

# Standards of Restorative Mediation.

Developed and adopted by  
The Russian Association of Restorative Mediation.

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# Introduction

These standards have been developed as a guideline and information source for mediators, chiefs and experts of reconciliation services and administrative bodies of different agencies, as well as for other specialists and organizations, interested in promoting restorative mediation in Russia.

These mediation standards should contribute to creating new ideas and different forms of organizing and conducting mediation, when keeping all principles of restorative mediation and taking into account regional environment.

Restorative mediation is based on the concept of restorative justice, which is worked out and carried through in different forms and practices throughout the world. Restorative justice is a new approach to the way, how the society should react to a crime, and this influences how this practice is performed.

The idea of restorative justice is that every crime must engage the responsibility of the offender to make reparations to the victim, for which the State and the social environment of the victim and offender should create necessary conditions. The restorative approach supposes that both, victim and offender, as well as all the people, who were affected by the crime, take an active part in the work of solving the problems, associated with the crime, with the help of an impartial third party (mediator). Such programs should be conducted only when the parties have expressed their voluntary consent to participate.

The restorative approach is opposite to the approach, oriented at punishment.

The ideas and practices of restorative justice are more important and wide than a simple reaction to a crime. Restorative justice, and more exactly, the restorative approach, may be used not only to criminal situations, but also to overcome adverse effects of conflicts within the system of general, professional and supplementary education, social security system, Ministry of Internal Affairs, judicial system and in families and every day life.

These standards of restorative mediation are based on the existing international documents: UN General Assembly Declaration 2002/12 On Basic Principles of Use of Restorative Justice Programmes in Criminal Matters, Recommendation # R (99) 19 Of the Committee of Ministers of the Council of Europe to member States concerning mediation in penal matters (adopted by the Committee of Ministers on 15 September 1999 at the 679<sup>th</sup> meeting of the Ministers' Deputies), Recommended Standards for School-Based Peer mediation Programs, developed by the US Association for Conflict Resolution, National Standards of Court-Connected Mediation Programs, developed by the Centre for Conflict Resolution and Institute of Court Management, as well as other standards of mediation. The following mediation models were also taken into account: interest mediation, transformative mediation, narrative mediation.

The Standards of restorative mediation were developed and adopted by the Russian Association of Restorative Mediation.

These standards cover a wide range of restorative practices: face-to-face mediation between the parties, family group conferencing, community circles, school-based conferences and other practices, which are based on the values and principles of restorative approach.

The twelve year experience of carrying out restorative justice programs in different Russian regions was taken into account while developing these standards.

## Concept of restorative mediation.

Mediation is usually understood as a process where the participants solve their conflict with the help of a third party (mediator).

Restorative mediation is a process where the mediator creates conditions to restore the ability of people to understand each other and to come to terms on mutually acceptable ways to solve the problem, and, if necessary, on making reparations regarding the damage, associated with the conflict or criminal situation.

During restorative mediation it is important that the parties have the opportunity to get rid of negative experience and develop new resources for finding a common solution to the situation. Restorative mediation includes individual preliminary meetings of the mediator and each party, and a joint meeting of the parties where the mediator also takes part.

## **Main principles of restorative mediation**

### **- voluntary consent to participate by the parties**

The parties should consent to participate on a voluntary basis; any kind of coercion to participate should be unacceptable. The parties should have a right to withdraw their consent both before the beginning and during the mediation process.

### **- the parties are well informed of the process**

The mediator must supply the parties with the information regarding the nature of mediation, its process and probable consequences.

### **- mediator remains neutral**

The mediator provides the parties equal assistance in their endeavor to solve the conflict. If the mediator feels unable to remain neutral, the mediator should hand the case over to another mediator or stop mediation. The mediator may not accept remuneration from one of the parties, which can rise suspicions in his/her support to this party.

### **- mediation process is kept confidential**

Mediation should be kept confidential. The mediator or a mediation service should provide for confidentiality of the mediation and prevent from any disclosure of the documents, related to the mediation process.

With the exception of cases when the information concerns possible threat to life or a probable new crime, then the mediator should inform the participants that this information will be disclosed.

The mediator should make a report on the results of the mediation to the referring organization.

The mediator may take notes and make reports to discuss them with other mediators and curators of reconciliation services. The names of the participants should be changed if the reports are to be published.

### **- responsibility of participants and the mediator**

The mediator should be responsible for the safety of the participants during the mediation and for the compliance with the principles and standards. The responsibility for the mediation results should be borne by the parties to the conflict, who take part in the mediation. The mediator may not advise the parties to take any decision regarding the nature of the conflict.

