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Polish Regulation Model of Civil Court Mediation and Assessment of Its Effectiveness[2]

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Abstract

The aim of the article is to present to international researchers the Polish model of legal regulation regarding civil court mediation. The second aim is to present an assessment of the effectiveness of these legal solutions. For these purposes, the article discusses said legal regulations and then follows up with a review of statistical data on the use of mediation in court proceedings. This leads to the assessment of the effectiveness of the presented legal model. The research concludes that despite the significant social need and the extensiveness of the legal regulation in force, the use of mediation in Poland remains at very low level and is not developing. Research shows that there are – not yet identified –reasons that hinder the development of mediation in Poland. Therefore, this article also aims to show which regulatory model does not work or, in other words, which regulatory model is not sufficient to develop civil court mediation in Poland – and maybe in other jurisdictions.

Keywords: mediation, civil mediation, legal regulation of civil mediation, voluntary mediation, mediation in Poland, statistics on mediation.

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Polski model prawny mediacji sądowych i jego skuteczność

Streszczenie

Celem artykułu jest zaprezentowanie międzynarodowemu środowisku badaczy i praktyków mediacji polskiego modelu regulacji prawnych dotyczących cywilnej mediacji sądowej oraz przedstawienie oceny skuteczności tych rozwiązań. W tym celu omówiono szczegółowo aktualnie obowiązujące regulacje prawne dotyczące mediacji oraz dokonano ich oceny. Następnie przedstawiono dane statystyczne na temat wykorzystania mediacji w postępowaniach sądowych w Polsce. Na tej podstawie dokonano oceny skuteczności prawnego modelu regulacji mediacji. Przeprowadzone badania pozwalają stwierdzić, że mimo istotnej potrzeby społecznej oraz mimo obszerności i kompleksowości prawnej regulacji mediacji w Polsce, jej wykorzystanie utrzymuje się nieustannie na bardzo niskim poziomie i praktycznie nie rozwija się. Przeprowadzone badania pokazują, że istnieją inne, na dziś nieustalone w sposób naukowy, przyczyny hamujące rozwój mediacji w Polsce, zaś wprowadzane stopniowo nowe instytucje prawne nie pozwoliły na ich usunięcie. Zatem niniejszy artykuł wskaże, jaki model regulacyjny nie działa w praktyce w Polsce i być może w innych jurysdykcjach.

Słowa kluczowe: mediacja, mediacja cywilna, prawna regulacja mediacji cywilnej, dobrowolna mediacja, mediacja w Polsce, statystyki mediacji.

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Introduction

As of 31 December 2023, there were 37 million people living in Poland.[3] In 2023, in Poland, 14,5 million court cases were initiated (except administrative cases). Therefore, statistically, almost 40% of Poland's inhabitants initiated one court case in 2023. Of course, this number includes cases that are not disputes and only require a court confirmation or similar act. However, it can be assumed that most of them are disputes. The numbers show that social relations in Poland generate disputes that are referred to courts for resolution. In this state of affairs, finding ways of dealing with disputes alternative to court proceedings is necessary in Polish society. One of these methods is mediation. It has been present in the Polish legal system for many years. Initially used in a very narrow scope in collective labour law,[4] it began to gain wider recognition and applicability with the introduction of the general regulations to the Code of Civil Procedure (hereinafter referred to as CCP) in 2005.

It should be stated at this point that the Polish CCP is applied in several types of cases, not only strictly civil, but also in family and employment cases. For this reason, all mentioned types of cases will hereinafter be referred to as civil cases – cases that are resolved in courts on the grounds of CCP.

The aim of the article is to present to international researchers and mediation practitioners the Polish model of legal regulations regarding civil court mediation. The second aim is to present an a review of the effectiveness of these legal solutions. For these purposes, the article offers a description and assessment of the legal regulations regarding mediation currently in force in Poland. This is followed by an overview of the statistical data on the use of mediation in court proceedings in Poland. This, in turn, serves as the basis to evaluate the effectiveness of the

[3] Główny Urząd Statystyczny, *Ludność. Stan i struktura ludności oraz ruch naturalny w przekroju terytorialnym w 2023 r. (stan w dniu 31.12)*, s. 11. Available from: stat.gov.pl/obszary-tematyczne/ludnosc/ludnosc/ludnosc-stan-i-struktura-ludnosci-oraz-ruch-naturalny-w-przekroju-terytorialnym-w-2023-r-stan-w-dniu-31-12,6,36.html (accessed: 17.05.2024).

