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doi: 10.21564/2414–990X.152.226289
UDC 340(438):351.822

MEDIATOR IN THE POLISH CIVIL TRIAL

The article discusses the results of research on the functioning of judicial mediation in civil cases. The effectiveness of mediation is assessed on the basis of the number of concluded settlements or discontinued proceedings as a result of approval of the settlement concluded before the mediator. In the course of the research, the reasons for too low in relation to the expected popularity of mediation were identified, both among the society and professionals related to mediation. For over a dozen years the provisions on mediation have been in force, it has provided many observations and conclusions regarding their functioning.

Keywords: judicial mediation; settlement; civil procedure; resolving disputes, extinguishing conflicts.

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Посередник у цивільному процесі в Польщі

У статті розглянуто результати дослідження застосування судової медіації в цивільних справах. Ефективність медіації оцінюється за кількістю укладених мирових угод або припинених судових розглядів, результатом яких стала мирова угода, укладена в присутності посередника. У ході дослідження виявлено причини занадто низької порівняно з очікуваною популярності медіації як у суспільстві, так і серед фахівців, пов'язаних з медіацією. Положення про медіацію використовуються судами вже понад десять років, що дозволяє зробити безліч зауважень і висновків щодо їх практичного застосування.

Ключові слова: судова медіація; цивільний процес; врегулювання спорів, погашення конфліктів.

Ways of resolving conflicts in the Polish civil process

The conflict comes from the verb Latin. the words conflictio, conflictus meaning clash, fight with someone, dispute. It can be assumed that conflict is the sharp

opposite of cooperation, the desire for one party's point of view to prevail over the other and at the same time to become a defeated party [1, p. 176]. Emotional conflicts are the most difficult to solve because they are related to emotional tensions caused by a negative attitude (e.g. hostility), in interactions between individuals and of a personal nature [2]. Polish civil procedural law [3] is applied when the provisions of substantive civil law are violated, and the process itself serves to resolve disputes, conflicts, and misunderstandings. When one of the parties goes to court in the process with the claim, it is defined as – the plaintiff, and if the other party challenges it, it becomes – the defendant. It also happens that the court process does not fulfill its role because it is not able to meet the parties' requirements [4]. This is due to a variety of reasons, including a shortage of staff in the justice system, excessive costs and complexity of the procedure, as well as the lengthiness of court proceedings. The right solution seems to be to replace the form of judicial dispute resolution through mediation [5, p. 39].

The existence of conflicts and disputes requires not only the necessity to develop social mechanisms aimed at avoiding such phenomena, but also the possibility of influencing the process of their resolution. In order to resolve conflicts or disputes, a whole range of methods of reaching a consensus should be used. In the literature on the subject, you can find many methods of conflict resolution, which are called alternative dispute resolution methods – ADR (*Alternative Dispute Resolution*) and these are actions alternative to court proceedings [6]. There are also new terms known as „Effective Dispute Resolution”, „Complementary Dispute Resolution” and „Supplementary Dispute Resolution” [7, p. 1; 8, p. 24; 9, p. 10; 10, p. 4–5; 11, p. 22]. Alternative dispute resolution methods can also complement the traditional judicial model [12, p. 905].

Although it is generally in the interest of society that the largest possible number of disputes considered by common courts end with the signing of an agreement, it is a difficult task to complete. Because a certain procedural formalism is not conducive to conciliation. The reason for this is the fact that the aim of court proceedings is to find the procedural truth and release a lawful decision rather than to establish the actual interests of the parties [13, p. 35]. It can be assumed that conflict resolution is the essence of alternative forms of dispute or conflict resolution, and its most widespread and well-developed form is mediation.

Mediation as a way of resolving conflicts in a civil process

Mediation (mediation in Latin means „to be inside”) is a modern and effective procedure in which the parties voluntarily and actively participate in resolving a dispute with the help of a third party [14, p. 179]. Mediation is intended to be a way of improving the administration of justice and to support and complement judicial proceedings [4]. In addition, resolving conflicts in the field of civil law, economic law, labor law, family law and criminal law, is to intended help natural persons, legal persons and other entities, e.g. courts. Hence, for some time, non-procedural forms have had an important role in administering justice [15, p. 912]. Furthermore,

mediation offers the possibility of obtaining a dispute resolution more tailored to individual needs than traditional court proceedings, as it does not focus only on legal issues. In addition, it is a faster, cheaper and less formalized method [16].

