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**POLICY DEPARTMENT** **C**  
**CITIZENS' RIGHTS AND CONSTITUTIONAL AFFAIRS**



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# The development of mediation in Poland

NOTE





**DIRECTORATE GENERAL FOR INTERNAL POLICIES**  
**POLICY DEPARTMENT C: CITIZENS' RIGHTS AND**  
**CONSTITUTIONAL AFFAIRS**

**LEGAL AFFAIRS**

# **The development of mediation in Poland**

## **NOTE**

### **ABSTRACT**

This paper analyses the current status of mediation in civil and commercial matters in Poland, taking into account a variety of legal, psychological and sociological factors. In particular, it focuses on the most important factors which, in the author's opinion, have a negative effect on the development of mediation in Poland. These factors include: negative socialisation, non-existence of authority figures, low level of public confidence and the lack of a conscious need to use mediation.

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## EXECUTIVE SUMMARY

Mediation (derived from the Latin word "mediare" – to be in the middle) was introduced into the Polish legal system in July 2005 by an amendment to the Code of Civil Procedure and some other acts (mediation in criminal matters was introduced by the codifications of 1997, which became effective on 1 September 1998). Thus Poland fulfilled the requirements set out in EU Directive 2008/52/EC on certain aspects of mediation in civil and commercial matters well before the date of compliance (21 May 2011) specified in Article 12, by which the Member States are obliged to bring it into force.

On the whole, there has been an encouraging increase in the number of cases resolved by mediation. However, several thousand cases still represent a tiny proportion of all cases adjudicated by courts at all levels. Only in the first half of 2010 over 6.4 million cases were filed with the courts, including over 500 thousand cases in business matters. As clearly follows from the above data, the use of mediation as an alternative to litigation through common courts of law is still very rare in Poland. The situation in this regard is especially complicated in business and family matters.

This paper focuses on the most important factors which, in the author's opinion, have a negative effect on the development of mediation in Poland. These factors include: negative socialisation, non-existence of authority figures, low level of public confidence and the lack of a conscious need to use mediation.

### ***Incorrect socialization process***

One of the most important factors that have a decisive effect on the citizens' willingness to use extrajudicial, alternative ways of resolving conflicts is the process of socialisation. In short, it can be defined as a *„process in which an individual acquires a system of values, norms and behavioural patterns which are appropriate to individuals as members of a specific community and which are accepted by most of its members.“*

As demonstrated by the author, the socialisation process in Poland is affected by domestic violence, non-existence of educational measures that foster acceptance for conciliatory forms of dispute settlement and a common belief that conflict is the best way to obtain compensation for the wrongs suffered, as well as other barriers of psychological nature.

The most important determinants of the socialisation process that have an effect on acceptance of mediation include:

- family model (partnership, patriarchal, matriarchal),
- family conflicts and their aggravation,
- conflict-solving methods,
- a value system acquired during the socialisation process,
- behavioural pattern.

This paper describes an ideal socialisation model which, in the author's opinion, guarantees a high level of acceptance for mediation.

### ***Non-existence of authority figures***

One of the key factors that determine the effectiveness of mediation is, on the one hand, the mediator's ability to serve as "an authority" for the disputants and, on the other hand, the disputants' willingness to accept the authority of others (including the authority of the mediator).

A mediator must establish and uphold his or her authority if mediation is to be successful. The author demonstrates that Poles are unlikely to accept authority figures other than those belonging to the closest family. Such a cultural pattern makes a mediator's work difficult, because most people tend to reject the authority of outsiders.

Anyone who decides to use mediation must subject himself or herself to the authority of a person with a highly informal status. Unlike the mediator, the judge is looked upon by the parties as a formally recognized authority.

Another important thing is the status of a mediation procedure, which is inferior to the status of proceedings before a common court of law. Taking into account the results of the above studies and the general perception of mediators and mediation, it can be concluded that role models and authority figures have a major influence on public acceptance of mediation.

### ***Violence***

The author refers to studies (CBOS 2009) on the prevalence of violence and aggression among Poles, proving that it is one of the most important factors that determine the correct socialisation process.

In total, 23% of Polish adults report having been victims to a form of violence (at home, at work or in public places). Conflicts among adults in Poland are frequent and common. Numerous studies confirm that they are not resolved by consensual means, because Polish adults tend to solve contentious issues by using (direct or indirect) violence. Consequently, they can see no need to use mediation, because it is a concept which is psychologically and mentally alien to them.

