

GUIDE TO **CONCILIATION**

Guide to Conciliation

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Design and Print

Sefine Tasarım San. ve
Tic. Ltd. Şti. - Ankara 2021
0312 287 4047

Foreword

Alternative resolutions, which have made an important contribution to the effective functioning of the criminal justice system and widely applied in many countries, are methods developed against classical lawsuits. These methods of dispute resolution significantly reduce the workload of the judiciary and save labour, time and resources.

In our country, great attention is paid to the development of alternative dispute resolution methods. In order to speed up access to justice, the issues of resolving the investigation files at the source before a lawsuit is filed, are highlighted and steps are being taken in accordance with this approach.

The conciliation institution, which is part of the concept of restorative justice, is widely applied as an alternative dispute resolution method in criminal law, one of the important disciplines of the field of public law and its effectiveness and success are increasing day by day.

Conciliation, which prioritises the reparation of the damage caused by criminal behaviour, aims the settlement of disputes permanently by proposing constructive ways without creating new conflicts.

With conciliation, the victim has the opportunity to express their concerns and share their feelings. The perpetrator, on the other hand, can understand the human dimension of the damage caused by the offense h/she has committed and has the opportunity to correct the negative consequences.

Thus, the victim and perpetrator leave the process healed and repaired. This decouples the way for the emergence of new conflicts between the parties, ensures the development of a culture of conciliation and the spread of it throughout society.

Conciliation practices have accelerated with the radical changes and regulations made in 2016, and a very important path has been taken after this date. The institution has been made to satisfy all the subjects involved in the criminal justice process by eliminating the shortcomings and needs arising from the legislation and practice

According to the goals and objectives included within the Judicial Reform Strategy document of our ministry, the Criminal Procedure Code and the law on amendments on certain laws no. 7188 adopted on 17 October 2019, some regulations to increase the effectiveness of the system in order to increase and improve the success achieved are made with due consideration of the requests arising from the practice. In this context, the scope of application of the conciliation institution is expanded and the conciliation period is extended.

On the other hand, for the institution to function in accordance with its purpose, effectively and efficiently, to know, interpret and apply the legislation correctly is of great importance for the functioning of the criminal justice system.

I am pleased to share the Guide to Conciliation which has been prepared in this direction and developed for practitioners, which has the quality of a guide. The Guide, developed with the contribution of eminent academicians and experienced practitioners who are experts in the subject, aims to promote the harmonious and uniform implementation of the conciliation institution and describes the concrete steps recommended to be followed by Public prosecutors, judges and conciliators.

I would like to thank everyone for sparing their valuable contributions in this process, and I wish the Guide to be useful in the belief that it will serve as a resource and guide the practitioners.

Abdulhamit GÜL
Minister of Justice

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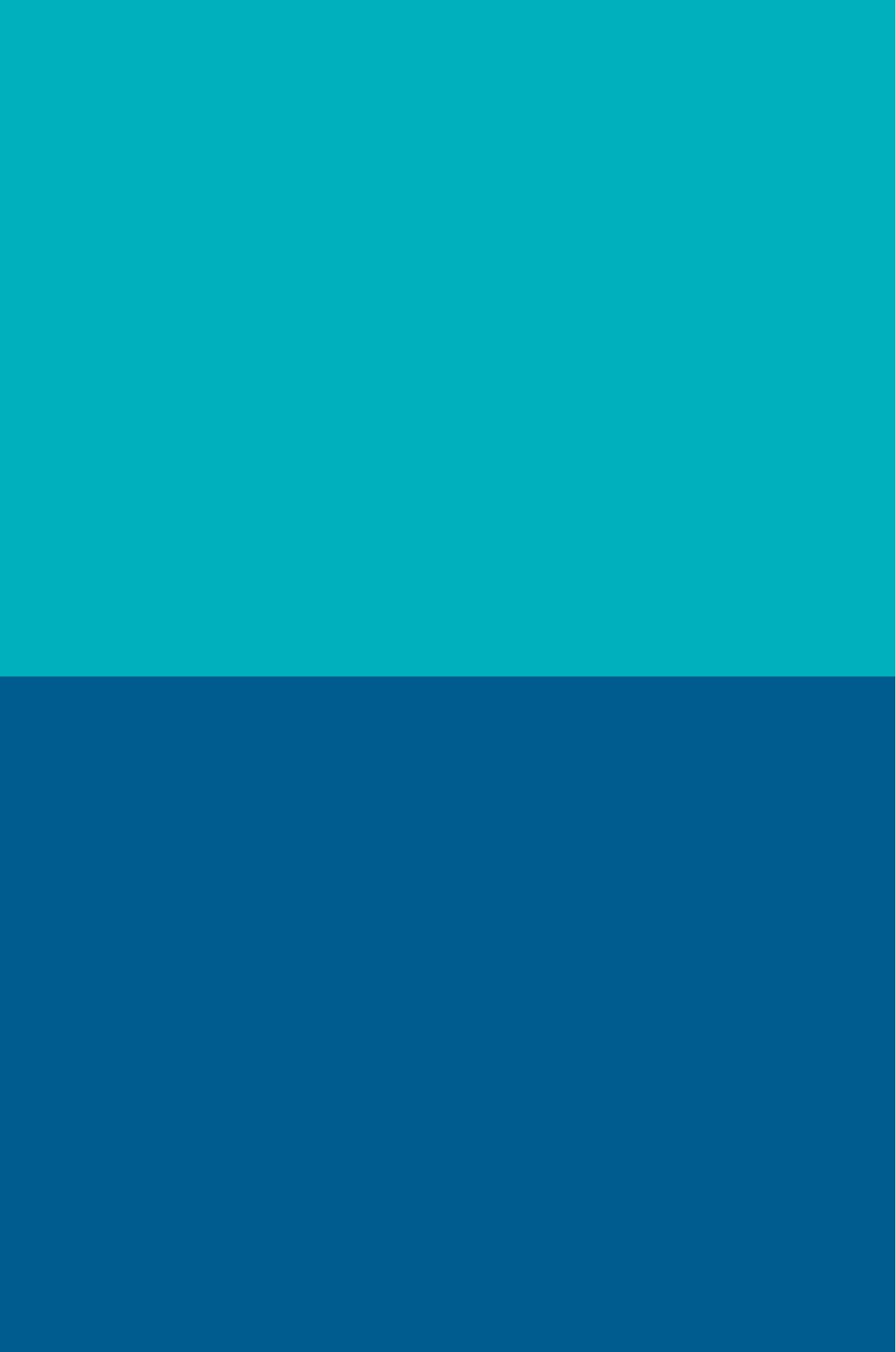
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Conciliation at the Investigation Phase

Steps Recommended to be Followed by the
Public Prosecutor Conducting the
Investigation



Step no.1

As soon as the public prosecutor is informed of a fact that creates an impression that an offense has been committed, either through a report of offense or any other way, s/he shall immediately investigate the factual truth, to decide on whether to file public lawsuit or not. (Art. 160/1 CPC) If it is clearly understood that the act subject to report or claim, without the need to an examination or that the report or claim is of an abstract nature, a decision not to investigate will be taken (Art.158/6, CPC).

Step no.2

After the beginning of the investigation, the public prosecutor collects and preserves all the evidence in favour and against the suspect with the assistance of the judicial law enforcement officers at his disposal in order to investigate the material fact and ensure a fair trial (160/2,CPC)

REMINDER

The public prosecutor conducting the investigation and judicial law enforcement officers cannot receive the statements of the parties regarding the conciliation and make a conciliation proposal during the investigation.



