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Analysis of the Causes of Conflicts at Universities and Alternative Methods of Resolving Them. Part I: Mediation in Academic Disputes*

Analiza przyczyn konfliktów na uczelniach wyższych i alternatywne sposoby ich rozwiązywania. Część I. Mediacja w sporach akademickich

ABSTRACT

This article consists of two parts. The first part analyzes the causes of an increasing number of disputes at universities, resulting both from external factors related to the crises of the 21st century and from internal factors, i.e. the nature of universities, the increasing complexity of problems arising at universities and the changing role of universities in society. One of the reasons for the increased number of conflicts is the treatment of universities as service providers, which is a result of a change in understanding the role of universities. Students understand their role as consumers and this change alone causes an increased number of formal proceedings against universities. In response to this trend, universities in many countries are introducing or considering alternative dispute resolution (ADR) methods, which are less expensive and faster alternatives to litigation or disciplinary proceedings, and include an important element of universities' mission of educating students in a spirit of respect and tolerance for the other party, and also choose methods in which the parties have the opportunity to influence the resolution of the dispute. The article analyzes mediation which is the most frequently used method of ADR in different countries in academic disputes. Although mediation, according to the analysis carried out in the article, perfectly fits into the idea of an autonomous and independent university, it is thus far widely used only in some countries. The analysis of the application of mediation in certain countries may be an important reflection on the more widespread introduction of this method at universities in other countries partiuculary because mediation is not confined to one legal

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system. In the second part of the study, the author analyzes the use of court proceedings in resolving academic disputes, the institution of an academic ombudsman, as well as mixed and adjudicatory methods of solving conflicts in higher education.

Keywords: dispute resolution; ADR; academic disputes; mediation; academic ombudsman

INTRODUCTION

Today, universities are facing many problems and challenges resulting from both the change in expectations concerning their traditional role and the necessity to adapt to global, local, social, and political crises that have emerged in the 21st century. Regardless of the recent crises that contribute to the emergence of conflicts at universities, they are large and complex organizations that have traditionally been characterized by various conflicts, e.g. resulting from the existence of separate interest groups such as students, academics and administrative staff or academic independence and freedom resulting in individualistic approach to decision making.

This article is an attempt to analyze and explain the sources of the increasing number of conflicts at universities around the world, the application of non-traditional mechanisms for resolving the disputes arising therefrom, and evaluation of these mechanisms from the point of view of the role of universities in the community.

Alternative dispute resolution (ADR) methods such as mediation, arbitration, med-arb or arb-med or ombudsman, regardless of the legal system are nowadays quite often applied in family, commercial or local disputes. Despite that trend, ADR methods at universities have not found wide and common application worldwide. In the 1970s in some countries such as Canada, the United States, Australia, New Zealand and Spain the universities introduced mediation or the institution of the ombudsman in a systemic way. In others, so far these methods are used rarely and randomly. Although ADR methods are not everywhere built into the university dispute resolution system, it is expected that due to the benefits they bring, as well as the growing costs and numbers of litigation or their threats they will be used more often in the near future.

Due to the wide range of topics, the analysis of alternative dispute resolution methods was divided into two parts. This article is primarily devoted to the analysis of the causes related to the challenges faced by universities in different countries, which cause an increased number of conflicts of a complex nature. Mediation in academic disputes which is both a self-contained mechanism of dispute resolution and an instrument used by an academic ombudsman, was also the main part of the analysis in this article. The second part of the study will discuss the application of court proceedings in academic disputes, the institution of an academic ombudsman and other mixed and adjudicative methods of solving disputes in higher education.

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THE EXTERNAL SOURCES OF CONFLICTS AT THE UNIVERSITIES

1. Recent crisis – pandemic

In a global world full of tensions, universities face many challenges for global and local reasons. The pandemic that engulfed the world at the beginning of 2020 is an example of a challenge that was not on the map a few months ago. Universities and other institutions were not prepared for this kind of crisis. In April 2020, more than 175 countries closed their universities and 220 million students, representing 13% of all students in the world, had to complete or suspend their education overnight.[1] The main response to these events was usually *ad hoc*, regardless of financial capabilities, ranking, region or country where the university is located.[2] The pandemic is predicted to have a significant, long-term impact on the financial capacity of universities, will cause problems with staff and teaching quality, and adversely affect the number of students. It will also increase the problems related to the infrastructure ensuring social distancing.[3]

2. Globalization and financial problems

One of the characteristics of modern universities worldwide is competition. For example, in many countries, led by the United States, the cost of university education has risen faster than inflation over the last decade, and student debt has reached record levels. In the United States, tuition fees have increased by 34%, and students, who more often see themselves as consumers of educational services and believe that education is not worth such high costs.[4] In turn, in Asia and the Middle East, the political situation and good economic conditions are conducive to increasing investment in the education sector. In China, the government has invested more than $33 billion in higher education and has set a goal, launched in 2015 by the World Class Program, for Chinese universities to be ranked among the top 15 universities in major world rankings by 2030.[5]

The general global trend over the last twenty years has been also an increase in the number of students. This development, which began after World War II,

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[1] *The COVID-19 Crisis Response: Supporting tertiary education for continuity, adaptation, and innovation*, http://pubdocs.worldbank.org/en/621991586463915490/WB-Tertiary-Ed-and-Covid-19-Crisis-for-public-use-April-9.pdf [access: 20.12.2020].

[2] *Ibidem*, p. 2.

[3] *Ibidem*.

[4] *Seven global key challenges faced by universities and their leadership teams*, www2.deloitte.com/uk/en/pages/public-sector/articles/seven-key-challenges-faced-by-universities.html [access: 20.12.2020].

[5] *Ibidem*.

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is associated with the concept of egalitarianism and the opportunities for more widespread academic education. The democratization of academic education is recognized as a positive trend, but it entails problems that can cause conflicts.[6] The number of students in the world has grown significantly over the last decades. Before the pandemic, there were about 150 million students and it is expected that this number will increase to 260 million by 2025.[7]

In addition, one of the challenges faced by universities is the growing population of students from foreign countries. University education and diploma are an important resource in the global economy, as it gives more opportunities to find better jobs and higher earnings, and is associated with a certain status and lifestyle.[8] On the one hand, the universality of education has mobilized universities to introduce new technologies, modern means of communication and better student support. On the other hand, there are negative aspects of the growing number of students, e.g. increased anonymity of students at universities, lack of contacts between students and faculty and less involvement of the faculty in mentoring and teaching. The growth in the number of students itself also leads to the necessity to increase financial outlays in order to provide an appropriate number of faculty, provide training for academic teachers and administration and ensure appropriate infrastructure.[9]

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[6] D. Kontowski, *Umasowienie czy demokratyzacja? Rosnąca liczba studentów w Polsce a tradycja liberal arts education*, „TH!NK" 2013, no. 4, pp. 69–82.

[7] *Challenge-driven universities to solve global problems*, www.nesta.org.uk/feature/10-predictions-2016/challenge-driven-universities-to-solve-global-problems [access: 20.12.2020].

[8] *Ibidem*.

[9] J. Leidenfrost, *Ombudsmen in Higher Education: Helping the Single Student, Contributing to the Universities' Institutional Changes*, "Creative Education" 2013, vol. 4(7), pp. 8–10. Interestingly, in Poland the increase in the number of students is considered a negative trend, leading to the end of the elite, and is referred to as the "mass education stage". The term itself, not to mention the critical approach of the academics, which recognizes "the need to adapt to this phenomenon", has a pejorative meaning. See M. Smużewska, *Uniwersytet bez idei. Artykuł recenzyjny książki Idea uniwersytetu. Reaktywacja pod redakcją Piotra Sztompki i Krzysztofa Matuszka (Kraków 2014: Wyd. Uniwersytetu Jagiellońskiego, ss. 365)*, „Nauka i Szkolnictwo Wyższe" 2015, no. 1, p. 313. Paradoxically, in Poland the trend of increasing the number of students is currently slightly different than overseas. See D. Antonowicz, B. Gorlewski, *Demograficzne tsunami. Raport Instytutu Sokratesa na temat wpływu zmian demograficznych na szkolnictwo wyższe do 2020 roku*, Warszawa 2011, https://wwsi.edu.pl/upload/large/Demograficzne_Tsunami_Instytut_Sokratesa.pdf [access: 10.01.2021]. See also D. Antonowicz, B. Jongbloed, *Jaki ustrój Uniwersytetu? Reforma szkolnictwa wyższego w Holandii, Portugalii i Austrii. Wnioski dla Polski*, 2015, https://ris.utwente.nl/ws/portalfiles/portal/5136798/Jongbloed+report_SP_Jaki_ustroj_uniwersytetu_PL+%28003%29.pdf [access: 10.11.2020], pp. 90–95. The record number of students were admitted to state universities in the academic year 2005/2006, when almost two million people (1,953.8 thousand) studied at public universities. Since then the number of students has been systematically decreasing. The reason for the first slowdown was the amendment of the Higher Education Act of 2005, which made it possible to complete studies at the undergraduate level. Further declines were mainly due to demographic factors and the continuous decline in the number of Poles aged 19–24. Between 2005 and 2019 the number of students at public

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Student mobility is also a major challenge for universities in relation to globalization. In the countries of the European Union, the Erasmus program established in 1987 has the greatest influence on the mobility of students and university staff. The program aims to finance student mobility to study in another European country for up to one year. In addition, it promotes and supports the cooperation of European higher education institutions in teaching, hosting faculty, the exchange of academic and administrative staff and initiating scientific-research contacts.[10] It is estimated that 4 million people, including 2 million students and more than 800 thousand employees, benefited from the Erasmus+ program in the years 2014–2020. Erasmus is considered to be the most successful student mobility program in the world, and studies show that the risk of unemployment among students who participated in the program is 50% lower in comparison to other students.[11]

In turn, in a situation of financial crisis, universities around the world, especially in the United States, Canada and Australia proactively seek foreign students using various marketing techniques. The strategy is based on a "competitive university admission process", which creates specific expectations for students who have qualified for the program.[12] The record level of foreign students in the United States was reached in the academic year 2018/2019, with 10 million 952 thousand who studied at the U.S. universities at that time and the upward trend has continued for several years. In addition, from 2014, there are about one million foreign students each year who study at the U.S. universities. According to the 2019 Open Door report, foreign students make up 5.5% of all students studying at universities in the USA. According to the United States Department of Commerce data, foreign students contributed $44.7 billion to the U.S. economy in 2018, an increase of 5.5% compared to the previous year.[13]

universities decreased by almost 40%, to 1 million 230 thousand in the academic year 2018/2019. See P. Chimczak, *Liczba studentów w Polsce – analiza i prognoza*, 7.05.2020, https://thinkco.pl/liczba-studentow-w-polsce [access: 10.10.2020].

[10] *O programie Erasmus+ 2014–2020*, https://erasmusplus.org.pl/strony-informacyjne/informacje-o-programie [access: 20.12.2020].

[11] It is also worth noting the Erasmus Mundus program, which includes partner universities from all over the world, is not limited to the European Union, and concerns joint master's program, doctoral studies, consortia, joint degrees and research. See *Erasmus: Facts, Figures & Trends. The European Union support for student and staff exchanges and university cooperation in 2013–2014*, https://ec.europa.eu/assets/eac/education/library/statistics/erasmus-plus-facts-figures_en.pdf [access: 20.12.2020].

[12] T. Birtwistle, *Legal Aspects of Higher Education in an International Context: Disputes, Resolutions, Methods and Safeguards*, Amsterdam 2008.

[13] *Number of International Students in the United States Hits All-Time High*, www.iie.org/Why-IIE/Announcements/2019/11/Number-of-International-Students-in-the-United-States-Hits-All-Time-High [access: 20.12.2020].

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The "internationalization" of education may be temporarily halted by the pandemic, and some universities face big challenges also due to a decreased number of foreign students. However, the prediction is that global trends discussed will most likely not only continue after COVID-19 but the number of students taking part in mobility and exchange programs will increase, as an antidote for a long-term lockdown.[14] These trends raise new challenges related to the need to provide students from different cultures with a way of studying that will meet their expectations and go beyond the local context of university education.