### ***Lack of need to use mediation***

Studies reveal other patterns, too. For example, violence, aggression and unfavourable attitudes towards mediatory forms of dispute settlement are more prevalent among people with lower levels of educational attainment (primary, pre-elementary or basic vocational education) and with an income below the national average, especially in less-urbanized areas (villages and small towns). The author believes that mediation is subject to the laws elucidated by Maslow in his theory.

It can be assumed that the Polish society satisfies its biological needs. The need to use mediation belongs to higher needs - such a need emerges when an individual has received the amount of information which is necessary to realize that a given need exists. It is a need which must be justified (as something seemingly irrational) by psychological and emotional factors. The author identifies factors which contribute to the non-use of mediation, pointing out that if the knowledge about the benefits of mediation becomes available to the whole society and not only to a few specialists, it will result in a more favourable climate, which will lead to greater public awareness of the need to use mediation. Such a climate preconditions the success of this extrajudicial form of settling disputes. In comparison with proceedings before a court, mediation brings a lot of advantages, both tangible (time, money) and intangible (stress, emotions) ones.

### ***Proposed solutions:***

In the final part of the paper, the author proposes: provision of training for judges to make them familiar with the principles of mediation, introduction of a statutory obligation to inform disputants about mediation, ensuring the availability of special rooms in courts in which mediation proceedings will be held, propagation of mediation by means of social

marketing techniques, as well as the inclusion of mediation-related contents in the curricula of secondary schools.

Finally, the author mentions another important development: this year a campaign is to be carried out to promote business mediation. It will be the first such campaign in Poland.

## **1. Introduction**

This paper analyses the current status of mediation in civil and commercial matters in Poland, taking into account a variety of legal, psychological and sociological factors. The findings presented in this paper are derived from studies carried out by research institutes and the Ministry of Justice or are based on the author's own experience and observations made while pursuing the profession of a mediator.

The aim of the paper is to identify barriers that impede the development of mediation in Poland..

## **2. Polish Legislation on Mediation and a comparison with the EU Mediation Directive**

In civil matters, mediation (derived from the Latin word *mediare* – to be in the middle) was introduced into the Polish legal system in July 2005 by an amendment to the Code of Civil Procedure and some other acts. Thus Poland fulfilled the requirements set out in EU Directive 2008/52/EC on certain aspects of mediation in civil and commercial matters well before the date of compliance (21 May 2011) specified in Article 12, by which the Member States are obliged to bring it into force.

The Code of Civil Procedure (KPC) has been amended in line with the main objectives of EU Directive 2008/52/EC: to set out the method and satisfy the need for introducing mediation as a separate institution in procedural law. This in turn is expected to reduce the number of court proceedings and improve legal culture in the Member States, whilst also contributing to the development of public discourse and exchange of views on the basis of conciliatory principles, rather than on the basis of a judicial process.

The above-mentioned KPC and the EU Directive cover civil and commercial matters and are similar in terms of their scope. However, there are some differences between them, too. Unlike the EU Directive, in which mediation is clearly defined, the KPC does not define mediation, but only describes its basic elements and principles. The KPC allows the court to refer the case to mediation only once, whereas the Directive states that the court may invite the parties to settle their dispute by mediation, but it may not force them to do it.

The Directive recommends introducing principles and quality standards relating to the profession of mediator. Polish legislation, however, contains no provisions to that effect. It does not introduce appropriate formal criteria for mediators, merely stating that a mediator must be a person with full legal capacity and enjoying full civil rights.

The KPC contains clear provisions relating to the confidentiality of the mediation process, which are nonetheless fairly brief in comparison with those contained in the Directive. The Polish legislator obliges the mediator to keep secret all facts that are disclosed to him or her in connection with the mediation procedure and prevents the mediator from being compelled to give evidence in judicial proceedings. The Directive contains more detailed provisions in this regard, preventing not only the mediator, but also other individuals involved in the administration of the mediation process from being compelled to give evidence in judicial proceedings (apart from a few expressly enumerated exceptions).