Step no 3

Acts related to the general investigation are also applied for offenses subject to conciliation (For example, expert report, judicial report). All the acts related to the collection and evaluation of evidence are carried out by the general investigation bureau, and no act related to the collection of evidence are left to the conciliation bureau. Protective measures may be applied to investigations concerning offenses within the scope of the conciliation.

Step no 4

When they are taking the statements, public prosecutors and judicial law enforcement officers working in the general bureau or the application bureau shall ask the parties in detail information such as open credentials and open addresses, contact numbers, e-mail addresses that are suitable for notification. This information is fully written in the minutes of the statement.

Step no.5

During the investigations concerning child victims or children pushed into crime, while the public prosecutor takes statements, the information of the legal representatives of the children such as open identification information and open addresses, contact numbers, e-mail addresses that are suitable for notification will be asked in detail. This information shall be fully recorded in the minutes of statements.

Step no.6

During the investigations conducted on children pushed into crime, if it is deemed necessary, the public prosecutor in charge of the children's bureau shall ask the juvenile judge to apply the protective and supportive measures in the Child Protection Law No. 5395.

Step no 7

During the investigation, the medical report whether the children pushed into crime in the age group 12-15 and deaf-mute children in the age group 15-18 understand the legal meaning and consequences of the act they committed and whether their capacity to orient their behaviour relating to this act was sufficiently developed, will be taken by the public prosecutor who is conducting the investigation.



REMINDER

As those who are over 12 years of age and under 15 years of age at the moment of the commission of the act cannot understand the legal meaning and the consequences of the act they committed and do not have the capacity to orient their behaviours do not have criminal liability, conciliation provisions are not applicable to them. Because the conciliation is not an alternative of the security measures but it is an alternative to the criminal liability. Because of the fact that the conciliation is the alternative of the criminal liability where deaf-mute children who are over the age of 15 and under the age of 18 at the time of the commission of the act, cannot understand the legal meaning and the consequences of the act they committed and their capacity to orient their behaviour are not developed, the provisions on conciliation are not applicable because of the absence of their criminal liability.

ATTENTION



In terms of the offenses committed by children provided that the victim or the person harmed by the offense is a natural person or a private legal entity, offenses requiring imprisonment or a judicial fine not exceeding the upper limit of 3 years, are also subject to conciliation. 3 years stated in this context does not indicate the penalty as a result of criminal proceeding but it refers to the amount of the punishment determined by law.

REMINDER



Conciliation provisions are not applicable to those who cannot understand the legal meaning and the consequences of the acts that they committed because of their mental illness or those whose capacity to orient their behaviour are significantly diminished as they cannot be punished.

Step no.8

If an arrest warrant is issued against the suspect, the file cannot be sent to the bureau for the application of conciliation provisions.

Step no. 9

Conciliation provisions cannot be applied to offenses covered by prepayment. The investigation file cannot be sent to Conciliation Bureau. Work and procedures related to prepayment shall be carried out.

Step no.10

Even if the investigation and prosecution are subject to complaint, offenses against sexual inviolability cannot be subject to conciliation. For this reason, the offenses of sexual abuse, sexual intercourse with a minor, simple form of sexual assault, qualified form of sexual assault between spouses and sexual harassment which are related to complaint are dealt with and decided in accordance with the general provisions. The file cannot be sent to Conciliation Bureau.

Step no. 11

At the end of the investigation phase, the public prosecutor concludes the file by deciding not to prosecute if there is not adequate evidence to create adequate suspicion to file a public lawsuit or if there is no possibility of prosecution. In other words, in cases where it will be decided that there is no room for prosecution because of an investigation into offenses covered by the conciliation, the file will not be sent to the Conciliation Bureau.

Step no.12

Although the offense investigated is subject to conciliation, the file cannot be sent to the Conciliation Bureau if the victim, the person who suffered losses due to crime, the suspect or their legal representative cannot be reached at the address declared to official authorities or for being abroad or for another reason. The investigation shall be concluded without conciliation.

Step no.13

Because of the fact that the personal impunity cases established in the Article 167/1 of the TCC, must be treated according to article 171 of the CPC, the public prosecutor can decide not to prosecute without sending the file to the Conciliation Bureau.

According to article 167/2 of the TCC, in case of the commission of the offenses in question against one of the partners who are separated, one of the brothers/sisters who do not live in the same house, uncle, aunt, nephew or the persons who have a kinship by marriage; as the prosecution of the allegedly committed offense is dependant of a complaint, the existence of a complaint shall be determined.

Step no. 14

If an offense within the scope of conciliation has been committed together with another offense which is not within the scope of the conciliation and it has been decided that there is no room for additional prosecution of the latter, the file will not be sent to the conciliation bureau immediately. The expiration of the appeal period against the rejection decision or the rejection of the appeal shall be waited.

Step no.15

At the end of the investigation procedures, the public prosecutor in charge of the investigation bureau shall make an assessment of whether the file should be sent to the Conciliation Bureau. For the assessment in question, the following considerations will be applied:

- a — Whether the committed offense is in the scope of conciliation or not,
- b — Whether all the conditions to bring an action, especially the complaint, are met (for example, the existence of a complaint, the period of time, whether the complainant is an official, authorisation, request, the period of time to bring an action, absence of pending proceedings and *res judicata* etc...)
- c — Whether there is adequate suspicion for filing a public lawsuit,
- d — If the conciliation remains inconclusive at the end of the conciliation process, whether it is possible to file an indictment without collecting new evidence by the public prosecutor in charge of the Conciliation Bureau, whether the file is completed (for example collection of the following evidence; the statement of the victim(s) for the offense of tortuous bodily injury, definitive medical reports, accident reports, expert reports based on the file, the statement of the suspect(s), witness declarations, if any in the absence of accident reports).

Step no.16

In cases where the offense investigated is subject to conciliation and there is adequate suspicion to file an indictment, the file shall be sent to Conciliation Bureau with the referral decision included within the Regulation Annex-1.

Step no.17

The public prosecutor writes the decision of referral in detail linking the material facts with the evidence based on the perpetrator, victim and act. In the decision, the public prosecutor describes in detail the acts of the perpetrator(s) against the victim(s) and how these acts were committed.



REMINDER

Apart from the Conciliation Bureau, no conciliation work or procedure can be carried out in the bureaux established by the public prosecutor. Conciliation work and procedures are only carried out by the Conciliation Bureau.

A public prosecutor responsible for the conciliation bureaux is assigned to the assize courts and the courthouses where three or more public prosecutors work, and the number of the public prosecutors may be increased according to the workload in the bureau.

Within the courthouses where two public prosecutors work, both of them may be responsible for the Conciliation Bureau. However, the proceedings of the investigation bureau and the proceedings of the conciliation bureau are carried out separately through UYAP screens.

Step no.18

In cases of offenses committed by the suspect against more than one victim, concerning those within the scope of the conciliation, the acts of the suspect against each victim will be assessed separately. For example, where the suspect committed the offense of deliberate bodily injury caused by weapon against the victim A, simple form of deliberate bodily injury against the victim B, simple form of threat against the victim C, each act is assessed separately concerning each victim. As the alleged offenses committed against B and C are within the scope of conciliation, the file separated concerning these persons is sent to the conciliation bureau (Art. 253/3, CPC).