### **- the offender makes reparations**

In the situations where there is an offender and a victim, the offender is responsible for righting the wrong, caused to the victim.

### **- the reconciliation services are autonomous**

A reconciliation service should be independent in choosing the forms of its activity and organization of mediation process.

## **Process and result of a mediation**

The main aim of restorative mediation is to provide for a dialogue between the parties, which enables them to get to know and understand each other better. The dialogue promotes for changes in the relations: from confrontation, prejudice, suspicion and aggression to positive relations. The mediator should help the parties to express and hear out the opinions, views, feelings, which creates an environment for mutual understanding.

Restorative actions (apology, forgiveness, sincere desire to redress the wrong) are an important result of restorative mediation, and they are such actions that could help to redress the consequences or the criminal situation.

An agreement or reconciliation agreement, which is presented to the referring body, is another important result of the mediation. The reconciliation agreement (the agreement) may be taken into account by this body while deciding on further actions regarding the parties to the situation.

Restorative mediation should be oriented at the communication process. It is targeted, first of all, at improving understanding, mastering ability to hold dialogue and solve situation. The agreement is a consequence of such a process.

## **Reconciliation service activities**

Reconciliation services should carry out programs of restorative mediation.

While performing their duties, reconciliation services should be autonomous and self-governing. Reconciliation service activities should obtain an official status within organizations where they are created.

Reconciliation services may be created at different agencies (educational system, youth policy, social security, justice and law enforcement bodies, etc.), as well as have interdepartmental, general (services at municipalities, Commissions for Juvenile Affairs, etc.) or territory character.

Mediators, heads of reconciliation services and curators should receive special training.

Reconciliation services should implement different programs: mediation, community circles, school conferences, they also may work out their own original programs, based on restorative mediation principles.

The reconciliation service should monitor and acquire statistics on referred cases and accomplished mediations.

Reconciliation services should be independent enough while performing their functions.

### ***Special features of reconciliation service activities within the bodies and agencies for prevention of youth offences and youth neglect***

The restorative justice programs can be carried through by educational institutions, social security organizations, agencies for youth policy and other bodies, organizing social assistance on the territory (municipal) entities. The cases may be referred to the territory (district, municipal) services by Commissions for Youth Affairs and Protection of their Rights (KDNiZP), administrative organs, social security agencies, law-enforcement bodies, courts, educational institutions, citizens.

The territory reconciliation service should work out Regulations, approved by the administrative body of this institution. Additional articles on mediation may also be included in the Sta-

tutes of the organization, as well as in the description of administrative functions of employees, who carry out restorative programs, and other documents.

Territory services may carry through different programs: mediation, community circles, school conferences, care circles, family group conferencing, provided the service employees have taken part in special trainings.

The chief (coordinator, curator) of a territory (municipal) service should be a trained mediator and assure the general management of the service, plan its development and promotion, organize the order and control for program realization, monitor and analyze program realization in the institution and provide for interaction with the interested institutions and agencies. The service may, upon the agreement by the KDNiZP, monitor mediation programs carried out on the territory of the municipality.

A territory (municipal) reconciliation service may recruit as mediators the following people, provided they receive mediation training:

- a) employees of this institution;
- b) adults (students, employees of nongovernmental organizations, etc.), upon the agreement with the administration. Youth voluntary organizations, created under the model of school reconciliation services, may be organized within territory (municipal) reconciliation service.

Experts of the territory reconciliation service may be engaged in the following fields of activities:

1. mediation of conflicts and criminal cases referred to by KDNiZP, courts, schools, citizens.
2. methodology assistance for reconciliation services on this territory.
3. training of mediators and curators of reconciliation services.
4. monitoring and analysis of the activities of reconciliation services on this territory.

Methodologists of the territory reconciliation service should be trained mediators and trainers and have experience in conducting the programs. The methodologist should provide for methodology assistance to mediators of different reconciliation services on the territory of the municipal entity, train mediators, including the students of general education institutions, organize supervision, consulting and give expert evaluation.

A reconciliation program of the territory (municipal) reconciliation service may be conducted between juveniles, a juvenile (juveniles) and an adult (adults), and between adults to determine the future of the juvenile.

The parties to the conflict should be allowed to be referred to a preliminary meeting with the mediator, where the conflict situation is clarified and the mediation process is explained, but the participation in the mediation should be voluntary. If the program participants are minors, the mediator is recommended to obtain from the parents the permission to participate in a restorative program, or to invite the parents to take part in the program.

The results of the restorative program may be taken into account while discussing the family or child issues during the court hearings or at an administrative meeting of KDNiZP, while taking decision on the future of the program participants.

