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The Culture of Compromise in Poland: the example of mediation

Various forms of alternative dispute resolution (ADR) have been developing in Poland since the 1990s, significantly expanding and diversifying the "offer" of support for people involved in disputes. The institutionalization of mediation in Poland, which began with the adoption of the Act on the Resolution of Collective Disputes (1991), introduced new ADR entities to the public arena and changed the scope of powers and tasks of institutions that traditionally had a monopoly on dispute resolution. Mediation strengthened the articulation and representation of the interests of various social groups, and forced changes in the existing strategies of public and non-public entities, strengthening the position of the individual in the process of asserting their rights. However, analyses show that the potential of mediation is not used in Poland. The article presents the results of research on knowledge about mediation and the popularity of this institution in resolving disputes among the inhabitants of two cities – Białystok and Warsaw. The survey research, conducted as part of student internships, was part of a broader research project titled: "Culture of compromise – the potential of ADR in Poland." The aim of the project was to reconstruct the practice of contemporary "culture of compromise" and to diagnose problems and barriers (e.g. legal, economic, social, educational, organizational) affecting the development of this institution in Poland.
Key words: conflict, dispute, ADR, mediation, culture of compromise

W Polsce od lat dziewięćdziesiatych rozwijają się rozmaite alternatywne formy rozwiązywania sporów (ADR), znacząco poszerzając i różnicując „ofertę" wsparcia dla osób uwikłanych w konflikty. Instytucjonalizacja mediacji w Polsce, rozpoczęta wraz z uchwaleniem ustawy o rozwiązywaniu sporów zbiorowych (1991), wprowadziła na scenę publiczną nowe podmioty ADR oraz zmieniła

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zakres uprawnień i zadań instytucji tradycyjnie posiadających monopol na rozstrzyganie sporów. Mediacje wzmocniły artykulację i reprezentację interesów różnych grup społecznych, wymusiły także zmiany w dotychczasowych strategiach działania podmiotów publicznych i niepublicznych, wzmacniając pozycję jednostki w procesie dochodzenia swoich praw. Analizy pokazują jednak, że potencjał mediacji nie jest w Polsce wykorzystany. W artykule przedstawimy wyniki badań dotyczących wiedzy na temat mediacji oraz popularności tej instytucji w rozwiązywaniu sporów wśród mieszkańców dwóch miast – Białegostoku i Warszawy. Badania ankietowe, przeprowadzone w ramach praktyk studenckich, stanowiły element szerszego projektu badawczego "Kultura kompromisu – potencjał ADR w Polsce". Celem projektu było odtworzenie praktyki współczesnej "kultury kompromisu" oraz diagnoza problemów i barier (np. prawnych, ekonomicznych, społecznych, edukacyjnych, organizacyjnych) mających wpływ na rozwój tej instytucji w Polsce.
Słowa kluczowe: konflikt, debata, ADR, mediacja, kultura kompromisu

1. Introduction

Sociological studies into judicial and extrajudicial procedures for resolving disputes have a long tradition in Poland (Maria Borucka-Arctowa, Adam Podgórecki, Jacek Kurczewski, Małgorzata Fuszara, Grażyna Skąpska).[1] In describing patterns of reaction to conflict characteristic of Polish society in the 1970s, Jacek Kurczewski used the term "culture of compromise", drawing attention to the significant flexibility of the disputed parties in their choice of means to help them achieve mutual accord. "The cultural ideal when resolving a conflict," wrote Kurczewski, "is the situation in which the parties reach an agreement between themselves, opting for mutual concessions, and when this is achieved outside of the realm of activity of institutions officially established for investigating conflicts and bringing about their regulated resolution" (Kurczewski 1982, p. 88). Formalised court procedure based on confrontation was treated as a last resort, as was also confirmed by the findings of studies conducted in the 1980s, in which the majority of respondents believed that "matters of conflict should be sorted out extrajudicially, through direct contact between the parties concerned", and that reaching a settlement, an agreement between the parties, was a better way of resolving a dispute than a court ruling (Skąpska 1989, p. 174). Similar tendencies were revealed by studies conducted decades later (Kurczewski, Fuszara 2003; Peisert, Schimanek, Waszak, Winiarska 2013;

[1] cf. for example: Adam Podgórecki: *Socjologia prawa*, Wiedza Powszechna, Warsaw 1962; idem: Sądy robotnicze jako eksperyment socjologii prawa, [in:] *Elementy socjologii prawa*, Wyd. UW, Warsaw 1990; Jacek Kurczewski: *Spór i sądy*, Wyd. UW, Warsaw 1982; Małgorzata Fuszara: *Rodzina w sądzie*, ISNS UW, Warsaw 1994.

Kurczewski, Fuszara 2017).[2] Currently, however, there is a greater expectation among Poles for official institutions, holding the power to impose specific settlements on the parties involved, to resolve their disputes. As Kurczewski emphasises, "Whereas respect for the law has remained unchanged for decades on end, with the exception of martial law, trust in the courts has steadily improved since the beginning of the transformation. In the Polish People's Republic, most respondents wanted to resolve matters extrajudicially. When I conducted a survey in 1974, 52% considered such a settlement better. 32% preferred to go to court. In 2014 the situation had reversed. 52% preferred to resolve the dispute in court, and 38% out of court. This was the gain of the transformation. However, in March 2016 – after a few months of war over the Tribunal, it almost evened out. 44% then preferred to go to court, while 42% of Poles wanted to resolve disputes out of court. We are at a crossroads".[3] Various forms of Alternative Dispute Resolution have been developing in Poland since the turn of the 1990s, significantly broadening and diversifying the "offering" of support for people embroiled in disputes. The institutionalisation of mediation, which began with the passing of the act on the resolving of collective disputes (1991), brought new ADR entities onto the pubic stage and changed the scope of the powers and tasks of institutions traditionally holding a monopoly on the resolving of disputes. Mediation has strengthened the articulation and representation of the interests of various social groups, and also forced change in the hitherto action strategies of both public and non-public entities, strengthening the position of the individual in the process of exercising their rights. The growth of ADR, perceived as a kind of remedy for an ailing judiciary (the large number of cases, high litigation costs, lengthy procedure), has been supported by various initiatives and projects at the Ministry of Justice, including the Social Council for ADR[4] established in 2005, the formation since 2010 of a Poland-wide network of mediation coordinators in the

[2] See also *Badanie opinii publicznej na temat wizerunku wymiaru sprawiedliwości, oceny reform wymiaru sprawiedliwości, aktualnego staniu świadomości społecznej w zakresie alternatywnych sposobów rozwiązywania sporów oraz praw osób pokrzywdzonych przestępstwem*, HomoHomini, Warsaw 2009; *Raport końcowy z badania opinii publicznej. Wizerunek wymiaru sprawiedliwości, ocena reformy wymiaru sprawiedliwości, aktualny stan świadomości społecznej w zakresie alternatywnych sposobów rozwiązywania sporów oraz praw osób pokrzywdzonych przestępstwem*, TNS OBOP, Warsaw 2011.

