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

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

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 (part II) contains the findings of an empirical study, presented in the form of detailed data obtained by means of a survey questionnaire, followed by a brief discussion and the most important conclusions.

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

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INTRODUCTION

This text is the second part of the paper, whose aim is to present a 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.[2] The second part of the article is 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.[3]

To maintain the continuity and comprehensiveness of the disquisition, one should refer the reader to the first part of the paper and note that the course of empirical studies included a detailed survey addressed to mediators at all the 19 Mediation Centres operating 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.[4] The choice

[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] See A. Zienkiewicz, *Objectives of Mediation and Selection and Implementation of Mediation Strategies and Techniques by Mediators in Civil Disputes – Study Report (Part I)*, "Studia Iuridica Lublinensia" 2021, vol. 30(5), pp. 601–618.

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

[4] Only mediators from such mediation centres were eligible to participate in the survey which had a team of highly 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

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of the group of mediators and the representative sample for the preliminary (pilot) study was adequate to the subject matter, scope and objective of the study.

This study dealt mainly with mediation objectives in civil cases in connection with the choice and application of mediation strategies and techniques by Polish mediators – trained lawyers (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. 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.[5] 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.[6]

Mediation Centres operating at District Chambers of Legal Advisors in Bydgoszcz, Lublin, Olsztyn, Warsaw and Wrocław took part in this scientific activity. More about the National Network of Legal Advisor Mediation Centres, see Centrum Mediacji, *Ogólnopolska Sieć Ośrodków Mediacji Radców Prawnych*, http://mediacje.kirp.pl/osrodki-mediacji-oirp (access: 25.8.2021).

[5] 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; e) preference of the mediators regarding the application of a specific mediation 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.

[6] The adopted understanding, classification and description of the superior (further) and inferior (closer) objectives of mediation discourse, in the personal, interpersonal, social, psychological, communicational and negotiation-informational dimensions are presented in A. Zienkiewicz, *Studium mediacji…*, pp. 96–123. At this point, it is also 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 e.g. 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*

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The further part of the text presents the findings of an empirical study in the form of detailed data obtained by means of a survey questionnaire, followed by a brief discussion and the most important conclusions.[7]

RESULTS OF THE SURVEY

The presentation of the survey results is divided into seven sections, in line with the main parts of the survey questionnaire.

Section I. "Questionnaire – Objectives and effectiveness of mediation and the choice and implementation of mediation strategies and techniques".

The first section presented the study objectives to the respondents along with the basic information on the survey nature, the principles and justifiability of participation in the study and on the entity managing and executing this research project.

Section II. "Objectives of mediation – introductory issues".

Question 1: "Is reaching a settlement between parties to a civil dispute the only objective of mediation proceedings?".

A "yes" response was given by 4% of the respondents. A "no" response was given by 20% of the respondents. The response "it depends on the dispute specificity (e.g., the parties' interests and needs)" was given by 76% of the respondents.

Question 2: "Is reaching a settlement between the parties to a civil dispute the most important objective of mediation proceedings?".

A "yes" response was given by 24% of the respondents. A "no" response was given by 16% of the respondents. The response "it depends on the dispute specificity (e.g., the parties' interests and needs)" was given by 60% of the respondents.

Question 3: "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?".

A "yes" response was given by 80% of the respondents. A "no" response was given by 8% of the respondents. The response "it depends on the dispute specificity (e.g., the parties' interests and needs)" was given by 12% of the respondents.

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.

[7] 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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Section III. "Various aims of mediation, affecting the mediator's tasks and potential benefits gained by the parties to mediation proceedings".

Task 1: "From the catalogue presented below, choose those objectives of mediations in civil disputes (including commercial or family ones) which you as a mediator identified or supported their pursuing. Mark their level of significance, adequate for the majority of mediation proceedings completed by you. Assign a relevant number on a scale from 1 to 10 (the larger the number, the more important the mediation objective). If you have not met with a given mediation objective, leave the question unanswered".

Objective 1: "Generating realistic options of an amicable dispute resolution".

The respondents indicated the following numbers: 4 (4%), 6 (8%), 7 (8%), 8 (36%), 9 (12%), 10 (32%).

Objective 2: "Conducting constructive negotiations and reaching a settlement".

The respondents indicated the following numbers: 5 (4%), 6 (4%), 7 (8%), 8 (24%), 9 (20%), 10 (40%).

Objective 3: "Determining and eliminating the dispute causes".

The respondents indicated the following numbers: 4 (8%), 5 (4%), 6 (16%), 7 (28%), 8 (16%), 9 (8%), 10 (20%).

Objective 4: "Improvement of communication and mutual understanding between the parties to a dispute".

The respondents indicated the following numbers: 4 (4%), 5 (4%), 6 (16%), 7 (16%), 8 (28%), 9 (4%), 10 (28%).

Objective 5: "Improvement of relations between the parties to a dispute".

The respondents indicated the following numbers: 3 (4%), 4 (8%), 5 (12%), 6 (20%), 7 (8 %), 8 (28%), 9 (4%), 10 (16%).

Objective 6: "Rebuilding the basis of cooperation between the parties to the dispute for the future".

The respondents indicated the following numbers: 4 (12%), 5 (24%), 6 (12%), 7 (8%), 8 (28%), 9 (8%), 10 (8%).

Objective 7: "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)".

The respondents indicated the following numbers: 4 (12%), 5 (24%), 6 (16%), 7 (8%), 8 (12%), 9 (8%), 10 (20%).

Objective 8: "Reinforcing self-consciousness (introspection) of the parties and learning (self-determination) of the parties with respect to diagnosing disputes and their amicable resolution".

