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ACT ON MEDIATION IN CRIMINAL AND CERTAIN CIVIL CASES

(1015/2005)

Summary combining texts from the Government proposal for an Act concerning mediation in criminal cases (HE 93/2005) and the related Legal Affairs Committee report (LaVM 13/2005). The entire text of the Act is also included.

1. Introduction

Mediation of criminal cases is a procedure that can be either parallel or complementary to court proceedings in resolving issues concerning crimes and minor civil cases. In the mediation process, the parties try, with the help of a mediator, to reach an agreement acceptable to both parties on damages or other compensation to satisfy the injured party. Compensation for the victim of a crime and active acceptance of responsibility on the part of the offender for the consequences of his/her action are seen as the most important goals of the mediation procedure.

Since mediation was introduced in the criminal legislation in 1997 as a justification for non-prosecution and for the waiving of penal sanctions, it has become increasingly important in decisions by the police, prosecuting authorities and courts of law. In terms of equality and legal protection, citizens must have equal opportunities to resort to mediation regardless of their place of residence. In addition, police and prosecuting authorities must always have the opportunity of referring a case to mediation at their discretion.

Attention has also been focused internationally on the need for developing mediation in criminal cases. The Council of Europe Committee of Ministers adopted Recommendation no. R(99)19 on mediation in penal matters in September 1999. The appendix to the Recommendation deals with issues such as general principles concerning mediation, the qualifications of mediators and the procedures to be followed in mediation. The Recommendation states that mediation in penal matters should be a publicly available service that should be facilitated through legislation. Similar views were expressed by the United Nations Economic and Social Council (ECOSOC) in its Resolution on the basic principles on the use of restorative justice programmes in criminal matters 2002/12.

Finland is in the vanguard of development concerning mediation of criminal cases. By international standards, Finland's mediation system is highly advanced, and it has become well established in Finnish society.

Mediation services in Finland focus predominantly on criminal cases and specifically offences committed by children and young people. The services offer a significant opportunity to develop a sense of responsibility in the young people concerned, to prevent recidivism and to break the cycle of crime in its early stages. Mediation involving young offenders under 15 was discussed in the final report of a research project on children and mediation in criminal cases issued by the Ministry of Social Affairs and Health at the beginning of 2005 (Ministry of Social Affairs and Health publications 2005:3). **An English summary is included in the final report.**

The fact that mediation in criminal cases has not been regulated by law has given rise to certain problems, and it has therefore proved necessary to introduce legislation to govern it.

Citizens have not been in an equitable position in terms of the availability of mediation services, since many municipalities have not been able to provide such services. It is likely that mediation in criminal cases would not expand significantly in the near future if its provision had continued to be left to the voluntary efforts of municipalities and subject to their financial resources. There was in fact a distinct danger that pressures on municipal finances might have led to a reduction in mediation services.

The outcome of mediation can have a major impact on the legal standing of the parties. For instance, it can be a significant factor if the prosecutor is considering non-prosecution. Remediation was also laid down as a factor mitigating punishment when the provisions concerning the general principles of the Penal Code were revised (Act amending the Penal Code, 515/2003). It is therefore important not only to ensure nationwide availability of mediation services but also the quality of the services, and to ensure that uniform procedures are observed for taking the legal protection of the mediation parties sufficiently into account.

2. Situation before the Act

2.1 Supervision and development of mediation services

Mediation in criminal cases has not been previously regulated by law in Finland. In practice, it has been based on a guide issued by Finland’s National Research

and Development Centre for Welfare and Health (STAKES) for use in mediation in criminal and civil cases (STAKES guides 1999/35).

On 27 February 2003, the Government issued a decree concerning an advisory board on mediation in criminal cases (165/2003). According to the decree, the advisory board acts under the auspices of the Ministry of Social Affairs and Health and is appointed by the Government for three years at a time. The board serves as a focus for cooperation between the administrative branches of government and the other parties primarily involved in the mediation of criminal cases. It includes representatives from the social welfare and justice branches, the court system, prosecution, police administration, the State Provincial Offices, parties providing mediation services, organizations operating in the sector and conciliators.