### **3. The use of mediation in Poland**

Useful insights can be gained by comparing data on the number of cases referred to mediation (all these data come from the Ministry of Justice and relate exclusively to court mediation. No statistical data are currently available on out-of-court mediation in Poland). It is worth remembering that in 2010 the Polish courts received more than 13 million cases (more than 1.025.000 economic cases, 750.000 civil cases and 1.315.000 family cases<sup>1</sup>).

The number of cases in commercial matters were as follows:

2006 – 256  
2007 – 258  
2008 – 210  
2009 – 540

In family matters:

2006 – 127  
2007 – 155  
2008 – 216  
2009 – 340  
In the first half of 2010 – 204

In civil matters (both in the district and regional courts):

2006 – 1448  
2007 – 1399  
2008 – 1455  
2009 – 1842

The above numbers include out-of-court procedures (averaging 20-40 mediations a year) 1117 cases were referred to mediation in the first half of 2010.

On the whole, there has been an encouraging increase in the number of cases resolved by mediation. However, several thousand cases still represent a tiny proportion of all cases adjudicated by courts at all levels. Only in the first half of 2010 over 6.4 million cases were filed with the courts, including over 500 thousand cases in business matters.

As clearly follows from the above data, the use of mediation as an alternative to litigation through common courts of law is still very rare in Poland.

### **4. Factors having a negative effect on the development of mediation in Poland**

This paper focuses on the most important factors, which have a negative effect on the development of mediation in Poland. These factors include: negative socialisation, non-existence of authority figures, low level of public confidence and the lack of a conscious need to use mediation.

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<sup>1</sup> all data from <http://bip.ms.gov.pl/pl/dzialalnosc/statystyki/statystyki-2010/>

#### **4.1. The effect of the socialisation process on attitudes to mediation**

One of the most important factors that have a decisive effect on the citizens' willingness to use extrajudicial, alternative ways of resolving conflicts is the process of socialisation. In short, it can be defined as a „*process in which an individual acquires a system of values, norms and behavioural patterns which are appropriate to individuals as members of a specific community and which are accepted by most of its members*” – (own definition).

Both primary and secondary stages of socialisation have an effect on public acceptance of conciliatory behaviour. The most important determinants of the socialisation process that have an effect on acceptance of mediation include:

- family model (partnership, patriarchal, matriarchal),
- family conflicts and their aggravation,
- conflict-solving methods,
- a value system acquired during the socialisation process,
- behavioural pattern.

First, it is useful to describe an ideal socialisation model. In the author's opinion, an ideal model would go in hand with a high level of acceptance for mediation. In such a model, an individual would grow up in a family which handles all family matters in a cooperative manner, both in relations between parents (carers) themselves and between parents and children. It would be a family equipped with conflict management skills and capable of resolving conflicts by mediation (dialogue, conciliation). The value system adhered to by above-described family would be based on honesty, disinterestedness, mutual trust and respect for the dignity and property of others.

The behavioural pattern, on the other hand, would entail active involvement in social, political and civic life. This means that an individual would be disinterestedly involved in helping others and interested in the problems of the local communities in which he or she lives. In addition, he or she would take an active part in the political and social life (active electoral rights) of his or her country. An individual (citizen) fulfilling the above criteria would be more favourably inclined towards the use of non-judicial (amicable) forms of resolving disputes.

Unfortunately, an ideal model does not work in practice in any society. The reality departs from the ideal to a smaller or greater degree. The above-described ideal model contrasts sharply with Polish reality, which translates itself into a low level of public acceptance of the mediation process.

In 2009, the Public Opinion Research Centre (CBOS)<sup>2</sup> carried out a study evaluating the prevalence of violence and aggression among Poles. The study suggests that it is one of the most important factors that determine the correct socialisation process. In total, 23% of Polish adults report having been victims to a form of violence (at home, at work or in public places). Out of the above number, more men than women report having experienced aggressive behaviour. Six percent of all adults (mostly women) are affected by domestic violence. 33% of women declare that they know at least one woman who is beaten by her husband during conflict situations. Most adults (68%) admit that conflicts, arguments and rows do occur in their homes. Out of this number, 19% quarrel several times a month or more. Most often, they argue about financial matters, for example, about having no money or about what to spend it on. Respondents experience the following forms of aggression and violence:

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<sup>2</sup> "Violence and conflicts at home", a study of the Public Opinion Research Centre (CBOS), 2009.

