved to decide whether they wish to use mediation and, most importantly, at what point in time, within the limits of the legal framework, in accordance with the Mediation Act 2017.[24] In Ireland, mediation cannot be used for serious and anti-state offences, as well as for

[21] Mediation in criminal cases. Available: Mediation in criminal cases (karne.pl) [last viewed 08.02.2025]; *Silecka-Marek, E.* The institution of mediation in Polish criminal law. Resocjalizacja Polska, 19(1), 2020, pp. 123–140;
Bronski, W., Bara, D., Dąbrowski, M., Sławicki, P. Mediation in Penal Enforcement Proceedings *de lege lata.* Studia Iuridica Lublinensia, 32(2), 2023, pp. 57–72.

[22] *Paasonen, J.* Mediation in criminal cases in Finland. 2023. Available: https://osuva.uwasa.fi/bitstream/handle/10024/16640/Osuva_Paasonen_2023.pdf?sequence=2 [last viewed 18.07.2025].

[23] Mediation in EU countries. Available: https://e-justice.europa.eu/topics/taking-legal-action/mediation/mediation-eu-countries/be_en?BELGIUM=&member=1 [last viewed 08.02.2025].

[24] Mediation Act 2017. Available: Mediation Act 2017 (irishstatutebook.ie) [last viewed 08.02.2025].

disputes relating to public regulation. Mediation may not always be used in domestic violence disputes, nor in child custody disputes, particularly where there is a question of whether such a solution would be best for the child. In such cases, the courts often step in and decide what is potentially the best solution for the child, i.e. to initiate a mediation process or to stay in the court phase of the dispute. Furthermore, mediation in Ireland is not possible due to (i) imbalance of power; (ii) lack of capacity; (iii) lack of consent of either party. Although an agreement reached in mediation may become legally enforceable, if one party does not comply with the agreement or tries to avoid it, the mediation becomes ineffective. Thus, once the mediation process has been completed and a settlement has been reached, it is not invariably a 100% resolution, as one of the parties may decide not to comply with it.

In Denmark,[25] which also has a partial model, mediation is in no way a substitute for judicial proceedings and can only be used after the latter have been concluded. If the parties decide to initiate the mediation process before the start of the trial and the mediation is successful for the parties, it is the judge who decides, the start of the trial, how the mediation will affect the court proceedings. In Denmark, as in Ireland, mediation is only possible if both parties agree to it.

There are also restrictions on the participation of minors, requiring the consent of their representatives (limitation of legal capacity). In the Danish case, mediation is only practicable on the condition that the perpetrator admits having committed the offence. Furthermore, there are no clear guidelines or clear exceptions as to which offences can be subject to mediation and which cannot. As in Finland, in Denmark mediation can only be used in domestic violence cases when such cases are referred by a police officer or a public prosecutor, and provided that the mediation is used for the first time, i.e., it has not been unsuccessful in the past, and the violence is not of a repetitive nature.[26]

The partial model is also applied in Hungary.[27] As in Denmark, in Hungary the defendant must have admitted the offence in order to participate in mediation. In terms of timing, mediation is only available at the pre-trial stage and before the formal charge, but if there are reasons (which are not specified) why it would be appropriate to use mediation after the start of the trial, this option is left open to the parties. In Hungary, mediation is not possible if the accused does not show active repentance, which is the basis for the use of mediation. Unlike other countries, Hungary has not only established cases where mediation is not possible, e.g., if the defendant is a recidivist, if the crime was committed while a member of a criminal organisation, but also cases where mediation can be used, e.g., in cases of offences against life, physical integrity, health, personal liberty, dignity and certain fundamental rights, as well as in cases of traffic offences, offences against property or intellectual property and/or criminal offences punishable by up to three years' imprisonment.

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[25] Mediation in EU countries. Available: https://e-justice.europa.eu/topics/taking-legal-action/mediation/mediation-eu-countries/be_en?BELGIUM=&member=1 [last viewed 08.02.2025]; Law on the resolution of conflicts related to criminal offences. LAW No. 467 of 12 June 2009. Available: https://www.retsinformation.dk/eli/lta/2009/467 [last viewed 08.02.2025].

[26] *Lappi-Seppälä, T., & Storgaard, A*. Nordic Mediation – Comparing Denmark and Finland. Neue Kriminalpolitik, 27(2), 2015, pp. 136–147. Available: http://www.jstor.org/stable/26315681 [last viewed 08.02.2025].