Globalization and technological progress give students around the world new educational opportunities. However, it is not only an opportunity but also a challenge, especially in less developed countries which do not have the financial resources to ensure modern technology but want to expand education in the name of progress. Unfortunately, they face a lack of infrastructure and technological facilities and as a result, differences in access to science and education increase. As S. Naveen aptly notes:

> […] despite differences in economy, political, culture and society, second and third worlds have adopted educational ideals from western thought and are anxious to appear modern and therefore promote education as a symbol of modernity and development to their own population and the foreign countries. The role of education has become more linked to globally competitive positions.[15]

Mobility is raising further challenges associated with the need to provide students from different cultures with a way of studying that meets their expectations and goes beyond the local context of university education. Universities that have an ambitious goal of accepting foreign students are now facing a problem to accommodate foreign students and consider the cultural differences which may affect the knowledge absorption and students' comfort. They may also have to deal with conflicts that result from difficulties in adapting to the requirements, norms, or culture of the country to which students from other parts of the world come.[16]

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[14] A. Witze, *Universities will never be the same after the coronavirus crisis*, www.nature.com/articles/d41586-020-01518-y [access: 20.12.2020].

[15] S. Naveen, *Globalization Effect on Education and Culture: An Analysis*, 28.05.2012. https://ssrn.com/abstract=2069155 [access: 10.08.2020]. The author rightly points out that less developed countries have adopted certain standards related to education from more developed countries, despite social, cultural and political differences, because they want to be perceived as modern communities, and higher education is a symbol of progress and development in the eyes of other countries as well as the local community. For this reason, higher education has become an element of competition on a global scale.

[16] *Ibidem*.

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3. Changes in expectations of students toward universities

The increase in the number of students at the universities results from an expectation to receive a solid and useful education and to be better prepared to perform work and profession. This approach to education also influences students' expectations as to the methodology of teaching. There is a growing understanding among students that more practical problem-solving and case study-based forms of teaching is needed. This is another challenge to classical teaching which assumed that the main purpose of education is reaching the truth rather than the practical application of knowledge. Therefore, the role of the university, which has traditionally been based mainly on the pursuit of truth, is no longer so pronounced, and is replaced by the need for practical education. The existing teaching methods still favor the traditional formula, however students expect more innovative forms of teaching including projects based on teamwork and solving specific problems. Experimentally, some universities already use such teaching methodology, but most apply traditional forms of teaching.[17] In addition, the main transformations at universities are related to the fact that students, as well as their parents, see themselves as consumers of educational services, regardless of whether they attend private or public universities.[18] Because of a reduction in fundings for university education, particulary for public institutions, universities were forced to look for additional incomes and resources, for example by introducing or increasing tuition and by seeking new students.[19] Universities strictly controled public spending, particularly regarding didactic.[20] Higher education institutions are aware that the amount of tuition is directly related to the evaluation of the quality of the program, and that with the introduction of higher fees, students have increasingly higher expectations of the universities.[21]

Another source of conflicts and tensions at the universities are the differences in the perception of individual scientific disciplines, particularly the sciences, technical, engineering, and mathematical sciences (STEM) as opposed to the humanities. The idea of the modern university has changed and it is no longer an institution where "the main aim was to establish facts and then explain them, to understand

[17] For example, University McMaster, https://future.mcmaster.ca/programs [access: 20.12.2020]; Universidad de Monterrey, www.udem.edu.mx [access: 20.12.2020]; Aalto University, www.aalto.fi/en [access: 20.12.2020]; L'université Paris 1 Panthéon-Sorbonne, www.pantheonsorbonne.fr/unites-de-recherche/cri [access: 20.12.2020].

[18] J. Barzun, *How It Runs, Where It Is Going*, Chicago–London 1993, p. 29.

[19] *Ibidem*.

[20] See F.A. Schmidtlein, R.O. Berdahl, *Autonomy and Accountability: Who Controls Academe?*, [in:] *American Higher Education in the Twenty-First Century: Social, Political, and Economic Challenges*, eds. P.G. Altbach, P.J. Gumport, R.O. Berdahl, Baltimore 2011, p. 69 ff.

[21] J. Leidenfrost, *Ombudsmen in Higher Education…*, p. 9.

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the causes and mechanisms governing the world" and the practical application of knowledge was treated as a secondary matter, which is a natural derivative of basic knowledge.[22] Currently, students expect knowledge that they will be able to use in practice, so the emphasis is mainly on technical and scientific fields. On the other hand, humanities such as art, philosophy, history, psychology, sociology and literature studies are gradually being marginalized.[23] It is slowly becoming apparent, however, the importance of the humanities in the development of the sciences. As M. Baker notes, "If we want new technologies to serve people, we need engineers, programmers and mathematicians to teach ethics, philosophy and social sciences. But in their practical applications".[24] The idea is to weave elements of ethics, philosophy and law into classes in science faculties so that STEM students better understand how technology affects people. However, the dualism that still exists in the treatment of the sciences and humanities is also another source of tension and misunderstanding.

4. Community Approach vs. Corporate Approach

Currently, there are deep changes at the universities by comparison to their historical role in society and culture. Today's university is constantly undergoing evaluation and self-evaluation processes, using tools taken from the economic sciences and using indicators such as "efficiency, relevance, excellence or quality of teaching".[25] Those economic measurements are understood often as a step towards adopting a "discourse of excellence". According to B. Readings, the performance indicators which are used as specific measurements of a university's excellence, indicate that market competition has been introduced to universities, especially since the allocation of funding depends on reaching certain standards and universities' performance.[26] In his opinion, the university "is busily transforming itself from an ideological arm of the state into a bureaucratically organized and relatively autonomous consumer-oriented corporation".[27] In the classic university, there was no concept of sales, services or consumers, and as J. Barzun points out, the focal

[22] P. Sztompka, *Uniwersytet współczesny. Zderzenie dwóch kultur*, „Nauka" 2014, no. 1, p. 95.

[23] M. Baker, *Szkodliwy podział na nauki humanistyczne i ścisłe*, 3.02.2019, https://holistic.news/szkodliwy-podzial-na-nauki-scisle-i-humanistyczne [access: 10.11.2020].Today, many leading universities are noticing the need to combine the sciences with ethics, philosophy or law.

[24] Initiatives that combine the humanities and science have been developed at Stanford University: "Human-Centered Initiative", "Milstein Program in Technology and Humanity". It is also worth mentioning the "Responsible CS Challenge" program, as a joint initiative of Omidyar Network, Schmidt Futures, Craig Newmark Philanthropies and Mozilla. See *Universities in Crisis*, www.isa-sociology.org/universities-in-crisis [access: 20.12.2020].

[25] A.B. Cabal, *The University as an Institution Today*, Paris–Ottawa 1993, p. 161.

[26] B. Readings, *Uniwersytet w ruinie*, Warszawa 2017, p. 62.

[27] *Ibidem*.

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point of universities were professors who were at the same time scientists, mentors and teachers.[28] Nowadays, in the era of widespread competition, universities increasingly use marketing techniques to encourage students to choose a particular university and the central role at the universities is played by administrators: provosts, rectors or presidents. Universities offer education, knowledge, teaching, skills and, finally, a diploma which is a confirmation of knowledge. With the intense competition between universities and the related challenges, academic institutions are forced to respond faster and more effectively to students' expectations and adapt to market needs.[29]

According to some authors, the main source of disagreement and consequently of conflicts at the universities is the clash between two cultures: community and corporate, which according to many are completely incompatible. This dissonance is the main source of the university's crisis.[30] This conflict can be seen both globally and locally. Research conducted at Polish universities shows that the scale of conservatism of academic staff at Polish universities is quite large. There is a considerable reluctance of academics to make major changes in the functioning of the traditional university, even though they realize that changes are necessary and may lead to a better alignment of science and higher education with student requirements.[31] The need to change and adapt the university to reality and current expectations is a big challenge, because it changes the perception of the university's role.[32] On the one hand, the corporate culture introduced at universities is not free from defects and is often criticized because it does not fit into a specific academic culture. The corporate approach is based on economic assumptions, while science and education cannot be easily measured by economic indicators. On the other hand, the introduction of broad changes at the universities was a response to the shortcomings of the traditional university and a consequence of the student movements that began in 1968. At that time, the university appeared to be detached from the local community and completely isolated from the world, often referred to as the "ivory tower", and full of many irregularities.[33]

The concept of the so-called "entrepreneurial university" was based on the principles of transparency, greater responsibility, and autonomy, which has contributed to many positive changes at universities on a global scale.[34] Nowadays, in most countries students pay for their education and inevitably they started to make demands on universities. The dissatisfaction and criticism of the universi-

[28] J. Barzun, *op. cit.*, p. 19, 222.
[29] J. Leidenfrost, *Ombudsmen in Higher Education…*
[30] P. Sztompka, *op. cit.*, p. 9.
[31] D. Antonowicz, B. Jongbloed, *op. cit.*, pp. 90–95; P. Sztompka, *op. cit.*, p. 9.
[32] M. Smużewska, *op. cit.*, p. 313.
[33] B. Clark, *Sustaining Change in Universities*, London 2004, p. 98.
[34] M. Smużewska, *op. cit.*, p. 313; D. Antonowicz, B. Jongbloed, *op. cit.*, pp. 90–95.

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ties by students in the 1960s and 1970s, manifested in the form of mass protests, was caused by "community and political" reasons, while in the 1990s resulted from "individualistic and consumer" reasons, which manifested themselves in the growing number of complaints and grievance proceedings about the functioning of universities.[35] Also universities themselves see their role as "service providers", and even if they follow the principle of not using corporate language and principles, the relationship with students is contract-based and the client's right to quality education.[36] Understanding the university-student relationship through the prism of "corporate culture" both increases students' expectations and causes or may cause to use more often traditional court proceedings when they are not satisfied with the services of the university. This is the case even in those countries where, so far, the court proceedings have been considered completely unique in resolving disputes between the university and students.[37]

P. Sztompka analyzed the clash between two cultures: community and corporate. The author criticized the corporate culture, even though, as he stated, these differences were deliberately exaggerated by him. The differences pointed out by the author reach back to the traditional role of universities, for which the main goal was to find the truth by establishing facts, explaining and understanding their causes and mechanisms. The emphasis is now on the practical application of knowledge, which can be a serious source of conflict.[38] Some authors note that treating universities like businesses would lead to the complete destruction of their autonomy and cultural cohesion.[39] Since this dichotomy is not always reconcilable, the trend to replace community culture with corporate culture is slowly fading away. The best universities in the world have already noticed that corporate culture at universities does not fully fit in with university culture, and they are returning, with consider-

[35] F.N. Dutile, *Law and Governance Affecting the Resolution of Academic and Disciplinary Disputes at Scottish Universities: An American Perspective*, "Indiana International & Comparative Law Review" 1997, vol. 8(1), p. 59.

[36] *Ibidem*.

[37] *Ibidem*.

[38] P. Sztompka (*op. cit.*, pp. 90–95) lists ten differences between the university's corporate and community culture, including: the way in which it participates in the institution and the differences between strong ties in a community of professors, scientists and students as opposed to a corporate culture in which administrative staff participates and dominates; the understanding of the university not as a community, but as an educational service provider with customers (students) who can complain to the institution; the different nature of connections in a community culture based on soft features such as trust, loyalty, solidarity, responsibility, identity. In the corporate culture, however, these ties are replaced or imposed by external regulations in a fairly strict manner, which may limit research freedom and creativity. According to the author, the community culture is dominated by scientific passion, cognitive curiosity, inquisitiveness, creative impulse. In the corporate culture, the motivations are more instrumental in order to obtain a salary that provides the means for a decent life.

[39] R. Birnbaum, *Management Fads in Higher Education: Where They Come From, Why They Do, Why they Fail*, San Francisco 2001, p. 239 ff.

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ation of many changes, to the tradition of community culture and the idea of the Humboldtian model of education.[40]

The dilemma of a modern university also lies in the fact that, on the one hand, it is deeply rooted in the sphere of unquestionable values such as autonomy, freedom of speech and expression, public discourse, independence and intellectual debate, and on the other hand, it provides educational services. According to some, it is a "mega-business", accompanied by a multidimensional culture, resulting from the different roles, the entanglement in politics, the decentralized organization of faculties with different interests, and the existence of a student community that adds another layer of complexity to the rather hierarchical structure of the university.[41] Achieving a relative balance between conflicting goals, which are additionally overlapped by different interest groups, inevitably leads to conflicts.[42]

INTERNAL SOURCES OF CONFLICT AT UNIVERSITIES

Higher education institutions have special features and characteristics which make them problematic institutions.[43] Some scholars criticize the utopian image of the universities as unified communities which act according to the principles of collegiality and cooperation.[44] Universities are pluralistic institutions and with groups which consist of individuals who have quite individualistic approaches to most matters. Lack of integration among those groups is inevitable due to academic independence and lack of imposition of certain professional standards as in the case with lawyers or medical doctors.[45] Sometimes it is also falsely assumed that since academia is understood as a community and its members are well-educated people they will work together in good faith for their university, and in case of conflict they will try to resolve it in consensual ways.[46] In reality campus structures, organizations and decision-making in several regards are not predictable and very fluid and the academic approach is not always oriented toward solving conflicts rationally or

[40] *Ibidem*.

