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Marta Osuchowska*

Criminal Mediation in the Law of the Argentine Republic**

1. INTRODUCTORY REMARKS

Mediation was introduced into Argentine's legal system in 1995 by virtue of Act No. 24.573 on Mediation and Conciliation Proceedings, which establishes a mandatory procedure in cases exhaustively listed in the Act. In one of the first articles, the Act also describes the types of proceedings in which mediation cannot be used, which include criminal proceedings[1]. A new law adopted in 2010 also explicitly prohibited the use of mandatory criminal mediation[2].

However, given the ineffectiveness of the repressive penal system in Argentina, some provinces have introduced mediation programmes into the criminal procedure rules applicable in their jurisdictions. Still, criminal mediation developed late, at the end of the 20th century and the beginning of the 21st century. Notably, the federal state system existing in Argentina gives provincial authorities broad jurisdictional powers, both in the institutional and procedural spheres. Thanks to this possibility, some Argentinian provinces have introduced mediation in criminal matters. However, the differences between provincial mediation models are considerable, as they involve not only different procedures, but also different substantive scopes of cases that may be subject to mediation[3]. Initially, mediation was seen primarily as a measure that could have brought improvements in juvenile justice[4].

As a procedural element, mediation must be distinguishable from traditional court proceedings. Also, the inducement of the parties to choose mediation as a method of alternative resolution of a conflict presupposes certain benefits associated with mediation. Changes to the legal basis must not only concern the Code of Criminal Procedure, but they must also result from the substantive law, which

* Marta Osuchowska, PhD, Assistant Professor of the Faculty of Law and Administration of the Cardinal Stefan Wyszyński University in Warsaw, a lawyer and Latin Amerika scholar, Poland, ORCID 0000–0001–9950–7458, Email: m.osuchowska@uksw.edu.pl

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1 Article 2 of Act No. 24.573: 'El procedimiento de la mediación obligatoria no será de aplicación en los siguientes supuestos: 1. Causas penales (...)'.

2 Article 5 of Act No. 26.589: 'El procedimiento de mediación prejudicial obligatoria no será aplicable en los siguientes casos: a) Acciones penales (...)'.

3 Ministerio de Justicia y Derechos Humanos, Presidencia dela Nación, *Mediación en la Argentina, una herramienta para el acceso a la Justicia*, 83 et seq.

4 This type of procedure exists in the provinces of Mendoza, Neuquén i Santa Fe.

needs to be amended first at the federal level and then in the provinces[5]. A turning point in this context was Act No. 24.316, which, for the first time in Argentina, introduced conditional suspension of custodial sentences[6], allowing this measure, which is beneficial to the convicted person, to be taken into account in the determination of the effects of mediation at the post-trial and post-conviction stage[7].

This paper aims to present criminal mediation in Argentina, with particular emphasis on the differences in criminal mediation procedures in different provinces, as well as to evaluate criminal mediation in terms of whether it achieves its objectives, and in particular the priorities of criminal law.

2. CRIMINAL MEDIATION IN PROVINCIAL LEGISLATION

Criminal mediation in Argentinian provincial legislation is increasingly accepted as an alternative way of resolving conflicts in criminal proceedings. With the passing years, more and more provinces adopt laws on mediation in criminal law and introduce the relevant amendments into their codes of criminal procedure. The most characteristic legal regulations and specific features of provincial law will be discussed below. It should be added, however, that apart from the examples described below, the following provinces have since introduced criminal mediation into their legal systems: Río Negro[8], Mendoza[9], Córdoba[10], Corrientes[11], Chubut[12], Entre Ríos[13], Neuquén[14], and Santa Fe[15].

A comparative analysis of existing legislation shows that there are certain common criteria concerning the principles of criminal mediation, i.e. voluntary nature, confidentiality, speed, informality, and the requirement of the victim's explicit consent for their case to be referred to mediation. Different provinces lay down different rules on costs of mediation proceedings: in Chaco and Córdoba, an exemption from such costs requires a proof of insufficient means of subsistence (poverty). In the province of Mendoza, the mediator's fee must be paid if a party has also appointed a defence counsel.

The institutional scope of mediation and the attribution of this procedure to a particular public authority varies from province to province, as laws link the procedure with the prosecution service (the provinces of Buenos Aires, Entre Ríos, and Neuquén) or with a criminal court (Chaco, Corrientes, Río Negro, and Chubut).

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[5] N.D. Barmat, *La Mediación ante el delito. Una alternativa para resolver conflictos penales en el siglo XXI,* Córdoba, 2000, 29.

[6] Act No. 24.316 of 13 May 1994 incorporated Articles 27 bis, 76 bis, 76 ter, 76 quater into the Penal Code and amended Article 64 of the Penal Code.

[7] A. Bovino, M. Lopardo, P. Rovatti, *Suspensión del procedimiento a prueba. Teoría y práctica*, Buenos Aires, 2013.

[8] Mediation Act No. 3.487, amended by Act No. 4.270, (*Boletín Oficial* B.O.)N° 4584 of 10 January 2008.

[9] Act No. 6.730 the Code of Criminal Procedure B.O. 30 November 1999, adopted by virtue of Act No. 7.007, B.O. 16 July 2002.

[10] Mediation Act No. 8.858, B.O. of 14 July 2000.

[11] Civil and Criminal Mediation Act No. 5.931, B.O. 16 December 2009.

[12] Mediation Act No. XIII – N° 13 (formerly, Act No. 4.939/02), adopted on 27 November 2002.

[13] Act No. 9.754 the Code of Criminal Procedure B.O. 5 March 2010. The Supreme Court of Justice of the Province of Entre Ríos established the Rules of Criminal Mediation, Acuerdo General N° 38 of 17 November 2009.

[14] Act No. 2.879, B.O. 22 November 2013 established the Penal Mediation Programme for provincial jurisdiction.

[15] Act No. 12.734 the Code of Criminal Procedure of 31 August 2007.

Furthermore, certain provinces explicitly provide for the possibility of an intervention by an interdisciplinary team (Buenos Aires, Mendoza, Chubut, and Neuquén).

There are fundamental differences between provinces with regard to the classification of mediatable criminal offences: in Chubut, the law stipulates that mediation can be used in cases where defendants, if convicted, may face a term of imprisonment of up to three years, Buenos Aires and Chaco set the maximum allowed term of six years, while the province of Río Negro establishes the highest ceiling, enabling mediation in cases of offences punishable by up to fifteen years of imprisonment. The second factor to be taken into account is the substantive classification of mediatable offences: in Chaco, such offences must be considered culpable and, apart from imprisonment, may carry the penalty of a fine or deprivation of public rights; in Río Negro, Córdoba, and Corrientes, mediation can be used only in cases of privately prosecuted offences. In many provinces (e.g. Mendoza or Entre Ríos), family disputes are explicitly mentioned as ones which, in principle, should be resolved through mediation. In Córdoba, family disputes are defined more broadly to include violations of family support obligations or obligations concerning contacts between parents and children who do not live together. Moreover, in Entre Ríos, mediation is explicitly admissible in conflicts related to the nature of parental authority, those arising between neighbours or ones with a negligible impact on the society.

