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Confidentiality of Mediation in Civil Cases in Perspective of the Jerzy Lande's Analytical Theory of Legal Norm

Poufność mediacji w sprawach cywilnych w perspektywie analitycznej teorii normy prawnej Jerzego Landego

SUMMARY

The paper discusses confidentility of civil mediation in the view of Jerzy Lande's theory of legal norm. In the Polish theory of law confidentiality of mediation has not been described whatsoever. Lande created a theory according to which two legal norms: legitimized and legitimizing were distinguished. Disposition, as a mandatory element of the norm, includes two constituents: obligation and entitlement (right). The article contains a re-conceptualisation which allows understanding specific features of mediation as a legal institution and enables to gain more insight into the functioning of confidentiality of civil mediation.

Keywords: mediation; confidentiality of civil mediation; legal norms; Lande's analytical theory of legal norm

INTRODUCTION

Mediation proceedings have been functioning in the field of civil law since 2005. On the basis of the Code of Civil Procedure, mediation can be defined as voluntary and confidential proceedings, aimed at amicable settlement of the dispute[1],

[1] I consider the dispute, after A. Korybski, as a conflict revealed to the social environment and subjected to its observation. The adoption of such a 'dispute' makes the definition of 'mediation

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which is organized and conducted by an impartial mediator[2]. It is part of the civil procedure and can be located on the border of the application and exercising the law[3]. For a dozen or so years, the development of this institution in terms of the number of mediation proceedings was not significant[4]. After the amendment of the Code of Civil Procedure and some other acts in September 2015[5], the number of mediation proceedings increased[6]. The changes also affected the institution of mediation in terms of imposing the obligation of secrecy of mediation on all persons participating in the proceedings[7]. A set of legal norms concerning a permanent mediator in civil matters appeared[8].

AIM OF THE RESEARCH AND RESEARCH QUESTIONS

The aim of the paper is broken down into main goals (cognitive, theoretical) and a secondary objective (practical).

Issues (questions) are the research problems[9]:

1. Does the understanding of the term 'confidentiality of mediation' exist among the interested entities in the context of its use during the application of the institutions of mediation proceedings?

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proceedings' not rise any doubts. More in A. Korybski, *Alternatywne rozwiązywanie sporów w USA*, Lublin 1993, pp. 23–24.

[2] Definition created on the basis of the Act of 23 April 1964 – Civil Code (Journal of Laws, 2017, Item 459, consolidated text).

[3] I assume here the decision grasp of the process of law application and law enforcement. In mediation proceedings, we are dealing with the operation of competency norms derived from the Code of Civil Procedure, the implementation of the law, as well as the compliance with the law. See L. Leszczyński, *Zagadnienia teorii stosowania prawa. Doktryna i tezy orzecznictwa*, Kraków 2004, pp. 15–16; A. Korybski, L. Leszczyński, *Stanowienie i stosowanie prawa. Elementy teorii*, Warszawa 2016, pp. 17–24, 134–149.

[4] Full details at https://isws.ms.gov.pl/pl/baza-statystyczna/opracowania-wieloletnie [access: 19.09.2018].

[5] The Act of 10 September 2015 on the amendment of certain acts in connection with the support of amicable dispute resolution methods (Journal of Laws, 2015, Item 1595).

[6] Detailed statistical data: *Postępowanie mediacyjne w świetle danych statystycznych. Sądy Rejonowe i Okręgowe w latach 2006–2016 oraz I półroczu 2017 roku*, https://isws.ms.gov.pl/pl/baza-statystyczna/publikacje/download,3502,5.html [access: 24.09.2018].

[7] Only the mediator was obliged to confidentiality until the amendment of the Code of Civil Procedure.

[8] For Article 5 of the Act of 10 September 2015, an amendment was made in the Act of 10 July 2010 – Law on the system of common courts (Journal of Laws, 2015, Item 133 as amended, consolidated text).

[9] I treat the research problem as a question (a set of questions) to which we are looking for answers on the way of scientific research. It is a concretisation of the subject, often by breaking down the subject of research into specific issues.