Pursuant to the European Union Directive 2008/52 / EC of May 21, 2008 on certain aspects of mediation in civil and commercial matters – mediation means an organized procedure of a voluntary nature, regardless of its name or description, in which at least two parties to the dispute are trying to reach an agreement themselves to resolve their dispute with the help of a mediator. Such proceedings may be initiated by the parties, or may be proposed or ordered by a court and imposed by the law of a Member State. This term includes mediation conducted by a judge who is not responsible for any legal proceedings relating to the dispute in question. However, it does not, cover attempts by a court or a judge resolving a dispute in the course of court proceedings relating to the dispute in question [17, p. 3].

Thus, mediation is intended to create the conditions for the parties to the conflict that will make it possible to reach an agreement that the parties to the conflict will be willing to consciously and voluntarily accept. The ideal solution that should be sought in the mediation process is an agreement that optimally reconciles the interests of the opposing parties, making each of them feel a winner, gaining something and not losing anything [18, p. 18].

It is worth emphasizing that the basic principles of mediation include: voluntariness, confidentiality, impartiality and the neutrality of the mediator [19, p. 10–11].

Research on statistical data compiled by the Ministry of Justice of the Republic of Poland

In Poland, after the introduction and regulation of mediation in the civil procedure at the beginning of the 21st century, there were multiple expectations [20, p. 6–24]. Supporters as well as optimists expected a rapid and steady increase in the number of mediation proceedings, assuming a significant reduction in the number of court proceedings [21]. Despite the passage of several years, the ratio of the number of mediation proceedings to the number of cases heard by common courts is still small. According to the information provided by the Ministry of Justice on the activities of common courts, regional and district courts still refer few cases to mediation compared to the number of cases brought to courts [22].

The obtained statistical data show that although the number of civil cases referred to mediation in particular years increased, the mediation rate itself, calculated as the percentage of cases referred to mediation in relation to all cases brought to courts in which mediation may be used, was not optimistic and in the following years it was: 0,50% (2013 r.), 0,50% (2014 r.), 0,70% (2015 r.), 0,90% (2016 r.), 1,09% (2017 r.), 1,07% (2018 r.), 1,18 % (I p. 2019 r.).

The mediation success rate was also not high and in the following years it amounted to: 28,69% (2013 r.), 28,69% (2014 r.), 24,30% (2015 r.), 21,76% (2016 r.), 32,36% (2017 r.), 26,45% (2018 r.), 26,83% (I p. 2019 r.).

The insignificant scale of the use of an out-of-court method of extinguishing a conflict has its effect in the form of burdening the courts with thousands of cases that affect them, the lengthiness of the court proceedings, or the need to deal with all cases brought to the courts, including even those whose costs of investigation often exceed the value of the dispute [6]. The institution of mediation is still reluctant by the procedural authorities and the participants themselves, and the level of use of mediation in court proceedings is still low. The number of cases referred to mediation in 2018 and in the first half of 2019, with a breakdown by individual judicial districts, is heterogeneous [23].

According to statistical data, in recent years the number of cases referred to mediation on the basis of a court decision has been constantly increasing, but despite that, the statistics of mediation proceedings are still not optimistic. In 2019, the number of cases referred to mediation by judges still stands at just a few percent, compared to the nearly 16 million cases brought to the courts. Despite many informational and legislative activities aimed at popularizing mediation, the interest of the parties and courts in this institution should be considered insufficient.

It is worth drawing attention to the uneven distribution of the number of cases referred to mediation in individual poviats in the first half of 2019. It can be indicated that mediation is more popular in large districts, such as (Table 3): Gdańsk (203), Kielce (123), Warsaw (122), Poznań (112) and districts deviating from these data: Jelenia Góra (2), Tarnobrzski (5), Piotrków (6), Legnica (7).

The data presented by the Ministry of Justice for 2014 shows that in the case of civil cases heard at the voivodeship level as a result of mediation, cases were most often discontinued on the basis of reserved claims (15 out of 124 cases were discontinued as a result of mediation in litigation in 2014), as well as claims from various types of contracts (including contracts: sale, for specific work, construction works, rental or lease, loans and orders – these were: 32 out of 124 cases). Moreover, in non-litigious proceedings, mediation turned out to be the most effective in cases concerning the division of joint property (34 out of 63 cases discontinued in 2014) and inheritance (11 out of 63). In the case of regional courts, the greatest effectiveness of civil mediation concerns divorce (12 out of 91 cases discontinued in this way) and protection of personal rights (8 out of 91).