Another criterion for the availability of mediation is the earlier settlements to which the perpetrator agreed. In the province of Entre Ríos, persons who have engaged in mediation but refused to enter a settlement without good cause are prevented from making any future mediation attempts. The Autonomous District of Buenos Aires and the provinces of Buenos Aires and Neuquén have adopted similar policies. The province of Chaco has set a maximum limit of three mediation proceedings for the same accused person, without specifying the type of the offence or duration of a sentence, except for felony cases that can be mediated without restrictions in respect of a single person. The province of Río Negro does not allow a second mediation attempt between the same parties and in the same case.

Some provincial regulations lay down deadlines for initiating mediation procedures: for example, the provinces of Buenos Aires and Entre Ríos provide for 60 calendar days subject to granting a request for an extension (30 and 60 days respectively); Chaco sets the time frame of 60 working days, which may be extended twice with the consent of the parties; Río Negro sets a period of 40 working days.

The substantive basis for the introduction of criminal mediation in the Province of Buenos Aires is the Code of Criminal Procedure, adopted by Act No. 11.922 in 1997. Pursuant to the Code, at the sentencing or post-conviction stage the perpetrator may benefit from the taking into account of an assessment of the victim's situation, voluntary compensation for the moral loss suffered by the victim, repentance, alleviation of the conflict or a settlement between the parties[16]. According to the

[16] Article 86 of Act No. 11.922: 'Lo atinente a la situación de la víctima, y en especial la reparación voluntaria del daño, el arrepentimiento activo de quién aparezca como autor, la solución o morigeración del conflicto originario o la conciliación entre sus protagonistas, será tenido en cuenta en oportunidad de: 1. Ser ejercida la acción penal; 2. Seleccionar la coerción personal; 3. Individualizar la pena en la sentencia; 4. Modificar, en su medida o en su forma de cumplimiento, la pena en la etapa de ejecución'.

procedure, if a settlement is reached in the mediation process, the prosecutor has special powers that enable them to discontinue the proceedings[17]. While exercising such special powers, the prosecutor should take into account the need to alleviate the conflict between the parties, as well as the need for reconciliation between the parties, which enables voluntary redress of the damage caused. Mediation prevents the parties from seeking revenge and, at the same time, promotes their pro-active approach to proposing compensation within the framework of legal guarantees[18].

The 1998 Organic Act on the Prosecution Service No. 12.061 obliged prosecutors to support, promote and use all mediation and arbitral mechanisms that allow for a peaceful resolution of conflicts[19].

By indicating the possibility of using mediation as a means to achieve a specific goal (in the Code of Criminal Procedure) and identifying the authority tasked with promoting these procedures (in the Organic Act), efforts were made to introduce criminal mediation. The mediation and conciliation procedures were finally determined by Act No. 13.433 (adopted in 2006), which introduced an alternative dispute resolution system for criminal preparatory investigations (*Investigación Penal Preparatoria*) in the province of Buenos Aires[20].

The Act aims to 'alleviate the conflict, seek reconciliation between the parties, allow for voluntary compensation of the moral loss caused, avoid reprisals, promote the parties' activism within the jurisdiction and in full respect of constitutional guarantees, and to address prejudices arising from criminal proceedings'[21].

The bodies responsible for conducting mediation procedures are the Offices for Alternative Dispute Resolution (officially known as Offices for the Alternative Resolution of Departmental Disputes) which report to the Prosecution Service. Each office employs an attorney who cooperates with a team comprising a psychologist and a social worker who specialise in alternative methods of conflict resolution.

An alternative dispute resolution procedure may be initiated by a prosecutor, acting *ex officio* or at the request of a party or the victim[22]. Next, the prosecutor

[17] Article 56 of Act No. 13.943: 'El Ministerio Público Fiscal podrá archivar las actuaciones respecto de uno o varios de los hechos imputados, o de uno o más de los partícipes, en los siguientes supuestos: 1) Cuando la afectación del bien jurídico o el aporte del imputado en el hecho fuera insignificante y siempre que la pena máxima del delito imputado no supere los (6) seis años de prisión; 2) Cuando, el daño sufrido por el imputado a consecuencia del hecho torne desproporcionada, superflua o inapropiada la aplicación de una pena, excepto que mediaren razones de seguridad o interés público; y 3) Cuando la pena en expectativa carezca de relevancia en consideración a las de los otros delitos imputados'.

[18] For a legislative proposal of a law on penal mediation in juvenile justice proceedings, see M. Medan, *Justicia restaurativa y mediación penal con jóvenes: una experiencia en San Martín, Buenos Aires*, Delito y Sociedad 41(2016), 77–106.

[19] Article 38 of Act No. 12.061: 'El Ministerio Público propiciará y promoverá la utilización de todos los mecanismos de mediación y conciliación que permitan la solución pacífica de los conflictos'.

[20] Penal Mediation Act No. 13.433, passed in the province of Buenos Aires on 21 December 2005, adopted on 9 January 2006 by Decree No. 39, and published on 19 January 2006, stipulates that all criminal proceedings initiated in the province of Buenos Aires that are subject to the Prosecution Service's intervention may fall within the scope of activities taken as part of alternative resolution of criminal conflicts provided that certain conditions are complied with.

[21] Article 2 of Act No. 13.433: 'El Ministerio Público utilizará dentro de los mecanismos de resolución de conflictos, la mediación y la conciliación a los fines de pacificar el conflicto, procurar la reconciliación entre las partes, posibilitar la reparación voluntaria del daño causado, evitar la revictimación, promover la autocomposición en un marco jurisdiccional y con pleno respeto de las garantías constitucionales, neutralizando a su vez, los prejuicios derivados del proceso penal'.

[22] Article 7 of Act No. 13.433: 'El procedimiento de resolución alternativa de conflictos podrá ser requerido por el Agente Fiscal que intervenga en la Investigación Penal Preparatoria, de oficio o a solicitud de cualquiera de las partes o de la víctima ante la Unidad Funcional'.

sends an application, in which parties must be named, to an Office for Alternative Dispute Resolution. Representatives of the Office may meet with each party individually or hold a joint meeting.