[3] Piotr Szymaniak, *Dlaczego Polacy mają niski szacunek do prawa? [Wywiad z prof. Jackiem Kurczewskim]*, https://forsal.pl/artykuly/940265,dlaczego-polacy-maja-niski-szacunek-do-prawa-wywiad-z-prof-jackiem-kurczewskim.html (accessed: 19.01.2023)

[4] Order of the Ministry of Justice No. 55/08/DNWO, of 1 August 2005, concerning the establishing of a Social Council for Alternative Dispute Resolution methods, together with justification. https://www.arch.ms.gov.pl/pl/dzialalnosc/mediacje/spoleczna-rada-ds-alternatywnych-metod-rozwiazywania-konfliktow-i-sporow/o-radzie/

ordinary courts (Rękas 2012), and the construction since 2015 of a system of free legal and civil counselling, to which free mediation[5] was added in 2020, or a project underway since 2020 on "disseminating alternative dispute resolution methods by raising the competencies of mediators, creating a National Register of Mediators, and informational activity", strengthening the professionalisation of the occupation of mediator, among other things by creating the said Register, conducting training in mediation as part of the Integrated Qualifications System and promoting e-mediation.[6] Numerous writers have discussed the strengths of mediation as an effective way of resolving disputes and effective method of achieving a satisfying agreement accepted by the parties, referring to the findings of research confirming the effectiveness and preventative character of this institution – thanks to which the filing of cases in court is becoming unnecessary (Czarnecka-Dzialuk, Wójcik 2001, Kruk 2004, Kruk, Wójcik 2004, Gójska 2004, Krajewska 2009, Zielińska, Klimczak 2020). Nevertheless, analyses and statistical data show that despite measures supporting and propagating mediation, its potential is still not being tapped in Poland. Why is that so?

This article presents the findings of research concerning the awareness of mediation and the popularity of this institution in the resolving of disputes among residents of two cities: Białystok and Warsaw. Questionnaire-based surveys conducted as part of students' practical experience constituted an element of a broader research project bearing the name "The Culture of Compromise – the Potential of ADR in Poland", which was intended to embrace not only entities referring cases for mediation, in other words the courts, but also non-governmental organisations conducting mediation, local-government institutions providing various "aid" services (including mediation), and other non-public entities, meaning legal practices increasingly often offering services in the area of mediation. The goal of the project was to reconstruct the practice of the contemporary "culture of compromise" and diagnose the problems and obstacles influencing the development of this institution in Poland. Of the extensively planned surveys, interviews were successfully conducted in Białystok with mediators (13) and judges (5), and the questionnaire was filled in by residents of Białystok and Warsaw. The surveys were conducted in Białystok in September 2019 on a random sample of 100 residents (Białystok has a population of 296,401). Altogether 99 questionnaires were completed. Due to the large number of refusals (40%), 13 questionnaires were filled in by non-randomly selected respondents, with attention given to ensuring maximum diversity in age and gender. In Warsaw

[5] Act of 5 August 2015 on free legal aid and citizens advice as well as legal education (Journal of Laws [Dz. U.] 2020, item 2232, last amendment Journal of Laws 2021, item 159).

[6] https://krm.gov.pl/files/page_files/69/broszura-informacyjna.pdf

the surveys began in November 2019 and lasted until the end of February 2021. 87 questionnaires were filled in by respondents of varied demographics. The respondents were randomly selected in a stratified sample, whereby initially 4 districts were drawn, followed by streets and specific addresses. The surveys in Warsaw – as well as subsequent stages planned for the project – were interrupted and de facto brought to an end due to the Covid-19 pandemic and the restrictions introduced from March 2020. The survey questionnaire contained 25 questions, the structure of which was mixed. There were both closed-ended single– and multiple-choice questions (where the respondents could enter their comments in the box marked "other", or where answers were to be put in what the respondent felt was the right order), and open-ended questions, in which there were no constraints on the respondents' answers. The surveys concerning awareness, popularity, availability and assessment of mediation by the respondents as a procedure for resolving disputes, including in the case of court disputes, also constituted an attempt to answer the question regarding the causes behind mediation being less popular than expected. A few of the questions echoed those posed by TNS OBOP in 2008 and 2011 in Poland-wide surveys assessing the functioning of the system of justice and ADR in Poland.[7] We also used questions on irenic models drawn up by Jacek Kurczewski (Kurczewski 1982, Kurczewski, Frieske 1990, Kurczewski, Fuszara 2017). The research findings presented here focus on present-day mediation, although they also strive to answer the question about the future of this institution and the debate concerning the development of ADR in Poland.

2. Court mediation in Poland – general information

The possibility of resolving court disputes through mediation appeared relatively recently in Poland. In criminal cases it was introduced by the Code of Criminal Procedure on 6 June 1997, which in Article 320(1) provided for the possibility of a case being referred to an institution or trustworthy person for the purpose of mediation, both in cases prosecuted by public indictment and in private prosecution disputes. The widespread application of mediation became possible as a result of the amendment to the Code of Criminal Procedure passed on 10 January 2003, which came into force on 1 July 2003. Un-

[7] Final public opinion survey report entitled "Wizerunek wymiaru sprawiedliwości, ocena reformy wymiaru sprawiedliwości, aktualny stan świadomości społecznej w zakresie alternatywnych sposobów rozwiązywania sporów oraz praw osób pokrzywdzonych przestępstwem", compiled by TNS OBOP for the Ministry of Justice, Warsaw 2011.

https://www.inpris.pl/fileadmin/user_upload/documents/Biblioteka_MWS/36.pdf (accessed: 19.01.2023)

der its provisions, mediation may be applied at any stage of criminal procedure, and therefore both in the course of preparatory proceedings (from the moment of entering the phase of "proceedings against a person", when a suspect appears), and at the stage of jurisdictional proceedings.[8] The catalogue of cases in which mediation may be conducted is not closed, although it is usually applied in situations where the parties are forced to maintain relations (e.g. in the event of crimes against family or in disputes between neighbours) and where cases are relatively minor, not involving a high degree of harm to the victim of the crime or demoralisation of the perpetrator (e.g. theft, the destruction of property, or battery).[9] A case is referred for mediation on the initiative of the parties themselves or of the body conducting the proceedings (the police, prosecutor, or court). The role of mediator is fulfilled by a "trustworthy person", while the actual mediation is conducted out of court. Mediation can also be conducted on the basis of the Act on proceedings in juvenile cases, the amendment to which of 15 September 2002 "gave (…) the court a certain alternative means of reacting to the undesirable behaviour of a minor, introducing the option of referring the case to an institution or trustworthy person for the purpose of conducting mediation" (Wejherowska–Oniszczuk 2011, p. 3). Cases in which mediation is used are above all those in which significant circumstances are not in doubt, the mental state of the perpetrator does not indicate a need for treatment, the actions perpetrated by them are not connected to organised crime, and the value of the damage caused is not high.