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Based on the analysis of literature and case law and the mediator's own practice, I cannot propose a thesis with a positive result. In the available materials related to the subject, the thematic scope is discussed with the simultaneous lack of uniformity of terminology. The above causes terminological chaos, ambiguity of the concept and, as a consequence, hinders practitioners from understanding by people performing the professions of a mediator, judge or a professional lawyer on the practical grounds[10].

2. Whether the term 'confidentiality of mediation' is correctly understood through the prism of regulation in the Code of Civil Procedure?

It is identical situation as in the previous point. It can also be argued that the lack of proper understanding of 'confidentiality of mediation' can be a blockade in the development of the institution of mediation. Practitioner's note: in the course of the activity as a mediator, I noticed a difference in the meaning of the problem by various entities in different situations. Such a state is not conducive to the development of institutions of mediation proceedings, causing confusion in the correctness of its understandings.

3. Should 'confidentiality of mediation' be understood through the prism of the institution of mediation regulated in the Code of Civil Procedure?

In the case of Lande's theory:

> […] the theory of law in its entirety includes law as a norm and a phenomenon of reality (whereby it is a real and richer part). The analytical theory of a legal norm is, however, indispensable, it gives an understanding of the structure and content of norms, but above all the legal institutions, to which these standards are composed, which is of great importance in the practical application of the law in force[11].

[10] Compare the selected materials: P. Waszkiewicz, *Zasady mediacji*, [in:] *Mediacje. Teoria i praktyka*, red. E. Gmurzyńska, R. Morek, Warszawa 2009, pp. 100–103; K. Antolak-Szymanski, O. Piaskowska, *Mediacja w postępowaniu cywilnym. Komentarz*, Warszawa 2017; A. Kalisz, A. Zienkiewicz, *Mediacja sądowa i pozasądowa. Zarys wykładu*, Warszawa 2014, p. 60; A. Zienkiewicz, *Studium mediacji. Od teorii ku praktyce*, Warszawa 2007, p. 273, 276, 296; S. Pieckowski, *Mediacja w sprawach cywilnych*, Warszawa 2016, pp. 26–27; M. Bobrowicz, *Mediacja. Jestem za*, Warszawa 2008, p. 32; E. Marszałkowska-Krześ, *Art. 183[4] k.p.c.*, [in:] *Kodeks postępowania cywilnego. Komentarz*, red. E. Marszałkowska-Krześ, Warszawa 2017; M. Białecki, *Mediacja w postępowaniu cywilnym*, Warszawa 2012, rozdział I, pkt 2.2; P. Telenga, *Art. 183[4]*, [in:] *Kodeks postępowania cywilnego*, t. 1: *Art. 1–729*, red. A. Jakubecki, Warszawa 2017; M. Koszowski, *Prawno-etyczne aspekty wykonywania zawodu mediatora (zasady etyki mediatora) z uwzględnieniem standardów europejskich*, „Studia Prawno-Ekonomiczne" 2008, nr 77, pp. 8–10; M. Miszkin-Wojciechowska, *Prawne gwarancje poufności mediacji gospodarczej i cywilnej – ocena regulacji prawa polskiego na tle wybranych rozwiązań w prawie obcym*, „Kwartalnik ADR" 2010, nr 2. See also the decision of the Higher Disciplinary Court of 27 February 2016, WSD 58/15; the judgment of the Gdańsk Court of Appeal of 23 October 2007, I ACa 807/07.

[11] J. Lande, *Studia z filozofii prawa*, oprac. K. Opałek, wstęp J. Wróblewski, Warszawa 1959, pp. 915–916.

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We will appropriately assimilate the term "confidentiality of mediation", obligations and rights of confidentiality arising when we look at the institution itself, in particular the place where it is located (the Code of Civil Procedure). In addition, we will correctly interpret and use the legal institutions, which in the process of exercising the right with mediation proceedings can be combined (e.g. power of attorney).

'CONFIDENTIALITY OF MEDIATION' – THE MEANING OF THE TERM

The confidentiality of information acquired in various ways and in various circumstances, including the implementation of mediation proceedings, is the essence of confidentiality. Confidentiality is the principle of mediation in a way that significantly distinguishes this institution from the legal case. It is to guarantee the entities in civil and legal dispute (family, civil, economic, employee) that the facts disclosed in the mediation will not be distributed by entities participating in it. Confidentiality in mediation creates opportunities for correct implementation of this institution and gives an important argument in the rationality of using mediation mainly for the parties to proceedings. For those participating in the proceedings, it creates a specific security buffer, increasing the probability of resolving the dispute[12].