The duties of the advisory board on mediation in criminal cases are to monitor and assess developments in mediation and to make proposals for future development, to promote cooperation in mediation matters between the various administrative branches, organizations and other parties, to issue content-based guidance on drawing up instructions for mediation activities, to monitor international developments in mediation and participate in international cooperation concerning mediation, and to carry out other duties laid down by the Ministry of Social Affairs and Health in order to achieve the goals set for the advisory board.

2.2 Mediation

Comprehensive annual statistics have not yet been gathered on mediation. The first national report on the

status of mediation was made by Juhani Iivari, appointed by the Ministry of Social Affairs and Health to investigate the national organization of mediation in criminal and civil cases (Ministry of Social Affairs and Health 2000:27). The report was completed in 2000 and was based on data for 1999, but the data have since been updated by STAKES on the basis of municipal questionnaires for 2003. The following discussion will look at the regional coverage of mediation, the numbers of cases that have undergone mediation and ways of arranging mediation in the light of the reports mentioned above.

Mediation services appear to have been reduced in Finland in the past few years. In 1999, 255 municipalities had the capability of providing mediation services, but in 2003 this was down to 217. The change is even clearer in the number of cases undergoing mediation: 4,573 in 1999 and 3,046 in 2003.

Mediation services are regionally concentrated. The mediation offices of the municipalities in the Helsinki region (Helsinki, Espoo, Vantaa) handled more than a third of all mediation cases in Finland.

Municipalities have arranged mediation services in various ways. Some have set up a mediation office of their own, others outsource the service to another municipality or an organization, while still others have municipal officeholders handling mediation in addition to their regular jobs.

In 2003, outsourcing was the most common way of arranging mediation (slightly under 29 per cent of all municipalities). The second most common way was to have officeholders in social and youth services handle it as

part of their job description (some 25 per cent of all municipalities). In 1999, 34 municipalities had a mediation office of their own, but the number was down to 27 in 2003. Just under 14 per cent of municipalities reported using some other way of organizing mediation, primarily through the use of voluntary resources only.

Proposals to start mediation were usually made by police or prosecuting authorities: in 90 per cent of all cases undergoing mediation.

In most cases the actual mediation is carried out by voluntary conciliators who are usually reimbursed for expenses incurred in the mediation process. The number of voluntary conciliators has decreased in recent years. In 1999 there were 916 voluntary conciliators, against only 603 in 2003.

Most (95 per cent) of the cases undergoing mediation were criminal cases, the majority of them subject to public prosecution. The mediation cases were principally cases of assault (45 per cent), theft (one tenth) and malicious damage (one fifth). Other crimes referred to mediation included unauthorized use, defamation and fraud. Civil cases accounted for five per cent.

Fifteen per cent of the offenders referred to mediation were children under the age of 15. Offenders under 21 accounted for 56 per cent. Mediation was started in some 90 per cent of all cases referred to mediation, and 96 per cent of these ended in an agreement. More than 80 per cent of the agreements were fulfilled.

3. Goals of the Act

The goal of the Act is to extend mediation in criminal cases to cover the entire country so that all customers have the opportunity to obtain good-quality mediation services regardless of their place of residence.

Further goals are to safeguard sufficient government funding for mediation services, to organize the national management, supervision and monitoring of mediation services and to create conditions for long-term monitoring and development.

The Act also aims at making the procedures observed in mediation more uniform and giving sufficient attention to the legal protection of customers in the mediation process.

3.1 The purpose of the Act and the content of and conditions for mediation in criminal cases

The Act contains provisions on the administrative organization of mediation services, government compensation for operating expenses and the procedure for carrying out mediation.

In mediation, the parties in a criminal case have the opportunity to meet each other confidentially and to discuss the mental and material harm caused to the victim by the crime in the presence of an independent conciliator. Mediation offers offenders an opportunity to assume responsibility for their action. The goal is to achieve reconciliation and an agreement satisfying both parties on how the offender will redress the harm or damage caused and compensate the victim for it, or on how

the particular issues in a criminal case that the parties can agree on are otherwise to be solved.

The conciliator's job is to act as mediator between the parties. The conciliator does not solve disagreements between the parties but helps the parties to solve them on their own.