In civil law, on the other hand, widespread application of mediation in the resolution of disputes resolved by court was made possible by the amendment to the Code of Civil Procedure of 28 July 2005. Pursuant to the provisions of Chapter 1 section 2 of the CCP, which regulates mediation and reconciliation proceedings before courts of the first instance, mediation should be understood as "voluntary, confidential and non-formalised extrajudicial proceedings in civil cases in which it is possible to reach a settlement (…), conducted between the parties (participants) to the specific dispute by a third party (an impartial mediator) in order to bring about an amicable settlement of the said dispute" (Jakubecki 2014). It is worth adding that the "catalogue (…) of cases (that cannot be the subject of a settlement) is small. For example, one could mention cases in family law for establishing paternity or maternity, cases concerning incapacitation, cases in personal law under articles on the recognition or declaration of death, cases in inheritance law under

[8] Maciej Lewandowski, Mediacja jeszcze przed zarzutem, *Rzeczpospolita*, Prawo co dnia, 15.12.2005.

[9] For further information, see: Agnieszka Rękas, *Mediacja w polskim prawie karnym*, Ministry of Justice, Warsaw 2011, p. 8, pp. 10–11; Anna Krajewska, *Spory konsumenckie i ich rozwiązywanie*, Trio, Warsaw 2009, p. 106.

articles on confirmation of the acquisition of inheritance, or finally so-called register cases. The vast majority of the remaining cases can be the subject of mediation. (…) they can be presented in the simplest manner according to the traditional division, meaning as cases in commercial, civil, family, and labour law" (Cebula 2012, p. 5). Conducting mediation in specific types of case obviously requires their specific nature to be taken into account, as well as the appropriate preparation of the mediator. A principle common to all types of mediation in civil cases is that they are voluntary, which is expressed above all in the mediation agreements concluded by the parties to the dispute. Sometimes, however, mediation is conducted on the basis of a decision by the court hearing the case; one should note at this point that "the court's decision to refer a case for mediation must be made at the latest (…) by the closure of the first hearing" (Cebula 2012, p. 9). A settlement reached by parties in mediation proceedings is confirmed by a civil court by means of a court order.

A particularly interesting solution is the possibility of conducting mediation in administrative law disputes. A distinctive feature of disputes of this kind is that the parties involved – unlike in criminal or civil law cases – are not equal. One of the parties is an administrative body, while the other is a citizen, and there is therefore an unavoidable asymmetry deriving from the power relationship between them. Mediation in administrative law disputes was introduced by Articles 115-118 of the Act of 30 August 2002, the Law on proceedings before administrative courts, in force from 1 January 2004. Mediation proceedings in regard to administrative "legality disputes" were introduced as part of a broader process of making administrative procedures more flexible. Mediation in administrative disputes has the character of auxiliary proceedings to ordinary proceedings before administrative courts. It applies to cases already the subject of court proceedings that have already commenced; therefore, a situation of *lis pendens* is a requirement for such mediation to be conducted.[10] Any administrative-legal dispute between a citizen and a state body can be the subject of mediation. Any party to such a dispute – meaning a private person, an administrative body, or the court hearing the case – may take the initiative to refer an administrative case for mediation proceedings. A characteristic feature of administrative disputes is that the mediator is a judge or court referendary appointed by the head of the department. Upon receiving an application for the conducting of mediation proceedings (as long as it has not been rejected by one of the parties to the dispute), the mediator sets a date for a mediation hearing. During the hearing (which is open to the pub-

[10] Michał Ciecierski, Aleksandra Sędkowska, Mediacja przyspieszy i usprawni, *Rzeczpospolita*, Prawo co dnia, 18.02.2005.

lic), the initiative lies with the parties, while the mediator only monitors the legality of what they agree upon. Mediation may result either in the parties to the dispute failing to reach an agreement, which obliges the court to hear the case without delay in the ordinary procedural manner, or in the parties reaching a settlement as a result of which the court issues a new administrative act or the complainant withdraws their complaint.[11]

The legal regulations in force enable the widespread usage of mediation for resolving diverse disputes, although a detailed analysis of the statistical data provided by the Ministry of Justice reveals it to still be an institution not commonly used and not very effective. And so, in regard to criminal cases, of which approximately 2 million are referred to the courts every year, in the years 1998-2006 the number of mediations rose from 10 to 5,052 (and the number of settlements reached rose from 7 to 3,062), following which their numbers fell; for example in 2007 there were 4,178 mediations, in 2008 there were 3,892, in 2010 – 3,480, and in 2011 – 3,254. Following a slight improvement in the years 2012-2015 (4,046 cases were referred for mediation in 2015, and 2,530 ended in a settlement), interest in the institution fell, and hovers around 3,800 cases.[12] Cases in which mediation frequently ends in a settlement concern minors, for example from 2004 to 2021, 77% of such proceedings ended in a settlement being reached.[13]

Approximately 8.5 million cases referred to civil departments are filed each year. From 2006 the number of mediation proceedings systematically rose; for example, in the first year of the functioning of this institution there were 1,448 cases, whereas almost a decade later the number had risen to 7,668. Currently there are about 4,600 mediations a year, although the ratio of settlements reached is still unfavourable for regional courts, in which there are two and a half times fewer than in the district courts; for example in 2021 in civil matters in regional courts 2,347 cases were referred for mediation (152 settlements), compared to 2,337 (372 settlements) in district courts. In family cases, there is somewhat more interest in mediation. For example in 2006 there were 318 such cases (127 settlements), in 2020 there were 8,166 (2,648 settlements), but in 2021 the number of cases referred for mediation fell sharply to 4,213 (1,623 settlements).[14] The tendencies observed above, of initial dynamic growth in mediations followed by their decline, are also visible in labour law cases. For example in 2006-2020 there

[11] Michał Ciecierski, Aleksandra Sędkowska, op. cit.

[12] From: statistical database of Poland's Ministry of Justice.

[13] From: *Postępowanie mediacyjne w świetle danych statystycznych. Sądy rejonowe i okręgowe w latach 2006-2021*, Ministry of Justice, Warsaw 2022, p. 28.

[14] Ibidem.

was evident distinct growth from 33 to 3,501, followed by a clear drop in 2021 to 1,859. The situation is similar in commercial cases, for which the number of mediations rose from 256 to 6,200 in 2020, only to drop to a level of around 3,500 in 2021, with the average percentage of settlements reached at 19.5%.[15] The usage of mediation in administrative court disputes is also very low, going from 0.4% to 0.1% per year, while in the year 2021 there were a total of 8 such mediations.[16] Mediation has been used mainly in tax and customs law cases, and on the whole they too proved ineffective, or in other words no settlement or agreement was reached.[17]

Analysis of the above data indicates that despite the relatively favourable legal conditions, mediation is used to only a minimal degree in court disputes.[18] The causes behind such a situation include the historical and social determinants shaping the models for resolving disputes and conflicts, the low level of society's trust in the institutions of the system of justice, the low level of trust in mediators' knowledge and background, the sceptical attitude shown by judges, lawyers and attorneys-at-law towards mediation, the small number of mediation centres, and society's lack of knowledge regarding mediation, the role of the mediator and the availability of mediation (Gmurzyńska 2007, Przybyła-Basista 2011, Zielińska, Klimczak 2020, Plucińska-Nowak 2021). In our research, we asked the Białystok judges and mediators to identify problems and obstacles contributing to the low level of usage of mediation in the courts, while the answers we obtained from the residents of Białystok and Warsaw have allowed us to show the social potential of the institution, and the opportunities for applying and verifying it in various conflict situations.

