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Objectives of Mediation and Selection and Implementation of Mediation Strategies and Techniques by Mediators in Civil Disputes – Study Report (Part I)

Cele mediacji a dobór i stosowanie strategii i technik mediacyjnych przez mediatorów w sporach cywilnych – sprawozdanie z badań (część I)

ABSTRACT

Studies of understanding and identification of mediation objectives, strategies and techniques and the effectiveness of mediation proceedings are justified from the cognitive and practical perspectives. The aim of this paper is to present the report of an empirical study, devoted to the subject matter mentioned above, conducted by the author as part of the scientific activity financed by the Polish National Science Centre. The paper is complex in nature – it deals with the research, concept and methodological threads. The empirical study was conducted in Poland, with Polish mediators participating in it, providing mediation services mainly in one of the Mediation Centres operating at District Chambers of Legal Advisors, making up the National Network of Legal Advisor Mediation Centres. However, considering the universal and utilitarian nature of the issue in hand, the comparative potential, originality and cognitive value of the study findings may be of interest to both Polish and international scientists and practitioners of mediation as an amicable form of holistic legal dispute management. Given the scope and depth of the issues addressed, the article is divided into three parts. This text (which constitutes part I) presents the subject, scope and objectives of the study and the general research hypotheses, followed by the course of the research and the major methodological assumptions, including the main empirical research tools: a survey questionnaire and an interview scenario.

Keywords: objectives of mediation; mediation strategies; mediation techniques; mediation effectiveness

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INTRODUCTION

The aim of this paper is to present the report of a preliminary (pilot) empirical study, conducted by the author as part of the scientific activity, entitled "Aims of mediation and selection and implementation of mediation strategies and techniques by mediators in civil (including commercial) disputes between entrepreneurs" financed by the Polish National Science Centre.[1] Given the scope and depth of the issues addressed, the article is divided into three parts. The first part presents the subject, scope and objectives of the research and the general research hypotheses, followed by the course of the research and the major methodological assumptions, including the main research tools: a survey questionnaire and an interview scenario. The second part of the article will be devoted to selected results of the empirical study, i.e. detailed data based on the questionnaire survey, a brief discussion and the most important conclusions. The third part will contain selected relevant data obtained from in-depth individual interviews with mediators, their discussion and conclusions, including a summary of the entire scientific activity, i.a., in the context of mediation practice and a further, more comprehensive scientific study of mediation as an amicable form of holistic management of legal disputes.[2]

This study dealt mainly with mediation objectives in civil cases in connection with the selection and application of mediation strategies and techniques applied by Polish mediators – lawyers by education (also professional legal advisors), providing mediation services mainly in one of the Mediation Centres operating at District Chambers of Legal Advisors, making up the National Network of Legal Advisor Mediation Centres.[3]

The general aim of this study was to determine how the above-mentioned mediators understand, set and prioritise the goals of mediation proceedings in civil disputes, especially commercial disputes. This is followed by identification of the way of choosing and applying various mediation strategies and techniques, with respect to the mediation objectives in a specific case. Indeed, when conducting a mediation, a mediator may use at least three basic mediation strategies, within which a variety

[1] This text was prepared as part of the scientific activity performed by the author in 2020, entitled "Aims of mediation and selection and implementation of mediation strategies and techniques by mediators in civil (including commercial) disputes between entrepreneurs", conducted as part of a competition entitled Miniatura 3, announced and financed by the Polish National Science Centre (decision no. 2019/03/X/HS5/00850). Selected general preliminary results of the research are presented in: A. Kalisz, A. Zienkiewicz, *Mediacja w sprawach gospodarczych jako narzędzie wspierające sukces w biznesie*, Warszawa 2020, pp. 133–137.

[2] For more on managing legal disputes holistically, see A. Zienkiewicz, *Holizm prawniczy z perspektywy Comprehensive Law Movement*, Warszawa 2018, p. 248–275 and the literature cited therein.

[3] See Ogólnopolska Sieć Ośrodków Mediacji Radców Prawnych, http://mediacje.kirp.pl/osrodki-mediacji-oirp [access: 25.08.2021].

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of specific mediation techniques are identified. These include a facilitative, evaluative or transformative strategy, the selection and implementation of which within a given mediation discourse should be determined not only by the mediator's competence or the will of the parties, but especially by the outcome of the conflict diagnosis, particularly including the properly identified objectives of a specific mediation. This is a model distinction between the main mediation strategies and, in practice, these styles can often be combined within a single mediation process.[4] A particular mediation discourse can accomplish multifaceted goals in personal, interpersonal and social dimensions, focused not only on concluding an agreement but also, for example, on identifying and eliminating the causes of the dispute, improving communication and relations between the parties or enhancing the processes of self-discovery, self-improvement, moral improvement and reconciliation of the opponents.[5]

Studies of perception and identification of the mediation objectives, strategies and techniques and the effectiveness of mediation proceedings are justified from the cognitive and practical perspective. Widespread and effective use of mediation can bring about various personal, interpersonal and social benefits, such as facilitating business activity through faster and cheaper resolution of civil disputes, offering a chance to eliminate not only a negative outcome, but also the causes of conflicts, strengthening positive relations, communication and cooperation (which is invaluable in commercial disputes, as well as in family, neighbourhood or employ-