Step no.19

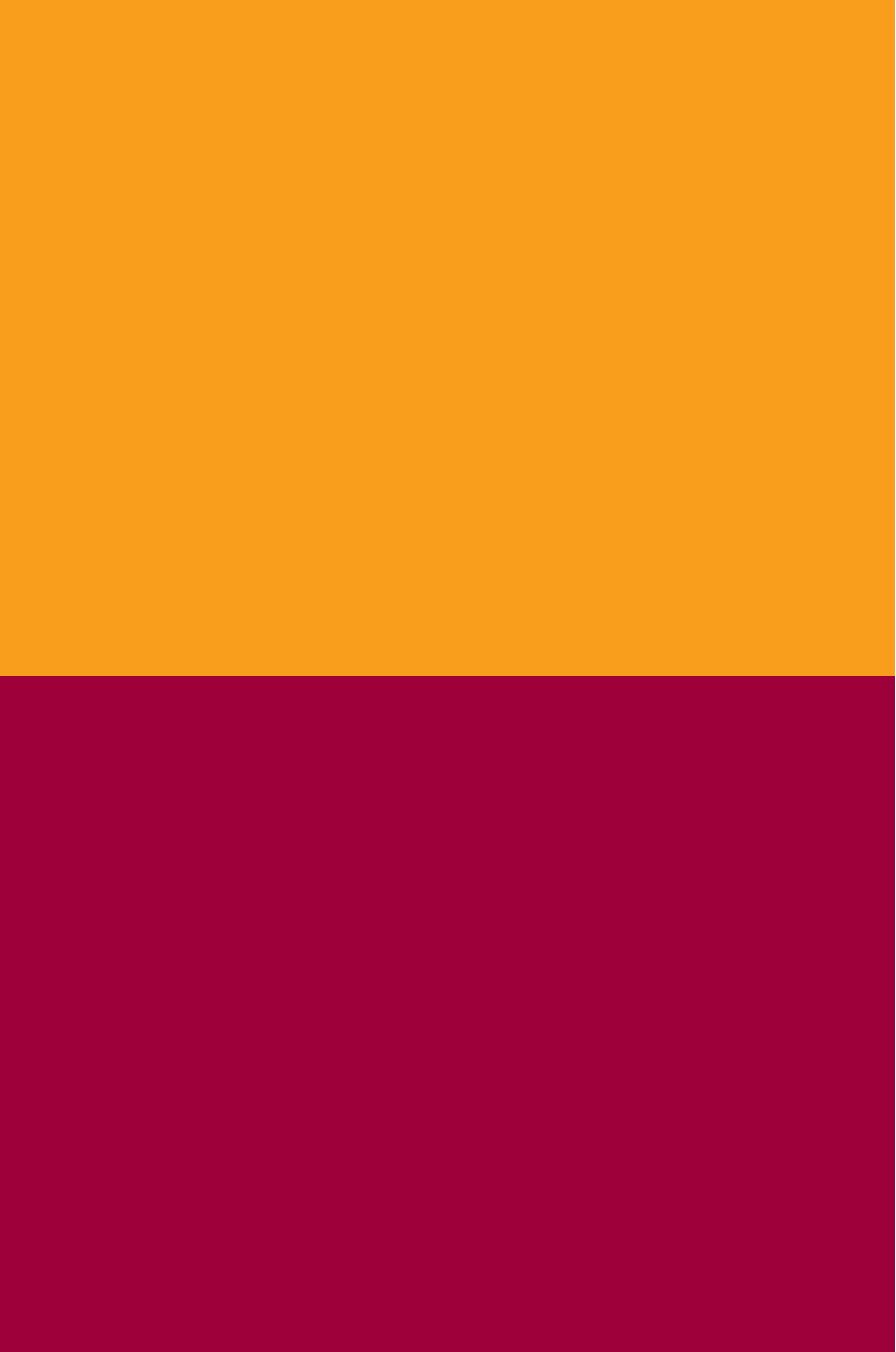
For the offenses committed mutually, if one of the allegedly committed offense is within the scope of conciliation and the other one is not, the file concerning the former is separated to be sent to the conciliation bureau.

Step no. 20

After a referral decision is made by the public prosecutor in charge of the investigation bureau, the Chief Public Prosecutor or the appointed deputy chief public prosecutor examines the file.

Conciliation at The Investigation Phase

The steps Recommended to be Followed by
the Public Prosecutor in charge of the
Conciliation Bureau



Step no.1

The referral decision and the investigation file subject to the referral decision are submitted to the public prosecutor in charge of the conciliation bureau.

Step no. 2

The public prosecutor in charge of the conciliation bureau examines the referral decision and the investigation file as to the the following aspects before the allocation of conciliator;

- a** — Whether the offense is within the scope of the conciliation or not,
- b** — Whether the absolute evidence for the proof of the offense are collected or not;
- c** — Whether there is adequate suspicion for filing a public lawsuit or not,
- d** — Whether proceeding conditions related to the offense are met or not etc..

Step no. 3

If as a result of the examination, it is understood that the case was sent to the bureau without collecting the absolute evidence to determine whether the offense has been committed or there is no adequate suspicion for filing a public lawsuit or the conditions of trial of the offense were not met then the file shall be returned to the investigation bureau together with the decision to return given in Annex-2 of the Regulation.

Step no. 4

The public prosecutor gives the reasons to return in the decision to return in detail.

Step no.5

As a result of the examination if it is understood that the offense subject to the referral decision falls within the scope of the conciliation and that there is adequate suspicion for filing a public lawsuit, the allocation of conciliator is made with the approval of the public prosecutor.



REMINDER

The public prosecutor cannot make allocation of conciliator before a period of one month (cooling period) from the date of the offense.

Step no. 6

In the event that the suspect, the victim or the party who suffers losses is a minor or under legal disability the public prosecutor will determine the person with whom the conciliation work and procedures will be carried out before the allocation of the conciliator.

Step no.7

If there is a conflict of interest between the minor or the legally disabled person and the legal representative who will carry out the conciliation work and procedures, a curator/tutor will be appointed to the minor or legally disabled person according to general provisions. After the appointment of curator/tutor, the allocation of conciliator for the file shall be done.

Step no. 8

A copy of the documents for the offense(s) subject to conciliation in the investigation file which are necessary for the conciliation and approved by the public prosecutor is provided by the bureau staff to the conciliator. The confidentiality of the investigation is stated.

Step no. 9

In case of hesitation or refusal or annulment of the allocation, the public prosecutor will make the necessary assessment. If there are reasons for hesitation, refusal or annulment; the actual conciliator will be dismissed and a new conciliator will be allocated.

Step no.10

The conciliation process must be concluded within thirty days from the date of the submission of the conciliation document to the conciliator. The public prosecutor may extend this period up to two times not exceeding twenty days each time. (Art.253/12, CPC)

Step no.11

The public prosecutor in charge of the conciliation bureau will check whether the conciliator complied with the period of conciliation set out in the legislation.

Step no.12

During the conciliation process the public prosecutor may meet up with the conciliator and may give directions to the conciliator. It is recommended that this power is not used by the public prosecutor except in mandatory cases and the conciliator uses their discretion when carrying out the conciliation. (Article 253/14, CCP).

Step no.13

In cases where the conciliation proposal and conciliation negotiations are made in courthouses, the public prosecutor in charge of the conciliation bureau will arrange the place and working environment. In general, it is recommended that the conciliator be responsible for determining the place and consult the parties. It is important to find a place where the parties can feel safe and comfortable for the conciliation proposal and negotiations (Article 35, Regulation).