3. Discussion of the research findings

3.1. Profile of the research sample

It has to be emphasised at the start that the address-based sample of our research does not reflect the attributes of the Polish population as a whole. 186 respondents, aged from 17 to 89, took part in the surveys – 99 of them in

[15] Ibidem.

[16] Wojciech Federczyk, Praktyka stosowania mediacji przed sądami administracyjnymi, *Kwartalnik ADR*, no. 4, 2008.

[17] From: "Informacja o działalności sądów administracyjnych" for the years 2004-2021; Supreme Adiministrative Court.

[18] This is a problem also observed in other EU countries, compared to which Poland's statistics do not look bad, e.g. mediation is used in less than 1% of civil and commercial cases in the EU. For actual number of mediations, Poland is in fifth place (together with Hungary), behind countries where mediation has a long-standing tradition, e.g. Germany, the Netherlands, England. See: *Raport końcowy – Diagnoza stanu stosowania mediacji oraz przyczyn zbyt niskiej w stosunku do oczekiwanej popularności mediacji*, Warsaw 2015, https://www.gov.pl/attachment/cb132c4a-8e40-401d-9bdb-57c73427578d. (accessed: 19.01.2023)

Białystok (58 women and 41 men), and 87 in Warsaw (51 women and 36 men). Most of the respondents (69%) were aged between 22-49; those aged 50-59 accounted for 12.4%; 60-69 – 8.1%; 70-79 – 4.9%; and 80-89 – 2.7%. The youngest survey participants were two 17-year-old men, and the oldest – an 89-year-old woman. Slightly over half the respondents (56.5%) claimed to have higher education (55.2% of the women, and 44.8% of the men) – in Warsaw 70.6% of the women and 66.7% of the men, and in Białystok 37.9% of the women and 56.1% of the men. 36% of the respondents have secondary education (62.7% of the women and 37.3% of the men) – in Warsaw 27.5% of the women and 27.8% of the men, and in Białystok 48.3% of the women and 36.6% of the men. The group of those with vocational education, 5.9% of the respondents (two men in Warsaw, and in 13.8% of the women and one man), is dominated by women – accounting for 72.7% of the group. 3 people with primary level education – 1 woman from Warsaw and 2 men in Białystok – took part in the research. In regard to the nature of their occupation, the largest percentage of the sample comprised white-collar workers (59.5%), followed by blue-collar workers (14.6%), students (14.1%) and pensioners (11.9%). One in two research participants (50%) had a moderate standard of living, and had to save up for larger expenses; one in three (30.6%) believed they had a good standard of living and could afford to buy a lot without specially saving up; 8.1% claimed to live at a very high standard, while 5.9% lived modestly. The respondents' opinions regarding their standard of living varied between their place of residence – with residents of Warsaw rating their financial situation as very good almost twice as often as those in Białystok (20.6% and 11.1% respectfully). The opposite was the case for those living modestly, and forced to save – with 10.4% in Białystok and 1.2% in Warsaw.

3.2. Respondents' knowledge of extrajudicial methods of dispute resolution

Mediation is one of the forms of ADR, meaning methods of resolving disputes other than a court process that have the following in common: focusing on resolving the conflict or dispute and not on confrontation; the participation of a third party supporting the parties in resolving the disputed issues; low level of formalism; and the direct participation of those involved in the dispute and their constructive interaction. In research conducted on a representative sample of Poles by TNS OBOP in 2011, extrajudicial ways of resolving disputes (mediation, conciliatory court) had been heard of by 43% of the respondents, while just over half had not come across the concept of ADR beforehand (54%).[19]

[19] https://www.arch.ms.gov.pl/Data/Files/_public/foto/ministerstwo_sprawiedliwosci_raport-koncowy.pdf

According to the declarations given by participants in our research in 2019, the vast majority (76.6%) had heard about extrajudicial methods of dispute resolution (e.g. mediation, conciliatory courts) – 83.9% of the residents of Warsaw (84.3% of the women and 83.3% of the men) and 70.1% in Białystok (80% of the men and 63.2% of the women). During analysis of the research material collected, a relationship showed itself between the respondents' level of education and their awareness of the existence of alternative dispute resolution methods. In Warsaw they had been heard of by 88.3% of respondents with higher education, 79.2% with secondary education, and one in two of those with vocational education; in Białystok – 80% of those with higher education, 63.4% with secondary, and 44.4% with vocational.

Have you heard of any out-of-court ways of resolving disputes (mediation, conciliatory court)?

City				Gender		All
				Female	Male	
Białystok	Have you heard of any out-of-court ways or resolving disputes (mediation, conciliatory court)?	YES	Number % of gender	36 63.2%	32 80.0%	68 70.1%
		NO	Number % of gender	21 36.8%	8 20.0%	29 29.9%
	All		Number % of gender	57 100.0%	40 100.0%	97 100.0%
Warsaw	Have you heard of any out-of-court ways or resolving disputes (mediation, conciliatory court)?	YES	Number % of gender	43 84.3%	30 83.3%	73 83.9%
		NO	Number % of gender	8 15.7%	6 16.7%	14 16.1%
	All		Number % of gender	51 100.0%	36 100.0%	87 100.0%
All	Have you heard of any out-of-court ways or resolving disputes (mediation, conciliatory court)?	YES	Number % of gender	79 73.1%	62 81.6%	141 76.6%
		NO	Number % of gender	29 26.9%	14 18.4%	43 23.4%
	All		Number % of gender	108 100.0%	76 100.0%	184 100.0%

When analysing the above results, it is important to recognise that the concept of ADR was largely known to the respondents. The vast majority had heard of out-of-court procedures for dispute resolution, such as mediation or conciliatory courts, and in addition 69.70% were able to give the proper definition of mediation as a voluntary and confidential process for reaching a resolution to a dispute, conducted in the presence of a mediator or third party. One in four respondents equated mediation with conciliation talks, which is close to the idea of the institution but does not fully reflect its essence. There was a marginal percentage of erroneous answers, where respondents equated mediation with arbitration (0.7%), therapy (1.4%), or a kind of court taking place outside of the courtroom but with a milder approach (2.1%). A small group of respondents did not know what mediation meant, or had no opinion on the topic (5.6%).