Mediation does not resolve the issue of guilt. In the case of mediation in a public prosecution case, the issue of guilt is always determined during the consideration of charges or in court proceedings. This also applies to complainant offences unless the complainant withdraws his/her summary penal order as a result of mediation, for instance.

Participation in mediation is voluntary for all parties concerned. A further condition for mediation is that the parties are sufficiently mature to understand the meaning of mediation and the solutions to be arrived at. A party may withdraw its agreement to participate in mediation at any time, in which case mediation must be interrupted without delay.

3.2 Arrangement, provision and funding of services

The State Provincial Offices are responsible for arranging mediation services and ensuring that they are appropriately accessible throughout the country. The services are primarily provided on the basis of commission agreements in the same way as debt counselling services are provided under the Act on financial and debt counselling (713/2000). A State Provincial Office makes an agreement with a municipality or some other public or private service provider. If, exceptionally, a commission agreement cannot be made in some area, the State

Provincial Office will provide the necessary services in that area through hired personnel or in some other manner it deems suitable.

Expenses incurred in the provision of mediation services will be compensated from government funds. The aggregate amount of government compensation is confirmed annually at a level which corresponds to the average expenses estimated to arise from maintaining mediation offices, appropriate service provision and training for persons engaged in the provision of mediation services. Service providers are entitled to receive government compensation on the basis of calculation criteria to cover the expenses arising from service provision. The number of inhabitants, the surface area and the crime situation of the operating area defined in the agreement are taken into account in determining the amount of the compensation.

3.3 General management, supervision and monitoring of mediation services

Although mediation services are of relevance to a number of different ministries, they are of greater relevance to the spheres of the Ministry of Justice and the Ministry of Social Affairs and Health. The actual legal effects of mediation are primarily evident in the criminal sanction system, which might justify the placement of mediation under the administrative purview of the Ministry of Justice. In Finland, however, mediation has from the very beginning been closely related to social work, prevention of exclusion and, in particular, child welfare. The main responsibility for nationwide development of mediation services has been with the Ministry of Social Affairs and Health from the start. The general supervision, management and monitoring of mediation services will fall

within the sphere of the Ministry of Social Affairs and Health in the future, too.

The advisory board on mediation in criminal cases will continue to operate under the auspices of the Ministry. Further provisions on its duties and composition will be issued by Government decree.

3.4 Issues dealt with through mediation

In principle, any type of crime can be dealt with through mediation regardless of the category of the crime. Crimes are dealt with if they are deemed eligible for mediation, taking into account the nature and method of the offence, the relationship between the suspect and the victim, and other issues related to the crime as a whole.

Cases involving domestic violence must not be referred to mediation if the violence in the relationship is recurring or if the parties have already been through mediation dealing with domestic violence. Neither are such cases eligible for mediation if the offender’s attitude to the offence or the relationship between the offender and the victim otherwise indicates that the offender regards use of violence as an acceptable way of dealing with controversy in the relationship.

A crime must not be referred to mediation, however, if the victim is underage and has a special need for protection on account of the nature of the crime or his/her age. For instance, sexual offences against children must be excluded from mediation. Assaults where the victim is very young should not be conciliated either.

Public prosecution cases and complainant offences are both eligible for mediation. Even if a case is dealt with and decided by a police or prosecuting authority or a court of law, this does not preclude mediation. Mediation offices assess whether individual cases are eligible for mediation.

In practice, criminal cases are referred to mediation primarily by the police or prosecuting authority. The discretion of these authorities has a major effect on what kind of offences are offered for mediation.

Apart from criminal cases, mediation may also deal with civil cases in which at least one party is a private individual. Thus, litigation cases between two companies, for instance, are excluded from mediation. Mediation offices assess whether dealing with a particular civil case through a mediation process for criminal cases is expedient or not.

3.5 Mediation procedure

3.5.1 General

As far as the procedure to be followed in mediation is concerned, the Act lays down provisions primarily on issues of particular importance for the legal protection of customers and their uniform treatment. Provisions on the various phases of the mediation procedure and their content remain few so as not to restrict the development of mediation and the chances of applying creative solutions. It is more appropriate to discuss the content of the mediation procedure in a separate mediation guidebook, which is in fact the case at present.