The respondents indicated the following numbers: 3 (4.2%), 4 (4.2%), 5 (41.7%), 6 (16.7%), 7 (8.3%), 8 (12.5%), 10 (12.5%). Moreover, 4% of the respondents did not give any response regarding this mediation objective.

Objective 9: "Getting the parties to apologise, forgive and reconcile".

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The respondents indicated the following numbers: 3 (16%), 4 (16%), 5 (44%), 7 (8%), 8 (8%), 9 (4%), 10 (4%).

Objective 10: "Supporting the parties' behaviours that are in line with the law and ethics".

The respondents indicated the following numbers on the percentage scale: 3 (4.2%), 5 (20.8%), 6 (20.8%), 7 (4.2%), 8 (25%), 10 (25%). Moreover, 4% of the respondents did not give any response regarding this mediation objective.

Task 2: "Indicate the stage of a mediation process in which you, as a mediator, establish the objectives of civil, including commercial, mediations (multiple choice)".

The respondents chose their answers from among the three options given: during pre-mediation (32%); during separate meetings with the parties (40%); during joint mediation sessions (88%).

Task 3: "Indicate the factors that usually affect identifying the hierarchy of objectives of civil, including commercial, mediations (multiple choice)".

The respondents chose their answers from among the following options: the character of a dispute causes (e.g., a conflict of interests, relations, regarding the facts, communication, values) (84%); the type of the dispute subject (48%); the level of the dispute escalation (64%); personal (psychological) characteristics of the parties (56%); the type of interests and needs of the parties to the dispute (72%); interests of the nearer or further social environment (16%); information obtained from lawyers representing the parties (20%); the mediator's preferences (20%). Additionally, the respondents could mention other factors; however, they chose not to.

Section IV. "Effectiveness of mediation".

In this section, the respondents were asked to answer whether they agree or disagree that mediation in civil (including commercial) cases is effective:

1) even if a mediation resulted in a settlement in at least part of the disputed issues. An affirmative answer was given by 96% of the respondents and a negative one – by 4%,
2) only when a mediation resulted in a settlement in all the disputed issues. An affirmative answer was given by 4% of the respondents and a negative one – by 96%,
3) when a settlement was achieved during a mediation which is not only mutually acceptable, but also beneficial to both parties (negation of the *volenti non fit iniuria* rule). An affirmative answer was given by 76% of the respondents and a negative one – by 24%,
4) only when a settlement was reached as a result of a mediation, which is realistic for both parties. An affirmative answer was given by 68% of the respondents and a negative one – by 32%,
5) only when a settlement reached during a mediation was approved by the court. An affirmative answer was given by 28% of the respondents and a negative one – by 72%,

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6) only when a settlement was reached in the negotiations, which was voluntarily executed by the parties. An affirmative answer was given by 44% of the respondents and a negative one – by 56%,
7) only when other significant aims of mediation were accomplished apart from achieving the settlement (e.g., improvement of communication, relation or reconciliation of the parties). An affirmative answer was given by 44% of the respondents and a negative one – by 56%.

Moreover, the respondents were asked to say (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 mediators participating in the study responded: "yes" (68%), "no" (4%), "it depends on the specific dispute" (28%).

Section V. "Mediation strategies and techniques".

This part of the questionnaire began by asking the respondents 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. The respondents mentioned direct (76%) and mixed mediation (24%).

Subsequently, an extensive catalogue of relevant statements was presented, associated with a mediator's individual approach to the mediation objectives and mediation strategies and techniques. The respondents were asked to respond to those statements by choosing one answer: "yes", "no", "it depends on the specific dispute (e.g., the parties' interests and needs)". The statements included the following:

1) "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". The mediators participating in the study responded: "yes" (28%), "no" (4%), "it depends on the specific dispute" (68%),
2) "As a mediator, I prefer to go beyond typical legal issues when determining the problems to be resolved in civil (including commercial) mediation (e.g., as regards improving communication, relations, the basis for cooperation between the parties)". The mediators participating in the study responded: "yes" (52%), "no" (4%), "it depends on the specific dispute" (44%),
3) "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)". The mediators participating in the study responded: "yes" (20%), "no" (40%), "it depends on the specific dispute" (40%),
4) "As a mediator, I advise the parties on the appropriate grounds for settlement (e.g., legal, ethical, customary, or arising from science achievements)". The

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mediators participating in the study responded: "yes" (40%), "no" (24%), "it depends on the specific dispute" (36%),

5) "In order to assist the parties in realistic negotiations during mediation, I find it helpful to advise them on the prospects of concluding and implementing settlement submissions voluntarily". The mediators participating in the study responded: "yes" (40%), "no" (12%), "it depends on the specific dispute" (48%),
6) "One of my main mediation techniques is to help the parties to understand the strengths and weaknesses of their legal position in the dispute". The mediators participating in the study responded: "yes" (24%), "no" (24%), "it depends on the specific dispute" (52%),
7) "As a mediator, I use relevant documents, pleadings, legal briefs, or case law to help the parties to assess realistically and resolve their dispute". The mediators participating in the study responded: "yes" (16%), "no" (48%), "it depends on the specific dispute" (36%),
8) "An important mediation technique that I use is to encourage the parties to explore the likely outcome(s) of their dispute in court proceedings". The mediators participating in the study responded: "yes" (40%), "no" (20%), "it depends on the specific dispute" (40%),
9) "An important mediation technique that I use is to suggest to the parties a specific settlement submission or its scope". The mediators participating in the study responded: "yes" (20%), "no" (28%), "it depends on the specific dispute" (52%),
10) "As a mediator, I meet separately with the parties to help them identify and understand the strengths and weaknesses of their position in the dispute". The mediators participating in the study responded: "yes" (56%), "no" (12%), "it depends on the specific dispute" (32%),
11) "I do not need to know the legal basis of the parties' positions (claims) or their legal and evidentiary position to act as a mediator in a civil (including commercial) case". The mediators participating in the study responded: "yes" (72%), "no" (4%), "it depends on the specific dispute" (24%),
12) "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 outcome)". The mediators participating in the study responded: "yes" (68%), "no" (4%), "it depends on the specific dispute" (28%),
13) "When mediating in civil (including commercial) cases, I make efforts to improve mutual understanding and relations between the parties". The mediators participating in the study responded: "yes" (80%), "no" (0%), "it depends on the specific dispute" (20%),