Step no.14

If the conciliation remains inconclusive during the phase of proposal, the public prosecutor responsible for the conciliation will assess the document submitted by the conciliator according to the following considerations:

- a** — Whether the parties have been adequately informed about the conciliation,
- b** — Whether an informing report concerning the work and procedures was drawn or not,
- c** — Whether the offense subject to conciliation, the date of the proposal of the conciliation and the signatures of the parties are in the conciliation proposal form or not.
- d** — Whether the conciliation proposal is carried out complying with the legislation or not.

If the public prosecutor finds any deficiencies, they will submit the case to the same conciliator.

Step no.15

The conciliation report submitted by the conciliator to the bureau, the conciliation file and the written agreement if any, are submitted to the public prosecutor in charge of the conciliation bureau.

Step no.16

The public prosecutor assesses the following aspects of the conciliation report;

- a — Whether the conciliation is based on the free will of the parties,
- b — Whether the act is legal and ethical,
- c — Whether the conciliation report and procedures are complying with the procedures and principles set out in the law.

Step no.17

If the public prosecutor determines that the conciliation is based on the free will of the parties and that the act is legal and ethical; that the conciliation report and procedures are made in conformity with the principles and procedures set out in the legislation, they shall approve the report by stamping and signing it, and keep it in the investigation file.

Step no.18

If the conciliation is not based on the free will of the parties, and the act is not legal and ethical, the conciliation work and procedures do not comply with the procedure and principles set out in the legislation, the public prosecutor does not approve the report. The public prosecutor writes the justification of disapproval in the report.

Step no.19

In the event that the public prosecutor does not approve the report because the act is not legal and ethical, they may ask the conciliator to change the act, provided that the conciliation period is complied with.

Step no. 20

If the public prosecutor determines that the conciliation report and works are not carried out in compliance with the principles and procedures set out in the law, they return the case file to the conciliator for the compliance of procedures with the legislation (for example, the proposal of conciliation to the child pushed into the crime or negotiations with the child, explanations regarding the commission of the offense in the conciliation report).

Step no. 21

The parties may establish a conciliation document in accordance with the sample conciliation report before the allocation of the conciliator or after the rejection of the conciliation proposal no later than the date on which the indictment was issued. The public prosecutor examines this document as to whether the conciliation is based on the free will of the parties or not, whether the act is legal and ethical or not.

Step no. 22

If the public prosecutor determines that the conciliation is based on the free will of the parties and the act is legal and ethical, they shall approve the document by stamping and signing it and keep it in the investigation file.

Step no. 23

If the conciliation is not based on the free will of the parties or the act is not legal and ethical, the public prosecutor does not approve the report. The public prosecutor writes the justification of disapproval in the report.

Step no. 24

If, at the end of the conciliation, the suspect fulfils the act at once, the public prosecutor issues a decision of non-prosecution (Article 253/19, CPC). This decision shall be notified to the victim and suspect, the right to object, its period and the relevant authority are indicated in the decision. (Article 172/1, CPC)

INFORMATION



After a decision of non-prosecution is issued, where no evidence for filing a public lawsuit is obtained and no decision of the magistrates' court is issued, it is not possible to file a public lawsuit for the same act.

The party who suffers losses due to an offense may lodge an objection before the magistrates' court of the place of assize court within the jurisdiction of the public prosecutor who issued the decision within fifteen days from the date of the notification of the decision of non-prosecution.

Step no. 25

If at the end of the conciliation process, the fulfilment of an act has been postponed to a future date, split into instalments, or is continuous, the public prosecutor decides to postpone the filing of a public lawsuit.

Step no. 26

If the requirements of the conciliation are fulfilled, after the decision to postpone the filing of a public lawsuit has been made, the public prosecutor issues a decision of non-prosecution.

Step no. 27

In cases where the performance of the act is postponed to a future date, or to instalments or subject to continuity, if the requirements of the conciliation are not fulfilled, the public prosecutor issues an indictment in order to file a public case (Article 253/19, CPC).

Step no. 28

If the conciliation remains inconclusive, the indictment about the suspect is issued by the public prosecutor in order to file a public lawsuit.

Step no. 29

If a decision of non-prosecution or an indictment is issued about the child pushed into the crime at the end of the conciliation process, the public prosecutor may request the juvenile judge (court) to implement the protective and supportive measures specified in the Child Protection Law No.5395.

Step no. 30

The conciliator's fee will be determined by the public prosecutor in accordance with the Conciliator Minimum Wage Tariff and paid with an outlay decision after the submission of the conciliation proposal form in case the conciliation proposal remains inconclusive; after the approval of the report in case of the establishment of a conciliation report.



ATTENTION

The public prosecutor determining the conciliator's fee considers the the skills and the efforts of the conciliator for conciliating the parties during the process when the latter assesses the obvious differences such as the age, education, social and economic situation of the parties, the number of the parties, the scope and the nature of the conflict.

Step no. 31

In cases where multiple conciliators are allocated by the public prosecutor, the conciliators fees indicated in the Conciliator Minimum Wage Tariff shall be paid separately and equally.

ATTENTION



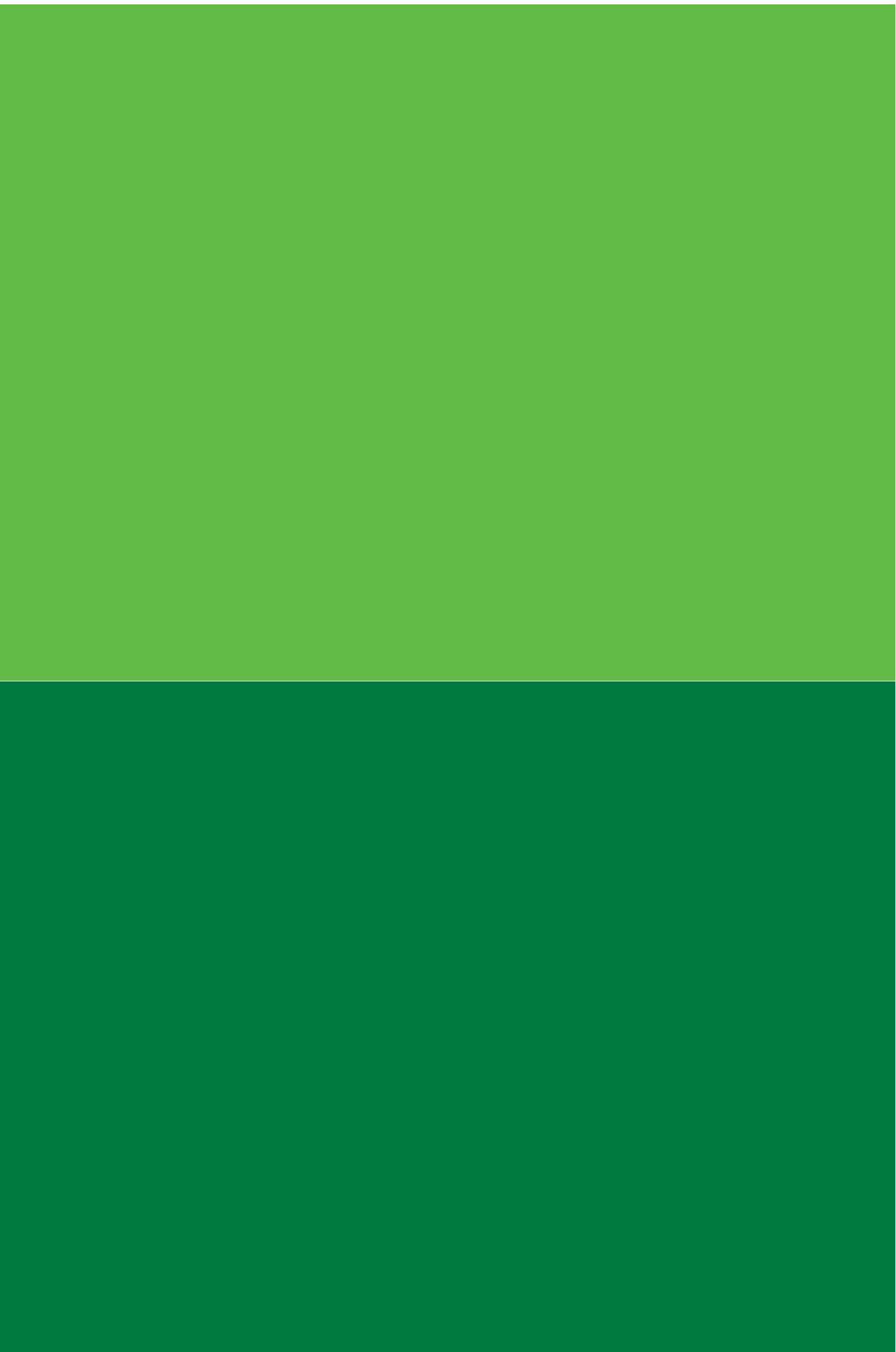
As the conciliation will be conclusive in cases where the performance of the act is postponed to a future date or to instalments or subject to continuity, the conciliator's fee will be determined by the public prosecutor considering the instalments indicated in the Tariff according to this result and it will be paid with the outlay decision. The non-fulfillment of the act later will not affect the amount of the conciliator's fee.