3.5.2 The position of a child and a child's custodian in mediation

In the mediation procedure, the most important provision concerning representation of a child is laid down in section 4(3) of the Child Custody and Right of Access Act (361/1983), under which a custodian represents a child in matters concerning the child's person unless otherwise is provided by law. This provision means that it is necessary to obtain the consent of custodians in order for a child to participate in mediation.

The nature of mediation also dictates that the child's consent is necessary in order for mediation to be possible. Mediation may be carried out only between parties that have personally agreed to it. In this respect the Act means deviating from section 4(3) of the Child Custody and Right of Access Act, which gives sole power of decision to the custodian.

On the other hand, an underage child cannot participate in the mediation process if a custodian objects to it, even if the child is willing. In some cases this may, in fact, lead to inexpedient situations, but in most cases it is probably in the interests of the child that mediation is carried out in agreement with the custodian.

If a party is an underage child, mediation meetings must in principle be arranged so that the child has an opportunity of receiving support from his/her custodian. The Recommendation of the Council of Europe Committee of Ministers uses a similar expression, according to which the basic security relating to procedural law applied to mediation entails the right of the child to receive help from parents. In practice, the provision means that a custodian should in general be able to attend mediation

meetings if the custodian so wishes. The presence of a custodian in mediation does not, however, always mean that the child has the opportunity to receive support, and it may even be against the child's interests. In such a situation a mediation session may be arranged without the presence of a custodian, **on the condition that the child is over 15.**

4.1. Secrecy - Section 21

Prohibition on testifying and on referring to information. It is important for the success of mediation that the parties can be confident that the issues presented during it are not disclosed to persons other than those taking part in the mediation procedure. There is likewise reason to try to prevent that the mediation procedure is used for obtaining information from the other party for future court proceedings. It is laid down for this purpose that mediators must not testify about anything they have learnt in the course of the mediation about the case being mediated. The prohibition on testifying is however displaced if there are particularly weighty reasons for questioning the mediator about it.

In practice, the restriction on the prohibition on testifying is of significance chiefly in criminal cases only. In them a prohibition according to the provision can be disregarded for instance when an aggravated offence is being investigated or it is possible to obtain such evidence by the mediator's
testifying for the benefit of the person suspected of an offence that otherwise obviously is not available.

Furthermore, provisions are laid down on the prohibitionon referring to information by the parties.

Accordingly, a party to the mediation process must not, without the consent of the other party, refer in later phases of dealing with the issue to what the other party has said during the process in order to reach agreement. The prohibition on referring to information only applies to the offers and counteroffers presented in the mediation process, not for instance to a confession made by the suspect in an unsuccessful mediation of a criminal case. The provision, however, does not prevent referring to the agreement that has been reached in the mediation process and regarding which a separate document has been drawn up as laid down in section 17 (5).

4.2. The financial implications of the Act

The expenses incurred in arranging mediation services are compensated from government funds. This compensation covers the average expenses arising from maintenance of mediation offices, appropriate service provision and training arranged for personnel engaged in the provision of mediation services. Compensation for such expenses requires an annual appropriation of EUR 6.3 million in the Budget under the main title of the Ministry of Social Affairs and Health.

NB: Unofficial translation

Act on Mediation in Criminal and Certain Civil Cases

(1015/2005)

Chapter 1 — **General provisions**

Section 1 — *Scope of application*

(1) For the purposes of this Act, mediation in criminal cases (*mediation*) means a non-chargeable service in which a crime suspect and the victim of that crime are provided the opportunity to meet confidentially through an independent conciliator, to discuss the mental and material harm caused to the victim by the crime and, on their own initiative, to agree on measures to redress the harm.

(2) Mediation may also be used in civil cases in which at least one of the parties is a natural person. Civil cases other than those concerning claims for damages based on a crime may, however, only be referred to mediation if the dispute is of a minor nature, taking into account the subject and the claims put forward in the case. What is provided on mediation in criminal cases in this Act applies, as appropriate, to mediation in civil cases.