In the Polish language dictionaries, secret or keeping secret corresponds to the meaning of the term ;confidentiality' or 'confidential'[13]. However, the confidentiality of mediation has a wider meaning than just secrecy. It also includes confidentiality of the proceedings and a standard authorizing the release of mediation participants from the confidentiality of mediation proceedings. Article 183^4 § 1 of the Code of Civil Procedure states that "Mediation proceedings are not public". This phrase should be understood as conducting proceedings in a way that prevents the participation of third-parties in it, and the persons who have been notified are the only ones who have access to mediation meetings. Article 183^4 § 2 sentence 2 states that "the parties may release the mediator and other persons involved in the mediation proceedings from this obligation" (of confidentiality).

The obligation to protect documentation related to mediation proceedings, i.e. the creation, circulation, and storage of documents is an element complementing

[12] See and compare also the Kodeks Etyczno-Zawodowy Psychologa, http://pracownik.kul.pl/files/10244/public/kodeks_etyczno-zawodowy_psychologa.pdf [access: 19.09.2017].

[13] *Słownik języka polskiego*, red. A. Kryński, N. Niedźwiecki, t. 4, Warszawa, p. 828; *Słownik języka polskiego*, red. M. Szymczak, t. 3, Warszawa 1981, p. 862; B. Ardynowska, *Encyklopedia. Prawo nie tylko dla prawników*, Bielsko-Biała 2002, p. 656.

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the confidentiality of mediation. They may contain information that is protected by law or contract[14].

I propose the following wording of the definition of confidentiality of mediation, taking Article 183[3] of the Code of Civil Procedure as a basis: Confidentiality of mediation being a set of legal norms is an obligation to organize and conduct non-public mediation following this set of legal norms, which are to fully secure the documentation and therefore to keep the contents of mediation secret[15].

When defining the confidentiality of mediation, it should be remembered that the legislator strengthened this principle, assuming that in the course of a potential court trial, it is ineffective to refer to settlement proposals, proposals for mutual concessions or other statements made in mediation proceedings[16]. He has also banned the interrogation of the mediator regarding the facts he learned about mediation unless the parties release him from the obligation to keep the mediation secret[17].

ANALYTICAL THEORY OF JERZY LANDE'S LEGAL NORM

Lande divided the theory of law into two parts: a) the standard (as analytical laws), b) the phenomenon of reality[18]. The task of the theory of a legal norm is to divide the norm into component parts. The components of the norm, the structure of the whole norm, as well as the comparison with other norms were subject to analysis[19]. The legal norm consists of a disposition, possibly a hypothesis. The disposition (an obligatory element) is an indication of mutual behaviour (authorization and obligation). In the hypothesis, the actual conditions are calculated, the existence of which depends on the application of the disposition. Norms consisting only of dispositions are categorical, and the ones with a hypothesis are hypothetical[20]. Lande distinguished two types of norms, i.e. sanctioned and sanctioning. The legislator, when assessing rights and obligations in social life, saw that some of them should be legally sanctioned (a sanctioned norm). The sanctioning norm serves to determine the legal consequences for not implementing the sanctioned norm. The hypothesis of this norm is the description of failure to comply with the

[14] See the Act of 29 August 1997 on the protection of personal data (Journal of Laws, 2016, Item 922). Cf. Standardy prowadzenia mediacji i postępowania mediacyjnego, https://ms.gov.pl/pl/dzialalnosc/mediacje/spoleczna-rada-ds-alternatywnych-metod-rozwiazywania-konfliktow-i-sporow/dokumenty-deklaracje [access: 2.08.2017].

[15] Cf. M. Miszkin-Wojciechowska, *op. cit.*, p. 24; K. Antolak-Szymanski, O. Piaskowska, *op. cit.*

[16] Article 183[4] § 3 of the Code of Civil Procedure.

[17] Article 259[1] of the Code of Civil Procedure.