[4] First introduced for collective labor law in 1991; more about development of mediation in Polish legal system in R. Morek, Ł. Rozdeiczer, *Mediation in Poland: Time for a Quiet Revolution?*, [in:] K. J. Hopt, F. Steffek (eds.), *Mediation: Principles and Regulation in Comparative Perspective*, Oxford 2012; A. Kalisz, A. Serhieieva, *The Development of Mediation in Poland and Ukraine: A Comparison and Prospects for Experience Exchange*, "Studia Iuridica Lublinensia" 2023, 32(3), pp. 92–94; as regards mediation in Polish labour law see: K. Antolak-Szymanski, *Mediation in Polish Labour Law: Comparing Its Evolution and Development to Labour Mediation in EU and US Law*, "Review of Comparative Law" 2018, XXXIV, pp. 21–40.

presented legal model. The research uses the normative method, the legal-historical method, and statistical analysis to achieve the above goals.

The subject of this research is exclusively court mediation due to the fact that this type of mediation is monitored by the Polish Ministry of Justice for statistical purposes. Of course, apart from court mediation, there is also a number of other types of mediation held on the basis of a contract clause or separate mediation contract (contract mediations), outside of court. However, there is no data in this respect and, therefore, it is not possible to precisely evaluate them from the point of view of the effectiveness of legal regulation.[5] Considering the overall state of this kind of mediation, it may be argued that the situation is not much better than in terms of court mediation.

Among the various features of the Polish model of legal regulation of mediation in CCP, it is worth pointing out that it follows the idea of voluntary mediation. Hence, there are no solutions in CCP that force the parties to participate in mediation. Today, the Polish regulation in force can probably be considered comprehensive and sufficient. However, the earliest legal solutions introduced to CCP, which came into force in December 2005, were limited. Over time, taking into account the very low level of use of mediation, new solutions have been developed and incorporated. For instance, in 2016, judges-coordinators for mediation were appointed in district courts. Their role is to carry out activities for the development of mediation, ensure efficient communication between judges and mediators, and cooperate in organising information meetings on mediation. Undoubtedly, this organisational solution supports the use of mediation, although the effectiveness of judge-coordinators varies depending on their individual approach and methods of work.

In addition to introducing new legal regulations, the Polish Ministry of Justice supported the development of mediation by allocating financial resources for development programs. Among others, PLN 17 million (approximately EUR 4 million) was spent on the maintenance and operation of Arbitration and Mediation Centers[6] and PLN 12 million (approximately EUR 2.8 million) for the programme Promoting Alternative Dispute Resolution by Improving the Competences of Mediators, Establishing the National Register of Mediators and Information Activities.[7]

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5 Some general conclusions, consistent with the conclusions of this study, were presented by S. Lipiec on the basis of conducted qualitative research; S. Lipiec, *An Alternative Resolution of International Disputes: A Review of the Polish Approach*, "Studia Europejskie – Studies in European Affairs" 2023, 3, p. 159.

6 Information about the project *Centra Arbitrażu i Mediacji*. Available from: www.gov.pl/web/sprawiedliwosc/centra-arbitrazu-i-mediacji (accessed: 17.05.2024).

7 Information about the project *Upowszechnienie alternatywnych metod rozwiązywania sporów poprzez podniesienie kompetencji mediatorów, utworzenie Krajowego Rejestru Mediatorów oraz działania informacyjne*. Available from: www.gov.pl/web/power/upowszechnienie-alternatywnych-metod-rozwiazywania-sporow-poprzez

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On the side of professional court lawyers (advocates and attorneys-at-law), initiatives have also been launched to promote mediation. Bar associations conducted several training programmes and established mediation centres. At university level, legal education also includes programmes and courses covering the field of mediation.[8]

Unfortunately, there is relatively little research activity on mediation with a view to shaping new legal regulations. A major study was conducted by Agrotec Polska sp. z o.o. in 2010. It was commissioned by the Ministry of Justice.[9] In 2011, commissioned by the European Parliament, a research report entitled The Development of Mediation in Poland was drawn up by M. Bobrowicz.[10] Both reports present obstacles to the development of mediation in Poland. Another study was conducted for the needs of the latest ministerial project aimed at developing a strategy for mediation in Poland, but its results are not publicly available.