Step no. 32

The expenses incurred by the conciliator including the compulsory road expenses incurred in accordance with the vehicle agreed in accordance with the provisions of the Law on Expenditure no 6245, dated 10/2/1954, shall be paid as long as it does not exceed the limit of the amount determined in Tariff. For the payment, the document indicating the expenses incurred by the conciliator, a note of expenses or a written statement in accordance with the rate are necessary.

Conciliation at The Prosecution Phase

Steps Recommended to be Followed by the Court



Step no.1

At the stage of the assessment of the indictment, the court returns the indictment issued without applying the conciliation procedure, to the public prosecutor where it is clearly understood from the investigation file that it is subject to conciliation. (Art.174, CPC).

Step no. 2

The court decides whether the nature of the offense is subject to conciliation or not (Art. 254/1, CPC).

Step no. 3

The court determines whether the victim is a natural person or private law legal entity, if the victim is a public legal entity, the conciliation process cannot be used (Art. 254/1, Art. 253/1, CPC).

INFORMATION



During prosecution, the proposal of conciliation can only be made to the parties by the conciliator allocated by the conciliation bureau (Art. 254/1, Art. 253/4, CPC).

Step no. 4

After filing a public lawsuit, if it is understood that the offense subject to prosecution is within the scope of conciliation, the court will send the conciliation file with an interlocutory decision to the bureau.

Step no. 5

The court clearly indicates the persons with whom the conciliation proceedings will be made and the offenses subject to conciliation in the interlocutory referral decision. (Art. 22/3, Regulation)

ATTENTION

According to the paragraph 7 of the Article 7 of the Regulation entitled "general provisions": "In the event of the death of the victim or the party who suffers losses during the investigation phase, the conciliation procedure shall be terminated. Article 243 of the Law is reserved for the prosecution phase." In cases where, conciliation provisions are applicable, if the victim became participant before his death, as the procedures of conciliation will be carried out between the heirs of the victim and the prosecutor, the heirs with whom the conciliation procedures will be carried out will be stated clearly in the interlocutory decision.

Step no. 6

For the successful conclusion of the conciliation, it is important that the documents related to the offense or offense subject to conciliation necessary for the conciliation deemed appropriate by the judge are included within the file sent by the court.

Step no. 7

The court will assess the conciliation report sent by the conciliation bureau according to following considerations.

- a** — Whether the conciliation is based on the free will of the parties,
- b** — Whether the act is legal and ethical,
- c** — Whether the conciliation report and the procedures are made according to the procedures and principles set out in the law.

Step no. 8

If the court determines that the conciliation is based on the free will of the parties, the act is legal and ethical and the conciliation report and proceedings are carried out according to the procedure and principles set out in the legislation, they shall approve the report by stamping and signing it and keep it in the investigation file (Art. 254/1, Art.253/17, CPC).

Step no. 9

The court does not approve the report if they determine that the conciliation is not based on the free will of the parties, that the conciliation report and procedure was not carried out in accordance with the procedures and principles set out in the legislation. The court will write the justification of disapproval in the report.

Step no. 10

If the court does not approve the report because the act is not legal and ethical, they can ask the conciliator to change the act, provided that the conciliation period is complied with.

Step no. 11

If the court determines that the conciliation report and procedures are not carried out in accordance with the procedure and principles set out in the law, they return the file to the bureau in order to submit it to the conciliator. (For example, proposal of conciliation to the child pushed into crime or negotiations with the child, explanations regarding the commission of the offense in the conciliation report).

Step no. 12

In cases where conciliation can be applied during the prosecution phase, after the rejection of the conciliation proposal, the parties can prepare and submit a conciliation document to the court in accordance with the Sample Conciliation Report until the decision is made. The judge shall then examine and evaluate this document as to whether the conciliation is based on the free will of the parties, whether the act is legal and ethical. (Art.26, Regulation).

Step no. 13

As a result of the conciliation, if the accused fulfills their act at once, then the court shall decide to dismiss the case (Art. 254/2, CPC).

Step no. 14

As a result of the conciliation, in cases where the fulfilment of the act is delayed to a later date, split into instalments or is continuous, then the court decides to defer the announcement of the sentence concerning the accused (Art. 254/2, CPC).

Step no. 15

After it is decided to defer the announcement of the sentence, if the requirements of the conciliation are fulfilled, the court shall dismiss the case (Art. 254/2, CPC).

Step no. 16

In cases where the fulfilment of the act is delayed to a later date, split into instalments or is continuous, if the requirements of the conciliation are not fulfilled, the sentence shall be announced by the court (Art. 254/2, CPC).

Step no. 17

If the conciliation remains inconclusive the proceedings will continue.



INFORMATION

If the conciliation remains inconclusive during the investigation phase, the court will not use the conciliation process during the prosecution, and no conciliation document shall be issued (Art. 253/18, CPC).

Step no. 18

If the conciliation remains inconclusive, the court shall apply the provisions concerning the cost and expenses provisions relating to judicial proceedings to the fee of the conciliator and other expenses (Art. 324, CPC).

Conciliation at The Prosecution Phase

Steps Recommended to be Followed by the
Public Prosecutor in Charge of the Conciliation
Bureau



Step no. 1

After the registration procedures are completed the conciliation file sent by the court will be handed over to the public prosecutor in charge of the conciliation bureau.

Step no. 2

The public prosecutor examines whether the persons for whom the conciliation will take place and the offenses subject to conciliation are clearly stated in the decision sent by the court and whether the offense is clearly within the scope of conciliation.

Step no. 3

If it is determined by the public prosecutor that the offense is not clearly within the scope of conciliation, then the court may be asked to reconsider the interlocutory decision.

Step no 4

In the event that the persons for whom the conciliation will take place or the offenses subject to conciliation are not clearly stated in the court's decision, the public prosecutor may request the court to remedy these deficiencies.

Step no. 5

If the public prosecutor does not determine any of the above mentioned deficiencies, allocation of conciliator shall be made.