Spiritus movens of low popularity of mediation

The obstacles to amicable settlement of civil disputes vary, often depending on the court, mediator and, above all, the parties participating in the process. At this point, it should be noted that one of the barriers to mediation is also the type of (subject) case, because not all cases, by their nature, can be concluded amicably. Firstly, when, due to the essence of the substantive legal relationship, the parties to these legal relationships cannot exercise their rights independently. First of all, it concerns non-pecuniary matters in the field of family law – marriage annulment, divorce or separation, or in matters relating to the determination of a child's parentage. The inalienable nature of the use excludes the possibility of its transfer

by settlement, however, it is permissible to establish and modify the content of such a legal relationship (duration, rights and obligations of the user). It is also inadmissible to conclude a settlement in cases for the revocation or declaration of invalidity of the resolutions of the shareholders' meeting of a limited liability company or the general meeting of a joint-stock company. Secondly, the exclusion of the possibility of concluding a settlement may result from the introduction of a clear procedural limitation – as in cases in the field of social insurance (Civil Procedure Code Art. 477¹²). Cases adjudicated in non-contentious proceedings are generally not amicable, as they are most often non-contentious. Participants in the proceedings may conclude a settlement in a few cases, such as, in particular, in matters related to division or demarcation and easement. Contrary to adoption or incapacitation, which can only be made by a court decision, the abolition of joint ownership, division of inheritance and division of joint property after the termination of joint property between spouses may be regulated by contract without initiating court proceedings. Hence, in departmental matters, a strong emphasis was placed on the harmonious carrying out of the division. The legislator introduced two measures to achieve this objective. The first is to impose an obligation on the court to persuade them to reach an agreement and to indicate to participants the methods that may lead to the division (Civil Procedure Code Art. 622 § 1). The second – submission of a joint application as to how to abolish joint ownership. However, in departmental matters, the court may issue a decision referring participants in the proceedings to mediation. It is also worth adding here that concluding a settlement before a mediator results in the return of three-quarters of the fee for the letter initiating the proceedings, and therefore the amount of the court fee in the case of successfully conducted mediation will be lower than when the application containing compliant draft abolition of joint ownership. However, participants in the proceedings will be required to bear the mediator's remuneration and expenses, unless they are released from this obligation by the court [24, p. 101].

The report on the diagnosis of the use of mediation indicated that the barrier to the low popularity of mediation among judges is their conviction of their own conciliation abilities and the worn-out way of thinking and proceeding, which is not conducive to transferring cases to mediation. In addition, it should be noted that the legislator did not provide for a bonus for judges to refer cases to mediation, which means that the use of mediation is not visible in the job evaluation sheets and is not accounted for in the allocation of cases by Rules of Procedure of Common Courts [27].

The main barrier to disseminating mediation, on the part of the mediators' community, and indicated by all respondents (including mediators), are insufficient requirements for the qualifications of mediators, which should be regulated by statutory regulations and executive provisions [25, p. 914]. The lack of uniform standards in the work of a mediator makes the quality of the work of mediators vary. Mediation centres apply different standards in terms of mediators' qualifications, which affects building a negative image of the mediator among judges, prosecutors

and attorneys [26]. According to the respondents, especially the mediators, the prestige of this function is also not supported by low salaries. Mediators often lack the financial resources and motivation to upgrade their qualifications and devote themselves to mediation.

Popularization of mediation is not favored by the attitude of the parties' attorneys, i.e. advocates and legal advisers, whose representatives often perceive mediators as competition, and referring cases to mediation as unfavorable for themselves from an economic point of view (the method of remunerating the attorneys often means that it is in their interest to conducting a case before a court). In addition, lawyers and solicitors using mediation should see their role as „guardians” of the judiciary, advising clients on various forms of approach to their disputes depending on the nature of the problem, and not schematically assume that the case may end up in court anyway [28]. The presence of the parties' attorneys in mediation influences the atmosphere and behavior of the parties, and effective representation in mediation requires a conciliatory approach from advocates and legal advisers [29, p. 19]. Thus, the attitude to the dispute itself must be transformed, which does not have to be resolved by a third party – a court – with the application of legal provisions, but by the parties themselves, assuming that all parties can benefit from a creative resolution of the dispute and the creation of new values important to them [30, p. 44; 31, p. 134–136; 32, p. 7]. Material values are important, but nevertheless important, and often, in the overall view of the conflict – even more valuable – are intangible goods such as: honor, respect, maintaining peaceful relations with the other party [32, p. 7].