[18] J. Lande, *op. cit.*, p. 915 ff.

[19] *Ibidem*, p. 915.

[20] *Ibidem*, p. 924.

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instruction of the sanctioned norm. The disposition specifies the authority to hear the case by the competent entity and the obligation (injunction) addressed to the entity infringing the norm sanctioned to undergo a certain negative effect[21]. Norms can create different constellations. For example, one sanctioned norm may be coupled with several sanctioning norms, and then, one of the sanctioning norms may be a sanctioned norm for another sanctioning norm[22].

Lande's theory[23] directs us to law in action. This is how the author's description can be understood, indicating that we first get acquainted with the legal relationship and then we follow the analytical theory of the legal norm. We have a path: a legal relationship – a legal institution – a legal norm. This leads directly to the understanding of confidentiality through the prism of the mediation proceedings[24].

The analytical theory of a legal norm will not be accepted here directly. Developed by Lande, it is too general in many points and requires reaching into the contemporary theories of a legal norm and the use of the interpretation of law along with its achievements. In addition, due to the focus of this publication for use in the law enforcement process, the concept requires a new look in the aspect of the subject being discussed. Entitlement and obligation are concepts that in practice of law enforcement and the application of law are the beginning of all activities. What am I entitled to? What am I obliged to? If this knowledge cannot be determined on the basis of the already existing information, we are looking for source materials (legal texts) that will help define those rights and obligations. In case of

[21] Threat of sanctions causes support of legal awareness of citizens and not everyone is able to perform duties (including those voluntarily accepted). *Ibidem*, p. 925.

[22] We will have to deal with such a situation in the system of mediation confidentiality breach confirmed by the final decision in the process of applying the law and then the actions of the bailiff, based on the court judgment. It seems that the norm of competence has been introduced to simplify the reading of the functions of individual standards. See L. Leszczyński, *op. cit.*, pp. 20–21.

[23] I believe that J. Lande was wrong in reducing the analytical theory of a legal norm to the understanding of legal provisions by means of analytical logic and specifying that it was a completely theoretical activity. Each of us is determined by the mother tongue, the environment from which he comes, educational experience, etc. In addition, there are differences in the concept of 'understanding'. I share the position of M. Zieliński (*Wykładnia prawa. Zasady, reguły, wskazówki*, Warszawa 2002, p. 46), who interprets the meaning strictly as an understanding of legal texts. The analytical theory of the legal norm, along with the justification of J. Lande, is very important within the framework of modern legal hermeneutics. Compare the thesis of J. Lande on the importance of the analytical concept of a legal norm for the practice of applying the law (J. Lande, *op. cit.*, p. 916) with the description of 'contemporary hermeneutics' by M. Zieliński (*op. cit.*, p. 67).

[24] Cf. J. Lande, *op. cit.*, p. 915–916. Other conclusions can be obtained using the linguistic concepts of a legal norm, which in its assumptions is based on language competences. Interpretation is made using language rules adopted in constructing legal expressions covering a given ethnic language. The perception of a norm through the prism of an institution is not accepted. Cf. K. Opałek, J. Wróblewski, *Zagadnienia teorii prawa*, Warszawa 1969, p. 65.

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necessity, we reach for precise materials, such as case law, voices, etc.[25] We will not seek a comprehensive development of the standard and focus on the selected parts. Following K. Opałek and J. Wróblewski, students of J. Lande, it should be assumed that "full determination of the rule of behaviour of the addressee of the sanctioned or sanctioning norm in the form of one rule would often require an extremely complicated structure"[26]. In particular, with a sanctioned norm, where we have to deal with procedural matters (within the meaning of court proceedings), "this is a question of some conventional selection of elements that are considered important from the point of view of the purpose of research"[27].

THE SELECTED LEGAL NORMS RELATED TO CONFIDENTIALITY

The first norm (sanctioned). The confidentiality of the proceedings, the basic rule – initiating Article 183^4 § 1 of the Code of Civil Procedure. The mediation proceedings are not public.