[4] More about the assumptions and selection of various mediation paradigms, strategies and techniques, see A. Zienkiewicz, *Studium mediacji. Od teorii ku praktyce*, Warszawa 2007, pp. 38–49, 170–207; idem, *Różnorodny paradygmat mediacji – odpowiedź na wielocelowość dyskursu mediacyjnego*, "Kwartalnik ADR. Arbitraż i Mediacja" 2008, no. 2, pp. 61–77. Cf. A. Rau, E. Sherman, S. Peppet, *Processes of Dispute Resolution: The Role of Lawyers*, New York 2002, pp. 358–370, 423–431; L. Riskin, *Understanding Mediator's Orientations, Strategies and Techniques: A Grid for the Perplexed*, "Harvard Negotiation Law Review" 1996, vol. 1(7), pp. 7–51; R. Bush, J. Folger, *The Promise of Mediation: The Transformative Approach to Conflict*, San Francisco 2005.

[5] The adopted understanding, classification and description of the superior (further) and inferior (closer) objectives of mediation discourse, in the personal, interpersonal, social, psychological, communicative and negotiation-informational dimensions, respectively, are presented in: A. Zienkiewicz, *Studium mediacji…*, pp. 96–123. At this point, it is worth noting the complex axiological level, relevant both to the amicable forms of dispute management (including mediation), as well as to processes of judicial application and interpretation of the law within a given legal order, visible, e.g., in various approaches to justice and concepts of its administration. For more, see M. Kordela, *Inter- and Extra-Legal Axiology*, "Studia Iuridica Lublinensia" 2020, vol. 29(3), pp. 29–38; L. Leszczyński, *Open Axiology in Judicial Interpretation of Law and Possible Misuse of Discretion*, "Studia Iuridica Lublinensia" 2020, vol. 29(3), pp. 39–54; W. Dziedziak, *Thoughts on the Notion of Justice*, "Studia Iuridica Lublinensia" 2021, vol. 30(2), pp. 139–148; A. Kalisz, A. Zienkiewicz, *Wymierzanie sprawiedliwości a mediacja*, [in:] *Rozdroża sprawiedliwości we współczesnej myśli filozoficzno prawnej*, eds. B. Wojciechowski, M. Golecki, Toruń 2008, pp. 263–274; A. Zienkiewicz, *Mediation als eine Form der Justiz*, [in:] *Mediation als Verfahren konsensualer Streitbeilegung. Die deutsche, polnische und ukrainische Perspektive*, ed. T. de Vries, Frankfurt am Main 2012, pp. 3–22.

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ment-related disputes). In consequence, this can also lead to relieving the burden on courts and reducing the excessive length of judicial proceedings. Moreover, apart from solving a dispute by concluding a settlement agreement, the objectives and also intangible benefits of participation in mediation may often include, for example, psychological satisfaction of the parties to the dispute or even their positive behavioural and personal transformation (including moral improvement) or acts of apology, forgiveness and reconciliation.[6]

Therefore, the effectiveness of mediation proceedings may be understood in different ways (e.g., not only as bringing the disputing parties to a settlement agreement with respect to all the disputed financial issues) and be determined by a number of factors of both a subjective and objective nature, one of the most important of which is the level of professionalism of the mediator, i.a., in terms of accurately determining the objectives of a mediation procedure and selecting and applying suitable mediation strategies and techniques to achieve them. As is rightly emphasised in the preamble to the Standards for Mediation and Mediator's Conduct, adopted by the Minister of Justice's Board of Trustees for ADR: "The success of mediation as an effective method of conflict resolution depends largely on the mediators' professionalism and a high level of their professional ethics".[7]

SCOPE, AIMS OF THE STUDY AND THE STUDY HYPOTHESES

The scope of the research was determined by the detailed objectives of the scientific activity. In order to accomplish the general study objective, the following issues were addressed: a) ways of understanding the mediation objectives, their types and hierarchy by the mediator group under study; b) conditions under which mediation in civil (including commercial) cases is recognised as effective in part or in whole; c) ways and the stage of establishing the aims of mediation; d) the mediators assigning and comparing the aims of civil (including commercial) mediations to the right catalogue of mediation objectives in the personal, interpersonal, social, negotiation-information, communication and psychological dimensions;[8] e) preference of the mediators regarding the application of a specific mediation

[6] More about apology, forgiving and reconciliation in legal regulations and dispute management, see A. Zienkiewicz, *Prawnik jako peacemaker – przeprosiny, przebaczenie, pojednanie w opanowywaniu sporów prawnych*, "Ruch Prawniczy, Ekonomiczny i Socjologiczny" 2019, vol. 81(4), pp. 43–57.

[7] See Społeczna Rada ds. Alternatywnych Metod Rozwiązywania Konfliktów i Sporów przy Ministrze Sprawiedliwości, Standardy prowadzenia mediacji i postępowania mediatora uchwalone przez Radę w dniu 26 czerwca 2006, https://bip.men.gov.pl/wp-content/uploads/sites/2/2019/07/standard-mediacji-opracowany-przez-spoleczna-rade-ds.-alternatywnych-metod-rozwiazywania-konfliktow-i-sporow-przy-ministrze-sprawiedliwosci-2006-r..pdf [access: 28.08.2021].