From the point of view of the parties to the dispute, the main reason mediation fails is that it is unwilling to participate in mediation. The reluctance to participate in mediation is partly due to the lack of willingness to take responsibility for the conflict in which they participate. The parties to the dispute prefer to make a decision by an external instance, hence such a large number of cases referred to courts and a small number of mediations, both court and out-of-court. Moreover, as indicated by the authors of the report examining the state of mediation, both the surveyed mediators and judges pointed to the fact that participation in mediation is often perceived by the parties as an admission of joint responsibility for the conflict. Mediation participants expect the mediator to propose specific methods of resolving the conflict, which shows that mediation is perceived as an informal court route, where a resolution will be worked out for the participants [23].

Another barrier from the point of view of the parties to the dispute is the lack of sufficient tools to induce the parties to consider mediation. Although the Code of Civil Procedure provides, as a formal deficiency, the obligation to inform the court in the statement of claim whether or not an attempt was made to resolve the dispute amicably before the case was referred to the court, in practice it is fulfilled by briefly indicating that no agreement was reached (Article 187 § 1 point 3 of the Code of Civil Procedure). The legislator, by introducing such a condition, did not provide for any further restrictions related to it. The following should be assessed positively

in Art. 103 § 3 point 2 of the Code of Civil Procedure a sanction consisting in the possibility of imposing, irrespective of the outcome of the case, on the party who, without justification, failed to appear at the mediation meeting despite prior consent to mediation - an obligation to reimburse the costs in a part higher than the result of the case would require, or even to reimburse the costs in full [26]. It should be noted that this sanction will be visible only in the decision concluding the case, after a long evidence procedure. Practice will show whether these changes were encouraging enough to mobilize the parties to mediate. Low level of social awareness in the field of mediation, insufficient number of information and promotion activities carried out so far, scattered sources of information are barriers to disseminating mediation concerning the general public and entrepreneurs [23]. A settlement is always in favor of the parties, even if the claim is partially abandoned. The creditor obtains an enforceable title faster and avoids carrying out a lengthy process that may fail as a result of failure to bear the burden of proving the facts from which it derives legal effects [33].

Another barrier to the use of mediation in civil matters is the lack of sufficient tools inducing the participants of the process to use mediation before bringing the case to court. It would be advisable to promote among the public the inclusion of a mediation clause in the concluded contracts, in which the parties undertake that in the event of a dispute, they will use mediation before going to court. It would be advisable to introduce an obligation to include such a clause in all civil law contracts concluded with consumers [26].

The judge as conciliator of the dispute during the preparatory hearing

In order to improve civil proceedings and counteract their excessive length, and in particular the examination proceedings, in 2019 the legislator introduced a revolutionary, undoubtedly the most comprehensive and serious modification of the Code since its adoption. The amendment to the Code of Civil Procedure by the Act of 4.7.2019 added a new Chapter 2¹ Organization of proceedings, in which the key institution of preparatory proceedings is the preparatory meeting [34].

In general, its conduct is obligatory (Article 205⁴ § 1 of the Code of Civil Procedure) and, as a rule, it should take place in a manner appropriate for a closed meeting, and the activities undertaken at the meeting are of a formalised nature (205⁵ § 2 of the Code of Civil Procedure). The proceeding change was caused, among others, by The statistical results obtained so far concerning the average duration (efficiency) of court proceedings in civil cases, which in the first instance for the years 2011–2018 were not too optimistic [35].

The average duration of court proceedings in district courts in civil cases in 2018 was 5,453 months, including as much as 11,635 months in cases heard in procedural proceedings, 8,706 months in cases heard in non-contentious proceedings, and 6,714 months in commercial cases. The statistical results presented are the result of various overlapping reasons, ranging from the organizational issues of the common judiciary (e.g. significantly limited access of judges to assistants, insufficient number of court

referendaries, serious problems with obtaining evidence from the opinions of expert doctors), economic issues, which often contribute to the complex substantive level of civil and economic matters, and ending up with legislation [36].

According to the new art. 2055 § 1 of the Code of Civil Procedure, the purpose of the preparatory session is to resolve the dispute without the need to conduct further sessions, especially hearings. Therefore, the chairman is to urge the parties to reconcile and amicably end the matter. The presiding judge seeks amicable ways of resolving the dispute with the parties, supports them in formulating settlement proposals, indicates the methods and effects, including financial ones, of resolving the dispute. At a preparatory hearing, the court may also refer the parties to mediation (Civil Procedure Code Art. 2056 § 2). It is a time and place where the parties are initially familiar with the legal aspects of the conflict, including possible ways of resolving the dispute and the potential outcomes of one and no other way out of the conflict. This debate is not bound by formal rules of procedure [26].