Mediation in criminal proceedings may be conducted in cases concerning family law, joint residence or relations between neighbours. A definition of the negative scope of criminal mediation has been compiled in much more detail, by enumerating the cases in which mediation cannot be used. According to this definition, mediation cannot be used in proceedings in which a minor is a victim, subject to exceptions established in Acts No. 13.944 and 24.270. Moreover, mediation cannot be used to resolve disputes concerning officials charged in connection with or in the performance of their public duties. The following categories of intentional offences described in Book Two of the Penal Code are also excluded from mediation: felonies against life (Title 1, Chapter 1); offences against sexual integrity (Title 3); theft (Title 6, Chapter 2). The last category of cases not eligible for conciliatory proceedings includes felonies committed against public authorities and the constitutional order. Other procedural requirements are the maximum term of imprisonment that may be imposed under the Penal Code, which is six years, and the condition that mediation may only be conducted in misdemeanour cases (*causas correccionales*)[23].

The last type of mediation prerequisites concerns criminal proceedings previously conducted against the defendant. If the defendant has breached the terms of a settlement concluded as a result of mediation, or if less than five years have elapsed since the signing of an agreement for an alternative conflict resolution in the area of criminal law in another investigation, another case cannot be submitted to mediation. The time limit for the completion of mediation proceedings is 30 days prior to the scheduled date of the hearing. If a mediation agreement (settlement) is entered into, the prosecutor closes the case. Importantly, the settlement does not determine guilt and, in this respect, has no influence on a possible trial that may be conducted[24]. The Office's powers include the authority to control and monitor such agreements. In discharging this authority, the Office may request the cooperation of public and private institutions[25].

[23] Article 6 of Act No. 13.433: 'La Oficina de Resolución Alternativa de Conflictos departamental deberá tomar intervención en cada caso en que los Agentes Fiscales deriven una Investigación Penal Preparatoria, siempre que se trate de causas correccionales. Sin perjuicio de lo anterior, se consideran casos especialmente susceptibles de sometimiento al presente régimen: a) Causas vinculadas con hechos suscitados por motivos de familia, convivencia o vecindad; b) Causas cuyo conflicto es de contenido patrimonial. En caso de causas en las que concurran delitos, podrán tramitarse por el presente procedimiento, siempre que la pena máxima no excediese de seis años. No procederá el trámite de la mediación penal en aquellas causas que: a) La o las víctimas fueran personas menores de edad, con excepción de las seguidas en orden a las Leyes 13.944 y 24.270; b) Los imputados sean funcionarios públicos, siempre que los hechos denunciados hayan sido cometidos en ejercicio o en ocasión de la función pública; c) Causas dolosas relativas a delitos previstos en el Libro Segundo del Código Penal, Título 1 (Capítulo 1 – Delitos contra la vida); Título 3 (Delitos contra la integridad sexual); Título 6 (Capítulo 2 – Robo); d) Título 10 Delitos contra los Poderes Públicos y el orden constitucional. No se admitirá una nueva medición penal respecto de quien hubiese incumplido un acuerdo en un trámite anterior, o no haya transcurrido un mínimo de cinco años de la firma de un acuerdo de resolución alternativa de conflictos penal en otra investigación. A los fines de garantizar la igualdad ante la ley, el Ministerio Público deberá arbitrar mecanismos tendientes a unificar el criterio de aplicación del presente régimen'.

[24] If a settlement is reached, a document is drawn up stating that 'the agreement does not determine guilt as the basis for financial claims, unless expressly provided otherwise'.

[25] Article 21 of Act No. 13.433: 'Seguimiento. En los casos en los que se arribe a un acuerdo, la Oficina de Resolución Alternativa de Conflicto podrá disponer el control y seguimiento de lo pactado, pudiendo para ello solicitar colaboración a instituciones, públicas y privadas, la que no revestirá el carácter de obligatoria. (...)'.

In 2002, mediation in criminal matters was also introduced in the province of Chaco. In accordance with Act No. 4.989, mediation is a procedure designed to redress and compensate for the consequences of a prohibited act for an injured person, a defamed person or a victim[26]. The Act also introduces the concept of a 'performance for the benefit of the community', which is provided when 'the victim cannot be compensated, or the provided compensation is insufficient'[27].

Also in that province, the maximum term of imprisonment that may be imposed for the offence which mediation concerns is six years. Mediation proceedings may also be conducted in cases of offences punishable by a fine or deprivation of rights (*inhabilitación*). Mediation may also be used in cases that are not covered by the Act by virtue of a direct legislative reference, but only after a court has pronounced the perpetrator guilty or issued a judgment of conviction. A mediation settlement can only be accepted after the perpetrator has made good the damage. As a result of mediation, a judge may impose a less severe penalty, applying a penalty that would be imposed for an attempted offence or the minimum penalty for a given offence. Furthermore, a mediation agreement may be taken into account in the consideration of a motion for conditional suspension of the sentence, a request for a pardon or conversion of the penalty. Similarly to the legislation applicable in the province of Buenos Aires, the laws of Chaco place subjective restrictions on the use of criminal mediation in cases of public officials charged with a criminal offence committed in the exercise of their duties[28].

The Code of Criminal Procedure in the Autonomous District of Buenos Aires gives the prosecutor in charge of the preparatory proceedings the opportunity to suggest to the parties to a conflict, both the victim and the accused, another alternative measure to resolve the conflict. This is allowed in cases brought by private prosecution[29]. For publicly prosecuted offences, mediation is encouraged whenever it allows for finding a better way to resolve the conflict between the parties. The mediation programme is implemented through the Office for Access to Justice and Alternative Methods of Conflict Resolution (*Oficina de Acceso a la Justicia y Métodos Alternativos de Solución de Conflictos*), which is a body subordinate to the Directorate for Judicial Policy of the Judiciary Council of the Autonomous District of Buenos Aires (*Dirección de Política Judicial del Consejo de la Magistratura de la Ciudad Autónoma de Buenos Aires*)[30]. A statute stipulates that the performance of

[26] Penal Mediation Act No. 4.989, B.O. N° 4584 of 14 January 2002.

[27] Article 2 of Act No. 4.989: 'La Mediación Penal es el procedimiento que tiene por objeto la reparación y compensación de las consecuencias del hecho delictivo mediante una prestación voluntaria del autor a favor del lesionado, víctima u ofendido. Cuando esto no sea posible, no prometa ningún resultado o no sea suficiente por sí mismo, entrará a consideración la reparación frente a la comunidad. Las prestaciones de reparación no deben gravar ni al lesionado ni al autor en forma desproporcionada o inexigible'.

[28] D. Martínez Zampa, *¿De qué hablamos cuando hablamos de mediación educativa?*, 'Revista de Mediación' 3(2009), 40–41; D. Martínez Zampa, *Situación actual de la mediación en el Chaco: avances y desafíos*, La Trama. Revista interdisciplinaria de mediación y resolución de conflictos 33(2012), 1–17.