[41] N.H. Katz, L.N. Kovack, *Higher Education's Current State of Alternative Dispute Resolution Service for Students*, "Journal of Conflict Management" 2016, vol. 4(1), pp. 5–37.

[42] J.E. Bienstock, *Campus Conflict Resolution: The Time Has Come for Mandatory Mediation*, "Journal of Business and Behavioral Sciences" 2019, vol. 31(1), p. 37 ff.

[43] J.V. Baldridge, D.V. Curtis, G.P. Ecker, G.L. Riley, *Policy Making and Effective Leadership*, San Francisco 1978, p. 25.

[44] J.V. Baldridge, *Power and Conflicts in the University: Research in Sociology of Complex Organizations*, New York 1971, p. 107.

[45] R. Clark, *The Higher Education System: Academic Organization in Cross-national Perspective*, Berkeley 1983, p. 41.

[46] W.C. Warters, *Mediation in the Campus Community: Designing and Managing Effective Programs*, San Francisco 2000, p. 19.

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collectively.[47] Conflicts appear at academia at various levels, and usually involve students, administration, academics and administrative staff.

Universities are special organizations that are platforms for dialogue between different people, as well as a place where various points of view, values, philosophies and interests clash. Diversity is especially valuable for universities as a basis for the formulation of new ideas and concepts. However, diversity is also often the cause of conflicts. Conflicts differ depending on the size of the university, its nature (public, private), location or student population.[48] However, regardless of the type of university, conflicts have always been a characteristic feature of the academic community.[49]

1. The unique features of higher education institutions

Regardless of the global problems, the university culture has always some unique features that encouraged conflicts, such as the presence of different interest groups, competition in research or lack of teamwork skills. Moreover, it is characterized by some specific features that have defined the academic culture and highlighted the importance of universities in the community, such as autonomy, academic independence, the special role of academic staff and the position of science and research.[50] Besides the universities are organizations where debate, views clash, creativity, innovation, going beyond the usual patterns are encouraged and different points of view lead to the discovery of the truth and new solutions, which also may enhance conflicts.[51]

Working at the university is characterized by a high degree of autonomy and independence, and academics enjoy freedom regarding research. They work mainly independently, so their ability to cooperate and make research in teams is low. Moreover, there is quite a lot of competition at universities, especially in the field of obtaining grants or other financial support. Therefore, one of the dominant approaches in relations with other academics from the same field is a competitive and individualistic mode, which also contributes to conflicts. Economic problems, on

[47] M.D. Cohen and J.G. March (*Leadership and Ambiguity: The American College President*, New York 1974, p. 45) describe the university's decision-making system as organized anarchy, while J.D. Millet (*New Structures of Campus Power: Success and Failures of Emerging Forms of Institutional Governance*, San Francisco 1978) uses a less drastic description calling it organized autonomy.

[48] M. Volpe, D. Chandler, *Resolving Conflicts in Institutions of Higher Education: Challenges for Pracademics*, "Georgia State University College of Law Reading Room" 1999, no. 8, p. 2.

[49] S. Klingel, M. Maffie, *Conflict Management System in Higher Education: A Look at Mediation in Public Universities*, "Dispute Resolution Journal" 2011, vol. 66, p. 1.

[50] See generally about the cause of conflicts at the universities: E. Gmurzyńska, *Benefits of Dispute Resolution Systems in Organizations: The Example of the University of Warsaw Conflict Resolution System*, "ENOHE Occasional Paper" 2012, no. 9.

[51] *Ibidem*.

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the other hand, cause universities to take steps to increase savings, such as merging departments, reducing the number of administrative staff or increasing teaching hours. In stable times, such changes are quite commonly tolerated, but with economic uncertainty they cause considerable tensions.[52] The dominant approach in relations with other employees is competitive- individualistic approach, which also may cause increased number of conflicts.[53]

A.E. Barsky points out other unique features of universities which contribute to conflicts, such as the tensions arising from the division of faculty members into tenure and non-tenure, as well as the economic and employment insecurity consequences associated with such a distinction.[54] In addition, individual achievements, which take the form of publications, are better rewarded at the university. This often leads to abandoning teamwork in favor of individual work. Researchers usually work in isolation, and the requirements to join a team are limiting the time for individual research.[55] The academic staff is also faced with various responsibilities and requirements for ensuring an appropriate level of teaching, publishing, conducting research, and involvement in university affairs. The consequence of these ever-increasing, new responsibilities is that those more involved in the university simply feel tired, frustrated and often unable to keep up with them all.[56]

2. University as an organization

Even though the university is a platform for the exchange of views, academic debate and dispute of scholars, it is also a place of work for a many people and a place to educate students, therefore various interests and needs of members of the community clash there, and often conflicts take on an unproductive or even destructive character.[57] Research shows that conflicts at universities are often a combination of objective interests and interpersonal or relational conflicts, which brings a lot of unnecessary emotions. The element of personal involvement in conflict at the university may result from identification with the values of the institution, which is often more than just a place of study or employment.[58]

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[52] S. Klingel, M. Maffie, *op. cit.*, p. 13.

[53] *Ibidem*.

[54] A.E. Barsky, *Structural Sources of Conflicts in a University Context*, "Conflict Resolution" 2002, vol. 20(161), p. 165.

[55] *Ibidem*, p. 167.

[56] *Ibidem*, p. 170.

[57] M. Czapski, *Mediacja w sporach akademickich*, [in:] *Mediacja. Teoria i praktyka*, eds. E. Gmurzyńska, R. Morek, Warszawa 2018, p. 473.

[58] J. Leidenfrost, *Conflict Resolution at University: Ombudsman Mediation as a Tool?*, "Perspective Focus" 2015, vol. 101(2), p. 105.

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Universities are organizations and at all organizations conflicts are inevitable. Members of academic community enter mutual relations within the group as well as outside the group and this causes different conflicts. Conflicts are also influenced by the characteristics of the organization such as its size, structure, and the existence of different interest groups. Moreover, the duration of the organization also influences the development of long-term conflicts or conflicts resulting from the implemented reforms.[59] The structure of universities in terms of existing groups is complex. At universities, even within the same unit, there are different interest groups – students, academics, administrative staff and management, and their perception of the same problem can be quite different. Moreover, the university is divided into faculties and institutes, which often constitute separate interest groups within the university and may compete with other faculties and departments.

At this point, it is worth recalling the principal division of conflicts in organizations into four types of conflicts. Since universities are organizations all types of conflicts appear at the higher education institutions and may be resolved with application of conciliatory methods such as mediation, with exception of intrapersonal conflicts. They include:

1) intrapersonal conflicts – these are internal conflicts of individual people, which consist in the clash of internal needs and values. Some authors claim that they may be resolved only by application in therapy. Even though they are internal in nature, they can affect the atmosphere at work or contribute to the emergence of interpersonal conflicts,
2) interpersonal conflicts – they result from different goals, values or styles of work between two or more people. Those are most common conflicts and may include horizontal conflicts, e.g. between two students or between two members of the faculty, who belong to the same groups. They may also be vertical conflicts characterized by hierarchy, especially between members of different groups in the same unit, e.g. between a tenured professor and a doctoral student, a student and a professor, a student and a member of administrative staff, an academician and an administrative staff member, the head of the unit and an employee,
3) intragroup conflicts – these are conflicts between several people or subgroups in the same group, e.g. between two groups of students or between two groups of academicians,
4) intergroup conflicts – these are conflicts between two groups inside of the organization or between a group inside and a group outside of an organization, e.g. between academic personnel and administrative personnel.[60]

[59] A. Szpor, *Konflikty w organizacjach – organizacje w konfliktach*, [in:] *Mediacje. Teoria…*, p. 105.

[60] A. Cybulko, *Konflikt*, [in:] *Mediacja. Teoria…*, pp. 84–85.

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3. Hierarchy

Another source of conflict is the hierarchy of the university structure expressed by symbols that distinguish certain members of the academic community, such as robes worn in different colors, regalia used by rectors and deans, and the preservation of hierarchy during university ceremonies. Regardless of the symbolism that emphasizes the link with centuries-old history, universities have traditionally been hierarchically organized, based on quite formalistic procedures.[61] Although hierarchical structure is one of the most characteristic elements of academic culture, R. Bing and I. Dye express the opinion, that hierarchy may be justified nowadays in military structures, for example, but it does not fit into the character and mission of a university whose idea is to seek truth and educate the young generation.[62]

Hierarchy can be observed in the relations between lecturers and students who are not very active participants, in the relations between independent academics and doctoral students, and the career of doctoral students often depends on the former, as well as in the relations between academics and administrative workers, where administrative workers are treated as "only" staff and second category employees.[63] Even if the traditional hierarchical formula of the university has been widely accepted, in the times of modern liberal democracy, in which the rights and freedoms of the individuals, their autonomy, as well as participation in decision-making and cooperation count, that concept is outdated. This traditional approach, however, may be a source of conflicts that arise from the contradictions between the existence of a hierarchical structure and the expectations of doctoral and graduate students, as well as of highly qualified professionals – administrative staff – to have a more significant voice in university matters and to play a greater role in the management of the university.

4. Groups of interests

A characteristic feature of the academy is the existence of several distinct groups that often have conflicting interests, even though the academic community is understood by the outside world as a collective. Both the existence of different groups at the universities, academics, administrative staff, university administration and students, and the autonomy and independence that are an indispensable feature of universities are grounds for tensions and problems. C.-M. Alcover notes that each group within the academic community claims to be more entitled to autono-

[61] J. Leidenfrost, *Conflict Resolution at University…*, p. 103.

[62] R. Bing, I. Dye, *The danger of hierarchical decision-making: How a model 'effective' college president alienated and embittered a campus*, "Academe" 1992, vol. 78(4), p. 16.

[63] M. Czapski, *op. cit.*, p. 475.

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my and independence. Students believe that they should have an influence on the decision-making process because they pay the tuition and without their presence and financial contribution the university could not exist. The academics believe that the university is primarily a community of scholars and they are the ones who influence and shape the university. The administration derives its right to influence the matters at the university from the provisions of laws, statutes, and regulations, which give them the right to manage the university, administer the funds and be responsible for the decisions made. At the same time, administrative employees believe that without their presence at the university neither students nor academic staff could function.[64] These complicated relations between clearly separated groups result mainly from the different compositions and, consequently, the status of members.[65] In addition, the individual groups are far from being homogeneous and within each group there are members with different statuses, rank, or hierarchy.[66]

5. Other causes of conflicts

Another source of disagreement is the vaguely formulated mission of the universities and the willingness to participate in the decision-making process of all those who treat their work and study at the university in a special way, because, as W.C. Warters described it, universities are institutions that "process people".[67] In addition, there are issues at the universities, which previously did not appear or were not considered at all. M. Volpe and D. Chandler point out that, for example, providing appropriate study conditions for students with disabilities gives rise to new responsibilities on the part of administration and staff.[68] Previously, the problems of students with disabilities were considered as a private matter, and universities were not easily or at all accessible to them. Today, students not only expect the administration and staff to provide appropriate conditions for students with disabilities, but also the right to use infrastructure, tutoring or psychological support, etc.[69]

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[64] A.W. Ostar, *Institutional conflict*, "Conflict Management in Higher Education" 1995, no. 92, p. 60.

[65] C.-M. Alcover, *Ombudsing in Higher Education: A Contingent Model for Mediation in University Dispute Resolution Processes*, "The Spanish Journal of Psychology" 2019, vol. 12(1), p. 278.

[66] For example, graduates and postgraduates, students of LLM programs, doctoral studies, master's and undergraduate studies.

[67] B. Warters, *Making the Case for Campus Mediation*, "The Fourth R" 1995, vol. 55, www.academia.edu/14449930/Making_the_Case_for_Campus_Mediation [access: 20.12.2020], p. 2.

[68] M. Volpe, D. Chandler, *op. cit.*, p. 4.

[69] *Ibidem*.