[8] According to the model distribution of mediation objectives proposed in: A. Zienkiewicz, *Studium mediacji…*, pp. 115–122.

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strategy (e.g., various types of facilitative, evaluative or transformative strategy) or their combination; f) the course and the main factors affecting the choice of specific mediation strategies and techniques for accomplishing specific objectives of mediation in a civil (including commercial) case; g) preferences of the mediators under study regarding the form of mediation in civil (including commercial) cases (direct, indirect, online, mixed mediation); h) ways of applying the preferred mediation strategies and techniques by the mediators under study in civil cases, including commercial cases; i) effectiveness of the main mediation strategies and techniques employed by the mediators in civil (especially commercial) cases.

The preliminary (pilot) study was intended to provide new, significant knowledge in the area presented above, which – apart from the cognitive effect and data interpretation – was to help the author to attempt to formulate the optimisation models regarding the choice and methods of employing specific mediation strategies and techniques to improve the effectiveness of mediation proceedings in civil, including commercial, disputes.

It was also intended to help to verify the accuracy and correctness of the adopted study methodology (regarding the applied study methods, techniques and tools) with respect to expanding the scope of the study by other mediator groups (not only lawyers), who provide mediation services in various types of civil, family disputes, regarding the labour law, in cases regarding minors, as well as penal and administrative cases. The final, comprehensive study material enables developing the methodology for the optimum identification of the mediation objectives and their hierarchisation in various types of legal disputes, followed by the right choice and effective application of specific mediation strategies and techniques to enable the comprehensive accomplishment of the objectives of mediation proceedings.

Accomplishing the general and more specific study objectives was also intended to present in more detail knowledge of the level of professionalism and approach to the professional ethics of Polish mediators – lawyers by education (also professional legal advisors), providing mediation services mainly in one of the Mediation Centres operating in the District Chambers of Legal Advisors, making up the National Network of Legal Advisor Mediation Centres.

Scientific reliability and honesty require one to admit that despite a preliminary (pilot) nature of the scientific activity under study, the author has proposed two general study hypotheses[9] based on previous, multi-year scientific research and practical

[9] The author's study findings, associated with various mediation aspects, including their objectives, strategies and techniques, are presented in: *ibidem*, passim; idem, *Reframing – uniwersalna technika mediacyjna*, "Edukacja Prawnicza" 2008, no. 4, pp. 39–40; A. Kalisz, A. Zienkiewicz, *Prawnik w mediacji*, "Kwartalnik ADR. Arbitraż i Mediacja" 2013, no. 2, pp. 35–55; iidem, *Mediacja sądowa i pozasądowa. Zarys wykładu*, Warszawa 2014; iidem, *Polubowne rozwiązywanie konfliktów w pomocy społecznej. Komunikacja, psychologia konfliktów, negocjacje i mediacje socjalne*, Sosnowiec 2015; iidem, *Mediacja w sprawach gospodarczych…*, passim.

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experience in court and out-of-court dispute management (associated with performing the profession of the legal advisor and mediator).[10] The first research hypothesis concerns the assumption that during mediation proceedings in civil cases (including commercial ones), conducted by mediators (who are lawyers by education who are also practising as legal advisors), various communicative, psychological, relational and ethical goals are often achieved, which go beyond the narrow treatment of the mediation discourse as the only qualified form of negotiation between the parties to a dispute, with the participation of an impartial and neutral intermediary, in order to conclude a settlement agreement, focused exclusively on economic and legal issues. According to the second study hypothesis, mediators apply (and also combine) various mediation techniques in civil cases to improve the effectiveness of mediation proceedings, which helps to accomplish various mediation objectives in the personal, interpersonal and social dimensions in a given case.

The scientific activity pursued in this study was additionally an attempt to face the view, expressed by some mediators, that lawyers acting as mediators in civil (particularly commercial) cases focus mainly (or only on) the economic and legal objectives of mediation and aspects of the parties dispute, usually applying an evaluative type intervention mediation strategy.

THE COURSE AND METHODOLOGY OF THE STUDY

The scientific activity involved a theoretical and empirical study using the selected methods, techniques and study tools (in particular, the survey questionnaire and the scenario of an in-depth interview).[11] The theoretical study, which was the starting point, included mainly an analysis of various relevant sources (e.g., the literature and normative acts) concerning mediation in civil (including commercial) cases, particularly with respect to the multi-objective nature and effectiveness of the mediation discourse and mediation strategies and techniques. This was helpful not only for establishing the current knowledge within the scope under study but

[10] The adopted understanding of the study hypothesis does not differ from its traditional meaning as a supposition or a guess concerning a phenomenon, often depending on other phenomena, requiring empirical verification. Cf., e.g., J. Wódz, *Socjologia dla prawników i politologów*, Warszawa 2000, pp. 155–156.