Despite the actions taken so far, the level of use of mediation and the level of effectiveness of initiated mediation proceedings still remain very low in Poland.

The legal model of regulation of civil court mediation in Poland

In Poland, civil mediation is regulated primarily by the provisions of civil procedure (Code of Civil Procedure, hereinafter referred to as CCP, Articles 183 (1) – 183 (15);) and implementing regulations. This is quite an extensive and detailed regulation, which to some extent is also applied to mediation held out of court on the basis of a contract. It is supplemented by provisions of other acts.[11] In the Polish legal model of mediation, the provisions in force regulate the following:

1. requirements for mediators,
2. requirements of a statement of claim,

-podniesienie-kompetencji-mediatorow-utworzenie-krajowego-rejestru-mediatorow-krm-oraz-dzialania-informacyjne (accessed: 17.05.2024).

8 S. Lipiec, *An Alternative Resolution of International Disputes: A Review of the Polish Approach*, "Studia Europejskie – Studies in European Affairs" 2023, 3, p. 163.

9 A. Rudolf, M. Cichowicz-Major, M. Matysiak, S. Pałka, W. Pieniążek, C. Przybył, *Final Report. Diagnosis of the use of mediation and of the reasons for its lower than expected popularity*, 2010. Available from: www.gov.pl/web/sprawiedliwosc/inne (accessed: 17.05.2024).

10 M. Bobrowicz, *The development of mediation in Poland*, Directorate-General for Internal Policies, 2011. Available from: www.europarl.europa.eu/studies (accessed: 17.05.2024).

11 For example, certain issues are regulated by the provisions of the Act of July 2001 – Law on the Organisation of Common Courts, which will be presented later.

3. the court's obligations during proceedings,
4. essence and course of mediation,
5. costs of mediation and mediator's remuneration,
6. other relevant issues.

Requirements for mediators

First, it should be noted that in Polish law there are two categories of mediators: a permanent court mediator and another mediator (who is not an appointed court mediator).

As for the requirements for all mediators, CCP only specifies exclusively that a mediator may be a natural person with full legal capacity to perform acts in law. However, judges cannot be mediators – with the exception of retired judges. Additional requirements for permanent court mediators are specified in the act regulating the common court system in Poland (Act of 27 July 2001 – Law on the Organisation of Common Courts). Pursuant to these regulations, a permanent mediator may be a person who:

1. meets the requirements previously specified,
2. has the knowledge and skills necessary to run a mediation,
3. is more than 26 years old,
4. speaks the Polish language,
5. has not been convicted for an intentional crime or an intentional fiscal crime,
6. has been enrolled on the list of permanent mediators run by the president of a district court.

Attention should be paid to the issue of knowledge and skills necessary to run mediation. Although details are not regulated by law, in practice, many educational programmes for mediators are based on the recommended standards of mediator training developed by the Alternative Dispute Resolution Council affiliated at the Ministry of Justice.[12] In reality, the quality of mediators' education may vary, but the above standards are a guarantee of a certain level of knowledge and skills.

The provisions of Polish law stipulate that the mediator is obliged to remain impartial when conducting mediation. The mediator is therefore obliged to disclose to the parties the circumstances that could raise doubts as to their impartiality.

[12] Resolution No. 1 of 2023 on the adoption of mediator training standards and Resolution No. 2 of 2023 on the adoption of mediator training standards. Available from: www.gov.pl/web/sprawiedliwosc/dokumenty (accessed: 17.05.2024).

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Moreover, mediation is confidential and the mediator cannot be a witness as to the facts that he learned in connection with the mediation unless the parties release him from this obligation.

Polish law also includes CCP regulations relating only to permanent mediators. They stipulate that a permanent mediator may refuse to conduct mediation only for important reasons, of which he is obliged to immediately notify the parties and the court.