Section 2 — *General conditions for mediation*

(1) Mediation may be carried out only between parties that have personally and voluntarily expressed their agreement to mediation and are capable of understanding the meaning of mediation and the

solutions arrived at in the mediation process. Before the parties agree to mediation, they must be explained their rights in relation to mediation and their position in the mediation process. Each party has the right to withdraw its agreement at any time during the mediation process.

(2) Underage persons must give their agreement to mediation in person. In addition, an underage person's participation in mediation requires that his/her custodian or other legal representatives agree to it. Legally incompetent adults may participate in mediation if they understand the meaning of the case and give their personal agreement to mediation.

Section 3 — *Issues dealt with through mediation*

(1) Mediation may deal with crimes that are assessed as eligible for mediation, taking into account the nature and method of the offence, the relationship between the suspect and the victim and other issues related to the crime as a whole. Crimes involving underage victims must not be referred to mediation if the victim needs special protection because of the nature of the crime or because of his/her age. If a crime cannot be referred to mediation, issues related to compensation of the damage caused by it must not be referred to mediation either.

(2) Civil cases may be referred to mediation if dealing with them through mediation can be considered expedient.

(3) Even if a case is dealt with and decided by a police or prosecuting authority or in a court of law, this does not preclude mediation.

Section 4 — *Definitions*

For the purposes of this Act:
1) *mediation office* means an operating unit with the duty of providing mediation services in a particular area under section 8;
2) *conciliator* means a person with appropriate training who handles individual mediation duties under the supervision and monitoring of the mediation office;
3) *person in charge of mediation services (co-ordinator)* means a person whose duty it is to be responsible for planning, developing and appropriately implementing mediation services within the operating area of the mediation office and of acting as conciliator where necessary; and
4) *mediation advisor* means a person with the duty of supervising and monitoring the work of the conciliators and acting as conciliator where necessary.

Chapter 2 — **Arrangement of mediation and compensation of expenses**

Section 5 — *General management, supervision and monitoring*

The general management, supervision and monitoring of mediation services fall within the jurisdiction of the Ministry of Social Affairs and Health.

Section 6 — *Advisory board on mediation in criminal cases*

The advisory board on mediation in criminal cases, appointed for a period of three years at a time by the Government for the purposes of national supervision, monitoring and development of mediation services, acts under the auspices of the Ministry of Social Affairs and Health, and further provisions on its duties and composition are laid down by Government decree.

Section 7 — *Obligation to provide services*

Each State Provincial Office is obliged to arrange mediation services and ensure that they are available in appropriately implemented form in all parts of the province.

Section 8 — *Service provision*

(1) In arranging the provision of mediation services, the State Provincial Office may make:
1) a commission agreement referred to in section 2(2) of the Local Government Act (365/1995) with the municipality concerned, under which the municipality undertakes to ensure that the service is provided within its own area or, in addition, in the areas of other municipalities or parts thereof as agreed under section 9; or
2) an agreement with some other public or private service provider under which the service provider undertakes to ensure that the service is provided in an area agreed on under section 9.

(2) If the services cannot be provided in a certain area under subsection 1, the State Provincial Office

concerned must provide the services in that area with the help of hired personnel or in some other manner it considers appropriate.

Section 9 — *Agreement on service provision*

An agreement on the provision of mediation services must include agreement on at least:
1) the area in which the service referred to in the agreement is arranged;
2) the amount of compensation payable from government funds in compliance with the grounds laid down in section 12(3) and the payment of the compensation;
3) the person in charge of mediation services, the other personnel in the mediation office and the number of conciliators;
4) the training arranged for persons involved in mediation;
5) the duration of the agreement; and
6) the termination of the agreement.

Section 10 — *Competence requirements for persons engaged in the provision of mediation services*

(1) Persons in charge of mediation services and mediation advisors must have an appropriate academic degree. If there is a special reason, other persons with good knowledge of mediation services and of related planning and supervision may be accepted for these duties. Persons who have completed introductory training in mediation services and otherwise have the education, skill and experience required for the appropriate handling of the duties may also act as conciliators.

(2) Further provisions on the competence requirements for persons referred to in subsection 1 may be given by Government decree.

Section 11 — *Provision of further training*

The State Provincial Offices must ensure that further training for persons engaged in the provision of mediation services nationally and regionally is provided.