- 10% of adults living in stable relationships have been called names or shouted at or verbally abused by their partners,
- 7% have had limited contacts with family and friends,
- 6% have been humiliated and ridiculed,
- 6% have been threatened by their partners,
- 4% have been blackmailed,
- 4% experience milder forms of physical violence, such as pulling or pushing (4%).

In the last 11 years, the level of physical violence against minors in the family has been steadily falling in Poland. At present, 69% of parents (carers) claim that they do not use any forms of corporal punishment of children. However, one can suspect that a certain number of respondents use direct coercion against their children even though they deny doing so in surveys. Due to the universal social norm, parental violence against offspring is socially disapproved. For this reason, it is difficult to provide reliable data on the actual number of parents who use violence against their children. Nonetheless, this number is probably higher than the one obtained in the studies (31%).

There is an important correlation between the above-described phenomenon and the public's attitudes towards conciliatory forms of resolving disputes. In short, its effect on public acceptance of mediation as a form of resolving disputes can be presented as:

- a) Acceptance of mediation by adults,
- b) Acceptance of mediation by children (future adults).

Data suggest that most adults still prefer to solve their conflicts in an active way (by physical and aggressive means) and very rarely choose a conciliatory method of resolving disputes. In the author's opinion, one of the main barriers to the acceptance of mediatory forms of dispute settlement in Poland stems from everyday behaviour patterns. Even the victim itself perceives conflict as the best way to obtain compensation for the wrongs suffered.

In business mediation, such attitudes are almost universal. In contrast to criminal and family matters, in which mediation is used more and more often, there has been a negligible increase in the number of business-related cases which are resolved by mediation. This may be caused by psychological barriers. In family matters, most disputants do not want their private, intimate matters to be discussed in public (Catholic child-raising model). Instead, they prefer to resolve their disputes as fast as possible and with minimum stress. This is especially true about divorce-related disputes (divorce is rated as the second most stressful life event after the death of a loved one). However, in business matters most of the above factors are of lesser or no importance. Disputants in business matters do not have to be afraid of being victimized again or coming into contact with the perpetrator (or the alleged perpetrator), while intimate matters are of minor importance.

On the other hand, there are other psychological factors that must be taken into account, such as the desire to revenge oneself and to triumph over the opponent, to satisfy one's ambitions, to win in a business confrontation, to deceive a competitor, to reassert one's authority in a business community, to destroy a competitor, to gain a market advantage, etc. Sometimes it manifests itself as an atavistic desire to be the winner and to revenge oneself. It is because rivalry on the battlefield has given way (after years of peace) to rivalry in business, which can be compared to prehistoric tribal competition and the struggle for survival (as different socio-biology studies suggest).

Other valuable insights can be gained from studies on the preferred business management model in Poland<sup>3</sup>:

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<sup>3</sup> The openness of Poles for cooperation, Public Opinion Research Centre (CBOS) March 2010.

- 39% of all subjects participating in these studies claim that they do not know anyone (except their own family of course) with whom they might do business together.
- Over the last six years the number of people who declare their readiness to take up business cooperation has decreased by 8 percentage points, falling to the same level as in 2002.

This can be attributed to the common mistrust of one's business partners and the fear of "outsiders". Such an attitude fosters aggressive, rather than conciliatory, behaviour in this professional group.

Conflicts among Polish adults are frequent and common. Numerous studies confirm that they are not resolved by consensual means, because adults in Poland tend to solve contentious issues by using (direct or indirect) violence. Consequently, they can see no need to use mediation, because it is a concept which is psychologically and mentally alien to them.

To foster favourable attitudes towards dispute settlement by mediation and to enhance public confidence, it is essential to promote widespread involvement in altruistic forms of interaction with the external environment (known in sociology as the macro environment). Such interaction can take the form of voluntary service, which is extremely popular on the North American continent and in some EU countries. It enables individuals to consciously engage in forms of external participation which are beneficial for the whole society. In Poland, 6% of adults report having worked as volunteers<sup>4</sup>. However, the above number comprises those who engaged in voluntary activities on an ad hoc, short-term or incidental basis.

The socialisation of the young generation is unlikely to bring a fast and significant improvement in this respect. As evidenced by the above-mentioned studies, children do not have any positive behavioural models for resolving conflict situations. A young person who is brought up in a community which prefers "ad hoc" and aggressive methods of settling disputes will tend to use the same methods when he or she grows up. The only cause for optimism is the decreasing number of adults who use violence against children. Even though, as has been pointed out earlier, this decrease is mostly attributable to the social norm which forbids the use of violence against minors, it still represents a significant progress. Due to this universal social norm, there is no acceptance, verbal or otherwise, of the use of violence.