Step no. 6

The conciliation process shall be concluded within 30 days following the receipt of the conciliation document by the conciliator. The public prosecutor may extend this period for a maximum of 20 days up to two more times where the conciliator applies to the bureau with the motion explaining the situation. (Art.253/12, CPC).

Step no. 7

In case the conciliation proposal remains inconclusive, the public prosecutor shall send the conciliation file, proposal forms and information report to the court with a cover letter.

Step no. 8

After the submission of the conciliation report to the bureau, the public prosecutor shall send the case and the report to the relevant court with a cover letter.

Step no. 9

Following the approval or rejection of the conciliation report by the court, the conciliator's fee shall be determined by the public prosecutor according to the Conciliator Minimum Wage Tariff and the outlay decision shall be sent to the court.

PROCEDURE AND PRINCIPLES TO BE FOLLOWED BY THE CONCILIATOR

Steps Recommended to Be Followed by the
Conciliator During the Conciliation Process

Step no. 1

Allocation of the Conciliator

The allocation of conciliators is made with the approval of the public prosecutor in charge of the conciliation bureau according to the list determined by the Department.

Step no. 2

Notification of the Allocation to the Conciliator

Following the allocation, the conciliator shall be notified of this by short message to their phone registered in the system or to their electronic mail address (KEP) via electronic means asking their “approval” or “rejection” as to the allocation within twenty-four hours.

Step no. 3

Approval or Rejection of the Function by the Conciliator

The conciliator shall accept or reject the functions within 24 hours on UYAP Conciliation Portal. If the end of the period coincides with a weekend or public holiday, they shall approve or reject the task on the first working day that follows. Otherwise, the assignment passes to the next conciliator. The Conciliator has to accept the task, unless they have an excuse.

Step no. 4

Reception of the Conciliation Document

The conciliator who accepts the functions through the portal receives the conciliation document from the system.

Step no. 5

Beginning of the Conciliation Period and Confidentiality of the Investigation

The conciliation period of 30 days starts from the reception of the document. The conciliator has the duty to respect the confidentiality of the investigation from this date.

Step no. 6

Examination of the Conciliation Document

Following the reception of the conciliation file, the conciliator makes a detailed examination. The conciliator draws a roadmap for the conciliation process by examining the following aspects:

- a** — Referral or interlocutory court decision,
- b** — Act constituting an offense,
- c** — The way of commission of the offense(s),
- d** — Minutes of statements of the parties,
- e** — Minutes or other documents related to the damage caused, if any,
- f** — Expert or social review reports, if any,
- g** — Age, education, social and economic situation of the parties,
- h** — Whether the suspect, the victim or the party who suffers losses is a major and if major whether they are under legal disability
- i** — Whether the parties are detained or convicts in the penitentiary institution,
- i** — Residence addresses of the parties.

After making this examination the conciliator will prepare the conciliation procedures and decides which party they will contact.

Step no. 7

The conciliator's hesitation

The conciliator shall hesitate in case of the presence of the following situations, considered as examples, that will cast doubt on his impartiality:

- a** — If the conciliator was damaged by the offense,
- b** — Even if the relationship disappeared later, if the suspect, defendant or victim and the conciliator were married or if they were in a relationship of curatorship or guardianship,
- c** — If the conciliator has a lineal kinship with the suspect, accused or victim,
- d** — If there is a relationship of adoption between the conciliator and the suspect, the accused, or the victim,
- e** — If there is a third degree of blood relationship between the suspect, the accused or the victim and the conciliator,
- f** — Even if the marriage has ended, if there is a relationship between the suspect, the accused or the victim and the in-laws and the conciliator including the second degree,
- g** — If the conciliator has acted as public prosecutor, judge, judicial law enforcement officer, attorney of the suspect or the accused or as victim's counsel in the same case file,
- h** — If it is a file that the conciliation bureau or the court conducts the procedures as a registry staff during the prosecution phase,
- i** — If the conciliator has been heard in the same file as a witness or expert,
- i** — If the conciliator has a personal or business relationship with one of the parties,
- j** — If the conciliator has a direct or indirect, financial or other interest relating to the outcome of the conciliation with one of the parties.

If any of the above-mentioned situations occur, the conciliator shall notify the public prosecutor in charge of the conciliation bureau of this situation without delay.

Step no. 8

Invitation to the conciliation proposal

According to the nature of the file, the conciliator determines which of the parties they will invite first for a conciliation proposal. The conciliator shall invite the parties by calling them by phone;

- a** — First of all, the conciliator introduces themselves as a conciliator, does not provide information about their actual profession, unless necessary
- b** — Reminds the facts,
- c** — Gives general information relating to the conciliation institution,
- d** — The conciliator emphasizes that the statements that will be made by them during the conciliation process will not be used as evidence against them in the future,
- e** — The conciliator will answer the urgent questions of the party, if any,
- f** — The conciliator invites to a conciliation proposal by determining the place, date and time in accordance with the will of the parties for a face-to-face meeting.

The conciliator does not make a conciliation proposal during the invitation and does not conduct procedures related to the negotiation stage.

If the conciliator realizes that a face-to-face meeting with the party cannot be carried out during the invitation to the conciliation proposal, the conciliator may proceed to the conciliation proposal stage.

Step no. 9

Conciliation Proposal

- a** — The conciliator makes the conciliation proposal to the suspect, accused, participant, victim or the party who suffered loss due to an offense,
- b** — In the event that the suspect, the accused, the participant, the victim or the party who suffers losses is a minor or under legal disability and if the victim or the party who suffers losses does not have the power of discernment, the conciliation proposal shall be made to their legal representatives. The legal representative is the parent, curator or tutor (Art. 253/4, CPC, Art.29/1, Regulation).
- c** — In cases where the parties are natural persons, the conciliation proposal shall be made to the natural person and not to the attorney or counsel. However, if the party requests that the conciliation work and procedures be carried out by his/her attorney or in his/her counsel after the conciliation proposal made to him / her, if there is special authority in the power of attorney (it should be clearly stated in the power of attorney that special authority relates to conciliation), the counsel or his/her attorney may also submit a statement to the offer of conciliation.
- d** — Where the complainant or the party who suffered losses is a private law legal entity, if there is any special authority stated in the power of attorney, a conciliation proposal can also be made directly to the counsel.
- e** — As the parental authority of the child whose mother and father are married will be used jointly as much as the marriage continues, the conciliation proposal shall be made to the mother and father in the name of the child.

- f** The conciliation proposal relating to the child whose mother and father are divorced shall be made to the party who has the custody. In case of joint custody, the conciliation proposal should be made to both of them.
- g** In the case of natural children, the conciliation proposal is made only to the mother, since the custody belongs to her. If the mother of the natural child has died, the custody does not automatically pass to the father. In this case a legal representative shall be assigned to the child.
- h** If one of the parents dies while the marriage continues, the custody belongs to the surviving spouse. In this case, a proposal of conciliation regarding custody, also without the need for a court decision, is made to the surviving mother or father.
- i** In cases where there is a conflict of interest between the child and his/her legal representative (For example, where the child commits an offense against his mother or father, where the mother or father commits an offense against the child), a proposal for conciliation is not made to a legal representative who has a conflict of interest with the child. In this case, in order to carry out conciliation procedures, the assignment of a curator for the child must be requested. The conciliator, applying to the conciliation bureau, requests the assignment of a curator to the child.
- i** If the child pushed into crime or the victim child is under the age of eighteen at the time of the commission of the offense, but has become a major at the time of the conciliation proposal, the proposal is made to him. Similarly, if the proposal was made to the parent of the child who was minor at the time of the proposal and that it was accepted, but then the child became major during the negotiations, then the conciliation negotiations shall be conducted with the child.