[29] Article 204 of the Code of Criminal Procedure of the Autonomous District of Buenos Aires, Act No. 2303/07: 'En cualquier momento de la investigación preparatoria el/la Fiscal podrá: 1) acordar con el/la imputado/a y su defensor/a la propuesta de avenimiento, en cuyo caso se aplicará lo establecido en el artículo 266; 2) proponer al/la imputado/a y/o al/la ofendido/a otras alternativas para la solución de conflictos en las acciones dependientes de instancia privada o en los casos de acción pública en que pueda arribarse a una mejor solución para las partes, invitándolos a recurrir a una instancia oficial de mediación o composición. En caso de acuerdo el/la Fiscal dispondrá el archivo de las actuaciones sin más trámite'.

[30] R.D. Smolianski, *El tribunal superior de justicia de la Ciudad y la mediación penal*, available in the *Prensa y Comunicación, Novedades y Artículos* section of the website of the Defensoría General de la Ciudad Autónoma de Buenos Aires, http://defensoria.jusbaires.gov.ar/(accessed on 30 November 2018).

penal activities is vested in the prosecution service, which additionally allows for the application of the principle of discretion in this matter[31].

The conciliatory procedure cannot be used in proceedings conducted in cases of intentional offences described in Book Two of the Penal Code: offences against life (Title I, Chapter I); offences against sexual integrity (Title III), as well as in cases that involve injuries resulting from domestic violence, which may occur not only in marriages, but also in any kind of informal relationships between persons[32]. There are no subjective restrictions for public officials. As regards procedural requirements, violations of previous mediation settlements preclude entering into mediation. The Autonomous District of Buenos Aires also adopted the requirement that at least two years must have passed since the signing of the last mediation agreement. A settlement reached by the parties is private and may include both requests for an apology and requests for pecuniary payments. In principle, there are no legal restrictions on the agreed obligations; such restrictions can only arise from customary law. Moreover, the District of Buenos Aires has a special criminal mediation system for juveniles aged 16–18, established by Act No. 2.451[33].

A procedure for mediation in criminal matters also exists in the province of Tierra del Fuego. In 2009, criminal mediation was introduced into the provincial legal system by Act No. 804, which indicated the conditions when it is possible to conditionally suspend trials in proceedings brought by private accusation and those involving offences committed by children and adolescents[34].

A request for mediation may be made by either party, or by a prosecutor or a judge, if they consider it to be an appropriate measure to resolve a conflict and ensure reconciliation between the parties, which enables voluntary compensation for the damage caused, while fully respecting the constitutional guarantees. The promotion of parties' pro-active approach in the proceedings, which is likely to eliminate the willingness to take revenge, should also be viewed positively. The agreement reached in mediation has the effect of a judgment, therefore it does not require a subsequent approval. This rule does not apply to juvenile proceedings, where an agreement must be accepted by the *Ministerio Pupilar*.

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[31] P.C. Mazzeo, S.M.I. Margetic, C. Erlich, *La mediación penal como un programa de justicia restaurativa* [in:] *El proceso de mediación en el poder judicial de la Ciudad Autónoma de Buenos Aires*, Buenos Aires: Centro de Mediación, 2016, 65–87.

[32] The injuries referred to in Article 91 of the Penal Code should be taken into account not only with regard to family relations, but also informal relationships, as stipulated by Article 8 of the Domestic Violence Protection Act No. 24.417 (Protección Contra la Violencia Familiar): 'En los procesos por algunos de los delitos previstos en el libro segundo, títulos I, II, III, V, y VI, y título V, capítulo I del Código Penal, cometidos dentro de un grupo familiar conviviente, aunque estuviese constituido por uniones de hecho, y las circunstancias del caso hicieren presumir fundadamente que pueden repetirse, el juez podrá disponer como medida cautelar la exclusión del hogar del procesado. Si el procesado tuviere deberes de asistencia familiar y la exclusión hiciere peligrar la subsistencia de los alimentados, se dará intervención al asesor de Menores para que se promuevan las acciones que correspondan'.

[33] Act No. 2.451 of 3 October 2007, the System of Juvenile Justice Procedure (*Régimen Procesal Penal Juvenil de la Ciudad Autónoma de Buenos Aires*); M.E. Caram, *Hacia la Mediación Penal*, in: Revista La Ley Suplemento de Resolución de Conflictos, Buenos Aires, 2000, 965–972.

[34] Article 10 of the Mediation Act No. 804 of 25 November 2009: '(…) Asimismo podrán ser derivadas a los Centros de Mediación aquellas causas que tramiten en el fuero penal que correspondan a delitos de acción privada como también las que sean susceptibles de aplicación del instituto de suspensión del juicio a prueba. Del mismo modo, también podrán derivarse las causas originadas en infracciones a la ley penal atribuidas a jóvenes y adolescentes'.

3. CRIMINAL MEDIATION VERSUS MEDIATION IN CIVIL MATTERS AND CONSTITUTIONAL PRINCIPLES

Unlike mediation in family matters, criminal mediation relates to proceedings conducted between persons who have not previously had contact or a closer relationship with each other. Another characteristic feature of criminal cases is an imbalance of forces inherent in the victim-perpetrator relationship, which tends to disappear as the proceedings progress. Separately held preliminary meetings, during which a mediator explains the procedure to both parties, are also intended to provide the necessary assistance in preparing the parties for a joint meeting and to allow the mediator to gain the parties' trust. In civil matters, such a procedure could contravene the principle of neutrality of the person appointed to manage the entire process[35].

In criminal cases, a dispute between the parties also has a different meaning than in civil matters. Criminal proceedings are always based on the correlation between the perpetrator and the victim. One party has committed an offence and admits to it, while the other is a passive participant against whom the offence was committed. The question of innocence or guilt of the perpetrator is not subject to mediation, but the settlement must at least lead to compensation for the loss suffered by the victim. In contrast to civil mediation, where the aim is to reach a settlement between peers, a crucial element of criminal mediation is the manner in which the agreement is reached, rather than an outcome in the form of a signed agreement. In criminal mediation, special attention is paid to dialogue, but also to an empathetic approach maintained throughout the process of reaching the victim's acceptance of the financial compensation and a sincere apology expressed by the perpetrator through repentance[36].

The question of the mediator's neutrality does not extend to the assessment of facts. The mediator's impartiality is directed at the participants of the proceedings as human beings, but they always obligatorily evaluate the act committed by the perpetrator as a moral wrong legally punishable by the system. The mediator is aware of the impact of the crime on the victim and therefore seeks to obtain the perpetrator's admission of guilt, but also strives to persuade the perpetrator to accept the relevance of his behaviour and to take responsibility for it[37].