### ***Peculiarities of Reconciliation Services within Educational System***

The restorative mediation programs within the educational system may be carried out in all types of general education institutions (7 and 8 types, in exceptional cases), in supplementary education institutions, secondary vocational education institutions and universities.

A school reconciliation service should be comprised of student mediators and an adult curator.

A school reconciliation service may recruit as mediators the following people, provided they receive mediation training:

- a) students;

- b) teachers of this institution;
  - c) an adult (a parent, a member of a nongovernmental or governmental organization or any other adult), upon the agreement with the administration of the educational institution.
- Mediation may be conducted jointly by an adult and a child.

The Curator of the reconciliation service should be an adult who is a trained mediator and is ready to provide systematic support and promotion for reconciliation service. The curator should have access to the information on the conflicts which take place in educational institution. The curator's task is to organize the work of the reconciliation service and assure that the reconciliation service gets all the information on conflicts and criminal situation.

This may be the deputy director for studies and pedagogical work, psychologist, social pedagogue (deputy director for social work), children's rights commissioner and others.

Children, pedagogues, administration, parents may *take part* in reconciliation programs. The conflicts between the adults should be mediated by an adult mediator.

The *administrator* may refer the parties to the conflict to a preliminary meeting with the mediator, where the conflict situation is clarified and the mediation process is explained, but the participation in the mediation should be voluntary.

The curator should obtain from the parents the permission for the student mediators to take part in the work of the reconciliation service.

The reconciliation service should work out a *Regulation*, which should be approved by the administration of the educational institution. Additional articles on the reconciliation service may also be inserted in the Statutes of the educational institution and other documents.

If one of the participants suffered material damage resulting from the conflict, an adult is then to be present as a co-mediator, and the curator is recommended to invite the parents for the mediation session, or to obtain their permission for the participation of their children in this mediation.

Similarly, the reconciliation services may be created at residence halls, special schools, etc.

### ***Special features of services, mediating criminal cases, which are pending before the court<sup>1</sup>.***

The work of a mediation service in criminal cases, which are pending before the court, should be carried out in accordance with the documents, establishing its relations with the court, such as laws, programs of cooperation with the courts, etc., and which are consistent with the legislation of the Russian Federation. The documents should contain legal and organizational issues regarding the interaction between reconciliation services and the courts, in particular:

- the procedure of referring the information on criminal situations for mediation;
- legal consequences of mediation;
- categories of the cases that may be referred to the mediation.

Since Russian criminal law and criminal procedure legislation do not contain provisions about the mediation, its legal consequences are equal to the legal consequences of the notions "re-

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<sup>1</sup>The provisions of this Section may apply as a base for mediating during the preliminary investigation, as well as in the cases of lay justice while considering criminal, civil and administrative cases.

conciliation”, “expiation”, “correction of the convict”, which exist in Russian legislation.

It is necessary to organize periodical meeting of the services’ expert-mediators with the judges as well as with other specialists and organs, which work with mediation programs, to clarify the mechanisms of cooperation, information and legal base and to discuss new possibilities to conduct mediation at different stages of criminal proceedings.

### **Peculiarities of mediation in criminal cases**

The peculiarity of mediation in criminal cases is that it focuses on righting the wrong, caused by the crime. Righting the wrong is not limited only to the compensation of material damage, but includes a variety of restorative actions.

Mediation assures the subjective right of each party for reconciliation and is possible to be applied at each stage of judicial proceedings, irrespective of the magnitude of the offence, as well as at the stage of serving the sentence. The legal consequences depend then on the category of the offence and when mediation, where the agreement was reached on reconciliation and righting the wrong, was conducted.

The starting point for mediation should be the acknowledgement of main facts of the case by the accused, and not the guilty plea in the legal sense. Participation in mediation should not be used as an evidence of the admission of guilt during the further consideration of the case.

The mediator should create conditions for the parties to discuss the issue of reparations, developing the mechanism and procedures of reparations, terms and conditions of implementation of the arrangements on reparations. The mediator should refuse to conduct meeting between the parties in case of any doubts regarding the security of the participants.

The mediation should be impartial. This means, the mediator should not accept any position, but should try and help the parties to participate actively in the mediation process, so that they could benefit from it.

The mediator’s neutrality in criminal cases has some special features. Firstly, being impartial towards the parties the mediator should not be indifferent to the very fact of the offence. This means the mediator does not regard the parties as equals, in the sense that the responsibility of righting the wrong is charged upon the offender. Secondly, the claims of the victims against the offender should be limited in case of their disparity against the gravity of the committed offence.

All legal safeguards should be observed during the mediation procedure. Mediation should be voluntary for both the victim and the accused.