Hypothesis: A mediation contract or a court order for mediation takes place. Article 183^1 § 2 of the Code of Civil Procedure performs mediation on the basis of a mediation contract or a court order that directs the parties to mediation. The contract may also be concluded by the party accepting mediation when the other party has submitted the application referred to in Article 183^6 § 1 of the Code of Civil Procedure. Moreover, in order for the disposition of the norm to apply, the mediation proceedings must take place (the *sine qua non* condition).

Disposition (elements):

a) entitlement – to the confidentiality of mediation proceedings. In the light of the Code of Civil Procedure, the scope of the entitlement is not specified. Looking at the institutions of mediation proceedings in terms of Lande's theory, the entitlement applies only to those who take part in it,
b) obligation – to ensure confidentiality during the proceedings. This obligation falls to the mediator, as the organizer of the mediation proceedings (in addition, this obligation also rests with the other participants in the proceedings).

The second norm (sanctioned). Reference to the information obtained in the mediation proceedings before a court of arbitral tribunal recognized as ineffective. The basic rule – initiating Article 183^4 § 3 of the Code of Criminal Procedure.

[25] A simplified course of the law enforcement process is presented here. In practice, there are other factors that can affect the order of the activities performed, their quality and number, e.g. education, environmental factors or belief in their own understanding of the law.

[26] K. Opałek J. Wróblewski, *op. cit.*, p. 60.

[27] *Ibidem*.

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Hypothesis: A mediation contract or a court order for mediation take place. There must be facts that have appeared during mediation – it is not important whether the proceedings are completed or not. The third element of the hypothesis is the requirement to conduct a case before a court or arbitration court (regardless of whether in this particular case or in another case). Another one is the necessity of the situation that complex settlement proposals, mutual concessions or other statements were submitted during the mediation procedure.

Disposition (elements):

a) entitlement – the authorization to request the court to declare information obtained during the mediation proceedings and presented by the other party as ineffective,
b) obligation – referring to the information obtained during the mediation procedure is recognized as ineffective. The obliged entity – court or arbitration court.

The third norm (sanctioned). Entitlement to release the mediator and other persons obliged to secrecy from the obligation of confidentiality. The basic rule – initiating Article 183^4 § 2 sentence 2 of the Code of Civil Procedure.

Hypothesis: A mediation contract or a court order for mediation takes place. There must be facts that have been acquired in connection with mediation. These facts are not public (commonly known).

Disposition (elements):

a) entitlement – the authorization for the parties of the mediation procedure to release the mediator and other persons who take part in the proceedings from the obligation of confidentiality,
b) obligation – applies to the mediator and other persons involved in mediation proceedings. It seems complicated because it is expressed as 'a release from confidentiality'. The update of this obligation may take place in strictly defined situations, such as the interrogation of a mediator in the civil proceedings involving a matter that is the subject of mediation. In the event of release by the mediation parties, the mediator must give testimony. Defining the obligation requires looking through the prism of mediation. This standard will not have a sanctioning norm/norms.

The fourth norm (sanctioned). The obligation to confidentiality of persons participating in mediation proceedings. The basic rule – initiating Article 183^4 § 2 sentence 1 of the Code of Civil Procedure.

Hypothesis: A mediation contract or a court order for mediation takes place. There must be facts that have been acquired in connection with mediation. These facts are not public (commonly known).

Disposition (elements):

a) entitlement – a demand (I have the right to demand) to keep the facts that have been learned in connection with the mediation proceedings confidential.

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Again, looking through the prism of J. Lande's theory, one should turn to those involved in the proceedings as authorized. People who do not take part in the proceedings have other legal instruments to protect the information concerning them. The purpose of confidentiality in mediation is to protect persons participating in such proceedings,

b) obligation – keeping the facts that have been learned in connection with mediation proceedings conducted by the mediator, parties and other persons involved in the proceedings confidential.

The sanctioning norms that may be coupled with a sanctioned norm, where the basic rule – initiating one – is Article 183^4 § 2 sentence 1 of the Code of Civil Procedure. The coupling can be singular or plural.

The first norm (sanctioning). Concerning the damage caused by not keeping the mediation secret. The basic rule – initiating – Article 415 or Article 471 of the Civil Code[28].

Hypothesis: The obliged person breaking the secret of mediation (in other words, violation of the disposition of the sanctioning norm).