- j** — If the child is not over the age of eighteen, but has got married or has become an adult by a court decision, the conciliation procedures are carried out personally with the child.
- k** — If the person under legal disability is an adult, the conciliation proposal shall be made to his/her legal representative.
- l** — Since a convict who has been sentenced to a measure involving a deprivation of liberty for a period of one year or more will be legally disabled, the proposal of conciliation is made to his guardian.
- m** — For the detainees or convicts who have sentenced up to one year of imprisonment, the conciliation proposal shall be made to the concerned person. The conciliation proposal can be made to these persons by face-to-face meeting in accordance with the provisions of the the Regulation on the Visits of Convicts and Detainees or through or the Audio-Visual Information System (SEGBIS)
- n** — If one of the parties does not speak Turkish or disabled, the assignement of an interpreter shall be requested from the conciliation bureau, according to the Article 202 of the CPC.

Step no. 10

Information in the Conciliation Proposal

- a** — When the conciliator makes a conciliation proposal, they inform the parties about the benefits of conciliation, the basic principles of the process based on voluntariness, confidentiality and impartiality, the roles of the conciliator and the parties, the conciliation process, the legal consequences of acceptance or rejection of the conciliation, the fact that the process is free of charge if the conciliation agreement is reached.
- b** — The conciliator should not only give the proposal form to the party but they should also make a detailed information concerning the above mentioned aspects.

Step no. 11

The Notification of the decision of the party in case of a face-to-face conciliation proposal

- a** — After explaining the content of the conciliation proposal, and giving the necessary information, the conciliator signs the relevant part of the form.
- b** — If one of the parties can immediately decide about the acceptance or rejection of the proposal; the relevant part of the form shall be handwritten and signed by the party in question.
- c** — If the party in question needs time to decide, the conciliator gives this party the information about the notification of his/her decision.
- d** — If one of the parties requests a period of 3 days in order to make a declaration concerning the proposal; the part in the relevant section of the form shall be handwritten and signed by the party in question. At the end of the period of 3 days, the conciliator shall clearly record the will of the party in an official report.
- e** — If the proposal remains inconclusive due to a rejection or for any other reason during proposal process, the conciliator will not establish a conciliation report, but they only draw up an official report of information as to the work and procedures carried out and signs it. The conciliator shall submit the conciliation document, the proposal form and information report to the conciliation bureau.



In offences committed by more than one person, all the suspects do not need to accept the conciliation proposal, the process of conciliation shall continue for those who accept the proposal of conciliation (Art. 255, CPC).



In order to make negotiations of conciliation about an offense causing damages or suffering to more than one person, all the victims or the parties who suffered losses shall accept the conciliation proposal.



ATTENTION

If the proposal remains inconclusive due to a rejection or for any other reason during proposal process, the conciliator will not draw up a conciliation report. The conciliator shall draw up an information report on the works and procedure carried out and signs it.

Step no. 12

Conciliation Proposal *Via* Annotated Notice

- a** — In case where despite all efforts, the conciliator cannot reach, contact and inform the concerned party for the conciliation proposal, then, the conciliator will make the conciliation proposal *via* annotated notice.
- b** — The conciliator draws up a conciliation form as well as an information report on the proposal (including the following aspects; the benefits of the conciliation, fundamental principles such as the voluntariness, confidentiality and impartiality of the process, the role of the conciliator and the parties, the process of conciliation, the legal consequences of the accepting or rejecting conciliation, the fact that the process of conciliation is free of charge in case of an agreement on the conciliation proposal). The conciliator will include their contact information in the report. The conciliator shall submit the proposal form and information report to the conciliation bureau for the notification to the concerned party. The annotated notice will be made to the party by the conciliation bureau.

Step no. 13

Conciliation Proposal Via Audio Visual Information System (SEGBIS)

In cases where the conciliator cannot make a face-to-face conciliation proposal, they can also make the proposal *via* audio visual information system (SEGBIS). (For example; concerning the proposals to be made to detainees or convicts in the penitentiary institutions).

Step no. 14

Signature of the Conciliation Proposal Form by a Demand Letter

- a In case of the acceptance or rejection of the party whose residence is different from the jurisdiction of the public prosecutor Office where the conciliator is assigned, the proposal form can be signed by a demand letter by the concerned party.
- b The conciliator draws up an information report when they fulfilled the duty of information and made a conciliation proposal. The conciliator submits the proposal form to the conciliation bureau for the signature of the party by a demand letter. The conciliation bureau sends the proposal form to the chief public prosecutor's rogatory office in which the party is located.

Step no. 15

Termination of the Conciliation Proceedings During Proposal Stage

In cases where the concerned party is abroad or his address cannot be found despite the searches, the conciliation proceedings shall be terminated. The conciliator shall record this issue in an official information report. The conciliator shall submit the conciliation document and the information report to the bureau.

Step no. 16

The Stage of Preparation to the Conciliation Negotiations

- a** — When the conciliation proposal is accepted by the parties, the negotiation stage takes place.
- b** — The conciliator shall hold at least one preparatory meeting in order to prepare the parties for the joint meeting.
- c** — The invitation to the preparatory meeting may be made by any means of communication.
- d** — The conciliator shall consider the security needs of the victim during preparatory meetings.
- e** — It would be appropriate that the first preparatory meeting be held with the perpetrator. During the first meeting with the perpetrator, the statements of the perpetrator concerning the offense will be heard and his/her will to attend the joint meeting will be determined. If the perpetrator wants to attend the joint meeting, the perpetrator shall be prepared and his expectations shall be realistic. The conciliator and the perpetrator will assess the losses of the victim as well as the capacity of the perpetrator to perform the act.
- f** — In the preparatory meeting held with the victim, the statements of the victim as to the offense will be heard. The conciliator's feedback concerning these statements should be sensitive. The will of the victim to attend the joint meeting will be determined, and if the victim wants to attend it, the victim shall be prepared. The victim will be helped for the determination of his/her losses and needs and expectations and these expectations must be realistic. In this stage, the capacity of the perpetrator to fulfill the act will also be considered.

- g** — If harmony and trust cannot be established between the parties at the end of the preparatory meetings, if the meeting of the parties is physically and psychologically risky, if the wills of the parties is to conduct the process without meeting, the negotiations will be conducted with separate meetings.
- h** — If between the victim and perpetrator there is not a relationship to be protected, if the damage caused or the emotional problems are not severe, the conciliation negotiations can be conducted separately with the parties or can also be conducted through communication means.
- i** — The conciliator can record the stages of the negotiations in an official report.

Step no. 17

Determination of the Place and Time of the Conciliation Negotiations

- a** — The conciliator shall determine the time and a safe environment, where the parties will feel at peace considering the wills of the parties.
- b** — The place where the conciliation meetings will be held must be determined considering the principle of the confidentiality of the negotiations and the meetings shall not be held in public places such as parks, gardens or restaurants.
- c** — If the negotiations are conducted with joint meetings, the will of the victim should prevail for the determination of the place and time, determined place and time should not prevent the attendance of the suspect/accused.