An analysis of criminal mediation laws enacted in individual provinces provides no grounds for accusing these laws of procedurally violating the Argentinian legal system. However, there is a need to take a closer look at and analyse constitutional guarantees from the substantive perspective. A section of the Argentinian legal scholarship believes that provincial criminal law contravenes the principle of citizens' equality before the law, which guarantees the same rights, privileges, and immunities to every Argentine, regardless of the province in which they reside[38].

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[35] J.I. Dávalos, *La mediación penal como método alternativo de resolución de conflictos: resultados actuales en la república Argentina*, http://www.derechoycambiosocial.com/revista022/mediacion_penal.pdf (accessed on 31 October 2018).

[36] N.V. Poblete, *Colegio Público de Abogados de la Capital Federal*, Separata Nº 20 Cuaderno de Doctrina – Temas de Mediación, Buenos Aires, 2001, 13 et seq.

[37] M.E. Caram, *supra* n. 33, at 1 et seq.

[38] Article 8 of the Constitution of the Argentinian Republic: 'Los ciudadanos de cada provincia gozan de todos los derechos, privilegios e inmunidades inherentes al título de ciudadano en las demás. La extradición de los criminales es de obligación recíproca entre todas las provincias'; Article 16: 'La Nación Argentina no

Thus, if it is assumed that in some provinces a person committing an offence may remain free or avoid imprisonment by performing certain acts, making apologies, paying compensation, etc., and another person who has committed the same offence in another province has to face imprisonment, this is not an expression of equal treatment before the law. However, it is worth recalling that the issue of unequal treatment of citizens and the different application of laws in the provinces is subject to review by federal courts. For this purpose, the mechanism of extraordinary appeal (*recurso extraordinario*) has been created[39].

Another principle which is called into question is the presumption of innocence and the right to a trial[40]. Mediation in criminal cases may be carried out at the stage of preparatory proceedings, during the trial or after a judgment has been pronounced. The last situation presents no problems, as the guilt has been decided by the court. However, how should mediation be assessed in the context of proceedings preceding the adjudication of a case? At that point, guilt has not yet been proven, and the confession of a person suspected of having committed a criminal offence may be the result of fear of a possible conviction in trial and the ensuing deprivation of liberty. A comparable situation may also occur if criminal proceedings are suspended during the trial. It is therefore important, as has always been emphasised in mediation proceedings, that the party who has committed a prohibited act should be aware that they participate in mediation on a voluntary basis and, accordingly, that they should take responsibility for the committed offence. Another guarantee of upholding the principle of presumption of innocence is the procedural prohibition of the admission of any evidence obtained by the mediator (such as documents, or statements made during meetings, talks or negotiations) in any court proceedings subsequent to mediation. Such evidence may not be included in the settlement ending the conciliatory proceedings, especially if it concerns the perpetrator's admission of the commission of the offence[41].

admite prerrogativas de sangre, ni de nacimiento: no hay en ella fueros personales ni títulos de nobleza. Todos sus habitantes son iguales ante la ley, y admisibles en los empleos sin otra condición que la idoneidad. La igualdad es la base del impuesto y de las cargas públicas'.

[39] Article 14 of Act No. 48 of 14 September 1863: (V. Recurso de inconstitucionalidad): 'Una vez radicado un juicio ante los tribunales de provincia, será sentenciado y fenecido en la jurisdicción provincial, y sólo podrá apelarse a la Corte Suprema de las sentencias definitivas pronunciadas por los tribunales superiores de la provincia en los casos siguientes: (...)'; Article 7 of Act No. 27 of 16 October 1862: 'La Corte Suprema conoce: 1° originaria y exclusivamente, de las causas concernientes a Embajadores, Ministros, Cónsules y Vicecónsules extranjeros, y en las que alguna Provincia fuese parte. 2° En el grado de apelación o nulidad, de las causas que, con arreglo al artículo 22, corresponden a los Juzgados de Sección, y de las que le vayan de los Tribunales Superiores de Provincia, con arreglo al artículo 23. 3° En grado de revisión de las causas que quedan expresadas en el inciso 1° de este artículo según las reglas que establezca una ley especial, que la misma Corte propondrá al Congreso, por conducto del Poder Ejecutivo'.

[40] Article 18 of the Constitution of the Argentinian Republic: 'Ningún habitante de la Nación puede ser penado sin juicio previo fundado en ley anterior al hecho del proceso, ni juzgado por comisiones especiales, o sacado de los jueces designados por la ley antes del hecho de la causa. Nadie puede ser obligado a declarar contra sí mismo; ni arrestado sino en virtud de orden escrita de autoridad competente. Es inviolable la defensa en juicio de la persona y de los derechos. El domicilio es inviolable, como también la correspondencia epistolar y los papeles privados; y una ley determinará en qué casos y con qué justificativos podrá procederse a su allanamiento y ocupación. Quedan abolidos para siempre la pena de muerte por causas políticas, toda especie de tormento y los azotes. Las cárceles de la Nación serán sanas y limpias, para seguridad y no para castigo de los reos detenidos en ellas, y toda medida que a pretexto de precaución conduzca a mortificarlos más allá de lo que aquélla exija, hará responsable al juez que la autorice'.

[41] A.I. Pérez Cepeda, *La víctima ante el Derecho penal; especial referencia a las vías formales e informales de reparación y conciliación*, 3 Cuadernos del Departamento de Derecho Penal y Crimonología, Nueva serie, Universidad de Córdoba, Argentina, 2000, 251.

4. THE PRINCIPLES OF CRIMINAL MEDIATION

Voluntary participation forms the basis for conducting mediation in criminal proceedings. None of the parties can be forced to take part in this process against their will, which is a key difference between mediation and the criminal trial. Only there does the State have at its disposal coercive measures to ensure the presence of the perpetrator, the assessment of their conduct, and the imposition of a penalty. Mediation is devoid of the character of criminal proceedings, although it is carried out with respect to actions that are normatively defined as punishable. Mediation also serves the purpose of resolving issues remaining in the realm of criminal law and attains the objectives which society has embraced as the rationale for criminal prosecution. This is why voluntary submission to mediation distinguishes criminal mediation from criminal proceedings. Parties must express their consent in writing. If a prosecutor requests mediation, they must notify the parties in writing, and the parties have a final say on the prosecutor's proposal. If a party is interested in this form of conflict resolution, they may also submit a written request to the prosecutor, who must notify the other party, also in writing, and the other party must give their consent, which is the basis for initiating the mediation process. This principle does not apply only to commencing the procedure, but remains relevant throughout the process. Also, at the stage of negotiating or determining the results of mediation and the contents of the agreement, the parties must not be coerced to engage in any activities against their will. The mediator's primary role should, therefore, be to skilfully explain any activities that are part of the mediation procedure and persuade the parties to engage in such activities.