In the course of such a conversation with the parties (proxies), learning about their attitude towards the dispute resolution method, the judge will determine the appropriate way to proceed in the case. First of all, the legislator placed emphasis on the mediation value of such a meeting with the conflicting parties (proxies). The judge should assume the role of a conciliator, trying to find and show to the parties those elements that may avert the conflict, while suppressing and extinguishing the sources of the conflict. It is about searching for ways of understanding between the parties, points of convergence and the resulting benefits for them. It is important to make the parties aware of the benefits of reconciliation and settlement of the dispute by way of a settlement. The preparatory meeting is to have a mediation value, the judge will assume the role of a conciliator, trying to find and show the parties those elements that may avert the conflict, while suppressing and extinguishing the sources of the conflict. It is about searching for ways of understanding between the parties, points of convergence and the resulting benefits. The activity of a judge, equipped with an attribute of the seriousness of the office held, is to be supplemented by the activities of mediators [38].

Initiating attempts to reconcile the parties is a challenge for the judges, requires special arbitrator skills and a certain change in the optics of looking at the goal of settling the case. It becomes important not only to make the parties aware of the benefits associated with an amicable settlement of the matter, but also to use appropriate negotiation techniques aimed at achieving the main result, i.e. avoiding a long process [37].

Additionally, a completely new institution has been introduced to the Code of Civil Procedure, which allows the chairman of the parties to instruct, if necessary, about the probable outcome of the case in the light of the statements and evidence submitted so far (Civil Procedure Code Art.156¹). Thanks to this new regulation, the parties can review their procedural position, submit possible new evidence motions, statements and raise new allegations, adequate to the probable outcome of the case declared by the court. The new regulation may contribute to the fact that

the parties should be more likely to conclude court settlements or agree to refer them to a mediator, knowing what the likely outcome of the case will be. This may especially apply to cases where the decision depends on the subjective opinion of the court, e.g. cases for compensation for infringement of personal rights. The introduced possibility may also lead to the claimant, informed of a possible negative decision (in whole or in part), withdrawing the claim and after the decision to discontinue the proceedings becomes final, he will bring another claim, hoping that the case will be assessed differently by a different court [38].

Nowadays, it is also very important to have the attorney of the party to the agreement, to correctly understand the client's interest in resolving the conflict, to understand the benefits of closing the case already at the preparatory meeting stage. The legislator definitely assigned the chairman the role of a mediator, a conciliator, and not a procedural body whose task is to resolve the case. The legislator assumed that in the course of the preparatory session, emphasis should be placed on the mediation aspect, and the judge should assume the role of a conciliator, trying to find and show to the parties those elements that could avert a conflict by suppressing and extinguishing it. [37].

Despite the fully justified assumptions of the amendment, the new institution in the form of a preparatory meeting may not bring the expected results. The introduction of the provisions on the preparatory session and the plan for the hearing can be called a breakthrough in the way the court's work with a civil case is organized. The provisions relating to this meeting also ensure that the activities are informal, providing both the court and the chairman with a fairly high „flexibility”. This breakthrough currently has only a legislative (normative) dimension, as it is difficult to predict that the introduction of these provisions will bring about a real revolution in the field of case management. The optional nature of the preparatory hearing may result in the courts rarely using this institution, choosing the current model of proceedings in which activities in the field of „preparation of the hearing” take place only during the information hearing at the first hearing [25]. The main factor discouraging the conduct of these sessions and the preparation of plans for hearings is the formalized procedure for changing the schedule of a hearing, and such a necessity is not uncommon in practice. The fear is all the greater as the perceptive abilities of the parties acting without a professional representative do not always allow them to understand the procedural law (e.g. regarding the deadlines for reporting facts and evidence). Such a party cannot be expected or required to report in a timely manner (prior to approval of the plan of a hearing) all statements and evidence [25]. Furthermore, the parties are charged with court fees if certain pieces of evidence are submitted after approval of the plan for the hearing. For the above reasons, it can be assumed that the new provisions of the procedure will not result in a quick improvement of court proceedings in civil cases [26].