Step no. 18

Determination of the Persons Who Will Attend the Conciliation Negotiations

- a** — The suspect, the accused, the participant, the party who suffer losses, the legal representative, the attorney and the counsel can attend the conciliation negotiations. Nobody except the above mentioned persons can attend the negotiations even if the parties accept.
- b** — There is no obstacle for the attendance of the victim of the offense or the child pushed into crime according to his/her mental maturity and with the approval of his/her legal representative and with the latter.

Step no. 19

Conducting the Joint Meeting

Preparing the Place of the Meeting

Before the meeting of the parties, the place of the negotiations shall be prepared. These preparations always require the parties' reception and the proper organization of seating plans and the parties to have a comfortable and safe environment during the negotiations. In reconciliation, reception arrangements should be made in such a way that the parties do not have to wait for each other alone. The conciliator shall be present in order to receive the parties.

Seating Plan

At the place of the conciliation negotiations, attention should be paid to the seating positions of the parties and the seating arrangements of the parties should be planned in advance. It is recommended that the talks be held around the round table. In some regulations, it is possible for the victim and the perpetrator to be seated face-to-face however; this way of sitting can be perceived as confronting people who have a severe conflict between them.

Opening Speech

After the parties take their seats, the conciliator shall receive the parties warmly and thank them for their attendance. Before a procedural agreement is reached on continuing the conciliation, the parties should be informed about the basic rules of the conciliation and the conciliation procedure, provided that the parties are also allowed to ask questions. The volunteer nature and the confidentiality of the process should be repeatedly emphasized, the conciliator should comfort the parties as much as possible and resolve these issues by making them feel safe. The conciliator should give the opening speech in accordance with the "Sample Conciliation Opening Speech" contained in the Annexes.

Conciliation Negotiations

- a** Concerning the explanation of the effects of the offense at the beginning of the joint meeting, the victim should have the opportunity to choose who will start to speak first. If the victim begins to explain, h/she should be allowed to express the effects of the offense, what h/she has experienced since the day of the incident, in turn, the perpetrator should be allowed to tell the story about the offense, to answer the questions of the victim and the perpetrator should accept the responsibility for the offense.
- b** As a requirement of the principle of voluntariness that dominates the conciliation, the victim has the right to a full choice in the entire conciliation process and can first agree to participate in the conciliation and then waive this decision. In the communication established with the victim throughout the whole process, great sensitivity should be shown. This is because flexibility is a necessary element during the entire conciliation process.
- c** Conciliation negotiations are carried out under the direction of the conciliator. The conciliation meeting begins with the fact that the conciliator explains his/her function and duty, explains the agenda, and specifies the basic interview rules that may be necessary during the conciliation. At the first stage of the meeting, the events and thoughts of the parties related to the offense committed are discussed. Victims are often not given the opportunity to directly explain their thoughts to the perpetrator and ask a lot of questions that will prolong the process. Both victims and perpetrators shall find the opportunity to talk about themselves with sincere feelings by clearly expressing their feelings and thoughts.
- d** The conciliator carefully monitors the negotiations and does not intervene unless necessary. However, if the negotiation progresses in a way that may cause psychological or physical risks, if necessary, the conciliator may interrupt the meeting, postpone the meeting to another date, resume the meetings separately in accordance with the will of the parties or terminate.

Compensation Agreement

- a** — In the second part of the meeting, which follows this important meeting where thoughts and facts are discussed, the victim's damages are focused on and a mutually acceptable compensation agreement, which is a material symbol in determining the perpetrator's liability, will be negotiated. The conciliators cannot put pressure on the parties to agree to a compensation agreement.
- b** — During the negotiations of the compensation agreement, the victim's needs and the options that the perpetrator can make or give for meeting these needs (the acts for redressing the damage) will be discussed and the options will be determined. When communicating the options, the conciliator cannot direct the parties by adopting any of the acts. The conciliator can only give examples of acts.

Step no. 20

What Can Be Done in Case of the Negotiations Are Blocked

If the negotiation is blocked, the conciliator can sometimes use blockage strategies. For example, in order to determine why the process is blocked, it may be necessary to stop the conciliation negotiations and think about this issue. Similarly, considering whether the parties are decoupled because of a symbolic act or any words, can be included among these strategies. It is possible to transform the conciliation process into indirect conciliation and to investigate how the best form of settlement can be found separately with the parties.

Step no. 21

Allocation of Adequate Time for Negotiation

The conciliator allocates adequate time for negotiations without putting the parties under time pressure.

Step no. 22

Conducting Negotiations Using Audio Visual Communication Techniques

In case of impossibility to make face-to-face negotiations, the conciliator can make the negotiations using audio-visual communication techniques.

Step no. 23

Respecting the Confidentialty of the Conciliation Negotiations

Conciliation negotiations shall be carried out in confidence, the conciliator shall be responsible for keeping confidential the statements made during the conciliation process, the facts conveyed to them or learned in another way.

Step no. 24

Determination of the Act

The conciliator ensures that the chosen act is in accordance with law, personal rights, ethical and enforceable. The conciliator shall summarize the determined acts to the parties and may give them time to think about these acts.

Step no. 25

Preparation of the Conciliation Report

- a** — When the conciliation negotiations end positively or negatively, the conciliator draws up a conciliation report.
- b** — As the conciliation report may be subjected to execution with judgment, the conciliation process shall be showed correctly and completely.
- c** — The conciliation report is established in accordance with the Sample Conciliation Report indicated in the Annex-3 of the regulation and is established in more than one copies of the number of the parties.
- d** — If the conciliation is successful, the report including the signatures of the parties describes the details of the agreement. However, the explanations concerning the commission of the offense made during the conciliation negotiations are not included in the report.
- e** — If the conciliation is successful, the conciliator clearly indicates the act agreed by the parties, the method of fulfillment of the act and the time of fulfillment of the act in the conciliation report (For example, for the acts to be performed at once, the date of the performance of the act, for the acts split into instalments; the amount of the act, the amount of the instalments, intervals and period, for the continuous acts; the duration and the time of the fulfillment of the act, for the acts postponed to a later date, the date of the performance of the act are stated).
- f** — If the conciliation remains inconclusive, the causes will be written in the report.

- g** The signatures of the participants to the negotiations will be included in the conciliation report. All the signatures shall be in a unique conciliation report.
- h** Although the conciliation proposal is accepted, if the party declares during the negotiations that they decided not to seek for a conciliation anymore, the conciliator explains this situation in the conciliation report and signs it. In this case, the signature of the party who declared that they decided not to seek for a conciliation anymore is not required to be included in the report.
- i** The conciliator shall deliver to the conciliation bureau the report they prepared, the conciliation file delivered to them and the documents showing the expenditures, if any, the note of expenses or a written statement that is in accordance with the current rate.
- i** After the signature of the conciliation report, the parties cannot change their decisions. Because of this reason, the conciliator cannot contact the parties again after the signature of the report to discuss whether their will has changed.
- j** In case of a decision of the public prosecutor or the court to return the case for changing the act because of the fact that the act is not legal or ethical or the conciliation report and procedures are not in compliance with the procedure and principles set out in the law, the deficiencies are remedied, and the other procedures are carried out by the same conciliator.

Step no. 26

The Signature of the Report by Demand Letter

In cases where the report is required to be signed by the parties by a demand letter, the report shall be signed through the chief public prosecutor's rogatory office in which the party is located. The conciliator shall submit the conciliation report to the bureau for signature by demand

letter



REMINDER

The conciliator should allocate adequate time for the conciliation negotiations and not to put the parties under time pressure. Conciliation negotiations shall be carried out in confidence. The conciliator shall be responsible for keeping confidential the statements during the conciliation process, the facts conveyed to them or learned in another way.