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14) "When mediating 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, or even moral improvement)". The mediators participating in the study responded: "yes" (44%), "no" (8%), "it depends on the specific dispute" (48%),
15) "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". The mediators participating in the study responded: "yes" (44%), "no" (20%), "it depends on the specific dispute" (36%),
16) "I allow cooperation of the parties and of the mediator with other experts (e.g., a tax advisor, a psychologist, an appraiser, etc.) in mediation". The mediators participating in the study responded: "yes" (52%), "no" (16%), "it depends on the specific dispute" (32%).

Moreover, the respondents were asked to address two issues:

1) even if a lawyer (a party's attorney) is present during mediation in a civil (including commercial) case, do they, as a mediator, ask the party to present their personal position and the perceived dispute outcome. The respondents were asked to indicate one of three answers: "yes", "no", "it depends on the specific dispute, parties or the attorney's attitude". The mediators participating in the study responded: "yes" (64%), "no" (8%), "it depends on the specific dispute, parties or the attorney's attitude" (28%),
2) who is responsible for preparing a settlement submission in civil (including commercial) disputes. The respondents chose from among the following answers: the parties (parties' attorneys) – 20%; it is a joint task of the parties (their attorneys) and the mediator – 80%; the mediator – 0%.

Section VI. "Preferences of a mediator – legal advisor – regarding the choice and application of a specific mediation strategy".

This section dealt with the determination of the mediation strategy preferred by the respondent, which he uses in mediations 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 (while the author was aware of the risk of simplifications arising from the concise model approach) characterised briefly to make it easier for the respondents to understand the main concepts.[8] The respondents had the following answers to choose from:

[8] More about the assumptions and choice of various mediation paradigms, strategies and techniques, see A. Zienkiewicz, *Studium mediacji…*, 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*

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1) the facilitative strategy (a mediator is responsible mainly for proper communication, the parties – for the mediation outcome; a mediation involves mainly joint sessions, the mediator is rigorously impartial; settlement submissions are based mainly on the parties' interests and needs). This option, as the preferred mediation strategy, was chosen by 20% of the respondents,
2) the evaluative strategy (it is important to know the legal issues and to evaluate 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 reach a settlement; settlement options are preferably developed and evaluated by the mediator; separate sessions or mixed mediation are the main mediation forms employed). This option, as the preferred mediation strategy, was chosen by 4% of the respondents,
3) the transformative strategy (the mediation aims mainly to improve the relations between the parties, to make the parties understand each other's determinants, self-determination, to achieve a positive transformation of their behaviour and moral improvement – which is more important than reaching a settlement regarding the economic and legal aspects of the case). None of the respondents chose this option as the preferred mediation strategy,
4) a mixed strategy (combines elements of the facilitative, evaluative and transformative strategy). This option, as the preferred mediation strategy, was chosen by 44% of the respondents.
5) I find it difficult to identify one preferred strategy for various types of civil disputes. This option was chosen by 28% of the respondents,
6) a mediator's own individual mediation strategy. This option, as the preferred mediation strategy, was chosen by 4% of the respondents,
7) a different answer (a mediator could give his own descriptive answer characterising his preferred mediation strategy). None of the respondents chose this answer.

Section VII. "The level of effectiveness of mediation strategies, the factors affecting their choice and the preferred mediation techniques".

In this section, 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 their own strategy in the basic types of private-legal disputes, i.e., commercial, civil and family ones. The respondents were 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,

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; *Mediacja w praktyce mediatora i pełnomocnika*, eds. C. Rogula, A. Zemke-Górecka, Warszawa 2021, pp. 113–120.

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as a mediator, did not have enough knowledge or experience to provide a response about following a specific strategy in a dispute, the respondent left the issue under analysis without selecting any value on the scale. The responses provided by the mediators gave the following results:

1. Facilitative strategy:
   a) commercial mediation. The respondents indicated the following numbers: 3 (4%), 5 (20%), 6 (12%), 7 (24%), 8 (16%), 9 (8%), 10 (16%),
   b) civil mediation. The respondents indicated the following numbers: 4 (8%), 5 (20%), 6 (12%), 7 (24%), 8 (4%), 9 (16%), 10 (16%),
   c) family mediation. The respondents indicated the following numbers: 1 (8%), 2 (4%), 3 (8%), 4 (4%), 5 (28%), 6 (4%), 7 (16%), 8 (16%), 9 (4%), 10 (8%).
2. Evaluative strategy:
   a) commercial mediation. The respondents indicated the following numbers: 4 (4%), 5 (28%), 6 (24%), 7 (20%), 8 (12%), 9 (8%), 10 (4%).
   b) civil mediation. The respondents indicated the following numbers: 4 (8%), 5 (28%), 6 (28%), 7 (20%), 8 (4%), 9 (8%), 10 (4%),
   c) family mediation. The respondents indicated the following numbers: 1 (8%), 2 (4%), 3 (4%), 4 (4%), 5 (28%), 6 (16%), 7 (16%), 8 (12%), 10 (8%).
3. Transformative strategy:
   a) commercial mediation. The respondents indicated the following numbers: 1 (8%), 2 (4%), 3 (4%), 4 (16%), 5 (36%), 6 (12%), 7 (4%), 8 (4%), 9 (8%), 10 (4%),
   b) civil mediation. The respondents indicated the following numbers: 1 (8%), 4 (12%), 5 (32%), 6 (12%), 7 (12%), 8 (16%), 9 (4%), 10 (4%),
   c) family mediation. The respondents indicated the following numbers: 1 (4%), 3 (4%), 4 (8%), 5 (24%), 6 (4%), 7 (12%), 8 (16%), 9 (16%), 10 (12%).
4. Mixed strategy:
   a) commercial mediation. The respondents indicated the following numbers: 4 (4%), 5 (4%), 6 (4%), 7 (32%), 8 (24%), 9 (20%), 10 (12%),
   b) civil mediation. The respondents indicated the following numbers: 6 (16%), 7 (32%), 8 (20%), 9 (20%), 10 (12%),
   c) family mediation. The respondents indicated the following numbers: 4 (4%), 5 (4%), 6 (12%), 7 (24%), 8 (28%), 9 (16%), 10 (12%).
5. Mediator's own individual strategy:
   a) commercial mediation. The respondents indicated the following numbers: 3 (4%), 4 (4%), 5 (24%), 8 (32%), 9 (24%), 10 (12%),
   b) civil mediation. The respondents indicated the following numbers: 3 (4%), 4 (4%), 5 (24%), 8 (36%), 9 (20%), 10 (12%),

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c) family mediation. The respondents indicated the following numbers: 3 (4%), 4 (4%), 5 (16%), 7 (4%), 8 (28%), 9 (28%), 10 (16%).

Subsequently, the respondent's task was – based on his own experience as a mediator – to indicate the factors that have a significant impact on the choice of specific mediation strategies and techniques in pursuing the established mediation objectives in a given civil (including commercial) dispute. The respondents could list those factors on their own or choose multiple ones from among the catalogue provided, which included: the type, degree of complexity and the character of the dispute causes (80%); the type and hierarchy of the parties' determined interests and needs (60%); the dispute duration and degree of escalation (60%); the long--term nature of the predicted contacts, possible cooperation of the parties in future (64%); the parties regarding the economic and legal aspects of the case as the priority (68%); the parties regarding the psychological and relational aspects of the case as the priority (44%); the mediator's preferred mediation strategy (32%); the parties' will regarding the method of the mediator's intervention (20%). Some of the respondents (4%) presented factors from outside the catalogue and mentioned: "maintaining impartiality by the mediator and following the rules of mediation (e.g., the parties refraining from insulting each other)".

At the end of the survey questionnaire, in section VII, the respondents were asked to present the mediation techniques which they applied in their mediation practice. As with the above issue, the respondents could also present their own mediation technique and choose multiple techniques from the catalogue, which included: the question technique (88%); the listening technique (92%); paraphrase (76%); uninterrupted statements of the parties (so-called storytelling) (72%); brainstorming (44%); sharing (48%); role reversal (68%); mirroring (44%); venting (48%); realness test (56%); impasse breaking techniques (52%); motivational techniques (44%); psychological techniques (44%); integrational negotiation techniques (win-win solution paradigm) (44%); observation, evaluation of importance and comparing the coherence of the parties' and their attorneys' verbal and non-verbal communication (36%); identification, analysis, selection, hierarchisation of data significant for an amicable dispute solution (52%). The respondents chose not to provide any techniques from outside this catalogue.

DISCUSSION OF RESULTS AND CONCLUSIONS FROM THE SURVEY QUESTIONNAIRE

One should begin a brief discussion of results and presentation of the main conclusions from the data obtained by means of the survey questionnaire by stating that the study data will be analysed in sequence, in accordance with the list of problems in sections II to VII, corresponding with the objectives of the scientific

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activity, mentioned in detail in this text – in the introduction and presented in general to the respondents in section I (introductory) of the survey questionnaire.[9]

The results of section II, entitled "Mediation objectives – introductory issues", show that – when diagnosing civil (including commercial) disputes as mediators – a large majority of the respondents (80%) also identify other objectives (tasks) in mediation proceedings apart from resolving a dispute by reaching a settlement. The response "it depends on the dispute specificity (e.g., the parties' interests and needs)" was given by 12% of the respondents. A mere 8% of the respondents answered that when diagnosing civil disputes, they did not recognise other mediation objectives than getting the parties to reach a settlement. Reaching a settlement between the parties to a civil dispute is the only objective of mediation proceedings only for 4% of the respondents. A large majority of the respondents made the exclusiveness of this objective conditional on the dispute specificity (76%). A settlement is never the only objective of mediation for 20% of the respondents. What is more, 24% of the respondents thought that reaching a settlement between the parties to a civil dispute was the most important objective of mediation proceedings, 16% of the respondents presented the opposite view, while 60% felt it depended on the specificity of a dispute.

These data show that the mediation practice of the mediator circles (comprising intermediaries, who also practice the legal advisor profession) is dominated by a broad approach to perceiving, diagnosing and identifying the aims of mediation and a settlement is not always the most important aim of mediation proceedings in civil disputes.