Requirements of a statement of claim

The CCP regulations clearly define the requirements for all procedural documents, including statements of claim commencing court proceedings. Currently, one of such requirements is to include information on whether the parties of a future trial have used mediation or another out-of-court method of resolving the dispute, and if no such attempts have been made, an explanation of the reasons for not doing that. This requirement has been in force since 2016 and is intended to introduce a specific type of encouragement to resolve disputes amicably before initiating court proceedings. The requirement was expected to have a positive impact on the development of mediation. Unfortunately, in practice, this did not bring the anticipated result. Lawyers drew attention to the lack of sanctions for the failure to fulfil this obligation[13] and developed methods of fulfilling this requirement in a way other than initiating mediation, e.g. pointing to unsuccessful negotiations to fulfil this requirement of the statement.

Obligations of the court during the proceedings

As for the duties of judges handling cases, the general rule contained in Article 10 of CCP states that in cases in which settlement is permissible, the judge shall strive to resolve them amicably in each stage of the proceedings – in particular by persuading the parties to mediate. It is supplemented by the CCP resolution which states that the judge may request the parties to participate in an information meeting on amicable methods of resolving disputes – in particular mediation, before referring the case to the mediator. The information meeting may be conducted by a judge, a court clerk, a court official, a judge's assistant, or a permanent mediator. This solution aims to provide parties with appropriate information about mediation

[13] J. Kawałek, *Kilka uwag na temat stosowania art. 187 § 1 pkt 3 k.p.c.*, „Palestra" 2016, 6. Available from: https://palestra.pl/pl/czasopismo/wydanie/6-2016/artykul/kilka-uwag-na-temat-stosowania-art.-187-1-pkt-3-k.p.c. (accessed: 22.05.2024).

before they decide to participate or not. The reason to introduce it was that people in Poland usually know nothing or very little about mediation. It was expected that the person conducting such a meeting and delivering relevant information would convince the parties to mediate. As it will be stated below, this theoretically good idea did not work in practice. Moreover, during the hearing, the judge is obliged to inform the parties about the possibility of an amicable resolution of the dispute through mediation. CCP includes also the legal institution of a preparatory meeting, held before the substantive examination of the dispute. At such a preparatory meeting, the judge is obliged to encourage the parties to reconcile and seek an amicable solution to the dispute, in particular through mediation. So, in accordance with legal regulations, during proceedings, the judge has many opportunities and duties to encourage the parties to resolve the dispute amicably.

The essence and course of mediation

The essence of mediation

As previously stated, civil court mediation in Poland is voluntary – it is actually part of its essence. CCP defines mediation in the following way: the mediator conducts mediation using various methods aimed at amicably resolving the dispute, including by supporting the parties in formulating settlement proposals, or – at the request of the parties – the mediator may indicate solutions of the dispute that are not binding upon the parties. Another element of the essence of mediation is that mediation is confidential, and confidentiality extends not only over the mediator, but also over the parties to the dispute. CCP stipulates that the mediator, the parties, and other persons participating in the mediation proceedings are obliged to keep secret the facts they learned in connection with the mediation. The parties may release unanimously the mediator and other persons participating in the mediation proceedings from this obligation. Due to the confidentiality of mediation, in the course of court proceedings, it is ineffective to refer to settlement proposals, proposals for mutual concessions, or other statements made during mediation proceedings.

Initiation of mediation

As a general rule, mediation is initiated by a party when the request for mediation is delivered to the mediator. The two main exceptions concern situations when: the mediator has refused to conduct mediation or when the other party has not consented to mediate (unless there was a prior mediation agreement).

Mediation may also be initiated by the judge. CCP states that the judge may refer the parties to mediation at any stage of the proceedings. Before the first hearing,

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the judge assesses whether it is justified to refer the parties to mediation. For this purpose, the judge may summon the parties to hear them. Mediation will not be conducted if at least one party has not consented to mediation within one week.

Choice of the mediator

The parties have the right to choose a mediator. If the parties have not done that, the judge, when referring the parties to mediation, appoints a mediator who has appropriate knowledge and skills in conducting mediation in cases of a given type, taking into account permanent court mediators first. The judge shall immediately provide the mediator with contact details of the parties and their representatives, in particular telephone numbers and e-mail addresses – if they have them. The mediator has the right to read the case files unless a party does not give their consent thereto.

Activities of the mediator during mediation

After initiating mediation, the mediator immediately sets the date and place of the mediation. This is not required if the parties agree to conduct mediation without a mediation meeting, i.e. in an asynchronous way of mediating. Pursuant to the CCP regulations, the mediator may conduct a mediation session using technical devices enabling the parties to communicate remotely if the parties consent to it.