[11] More about the sociological and legal methods, techniques and research tools (including those applied in the scientific activity presented here), see, e.g., A. Pieniążek, M. Stefaniuk, *Socjologia prawa. Zarys wykładu*, Kraków 2001, pp. 130–149; *Leksykon socjologii prawa*, eds. A. Kociołek-Pęksa, M. Stępień, Warszawa 2013, pp. 128–139. More about the methodology of social studies and methodological issues of the science of law, see, e.g., S. Nowak, *Metodologia badań społecznych*, Warszawa 1985; L. Sołoma, *Metody i techniki badań socjologicznych. Wybrane zagadnienia*, Olsztyn 1995; K. Opałek, *Problemy metodologiczne nauki prawa*, Warszawa 1962; Z. Ziembiński, *Metodologiczne zagadnienia prawoznawstwa*, Warszawa 1974; J. Stelmach, B. Brożek, *Metody prawnicze*, Kraków 2004.

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also for preparing the study tools necessary to conduct the empirical analysis which constituted the principal part of the scientific activity.

The course of empirical studies included a detailed survey addressed to mediators at all of the 19 Mediation Centres at District Chambers of Legal Advisors, which make up the national network, with 25 mediators from all over Poland participating. Moreover, according to the plan, ten semi-structured, in-depth individual interviews with mediators were conducted, the mediators being trained lawyers (practising the legal advisor profession), working at one of the five selected mediation centres – parts of the national network of the Mediation Centres of Legal Advisors.[12] The selection of the group of mediators and the representative sample for the preliminary (pilot) study was appropriate for the subject matter, scope and objective of the study. The Commercial Mediation Centres operating for years at District Chambers of Legal Advisors, making up a national network (while retaining their autonomy and individual regional specificity), conducting mediation proceedings under court referrals and contractual mediations in various types of civil disputes (not only commercial disputes), with over 350 mediators, provided an adequate study environment for the principal study objective and for the specific objectives of the scientific activity.[13]

This paper also presents elements and the contents of the survey questionnaire developed for (and used in) this scientific activity, and of the scenario of an individual interview in order to present the most important problem groups and specific issues dealt with in the study, aimed at acquiring relevant quantitative and (particularly) qualitative data.

THE SURVEY QUESTIONNAIRE

The survey questionnaire designed for the planned study is made up of seven sections: the (first) introductory section and sections two to seven containing questions or tasks for the respondents. Most of them were closed-ended questions with prepared multiple-choice answers (disjunctive or conjunctive, respectively). The mediators under study passed to the next section only after they had displayed the contents of the preceding section and answered all the questions in it, so that none

[12] Only mediators from such mediation centres were eligible to participate in the survey which had a team of experienced mediators. Moreover, various regions of Poland should be represented in the study and not only the largest, but also medium-size cities and towns. Mediators from Mediation Centres at District Chambers of Legal Advisors in Bydgoszcz, Lublin, Olsztyn, Warsaw and Wrocław took part in this scientific activity.

[13] The National Network of Mediation Centres of Legal Advisors has 362 mediators (as of 25 August 2021). See Ogólnopolska Sieć Ośrodków Mediacji Radców Prawnych, http://mediacje.kirp.pl/osrodki-mediacji-oirp [access: 25.08.2021].

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of the questions could be omitted. The study was anonymous, voluntary and it was performed in an electronic form (online).

The first section, entitled "Survey questionnaire – Aims and effectiveness of mediation and the selection and application of mediation strategies and techniques", presented to the respondents the study objectives, the basic information on the survey nature, the principles and justifiability of participation in the study and on the entity managing and performing this research project.

Section two, entitled "Mediation objectives – introductory issues", contained a sequence of the following three closed-ended questions, opening the study with three-variant multiple answers (yes, no, it depends, on the specificity of a dispute, e.g. interests and needs of the parties): a) Is reaching a settlement by the parties to a civil dispute the only aim of mediation proceedings? b) Is reaching a settlement by the parties to a civil dispute the most important aim of mediation proceedings? c) When diagnosing civil (including commercial) disputes as a mediator, do you also identify other aims of mediation proceedings than resolving the dispute by reaching a settlement?

Section three, entitled "Various aims of mediation, affecting the mediator's tasks and potential benefits of the parties to the mediation proceedings", contained a catalogue of various potential aims of mediation in civil disputes (including commercial or family disputes). A respondent was asked to choose the aims that he/she identified with or sought to accomplish as a mediator. At the same time, the respondent was asked to mark the level of significance reflecting the majority of mediation proceedings completed by the mediator, on a scale from 1 to 10 (the higher the score, the more significant the mediation aim). If a respondent as a mediator did not meet with a given objective of mediation, the type of objective was left without checking any answers on the proposed scale. The following were mentioned among the potential mediation aims in civil cases: a) the generation of real options for the amicable settlement of a dispute; b) conducting constructive negotiations and reaching a settlement; c) determining and eliminating the dispute causes; d) improving communication and mutual understanding between the parties to the dispute; e) improving relations between the parties to the dispute; f) rebuilding the basis of cooperation between the parties to the dispute for the future; g) satisfying significant psychological needs of the parties (e.g., the need to be listened to, the need for recognition, understanding, for venting negative emotions or playing an important role in the decision-making process); h) reinforcing the self-consciousness (introspection) of the parties and learning (self-determination) of the parties with respect to diagnosing disputes and their amicable resolution; i) bringing the parties to apologise, forgive and reconcile; j) supporting the parties' behaviours which are consistent with the law and ethics.