[27] *Barabás, T. A*. Restorative justice in Hungary: a rapidly growing field of practice. Restorative Justice, 3(3), 2015, pp. 387–395. https://doi.org/10.1080/20504721.2015.1109348; Mediation in Court Proceedings. 2024. Available: https://wydawnictwo.iws.gov.pl/wp-content/uploads/2024/06/MediationCourt_06__18-03-2024_DRUK.pdf [last viewed 08.02.2025].

An analysis of the use of mediation in criminal justice in different countries has shown that, regardless of the model used by a given country, there are fundamental grounds for not proceeding. These include:

- reluctance of the parties to participate in mediation;
- power difference;
- cases of serious, violent crime;
- cases of domestic violence.

Acts that either make the process impossible or single out as requiring special attention include, in the practice of the countries, those involving minors. An analysis of the practice in the various countries shows that the parties do not necessarily prohibit mediation in cases involving minors, but that, even if they do, there remains a duty to assess very carefully the need for and the possibility of such mediation in the light of the specific situation of the minor, the objectives pursued by the mediation, and the possibility of achieving those objectives without causing additional harm to the minor.

When assessing the practice in the countries regarding the offences which do not allow the initiation of mediation, there is a tendency for such offences to be related to particularly sensitive cases, which involve attacks on the most protected values (life, health), or which are special because of the nature of the case and the parties involved in the case, e.g., family members, cases of domestic violence, sexual offences. This type of crime is distinguished by the fact that it is extremely sensitive (psychologically, emotionally). These crimes have a direct relationship with the victim, are committed in the victim's immediate environment (in cases of domestic violence), or have complex psychological consequences. Such reasons are likely to determine the practice of the parties not to apply mediation in this type of criminal case.

One of the most important criteria, which is common to almost all parties, is that the parties to the mediation must be voluntary, as the basis for the mediation process. The mediation process shall not be initiated and shall be terminated if the parties no longer wish to participate in the mediation. The aforementioned circumstance is viewed in the academic literature through both a positive and a negative lens, taking into account the fact that, due to the principle of voluntariness, on the initiative of one of the parties, a mediation process may not be started at all, while one that has been initiated may be terminated for any reason whatsoever,[28] in which case mediation would be ineffective in this respect[29].

The imbalance of power, as one of the criteria applied in some of the practices of the countries analysed and which makes the mediation process in criminal justice impossible, is related to the imbalance of equality in the process, where the process would already be "entered" from different positions, which would make the mediation process impossible. The imbalance of power can be linked to socio-economic status, legal literacy or psychological motives, i.e. psychological and emotional pressure, which can be particularly pronounced in the case of mediation for crimes in which the accused and the victim are in a close relationship (e.g., family members, spouses).

The analysis of the use of mediation in criminal justice in different countries has also shown that, depending on the model used by the parties, the possibility of

[28] Legal Framework of Mediation in Belgium. Available: https://mediation-net.eu/index.php/en/mediatziya/pravna-ramka/10-belgium/57-legal-frame-of-mediation-in-belgium [last viewed 08.02.2025].

[29] Mediation in Croatia. Available: https://www.mediation-help.com/en/about-mediation/horvatiya/ [last viewed 08.02.2025]; *Plevri, A.* Mediation in Cyprus, pp. 127–148.

initiating mediation varies, i.e., in one case, mediation can be initiated only at certain stages (usually before the start of the trial), or during the entire criminal proceedings, i.e., both at the pre-trial stage and at the trial stage. Even if mediation can be initiated at any stage of the criminal proceedings (the full model), there is procedural non-absoluteness, i.e., statutory grounds under which mediation in criminal proceedings is not possible and should be terminated.

5. Guidelines for establishing mediation in criminal justice

The term mediation is not used in Lithuanian criminal justice. Article 212(5) of the Code of Criminal Procedure of the Republic of Lithuania[30] (hereafter referred to as the CCP or the Code of Criminal Procedure) refers to reconciliation as one of the grounds for the discontinuance of a criminal case at the time of its preparation for trial (Article 235 of the Code of Criminal Procedure) and during the trial (Article 254(5) of the Code of Criminal Procedure).