After mediation, the mediator draws up minutes of the course of the mediation. If the parties have concluded a settlement, it shall be included in the minutes or attached to it. By signing the settlement, the parties agree to submit a request to the court for its approval, of which the mediator informs the parties. This is not mandatory, but may be helpful for later enforcement. The mediator delivers a copy of the minutes to the parties.

Duration of mediation

When referring parties to mediation, the judge sets its duration for a period of up to three months. At the unanimous request of the parties – or for other important reasons, the deadline for mediation may be extended if this will facilitate the amicable settlement of the matter. If the abovementioned deadline expires or if one of the parties does not agree to mediation, the judge will hear the case.

Approval of the settlement by the court

In the course of the development of legal regulations on mediation, the issue of possible difficulties with the enforcement of a settlement was raised. Therefore, CCP contains a number of regulations enabling the court to approve a mediation settlement. This applies to both contractual and court mediation. Confirmation of

the settlement by the court equalises its legal effect with that of a court judgement. This means that it will be subject to direct enforcement by an enforcement officer.

The court refuses to confirm the settlement concluded before a mediator if the settlement is contrary to the law, or contrary to the rules of social relations, or seeks to circumvent the law, or if it is incomprehensible, or contains contradictions.

Costs of mediation and mediator's remuneration

Mediator's remuneration

The mediator's remuneration is an issue for separate research and article because it is currently causing some discussion in Poland[14] and there may be changes in this area. At the moment, the law stipulates that the mediator is entitled to remuneration and reimbursement of expenses connected with the mediation unless he has agreed to conduct mediation without remuneration. The remuneration and reimbursement of expenses are covered by the parties, and the mediator collects them directly from the parties, without the court's involvement. Before commencing the mediation proceedings, the mediator informs the parties about the costs of the mediation.

The remuneration of a mediator in civil cases is specified in the Minister of Justice's regulation of 20 June 2016 on the amount of remuneration and reimbursed expenses of a mediator in civil proceedings. In cases in which the value of a claim may be determined and stated, it is 1% of the value of the claim – but not less than PLN 150 (approximately EUR 35) and not more than PLN 2,000 (approximately EUR 471) for the entire mediation procedure. In cases in which the value of a claim is impossible to determine, the mediator's remuneration is PLN 150 (approximately EUR 35) for the first meeting, and PLN 100 (approximately EUR 24) for each subsequent session), a total of no more than PLN 450 (EUR 106). Certain types of necessary expenses the mediator incurs in connection with mediation are also subject to reimbursement. It is possible to assess the economic value of the above remuneration by comparing it with the average monthly salary in Poland of PLN 7,155 (approximately EUR 1,684) in 2023.[15]

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14 For instance see A. Samoiłło, *Mediator – czy to się w ogóle opłaca?*, ADR 2019, 1, p. 49 *et seq.*

15 Announcement of the President of the Central Statistical Office (Komunikat Prezesa Głównego Urzędu Statystycznego) of February 2024, on the average salary in the Polish economy in 2023. Available from: https://stat.gov.pl/sygnalne/komunikaty-i-obwieszczenia/lista-komunikatow-i-obwieszczen/komunikat-w-sprawie-przecietnego-wynagrodzenia-w-gospodarce-narodowej-w-2023-roku,273,11.html (accessed: 17.05.2024).

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Mediation costs and their bearing

If the judge refers a case to mediation, the costs of mediation become part of the necessary costs of civil proceedings. In general, the losing party is obliged to reimburse the necessary costs of the proceedings to the winning party. This includes the costs of mediation. Of course, this rule applies to mediation that did not result in a settlement and the case had to be judged by a court. The costs of mediation conducted on the grounds of a referral by a judge and ending with a settlement, incurred by each party, are covered by that party – unless the parties have agreed otherwise.

There are also certain solutions that make it possible to impose certain financial burdens on the party unwilling to participate in mediation. Thus, if a party refuses to participate in mediation without a reasonable justification, the judge may demand that party to fulfil an obligation to reimburse the costs – but only those resulting from this refusal. Moreover, if a party fails to appear at the mediation meeting without justification, despite having previously agreed to mediation, the judge may impose on that party the obligation to reimburse the costs of the whole court proceedings in excess of the amount determined in accordance with the general rules, or even to reimburse the costs of the entire court proceedings in full.