Moreover, respondents were asked in this section to indicate the stage of the mediation process in which they usually establish the aims of civil, including commercial, mediations. Three possible answers were proposed as part of the

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multiple-answer choice: pre-mediation, separate meetings with parties, joint mediation sessions.

Subsequently, a task was set of indicating the factors that usually affect the identification of the hierarchy of objectives of civil (including commercial) mediations. The respondents had the choice of a multiple choice of factors from the catalogues presented in the survey, and they could choose one from outside the set presented in the survey. The factors proposed to the respondents included: a) character of dispute causes (e.g., conflict of interests, relations, regarding the facts, communication, values); b) type of the dispute object; c) level of the dispute escalation; d) personal (psychological) characteristics of the parties; e) type of interests and needs of the parties to the dispute; f) interests of the closer or farther social environment; g) information obtained from lawyers representing the parties; h) the mediator's preferences.

In section four, entitled "Effectiveness of mediation", the mediators were asked first to state whether they agree or do not agree that the effectiveness of mediation proceedings in civil (including commercial) cases can be discussed: a) even when a settlement was achieved at least regarding part of the disputed issues; b) only when a settlement was achieved during the mediation regarding all the disputed issues; c) when a settlement was achieved during a mediation which is not only mutually acceptable, but also beneficial to both parties (negation of the rule *Volenti non fit iniuria*); d) only when a settlement was reached as a result of the mediation, which is realistic for both parties; e) only when a settlement was reached during the mediation, which was approved by the court; f) only when a settlement was reached in the negotiations, which was voluntarily executed by the parties; g) only when other significant aims of mediation were achieved apart from achieving the settlement (e.g., improvement of communication, relation or reconciliation of the parties).

Moreover, the respondents were asked (by choosing one of the answers, yes, no, it depends on the specific dispute) whether mediation in a civil case is effective even when the parties did not reach a settlement, but at least some of the mediation objectives were accomplished in the psychological, communicative or relation dimension between the parties (e.g., constructive communication and the basis for cooperation was restored, or mutual apologies and reconciliation took place).

The main objective of section five, entitled "Mediation strategies and techniques", was to determine the preferences of the respondents (mediators-legal advisors) regarding the choice and application of various techniques, typical of specific mediation strategies, with respect to the mediation objectives in a specific case. Initially, they were asked to choose the preferred form of mediation in civil (including commercial) cases from among: direct, indirect, online and mixed (i.e., including all the previous ones in any variant) mediation. This was followed by the presentation of a broad range of relevant statements, for which one was to choose one answer: yes, no, it depends on the specific dispute (e.g. the parties' interests and needs). These included

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the following: a) as a mediator, I encourage the parties to focus in civil (including commercial) mediation primarily on resolving their economic and legal problems through a settlement agreement; b) as a mediator, I prefer to go beyond typical legal issues when determining the problems to be resolved in civil mediation, including economic mediation (e.g., as regards improving communication, relations, the basis of cooperation between the parties); c) when familiarising himself with the issues under dispute, it is important for the mediator to thoroughly understand the legal position of the case (including the legal and evidentiary position of the parties); d) as a mediator, I advise the parties on the appropriate grounds for settlement (e.g., legal, ethical, customary or academic); e) to help the parties negotiate realistically in mediation, I find it helpful to advise on the prospects of the parties voluntarily concluding and implementing settlement submissions; f) one of my main mediation techniques is to help the parties to understand the strengths and weaknesses of their legal position in the dispute; g) as a mediator, I use relevant documents, pleadings, legal briefs or case law to help the parties to assess realistically and resolve their dispute; h) an important mediation technique I use is to encourage the parties to explore the likely outcome(s) of their dispute in court proceedings; i) an important mediation technique I use is to suggest to the parties a specific settlement submission or its scope; j) as a mediator I use separate meetings with the parties to help them identify and understand the strengths and weaknesses of their position in the dispute; k) I do not need to know the legal basis for the parties' positions (claims) or their legal and evidentiary position to act as a mediator in a civil (including commercial) case; l) when conducting mediation in civil (including commercial) cases, I focus primarily on promoting amicable and constructive communication between the parties, rather than on its economic and legal outcome (in accordance with the rule that the mediator is responsible for the course of the mediation and the parties to the dispute – for its result); m) when conducting mediation in civil (including commercial) cases, I make efforts to improve mutual understanding and relations of the parties; n) when conducting mediation in civil (including commercial) cases, I take into account the possibility of supporting positive personal and behavioural transformation of the parties (e.g., towards abandoning negative behaviours, bringing the parties to an act of apology, forgiveness and reconciliation of the parties, or even moral improvement); o) I do not consider it my responsibility as a mediator in civil matters to enforce the rights and obligations of the parties under the law; p) I allow cooperation of the parties and of the mediator with other experts (e.g., tax advisor, psychologist, appraiser, etc.) in mediation.