A principle of criminal mediation, which should be respected in particular by mediation authorities, is confidentiality. No effort should be spared to uphold this principle as the parties' voluntary participation in the process is both their legal right and a personal decision based on their confidence in the justice system. This is particularly difficult in situations where there is a high level of public interest in a case, for example, because a public figure is involved. A guarantee of confidentiality means that everything that has been said during hearings and deliberations, as well as all documentation presented and prepared in the course of proceedings, will be kept within a narrow circle of recipients, i.e. between the parties and the entities appearing in the proceedings. No information from the mediation process can be used by the parties or the prosecutor as evidence in criminal proceedings that may follow[42].

A mediator must keep for themselves all knowledge acquired in the course of their activities in mediation proceedings. This rule also applies to all the actions a mediator takes, even at the stage of preliminary discussions with the parties. Single-party consultations are also subject to this principle, and knowledge acquired in this way may not be disclosed to the other party to mediation without express consent of the party involved in such consultations. As a consequence, a mediator may not be called as a witness in any criminal proceedings that may be conducted in this case.

[42] M.A. García Fernández, *La mediación penal y el nuevo modelo de justicia restaurativa*, Revista internacional de doctrina y jurisprudencia 15(2017), 13–14.

The absence of a strict procedural framework is a specific feature of mediation proceedings. In order to maintain the guarantees offered by the legal system, it is essential to resolve a conflict in a way that is satisfactory to the parties. Without assessing the substantive scope of cases that may be referred for mediation, the formal requirements will be met by the parties concerned if they give their consent to such a form of dispute resolution. Furthermore, facts need to be established and a professional accredited mediator appointed as a neutral third party. Actions taken in the course of proceedings must be appropriate to the case in question, but also to the subjective requirements and circumstances of the parties. The assessment of the actual state of affairs is the task of the mediator, who is responsible for the decisions and actions taken.

A mediator is obligated to ensure equal treatment of all parties involved in the proceedings and must inspire confidence among the parties. If any circumstances that may violate this principle of impartiality appear, the mediator is obligated to recuse themselves from the proceedings, regardless of their stage, as it is the case with the judge in a criminal case. In instances where such self-disqualification is not required by the law, a mediator who finds himself not to be competent in the case in question may step down voluntarily. The guarantee of impartiality prevents a mediator's excessive involvement in reaching a settlement, as the final resolution of the dispute should be an autonomous decision of the parties. Otherwise, the parties would not be able to obtain a mutually beneficial outcome.

The principle of direct involvement improves the confidentiality of the mediation process. In addition, personal contact between the parties and the mediator enhances confidence in the mediator and enables a better assessment of the conduct of participants in the proceedings.

With regard to the specification of the requirements pertaining to the agreement that ends mediation, it is important to emphasise the requirement of the victim's consent to the means of resolving the dispute contained in the settlement. The victim, as the injured and aggrieved party, in consideration for the determination of terms satisfactory to them, agrees to a waiver of the culprit's punishment for the act committed, mitigation of the severity of the punishment or even to the discontinuance of the proceedings brought against the culprit.

Mediation should be free of charge, which improves the availability of the procedure among members of the public. A necessity of paying a fee would prevent the economically disadvantaged from using mediation. In this way, a possible economic barrier to access to mediation is removed. The reasons for this state of affairs can be traced back to the best interests of the state, which supports peaceful resolution of conflicts.

A formal guarantee of conducting criminal mediation is its speed as compared to lengthy criminal proceedings. Most laws lay down a time limit of up to 60 days for the completion of mediation proceedings, which may be extended at the request made by the mediator in consultation with the parties involved.

It is the mediator's task to inform the parties of the nature, characteristics, and principles of the mediation procedure in which they will participate. In addition, the mediator must explain their own role in the proceedings and present the range of actions they can take in the exercise of their functions in compliance with the applicable ethical standards.

5. PARTICIPANTS IN MEDIATION PROCEEDINGS

The most important role in mediation is played by the parties to the proceedings: without their consent to engage in mediation the process cannot start. Each party has the right to make a request for mediation proceedings to be initiated. The parties remain active participants at all stages of mediation. It is their responsibility to look for a way to resolve the conflict. In order to do so, they need to acknowledge each other's concerns, fears, losses, and circumstances that led to the situation. All these aspects are addressed during joint meetings with the assistance of a professional actor – the mediator. Mediation is an opportunity to reflect on the conduct of the perpetrator of a prohibited act and to find a way of remedying the damage caused. Negotiations, which replace an adversarial process, are designed to create an atmosphere that allows the other party to be heard and understood. Crucially, in order to be interested in a peaceful resolution of the conflict, the parties themselves should be open to forgiveness, as they are the only ones who can put an end to the situation[43]. Notably, if there are several victims or perpetrators in a case, mediation can be conducted for all these persons jointly or any one of them separately. However, it is forbidden to extend the effects of specific procedures to other participants who have not agreed to mediation as a means of settling the dispute. In such a case, any parties 'opting out' of mediation will be subject to the ordinary criminal procedure and mediation outcomes will not even be considered in evidentiary proceedings.

The prosecutor is the first to receive parties' requests for mediation and has the opportunity to encourage the parties to make use of this form of case resolution. In order to speed up the procedure, the prosecutor may also, on their own initiative, prepare documentation and send it to a mediation centre if the prosecutor considers that a case is of a type that satisfies the legal requirements that allow mediation to take place. Such prosecutor's action is without prejudice to the guarantee of voluntary participation, as the next step is the mediator's assessment of the possibility of initiating the procedure. Next, if a case is eligible for mediation, the consent of the parties must still be obtained. Failure to meet any of these conditions will result in the case materials being returned to the prosecutor.

An important role in the mediation process is also played by the judge, whose responsibilities include reviewing the agreement signed by the parties and making sure that the agreement has not violated any constitutional guarantees. If the judge comes to the conclusion that this document does not meet the legal requirements, they will return the agreement to mediation for the purpose of remedying any defects. The judge also evaluates the impact of the settlement on the conviction already handed down and orders its mitigation in the spirit of, and in accordance with, the agreement. If the perpetrator is already serving a sentence for an infraction, a request for admitting them to the mediation process must be submitted to the judge who presided over the case and issued the judgment.