Other relevant issues. Limitation period

The most important features of the Polish model of regulation are presented above. Of course, there are several other detailed provisions of law. Among others, attention should be paid to the regulations linking mediation with the limitation period for claims. In the current legal situation, the Civil Code provides that the limitation period does not begin – and the already initiated limitation period is suspended for claims covered by the mediation agreement for the duration of the mediation. Previous regulations made it possible to interrupt the limitation period, and thus cause the limitation period to start running again. This solution was much more beneficial from the point of view of the development of mediation. However, on the other hand, it could be also abused.

Historical development of regulation

The legal regulations discussed above are current as of May 2024. They have been subject to gradual evolution, during which newer solutions have been introduced due to the ineffectiveness of the existing ones.

The first general regulation of mediation for all civil cases was introduced into CPP in 2005. Although its entry into force was associated with great hopes for an increase in the number of mediation proceedings and a reduction in the number of court judgements, the number of court mediation cases remained at a very low level. This state of affairs provoked the search for further legislative solutions to this problem. For example, the first version of Aricle 1839 sentence 2 of the CCP of 2005 stipulated that at the joint request of the parties, the court may authorise the mediator to review the case files. This solution was criticised by part of the mediators' community because, according to critics, it made it difficult to become familiar with the case.[16] Therefore, the next version of this solution from 2016[17] stipulated that the mediator has the right to read the case files unless any of the parties of a case objects within one week from the date of announcement or delivery of the decision to the parties to mediation. Moreover, § 3 was added, which states that after referring the parties to mediation, the judge immediately provides the mediator with the contact details of the parties and their representatives, in particular telephone numbers and e-mail addresses, if they have them. This was a response to the varied practice of courts. Part of judges referred cases to mediators without providing the contact details of the parties to the dispute, which forced mediators to search for them on their own or ask the court to provide such data. This was burdensome and time-consuming for mediators, sometimes even impossible to do. Therefore, this last solution significantly improved the mediation proceedings. As can be seen in the above example, in the course of the development of the regulation of mediation, the law has been shaped in order to facilitate initiation of mediation and its course.

In force since 2016, the provisions of Article 187 § 1 point 3 of CCP have required the party initiating court proceedings to provide information on whether the parties have attempted mediation or any other out-of-court method of resolving the dispute, and if no such attempts have been made, an explanation of the reasons for not making such attempts. Information meetings were also incorporated into CCP with effect in 2016. In the same year, a possibility for a judge to hear the parties before referring the case to mediation was also introduced. Since 2012, a mediation

[16] In this discussion, held during meetings, conferences, and other mediation events, I took the opposite position, arguing that reading the case files is not necessary to understand the essence of the dispute because the civil proceedings files only contain positions and do not reveal real interests; I also argued that the mediator conducts interviews with the parties that are sufficient to determine the essence of the dispute.

[17] E. Anioł, A. Błaszczak write more about the hopes related to the extensive amendment of the CCP; E. Aniello, A. Błaszczak, *Popularization of the institution of mediation and the principle of voluntary mediation in the light of changes in legal regulations*, ADR 2019, 1, pp. 21 *et seq.*

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settlement approved by the court is the basis for an enforcement procedure, which means that it has been practically equated with a court judgement.

It is not the purpose of this study to present the full historical development of the regulation of court mediation in Poland. The above examples only illustrate trends in the development of regulations aimed at popularising this way of resolving disputes.

New legal regulations weakening mediation were very rarely introduced. An example of this may be the issue of the limitation period for claims. The first regulation of the Polish Civil Code regarding the limitation of claims did not provide for any legal consequences in connection with the commencement of mediation. The next regulation stated that the initiation of mediation interrupted the limitation period which means that by initiating mediation the limitation period began to run again. Currently, the regulations stipulate that the limitation period does not begin, and any commenced limitation period is suspended for the duration of the mediation. When the mediation ends the limitation period will be continued. Therefore, regulation currently in force is less favorable for the claim holder. This regulation entered into force in 2022.

Summing up, over the years, new solutions have been introduced to the legal system in order to increase the number of mediations. As the data presented later in the article will show, this did not help much in popularizing mediation. However, legislative work is constantly continuing and as of the end of the study, new proposals for changes to the law are being presented to the Polish parliament, which still are intended to increase the use of mediation in Poland.