Section 12 — *Compensation from government funds*

(1) Expenses incurred in arranging mediation services are compensated from government funds. The aggregate amount of compensation payable from government funds is confirmed annually at a level which corresponds to the average expenses estimated to arise from maintaining mediation offices, appropriate service provision and training for persons engaged in the provision of mediation services.

(2) The aggregate amount of compensation is divided among the State Provincial Offices for use in covering expenses referred to in subsection 1. The division is based on the number of inhabitants, the surface area and the crime situation in each province.

(3) Service providers are entitled to receive compensation payable from government funds on the basis of calculation criteria to cover their expenses referred to in subsection 1. The amount of compensation is determined on the basis of the number of inhabitants, the surface area and the

crime situation in the service provider's operating area.

(4) Further provisions on the division of compensation referred to in subsection 2, on determining the compensation referred to in subsection 3 and on payment of the compensation to the State Provincial Offices in cases referred to in section 8(2) are given by Government decree.

Chapter 3 — **Mediation procedure**

Section 13 — *Referral to mediation*

(1) Mediation may be proposed by the crime suspect, the victim, the police or prosecuting authority or some other authority. If the suspect or the victim is underage, his/her custodian or other legal representative has the right to propose mediation. In cases involving a legally incompetent adult, the person supervising his/her interests may also propose mediation.

(2) However, only the police or prosecuting authority has the right to propose mediation if the crime involves violence that has been directed at the suspect's spouse, child, parent or other comparable near relation.

(3) When the police or prosecuting authority assesses that a case at hand is eligible for mediation as laid down in section 3(1), it must inform the suspect and the victim of the crime of the possibility of mediation and refer them to mediation, unless otherwise provided in subsection 2 of this section. If the suspect or the victim of the

crime is underage, the information on the possibility of mediation must also be given to his/her custodian or other legal representative. In cases involving a legally incompetent adult, the information must always be given to both the person him/herself and the person looking after his/her interests.

Section 14 — *Place of mediation*

(1) Proposals concerning mediation are processed by the mediation office in whose area one of the parties lives and in which the mediation can take place flexibly, giving due consideration to the circumstances of the partners. Proposals may also be processed by the office in whose area the crime has taken place.

(2) Parties can always submit a proposal concerning mediation to the mediation office in whose area they live. If the mediation office receiving the proposal decides not to deal with it, it must transfer the case without delay to an office it deems suitable for processing the proposal under subsection 1.

(3) If no agreement is reached between mediation offices in the matter of deciding which of the offices referred to in subsection 1 will process the mediation proposal, the proposal shall be processed by a mediation office designated by the State Provincial Office, provided that the mediation offices are located in the same province. If the mediation offices are located in different provinces, the designation will be made by the Ministry of Social Affairs and Health.

Section 15 — *Investigating the conditions for mediation and deciding on mediation*

Before deciding to start mediation, the mediation office must ensure that the conditions for mediation laid down in section 2 are fulfilled and must assess the eligibility of the case for mediation. If the case concerned is a civil case, the mediation office must also assess whether it is expedient to resort to mediation. The person in charge of mediation services in the mediation office decides on whether to accept a case for mediation.

Section 16 — *Duties of the mediation office in connection with the mediation procedure*

When a mediation office accepts a case for mediation, it must:
1) nominate a conciliator for the mediation process who is suitable for the task on the basis of his/her experience and personal characteristics and is not disqualified in the manner referred to in the Administrative Procedure Act (434/2003);
2) with the relevant parties' agreement, obtain documents necessary for mediation from the police or prosecuting authority, courts of law or other parties;
3) ensure the provision of an interpreter or translator if a party does not have a command of the language to be used in mediation or because of a sensory or speech defect or some other reason cannot understand the discussions held in the mediation process or be understood in it; and
4) after mediation, inform the police or prosecuting authority of the mediation process and its outcome, notwithstanding the provisions on secrecy.