Moreover, the respondents were asked to address two issues. First, even if a lawyer (the party's attorney) is present during the mediation in civil (including commercial) cases, do I, as a mediator, ask the party to present their personal position and the perceived dispute outcome – by indicating one of the three answers: yes, no, it depends on the specific dispute, parties or the proxy's attitude. Second, who is

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responsible for preparing a settlement submission in civil (including commercial) disputes – the respondents were to choose from among the following answers: a) the parties (the parties' attorneys); b) it is a joint task of the parties (their proxies) and the mediator; c) the mediator.

Section six, entitled "Preferences of a mediator-legal advisor – regarding the choice and application of a specific mediation strategy", deals with determining the mediation strategy preferred by the respondent, which he uses in mediation in various types of civil cases. As part of the proposed catalogue of answers presented below, for the avoidance of misunderstandings, individual strategies known from the literature were characterised briefly to make it easier for the respondents to understand the main concepts (although the author was aware of the risk of simplifications in connection with the concise model approach). The respondents were given the following answers to choose from: a) a facilitative strategy (a mediator mainly responsible for proper communication, the parties – for the mediation outcome, joint sessions predominate, the mediator's impartiality and neutrality rigorously understood, settlement submissions based mainly on the parties' interests and needs); b) an evaluative strategy (it is important to know the legal issues and to assess the legal position of the parties to the dispute, to predict their chances in court proceedings, it is important for the parties to understand the consequences of a failure to settle, it is preferable for the mediator to give an opinion and propose settlement options, separate sessions or mixed mediation predominate); c) a transformative strategy (the main objectives of mediation are the improvement of the parties' relationship, mutual understanding of each other's circumstances, self-determination, positive change in their behaviour and moral improvement – which are more important than reaching a settlement on the economic and legal aspects of the case); d) a mixed strategy (combines appropriately elements of a facilitative, evaluative and transformative strategy); e) it is difficult for me to identify one preferred strategy for different types of civil disputes; f) my own individual mediation strategy; g) another answer – the respondent can give his own descriptive answer characterizing the preferred mediation strategy.

In section seven, entitled "The level of mediation strategy effectiveness, factors affecting their choice and preferred mediation techniques", the respondents were asked to determine – based on their knowledge and experience – the level of effectiveness of the main mediation strategies (facilitative, evaluative, transformative), a mixed strategy and the mediator's own strategy in the basic types of private-legal disputes, i.e. commercial, civil and familial cases. The respondents were asked to determine the effectiveness level for a strategy on a scale from 1 to 10 (the larger the number, the higher the effectiveness). If the respondent as a mediator did not have sufficient knowledge or experience enabling him/her to provide a response about applying a specific strategy in a dispute, he/she left the issue under analysis without selecting any value on the scale.

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Subsequently, the respondent's task was – based on his/her own experience as a mediator – to indicate the factors that have a significant impact on the choice of specific mediation strategies and techniques for pursuing the established mediation objectives in a given civil (including commercial) dispute. It was possible to personally indicate the factors in question and to make multiple selections from a proposed catalogue that included the following options: a) type, complexity and nature of the causes of the dispute; b) type and hierarchy of the established interests and needs of the parties; c) length and degree of escalation of the dispute; d) long-term nature of the predicted contacts, possible future cooperation of the parties; e) regarding the economic-legal aspects of the case as the priority by the parties; f) regarding the psychological-relational aspects of the case as the priority by the parties; g) a mediation strategy preferred by the mediator; h) the will of the parties as to how the mediator should intervene.

At the end of the questionnaire research, within section seven, the respondents were asked to describe the mediation techniques they used in mediation practice. Similarly to the above question, there was an opportunity to personally indicate the mediation technique in question and a multiple choice from a catalogue that included the following techniques: a) questioning technique; b) listening technique; c) paraphrasing; d) storytelling; e) brainstorming; f) sharing; g) role reversal; h) mirroring; i) ventilation; j) reality check; k) impasse breaking techniques; l) motivational techniques; m) psychological techniques; n) integrative negotiation techniques (win-win solution paradigm); o) observing, assessing the significance of and comparing the consistency of the verbal and non-verbal communication of the parties and their representatives; p) identifying, analysing, selecting, prioritising data relevant to the amicable settlement of the dispute.

Participation in the survey was concluded with a thank you note and confirmation that the completed survey had been sent to the investigator.

THE SCENARIO OF THE SURVEY

As part of the empirical research (in addition to the survey), ten semi-structured, in-depth individual interviews were conducted with mediators who were lawyers by training (and also practicing as legal advisors) and who operated within one of the five Mediation Centres at the District Chambers of Legal Advisors, selected from among a dozen or so positively distinguished mediation centres in Poland. Mediators from the Mediation Centres at the District Chambers of Legal Advisors in Bydgoszcz, Lublin, Olsztyn, Warsaw and Wrocław were included in the research. In each of the centres mentioned above, interviews were conducted with two mediators selected from among the leaders of the centre, i.e. persons with considerable mediation experience, often also performing managerial and coordination functions

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in the mediation centre, and therefore additionally equipped with knowledge of the specificity and statistics of its activities. The interviews were oral, the author personally spoke to each of the respondents. The average duration of the interview was about two hours. With the consent of the respondents, the interviews were recorded and then transcribed (only for the use of the researcher, while maintaining the confidentiality of the respondents' personal data), which greatly facilitated the collection of the information and its in-depth analysis.

