

Guidelines on mediation

Definition of mediation

1. Mediation is defined as an informal, structured, voluntary and cooperative process, based on the responsibility and autonomy of the participants, for the prevention and amicable resolution of disputes. Initiated by the participants themselves, mediation involves a trained mediator who is an independent, neutral and impartial third party.

Referral to mediation

2. Matters may be referred to the Mediators by permanent and temporary staff members, whatever the nature of their contract. Other Secretariat members (trainees, secondees and study visitors) and persons who are not Secretariat members but are involved in the Council of Europe's activities, whatever their nature or geographical location, may also request the Mediators' intervention. The Mediator shall decide whether mediation is possible under the terms of these Guidelines.

3. A referral to the Mediators may be made at any time, unless a formal complaint of harassment in respect of the same facts or conduct is pending with the Director of Human Resources pursuant to the *Policy on respect and dignity in the Council of Europe*.

Subject of mediation

4. The persons mentioned above may ask the Mediators to help them resolve any inter-personal differences with other staff members or any situation which impacts on their well-being or performance at work.

5. They may also ask the Mediators for advice and support on any inter-personal matter arising under the *Policy on respect and dignity in the Council of Europe*.

6. Where a dispute has arisen over an administrative decision taken by a staff member's manager, the appropriate means of contesting the decision itself are the grievance procedures set out in Article 14 of the Staff Regulations and the *Staff Rule on grievance procedures*. Nonetheless, mediation can be helpful in such a situation in order to address the inter-personal aspects of the dispute, by seeking to restore the relationship that may have deteriorated as a result of the dispute.

7. A referral to the Mediators shall not interrupt or suspend the time-limits applicable to the grievance procedures under Article 14 of the Staff Regulations and the *Staff Rule on grievance procedures*. However, when an appeal has been lodged with the Administrative Tribunal, the parties may, in accordance with Article 13.1 of the *Statute of the Administrative Tribunal of the Council of Europe*, ask the Tribunal to suspend the proceedings with a view to arriving promptly at a friendly settlement.

Role of the Mediator

8. The Mediator facilitates communication, without any decision-making power, and promotes dialogue and relationships, in particular through confidential interviews and meetings.

9. The Mediators endeavour to facilitate agreement between participants. They do not give their personal opinion on the possible solutions to be implemented. They ensure that the process is fair and that solutions are sought in an equitable manner.

10. A Mediator may decline to examine a matter that has been referred to them, without the need to give reasons for their decision. A Mediator may also, with the agreement of the staff member who contacted them, or where the other participant to the dispute has already been contacted, with the agreement of both participants, transfer a matter to the other Mediator of the Council of Europe. Where a person has contacted the Mediators but mediation is not the appropriate avenue of recourse, the Mediator may advise the person of alternative options available to them, such as the procedures set out in Article 14 of the Staff Regulations and the *Staff Rule on grievance procedures*.

Confidentiality

11. Unless expressly agreed otherwise by the participants, mediation is subject to the principle of confidentiality, which binds all those involved, including the parties. Any and all statements made and documents generated during the mediation shall not be disclosed to third parties nor invoked or produced in the context of legal proceedings. The principle of confidentiality shall not apply in case of situations where there appears to be an imminent risk of harm to any person. In such cases, the Organisation's doctor and the Director of Human Resources will be notified of the situation as a matter of urgency.

Breach of confidentiality and interference

12. Breach of confidentiality by any of the participants in mediation may be subject to disciplinary sanctions. Furthermore, any interference with the mediation process or intimidation by another staff member may be reported to the Mediators and/or the Director of Human Resources and may result in disciplinary sanctions.

Details of the mediation process

13. In the first instance, the Mediator meets the staff member(s) who contacted them for a preliminary individual meeting. The staff member may be accompanied on this occasion by a person of their choice. This preliminary meeting does not commit the staff member(s) to any subsequent meeting with the Mediator or any other person.

14. After this preliminary meeting, the Mediator assesses whether mediation is possible. He or she discusses this with the staff member(s), who may decide how they would like to proceed.

15. If the staff member(s) decide(s) that they would like to pursue the mediation, the Mediator contacts the other staff member(s) concerned for a preliminary individual meeting to determine whether mediation is possible. If the staff members concerned agree, the Mediator sets up one or more joint sessions.

16. No action will be taken by the Mediator without a staff member's explicit agreement, except where the situation presents a physical or psychological risk to the staff member concerned or another person.

Termination of mediation

17. The mediation ends:

- i. When a solution has been reached. The agreement reached in mediation is not subject to any specific formality: it may be written or oral, as decided by the participants.
- ii. If the person who requested the mediation decides to withdraw their request or if any participant in the mediation withdraws their consent to the continuation of the mediation.
- iii. If the Mediator decides to terminate the mediation. In such cases, the Mediator shall inform all participants in the mediation of their reasons for such termination.

18. Unless the staff members concerned expressly agree otherwise, there is no written report on the matter dealt with in the mediation.

Follow-up

19. Where possible and appropriate, the Mediator shall follow up on the agreement reached in the mediation. In the event of difficulties or failure in the implementation of the agreement, the staff members may contact again the Mediators to review the situation and, if necessary, look for alternative solutions.

Practical matters

20. In principle the Mediators shall perform their duties at the Council of Europe's headquarters, unless circumstances require them to travel outside of Strasbourg. The Mediators may also conduct meetings by videoconference with the agreement of the participants and in full compliance with the principle of confidentiality.

21. Requests for mediation shall be made in French or English, by any appropriate means, through one of the Mediators' secretaries or directly to the Mediators.

Activity report

22. Every two years, the Mediators shall present an activity report to the Secretary General stating the number and nature of the problems referred to them, whilst fully adhering to the principle of confidentiality. In their activity report, the Mediators may make recommendations and suggest amendments to rules and regulations and administrative practices in relation to the settlement of disputes at the workplace. The presentation of the activity report shall be an opportunity for the Mediators to exchange views with the Secretary General on the content of the report and the action to be taken.

Role of Secretariat

23. The Secretary General shall provide the Mediators with any administrative and material support they need in order to carry out their duties, including by providing them with a Secretariat. The Secretariat shall assist the Mediators and, in particular, forward any request for mediation. The Secretariat shall furthermore provide support in the drafting of the above-mentioned activity report.

Effective date

24. These Guidelines shall take effect on 1 July 2023.

(signed)
Marija PEJČINOVIĆ BURIC
Secretary General of the Council of Europe
15 June 2023