The mediator, who is not a typical participant in criminal proceedings, also plays an important role in the mediation procedure. As opposed to the judge and

[43] C.M. Cannizzaro, *Conciliación. Problemas e incongruencias del Nuevo Código Procesal Penal de la Nación*, Lecciones y Ensayos 95(2015), 230.

prosecutor, whose tasks are clearly defined by the law and whose roles stem from the judicial system established in a country, the mediator is a person from outside of the traditional framework of criminal justice. Nevertheless, the mediator is a professional actor in the mediation process. The mediator has the great responsibility of directing the actions of the parties. The mediator does not make any decisions about the conflict and does not assess the lawfulness of parties' decisions. Moreover, it is beyond the mediator's remit to establish the truth or assess guilt. What the mediator does is facilitating the parties' understanding of their needs relating to the conflict between them[44]. The mediator regulates the process of communication between the parties and is responsible for creating an appropriate atmosphere of freedom for both parties to act. Laws clearly define the requirements that a mediator must meet. In addition to specialist legal education, a mediator must have a proven track record of professional experience, must have completed training in mediation, and their name must be on the public register of mediators[45].

Act No. 26.589 introduced a new role of 'professional assistants' who are to assist mediators. They may work with a mediator intervening in a case in order to resolve the conflict which is being meditated. Assistants are subordinated to mediators, because they work under mediators' direction. Mediators are also legally responsible for the actions taken by their assistants[46]. Assistants must be registered with the National Mediation Register and meet the substantive requirements listed in statutory law. Unlike mediators, they do not have to have held a university degree in law for at least three years or take professional aptitude tests[47].

6. THE PROCEDURE AND DOCUMENTATION

Mediation in criminal cases starts with the prosecutor's receipt of the case file or a notification of a crime. For the types of offences eligible for mediation, the documentation must be forwarded to a Public Mediation Centre or a Justice of the Peace, who can also act as a mediator. Upon receiving the file, the Mediation Centre randomly selects a mediator, who immediately initiates an inquiry aimed at having a separate, face-to-face meeting with each party, with a view to informing

[44] E. Neuman, *Mediación y Conciliación Penal*, Buenos Aires, 1997, 20.

[45] Article 11 of the Mediation and Conciliatory Procedure Act No. 26.589 of 15 April 2009: 'Requisitos para ser mediador. Los mediadores deberán reunir los siguientes requisitos: a) Título de abogado con tres (3) años de antigüedad en la matrícula; b) Acreditar la capacitación que exija la reglamentación; c) Aprobar un examen de idoneidad; d) Contar con inscripción vigente en el Registro Nacional de Mediación; e) Cumplir con las demás exigencias que se establezcan reglamentariamente". Haber completado la capacitación exigida por el Ministerio de Justicia y Derechos Humanos de la Nación (res. 483/00): Estar inscripto en el Registro Público de Mediadores'.

[46] Article 10 of Act No. 26.589: 'Los mediadores podrán actuar, previo consentimiento de la totalidad de las partes, en colaboración con profesionales formados en disciplinas afines con el conflicto que sea materia de la mediación, y cuyas especialidades se establecerán por vía reglamentaria. Estos profesionales actuarán en calidad de asistentes, bajo la dirección y responsabilidad del mediador interviniente, y estarán sujetos a las disposiciones de la presente ley y su reglamentación'.

[47] Article 12 of Act No. 26.589: ‚Los profesionales asistentes deberán reunir los requisitos exigidos para los mediadores en el artículo 11, incisos b), d) y e)'; Article 38: 'Los profesionales asistentes deberán inscribirse en el Registro Nacional de Mediación, en el capítulo correspondiente al Registro de Profesionales Asistentes que organizará y administrará el Ministerio de Justicia, Seguridad y Derechos Humanos. El Poder Ejecutivo nacional dictará la reglamentación que determinará los requisitos necesarios para la inscripción, que deberá incluir necesariamente la capacitación básica en mediación, y la capacitación específica que exija la autoridad de aplicación'.

them about the benefits of mediation. If any of the parties rejects the procedure, the mediator returns the file to the intervening prosecutor or criminal court in order to allow them to proceed with an ordinary criminal case. If the parties agree that a dispute should be referred for mediation, the date and time of the hearing are fixed.

If the parties accept the procedure, the mediator starts to arrange individual meetings with them. If the mediator decides that a face-to-face confrontation will be unsuccessful or even harmful, they will continue with private meetings. The parties' failure to reach a settlement may also lead to the mediator's decision to extend the mediation proceedings, which must be notified to the prosecutor or judge. If, despite such an extension, the conflict cannot be resolved through mediation, the documentation is returned so that the criminal proceedings can continue.

At the end of the mediation process, after a settlement is made, an agreement is drawn up between the parties. It sets out the rules and methods of remedying the situation, as well as the deadline for the performance of the assumed obligations. This document is sent to the judge, who is required to review the agreement's compliance with constitutional guarantees. If the judge finds that the settlement violates such guarantees, they notify the mediator and the parties that the agreement needs to be amended, indicating any objections raised during the review. If the parties do not accept the need for an amendment, the dispute is deemed to be unresolved and the ordinary criminal proceedings continue. Any amendments agreed by the parties must be incorporated into the agreement, which is sent back to the judge for approval.

Another important task of the mediator is to draw up appropriate documentation once the obligated party has performed their obligations set out in the settlement. The judge is notified about their performance and then the judge has to assess the obligated party's actions and decide if these actions should result in a modification of the sentence or the non-initiation of criminal proceedings, depending on the stage of the case. However, if the perpetrator of a prohibited act has failed to comply with their obligations, the mediator's notification sent to the judge must disclose this fact. If the perpetrator's performance is incomplete, the judge's decision will be influenced by the extent to which the damage has been repaired and the party's commitment to perform the obligation.

Documents that are prepared after the oral phase of mediation have a strictly defined structure, with mandatory elements required by the law. The mediator is responsible for the preparation of these documents, including the agreement. In the introductory party, the participants and the facts of the dispute should be described. A party's identification data include the first and last name, identification number ('DNI'), and residence address. A document must also specify the date and place of preparation. This is followed by the particulars of the remaining participants: the attorneys and the mediator, accompanied by their registration numbers. A description of the facts includes a designation of the reported incident, the case file number, and the prosecutor's office. Below, sessions' start and close dates are given, together with the number of sessions held. However, the key part of any document is a description of the parties' obligations to act or to refrain from acting, which must be phrased in the most precise manner possible. The places and timeframes

of the agreement performance are also provided. Where the involvement of a third party is necessary, this party's identification data are given. The settlement may require that medical examinations, procedures or surgeries be performed, provided that it designates the healthcare institution and the attending doctor and determines the form of and the deadline for submission of medical records of such a treatment. These records are necessary for the purposes of reviewing the agreement's performance. All documents are signed by the parties and the mediator, but become effective only upon the judge's approval. The agreement is binding on the parties from the moment of its signature and constitutes a valid enforcement title.