At the beginning of each interview, individual respondents were informed about the topic, scope, objectives of the scientific activity, the nature of the research tool (interview specifics), the entity management, implementation and funding of the research being conducted. Efforts were also made to properly motivate them to give honest and comprehensive answers. Before starting the substantive part of the interview, each interviewee was asked to present his or her professional profile. In this regard, the respondents provided information on their competences and experience in legal assistance as a legal advisor and mediation services as a mediator. Respondents indicated their specialisations and the types of court and out-of-court disputes they had dealt with so far as legal advisers and mediators. In order to avoid misunderstandings, the researcher checked that the respondents had met the basic conceptual grid used in this study and that it was understood by them in accordance with the literature on mediation theory and practice.

The interview was of a semi-structured nature, where, on the one hand, the respondents presented free statements on the given topic, and on the other – they addressed more detailed issues suggested by the interviewer, including answering questions prepared in advance and arranged in an appropriate order. The scope of the interviews was determined primarily by the general aim of the research and the specific objectives of the scientific activity.

The presentation of the main elements and the main content of the individual interview scenario used during the research activity (focused especially on the acquisition of relevant qualitative data) should emphasise the following components.

Firstly, respondents were asked to speak freely about their understanding of the essence (definition) of mediation, the main tasks of a mediator and the mediation objectives.

Secondly, the respondents were asked to indicate the level of importance (on a scale from 0 to 10) of the following (potential) objectives of mediation (in general), and further broken down into business, civil and family mediation. The objectives listed by the researcher included, in particular: a) to conduct meaningful negotiations, to generate options for dispute resolution and to conclude a settlement (with the question whether this was the only or most important objective in any mediation process); b) to identify and eliminate the causes of the dispute; c) to improve communication between the parties to the dispute; d) to improve the relations between the parties; e) to make the parties, if necessary, perform acts of apology,

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forgiveness, reconciliation; f) to rebuild the basis of cooperation between the parties to the dispute for the future; g) to deepen the processes of self-discovery of the parties to the dispute; h) to strengthen self-determination (learning) of the parties to the dispute; i) to satisfy important psychological needs of the parties (among others: the need to vent negative emotions, to be listened to, to be recognised, to understand one's circumstances and motivations, to feel that one plays an important role in the decision-making process); j) to shape desirable social attitudes and to promote the moral improvement of the parties to the dispute; k) to extend access to justice in the broad sense; l) to strengthen the parties' right to choose the form of dispute management; m) to strengthen the parties' participation in dispute resolution; n) to reduce the burden on the courts through mediation and other forms of ADR; o) to strengthen legal awareness, a culture of dialogue and peaceful forms of dispute resolution.

In addition to assigning a degree of importance, respondents usually justified their decisions.

Thirdly, the respondents were asked to comment on the prioritisation of mediation objectives in a specific case. As part of the clarification of the analysed aspect, the question was asked: How are the objectives of mediation and their hierarchy in a specific case affected by individual factors (specifics) of a given case, such as, among others, the causes, the subject matter, the type of dispute and its escalation level, the personal characteristics of the parties, the needs and interests of the parties, the interests and needs of the social environment and of the lawyers representing the parties to the dispute?

Fourthly, the respondents commented on the ways and stages of the mediation procedure relating to the setting of mediation objectives in various civil cases. They provided information on the preferred scope (narrow or broad, going beyond economic and legal issues) of diagnosing the dispute and the conflicting parties.

Fifthly, the respondents were asked to present their understanding of the effectiveness of mediation. After making a free statement, they were asked to respond either in the affirmative or in the negative to the thesis that mediation proceedings in civil (including commercial) cases can be said to be effective: a) even if, during mediation, a settlement agreement has been reached with regard to at least some of the disputed issues; b) only if, during mediation, a settlement agreement has been reached with regard to all the disputed issues; c) if, during mediation, a settlement agreement has been reached which is not only mutually acceptable but also beneficial to both parties (negation of the rule *Volenti non fit iniuria*); d) only when the mediation has resulted in a settlement agreement that is realistic for both parties; e) only when the mediation has resulted in a settlement agreement that has been approved by the court; f) only when the mediation has resulted in a settlement agreement that has been voluntarily implemented by the parties (g) only when, in addition to concluding a settlement agreement during the mediation,

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other significant objectives of the mediation have been achieved (e.g., improvement of communication, relations or reconciliation between the parties).

In addition to expressing approval or disapproval, respondents usually gave additional reasons for their position.