Regulation effectiveness. The use of mediation in court disputes

As already mentioned, the Polish Ministry of Justice collects and publishes detailed statistical data on court mediations. They were recently published in the report *Mediation proceedings in the light of statistical data. District and district courts in the years 2006–2023*.[18] In this study, the state of utilisation of mediation in all the court cases was illustrated with the following statistical indicators:

1. number of cases initiated in courts (excluding administrative courts),
2. number of cases in which mediation can be used (selected cases from the total number of cases submitted to the court),
3. number of cases referred to mediation,

[18] https://isws.ms.gov.pl/pl/baza-statystyczna/publikacje/ (accessed: 17.05.2024).

4. percentage of cases referred to mediation in relation to all cases submitted to courts in which mediation may be used,
5. number of effective mediation proceedings, i.e. cases in which a settlement was reached as a result of mediation,
6. percentage of cases in which a settlement was reached as a result of mediation.

The data cover all initiated court proceedings, including not only civil cases but more. However, the findings can be used to determine the effectiveness of regulation of civil mediation as the number of civil cases is certainly very high and the data below clearly show that mediation in Poland is virtually non-existent in practice.

Data for 2023 show that the use of mediation in Polish courts remains at a very low level. First, attention should be paid to the category of cases in which mediation can be used. In the years 2020-2023, it remained at the level of approximately 14% of all cases brought to courts. On this basis, it can be assumed that the selection of cases for this category is very limited and it could be considered whether it should not encompass a larger pool of cases. However, this issue can be left aside in this study because it does not have much impact on the overall picture, i.e. it does not change the general situation.

In 2023, the above indicators were as follows:

1. number of cases initiated in courts (excluding administrative courts) – 14,667,316
2. number of cases in which mediation can be used – 2,148,836 (14.65% of the above total number of cases indicated in point 1),
3. number of cases referred to mediation – 34,484,
4. percentage of cases referred to mediation in relation to all cases submitted to courts in which mediation may be used – 1.6%,
5. number of effective mediation proceedings, i.e. cases in which a settlement was reached as a result of mediation – 9,410,
6. percentage of cases in which a settlement was reached as a result of mediation – 27.29%.

The above data allow us to introduce another important indicator that is not taken into account by the Ministry of Justice – the percentage of effective mediation proceedings in relation to cases in which mediation can be used. In 2023, it was 0.44%.

Moreover, the total number of information meetings conducted in 2023 was 1,948.

Therefore, it can be said that effective mediation in court cases in Poland practically does not exist.

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Table 1. Report Mediation proceedings in the light of statistical data. District and district courts in the years 2006–2023

1		2013	2014	2015	2016	2017	2018	2019	2020	2021	2022	2023
2	Number of cases initiated in courts	15.169.808	14.553.725	15.156.076	14.910.884	15.782.479	15.049.054	17.728.993	13.984.515	14.262.483	14.636.438	14.667.316
3	Number of cases in which mediation can be used	2.710.600	2.604.395	2.584.300	2.566.157	2.525.725	2.511.935	2.459.950	1.965.592	2.077.679	2.112.717	2.148.836
4	Number of cases referred to mediation	13.370	13.239	17.811	24.105	27.493	26.810	30.828	31.162	32.580	31.939	34.484
5	Percentage of cases referred to mediation in relation to all cases submitted to courts in which mediation may be used	0,5%	0,5%	0,7%	0,9%	1,1%	1,1%	1,3%	1,6%	1,6%	1,5%	1,6%
6	The number of effective mediations, i.e. cases in which a settlement was reached as a result of mediation	3.836	3.798	4.328	5.246	8.897	7.090	8.204	7.963	9.253	9.136	9.410
7	Percentage of cases in which a settlement was reached as a result of mediation	28,69%	28,69%	24,30%	21,76%	32,36%	26,45%	26,61%	25,55%	28,40%	28,60%	27,29%

Source: https://isws.ms.gov.pl/pl/baza-statystyczna/publikacje/

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It is also important to discuss trends in the development of mediation. They can be seen best in the comparison of the above indicators from a historical perspective.