The results of section III, entitled "Various aims of mediation, affecting the mediator's tasks and potential benefits gained by the parties to mediation proceedings", show that all the mediators (100%) participating in the study identified in their practice or supported pursuing various mediation objectives in civil (including commercial and family) disputes, such as: generating realistic options of amicable settlement of a dispute; conducting constructive negotiations and reaching a settlement; determining and eliminating the dispute causes; improving communication and mutual understanding between the parties to the dispute; improving relations between the parties to the dispute; rebuilding the basis for cooperation between the parties to the dispute for the future; satisfying significant psychological needs of the parties (e.g., the need to be listened to, the need for recognition, understanding,

[9] The author is aware of the risk of some simplifications or omissions in the presentations of results and conclusions from the survey questionnaire, given the editorial limitations of the text. Nevertheless, he wishes to encourage the readers particularly interested in this subject matter to analyse the data provided herein on their own, to draw their own conclusions and subsequently to contact the author in order to present and discuss them.

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for venting negative emotions or playing an important role in the decision-making process); getting the parties to apologise, forgive and reconcile.

Moreover, 96% of the respondents identified or supported pursuing such mediation objectives in civil (including commercial and family) disputes as: reinforcing self-consciousness (introspection) of the parties and learning (self-determination) of the parties with respect to diagnosing disputes and their amicable resolution; supporting the parties' attitudes and behaviours that are in line with the law and ethics.

A high and the highest level of significance (the highest sum of results from the 8–10 interval), adequate to most of the mediation proceedings completed by the mediators participating in the survey, was assigned to the following mediation objectives: generating realistic options of amicable settlement of a dispute (80%); conducting constructive negotiations and reaching a settlement (84%); improving communication and mutual understanding between the parties to the dispute (60%); supporting the parties' attitudes and behaviours that are in line with the law and ethics (50%).

A medium level of significance (the highest sum of results from the 4–7 interval), adequate to most of the mediation proceedings completed by the mediators participating in the survey, was assigned to the following mediation objectives: determining and eliminating the dispute causes (56%); rebuilding the basis for cooperation between the parties to the dispute for the future (56%); 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) (60%); reinforcing self-consciousness (introspection) of the parties and learning (self-determination) of the parties with respect to diagnosing disputes and their amicable resolution (nearly 71%); getting the parties to apologise, forgive and reconcile (68%).

Another mediation objective that is worth mentioning is to improve relations between the parties to a dispute, for which the sum of results was the same in the 4–7 and 8–10 intervals. Only 4% of the respondents regarded it as having a low level of significance (the number of 3).

It is noteworthy that none of the mediation objectives presented in section III of the questionnaire were classified by most of the respondents as being in the lowest or low level of significance (the highest sum of results on the scale from 1 to 3) adequate to most of the mediation proceedings completed by them. Moreover, none of the various objectives of the mediation discourse was given a score under 3 on the 10-point scale.

These data confirm and consolidate the earlier findings of section II that the mediation practice of the mediator circles (comprising intermediaries, who also practice the legal advisor profession) is dominated by a broad approach to perceiving, diagnosing, identifying and pursuing the aims of mediation. Reaching a settlement is not always the most important or the only task to be accomplished in mediation proceedings in civil disputes. The mediation discourse often serves

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multiple and diverse purposes, not only in the negotiation aspects but also in the relational, psychological, communicational and ethical dimensions, which according to a large majority of the respondents, can be classified as being of a high or medium significance in a majority of the mediation proceedings conducted by them. The diverse examples of civil mediation objectives were the basis for assigning them to the corresponding model types and cataloguing them.[10]

The majority of the respondents admitted (multiple answers were allowed) that they usually set the objectives in civil (including commercial) cases at the stage of joint mediation sessions (88%), and the least frequently – at the pre-mediation stage (32%). Separate sessions were chosen by 40% of the respondents. In effect, it shows that identification of mediation objectives is performed at various stages and in various forms of mediation (direct and indirect), usually during joint meetings with the parties, when the mediator can determine their positions and arguments and observe their responses to the other party's statements, including non-verbal ones. A proper conflict diagnosis includes the determination of the parties' multi-aspect interests and needs and possible space for understanding.

At the same time, the respondents indicated (multiple answers were allowed) the factors that usually affect identifying and the hierarchy of objectives in civil, including commercial mediations. The respondents chose all the answers in the cafeteria. The five factors chosen by the largest percentage of the respondents included: the character of a dispute causes (e.g., a conflict of interests, relations, regarding the facts, communication, values) (84%); the type of interests and needs of the parties to the dispute (72%); the level of the dispute escalation (64%); personal (psychological) characteristics of the parties (56%); the type of the dispute subject (48%). The respondents participating in the study chose not to mention other factors than those proposed in the questionnaire, which may imply that, in their opinion, it was exhaustive, at least with respect to the most important of them.

The results of section IV, entitled "Effectiveness of mediation", show how this effectiveness is understood by the respondents. The following conclusions can be drawn based on the results.

Firstly, a large majority of the respondents believe that mediation proceedings are effective even when they result in reaching a settlement regarding at least some of the disputed issues (96% of the respondents gave the positive answer and only 4% – the negative one). It was confirmed by the answers given to the reverse problem: whether mediation would be effective only when the parties have reached an agreement regarding all the disputed issues (4% of the respondents gave a positive answer and only 96% – a negative answer).

[10] According to the model classification of mediation objectives in the personal, interpersonal, social, psychological, communicational and negotiation-information dimension, proposed by the author in A. Zienkiewicz, *Studium mediacji…*, pp. 115–122.