Sixth, respondents provided their preferences regarding the form of mediation in different types of civil cases (direct mediation, indirect mediation, mixed online mediation), as well as for conducting mediation sessions with the parties alone, with the parties' attorneys alone, and with the joint participation of the parties and their lawyers. In addition, the respondents presented their attitudes to the different activities at different stages of mediation, and not only within the so-called mediation proper, but also in pre-mediation and post-mediation.[14]

Seventh, respondents commented on various mediation strategies (including facilitative, evaluative, transformative, mixed strategies and their own practices) and related mediation techniques, including as to the acceptable degree, extent and methods of the mediator's intervention in the dispute. Respondents chose to indicate a preference for the use of facilitative, evaluative, transformative, mixed and other strategies regarding mediation in general, and further broken down into civil, family, and commercial mediation. The mediators interviewed also reported on how they used selected strategies and a broad catalogue of mediation techniques in different civil cases (including listening, storytelling, questioning, paraphrasing, sharing, mirroring, role reversal, brainstorming, observation, analysis, selection, non-verbal communication techniques). Respondents also addressed a number of difficult practical issues, such as the importance of legal and evidentiary issues and the mediator's familiarity with the case file for the accurate identification of mediation objectives and the effectiveness of the mediation discourse, handling situations of significant imbalance or passivity of the parties to the dispute, the proper application of the so-called "reality test", the constructive conduct of negotiations with the mediator's participation, ways of establishing a consensus space and generating options for resolving the dispute, the preferred techniques for working on the content, form and drafting of a settlement agreement, the varied role of lawyers in mediation, rules of participation of other experts in mediation proceedings and co-mediation.

Eighth, the mediators interviewed, identified and commented on various factors influencing the selection and application of particular mediation strategies and techniques, also regarding the achieving of the objectives of a specific mediation procedure. The researcher then presented a catalogue of the various factors to which the respondents responded from the perspective discussed.

[14] More about the pre-mediation phase, mediation proper and post-mediation, see, e.g., A. Zienkiewicz. *Studium mediacji…*, pp. 128–137.

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Ninth, interviewees were asked to identify the most useful mediation strategies and techniques for achieving specific types of mediation objectives (including negotiation, communication, psychological, relational, or personal and behavioural development of the disputing parties). In addition, respondents were asked to grade the effectiveness of the main mediation strategies (and related techniques) with respect to mediation in general, and further broken down into civil, family and commercial mediation.

At the end of the survey, the respondents were given an opportunity to make a free statement not only summarizing the research subject matter but also related more broadly to any aspect of mediation practice, the activities of the mediator community, relevant legal regulations or relating to other court or out-of-court forms of settling legal disputes. The vast majority of them have benefited from this, providing additional, valuable information to expand the research material.

CONCLUSIONS

The preparation and conduct of the research in question was a considerable undertaking for the author – not only from the scientific but also organisational perspective.[15] The applied methods, techniques and research tools, as well as the selection of an appropriate research group and sample, proved their worth in the research practice and made it possible to obtain significant qualitative and quantitative data needed to fulfil the set objectives of the presented scientific activity.

The second and third parts of this article will present selected results of the empirical research (using the questionnaire and then interview techniques), their discussion and conclusions. This will include conclusions relevant to the practice of mediation and the conduct of further scientific research related to the multi-objective nature and effectiveness of mediation, in the context of proper selection and application of mediation strategies and techniques in different types of conflicts, from the perspective of a holistic approach to dispute resolution.[16]

[15] Bearing in mind, among other things, that the study was conducted by one person, the interviews with the mediators were conducted directly in different cities of Poland, under the constraints of the COVID-19 pandemic, which prevented the convenient use of the full 12 months originally reserved for the study in 2020. At this point, however, it should be noted that, despite all this, all substantive elements of the research activity and its important objectives were achieved according to the research plan.

[16] For more on a holistic approach to managing legal disputes, see A. Zienkiewicz, *Holizm prawniczy*..., pp. 248–275 and the literature cited therein.

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ABSTRAKT

Prowadzenie badań nad rozumieniem i identyfikacją celów mediacji, wykorzystywanymi strategiami i technikami mediacyjnymi oraz efektywnością postępowań mediacyjnych ma istotne uzasadnienie poznawcze i praktyczne. Celem artykułu jest przedstawienie sprawozdania z badań empirycznych, poświęconych wymienionej problematyce, przeprowadzonych przez autora w ramach działania naukowego, sfinansowanego przez Narodowe Centrum Nauki. Artykuł ma złożony charakter, podjęto w nim zarówno wątki naukowo-badawcze, koncepcyjne, jak i metodologiczne. Prezentowane badania empiryczne przeprowadzone zostały w Polsce, z udziałem polskich mediatorów, świadczących usługi mediacyjne przede wszystkim w ramach jednego z ośrodków mediacji funkcjonujących przy Okręgowych Izbach Radców Prawnych, tworzących tzw. Ogólnopolską Sieć Ośrodków Mediacji Radców Prawnych. Mając na uwadze uniwersalność i utylitarność podejmowanych zagadnień, ich potencjał komparatystyczny oraz oryginalność i wartość poznawczą uzyskanych wyników badań, mogą one zainteresować nie tylko krajowych, lecz także unijnych czy międzynarodowych przedstawicieli nauki i praktyki mediacji jako polubownej formy holistycznego opanowywania sporów prawnych. Zważywszy na zakres i stopień szczegółowości podjętych zagadnień, artykuł składa się z trzech części. W niniejszym tekście (stanowiącym część I) zaprezentowany został przedmiot, zakres i cele badań oraz generalne hipotezy badawcze, a następnie przebieg badań i najważniejsze założenia metodologiczne, w tym główne, empiryczne narzędzia badawcze: kwestionariusz ankiety i scenariusz wywiadu.

Słowa kluczowe: cele mediacji; strategie mediacyjne; techniki mediacyjne; skuteczność mediacji