3.3. Mediator – who is he or she?

According to the classification of professions and specialisations, a mediator is a person who helps parties embroiled in a conflict to resolve it and to reach an agreement (reaching a settlement accepted by the parties). They mediate in conflicts of diverse character: civil, commercial, peer, family, social, and others. A person working in this profession conducts the mediation with the consent of the parties, maintaining impartiality, neutrality and confidentiality. Their tasks include the editing of the settlement drawn up by the parties to the dispute, which upon signing is submitted to the court, and following its acceptance becomes as binding as a settlement reached before a court. The mediator performs their duties on the grounds of a mediation agreement that they conclude with the parties to the dispute on the initiative of the latter. A person practising the profession of mediator should stand out in their knowledge of the law (the scope depending on the type of disputes in which they assist in resolving) and the functioning of mediation procedures, and also the psychological mechanisms behind the emergence, escalation, and resolution of disputes. In addition, they must also fulfil a number of formal requirements, differing depending on the type of mediation being conducted. The profession of mediator is relatively new; there are no data on the number of mediators in Poland, and neither is their a single list of them (according to announcements made by the Ministry of Justice, a National Register of Mediators is to be established by the end of 2023; rules for the verification of mediators' competencies in criminal matters and misdemeanours came into force in September 2022). Some people become involved in mediation more as a hobby, others make a living out of it. In general, though, it is not particularly enticing because of the low rates, and most mediators treat the conducting

of mediation as an additional activity. The mediator is chosen by the parties or appointed by a court. Information concerning those conducting mediation can be found in the regional courts, and on the websites of mediation centres, non-governmental organisations, and legal practices.

According to most participants in our research (92.9%), a mediator is a neutral person supporting the parties in drawing up an agreement bringing their dispute to an end. An insignificant percentage (1.6%) saw them as a person imposing their solution on the parties, only seeing to the organisational aspect of the mediation (1.6%), or performing as the "lawyer" of one of the parties to the dispute (1.5%). It was very rare for respondents to not know at all who a mediator was (2.2%). The accounts given by the research participants reveal that society's knowledge of mediation is steadily growing. They also no longer mistake mediation for meditation, using the name correctly and understanding the sense of this institution:

I'll say this, just now mediators come from almost all occupational groups. From people with vocational education to those with professorial degrees, so it's starting to be a democratic method of work, and there's beginning to be more and more knowledge on mediation. People coming to a mediator even when they don't have… there's sufficient information online now that they read and try to find something out about the mediator, about the centre, about mediation. Whereas when we started, you'd have people coming in, saying "Good morning, I'm here for the meditation", so they even got the name wrong. Just now nobody says meditation for mediation, and people have more and more knowledge.

3.4. The mediator's competencies – knowledge, skills, professional experience

Where formal requirements are concerned, anybody possessing full legal capacity and enjoying full public rights can be a mediator in civil cases; in regard to criminal cases, the mediator's competencies are determined by the provision concerning the possession of skills and knowledge in the conducting of mediation proceedings, the resolving of conflicts, and establishing interpersonal contacts; in juvenile cases there is mention of education in psychology, pedagogy, sociology, resocialisation or law, as well as having the skills of resolving conflicts and establishing contact between the parties, enabling the conducting of mediation, moderating the course of the mediation, mediating in the talks between the parties, advising the parties on possible solutions (but not imposing them), giving the parties explanations related to the significance of factual and legal circumstances, and help in wording the settlement or agreement.

What expectations did our respondents have towards mediators?

The question concerning the mediator's competencies was open-ended. Respondents could list what competencies, skills, knowledge, education or experience a mediator should, in their opinion, possess. Should they be a lawyer or a psychologist? Due to the large number of definitions (surpassing 70), the answers were assigned to two categories, consisting of definitions corresponding to a mediator's hard and soft competencies. According to 42.8% of the respondents, a mediator should possess both soft and hard competencies. In regard to the latter, the respondents expected a mediator to be a graduate of studies in psychology (23.1%) or law (18.3%), to have a certain knowledge of the law (11.2%), or to have completed a course in mediation (10.7%). Other attributes given by the respondents were: knowledge of psychology, knowledge of the subject-matter of the dispute, and education in pedagogy or sociology. In the respondents' opinion, a mediator is somebody who has the skill of resolving disputes (14.3%), is an impartial participant in the mediation process (28.6%), and supports the parties with their communication skills (21%), such as the skill of listening to the positions of the parties to the conflict (12.6%) in order to draw up an agreement. Equally important are the traits of assertiveness, composure, respect for people and interpersonal skills, as well as competencies related to the skill of conducting talks, high ethical standard, and personality traits thanks to which the parties to the dispute will be able to trust them. There were certain differences in the respondents' answers depending on their place of residence. For one in three of those from Warsaw (27.7%) an important attribute for a mediator proved to be ease of communication (compared to 13% in Białystok), while the skill of listening to the other party was significant for, respectively, 18.5% and 5.6%. On the other hand, the skill of resolving conflicts was much more important to the residents of Białystok (20.4%) than Warsaw (9.2%).

As mentioned earlier, almost half the respondents were of the opinion that mediators should have both soft and hard competencies, including completed studies in psychology or law. The actual mediators participating in our research did not put such emphasis on formal education, dividing mediators into good and bad above all in regard to their background and professional experience, or lack of:

What I think is that the legislator gives a very broad spectrum of possibilities, and as a trainer and also a mediator with experience, I can say that mediators can be split into the good and bad, and not those who are lawyers or sociologists or engineers. Anyone who likes people, who learns to work

with other people, who has a certain potential and patience towards others, can be a good mediator if they invest in themselves, if they train, if they allow themselves the right to make mistakes, but work on it. So, I'd say that the profession itself is of secondary importance. (…) I'd say they could even be an engineer if they have the predisposition and go through the right training or postgraduate studies and work on their skills. (…). I'd say that mediators can be split into good and bad, but not into lawyers and non-lawyers.

Most of the mediators we talked to emphasised the contribution that the courses and training they had been on had made to the professional character of their mediation and helped in making a positive impression on their clients, although no less important a role was played by the experience gained in work as a mediator, the appropriate attributes and aptitudes such as communicativeness facilitating the establishing of relations, and creativity, openness, resourcefulness and the skill of discerning creative solutions to specific problems.

The fact that it's written in our legislation, unfortunately, that anybody can be a mediator and anybody can be added to this list, well sadly … well it isn't good. Because if we don't go on courses, and techniques are incredibly important here (…) And later that's reflected in the opinions that the clients who come to us have if somebody doesn't treat training as important, but simply registers and is looking for a kind of additional occupation, that maybe there's some money in it, and like that's their only goal. So, you also have to have the aptitudes, because you need incredible patience, understanding, and sometimes you have to see yourself in the situation that the parties have found themselves in.