Studies reveal other patterns, too. For example, violence, aggression and unfavourable attitudes towards mediatory forms of dispute settlement are more prevalent among people with lower levels of educational attainment (primary, pre-elementary or basic vocational education) and with an income below the national average, especially in less-urbanized areas (villages and small towns). Poorly educated individuals are less successful in overcoming the difficulties of everyday life. Not being psychologically equipped to cope with complicated problems, they tend to resort to aggression and violence. Conciliation and mediation are an alien and incomprehensible concept to them.

Fortunately, there has been an increase in the number of people with higher education (with a bachelor's degree or a master's degree). Today, there are 30 thousand doctoral students in Poland - twenty times more than in 1989. The standard of living has been steadily improving, too. This means that there are fewer people with a bad financial situation, which is the main conflict-triggering factor, and as such it gives rise to all forms of violence and aggression.

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<sup>4</sup>Overview of social, sport and cultural activities of Poles, CBOS, February 2010.

The socialisation process also has an effect on attitudes of entrepreneurs towards the use of mediation in solving business-related disputes. In statistical terms, entrepreneurs constitute an almost ideal sample, which is representative of the public at large. Therefore, their socialisation process and its determinants can be expected to be the same as in the case of other members of the society. In addition, the Polish middle class has been developing for only 20 years. This means that entrepreneurs cannot rely on the life and professional experience of the previous generations. A vast majority of them come from social groups with high rates of negative socialisation. In consequence, mediation is an incomprehensible concept to them.

#### ***4.2. The lack of social approval for authority figures as an obstacle to accessing mediation***

Another important factor is the attitude towards authority figures. One of the key factors that determine the effectiveness of mediation is, on the one hand, the mediator's ability to serve as "an authority" for the disputants and, on the other hand, the disputants' willingness to accept the authority of others (including the authority of the mediator). A mediator must establish and uphold his or her authority if mediation is to be successful. Given the scarce use of mediation in Poland, it is not possible to rely on any behavioural study on this subject.

Some important insights can be gained from nationwide studies examining the issue of authority figures<sup>5</sup> in general. Their results can be summarized as follows:

- 74% of respondents agree with the statement that it is important for people to have role models in their lives,
- 21% of respondents disagree with the above statement,
- 48% admit that there is or has been a role model or an authority figure who has exerted a special influence on their lives,
- 44% claim that there have been no such people in their lives,
- 57% do not think that there are any public figures who can be considered an authority,
- 34% report that they have or have had such a role model.

The following answers were obtained to some more specific questions:

- All respondents said that there has been a person in their lives whom they treated as a role model,
- As many as 52% of respondents looked up to their parents as role models,
- 17% mentioned John Paul II as the person who had exerted an exceptional direct influence on their lives,
- 6% looked up to their grandparents as their role models,
- 6% looked up to their spouses as their role models,
- 5% named teachers, professors and educators as their role models,
- Lech Wałęsa was named as an authority figure by 5% of respondents,
- 5% said that they looked up to Józef Piłsudski (creator of the independent Polish state in 1918) as their role model.

Only a few respondents mentioned a politician or a historical figure other than the ones indicated above. An equally small number of respondents indicated wider family members, acquaintances, friends, superiors at work, siblings or children as their role models. It should be remembered, however, that these answers are mostly declarative. They have little in common with the actual choices made in everyday life. Most respondents named John Paul

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<sup>5</sup> Role models and authority figures of Poles, CBOS October 2009.

II as their role model, yet very few of them follow his example in any consistent manner. Role models are not always imitated. One of the most important findings of this study is that very few Poles are ready to accept authorities from outside the closest family circle. Such a cultural pattern makes a mediator's work difficult, because most people tend to reject the authority of outsiders.