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Secondly, the majority of the respondents agreed with the view that an effective mediation can be described as the proceedings resulting in a settlement, which is not only acceptable to both parties but also beneficial for both of them (negation of the *volenti non fit iniuria* rule – the positive answer was given by 76% of the respondents). The agreement must be executable by both parties (the positive answer was given by 68% of the respondents). This indicates an in-depth and multi-aspect approach of a majority of mediators to the quality of settlements reached in mediations. Intermediaries guard their acceptability, but also the mutual beneficialness and realisticness, which is the fulfilment of the win-win solution postulate and the dispute management, making use of the potential and advantages of mediation, which is often particularly absent in court settlements of legal disputes.[11]

Thirdly, a majority of mediators do not make the mediation effectiveness conditional upon the settlement being approved by the court (72% of the respondents), which does not necessarily mean that mediators do not care about the settlement agreement being in line with the law or the rules of social conduct. Mediation practice shows that the parties often enforce provisions of a settlement voluntarily without the need for the clause of enforceability issued by the court. This issue corresponds with whether mediation can be effective only when a settlement was reached in the negotiations, which was voluntarily executed by the parties. In this regard, the respondents gave 44% positive answers and 56% negative ones. This shows that less than half of the respondents associate mediation effectiveness with voluntary execution of the settlement, which does not have to be conditional upon court approval. For a majority of the mediators, the mediation effectiveness does not depend on the voluntary execution of the settlement, whereby they allow for its provisions to be enforced under a court order if needed.

Fourthly, 44% of the respondents agreed with the view that mediation is effective only when its other significant objectives (apart from reaching a settlement) were accomplished (e.g., improvement of communication, relation or reconciliation of the parties). A negative answer was given by 56% of the respondents. The data under analysis show that a considerable percentage of mediators associated mediation effectiveness (apart from reaching a settlement) with accomplishing other multi-aspect mediation objectives and regard them as important. This is clearly indicated by the respondents' answers when they were asked whether mediation in a civil (including commercial) 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, communicational or relational dimension between the parties (e.g., constructive communication and the basis for cooperation was restored, or mutual apologies and reconciliation took place). As many as 68% of the respondents gave

[11] For more about the advantages and weaknesses of mediation, also with respect to the specificity of court proceedings, see *ibidem*, pp. 150–156.

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the positive answer, 28% made their answer conditional upon the specificity of a dispute, and only 4% gave the negative answer. This again confirmed the earlier findings that the mediation practice of mediator circles (comprising intermediaries, who also practice the legal advisor profession) is dominated by a broad approach to perceiving, diagnosing, identifying, and pursuing the aims of mediation. Reaching a settlement is not always the most important or the only task to be accomplished in mediation proceedings in civil (including commercial) disputes and reaching it is not the necessary condition for a mediation to be regarded as effective.

The results of section V, entitled "Mediation strategies and techniques", provided some knowledge about 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, the respondents were asked to choose the preferred form of mediation in civil (including commercial) cases from among: direct, indirect, online, and mixed (i.e., combining all the previous ones in any variant) mediation. The choices made by the respondents focused on two forms – a large majority of them chose direct mediation (76%) and the others – the mixed type (24%). These results showed that neither a classic indirect mediation (typical of the evaluative strategy) nor the online type (becoming increasingly popular during the COVID-19 pandemic) are the mediation forms preferred by the respondents. It is a much more desirable option to conduct at least part of the mediation sessions directly, with both parties participating.

Moreover, the answers given by the respondents regarding the extensive catalogue of specific statements related to the choice and application of various mediation strategies and techniques with respect to pursuing mediation objectives, revealed the following relevant information.

When conducting mediation proceedings in civil (including commercial) cases, the majority of the respondents (68%) make it conditional upon the case specificity whether they will encourage the parties to focus primarily on resolving their economic and legal problems through a settlement agreement. Therefore, this aspect does not always have a principal or major effect on perceiving the conflict, regardless of the multi-aspect dispute diagnosis, including various possible objectives of the mediation. The survey showed that the majority of the respondents (52%) prefer to go beyond typical legal issues when determining the issues to be resolved in civil (including commercial) mediation (e.g., as regards improving communication, relations, the basis for cooperation between the parties) and 44% of them make such activity conditional upon the specificity of a dispute. This again confirms the respondents' broad approach to mediation objectives.

Regarding various legal aspects of a dispute with respect to the operating methodology adopted by mediators or the mediation techniques applied by them, the majority of them adopt attitudes that are more typical of the evaluative strategy

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in some cases, and attitudes typical of the facilitative or transformative strategy in others. This indicates that the majority of the respondents prefer an individual mediation style or a mixed strategy.

Example answers of the majority of the respondents, closer especially to the facilitative strategy, reveal the following issues.

The majority of the respondents (40%) rejected the view that it is important for the mediator to thoroughly understand the legal position of the case (including the legal and evidentiary position of the parties) when familiarising themselves with the issues under dispute. At the same time, 48% of the respondents stated that they did not use relevant documents, pleadings, legal briefs or case law to help the parties realistically assess and resolve their dispute. Moreover, 72% of the respondents stated that they did 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. In addition, 68% of the respondents admitted that when mediating in a civil (including commercial) case, they 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 outcome). Further, 44% of the respondents also did not consider it their responsibility as mediators in civil matters to enforce the rights and obligations of the parties under the law.

Example answers of the majority of the respondents, closer especially to the evaluative strategy, reveal the following issues.