For most, an important step on the path to full professionalisation of the occupation of mediator will be the drawing up of universally recognised rules that standardise mediators' competencies, meaning a programme of courses or training (what courses confirm qualifications, who can run them?), the completion of which would guarantee the qualifications essential for practising the profession of mediator (exams):

Well, I think that an obstacle to its growth is the lack of standardisation. It's something still on fragile legs and young. On the one hand, if you don't have reliable specialists, a certain standard, well things vary, people come and sometimes to put it crudely they're taken for a ride. It isn't mediation, and we don't know what it is, because somebody found a way of saying they're doing mediation and they're wheedling money out of people in a totally dishonest way. (…) Now we're working on a certification model where we have certification commissions granting certificates. I think it's also a step towards

realising that you have to do something with yourself, that you have to meet a certain standard to be able to say: "OK, I have a certificate". It isn't that you complete training online and then you have the piece of paper, hang it up and open an office, and, well, then it's done really unprofessionally, that's what's harming mediation the most right now.

3.5. How to find a mediator

Information about where to look for a mediator to help parties resolve a dispute, about whom to contact in regard to mediation, seems generally available; the courts and prosecutors' offices publish information about mediators and their hours of duty on their websites, while NGOs (associations and foundations) conducting mediation and legal practices "advertise" themselves online. Unfortunately, in order to get to this information, one has to have access to and know how to use the internet, which among the elderly, for example, is not so obvious. As we have already noted, since January 2020 mediation has been functioning within the system of free legal aid financed by the state (this does not embrace cases in which a court or other organ issued a decision to refer the case for mediation or mediation proceedings). Mediation is conducted in powiats (districts) that have signed an agreement for the provision of such aid. Lists of points providing this assistance (of which according to data from NIK there are 1524 throughout Poland) are published online by district starosty offices and the Ministry of Justice. Thanks to the new provisions, the availability of mediation has greatly increased. With this being so, what are the findings of our research and the answers given by our respondents to the question about where to look for a mediator, about whom to approach regarding mediation?

According to the largest group of respondents (24.7%) any person accepted by the parties to a dispute can be the mediator; it is worth emphasising that this is the first step towards drawing up an agreement bringing the matter to a close. Whereas with civil law disputes such a solution is possible, with criminal or juvenile cases the mediator must meet the requirements laid out by statute, meaning that they have to be a natural person registered on the list of mediators kept by the heads of the regional courts. The legislator has not excluded the possibility of mediation in the abovementioned cases being conducted by institutions and organisations statutorily providing such a form of legal aid. Asked about what institution one can approach regarding mediation, one in five respondents (20.7%) indicated the Polskie Centrum Mediacji (Polish Mediation Centre), in other words one of the NGO's longest on the "market" for conducting mediation, training mediators and organising social campaigns promoting mediation. Although indicating it may

have resulted primarily from awareness of the institution itself, we cannot rule out that its name led respondents to choose it as an entity than could facilitate finding a mediator (or mediators). 18.9% of the respondents felt that a mediator could be found by using information available online, while one in ten indicated District Family Support Centres, Municipal Social Welfare Centres and lawyers as a source of such information. A relatively small percentage (3.5%) were convinced that a mediator would appear in court on their own initiative (9.2% of respondents living in Białystok, and 2.5% of those from Warsaw). 11% did not know how to reach a mediator, or to find information about people conducting mediation.

3.6. Participation in mediation: experience and assessment

The percentage of our respondents who answered in the affirmative to the question about whether they had ever had participation in mediation proposed to them was 14.2% (Białystok – 43.8% of the women and 56.3% of the men, and in Warsaw – 70% and 30% respectively).

Respondents' participation in mediation	Instances	Percentage
Yes	26	14.0
No	157	84.4
All	183	98.4
N/A	3	1.6
Total	186	100.0

Participation in mediation was proposed to over half by a court (28.6%), family member or partner (28.6%), while for the rest the proposal came from friends (14.3%), one's employer or colleagues (9.5%), a public institution (9.5%) or a lawyer (9.5%). One in three respondents (34.6%) felt that the mediation had not ended with the expected solution, 26.9% considered it helpful in resolving the conflict, while according to 15.4% it only partly fulfilled its task, and 23.1% had no opinion on the matter. Half the respondents (51.3%) felt the greatest strength of mediation to be the possibility of reaching an agreement, while for 17.9% it was the way it was organised; 16.7% considered it a faster and easier way of reaching an agreement in the case, and for 16% the opportunity to learn the other party's position and attempt to understand was important, while for 15.4% the costs – lower than for court proceedings – and being able to come up with a compromise or agreement played a role. The respondents also stressed the significance of the chance that mediation gave for a dispute to be resolved without the involvement of a court (14.7%), the opportunity for releasing negative emotions (7.7%), and the fact that the parties do not emerge as losers from the mediation (2.6%).

When asked in turn about features they disliked about mediation, the largest group mentioned the problem of an underqualified mediator (15.8%); this was followed by the possibility of them being biased (12.9%), the agreement's transience (8.9%) and the necessity to forgo part of the claims (8.9%). The remaining answers were rather dispersed, describing 29 different situations, the vast majority of which were given by fewer than 5%, and as such we will not be discussing them in this paper. Here as well there were certain differences between the sexes. When asked what features of mediation they didn't like, women most often pointed to the low competencies of those conducting the mediations (20%), partiality (11.7%), the possibility of a conflict being exacerbated as a result of ineffective mediation (8.3%), and the costs of the mediation (6.7%). For the men, the biggest drawback of mediation proved to be the impermanence of the agreements drawn up (17.1%), the mediator's partiality (14.6%) and having to forgo a part of one's claims (12.2%). 19.2% of the respondents declared that they knew people, institutions or organisations conducting mediation in their city or the vicinity. Those indicated most often were lawyers (25%), with 88.9% of such answers given by women, the Polish Mediation Centre (25%) – 55.6% by women, the courts (19.4%) – 57.1% by women, and Municipal Social Welfare Centres (8.3%) – 100% of such answers given by women. It should be noted that answers not given by the women included court mediator and the Podlaskie Centrum Arbitrażu i Mediacji (arbitration and mediation centre). 32.6% of the respondents obtained their information concerning persons and institutions conducting mediation from the internet, 19.7% from the radio, press or television, 9.1% from friends and acquaintances, 5.3% from adverts and announcements, and the rest (3%) from a member of their family. One in three were unable to indicate a source of such information.

3.7. The purposes of mediation and benefits of its application

The respondents were also asked whether they agreed with a number of statements describing features of mediation, an analysis of which reveals a very positive image of the institution. The vast majority of the statements the respondents were presented with, de facto describing various benefits of mediation, met with their agreement.

Asked whether mediation leads to the reaching of a settlement that takes account of the interests of both parties, almost all participants in the research answered in the affirmative (95%). The next question concerned whether mediation allowed for a better understanding of the reasons behind diverse kinds of behaviour displayed by the other party – and again the vast majority either "definitely" or "rather" agreed with such an opinion (88.1%).