In addition, anyone who decides to use mediation must subject himself or herself to the authority of a person with a highly informal status. Unlike the judge (representative of judicial authorities), the mediator is not invested in any formal authority associated with his or her function. Such authority is extremely important in the judicial system. In Poland, the status of a mediator is unknown and misunderstood by the general public. For this reason, an individual (an entrepreneur) may experience a cognitive dissonance associated with this new and unfamiliar form of resolving disputes. He or she may be convinced that mediation does not guarantee a satisfactory outcome. It may be interesting to point out that as many as 46% of respondents did not know the correct answer to the following question: "Mediation can be described as

- a) An extra-judicial way of dispute resolution,
- b) Presentation of a court case through the media
- c) A dispute fought between the parties,
- d) Hard to say".

Unlike the mediator, the judge is looked upon by the parties as a formally recognized authority. Another important thing is the status of a mediation procedure, which is inferior to the status of proceedings before a common court of law. Many Poles feel that it is of lower value. Furthermore, the outcome of a mediation procedure may be psychologically less satisfying to the aggrieved party (or both parties) than the punishment imposed by the court.

Taking into account the results of the above studies<sup>6</sup> and the general perception of mediators and mediation, it can be concluded that role models and authority figures have a major influence on public acceptance of mediation. The above-described situation will not improve unless there is a significant increase in the educational level of the society. Moreover, the society must develop a more open attitude towards authority figures from outside the closest family circle (i.e. from an individual's immediate environment).

### ***4.3. The level of social confidence and its effect on public acceptance of mediation***

The next important issue is trust, especially trust in the system of justice. In Poland, it is an issue which constitutes an important barrier to the development of extrajudicial forms of resolving disputes. Studies suggest that Poles belong to the most mistrustful societies in the European Union<sup>7</sup>.

- 72% of respondents prefer to be cautious, rather than open, in their contacts with other people,
- 80% have complete trust in their parents, children and spouses,
- 22% declare that they have complete trust in their acquaintances (most respondents declare lower levels of trust; 68% say that they usually trust their acquaintances),
- 36% have complete trust in wider family members (51% usually trust them),
- 18% have complete trust in people with whom they work on a daily basis (66% usually trust them),

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<sup>6</sup> Role models and authority figures of Poles, CBOS October 2009.

<sup>7</sup> Cooperative attitudes of Poles, CBOS March 2010

- 17% have complete trust in their neighbours (57% usually trust neighbours),
- 26% of Poles say that most people can be trusted,
- 34% of Poles declare that, on the whole, they trust strangers whom they encounter every day (30% do not really trust strangers),
- 46% do not trust strangers (7% do not trust them at all).
- 42% of respondents think that it is unwise to trust one's business partners too much,
- 34% think that it usually pays to have trust in one's business partners.

The above studies lead to the conclusion that an open attitude towards other people and trust in the institutional sphere correlate with respondents' financial status and the level of education. Similar correlations were discovered in connection with the socialisation process: the higher the level of education and financial status of respondents, the more likely they are to trust strangers, business partners and other people.

These studies also reveal a correlation between social involvement and the level of trust, which has already been identified as an important determinant of the socialisation process. People who provided assistance for those in need and engaged in voluntary activities or worked for the local community had more trust in their families, friends, colleagues and welfare workers than those who never engaged in such activities and they more often trusted philanthropic institutions and charities (a study conducted by the Public Opinion Research Centre (CBOS) between 7 and 13 January 2010).

It can be concluded that a distrustful society is not likely to accept mediation as a primary form of resolving disputes. It is associated both with mistrust of the "new" and "unknown" and with mistrust of the other party to the proceedings. In the case of business-related matters, this mistrust is accompanied by stereotypes, which are not conducive to successful business transactions. The relevant data also reveal a dogmatic, inborn and atavistic conviction about dishonesty of business partners (other than the ones from the closest family, of course). Such a conviction has a negative effect on the entire business sector.

Initially, a mediator as an "outsider" will be treated with mistrust. Of course, he or she may win the disputants' trust, providing that the mediation procedure is conducted in an efficient and impartial manner. Nonetheless it constitutes a major barrier that has to be overcome at the start of this process. It is a barrier which impacts negatively on decisions to use mediation instead of having recourse to judicial proceedings. This tendency is especially prevalent among respondents who prefer to be cautious, rather than too open, in their contacts with other people.

To obtain a full picture of mistrust-related barriers to the fast development of mediation in Poland, one should also take into account the results of studies on the level of trust towards the system of justice. Negative opinions about courts prevail over positive ones, whereas approval and disapproval for the prosecution office was voiced by an almost equal number of respondents. At present, 33% of those interviewed have favourable opinions about the work of prosecutors, whereas 36% are dissatisfied with it. Less than one-third of respondents have favourable opinions about the courts (31%), while another 45% are highly critical about them.