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DEVELOPMENT OF ADR METHODS AT UNIVERSITIES

1. Strategies and approaches to conflict resolution by universities

Until the last decade of the 20th century, there was no discussion of conflicts and conflict resolution at universities. Although conflicts were always a part of the university culture, with their increasing number recently one might risk saying that through internal structures as well as specific features of academic life, universities either omitted the problem, coped better with conflicts than other institutions, or pretended of doing so.[70] Such approach was caused by: academic independence, conducting research without the need to cooperate with others, the separation of the university from the outside world, focus on finding the truth rather than the current management of the university, the loose links between the various colleges and faculties, which did not require closer cooperation, and the academic culture based on disputes and clash of the points of view. These features lead to greater resistance to conflicts and greater acceptability of conflicts. However, because of the student movements that began in 1968 and which have spread across many countries on all continents, including France, Germany, Italy, Eastern Bloc countries including Poland, Czechoslovakia, Yugoslavia, as well as the United States, Canada, Brazil, and Mexico the universities have changed their approach to resolving internal disputes. These social and political movements made general demands against traditional society, imperialism, capitalism, communism, the war in Vietnam, granting equal rights to women and people of different races.[71] They also made demands for university reform, including depoliticization of universities, ensuring greater autonomy and independence, equality, diversity, transparency, accountability, change of procedures, and giving more rights to students.[72] These movements propose a departure from archaic structures and outdated teaching methods at the universities.[73]

When analyzing the development of dispute resolution at universities, it is useful to apply the dispute resolution strategies in organizations systematized and described by W.L. Ury, J.M. Brett and S.B. Goldberg.[74] The universities historically went through all three approaches to solving conflicts which are distinguished by the authors:

1) power-based approach – conflicts are resolved by those who have power and can force others to adhere to imposed standards by creating economic

[70] S. Klingel, M. Maffie, *op. cit.*, p. 9.

[71] W.C. Warters, *The Emergence of Campus Mediation Systems: History in the Making*, "Conflict Management in Higher Education Report" 2001, vol. 2(1), p. 72.

[72] S. Klingel, M. Maffie, *op. cit.*, p. 13.

[73] W.C. Warters, *The Emergence of Campus Mediation Systems…*, p. 72.

[74] W.L. Ury, J.M. Brett, S.B. Goldberg, *Getting Disputes Resolved*, San Francisco 1993, pp. 8–19.

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or regulatory expertise. This approach forces the other party to do something they would not otherwise do, which includes imposing various types of punishment,

2) rights-based approach – conflicts are resolved based on who is right, what is fair, based on the law, or on community-accepted standards or precedents. The people involved refer mainly to their arguments and positions. Disputes in a rights-based approach are often resolved by a third party, such as arbitrator, judge or disciplinary committee,
3) interests-based approach – this is an approach to conflict that is based on needs, expectations, and broad interests. It may involve resolving the dispute by discussing the basic interests of the parties, their needs, expectations, and concerns, and developing creative solutions. In this approach, conciliation methods are often used, including negotiation, mediation, and facilitation.

2. Evolution in approaches to conflicts by universities

Before 1968, the mechanisms for settling disputes were determined by the university authorities, which rarely considered the application of a proper and fair trial to students or employees. The procedures applied by the universities particularly regarding the students were power-based and they applied *in loco parentis* doctrine,[75] which legitimized universities to discipline students and punish them in internal proceedings, often without regard to the protection of individual rights and freedoms.[76]

As a result of the protests and social changes, the universities had to change their power-based attitude toward members of the academic community and also could no longer pretend that there are no conflicts in academia or that they are resistant to them and can solve them internally without any transparency. They began to consider introducing internal mechanisms of conflict resolution, mainly in the form of disciplinary proceedings, the adoption of codes of conduct and procedures including complaints and grievances against the university.[77]

[75] R.C. Conrath, *In Loco Parentis: Recent Developments in this Legal Doctrine as Applied to the University-Student Relationship in the United States of America, 1965–75*, 1976 (doctoral dissertation submitted to the Kent State University Graduate School of Education), p. 11. The term *in loco parentis* means "in place of the parent". It refers to the legal responsibility of a person or organization for another person. This principle was established in English common law, although its traces can be found in Roman law. Among other things, it was applied in colleges and universities in Europe and the United States, and the university derived the right to act in the interests of students from that rule, but also the rights to introduce rules, principles or penalties against students. See more about *in loco parentis* in the second part of the article.

[76] *Ibidem*, p. 2.

[77] *Ibidem*.

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After the protests in 1968 universities' approach toward the students and conflict resolution has been transformed into the rights-based approach. As an effect students began to treat the relationship between them and the university as contractual. For those reasons, in some countries academic institutions started to face a growing number of formal complaints and court litigations that concerned not only discrimination, bullying or sexual harassment, but also those problems that were traditionally reserved for internal structures including academic evaluation.

This phenomenon is the reason why at the beginning of the 1970s, the use of ADR methods which were based on the wide interests of the conflicting parties, and the assumption that every conflict in the organization may be resolved if appropriately approached, began to be considered in various conflicts. ADR methods which most often include mediation, arbitration, the ombudsman institution, conciliation, hybrid methods such as arb-med and med-arb,[78] were introduced to the legal systems and the judiciary system based on the assumption of inadequacy of court proceedings in resolving many disputes.[79] The main advantage of these methods in relation to formal procedures was efficiency and lower costs.[80] An equally important characteristic of these methods was that they are confidential and less formalized. Conciliatory methods such as mediation, ombudsman or facilitation focused on the actual resolution of disputes based on interests and in the opinion of the parties were fairer, more just, improved relations and satisfaction among participants.[81]

Increased numbers of complaints against the universities brought the wider application of ADR methods also in university settings. Such development was also caused by general application of ADR methods in different fields, which made universities to look more closely at these methods. Not only were they an effective alternative to more formal internal and external procedures, but they were also better suited to the sensitive and complex nature of academic disputes. Another reason for their introduction was the intent for the parties and the community to resolve their own conflicts. N. Christie in his article *Conflicts as a Property* called for handing the disputes over to the parties, stating that "lawyers are particularly good at stealing conflicts", that "conflict becomes a property of lawyers" and that conflict is a property and as such belongs to the parties and to the community.[82] Introducing a formula that would guarantee more democratic process with the possibility of the parties to influence the outcome and procedure fulfilled the expectations of students' movements to respect their rights and ensure greater independence. ADR

[78] Discussion about ADR methods and their nature: R. Morek, *ADR – w sporach gospodarczych*, Warszawa 2004, pp. 1–6.

[79] L.L. Riskin, J.E. Westbrook, *Dispute Resolution and Lawyers*, St. Paul 2002, p. 43.

[80] *Ibidem*.

[81] *Ibidem*.

[82] N. Christie, *Conflicts as Property*, "The British Journal of Criminology" 1977, vol. 17(1), p. 4.

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methods, mediation in particular, guaranteed this impact and began to provide an appealing alternative to internal mechanisms to resolve academic disputes, which proved to be insufficient.

Moreover, an important argument in favor of using these methods was that at universities, which are centrally managed, conflicts could not be left alone or only be solved *ad hoc*.[83] B. Clark used the term "power exercised by consent", which meant that instead of resolving conflicts individually with the help of lawyers, administrative procedures or unions, a conflict resolution system based on authority, reputation, trust and recognition among members of the academic community should be built into the universities' structures.[84]

V.M. Volpe observed that in the United States, following student protests, there has been a paradigm shift in the approach to conflicts at universities by switching from right-based approach into interest-based approach expressed in conciliatory methods, which are part of conflict management. The author notes that the interest of universities in ADR methods was influenced by three elements that occurred simultaneously: 1) universities have become increasingly complex institutions and were interested in using alternative methods that were less costly and more effective in resolving conflicts than formal procedures; 2) conflicts, conflict resolution, negotiation, mediation became part of scientific research and some academics who were involved in such research were able to support their native universities with their knowledge; 3) a new scientific discipline related to conflict resolution (programs, master's, post-graduate, undergraduate, and graduate studies) has developed, which has contributed to the development of interest in conflict resolution on campus.[85]

The arguments that led to the introduction of these methods in particular for resolving disputes involving students were as follows:

- the campus is a place where, due to the unique characteristics of the university, many conflicts arise and are inevitable,
- the campus creates within certain limits a defined community governed by certain, distinct principles and values,
- dormitories for students and doctoral students on the campus, where people from different backgrounds with different values are brought together, are inevitable ground for conflict,
- there are different groups and "subcultures" within the academic community with a variety of views, opinions and values, and in such subgroups conflict is inevitable.[86]

[83] B. Clark, *op. cit.*, p. 39.

[84] G. Bexell, *Managing Ethical Issues: University Ethics and Human Resources*, 2005, https://search.oecd.org/education/imhe/35378038.pdf [access: 20.12.2020], p. 5.

[85] V.M. Volpe, D. Chandler, *op. cit.*, p. 6.

[86] *Ibidem*.

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M.W. Peterson and M.G. Spencer expressed the opinion that in academic subcultures the campus is becoming a "laboratory of conflict" because members of the community with different perceptions, views and values must coexist with each other.[87] With different level of conflicts, special approach of academics to decision making, as well as diversity of students and on another hand fulfilling educational and social goals it seems that setting the system for dispute resolution is quite apparent.[88] Challenged by the special characteristics of university politics, individualism, diversity of students, approach to a decision making process and pluralism, for over thirty years, academic institutions undertake many initiatives concerning introducing mediation or other ADR methods into the system. This approach is based on belief that reaching consensus and approaching conflicts by discussing and underlying broad interests of the parties through problem solving is much more effective and more appropriately build into the university mission. Rather than dealing with "symptoms" of conflicts, we should focus on their "causes".[89]

It is worth noting that although mediation and the institution of the ombudsman or adjudication proceedings are the most frequently used methods at universities, their spectrum is much more extensive and subject to constant development. The university environment is particularly suited to experimentation and creation of a variety of ADR instruments in its space due to the diversity of disputes, the search for creative solutions or the possibility of using the intellectual potential of staff and students.[90]

[87] M.W. Peterson, M.G. Spencer, *Understanding academic culture and climate*, "New Directions for Institutional Research" 1990, no. 68, p. 16.

[88] W.C. Warters, *Mediation in the Campus Community…*, p. 4.

[89] *Ibidem*.

[90] Other informal and conciliatory mechanisms used at universities include: 1) partnership – non-binding agreement of dependent groups to proactively try to create relationships based on trust and mutual understanding; 2) shared decision-making (SDM) – the goal of both parties, representatives of institutions and other organizations is to develop the directions of institution's policies and strategies; 3) community and group conferencing – involves the organization of conferences with the participation of all those affected by the conflict. Conferences are not meant to resolve the conflict, but to lead to systematic changes in the organization; 4) public dialogue – aimed not so much at resolving the dispute, but at establishing a dialogue between the participants of the dispute and understanding different points of view. Additionally the concept of restorative justice is used in disciplinary proceedings against students usually in minor matters, related to the course of studies or education at the university. It is modelled on restorative justice in criminal cases and aims to repair damage, but also to rehabilitate and educate the perpetrator. See W.C. Warters, *Institutional and Program Level Guidance for Conflict Management in Higher Education*, Campus Conflict Management Committee, May 2003, p. 18.

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3. ADR methods and universities' mission

One of the argument which speaks for introduction of ADR methods in academic arena is the broad understanding of mission of universities. As it was mentioned before universities are organizations in general sense, but their mission determines their main purpose of operation.[91] Universities are the educational institutions, conduct research, enable students to get the most out of their intellectual abilities, but also educate them in a spirit of openness and tolerance.[92]

The aim of education at universities is to promote the exchange of views, to present arguments, new ideas, and concepts, to instill respect for different ideas and diversity, a broad approach to problem solving, and teach the ability to cooperate with others notwithstanding their political, ideological or religious differences, search for historical and cultural identity and freedom from discrimination.[93] Many universities also include in their mission goal to teach students in the spirit of humanity, freedom of thought, cooperation, peaceful problem solving, openness, dialogue and tolerance for others.[94] Moreover, the mission of universities is not only to provide education at a level which ensures the acquisition of high professional qualifications,[95] but also to educate them as citizens and citizens leaders.[96]

It seems that the introduction of mediation and other ADR methods in the university settings teaches students respect for the views of others, strengthens

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[91] E. Gmurzyńska, *Benefits of Dispute Resolution Systems…*

[92] Heidelberg University, *Mission Statement & Principles*, www.uni-heidelberg.de/en/university/about-the-university/mission-statement-principles [access: 10.10.2020].