Section 17 — *Duties of the conciliator*

Conciliators must:
1) arrange mediation meetings between the parties;
2) conduct the mediation without bias and respecting all parties;
3) help the parties to find mutually satisfactory solutions concerning the crime in order to redress the mental and material harm the victim has suffered because of the crime;
4) give the parties information on available legal assistance and other services;
5) draw up a document on the agreement reached by the parties in the mediation process and verify it with a signature; and
6) after mediation, submit a report on the mediation process to the mediation office.

Section 18 — *Arrangement of mediation*

(1) Mediation takes place without an audience. The parties must participate in the mediation process in person. In mediation meetings, the parties are allowed to use assistants or support persons if this does not endanger the undisturbed progress of the mediation process. If one of the parties is underage, the mediation must be arranged in a way that allows the person the opportunity to receive support from his/her custodian or other legal representative. The presence of a custodian or some other legal representative in mediation meetings can be prohibited only if it is clearly against the interests of the underage person. Custodians or other legal representatives of parties under 15

years of age cannot, however, be prohibited from participating in mediation meetings.

(2) If agreement on the participation of an assistant, a support person or a custodian or legal representative of an underage person in the mediation process cannot be reached between the conciliator, the parties to the mediation process and the legal representative of the underage person, the matter will be decided by the person in charge of mediation services in the mediation office.

(3) Conciliators may also arrange mediation meetings with one party in the absence of other parties, provided that all parties agree to this.

Section 19 — *Interruption of mediation*

(1) Mediation offices must interrupt mediation immediately if a party withdraws its agreement or if there is reason to suspect that the agreement has not been given voluntarily. Mediation must also be interrupted if there is a justified reason to suspect that a party to the mediation process cannot understand the meaning of mediation and the solutions to be made in the process or if continuation of the mediation process is clearly against the interests of a party that is underage.

(2) Mediation offices may interrupt mediation if, for reasons other than those referred to in subsection 1, it emerges that there is no basis for successful mediation.

Section 20 — *Secrecy and the confidentiality obligation*

(1) The provisions of the Act on the Openness of Government Activities (621/1999) apply to the publicity of documents held by conciliators or mediation offices and to the confidentiality obligation of mediation office personnel or other persons participating in the handling of mediation cases.

(2) Notwithstanding provisions of section 14 of the Act on the Openness of Government Activities, mediation offices shall decide on access to information contained in documents that are held by the conciliator or the mediation office. The provisions of section 29 of the Act on the Openness of Government Activities apply to the right of mediation offices to grant State Provincial Offices access to information contained in secret documents.

(3) In mediation offices, the person in charge of mediation services shall decide on issues referred to in this section. The provisions of section 33 of the Act on the Openness of Government Activities apply to appeals concerning such decisions.

Chapter 4 — **Miscellaneous provisions**

Section 21 — *Prohibition on testifying and on referring to information*

(1) Conciliators must not testify about anything they have learnt in their duties concerning a mediation case unless particularly weighty reasons require the questioning of a conciliator.

(2) In later phases of dealing with a case, a party to the mediation process must not, without the consent of the other party, refer to what the latter has presented during the process in order to reach agreement.

Section 22 — *Dealing with disputes concerning agreements made on the arrangement of mediation*

Disputes concerning agreements on the arrangement of mediation made in accordance with section 9 are dealt with as administrative litigation cases by an administrative court as provided in the Administrative Judicial Procedure Act (586/1996).

Section 23 — *Appeals*

Appeals against decisions made by State Provincial Offices or the Ministry of Social Affairs and Health under section 14(3) and by mediation offices under section 15(1), 18(2) or 19 are submitted to an administrative court as provided in the Administrative Judicial Procedure Act.

Section 24 — *Mediation office's notification obligation*

A mediation office must, without delay, notify the police or prosecuting authority of a decision by which it has refused to accept a case for mediation or has interrupted the mediation.

Section 25 — *Non-chargeability of documents obtained for mediation*

Mediation offices are entitled to obtain documents necessary for mediation from police and prosecuting authorities and courts of law free of charge.

Section 26 — *Entry into force*

(1) This Act enters into force on 1 January 2006.

(2) Services referred to in this Act must be arranged in accordance with section 7 and provided in accordance with section 8 as of 1 June 2006.

(3) Measures necessary for the implementation of the Act may be undertaken before the Act's entry into force.