During mediation, no decision would be taken without the consent of those concerned – such an opinion was shared by 85.1% of the respondents. The statement that mediation enables the expression of one's own feelings and needs in an atmosphere of calm and acceptance was agreed with by 77.3% of the respondents. People who take part in mediation are keener to abide by what is agreed upon, since they draw up the conditions of the agreement themselves; this statement again met with the agreement of the vast majority of the respondents (77.4%). Almost two thirds of the respondents (64.1%) agreed with the opinion that mediation enables the forgiveness of grievances suffered and even reconciliation. The opinion that mediation is cheaper than going to court was shared by 74.6% of the research participants. A strong majority of the respondents (81%) agreed that one risks nothing when commencing mediation, since one can withdraw at any moment. The view that mediation leads to a situation in which both parties come out winning was expressed by most of the respondents (68%). Slightly over half the respondents (52.2%) agreed with the opinion that mediation is more effective than a court trial. The only statement that fewer than half the respondents agreed with (33.9%) was that a settlement reached before a mediator is equivalent to a court judgment.

	I definitely agree	I rather agree	definitely + rather
Mediation leads to the reaching of a settlement taking the interests of both parties into account	67	28	95.0
Mediation allows for a better understanding of the reasons behind various behaviours of the other party	40.3	48.1	88.1
No decision is taken during mediation without the consent of those concerned	48.1	37	85.1
Mediation enables the expression of one's own feelings and needs in an atmosphere of calm and acceptance	33.1	44.2	77.3
People who take part in mediation are keener to abide by what is agreed upon, since they drew up the agreement's conditions themselves	26	51.4	77.4
Mediation enables the forgiveness of grievances suffered and even reconciliation	21	43.1	64.1
Mediation is cheaper than going to court	38.7	35.9	74.6
One risks nothing when commencing mediation, since one can withdraw from it at any time	45.6	36.1	81.7
Mediation brings about a situation in which both parties are winners	23.8	44.2	68.0
Mediation is more effective than a court trial	17.2	35	52.2
A settlement reached before a mediator is equivalent to a court judgment	12.2	21.7	33.9

According to the respondents, cases that should be mediated are above all civil (70.8%), and less often administrative (4.4%), criminal (2.9%) or international cases (1.5%). One in five (20.4%) expressed the view that any case could be mediated. The majority (78.3%) also felt that solutions supporting mediation are needed in Poland, for example 75.7% indicated informational campaigns, and according to 14.3% there should be an obligation to conduct mediation in cases involving disputes.

3.8. How disputes should be resolved

The questionnaire repeated questions posed by Jacek Kurczewski about "irenic models"; he defined these as a few general models of conduct in a dispute situation, describing them in relation to three criteria. The first of these concerns whether when resolving a dispute one should be guided by the legitimacy of the claims put forward by its parties, or by compromise; the second – whether the letter of the applicable law or aspiring to satisfy the participants in the dispute should be decisive; and the third – whether a resolution to the dispute should be imposed on the parties, or voluntarily accepted by them (Kurczewski 2004, p. 29). Asked about what dispute resolutions were better in their opinion, in 83.2% of cases our respondents claimed that the goal should be to bring about mutual agreement, along the lines of each slightly forgoing their demands (their claims). Only 11.2% of the respondents answered that it was more important to fully satisfy the legitimate demands of one of the parties, even if that would dissatisfy the other party. Few respondents (only 5.6%) had no opinion on the matter. 59.8% of the respondents also felt that the dispute resolution should satisfy both parties, even if not strictly according to the letter of the law; however, 35.2% believed that the dispute should be settled according to the law, even if not everybody would be satisfied. Over half the respondents – 56.2% – were of the opinion that outsiders, people who advise disputing parties on how to proceed, could take part in resolving the dispute. And 28.1% held the position that a dispute should be resolved by an institution with the authority to do so (e.g. a court), and which could impose its decision on the parties.

What in your opinion is better?

Satisfying the fully legitimate demands of one of the parties, even if this dissatisfies the other party	Bringing about a mutual agreement whereby each forgoes a little of their demands (claims)
11.2	83.2
Dispute resolution according to the letter of the law, although not everybody would be satisfied	Dispute resolution to the satisfaction of both parties, although it would not be strictly by the letter of the law
59.8	35.2
Dispute resolution by an official institution (e.g. a court) that has the authority and can impose its decision	Dispute resolution by outsiders, who can only advise the disputing parties on how to proceed
28.1	56.2

We also asked our respondents about what method of resolving a dispute they believed to be fairest. According to 23.1% of them, the fairest resolution to a dispute is achieved in the courtroom, and according to 17.4% – thanks to other institutions. 22.2% felt that a solution should be found by the disputing parties themselves, and 20.8% – that they should ask friends and acquaintances for help. 16.6% of the respondents expressed the view that disputes should be resolved in some other manner. As for the most effective ways of resolving a dispute, in the respondents' opinion they would be: court ruling (22.7%), an agreement between the parties concerned (22.5%), the help of friends and acquaintances (20.1%), other institutions (18%) and other ways of resolving conflicts (16.7%).

Question	What method of dispute resolution is the fairest?	What method of dispute resolution is the most effective?
Court ruling	23.1	22.7
Resolution by institutions other than a court	17.4	18
The parties concerned resolving the dispute themselves	22.2	22.5
Dispute resolution with the assistance of friends and acquaintances	20.8	20.1
Other resolution	16.6	16.7

3.9. How best to resolve different types of disputes

Our respondents were also asked to rate what methods of dispute resolution are the most favourable in different types of dispute.[20] Most of them (77.5%) were of the opinion that family disputes should be resolved between the parties concerned, without the aid of third parties; 37.7% of the respondents would turn to friends or acquaintances for advice, while the court proved to be the appropriate place for resolving family disputes for 34.7% of the respondents. Other institutions were considered suitable for resolving family disputes by 26% of the respondents. The vast majority of the respondents, 72.7%, believed in turn that neighbourly disputes should resolve themselves. According to 53.7%, outsiders not embroiled in the dispute could be helpful in resolving a dispute between neighbours, while the court proved the most appropriate place for the resolution of neighbourly disputes for 44.3% of the respondents. Other institutions were indicated by 30.2% of the study participants. As for labour disputes, according to almost 3 in 4 of the respondents they should be resolved by the parties concerned, without the involvement of third parties (70.6%). Slightly fewer respondents indicated the answer that the parties concerned should approach others, not involved in the dispute, for advice (63.9%). According to 34.5% of the respondents, the court is the best way of resolving labour disputes, while 23.9% indicated the role of other institutions in resolving such disputes, and 21% of the respondents felt that ways of resolving a labour dispute other than those listed above should be sought.

How best to resolve different types of disputes?

	Family disputes	Neighbourly disputes	Labour disputes
Court judgment	34.7	44.3	34.5
Resolution by institutions other than a court	26	30.2	21
Dispute resolved by the parties concerned themselves	77.5	72.7	70.6
Dispute resolution with the aid of outsiders	37.7	53.7	63.9

[20] Respondents were able to indicate more than one answer to specific questions.