Conclusions. Bearing in mind the presented research results, in view of the current difficult situation in the justice system, deepened in 2020 by the state

of a global pandemic, it is recommended that the legislator consider introducing obligatory mediation in all civil cases, the subject of which allows for an amicable conclusion of the proceedings. The costs of such mediation should be borne not by the parties but by the State Treasury. Only the parties' unwillingness to conclude a settlement after mediation would allow the case to be heard in court proceedings, which in turn should be associated with clear restrictions in the form of significantly higher costs for the parties and stricter procedural rigors, the non-application of which would have negative consequences for the parties [26].

As the experiences of other countries show, the introduction of compulsory mediation elements effects in the increase of their number. An example of a country where a first meeting with a mediator is compulsory is Slovenia. The use of mediation is voluntary there, but if the parties themselves do not come up with the initiative to refer the case to an amicable solution, the court may refer them to an obligatory information session, under financial sanction for absence. Also, if a party unjustifiably refuses to enter into mediation, a Slovenian court may impose additional financial penalties on it. A similar solution was adopted in Italy, with a number of incentives to participate in the briefing, not just sanctions for absence. Among other things, these are such solutions as: the introduction of a fixed fee for the first mediation meeting (EUR 40 per page) and no fees for the next, if any, no sanctions for withdrawing from mediation at the first meeting, tax benefits for the parties to the mediation [23].

The right to a fair trial is one of the fundamental rights of a democratic society. However, this right cannot be understood as providing courts with exclusive rights to resolve disputes. The effect of exclusivity is overloading the courts, increasing delays in resolving disputes and excessive costs. However, this does not translate into a higher quality of the justice system, which is why in civil society it is necessary to resort to dispute resolution at the lowest possible institutional level ensuring a quick finding of a solution acceptable to both parties [39, p. 23].

There is no doubt that the substantive court decisions are extremely rarely satisfied with all entities participating in the proceedings. On the other hand, a compromise worked out through mutual concessions has a much better chance of at least partially satisfying them than an authoritarian decision of the case by a court. It is also important that court settlements are generally respected voluntarily by their parties, without the necessity to enforce them [40, p. 796]. That is why it is popular to say that "a settlement is always better than a satisfactory judgment [41, p. 4].

The mere positive view of mediation by judges, mediators and proxies is not enough, statutory tools are necessary to order the conflicting parties to terminate the dispute. Such a solution would improve not only statistics, but through compulsory participation in mediation it would improve the perception of mediation by the parties as an effective tool for dispute resolution. The implementation of these solutions would have to be preceded by changes to the law [26]. Taking into account the current statistical data on the number of cases brought to courts and the number of settled cases, it is reasonable to promote mediation as a universal tool for resolving

and extinguishing conflicts. The „fashion for mediation and conflict suppression” should be promoted and popularized wherever it is possible.

One can positively assess the fact that it meets the difficult situation caused by the COVID-19 (SARS-CoV-2) pandemic in 2020, in which they found themselves, among others entrepreneurs. The National Network of Mediation Centers of Legal Advisers launched an initiative of the action called „Mediate, do not sue!”, Which was addressed to entrepreneurs who, due to the state of the epidemic, found themselves in a difficult position and unanimously need the help of professional mediators in resolving disputes between them.

To sum up, the increase in the number of cases referred to mediation may contribute to increasing the efficiency and strengthening the efficiency of the entire justice system.

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Посредник в гражданском процессе в Польше

В статье рассмотрены результаты исследования применения судебной медиации в гражданских делах. Эффективность медиации оценивается по количеству заключенных мировых соглашений или прекращенных судебных разбирательств, результатом которых стало мировое соглашение, заключенное в присутствии посредника. В ходе исследования выявлены причины слишком низкой по сравнению с ожидаемой популярности медиации как в обществе, так и среди профессионалов, связанных с медиацией. Положения о медиации используются судами уже более десяти лет, что позволяет сделать множество замечаний и выводов по их практическому применению.

Ключевые слова: судебная медиация; гражданский процесс; урегулирования споров; погашение конфликтов.

Рекомендоване цитування: Khmel'yazh K. S. Mediator in the Polish civil trial. *Проблеми законності*. 2021. Вип. 152. С. 163–175. doi: <https://doi.org/10.21564/2414-990X.152.226289>.

Suggested Citation: Khmel'yazh, K.S. (2021). Mediator in the Polish civil trial. *Problemy zakonnosti – Problems of Legality, issue 152, 163–175*. doi: <https://doi.org/10.21564/2414-990X.152.226289>.

Надійшла до редколегії 18.12.2020 р.