Assessment and conclusions. Current state in Poland

When it comes to the voluntary mediation model adopted in Poland, it can be argued that the legal and institutional infrastructure is complex and seems to be of good quality. Moreover, it is subject to constant changes and improvements aimed at addressing identified (either accurately or incorrectly) obstacles to the development of mediation. New solutions are constantly being sought, and legislative work does not cease. There is ongoing discussion by academics[19] and practitioners, resulting in new proposals of changes to the existing regulations. The current debate refers mostly to legal issues and is based mostly on theoretical research.

Despite these efforts, as statistical data show, the use of mediation in courts in Poland has practically not increased over 10 years. Although the number of mediation proceedings increased by 280% – from 13,370 in 2013 to 34,484 in 2023, these numbers compared with the number of cases in which mediation can be used remain at a level of 0.5 % to 1.6% respectively. Court cases ended with a mediation settlement make only 0.44% of all cases in which mediation can be used. Therefore, the above proves that the legal model of regulating court mediation in Poland is ineffective.

As the new proposals of changes are still raised, it may be predicted on the basis of previous experience that new changes to the law will probably not change the situation. It seems that many things have been done within the legal system and any further legal solutions within the voluntary mediation model will not improve the situation much.

In my opinion, the combination of the above statistical data with a generally good regulatory model and constant ineffective legislative efforts to improve the situation shows that the reasons for the low level of use of mediation in Poland are probably located outside the legal system. Determining them requires additional,

[19] For instance, see the proposal of: A. Arkuszewska, *Pozasądowe metody rozwiązywania sporów – mediacja i arbitraż w modelu kodeksu postępowania cywilnego*, „Gdańskie Studia Prawnicze" 2022, 5, p. 218; L. Mazur, *Ustawa o zawodzie mediatora – czy jest potrzebna?* [in:] J. Czapska, M. Szeląg-Dylewski (eds.), *Mediacje w prawie*, Kraków 2014, p. 111; A. Majerek, *Problematyka kwalifikacji mediatorów sądowych*, [in:] J. Czapska, M. Szeląg-Dylewski (eds.), *Mediacje w prawie*, Kraków 2014, p. 50; A. Mucha, *Czy obecna konstrukcja prawna mediacji jest efektywna ekonomicznie? O kosztach społecznych mediacji w ujęciu ekonomicznej analizy prawa*, [in:] J. Czapska, M. Szeląg-Dylewski (eds.), *Mediacje w prawie*, Kraków 2014, p. 68; For instance see findings for 2012 in R. Morek, Ł. Rozdeiczer, *Mediation in Poland: Time for a Quiet Revolution?*, [in:] K. J. Hopt, F. Steffek (eds.), *Mediation: Principles and Regulation in Comparative Perspective*, Oxford 2012.

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detailed research using empirical methods involving an analysis of law and its application. Only precise identification of obstacles and a correct way of addressing them can lead to a more dynamic development of the mediation mechanism. Some non-legal obstacles have already been identified in the previously mentioned reports[20] and have been addressed by the Ministry of Justice. However, for some reason, this has not translated into the development of mediation. Therefore, it seems necessary to further investigate the non-legal obstacles to this development – but using alternative methods. In any case, it can be said that the Polish advanced regulatory model is not sufficient for the advancement of mediation.

The introduction of a mandatory mediation model would probably change the scale of mediation use. Such ideas are presented during theoretical discourse[21] and also as legislative proposals. However, it cannot be clearly stated whether the final result would be better. In other words, would such a change of the model allow for an increase in the number of successful mediation proceedings? Because this is exactly the desirable outcome. These doubts stem from Polish cultural conditions in which coercion often brings results opposite to those expected. Confirming this hypothesis could be the subject of further scientific research.

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[20] A. Rudolf, M. Cichowicz-Major, M. Matysiak, S. Pałka, W. Pieniążek, C. Przybył, *op. cit*.; M. Bobrowicz, *op. cit.*

[21] E. Anioł, A. Błaszczak, *Upowszechnienie instytucji mediacji i zasada dobrowolności postępowania mediacyjnego w świetle zmian regulacji prawnych*, ADR 2019, 1, s. 21; K. Bednarczyk, *Perspektywa modyfikacji zasady dobrowolności mediacji w polskim prawie*, ADR 2022, 3; Ł. Chyla, *Co z tą mediacją? Rozważania dotyczące upowszechnienia mediacji gospodarczej w Polsce – część I*, ADR 2022, 3.

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