[93] Uniwersytet Warszawski, *Misja. Strategia rozwoju*, www.uw.edu.pl/uniwersytet/misja-strategia-rozwoj/misja-uw [access: 10.10.2020]; Die ETH Zürich, www.ethz.ch/about/missionstatement/index_EN [access: 10.10.2020]; Universität Göttingen, www.unigoettingen.de/en/43883.html [access: 10.10.2020].

[94] The Mission of the University of Warsaw, adopted by the Senate in 2001, states that "The civic mission of the University is to shape such elites of the Republic of Poland that will use *imperio rationis* in their activities but not *ratio imperi*. The University is a community of dialogue. Exchange of views, clash of arguments, openness to new ideas are inextricably linked here with respect for diversity and respect for personal dignity. In this way, the University develops cooperative skills regardless of political, ideological and religious differences, and creates models of public debate. Thus, University shapes not only the civic attitudes of students, but also their personalities" (Uniwersytet Warszawski, *Misja…*).

[95] The mission of the University of Warsaw states that the skills acquired during studies ensure high professional qualifications and prepare students for responsible performance of public functions (*ibidem*).

[96] Harvard University, *Mission, Vision, & History*, https://college.harvard.edu/about/mission-vision-history [access: 10.11.2020]: "The mission of Harvard College is to educate the citizens and citizen-leaders for our society. We do this through our commitment to the transformative power of a liberal arts and sciences education". See also Yale, *Mission Statement*, www.yale.edu/about-yale/mission-statement [access: 10.11.2020].

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emotional intelligence and sensitivity to the problems of others and is a suitable method for achieving the educational goals and the broad mission of universities. Participation and knowledge of procedures in which consensus is achieved through dialogue fits to the mission goal of educating students as responsible members of society playing important public roles independently of their specializations and type of education. ADR methods which emphasize the cooperation of the parties, are focused on the broadly understood interests of participants and problem solving, rather than on winning. They are better predisposed to resolve academic disputes, both due to their nature and the mission of the university to promote cooperation, tolerance and respect for other people.

MEDIATION AS ADR METHOD IN ACADEMIC CONFLICTS

1. Definition of mediation

Mediation is not only a conciliatory method of dispute resolution, but as R. Morek notes, it is "a social phenomenon and a particular kind of human activity and thus cannot be easily defined".[97] This remark is particularly pertinent in relation to mediation in academic disputes, due to their nature, the variety of disputes and, consequently, the different roles that the mediator plays depending on the type of dispute, as well as the objectives that are prioritized. Mediation in academic disputes escapes the narrow framework of classical definitions, as it is difficult to capture it in a single formula because it applies to a wide variety of issues involving students, staff, and administration, such as student dismissal, graduation problems, faculty conduct, or issues relating to staff salaries, bonuses, employee appraisals, intellectual property protection, misconduct or harassment. A broad definition of mediation in academic conflicts is useful not only because of the variety of disputes and their complexity. Often, in academic conflicts, the issues of employment or studying are intertwined with strong personal relationship issues. For these reasons, the most appropriate definition could be a definition that "treats mediation as an aggregate concept, used in relation to non-uniform proceedings".[98] It follows from this definition that mediation is a "conciliatory method to resolve a dispute with the help of a third party".

It is worth noting that there is no statutory definition of mediation in Polish law. The only formal definition of mediation is provided in Article 3 of the Directive of the European Parliament and of the Council 2008/52/EC of 21 May 2008 on certain

[97] R. Morek, *Wprowadzenie*, [in:] *Mediacje. Teoria…*, p. 21.
[98] *Ibidem*.

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aspects of mediation in civil and commercial matters,[99] which defines mediation quite broadly as a structured process, however named or referred to, whereby two or more parties to a dispute attempt by themselves, on a voluntary basis, to reach an agreement on the settlement of their dispute with the assistance of a mediator. Although this definition refers to civil and commercial disputes, because of the general character of the definition of mediation, it can also be used in relation to academic disputes.

2. Nature and goals of mediation

Mediation is an alternative dispute resolution method used in a very broad spectrum of disputes such as family, commercial, peer, neighborhood, labor or environmental disputes. This wide use of mediation is possible due to the informality of this procedure, which gives the parties a significant influence on both the course and outcome of the procedure. Since mediation is not contentious and contradictory, and its outcome considers broad interests of the parties, it gives the parties a chance to reach an agreement that is satisfactory for all participants, and at the same time the opportunity to reach creative solutions that go far beyond the means normally available in formal proceedings. The role of an impartial and neutral mediator is to provide participants with a sense of security, the opportunity to reflectively listen to each other and tell their stories, so that they can understand how to deal with similar situations in the future or change their communication style. The mediator's role is to assist the parties in the communication and to identify their broad interests, rather than make binding decisions so that participants participate in a democratic procedure in which they ultimately decide on the outcome of the dispute.

Due to the existence of different subcultures and conflicts of interest on campus, mediation has this advantage over more formal methods of dispute resolution as it draws attention to the different perspectives of the members of the organization, reduces the feeling of incompetence, lack of communication and misunderstanding, and solves the conflict.[100]

The objectives of mediation in academic disputes are not, however, so obvious and are often ambiguous. For example, in court ordered mediation, one of the most important results is a formal agreement, subsequently approved by the court, which finally ends the formal proceedings. While in academic mediation it is also important to achieve an outcome in the form of an agreement, the process itself is equally important because of the parties involved, such as students and staff. It builds participants' sense of responsibility for their decisions, ability to be involved in the decision-making process, their membership in the academic community, educates participants in a spirit of cooperation and mutual respect, and teaches them conflict resolution skills that are

[99] OJ EU L 136/3, 24.05.2008.
[100] *Ibidem*.

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important both professionally and personally. One of the authors considered academic mediation not only as a method for resolving disputes, but above all as a method of preventing disputes. "The real mediator is someone who, like a 'prophet', possesses a sense of anticipation, by creating passerelles that could restore communication and by solving the misunderstandings and conflicts that may emerge".[101]

In academic mediation, the emphasis is not only put on resolving a specific conflict, but also on preventing its escalation and the emergence of similar disputes in the future, as well as on improving relations between members of the same community.[102] Depending on the nature of the dispute or the people involved, different models can be used in mediation at the university. Where relationships are an important element in resolving disputes, for example between university staff, a transformative model can be applied, emphasizing the relationship between the parties, understanding each other's points of view, transforming the relationship. Similarly, in disputes involving students, a model aimed at understanding and listening to the other party's point of view or empowering the party may be more purposeful, because in academic mediation, the effectiveness expressed in resolving a matter quickly is not always a priority.[103] In other disputes, where quick resolution is important, a facilitative model based on the interests of the parties may be more appropriate. It is worth remembering that in addition to disputes between members of the academic community referred to as academic disputes, the university is an institution entering into many legal contracts with external parties. In such disputes which arise from the contracts and more formal relations with the outside partners, mediation is considered as an effective method, primarily from the point of view of the durability of the solution, time and cost.[104]

3. Application of mediation

Mediation is also a method that gives the parties a sense of satisfaction.[105] The research indicates that even if no settlement is reached, the vast majority of the participants have a positive opinion about the procedure.[106] According to many re-

[101] P. Caetano, I. Freire, *Mediation in Education: A Collaborative Study between the University and Practitioner-researchers in the Field of Education*, Portugal 2004 (paper presented at the European Conference on the Educational Research, University of Crete, 22–25 September 2004).

[102] *Ibidem*.

[103] R.A. Baruch Bush, J.P. Folger, *The Promise of Mediation: Responding to Conflict through Empowerment and Recognition*, San Francisco 2005, p. 41 ff.

[104] See more on mediation models in: E. Gmurzyńska, *Rodzaje mediacji*, [in:] *Mediacja. Teoria…*, p. 177 ff. See also W.C. Warters, *The History of Campus Mediation Systems: Research and Practice*, "Georgia State University College of Law Reading Room" 1999, no. 10, p. 6.

[105] R. Morek, *Wprowadzenie…*, p. 21.

[106] In mediation studies conducted at the University of Albany, it was found that the majority of people participating in academic mediation were satisfied with the process. The study also found that the benefit of the programs, in addition to the satisfaction of the parties, as well as the implementation

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searchers, the high satisfaction of the parties with mediation is due to the fact that it achieves procedural justice.[107] Sociologists, within the framework of the social theory of procedural justice, concluded that the evaluation of the process by its participants is not only a result of the outcome, but also of what procedure has been applied.[108] In assessing the process, the parties take into regard: proper treatment of the participants and a just and fair procedure.[109] Participants recognize the process as fair when they are treated with dignity, respect and impartiality both by a neutral third party and by the other party.[110] Mediation, especially in an academic setting, fits perfectly into the paradigm of procedural justice in the subjective perception of its participants.[111] During the mediation, the parties are involved in the decision-making process, they are "given a voice", the parties not the mediator decide on the course of the process, its outcome or the content of the settlement.[112] Thanks to the mediator's use of effective communication techniques, the parties feel listened to and understood. Moreover, the mediator provides them with the opportunity to express themselves fully and equally, to present their arguments and what happened, to "vent" their feelings and manifest their emotions, so that the parties undergo a certain kind of "purification".[113]

Mediation at universities is also used in various contexts, which may influence the course of mediation, the degree of formalization, as well as the assessment of when it is effective. For example, mediation is often used not as a self-contained procedure, which is carried out by a professional mediator, but as a tool of the ombudsman's work, which may be less formal than classic mediation and may not end with a written settlement, but with the improvement of the relationship, understanding the other party's point of view, or symbolically, shaking hands.

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of the agreements made in mediation, is that they are much less intimidating and stressful for participants than, for example, proceedings before the courts. See K. Miller, *Valuable and reliable resources for universities*, 24.01.2020, www.chronicle.com/article/research-universities-are-a-wasted-resource [access: 10.08.2020].

[107] E. Lind, T.R. Tyler, *The Social Psychology of Procedural Justice*, New York 1988, p. 42.

[108] M. Borucka-Arctowa, *Koncepcja sprawiedliwości proceduralnej i jej rola w okresie przemian systemowych. Analiza teoretyczno-prawna*, [in:] *Dynamika wartości w prawie*, ed. K. Pałecki, Kraków 1987, p. 33.

[109] M. Deutsch, P.T. Coleman, E.C. Marcus, *The Handbook of Conflict Resolution: Theory and Practice*, San Francisco 2006, p. 47; T. Chauvin, *Prawa stają się prawem: demokratyczne procedury w służbie wartości*, [in:] *Prawa stają się prawem. Status jednostki a tendencje rozwojowe prawa*, ed. M. Wyrzykowski, Warszawa 2006, p. 191.

[110] N.A.Welsh, *Decision Control in Court-Connected Mediation: A Hollow Promise without Procedural Justice*, "Journal of Dispute Resolution" 2002, no. 1, p. 184.

[111] E. Gmurzyńska, *Sprawiedliwość a mediacja. Wybrane zagadnienia związane z realizowaniem koncepcji sprawiedliwości w mediacji*, [in:] *Aurea praxis, aurea theoria*, eds. J. Gudowski, K. Weitz, vol. 2, Warszawa 2011, p. 1695.

[112] Eadem, *Rola prawników w alternatywnych metodach rozwiązywania sporów*, Warszawa 2014, pp. 20–25.

[113] *Ibidem*.

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At universities, not only the definition of mediation but also the range of mediation services offered is quite diverse. At some universities, the possibility of using mediation means that professional mediators help to resolve conflicts between members of the community. In other cases, mediation is understood as a more informal discussion between the parties with the participation of the ombudsman who acts as a mediator, although this discussion is sometimes more like facilitation or even informal discussion than classic mediation. Mediation may involve the use of professional internal mediators employed by the university, by the neutral third parties from outside the institution who are hired to conduct a particular case or by mediators who are members of the academic community specially trained to conduct mediation.[114] There are also universities where the co-mediation model is used. To ensure the neutrality of the mediators, there are two mediators, one external mediator, who is not affiliated with the academic community and thus has a broader and more neutral view of the conflict, and another internal mediator, from the university, who understands the specifics of working and studying at the university.[115]

At some universities mediations are provided only for students, at others there are used only for administrative or academic staff, and at others it is offered for all groups. Often mediation is applied between the students who live in dormitories, disputes among bigger groups of the academic community, in case of bullying and sexual harassment, disputes between students and administrative staff and between academics.[116]

Additionally, the scope of mediation programs varies. At most universities, mediated disputes include only those between the members of the academic community and those which are results of employment or study at the university. However, there are examples of mediation programs which also include disputes not connected to university, e.g. family or divorce disputes if they concern at least one member of academic community.[117]

4. Exclusions from mediation

Mediation may not be suitable for resolving all campus disputes, such as serious offences, including harassment because in some of these situations, it is not possible to find a common solution through dialogue between the parties. However, from the point of view of application of mediation each case shall be considered individually, especially taking into regards a subject matter of conflict and willingness of the parties to participate in mediation. In addition, there are areas that may be

[114] W.C. Warters, *The History of Campus Mediation Systems*..., p. 14.
[115] *Ibidem*.
[116] *Ibidem*, p. 6.
[117] *Ibidem*.