Before the parties agree to take part in the mediation they should be informed of their rights, on the nature of the mediation process and on possible legal consequences of the agreed decision. Mediation may result in legal consequences for the parties, for example, the criminal proceedings may be stopped as a result of the reconciliation of the parties. But this possibility should not mean that the mediator makes guarantees regarding the outcome of the proceedings. The criminal justice authorities have exclusive competence in settling a criminal law conflict, and the mediation in criminal proceedings assures the participation of the parties in solving the problems which are associated with the crime and issues on righting the wrong, but the final decision on the case is made by the court, an only in case of private prosecution the court is obliged to stop proceedings as a result of the reconciliation between the parties.

While preparing to the mediation it is important to find and invite for participation not only officially recognized victim, but other people as well, who have suffered from the crime.

Because of the restricted time-limit for the consideration of the case by the court and the absence of special provisions on the suspension of the proceedings until mediation is completed, the court should refer the case for mediation as soon as possible, before the case is listed for trial, to assure the best conditions for conducting all the stages of mediation before the court trial begins.

If the mediation is not completed before the trial starts, the information on the current status of the mediation should be presented with the court.

In case the parties have reached the agreement, the mediation results in the conclusion of the reconciliation agreement. During the court proceedings the parties should petition for the deposition of documents.

In accordance with the confidentiality principle, the mediator may supply the court only with the results of the mediation. The court should be presented with the comprehensive information regarding the organization, which conducts mediation. The court should have the right to investigate the motives which form the base for the reconciliation of the parties, to exclude a possible pressure on the victim made by the interested people.

### **Peculiarities of mediation in criminal cases with participation of minors**

It is important to consider mediation from the point of view of better assurance of the interests of a child, in accordance with the UN Convention on the Rights of a Child and the European Convention on the Exercise of Children's Rights.

When the mediation is a part of law enforcement practices regarding the minors, the mediator should work in cooperation with the specialists from social and psychological services.

It is desirable that the mediator examines the social and psychological aspects of the offender's personality, his/her social status and environment, which are contained in the reports made by other services.

The report on the results of the mediation should be presented to the court together with the report made by a social worker or a pedagogue-psychologist. It is possible to include all the information in a single document.

The legal consequences of the mediation regarding the minor offender should be supplemented by the possibility of the use of the norms, regarding to the application of coercive measures of educational character, as for comparison to the measures applied to the adults.

The mediator should take into account legal peculiarities, related to the minor participants of the mediation. In particular, the mediator should invite the legal representative of the minor to participate in the mediation or obtain his/her agreement, as well as the mediator should inform him/her on the nature, goals and legal consequences of the mediation.

When making a decision on referring the case to mediation, it is important to consider the circumstances that place parties in a special, unequal situation. This may happen because of the differences in age, maturity and intellectual abilities of each party. In this case the mediator needs to create conditions for the proper participation of those people in mediation, or take a decision to introduce

some limitations.

The issue of resocialization, educational effect and of preventing this kind of behavior in future is among main issues in case of mediation of criminal conflicts where the minors take part.

Apart from the general mediation knowledge, the mediator should be competent in legal matters regarding the category of cases, s/he works with.

## **Initial and In-Service Training for Mediators, Trainers and Curators**

The mediator should not be obliged to have a special education, such as pedagogic, psychological and other, but the mediator should receive mediation training.

The main stages of training for adult mediators should include:

1. theory of mediation, including special features of restorative mediation and the knowledge of these standards.
2. training course on main mediation skills.
3. conduct of mediation under the supervision by more skilful mediators or between other mediators, as well as writing reports on the mediations conducted.

The forms of mediators' training may be determined by the mediation services on their own.

The mediator should be familiar with the specificity of work with the offenders and victims in the field of his/her activities.

The mediation trainer should be a practicing mediator.

The curators of the services should take part in the mediators' training.

## **Promoting restorative mediation in the society**

It is necessary to promote the creation and development of restorative mediation communities.

The promotion of restorative mediation assists in expanding the use of restorative way of reacting to conflict and criminal situations, which helps to strengthen positive social bonds in the society.

To promote the standards of restorative mediation it is recommended to:

1. Spread the information on the purposes and objectives of restorative mediation, its positive aspects, procedure and results among all interested people.
2. Develop methodology and regulatory framework.
3. Organize training for mediators and coordinators of restorative mediation programs.

It is necessary to aim at implementing restorative mediation into the activity of different agencies, in different spheres of social life.

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*The representatives of different teams, promoting restorative mediation in Moscow, Volzhsky, Kazan, Novokuybyshevsk, Novosibirsk, Perm, Petrozavodsk, and Tyumen took part in the development of these standards.*