

FAMILY MEDIATION IN PORTUGAL

Principle of voluntary participation and approval of the agreement

In Portugal mediation is voluntary. The parties in a family dispute concerning children or spouses can use public or private family mediation by mutual agreement. The court can also refer the parties to mediation, but it cannot impose it without their consent. Family mediation can be accessed before an action is lodged in court or in the Civil Register Office (*Conservatória do Registo Civil*), or after the action is already pending. **In either case, the agreement relating to family matters must be approved to be enforceable.** The parties' representatives (if any) can also attend the mediation sessions — and in practice sometimes do so.. Law No 29/2013 of 19/4 details the general principles applicable to mediation.

Mediation in court

If the parties access **family mediation before bringing an action** and if an agreement is reached, they should **request the Civil Register Office of their choice to approve** the agreement. Such agreements may cover matters concerning the spouses (e.g. divorce, maintenance payments between the spouses, family home, use of the surname of the ex-spouse) and matters concerning the children (e.g. agreement relating to parental responsibility attached to a divorce agreement or agreement for maintenance payments for adult offspring). Before approval by the registry office, the Public Prosecutor's Office (*Ministério Público*) will issue an opinion on the agreement, insofar as it relates to parental responsibility for minors.

If mediation takes place before bringing an action to court and **if its sole purpose is to agree on parental responsibility for minors** (without an enclosed divorce agreement or judicial separation), the parties will have to request the competent court to approve the agreement.

If **family mediation takes place while a judicial action is pending**, it will proceed as follows:

In judicial actions concerning parental responsibility (e.g. custody, visits, maintenance allowances for minors), there is a specialised technical hearing and mediation stage. After being summoned to a meeting by a judge, should the parties not reach an agreement, the judge will adjourn the talks for a period of between two and three months and will refer the parties to one of the following alternative mechanisms: mediation, as long as the parties consent or request the referral; or a specialised technical hearing, to be undertaken by the technical support services of the court. Once the adjournment period has expired, talks will recommence and, should an agreement have been reached by one of the above methods, the judge will consider and approve the agreement. If there is no agreement, the case will proceed to the litigation phase.

As a rule, in all civil actions, including those concerning spouses (e.g. divorce and judicial separation, maintenance payments between the spouses and ex-spouses, awarding the family home, when there is no initial agreement), Article 273 of the Code of Civil Procedure (*Código de Processo Civil*) allows the court to stay the proceedings and refer the case to mediation, unless either of the parties opposes the referral.

In accordance with Article 272(4) of the Code of Civil Procedure, the parties may also request to stay the proceedings by mutual agreement for a period of three months and access mediation of their own initiative.

If an agreement is reached through mediation while proceedings are pending in the cases described above, the parties must **request its approval by the court.**

Actions concerning family matters that fall under the competence of the public registrar must be brought with the prior agreement of both parties, otherwise they will fall under the competence of the courts. For that reason, access to mediation at the initiative of the parties can be useful before initiating the proceedings. After initiating the proceedings in the civil register office, Article 14(3) of Decree-law No 272/2001 of 13/1 states that the registrar should inform the spouses seeking divorce of the existence of mediation services. This provision allows the parties, while the divorce proceedings by mutual consent are pending at the civil register office, to access mediation to reconcile the spouses or to review the agreement relating to parental responsibility, attached to the divorce agreement, when there is a motion from the Public Prosecutor's Office to that effect.

Choice of the public or private mediator, duration and cost of mediation

As a general rule, family mediation has a **maximum length of three months**, based on the principle contained in Article 272(4) of the Code of Civil Procedure. Only in exceptional and justified cases can mediation exceed this period.

If the parties access **private mediation**, they will have to pay the fees of the mediator. This amount, the rules and the mediation schedule are set in the mediation protocol signed by the parties and by the mediator at the start of mediation. The Ministry of Justice maintains a list of public and private mediators that the parties can check in order to choose a private mediator: <http://www.dgpj.mj.pt/sections/gral/mediacao-publica>.

In order to access **public mediation**, the parties should contact the Alternative Dispute Resolution Office (*Gabinete de Resolução Alternativa de Conflitos*) of the Directorate-General for Policy and Justice and request a pre-mediation session. The session can be booked by telephone, by *email* or via an online form. In the public pre-mediation session, a mediation protocol is signed between the parties and the mediator. A time period will be set, sessions will be scheduled and the procedural rules explained.

The cost of public family mediation is 50 euros for each of the parties, independently of the number of sessions scheduled. This fee of 50 euros is paid by each of the parties at the outset of the public mediation. The fees of mediators working through the public system are not paid by the parties. They are paid by the Directorate-General for Policy and Justice, according to a legal schedule.

Public mediation sessions can take place at the premises of the Directorate-General for Policy and Justice, or at premises made available in the municipality where the parties reside.

In public mediation, the parties can choose a mediator from a list of selected public mediators. If they do not do so, the Alternative Dispute Resolution Office of the Directorate-General of Policy and Justice will appoint one of the mediators from the public mediators list chosen by sequential order and considering the proximity to the area of residence of the parties. As a rule, this appointment is made electronically.

If the parties are entitled to **legal aid**, this may cover the cost of mediation.

Cross-border mediation and co-mediation

In the case of a **cross-border dispute**, which makes it impossible to have face-to-face sessions, it is possible to use the videoconferencing systems to facilitate mediation.

In Portugal, **mediators from other Member-States** can not only register to be included in the list of family mediators compiled by the Ministry of Justice (which includes public and private mediators), but they can also be selected for the list of public family mediators (by public tender). In both cases, this will be on the same conditions as those applicable to national mediators.

In Portugal, **co-mediation is allowed**, both in the public system and in the private mediation system. Co-mediation can take place by choice of the parties, or at the suggestion of the mediator, if he/she believes this is the best approach for the case.

Useful links

Please visit <http://www.dgpj.mj.pt/sections/gral/mediacao-publica> for: the *link* for national mediation legislation; the *link* to access the list of public and private family mediators; the *link* to access information on family mediation and mediation in general.

Requests for public mediation can be made by calling + 351 808 26 2000, by *e-mail* to smf@gral.mj.pt, or via the online form found at <http://smf.mj.pt/>.

Final Note

Information contained in this factsheet is of a general character and is not exhaustive; it is not binding on the contact point, the European Judicial Network in civil and commercial matters, the courts or any other persons. It does not dispense with the need to check the applicable legal texts in force.

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