Thus, although the current legal framework provides for the possibility of reconciliation in criminal proceedings, it cannot be equated or compared with mediation. Unlike mediation, reconciliation is more of a formal confirmation of the fact that the accused and the victim have reconciled. It does not seek to restore the balance between the accused and the victim that was disturbed by the offence, but is limited to confirming the fact of reconciliation as a ground for terminating the criminal proceedings.

Nor does the use of this process change the legal status of the accused as a participant in the proceedings, i.e., he or she continues to enjoy the status of a person with a criminal record, even after reconciliation, one of the grounds for the end of the criminal proceedings.

Reconciliation is also a ground for exempting a minor from criminal responsibility. A minor who has committed a criminal misdemeanour or a reckless or a minor or a petty or a petty crime for the first time may be released from criminal liability by the court if he or she has apologised to the victim and has made full or partial reparation for the damage or has eliminated the property damage caused by his or her work or by paying a sum of money (Art. 93(1)(1) of the Criminal Code[31] of the Republic of Lithuania (hereafter referred to as the CC or the Criminal Code)).

Mediation is used not only in civil but also in criminal cases in various European countries, contributing to a more effective and harmonious resolution of conflicts and in criminal cases.[32] It is important for governments that the programs used in the criminal justice process have the possibility to impact reoffending rates.[33] One such program is victim-offender mediation, in which victims and offenders involved in an offense get the opportunity to discuss the crime, ask questions, and come to an agreement on how to best solve the crime and view crime as a violation of the relationship between people, which can only be solved by active involvement

[30] Code of Criminal Procedure of the Republic of Lithuania (Official Gazette of the Republic of Lithuania, No. 37-1341, 2002).

[31] Criminal Code of the Republic of Lithuania (Žin., No. 89-2741, 2000).

[32] *Zhomartkyzy, M.* Comparative study of mediation practices in European countries. EUREKA: Social and Humanities, 5, 2023, p. 97.

[33] *Jonas-van Dijk, J., Zebel, S., Claessen, J.* and *Nelen, H.* Participation in Victim-Offender Mediation Predicts Less Reoffending: A Propensity Score Matched Case-Control Study. Crime & Delinquency, 2025, pp. 1–27. https://doi.org/10.1177/00111287251335009

of the main involved parties of a conflict – victim, offender, and the community.[34] The existing legal regulation of the institution of mediation in criminal justice in Lithuania, as well as the problems of its practical applicability, suggest that the institute of reconciliation in criminal justice does not achieve the true objectives of mediation.

In this context, it should be noted that as early as 2015, the Concept Paper emphasised that the development of conciliation/mediation in criminal proceedings could contribute to the development of the institution of reconciliation. The possibility of introducing mediation in criminal proceedings is also reflected in the works of criminal law scholars.[35]

In its jurisprudence, the Constitutional Court has noted that the constitutional right to a fair trial implies, *inter alia*, not only that the principles and norms of criminal procedure law must be respected in the course of the trial, but also that the sentence prescribed by criminal law and imposed by the court must be fair; the criminal law must provide all possibilities for the court, taking into account all the circumstances of the case, to sentence a person who has committed an offence to a fair punishment. The Constitutional Court has also stated that the penalties and the system of penalties laid down in criminal law must be such as to enable the court to administer justice when imposing penalties.[36]

The aforementioned case-law of the Constitutional Court should be viewed through the prism of the imposition of a fair, proportionate and effective punishment, which cannot be separated from the institute of exemption from criminal liability or the institute of a lighter sentence provided for in the criminal law.

In view of the above, it is appropriate to add articles to the CCP regulating the institution of mediation. The CCP should be supplemented by appropriate articles defining the grounds for the use of mediation in criminal proceedings, clearly identifying the stages of the criminal proceedings where such action is possible and other practical aspects. The introduction of such an institution into Lithuanian criminal justice would have a positive impact on criminal policy, not only in the sense that the use of mediation creates preconditions for the appropriate imposition of a sentence (in the event of a lighter sentence or exemption from criminal liability), but also in the sense that mediation could positively contribute to restoring the equilibrium between the perpetrator of the offence and the injured party.