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particularly important from a university policy point of view, such as discrimination or hate speech, where the university may decide that transparency and keeping the community informed about the outcome of the procedures is more important than resolving the dispute itself in confidential procedure.[118] Mediation may be also excluded in cases of narrow academic assessment.[119] In addition, mediation may not be an appropriate method in academic disputes, where the parties are involved in a values-based conflict, where there is no room for compromise, a party is not effectively engaging in negotiations, one party refuses to participate in good faith, the case must be settled by a court, one of the parties does not intend to mediate, there is an imbalance of power between the parties that cannot be neutralized by the mediator, or the parties are not involved in the process of reaching a solution.[120]

Although the catalog of these exemptions seems quite long and includes a list of typical limitations in use of mediation, it should be taken into account that most often parties in academic conflicts are people who belong to the same community and have common values and long term relations which usually enhance conflict resolution with participation of professional, neutral party. Moreover, academic disputes are often about no tangible interests such as: dignity, honor, respect, saving face, fair treatment, clearing one's good name, apologizing, making people aware of important ethical values, education to reach consensus through dialogue and understanding others, which can be effectively resolved in mediation, which goals may be effectively reached in mediation.

DEVELOPMENT OF MEDIATION IN ACADEMIC CONFLICTS

Mediation was essentially the first method of settling disputes amicably that was introduced by universities in the United States, Canada, Australia and New Zealand.[121] It turned out that the formalized control mechanisms do not work ef-

[118] J.E. Bienstock, *op. cit.*, p. 41.

[119] R. Behrens, *ENOHE 2013 Dispute Resolution in Higher Education in Turbulent Times*, [in:] *Report of the 10th Annual Conference of the European Network of Ombudsmen in Higher Education*, Oxford 2014, p. 5.

[120] See discussion about excluding mediation is some disputes: H. Abramson, *Mediation Representation: Advocating in a Problem-solving Process*, Boulder 2004, p. 117 ff.; P. Young, *The "What" of Mediation: When Is Mediation the Right Process Choice?*, October 2006, www.mediate.com/articles/young18.cfm [access: 22.09.2020]; Ch. Moore, *The Mediation Process: Practical Strategies for Resolving Conflicts*, San Francisco 1996, p. 13; T. Grillo, *The Mediation Alternative: Process Dangers for Woman*, "The Yale Law Journal" 1991, vol. 100(6), p. 1585; R. Delgado, Ch. Dunn, P. Brown, H. Lee, D. Hubbert, *Fairness and Formality: Minimizing the Risk of Prejudice in Alternative Dispute Resolution*, "Wisconsin Law Review" 1985, no. 1359, p. 1387 ff.

[121] One of the experimental centers that promoted the introduction of mediation on campuses was the Center for Mediator in Higher Education, which began operating in 1979 in cooperation with

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fectively in academic community and that there is a need for dispute resolution instruments that support the community, give its members influence on the final decision, have an educational meaning and take into account rather complicated nature of relationships at the university.[122] Mediation or other ADR methods gave the parties the opportunity to reflect on the situation, look at their style of communication, improve their communication skills, accept diversity, be able to listen to the other person, and work out the differences that the parties share, as opposed to formalized proceedings, which are inherently contradictory and rarely give a chance to improve the relationship between the parties.

Despite the view that ADR methods fit very well into the university culture, they were adopted by different universities at various pace and time. They were introduced the earliest at the U.S. and Canadian universities, which should not come as a surprise, because these ADR methods have developed first on the North American continent. The United States is considered to be the cradle of mediation in the legal system, and the beginnings of this method can be found in community centers where minor criminal, civil or neighborhood disputes were solved. In the 1970s, however, the potential of mediation in resolving legal disputes in the courts was noticed.[123] Since 1976 and the Pound Conference on Justice Reform, mediation has gradually become the most popular method of resolving court and out-of-court disputes in the United States.[124] During this conference, F.E.A. Sanders presented the concept of a "multi-door courthouse" – the courts from which one comes out through different doors and achieves justice in different ways, not only by rendering the judgement, but also by means of ADR methods.

The popularity of mediation and other ADR methods in the United States is evidenced by the following facts: historically only a small percent of the cases went to trial, however after introducing ADR methods in the court system, that number

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the New York branch of the American Arbitration Association. The Center has been in operation for 5 years and its purpose was to encourage the administration at various universities to use mediation (see J. McCarthy, *Conflict and Mediation in Academy*, "New Directions for Higher Education" 1980, no. 31, pp. 1–8). The first university to use mediation on its campus was the University of Hawaii in 1979 (see B.E. Barnes, *Designing a Conflict Resolution System for the University of Hawaii System: Economic Considerations and the Unionized Campus*, CNCR-Hewlett Foundation Seed Grant White Papers 1999, no. 9, p. 2).

[122] W.G. Tierney, *Organizational culture in higher education: Defining the essentials*, "Journal of Higher Education" 1988, vol. 59(1), pp. 2–21; K. Girard, J. Rifkin, J. Townley, *Peaceful Persuasion: A Guide to Creating Mediation Dispute Resolution Programs on College Campuses*, Amherst 1985.

[123] E. Gmurzyńska, *Mediacja w sprawach cywilnych w amerykańskim systemie prawnym. Zastosowanie w Europie i w Polsce*, Warszawa 2007, p. 4 ff.

[124] L.P. Love, *Twenty-Five Years Later with Promises To Keep: Legal Education in Dispute Resolution and Training of Mediators*, "Ohio State Journal on Dispute Resolution" 2002, vol. 17(3), p. 597.

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is even smaller;[125] for many years there has been a noticeable institutionalization of these methods; in many states mediation is mandatory: the use of the term "liti--mediation" indicates that mediation is proposed in many civil disputes and has become an important stage of civil procedure;[126] mediation is the most popular method of dispute resolution among many ADR methods, such as arbitration, med-arb, arb-med, mini-trial, expert opinion.[127]

According to some research, more than half of public universities in the United States use mediation as a stand-alone method of resolving disputes on matters between university members by neutral and impartial mediators, regardless of the fact that it is used as one of the main tools by university ombudsman.[128] W.C. Warters reports that there was a total of about twenty mediation projects on campuses in Canada and the United States in 1990, but by the year 2000 the number had exceeded two hundred programs and is still on the rise.[129]

Despite the opinion of many researchers that ADR methods are perfectly suited for resolving university disputes, it took more time for the European universities to became interested in these methods. One exception is Spain, where already in the 1990s the first academic ombudsman used mediation as a tool for their work. In Europe, it was only in the 21st century that the mechanisms of alternative methods became more widely applied, and mediation itself started to be used more often in the last decade as a method of solving civil, family, business or criminal disputes. However, it is still difficult to speak of use of mediation comparable to that in Canada, the United States, Australia or New Zealand.[130]

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[125] K.K. Kovach, *The Vanishing Trial: Land Mine on the Mediation Landscape or Opportunity for Evolution: Ruminations on The Future of Mediation Practice*, "Cardozo Journal of Conflict Resolution" 2005, vol. 7(27), p. 32; M. Galanter, *The Vanishing Trial: An Examination of Trials and Related Matters in Federal and State Courts*, "Journal of Empirical Legal Studies" 2004, vol. 1(3), p. 460 ff.

[126] J. Lande, *Lawyers' Routine Participation Directs Shape of "Liti-Mediation"*, "Alternatives to the High Cost of Litigation" 1998, vol. 16(53).

[127] *Ibidem*. In this country, university mediation is most often offered as a stand-alone dispute resolution method by HR offices (Human Resources), and on a few (5) by specific departments at universities dealing with peace studies. In six cases an academic ombudsman is an institution where mediation can be used as a stand-alone procedure, regardless of the fact that it is used as a working tool for ombudsmen. See *ABA Report*, [in:] *Special Committee on Alternative Means of Dispute Resolution*, Washington 1983, pp. 597–607.

[128] S. Klingel, M. Maffie, *op. cit.*, p. 13; B.H. Raven, *The Bases of Power/Interaction Model of Interpersonal Influence*, "Analyses of Social Issues and Public Policy" 2008, vol. 8(1), p. 9. Out of the 45 public universities surveyed, mediation is applicable in 26. However, at most of these universities, cases involving the hiring of academics for the position of assistant professor (tenure) or professor and cases involving discrimination are excluded from mediation.

[129] W.C. Warters, *Mediation in the Campus Community…*, p. 2.

[130] G. DePalo, L. D'Urso, *'Rebooting' The Mediation Directive: Assessing the Limited Impact of its Implementation and Proposing Measures to Increase the Number of Mediations in the EU*, www.

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The adoption by the European Parliament of Directive 2008/52/EC of 21 May 2008 on certain aspects of mediation in civil and commercial matters, which contains a framework for regulating mediation as a method to ensure better access to justice, has contributed to the promotion of mediation in Europe.[131] The Directive indicated the basic principles of mediation that should be regulated by the Member States, the need for the Member States to ensure the quality of mediation or to introduce mechanisms for the enforceability of settlements. The greatest achievement of the Directive was that, despite its limited scope, since it only applied to cross-border disputes, EU Member States introduced mediation into their legal systems in virtually most civil and commercial cases. Other reasons that have contributed to increasing the popularity of mediation and other ADRs in Europe are as follows: the introduction of mandatory and quasi-mandatory mediation;[132] the institutionalization of ADR in various disputes, which is enshrined in laws, regulations and statutes concerning the activities of many institutions; the professionalization of the profession of a mediator, which contributes to greater public confidence in this method.[133]

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europarl.europa.eu/RegData/etudes/etudes/join/2014/493042/IPOL-JURI_ET(2014)493042_EN.pdf [access: 10.10.2020].

[131] Directive 2008/52/EC of the European Parliament and of the Council of 21 May 2008 on certain aspects of mediation in civil and commercial matters; Directive 2013/11/EU of the European Parliament and of the Council of 21 May 2013 on alternative dispute resolution for consumer disputes and amending Regulation (EC) no. 2006/2004 and Directive 2009/22/EC (Directive on consumer ADR) (OJ EU L 165/63, 18.06.2013); Regulation (EU) no. 524/2013 of the European Parliament and of the Council of 21 May 2013 on online dispute resolution for consumer disputes and amending Regulation (EC) no. 2006/2004 and Directive 2009/22/EC (Regulation on consumer ODR) (OJ EU UE L 165/1, 18.06.2013).

[132] Mandatory or quasi-mandatory mediation has been introduced in Greece, Romania and Turkey, as well as in the United States, Australia or New Zealand. On the other hand, quasi-obligatory schemes were introduced in other countries. They include, i.a., obligatory information meetings; imposing the costs of the trial even if the party wins the case; penalties for unjustified refusal to participate in mediation; the obligation of the parties to include in their pleadings information whether they have undertaken mediation and explain why they have not. The obligation for lawyers to inform the parties about mediation have been introduced, i.a., in Germany, Poland, Italy and France. Furthermore, the EC in the *Alasini v. Telecom* case (2012) decided that mandatory mediation is without prejudice to Article 47 of the European Treaty on access to the courts. Similarly, see the case *Menini v. Banco Popolare* (2017).

[133] For example, in recent years, in Poland, in addition to mediation in civil cases involving business, family and labor issues (2005), criminal (1997) and juvenile cases (2001), mediation and other ADRs have been introduced in other disputes, e.g. in administrative disputes under the Act of 30 August 2002 – Law on proceedings before administrative courts (Journal of Laws 2017, item 1369), in consumer disputes under the Act of 23 September 2016 on out-of-court resolution of consumer disputes (Journal of Laws 2016, item 1823), in the recovery of receivables on the basis of the Act 7 April 2017 on amending certain acts to facilitate the recovery of receivables (Journal of Laws 2017, item 933). Moreover, there is a possibility of mediation by Prosecutor General in the Act of 15 December 2016 on the General Prosecutor's Office of the Republic of Poland (Journal of Laws 2016, item 2261), or in disputes concerning public procurement under the Act of 11 September 2019 – Public Procurement Law (Journal of Laws 2019, item 2019).

