

Challenges of workload in Court Proceeding and ADR forms

Twinning of Lawyers
16 th October 2021

Hanna Woźniak (Poland)
Attorney – at – law

Alternative Dispute Resolution – Poland

There are three basic models of dispute resolution:

- ✓ **contract,**
- ✓ **mediation and**
- ✓ **arbitration.**

Arbitration Agreement

1. This arbitration agreement is made between
_____ at the address of _____

_____ at the address



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Arbitration

✓ regulations in Polish Civil Procedure's Code (articles from 1169 – 1217),

Disputes: Civil Cases; Unless a special provision provides otherwise, the parties may submit to an arbitration court for resolution:

- 1) disputes over property rights, with the exception of cases concerning alimony;*
- 2) disputes over non-pecuniary rights, if they may be the subject of a court agreement.*

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Arbitration

- ✓ Arbitration is more formal than Mediation and resembles a simplified version of a trial involving limited discovery and simplified rules of evidence. Prior to the dispute occurring, parties usually enter into a binding ***arbitration agreement*** or any other form of agreement with an ***arbitration clause***, that allows them to lay out major terms for the arbitration process.

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Arbitration

- ✓ The arbitration is headed and decided by an **arbitral panel** or a **single arbitrator**, depending on the agreement of the parties.
- ✓ Arbitrators do not have to be lawyers, parties can select arbitrators from other fields that they consider more suitable for the resolution of the dispute.

For example, parties can choose an arbitrator with an engineering background to arbitrate a construction dispute.

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Arbitration

- ✓ no license is required for Arbitrator,
- ✓ no Ethic Code, only internal regulation,
- ✓ voluntary,
- ✓ still not so popular method of dispute resolution in Poland, because of low awareness of the society about this kind of method and the difference between arbitration and litigation.



CONFLICT

MEDIATOR

CONFLICT

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Mediation

- ✓ less formal than Arbitration,
- ✓ forms: judicial or contractual Mediation,
- ✓ voluntary.

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Mediation

Disputes: Mediation in Poland may be applied in following issues:

- ✓ **Civil law** (including commercial, family and labor law) - regulations in Polish Civil Procedure's Code (articles from 1831 – 186),
- ✓ **Criminal Law** - may be conducted by institutions and persons authorized to conduct mediation proceedings entered on the list kept by the president of the regional court. Mediation is aimed at redressing the material and moral damage caused by the crime, and allows the aggrieved party to express their feelings, expectations and needs.

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Mediation

Disputes: Mediation in Poland may be applied in following issues:

- ✓ **Civil law** (including commercial, family and labor law) - regulations in Polish Civil Procedure's Code (articles from 183 (1) – 186),
- ✓ **Criminal Law** - may be conducted by institutions and persons authorized to conduct mediation proceedings entered on the list kept by the president of the regional court. Mediation is aimed at redressing the material and moral damage caused by the crime, and allows the aggrieved party to express their feelings, expectations and needs.

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Mediation

Disputes: Mediation in Poland may be applied in following issues:

- ✓ **Juvenile cases** may be conducted by institutions and persons authorized to conduct mediation proceedings entered on the list kept by the president of the regional court; mediation in juvenile cases can also be conducted by family diagnostic and consultation centers.

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Mediation

- ✓ **Mediator** may be a natural person with full legal capacity and public rights, judge cannot act as mediator, but this not apply to retired judges. Any specific education isn't required. No license is required.
- ✓ The president of the regional court keeps a **list of permanent mediators**. The rules are set out in the regulation of the Minister of Justice of 20 January 2016 on maintaining a list of permanent mediators. Within the scope of their statutory tasks, non-governmental organizations and universities may maintain lists of mediators and establish mediation centers.

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Mediation

Permanent mediators constitute a separate category of mediators. Who can become a permanent mediator:

- fulfill the conditions set out in Art. 183 (2) § 1 and 2 of the Act of November 17, 1964 - Code of Civil Procedure,
- has knowledge and skills in mediation,
- is over 26 years old,
- knows the Polish language,
- has not been legally convicted of an intentional crime or an intentional fiscal crime,
- was entered on the list of permanent mediators kept by the president of the regional court.

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Mediation

Time:

- when referring parties to mediation, the court sets its duration for up ***to three months***.
- at the joint request of the parties or for other important reasons, the time limit for mediation ***may be extended if it favors an amicable settlement of the case.***

The duration of mediation is not included in the duration of the court proceedings.

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Mediation

Cost:

✓ **Civil cases:** The **costs of mediation** (mediator's remuneration and reimbursement of expenses related to mediation) **charges the parties**, as a rule in equal parts, unless the parties agree on a different division of the accounts.



The costs of mediation conducted as a result of a court referral are specified in the *Regulation of the Minister of Justice of June 20, 2016. on the amount of remuneration and reimbursable expenses of a mediator in civil proceedings.*

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Mediation

Cost:

- ✓ **Criminal and juvenile cases:** *the costs are covered in full by the **State Treasury**.*
However, if the parties themselves contacted the mediator (without referring the court, prosecutor or police), they cover the costs of mediation.

A party to mediation proceedings may submit, on general terms, **an application for exemption from the costs** of mediation conducted as a result of a court referral.

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Mediation

Cost:

- ✓ In mediation proceedings from a court referral, *in non-property disputes* and *in disputes over property rights*, in which the value of the subject of the dispute cannot be determined, the mediator's remuneration is PLN 150 for the first mediation session, and for each subsequent session - **PLN 100- about 25 EURO** (in total not more than PLN 450). If the proceedings concern property rights, the mediator's remuneration is 1% of the value of the dispute (not less than PLN 150 and not more than PLN 2,000 for the entire mediation procedure).

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Mediation

Mediation agreement (does not apply to criminal and juvenile mediation) – a written agreement between the parties on the referral to mediation in the case of any dispute between them.

The court at the request of a party, immediately conducts **the procedure to approve the agreement concluded before the mediator**. If the agreement is enforceable by way of execution, the court approves it by giving it an **enforcement clause**, otherwise, the court approves the agreement by an order. The court refuses to grant an enforcement clause or to approve an agreement concluded before a mediator, in whole or in part, if the agreement is inconsistent with the law or the principles of social coexistence or aims to circumvent the law, and also when it is incomprehensible or contains contradictions.

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Mediation

- ✓ an agreement concluded before a mediator, after its approval by a court, has the legal force of an agreement concluded before a court.
- ✓ **no Ethic Code, only internal regulation,**
- ✓ **more popular method than Arbitration.**

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Thank you for your attention.