The institution of mediation in criminal justice cannot be linked to the reconciliation institute already existing in the CCP, i.e., the mediation process must be completely independent. On the other hand, a successfully completed mediation process could serve as a basis for the termination of the criminal proceedings. Taking this into account, the current legal framework shows a shift towards a corresponding

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[34] *Jonas-van Dijk, J., Zebel, S., Claessen, J.* and *Nelen, H.* Participation in Victim-Offender Mediation Predicts Less Reoffending: A Propensity Score Matched Case-Control Study. Crime & Delinquency, 2025, pp. 1–27. https://doi.org/10.1177/00111287251335009

[35] *Michailovič, I., Bikelis, S., Čepas, A.* [et al.] Perspectives of Restorative Justice in Lithuania. Research of the Lithuanian Law Institute. Šiauliai; *Giedrytė-Mačiulienė, R., Venckevičienė, J.* Implementation of mediation in probation services in Lithuania. Legal Issues, 2(92), 2016; *Michailovič, I.* Possibilities of Restorative Justice in Criminal Justice. Challenges of Globalization for Criminal Justice. A collection of peer-reviewed scientific articles on criminal law, execution of sentences and criminal procedure. Vilnius: Registrų centras, 2014; *Liesis, M., Michailovič, I.* Mediation in Lithuanian criminal and administrative misdemeanour justice at the trial stage. Criminological Studies, 2018; *Uscila, R.* Mediacijos taikymas baudžiamojoje justicijoje. XIII Kriminalistika ir teismo ekspertologija: mokslas, studijos, praktika. Vilnius: Lietuvos teisės institutas, Lietuvos teismo ekspertizės centras, 2017.

[36] Decisions of the Constitutional Court of 10 June 2003, 10 November 2005, 8 June 2009, 4 June 2012.

addition to both the CC and the CCP, as well as to the Law on Mediation of the Republic of Lithuania, which defines the institutes for the mediation of civil disputes and the mediation of administrative disputes, but not for the mediation of criminal ones.

It is also important that the inclusion of mediation in criminal justice should leave the parties free to enter into mediation at any stage of the criminal proceedings.

Based on the existing legal framework, which provides for cases where, for example, bail, mediation, as well as the applicable case law, it can be assumed that essentially the same offences and the same categories of offences could also be covered by the institution of mediation. Of course, in this context, it is also important to consider whether the use of mediation would be allowed for all offences. As discussed earlier in the article, in virtually all models (with some exceptions), the parties have provided for exceptions, i.e., offences for which mediation is not possible, irrespective of the model applied (full or partial). In principle, these limitations relate to the most sensitive types of offences, where the objectives of mediation could potentially be seen as difficult to achieve. The practice in the countries shows that these are mostly domestic violence cases, crimes of a sexual nature and cases where the interests of minors are at stake. In the light of the implementation of this institution, Article 80 of the CC provides for the criminal liability of minors, one of the purposes of which is to help the minor to change his lifestyle and behaviour by combining the punishment for the offence committed with the development of his personality, education, the elimination of the causes of his illegal behaviour, and the deterrence of the minor from committing new offences, ensuring that the liability is appropriate to his age and social maturity. Mediation in this context can therefore have a positive impact, both in terms of the emotional/psychological relationship with the offence committed and in terms of approaching the victim through the prism of empathy, thus contributing, among other things, to the objectives of Article 80 of the CC, not only in terms of punishment, but also, and most importantly, in terms of assisting the minor to change the way he live his life, and to do so in a way that is not punitive, as an end in itself, but through a different kind of 'inducement' to the committed offence, through the creation of a different kind of relationship which may have a positive impact on the development and upbringing of the minor, thereby creating an additional institute as a ground for exempting the minor (and not only the minor) from criminal responsibility as an *ultima ratio* measure.

In the context of the process of implementing mediation in the existing legal system and the practicability of such a process, it should be argued that the implementation of mediation in the existing legal system should not be a difficult process for several reasons. First of all, Lithuanian criminal law already has institutes (e.g., bail, reconciliation) which could be used to classify the same offences and the same categories of offences under which a mediation process could be initiated. Another reason is the already extensive network of mediators. In the context of the existing network of mediators, it should be noted that, according to the information provided on the website of the State Guaranteed Legal Aid Service, under the section List of mediators, there are no mediators who are specialised in criminal cases. In this context, it is appropriate to develop the competence and knowledge of mediators by allowing them to specialise in criminal cases, ensuring the sufficiency of training and the need for further training in this area. It should also be noted that the introduction of mediation in criminal justice would not require the creation of a new organisational system, case management or payment system, as these already

exist and would only be supplemented by the creation of additional mediation cases arising from criminal justice.