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In some European countries, the use of mediation at the universities as an independent method of dispute resolution can be observed, mainly in cases of labor conflicts. In Austria, on the other hand, some universities, which include the University of Innsbruck, are currently attempting to mediate between students as well, by setting up a special mediation fund or training students in mediation skills.[134] The University of Sheffield has developed a joint project with the student council to train students as "conciliators" to prevent further conflicts. The conciliators facilitated meetings during the informal stage of the college's complaints procedure before the student made a formal complaint, and the purpose of these meetings was to guide the proceedings and solve the problem in such a way that no formal procedure was initiated.[135]

At British universities, mediation is applied as an independent form of academic dispute resolution for members of different groups in the academic community.[136] At most of them, mediation is free of charge and used not only to resolve disputes between employees or between students, but also between university staff and students. At Oxford, for example, free mediation is available to students, while in employee disputes external companies are used.[137]

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[134] J. Grier, J. Wohl, J. Leidenfrost, *Thirty Years of Solitude? University Ombudsmen's Pioneering Past, Confident Present, Challenging Future, Report of the 12th ENOHE Annual Conference*, Innsbruck 2015, p. 9.

[135] L. Buckton, *The Student Conduct and Appeal Office*, https://slideplayer.com/slide/16442760 [access: 10.11.2020].

[136] University of Dundee, www.dundee.ac.uk/edr/howcanwehelp [access: 10.11.2020]: "The value of the use of mediation is principally a quicker, simpler and more cost-efficient way to solve disputes. It allows for taking into account a wider range of interests of the parties, a greater chance of reaching an agreement which will be voluntarily respected"; Goldsmith University of London has a team of professional and trained employees in dispute resolution. All have received the "Understanding Workplace Mediation Theory and Practice" training and have received Level 3 accreditation from the Open College Network in London (Goldsmith University of London, www.gold.ac.uk/students/wellbeing/mediation [access: 10.11.2020]); University of Bristol, www.bristol.ac.uk/secretary/mediation [access: 10.11.2020]: "The Mediation Service can be used to resolve disputes between any University staff members and between University staff and students"; University of Southampton, https://www.southampton.ac.uk/mediation/students.page [access: 10.11.2020]: "Mediation is a free and confidential service and offers you an opportunity to try to resolve any conflict between parties who may work, study or live together. It could be student/student or student/staff"; University College of London, www.ucl.ac.uk/student-mediator/what-student-mediation [access: 10.11.2020]; University of Durham, www.dur.ac.uk/mediation.service [access: 10.11.2020]: "The University Mediation Service is open to all University staff and students who wish to resolve conflict outside of formal procedures and are willing to discuss difficulties in order to improve a future relationship. The Service is confidential and is independent of Human Resources and all other University departments"; University of Manchester, www.staffnet.manchester.ac.uk/equality-and-diversity/mediation [access: 10.11.2020]: "The service is open to both staff and students who wish to address an issue or concern they have at work or study".

[137] The Student Resolution Service (www.ox.ac.uk/students/welfare/harassment/student-resolution-service [access: 20.12.2020]) offers free mediation service for students who find themselves

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It is worth noting that at European universities, the topics such as conflict management, mediation, negotiation, arbitration, ADR or conflict resolution are becoming quite popular in the teaching context, especially in the framework of specialized master's studies (LL.M). The review of the programs offered by European universities leads to this conclusion.[138] Despite the fact that mediation, as well as other ADR methods, is an increasingly important subject taught and researched, due to the interdisciplinary nature of this field, it is usually built into the mechanisms used by the ombudsman, provided that the ombudsman has been appointed at the university.[139] The analysis of ADR mechanisms used at European universities leads to the conclusion that although mediation has great potential and could be used in many disputes at European universities, it is difficult to find its systemic and systematic application.[140] At some universities, it is used quite systematically, at many it is used *ad hoc* when needed, at others it is seldom or never applied.

An example of systemic application of mediation is the University of Warsaw, where, apart from the institution of an academic ombudsman, who has mediation included in its scope of duties, the Center for Dispute and Conflict Resolution at the Faculty of Law and Administration has been established. The Center works closely with the ombudsman. The Center, which was established as a foundation in 2006, is organically connected with the Faculty of Law and Administration and one of its goals is to promote and popularize mediation and other amicable dispute resolution (ADR) methods at the University of Warsaw and in the academic community.[141] Several mediators who are employees or professionals who cooperate with the University of Warsaw conduct mediation in the Center, which is supported by the Rector of the University. They, among other things, mediate academic disputes which are directed to the Center by an ombudsperson, anti-discrimination committee or the rector of the University.[142] Mediation is free of charge and is available

in conflict with another student. However, Oxford employees are recommended only to specific mediation companies. See University of Oxford, *Guidance on mediation*, https://hr.admin.ox.ac.uk/guidance-on-mediation [access: 20.12.2020].

[138] *Masters Programs in Peace and Conflict Studies in Europe 2021*, www.masterstudies.com/Masters-Degree/Peace-and-Conflict-Studies/Europe [access: 20.12.2020].

[139] The institution of the academic ombudsman is discussed in the second part of the article.

[140] J. Leidenfrost, *Conflict Resolution at University*…, p. 106.

[141] Statut Fundacji Centrum Rozwiązywania Sporów i Konfliktów przy Wydziale Prawa i Administracji Uniwersytetu Warszawskiego z dnia 12 czerwca 2006 r., https://mediacje.wpia.uw.edu.pl/o-nas/statut [access: 27.01.2021].

[142] Regardless of academic mediation, the main core of the Center's activities is the education of law students about the Center. The Center receives cases referred by the courts and, within mediation clinic, students, after intensive and practical classes on negotiation, dispute resolution and mediation, conduct co-mediations and act as first contact mediators in cases referred by the courts. However, students do not take part in academic mediation, as those that are submitted to the Center usually involve disputes between university staff.

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for students and employees of the University of Warsaw, although majority of mediations concern employees. The Center also promotes conciliatory methods of dispute resolution and soft skills by organizing trainings for students, administrative staff and faculty members. In a certain sense, the University of Warsaw created a system of dispute resolution, consisting of the academic ombudsman, the Center for Dispute and Conflict Resolution, as well as a workshops for members of the academic community on how to deal with conflicts.[143]

What is also interesting from the point of view of academic mediation in Poland according to the Act of 20 July 2018 – Law on Higher Education and Science[144], in force since October 1, 2018, a legal framework for the use of mediation in some academic disputes has been created.[145] Although the statutory provisions are very narrow and provide only for the use of mediation in disciplinary proceedings against academics, there is nothing to prevent universities, regardless of these regulations, from introducing mediation in other disputes. This regulation can be interpreted as a positive trend since it draws the attention of universities to the possibility of using mediation in academic disputes on a wider scale. However, the law is very vague as to the form and rules of mediation and refers only to the voluntary character of mediation and states who can be a mediator in academic disputes. According to Article 282 of the Law, mediation is voluntary and may be only conducted with the consent of both parties. Mediation may be conducted by an academician who is appointed by the rector. The Law does not regulate other rules and procedures of mediation.[146]

[143] The introduction of such a system was made possible thanks to the support of the university authorities for this idea and the fact that the research staff, especially at the Faculty of Applied Social Sciences and the Institute of Applied Social Sciences (ISNS), have been involved in mediation classes, negotiations of the mediation clinic or the participation of students in moot court and competitions on this subject.

[144] Journal of Laws 2018, item 1668 as amended.

[145] Until the introduction of the Act, mediation in disciplinary disputes could also be used on the basis of Articles 150 and 223 of the Higher Education Act, which provided that in disciplinary proceedings against students and employees, the provisions of the Code of Criminal Procedure shall apply offenders, if certain matters are not directly regulated in academic disciplinary proceedings. Due to the fact that Article 23 of the Code of Criminal Procedure provided for mediation in criminal cases, the interpretation of these provisions was that mediation may be used in disciplinary proceedings, although practically it was used extremely rarely.

[146] According to the report of the Fundacja Nauka Polska (Polish Science Foundation), out of 69 universities that have answered the question, 51 have not yet established a mediator function. Some universities, such as the Stanislaw Wyspianski Academy of Theater Arts in Kraków, have indicated that the rector of the Academy will appoint a mediator for a specific case and there are no plans to appoint a permanent mediator. Other universities replied that they are not appointing such an institution "because there is no need to do so" (see P. Szewioła, *Mediacja na uczelniach rozkręca się powoli*, 12.11.2019, https://serwisy.gazetaprawna.pl/edukacja/artykuly/1439065,mediacja-uczelnie-szkolnictwo-wyzsze-mediator-pracownicy-naukowi.html [access: 20.12.2020]; *Osoba mediatora*

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THE BENEFITS OF MEDIATION FOR ACADEMIC COMMUNITY

1. Benefits for students

Conflicts on campus involving students are part of their academic life. They arise both from contacts with the administration or academic teachers and are part of life in dormitories where students from various backgrounds, different parts of the country and the world meet. This diversity in the face of globalization manifesting itself in student mobility and studying in different countries concerns culture, religion, race, traditions, and systems of values. In the absence or rare prior contact with diversity, various kinds of fears may arise and reveal stereotypes that can cause misunderstandings.[147] For students, especially younger students, the university is an unknown and fascinating world identified with unfettered freedom, which often leads to experimentation or the crossing of certain boundaries, as an expression of this freedom but also may the cause of conflict. Students, especially in their first year of studies, lack negotiating skills, which can exacerbate the conflict as the techniques they use are ineffective.[148] New and unknown situations and detaching from the family can be stressful, but also a basis for conflicts with their roommates, classmates, and professors. Students particularly at the beginning of their academic education also may not be familiar with the university ethics and standards and get into trouble with the university and administrative staff.

Mediation gives a sense of involvement to the parties in the decision-making process, creates an atmosphere of dialogue, good communication, and ensures the balance of the parties in the process, which is particularly important in conflicts between students and academic or administrative staff, in which, as a rule, inequality of the parties is inherent. Moreover, it is not without significance that it is the university that gives students the opportunity to take part in mediation, which is a voluntary procedure and does not impose any decisions on students. Participation

w świetle Ustawy 2.0, https://sciencewatch.pl/index.php/7-osoba-mediatora-w-swietle-ustawy-2-0 [access: 20.12.2020]). Moreover, the narrow application of mediation only in disciplinary matters concerning academics is criticized, as well as the fact that professional mediators cannot perform the function of a mediator in academic disputes, especially since not all universities employ academics who specialize in conflict resolutions and mediation. An interesting initiative was taken by ADR Study Space, which is an informal organization of academics teaching mediation and other ADRs at law faculties in Poland. ADR Study Space proposed to create a mediators' list consisting of academics from universities all over Poland who deal with mediation and are often professional mediators. If, therefore, there would be problems with the impartiality of the mediator because he or she is an employee of the same university as the parties to the dispute, the university could use the mediators from the list. In this way the principles of professionalism and impartiality would be ensured, as well as knowledge about the universities.

[147] W.C. Warters, *Mediation in the Campus Community…*, p. 33.

[148] M. Czapski, *op. cit.*, p. 476.

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in mediation enhances the students' sense of responsibility and contributes to a positive evaluation of the university, which, in addition to more formal procedures, provides such an opportunity.[149] The value of mediation in disputes involving students is significant since the issue may be solved in the form of dialogue and open communication, regardless of who is the other party. It also mobilizes students to actively participate in the process and seek possible solutions to develop soft skills such as teamwork, problems-solving or negotiation. Mediation also ensures a sense of security through the implementation of the principle of impartiality and neutrality. Mediation encourages the parties to present their stories without interruption, ensures the balance between them no matter what position they hold in the university hierarchy, watches over the process and makes sure that the parties hear and understand each other.

2. Benefits for administration

Mediation is characterized primarily by a quite high efficiency and a short time to resolve a dispute. Studies show that over 50% of cases that are subject to mediation end in a settlement,[150] while many statistics indicate that solving an average mediation case takes no more than two months, which significantly saves administration time. Research shows that managers of various institutions devote more than 30% of their time to conflict resolution.[151] In a university which is a complex institution from the point of view of the existence of separate groups and subcultures and the clash of different interests, conflicts and their resolution are an important part of the tasks to which the university administration devotes its time. Furthermore, mediation is characterized by the fact that it is, in principle, cheaper than other methods of resolving disputes, such as litigation or arbitration. Additionally, in an academic environment, where the role of a mediator is often played by academics, within the framework of established dispute resolution programs or centers, or where mediation is conducted by an ombudsman, its costs are even lower by comparison to the programs employing mediators from outside the university. The costs of financing such programs incurred by the university are only a fraction of the costs incurred during formal proceedings.