7. EFFECTS OF MEDIATION AND AN ATTEMPT AT THEIR ASSESSMENT

An assessment of the effectiveness of mediation depends on the parties' subjective perception. As far as the legal system and the objectives of criminal proceedings are concerned, it is important that the agreement which ends mediation is an expression of a compromise reached between the two parties. Furthermore, the mediation procedure, which is non-adversarial, makes it more likely for the parties to reach a solution that is more satisfactory for them than a court judgment[48].

The laws governing criminal mediation do not specifically address its effects, leaving this part of the procedure to the discretion of the parties and the mediator. By way of example, it is worth noting that in the province of Buenos Aires only two articles have been devoted to this issue. One defines the formal effects on the assumption that mediation has been successful, while the other deals with cases of disagreement between the parties or failure of the participants to comply with formal requirements. They indicate the impact of mediation on the trial and describe the formal effects of the final agreement, i.e. legal review of decisions, discontinuance or continuation of preparatory proceedings by a prosecutor[49].

Mediation in criminal cases is still a new procedure, whose effectiveness can only be tested in practice. This affects the establishment of legal norms regarding mediation. In the province of Buenos Aires, draft amendments to criminal mediation laws include the introduction of clear guidelines on procedural admissibility,

[48] See arguments in favour of introducing criminal mediation into the legal system: A. Prunotto Laborde, *Mediación Penal*, Rosario, 2006, 32 et seq.

[49] Article 20 of Act No. 13.433: 'En aquellos acuerdos en que las partes hayan dado enteramente por satisfechas sus pretensiones, el Agente Fiscal mediante despacho simple, procederá al archivo de las actuaciones. Para los casos en que se pacte alguna obligación para las partes, la Investigación Penal Preparatoria se archivará sujeta a condiciones en la sede de la Oficina de Resolución Alternativa de Conflictos a fin de que constate el cumplimiento o incumplimiento de las mismas. Verificado el cumplimiento, se remitirán las actuaciones al Agente Fiscal, quien procederá de la manera enunciada en el párrafo primero. En caso de comprobarse el incumplimiento de aquellas en el plazo acordado, se dejará constancia de dicha circunstancia, procediéndose al desarchivo de la Investigación Penal Preparatoria y a la continuación de su trámite'; Article 21: 'En los casos en los que se arribe a un acuerdo, la Oficina de Resolución Alternativa de Conflicto podrá disponer el control y seguimiento de lo pactado, pudiendo para ello solicitar colaboración a instituciones, públicas y privadas, la que no revestirá el carácter de obligatoria. Asimismo, en aquellos casos en los que se haya acordado algún tipo de tratamiento, terapia, participación en algún programa de rehabilitación, etc; podrá derivar mediante oficio a las entidades públicas o privadas que presten ese servicio'.

with the aim of reducing the freedom to evaluate their specific application. They are meant to limit procedural admissibility criteria, predominantly those relating to the specific situation and the victim's position. Mediation cannot be used if the prohibited act violates, in a socially reprehensible manner, the rights of an individual on grounds of their sex (*violencia de género*). Also, mediation is inadmissible if the prohibited act results in a person's death. In those cases, a custodial penalty is intended to protect the public against the perpetrator's possible re-offending. The public interest justifies this. Moreover, if the victim has died, the case cannot be solved, as the other party is missing.

In criminal cases, mediation takes places only where the victim and the perpetrator of a prohibited act agree to this method of dispute resolution. Both parties have leading roles. They can listen to each other, ask for explanations, express their feelings as well as demand compensation and assume the responsibility that is appropriate in their opinion. They do not have these opportunities in the course of traditional criminal proceedings. It should be noted that commencing mediation does not mean that the perpetrator pleads guilty. The main objectives of this procedure are to repair the damage suffered and to rehabilitate the perpetrator[50].

There are two different views in the scholarship regarding the scope of criminal mediation. According to one of such views, mediation should be limited to some types of offences only, whereas according to the other, the procedure should be developed in a way that allows for its use in respect of any perpetrator of any prohibited act. The only restrictions should apply to officials who commit an offence related to their function, which is justified by the social harmfulness of these activities and their impact on a wide range of recipients. The importance of the public interest requires members of the public to know the truth about the events that affect public administration.

The scope of mediation procedures should include, in particular, offences committed unintentionally and prosecuted either privately or on request. Due to the substantive scope, the mediation procedure is best suited to those acts that are related to parental authority, and more broadly to the whole area of family law understood not only as the relations between spouses and children, but also between the couples remaining in non-formalized relationships[51].

In view of the high probability that the objectives of criminal proceedings will be achieved peacefully through mediation, the introduction of this option into the criminal procedure should be regarded as a positive development. However, the introduction of appropriate standards at the federal level in Argentina should be considered, as divergences, in particular those related to substantive requirements, can potentially infringe the rights of citizens based on their place of residence and thus violate constitutional norms.

[50] N.V. Lopez Faura, *Penal en Infractores: Una Utopía en Argentina*, Revista La Ley. Suplemento de Resolución Alternativa de Conflictos (18 September 1999).
[51] N.D. Barmat, n. 5 *supra*, at 203–205.

Abstract

Marta Osuchowska, *Criminal Mediation in the Law of the Argentine Republic*

Mediation in criminal cases in Argentina is a mechanism governed by provincial law. Although this procedure has not been introduced in all regions, increasingly more provinces see the advantages of this procedure in resolving conflicts between the parties. Differences in provincial legislation provoke scholarly arguments concerning violations of constitutional guarantees. Despite theoretical concerns, it is appreciated in practice that criminal mediation is a time-effective measure, promoting pro-active approach of the parties to the conflict, which has a positive impact on the society as a whole.

Keywords: *mediation, criminal law, Argentina, province*

Streszczenie

Marta Osuchowska, *Mediacja karna w prawie Republiki Argentyńskiej*

Mediacja w sprawach karnych jest w Argentynie instytucją podlegającą prawu prowincjalnemu. Nie została ona wprowadzona we wszystkich regionach, jednak stale zwiększa się liczba prowincji, które dostrzegają zalety tej procedury w rozwiązywaniu konfliktów między stronami. Różnice występujące w ich prawodawstwie skłaniają doktrynę do formułowania poglądów dotyczących naruszania gwarancji konstytucyjnych. Mimo wątpliwości o charakterze teoretycznym, w praktyce docenia się szybkość rozwiązań mediacyjnych oraz aktywny w nich udział stron konfliktu i pozytywny wpływ na społeczeństwo.

Słowa kluczowe: *mediacja, prawo karne, Argentyna, prowincja*

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