All in all, the lack of trust represents one of the most important barriers to the development of mediation in Poland, which is associated with the earlier described phenomena. It is caused by high rates of negative socialisation, improper role of the family, school and the macro-environment of an individual. Media also contribute to this situation, fostering negative social attitudes and exaggerating the significance of pathology.

## 5. Is there a need to use mediation among Poles?

There is one more question to answer: do Poles feel the need to use mediation? In this case, the need is understood as a psychological category. As Maslow demonstrated in his research, an individual must first become aware of a need before he can start thinking about external (material) and internal (transcendent) resources that are available to him (Motivation and Personality – Abraham Maslow, 1954).

Generally speaking, an individual satisfies the most fundamental physiological needs first (food, clothes, a roof over one's head). Then, he satisfies all other needs, up to the transcendent level (higher spiritual needs). In order to use them properly, an individual must be equipped with knowledge that will make him aware that a specific need exists. Nowadays, this phenomenon is often taken into account in different marketing strategies in order to generate new needs (usually associated with high-tech) which are satisfied by purchase decisions.

Mediation is also subject to the laws elucidated by Maslow in his theory. It can be assumed that the Polish society satisfies its biological needs. Of course, this happens on different levels, but homelessness and malnutrition rates are low. The need to use mediation belongs to higher needs - such a need emerges when an individual has received the amount of information which is necessary to realize that a given need exists. It is a need which must be justified (as something seemingly irrational) by psychological and emotional factors. Speaking in marketing terms, a prospective buyer must see a tangible benefit associated with the "purchase" of mediation. And this is one of the most fundamental problems encountered by the Polish mediation today.

The level of public knowledge about mediation is extremely low. Most citizens are not even aware that disputes can be resolved in this way. If people do not know that something exists, they will never use it.

The Polish society does not use mediation, because it is unaware of its existence. This is caused by the following factors:

- Educational institutions do not teach about mediation,
- The State authorities are many years behind in promoting the concept of mediation (although the Ministry of Justice is implementing an ambitious and comprehensive program this year which promotes mediation among the public),
- Judges fail to inform disputants of the possibility of resolving disputes by mediation (with the exception of cases in family matters, in which it is obligatory),
- Judges are mistrustful of mediation as an alternative form of resolving disputes.

If all these problems are properly solved, one can expect that the knowledge of the benefits of mediation will no longer be a secret knowledge which is only available to a few specialists. This should result in a more favourable climate, which will lead to greater public awareness of the need to use mediation. Such a climate preconditions the success of this extrajudicial form of settling disputes. In comparison with proceedings before a court, mediation brings a lot of advantages, both tangible (time, money) and intangible (stress, emotions) ones.

## 6. Concluding remarks

In conclusion, there is a number of actions that should be taken in the nearest future to enhance the status of mediation in Poland. The proposed actions are of practical nature and do not require any fundamental systemic or legislative changes.

First of all, they include:

1. Provision of training for judges to make them familiar with the principles of mediation,
2. Judges should be required by law to inform disputants of the possibility of having recourse to mediation,
3. Ensuring the availability of special rooms in courts in which mediation proceedings will be held,
4. Propagation of mediation by means of social marketing techniques,
5. Inclusion of mediation-related contents in the curricula of secondary schools.

Recently, the Ministry of Justice, together with the self-governing bodies of law professionals and non-governmental organizations, has launched a vigorous campaign to promote mediation.

It is carried out in several ways:

1. Through an awareness-raising campaign, mostly in the form of posters, leaflets and brochures.
2. In the form of training on alternative ways of solving conflicts and disputes which is addressed to law practitioners, including employees of courts who deal with disputants in the initial stages of the legal process.
3. Through a social campaign launched under the European Social Fund Priority V "Good Governance" of the Operational Programme "Human Capital" 2007-2013 – "Facilitating access to justice".

Finally, one should mention another important development: this year a campaign is to be carried out to promote business mediation. It will be the first such campaign in Poland. To instil a mediation-based conflict resolution culture in Poland, it is necessary both to encourage negotiations as an alternative to court disputes and to promote mediation understood as mediation management.



DIRECTORATE-GENERAL FOR INTERNAL POLICIES

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