Regardless of the effectiveness and costs of mediation, the confidentiality rule inherent in this procedure is also important for universities. Universities often face negative comments in case of a dispute or other difficult issues, so the confidentiality

[149] K. Matthews, *7 Benefits of Mediation Programs in Higher Education Institutions*, October 2019, www.mediate.com/articles/matthews-7-benefits.cfm [access: 10.09.2020].

[150] A. Gójska, *Mediacja w postępowaniu cywilnym w Polsce w statystykach Ministerstwa Sprawiedliwości*, „Profilaktyka Społeczna i Resocjalizacja" 2013, no. 22, p. 113.

[151] D. Dana, *The costs of organizational conflict*, "Organizational Development Journal" 1984, p. 5.

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of mediation can be a reason why they decide to solve a dispute this way. Making certain issues public especially if the dispute concerns an individual situation resulting from a personal conflict, can be destructive for the administration and the academic community as a whole. External observers often generalize one incidental case to the entire academic community. In such situations, the use of mediation, one of the basic principles of which is confidentiality, allows solving the conflict without any external pressure on the administration or the parties.

The use of mediation in academic disputes is a reflection of the fact that the university administration not only wants to resolve internal disputes in the form of a dialogue, but also is ready to include members of the community in a proactive approach, takes their opinion into account, is ready to listen to their point of view, and is willing to correct inappropriate practices at the university.[152] Mediation solves conflicts broadly because parties base their solution on multifaced interests. Often in mediation, the parties expand the scope of dialogue and build added value, which in a university conflict situation can make a difference and introduce positive changes at the university. During mediation, several issues are raised which are not usually discussed at all in more formal procedures such as complaints and grievances, as well as court or quasi-judicial proceedings. There is no opportunity to analyze the sources of conflict in-depth in formal proceedings. Mediation goes beyond the limits of the original complaint and thus resolves the conflict extensively, which has a positive impact on its sustainability and stability. Reaching the consensus often makes the parties to cooperate which is a key element for a good atmosphere at the university.

In addition, there are numerous conflicts at the university, which traditionally are not resolved and left to themselves, as there is often no opportunity for the parties to talk or improve their relationship in a safe environment.[153] These conflicts affect both students and staff who as a result may leave the university.[154] Research carried out among Ph.D. students shows that only 50% of students did not graduate from these studies and left, and one of the two main reasons of such situation is a conflict with the mentor.[155]

Apart from the economic and organizational benefits, the paradigm of mediation based on the autonomy of the individual, who influences the process and how the dispute ends, has the right to express his opinion and to be heard, fits in with the idea of an autonomous and independent university. It allows for the resolution of

[152] W.C. Warters, *Mediation in the Campus Community…*, p. 29.

[153] An interview with a lawyer from the University of Warsaw, according to which many cases in courts involving the university as a party would not be pursued at all if the parties had the opportunity to talk in a safe atmosphere, and if a mediator took part in them, they could be even more effective.

[154] J.P. Folger, J.J. Shubert, *Resolving student-initiated grievances in higher education: Dispute resolution procedures in a non-adversarial setting (Report no. 3)*, Washington 1986.

[155] M. Nerad, D.S. Miller, *Increasing student retention in graduate and professional programs*, [in:] *Assessing Graduate and Professional Education*, ed. J.G Haworth, San Francisco 1996, p. 61 ff.

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the dispute regardless of formal procedures, and at the same time gives community members the opportunity to participate in the process, which is carried out, among other things, by the principle of voluntariness. Mediation is also part of the university's mission, which includes values such as dialogue, tolerance and respect for the views of others. Mediation teaches important negotiation and problem-solving skills, shows how to reach a consensus despite different views on the same problem, teaches to respect for each other, and builds more lasting relationships, and thus is an important part of university education.

3. Benefits for academic and administrative staff

One of the distinct features of academic work is the autonomy of research and scientific work. Since mediation is also characterized by party autonomy and the parties' influence on the procedure and its outcome, it clearly reflects values important to members of the academic community and can therefore be particularly useful in disputes involving academics on one or both sides.

It is also important for the staff of the university to maintain good relations since work at the university is often long-term and the continuation of a conflict in such conditions is not effective and does not contribute to a good atmosphere at the workplace. Moreover, the mere participation in the mediation process, in which all persons involved in the conflict can take part, gives a sense of influence on the matters of the university and collectively made decisions. For the administrative staff, who enter into relations with students and other administrative and academic staff, mediation provides an additional opportunity to resolve the conflict quickly and effectively. Very often at the university, there is no possibility for the conflicted parties to talk and explain the situation to each other, which can lead to dragging out and aggravating the conflict or even taking more formal steps by one of the parties. Regardless of the position of the employee at the university, mediation ensures equality of the parties and a meeting in a secure environment, which can be achieved by, among other things, the confidentiality of this procedure and the presence of an impartial and neutral mediator, instead of resorting to hierarchical university structures or subjecting the case to the decision of the head of a unit. Due to the nature of the disputes, employees may also not feel comfortable talking to their immediate superior about the causes of the conflict. Another reason for using mediation in university disputes is the fact that the second largest number of disputes are interpersonal conflicts at the university, and the use of mediation in these disputes has the effect of removing the responsibility and burden for resolving these disputes from those who are heads of institutes or departments.[156]

[156] W.H. Gmach, J.B. Carroll, R. Seedorf, D. Wentz, *Center for the Study of the Department Chair: 1990 Survey*, Washington 1990.

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CONCLUSIONS

The changing role of universities, the complexity of the academic community, as well as the global crises and challenges of the 21st century make universities "laboratories of conflicts". Moreover, conflicts and disputes at universities have always been an inseparable part of academic life, as the truth has been reached through disputes and discussions. Academic independence, individual mode of work or hierarchical structures makes universities particularly vulnerable to the emergence of conflicts.

Disputes and debate inherent in the nature of academic life, the right of everyone to express their views and be heard with respect, and in addition, the growing number of litigation cases against universities, also seen recently as providers of educational services, have led universities around the world to seek new ways to resolve disputes. The alternatives to court proceedings would protect the independence of universities, serve an educational function and resolve disputes in a spirit of tolerance, respect for the views of others and dialogue. Such direction can be described as a paradigm shift in the approach to conflicts in academic disputes that take place at universities, practically on all continents, although the development of these methods is not equally advanced everywhere.

The most frequently used alternative mechanism in resolving disputes at universities is mediation. It is method non-binding and informal in nature. Its application is based on the conviction of broadly understood independence of members of the academic community. Therefore, all participants of the mediation have an equal influence on the process and its outcome, and consensus is reached through dialogue.

Mediation brings many benefits to the university and its community. From the point of view of its application in university disputes, its educational character is important, especially in disputes with students, who are involved in a process that considers their voice, the possibility of influencing the outcome of the dispute, ensures equality of the parties, and mobilizes to listen to the other party's arguments and understand them. This method of dispute resolution offers individual groups in the university many benefits that go beyond the typical list of benefits usually mentioned when describing mediation, such as saving costs and time, making it a truly "appropriate" method of dispute resolution for solving academic disputes.

Nevertheless, application of mediation is neither obvious nor uniform, and even at universities operating in the same country there are significant differences in its application. On the one hand, there are countries such as Canada, the United States, Australia, New Zealand, Mexico and Spain, where mediation has been in place in higher education institutions for more than four decades and has an established position and importance. On the other hand, in many countries in Europe this method has only been introduced in recent years and often there is no institutional or external support, jointly developed standards or principles of good practice. The analysis

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of mediation in higher education institutions in Europe shows also that there is no broad research on its application and models and thus more research is necessary.

The analysis of the use of mediation at different universities in selected countries leads to the conclusion that there is no single or even several models of mediation in academic community, and its use is diverse and often random. The prevalence of the use of mediation in an academic context depends on such factors as: the level of development and popularity of mediation in each country; convincing the university administration of the effectiveness and legitimacy of using this method in university disputes; involvement of members of the academic community in promoting mediation; external factors such as laws and statutes that regulate and support the use of mediation at universities.

It is worth emphasizing the untapped potential of mediation as a self-contained method of solving academic disputes, which is however still not systematically applied, at least in Europe, even though, according to many research and opinion very suitable for such disputes. The use of mediation in various disputes not only internally, with students or staff and faculty members but also externally, for example by introducing mediation clauses into contracts, which the university concludes with various external entities, may be a good solution from the point of view of the costs of conducting disputes, as well as fulfilling the idea of an autonomous and independent university.

Particular attention should be paid to utilization of the intellectual potential of students and their inclusion in conducting mediation in the form of peer mediation or in other forms of ADR, which have invaluable educational benefits. Consideration should also be given to the introduction of mandatory mediation in academic disputes, as this method gives the possibility to resolve disputes at an early stage and gives the parties a chance to meet, which may lead to the end of the dispute and thus avoid formal procedures. Mediation not only contains an element of informality, confidentiality or relatively low costs, but at the same time it does not involve any burdens resulting from joining this procedure. Mediation does not limit the right to go to court or another formal procedure, but only provides an opportunity to reflect on solutions together, and in case of disagreement, the court or other formal procedures, such as disciplinary proceedings, are still available to each party. In addition, there are no negative consequences for the parties if they do not participate in mediation or do not reach a settlement. Mandatory mediation in certain academic disputes would also prevent situations where the initiation of formal procedures is due to a party's lack of knowledge of other possibilities. It is also worth considering the introduction and adoption of the statutory regulation of mediation in academic disputes, which would give this method a greater significance and legitimacy to apply it.

One of the conclusions that emerge from the analysis of the development of ADR methods at universities in some countries is that a systemic approach to

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dispute resolution is most effective when it relies on multifaceted and proactive actions of universities in this area. These activities may also include incorporating a conciliatory approach to dispute resolution into the mission of universities, which may manifest itself not only in the commitment of universities to propose mediation in the event of disputes with students or staff, but also in the introduction of mediation or mixed clauses into any contracts that the university enters with different entities.

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ABSTRAKT

Opracowanie składa się z dwóch części. Pierwsza część jest analizą przyczyn powstawania coraz większej liczby konfliktów na uniwersytetach, wynikających zarówno z czynników zewnętrznych związanych z kryzysami XXI w., jak i z przyczyn wewnętrznych, tj. z charakteru uczelni wyższych, coraz większej złożoności problemów powstających na uniwersytetach oraz ze zmieniającej się ich roli w społeczeństwie. Jedną z przyczyn tych konfliktów jest traktowanie uczelni wyższych jako dostawców usług, co jest wynikiem zmiany w pojmowaniu roli uniwersytetu. Takie podejście powoduje nie tylko powstawanie konfliktów, lecz także coraz częstsze odwoływanie się przez studentów, którzy rozumieją swoją rolę jako konsumentów, do procedur formalnych, jakimi są postępowania sądowe. W związku z taką tendencją uniwersytety w wielu krajach wprowadzają lub rozważają wprowadzenie alternatywnych metod rozwiązywania sporów (ADR), które stanowią tańszą i szybszą alternatywę dla postępowań sądowych czy dyscyplinarnych oraz uwzględniają ważny element misji uniwersytetów polegający na edukacji studentów w duchu poszanowania i tolerancji dla drugiej strony, a także wybierają takie metody, w których strony mają możliwość wpływu na przebieg i rozwiązanie sporu. W artykule poddano analizie najczęściej wykorzystywaną na świecie formę ADR w sporach akademickich w postaci mediacji. Metoda ta doskonale wpisuje się w ideę autonomicznego i niezależnego uniwersytetu. Mimo to jest na razie wykorzystywana w szerokim zakresie tylko w niektórych krajach. Przedstawiona analiza może stanowić podstawę dla ważnej refleksji nad bardziej powszechnym

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wprowadzeniem tej metody na uniwersytetach na całym świecie, ponieważ nie jest ona przypisana do jednego systemu prawnego. W drugiej części opracowania autorka przenalizuje stosowanie postępowania przed sądami w rozwiązywaniu sporów akademickich, instytucję rzecznika akademickiego oraz formy mieszane i adiukacyjne stosowane w sporach akademickich.

Słowa kluczowe: rozwiązywanie sporów; ADR; spory akademickie; mediacja; rzecznik akademicki

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