4. Summary

Our studies lead to the conclusion that knowledge of mediation and its accessibility, and convictions of the benefits of mediation, are sufficiently widespread among the respondents for it to seem unjustified to speak of "mental" obstacles to making use of it (as far as so-called "ordinary" people, potential participants in mediation proceedings, are concerned). The respondents' opinions rather indicate that a favourable "foundation" exists for the so-called culture of compromise and resolving disputes extrajudicially in a non-antagonising manner. Moreover, the research conducted by Jacek Kurczewski in 2021 shows that Poles' trust in the system of justice has been falling in recent years, and last year reached a level equal to that seen in the times of the Polish People's Republic; therefore, the various out-of-court paths for resolving disputes should all the more so experience increasing uptake. Nevertheless, this contrasts sharply with the invariably very low rates of using mediation procedures in practice. Also of note is the puzzlingly low percentage of settlements reached when disputes go for mediation – hovering steadily at around one third of these cases. What is it, therefore, that stands in the way of the advancement of this form of ADR?

The remarks of the mediators we interviewed, which we are treating as a kind of closing commentary to our presentation, shed some light on this issue. Firstly, from their point of view the very low rates of remuneration discourage people from conducting mediation (for example, in criminal mediation the rate is 120 Polish zlotys plus VAT, regardless of how much work and time the mediator has to put into conducting the procedure). This applies to both rates for court mediation and commercial rates for the customers of mediation centres or social organisations conducting mediation:

This could be why I haven't become a professional in it and why it isn't my main source of income. Mediation services are disproportionately low-price, cheap, compared to the organisational requirements and the work put into the mediation. Particularly so with mediation ordered by a court… The rates are… If you break it down to the mediation process minus the costs, then they're at the level of a construction worker's hourly wage, so… The amount of work you put in is disproportionately high for the proposed income.

Alongside the financial barriers, another problem – according to the mediators – is the absence of regulation in this profession, which is reflected in a lack of professionalism among those undertaking the conducting of mediation. Bad experiences with substandard mediators are putting customers off; it is not infrequent for their cases to require "corrections" by other

mediators, and bad experiences are reducing trust in this form of ADR, including among those (judges) able to refer cases for mediation:

I'd say – and it may not sound nice uttered by a mediator – that it's the lack of professionalism shown by a large proportion of mediators. Because the way it is, if a customer comes and uses it, sometimes I have the luck to be given such cases for correcting since somebody else has already done something, then it's hard to work with such a customer because they are already really disenchanted.

One of the judges taking part in our research sees the problem as follows:

I believe there should be a law on mediation, there should be the profession of mediator, there should be the specialisation of mediation, I believe a mediator should have an indicated specialisation, and the judge must have a list, and not have to search for a person on the list but see on it that this one is for commercial law, this for family law, or civil law, and then you know who to send to [...] Mediation is only as good as the mediator […] the professionalism of a permanent mediator, specialisation, and the training, that all contributes to the standard of mediation, the content of the settlements reached, as well as the percentage of settlements approved by the court.

The judges frequently emphasised in their remarks the need for consolidating the position of mediators among the legal professions, and for taking institutionalised measures towards the professionalisation of their services, which should contribute to mediation becoming widespread and strengthened as a method of resolving disputes, for example in commercial cases:

There should be mediation clauses right from the preliminary stage, so the parties see when concluding agreements – contracts worth millions – that there's a mediation procedure. If there's a dispute, there's already a clause providing for mediation […]. That would really facilitate the cases for us judges, cases that come in and take years, with court-appointed experts and various others. That's why I also think [there should be] training, professionalism, statutory specialisation, the profession of mediator, and then we'll move forward.

However, as the mediators pointed out, judges themselves also stand in the way of the development of mediation in Poland, and not only because of the lack of trust in non-professional mediators mentioned above. They also have their "favourite" mediators or mediation centres that they refer customers to, overlooking others on the list of mediators while doing so, which practically eliminates some of them from the "mediation market" and hinders its growth:

Mediation in Białystok is reserved for people who have been on this market for so many years, and most mediations are carried out in the region of Białystok's district and regional court, by a couple of people, although there are a few dozen mediators. My feeling is that it makes no difference what one's experience is, what kind of education one has, the main thing is to be known by the judges. And those judges have their three or four mediators and rely on them. And currently there are queues of several months to see those mediators in greatest demand in Białystok, which is absolutely idiotic, because mediation is meant to speed things up, whereas we've reached a point in which mediations are referred – over ninety percent of them – to a couple of names, so we have a backlog. Great!

Finally, an impediment to the growth of mediation in Poland is its availability. Mediation services are provided above all in large cities, and some centres are difficult for people with mobility problems to access:

Well for example those mediation centres are located only in the big cities, so if somebody's in the countryside and ailing then sometimes there's no way for them to get there, no longer is there the option of us going there, renting premises and conducting the mediation, because then the costs are such that such an elderly and ailing person definitely won't choose it. The centres themselves are also obstacle. I know that from experience, and now as I look for a small centre for myself then I'm definitely looking for ground-floor premises, or with a lift, because many people have difficulties with mobility and are simply unable to get to a centre.

Nevertheless, it has to be stressed that the significance and potential of mediation is recognised and appreciated by those with professional contact with the institution. The judges we spoke to perceived numerous benefits when looking into the future, benefits that the growth and popularisation of mediation could bring to a judiciary increasingly burdened with cases, seeing in it opportunities for resolving the problem of court congestion. However, they do emphasise that in order to solve this problem, not only are legislative changes essential for reviving the idea of mediation, removing or modifying non-identical or "dead" provisions allowing judges to refer cases for mediation, but so too is active work towards educating all groups (lawyers, businesses, students, etc.) about the benefits of alternative dispute resolution methods:

I believe that these are huge benefits for the court, huge benefits because there is a reduction in the number of long-lasting and frequently complicated cases in court, lacking appeal and enforcement proceedings, there's the possibility of concluding a larger number of cases between entrepreneurs and employers, the court doesn't receive further dispute cases, and then the so-called

court congestion is eliminated. […] I think that the briefings given in the labour code, where courts are obliged to send parties for such meetings, that the provision was a dead one, the provision didn't function.[21]

Summarising the findings of our research, it could be stated that the growth of the culture of compromise in Poland – despite the fertile ground for it – is largely thwarted by mundane obstacles that, taken together, mean the potential latent in mediation is not being tapped in Poland. Not only is the imperfect law, usually lagging behind the needs of society and societal changes, a source of obstacles to its growth; so too is the entrenched cultural attitude among the country's citizens towards the law and available means for resolving disputes. The key to overcoming these limitations seems to lie in measures favouring a widescale educational campaign, conducted within the group of youngest participants in the life of society, showing the benefits of deliberation and the ideas of alternative dispute resolution intertwined with it.

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