For 40% of the respondents, an important mediation technique they use is to encourage the parties to explore the likely outcome(s) of their dispute in court proceedings. Moreover, 56% of the respondents meet separately with the parties to help them identify and understand the strengths and weaknesses of their position in the dispute (an additional 32% makes it conditional on the dispute specificity).

The study results also revealed an even distribution of the preferences of the respondents who approve unconditionally and do not approve of some issues within the analysed legal aspect important for the mediator's work methodology. A positive and a negative answer was given by 24% of the respondents each, regarding the statement that one of the main mediation techniques is to help the parties to understand the strengths and weaknesses of their legal position in the dispute. The answer "it depends on the specificity of a dispute" was chosen by 52% of the respondents.

A similar conclusion regarding the general preference of a majority of the respondents regarding an individual mediation style or a mixed strategy can be drawn from an analysis of the responses focused on other aspects of the selected mediation techniques.

The answers of a majority of the respondents closer to the facilitative strategy show that 28% of them rejected the statement that an important mediation tech-

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nique that they use is to suggest to the parties a specific settlement submission or its scope (while at the same time making such activity conditional upon the dispute specificity by 52% of the respondents).

As an example of the answers of a majority of the respondents closer to the evaluative strategy, it can be stated that 40% of them admitted that, as mediators, they advised the parties on the appropriate grounds for settlement (e.g., legal, ethical, customary, or academic). What is more, 40% of the respondents stated that in order to assist the parties in realistic negotiations during mediation, they find it helpful to advise them on the prospects of concluding and implementing the settlement submissions voluntarily.

The answers of a majority of the respondents, closer to the transformative strategy, show that as many as 80% of the respondents admitted (with no negative answers) that when conducting mediation in civil (including commercial) cases, they make efforts to improve mutual understanding and relations between the parties. Moreover, 44% of the respondents stated that when conducting mediation in civil (including commercial) cases, they take into account the possibility of supporting positive personal and behavioural transformation of the parties (e.g., towards abandoning negative behaviours, getting the parties to apologise, forgive and reconcile, or even achieve moral improvement).[12] In the current study, a majority (48%) of the respondents made it conditional on the dispute specificity.

These data show that the mediators participating in the study (who are also practicing legal advisors) apply various mediation techniques in various proportions, typical of the facilitative, evaluative and transformative strategies. Therefore, a large majority of them (also given the answers making the final position conditional on the dispute specificity) can be classified as operating their own mediation style or following a mixed strategy (combining elements of the three model styles of mediation). This is confirmed and made more precise by the results of the next sections: VI and (particularly) VII of the questionnaire.

To conclude the analysis of the detailed results of section V, one should point to three important preferences related to the methodology of a mediator's work (which were established in the survey) concerning a mediator's cooperation with other experts, personal contact with the parties to a dispute and a group of entities responsible for developing a settlement agreement. Firstly, a majority of the respondents (52%) admitted that they allowed the cooperation of the parties and of the mediator with other experts (e.g., a tax advisor, a psychologist, an appraiser, etc.) in mediation. The answer "it depends on the specificity of a dispute" was chosen by 32% of the respondents. This indicates that a majority of the respondents can be open to working within an interdisciplinary team of experts (collaborative team) as part of holistic dispute

[12] Cf. idem, *Prawnik jako peacemaker – przeprosiny, przebaczenie, pojednanie w opanowywaniu sporów prawnych*, "Ruch Prawniczy, Ekonomiczny i Socjologiczny" 2019, nr 4, pp. 43–57.

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management.[13] Secondly, 64% of the respondents stated that even if a lawyer (party's attorney) is present during the mediation in civil (including commercial) cases, they, as mediators, ask the parties to present their personal positions and the perceived dispute outcome. Thirdly, a large majority of the respondents (80%) expressed the view that preparing a settlement submission in civil (including commercial) disputes is a joint task of the parties (their attorneys) and the mediator. None of the respondents saw it as an exclusive role of the mediator.

The results of section VI, entitled "Preferences of a mediator – legal advisor – regarding the choice and application of a specific mediation strategy", show that a mixed strategy (combining elements of the facilitative, evaluative and transformative strategy) is the one preferred by the respondents – it was chosen by 44% of the respondents. It was followed by the answer "I find it difficult to identify one preferred strategy for various types of civil disputes" (28%) and the facilitative strategy (20%). Only 4% of the respondents chose the evaluative strategy. Moreover, 4% of the respondents chose a mediation strategy of their own. None of the respondents admitted that they preferred the transformative strategy, which shows that the mediation objectives involving improvement of the relations between the parties or their positive behavioural and personal transformation are not perceived as dominant in various types of civil disputes with respect to the typical mediation objectives.

The results of section VII, entitled "The level of mediation strategy effectiveness, factors affecting their choice and preferred mediation techniques", provided detailed data related primarily to the assessment of 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 family disputes. An analysis of the study on the level of mediation strategy effectiveness, especially with respect to data classified into three main catalogues: the highest and high level of a mediation strategy effectiveness (the highest sum of results from the 8–10 interval); a medium level of a mediation strategy effectiveness (the highest sum of results in the 4–7 interval; the lowest and a low level of a mediation strategy effectiveness (the highest sum of results in the 1–3 interval) – leads one to the following conclusions.

The majority of the respondents saw the effectiveness level of the facilitative strategy: in commercial disputes – as medium (56%); in civil disputes – as medium (64%); in family disputes – as medium (52%).

The majority of the respondents saw the effectiveness level of the evaluative strategy: in commercial disputes – as medium (76%); in civil disputes – as medium (84%); in family disputes – as medium (64%).