In conclusion, it is proposed to introduce mediation (which has been successful) as a ground for exemption from criminal liability in Chapter 4 of the CC (exemption from criminal liability). Also, a mediation clause should be included in Article 3 of the CCP (Circumstances preventing criminal proceedings), stipulating that criminal proceedings should not be initiated without the parties having first offered to initiate a mediation process and that only if the parties do not agree to participate in mediation prior to the start of the pre-trial investigation, should a pre-trial investigation be opened. It is also proposed to add a separate paragraph to Article 212 of the CCP (Cases of termination of pre-trial investigation) stating that the pre-trial investigation is terminated when the suspect and the victim successfully complete the mediation process during the pre-trial investigation, Article 232 of the CCP (orders made during the preparation of the case for trial), providing for the adjournment of the trial by referring the case to mediation, and Article 235 of the CCP (termination of the case), by including the successful completion of mediation as a ground for the termination of the judicial proceedings. This would ensure the fundamental principle of a full model of mediation in criminal justice, allowing the parties to initiate mediation both before the pre-trial investigation and throughout the criminal proceedings, including the trial.

Summary

Mediation in criminal justice is fragmented, with only a narrow range of applications, and the main reasons for this are the lack of legal regulation and the absence of a unified policy on the subject. One of the most important aspects of the mediation doctrine is the effectiveness of mediation, which is conditioned by the timely intervention in the dispute, the de-escalation of the conflict between the parties and the impact on both parties. For the victim, ensuring restitution, removing factors that contribute to insecurity and avoiding secondary or repeated victimization. For the perpetrator, avoiding stigmatization and criminal records, while at the same time creating conditions for reparation.

It should be noted that in 2023–2024, the use of mediation in the prisons of the Lithuanian Prison Service was extended. Current practice shows that there are about 30 mediations per year that are implemented in Lithuanian prisons. The application of mediation in the penitentiary system is dictated by the realization of the principle of restorative justice, i.e. compensating the victim, restoring constructive cooperative relations between the parties to the conflict, enabling the convicted person to demonstrate positive change and to evaluate it from the point of view of his resocialization.

The analysis of foreign countries on mediation in criminal justice has shown that the models used by countries can be divided into two main groups: those which apply a partial model of mediation in criminal justice and those which apply a full model of mediation in criminal justice. The difference between mediation models is essentially related to the stage of the process at which the parties can initiate mediation. Likewise, a review of mediation in criminal justice in foreign countries has shown that it is appropriate to introduce a model that covers all aspects of the offence, i.e., pre-trial, during and after the trial. An analysis of the use of mediation in criminal justice in different countries has demonstrated that, irrespective of the model used by the parties concerned, there are fundamental grounds on which the process is not possible.

The institution of mediation in criminal justice cannot be linked to the reconciliation institute already existing in the CPC, i.e., the mediation process must be completely independent. Successful completion of the mediation process could serve as a basis for the termination of the criminal proceedings. The incorporation of mediation into an existing criminal justice system should not be seen as a complicated process due to, e.g., an already existing organizational system, an existing network of mediators, a case management or payment system, etc.

The analysis offered in this paper indicates that the model of mediation in the probation system, which has been in place and implemented for nine years, has been fully successful and has become established in the mediation service system. In Lithuania, the probation system has introduced separate positions for mediators, and the staff work only on the mediation work assigned to them, although in practice it is common for mediators to be assigned additional functions related to the resocialization of convicted persons. It is important to mention that training and methodological tools have been developed to ensure the maintenance and continuity of the mediation model.

It is necessary to maintain the established model of mediation in the probation system, irrespective of the direction of the full development of mediation in criminal justice. However, in the future, it will be necessary to harmonize the legal regulation of the different areas of mediation in the criminal justice system. The development of a mediation system covering civil, administrative and criminal justice will require the harmonization of the legal regulation of both mediation and the content of other laws and sub-legislative acts.

A clearer and more coherent legal framework is necessary to develop the mediation model. The criminal law, i.e., the Criminal Procedure Code and the Criminal Code, should provide the legal basis for the use of mediation, specifying when it is possible, in which criminal offences and in relation to which persons, and the necessary conditions for mediation to be initiated.

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