[13] More about the holistic dispute management and the collaborative team, see A. Zienkiewicz, *Holizm prawniczy…*, pp. 248–275; S. Gutterman, *Collaborative Law: A New Model of Dispute Resolution*, Denver 2004, pp. 97–244, 435–443.

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The majority of the respondents saw the effectiveness level of the transformative strategy: in commercial disputes – as medium (68%); in civil disputes – as medium (68%); in family disputes – as medium (48%); incidentally, 44% of the respondents saw its effectiveness as high or the highest.

The majority of the respondents saw the effectiveness level of the mixed strategy: in commercial disputes – as high and the highest (56%); in civil disputes – as high and the highest (52%); in family disputes – as high and the highest (56%).

The majority of the respondents saw the effectiveness level of their own, individual mediation strategy: in commercial disputes – as high and the highest (68%); in civil disputes – as high and the highest (68%); in family disputes – as high and the highest (72%).

The highest level of effectiveness for commercial, civil and family disputes was therefore assigned by the respondents to their own mediation strategy (68%, 68%, 72%, respectively), followed by a mixed strategy (56%, 52%, 56%). These two strategies were classified by a majority of the respondents as being of the highest or high effectiveness.

For the sake of consistency and order, it must be pointed out that the respondents often chose answers from a whole or nearly a whole 10-point scale determining the level of effectiveness of a specific mediation strategy in a dispute type, which is indicative of a diverse, personal experience that they gained in their professional practice. At the same time, it corresponds with the flexibility of the mediation proceedings and individual specificity of each dispute, both in the subjective and objective dimension, concerning not only both parties to the conflict, but also the preferences, the professional level or the so-called mediator's "disposition of the day" in a case, which affects the choice and application of various mediation strategies and, in consequence, an individual assessment of their higher or lower effectiveness. The study results showed that the respondents applied and appreciated the three main, model mediation strategies (facilitative, evaluative, transformative), seeing them as being of medium effectiveness. However, they see their own individual mediation style and a mixed strategy as the most effective ones, using elements of various mediation strategies to accomplish specific mediation objectives in a given case.

In section VII, the respondents, based on their own experience as mediators, identified the factors that had 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. Considering the ability to identify those factors by listing them or to choose multiple ones from the catalogue provided, the five factors chosen by the largest number of the respondents included: the type, degree of complexity and the character of the dispute causes (80%); the parties regarding the economic and legal aspects of the case as the priority (68%); the long-term nature of the predicted contacts, possible cooperation of the parties

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in future (64%); the type and hierarchy of the parties' determined interests and needs (60%); the dispute duration and degree of escalation (60%). A small part of the respondents (4%) presented factors from outside the catalogue and mentioned: "maintaining impartiality by the mediator and following the rules of mediation (e.g., the parties refraining from insulting each other)".

At the end of the survey questionnaire, in section VII, the respondents presented the mediation techniques which they usually applied in their mediation practice. As with the above issues, they could provide their own answer or choose multiple options from the proposed catalogue. The five techniques applied by the largest number of the respondents, chosen from among the many diverse methods, included: listening technique (92%); question technique (88%); paraphrase (76%); the parties' uninterrupted statements (so-called storytelling) (72%); role reversal (68%). There were also answers indicating the lower popularity of many other techniques, e.g., in verbal and non-verbal communication, psychology and negotiation practice. The respondents chose not to provide any techniques from outside this catalogue, which may indicate that the catalogue of answers provided in the questionnaire included a majority of the most important mediation techniques applied by the respondents.

CONCLUSIONS

This survey provided significant quantitative and qualitative data supporting the general study objective and specific research tasks (mentioned in the introduction) associated with the choice and application of various mediation strategies and techniques, in the context of establishing the objectives of a specific mediation and perceiving a mediation as effective. Moreover, both the correctness and utility of the research tool (the survey questionnaire) were also verified. Apart from supplying detailed data, the multi-aspect results of the scientific activity verified the general research hypotheses. Firstly, the research assumption that during mediation proceedings in civil cases (including commercial ones), conducted by mediators (who are lawyers by education who are also practicing 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. Secondly, the assumptions in civil cases which lead mediators to apply (and also combine) various mediation techniques to improve the effectiveness of mediation proceedings help to accomplish various mediation objectives in the personal, interpersonal and social dimensions identified in a given case. Moreover, the survey results helped to falsify the view (expressed

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in some circles) that lawyers acting as mediators in civil (particularly commercial) cases focus mainly only on the economic and legal objectives of mediation and aspects of the parties' dispute, usually applying the intervention mediation strategy of an evaluative type. The study results showed that the majority of the respondents applied various techniques, typical of different mediation strategies, which indicates that the mediators' own individual mediation or mixed strategies dominate among the studied group of mediators.

Expanding the study material, particularly by significant quantitative data, was done at the stage of individual interviews with the mediators, the results and discussion of which will be provided in part three of the paper, together with the conclusions, summarising the entire scientific activity, i.a., in the context of mediation practice and further, more comprehensive scientific research of mediation as an amicable form of the holistic management of legal disputes.

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ABSTRAKT

Prowadzenie badań nad rozumieniem i identyfikacją celów mediacji, wykorzystywanymi strategiami i technikami mediacyjnymi oraz efektywnością postępowań mediacyjnych posiada 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 II) zaprezentowane zostały rezultaty badań empirycznych w postaci szczegółowych danych uzyskanych na podstawie kwestionariusza ankiety, a następnie ich zwięzłe omówienie oraz najważniejsze wnioski.

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