Disposition (elements):

a) entitlement – to demand compensation for the damage, expectation of compensation for the damage suffered by the person who has incurred this damage,

b) obligation – for the damage to be repaired by the person who caused the damage (a mediator, parties, other persons who take part in the proceedings).

The second norm (sanctioning). The possibility of using the court path. The basic rule – initiating one – is Article 1 in conjunction with Article 2 of the Code of Civil Procedure. We refer to the provision that authorizes (opens the court path).

Hypothesis: The obliged person breaking the secret of mediation (in other words, violation of the disposition of the sanctioned norm).

Disposition (elements):

a) entitlement – bringing the case to court by an authorized person,

b) obligation – the court is obliged to carry out the case (the Code of Civil Procedure – legal admissibility).

The third norm (sanctioning). Recognition of the case by a criminal court. Criminal responsibility of the mediator. The basic rule – initiating one – is Article 266 § 1 of the Criminal Code.

Hypothesis: The mediator breaking the disposition of the sanctioned norm.

Disposition (elements):

[28] Confidentiality in mediation can have a statutory dimension (resulting from the Code of Civil Procedure) or consensual dimension, based on a contract between the mediator and the parties. In both cases, the basis of the claim will be the Article 471 of the Civil Code. In the case of a claim made by an entity not participating in mediation, it will be Article 415 of the Civil Code.

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a) entitlement – the criminal court has the competence to hear the case regarding the fulfillment of Article 266 of the Criminal Code,
b) obligation – the violator (mediator) subjecting himself to a negative effect.

The fourth norm (sanctioning). Disciplinary responsibility of a permanent mediator. The basic rule – initiating one – is Article 157c of the Law on the system of common courts. At the same time, there are two sub-points constituting the basis for the construction of the norm in this provision.

Hypothesis: There has been a breach of the sanctioned norm by a permanent mediator.

Disposition (elements):
a) entitlement – of the president of a regional court to remove permanent mediators from the list in civil cases in the case of improper performance of duties by a permanent mediator,
b) obligation – of the violator (a permanent mediator) to subject himself to a negative result (crossing out from the list).

CONCLUSIONS

The explanation of 'confidentiality of mediation' presented in this paper should harmonize the understanding of the term. It should be emphasized that the practice activities are to a large extent based on theoretical achievements. Until now, the diversity that was associated with understanding the term was an obstacle in the uniform treatment of the term. There were no theoretical studies that could be used in practical activities.

The correctness of understanding the term 'confidentiality of mediation' is unsatisfactory, in my opinion. The analysis of the available work and court decisions leads to the conclusion that the majority of interested parties did not interpret the provisions in order to describe the confidentiality norms. Possibly, partial interpretation was made, disregarding the confidentiality of mediation in the institution of mediation proceedings. The problem is particularly evident in the scope of the understanding of 'secret actions' and 'confidentiality'. It is also difficult to determine the basis of the bond relationship (what it results from?) regarding confidentiality. Some of these problems have already occurred on the basis of the law and some arise as a result of the development of mediation. Therefore, an accurate theoretical study of the problem is necessary.

Confidentiality in mediation proceedings is a component of the institution of mediation regulated by the Code of Civil Procedure. It is possible to describe the model, taking into account contemporary achievements of legal theory, while maintaining the assumptions of J. Lande. The model should contain several elements: definition of confidentiality functions it performs, authorized and obliged entities,

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and possible influence under the applicable law. In addition, the substantive and functional links should be demonstrated, the dynamics of norms should be extracted and the analytic scheme should be broken. A practical note: in the case of a legal relationship, whether intentionally or not, the construction of a legal norm is used with emphasis on the authority and obligation that arise from it. Mediation proceedings are carried out with legal consequences (including confidentiality). We start learning the rules of conducting mediation proceedings, we are familiar with the confidentiality of who is authorized and who is obliged. The above way of understanding was described by J. Lande several decades ago and, through the prism of contemporary mediation and law practice, he did it properly.

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STRESZCZENIE

Przedmiotem analizy jest zasada poufności w postępowaniu mediacyjnym w sprawach cywilnych w świetle analitycznej teorii normy prawnej J. Landego. W szczególności rozważana jest teza o możliwości wykorzystania propozycji Landego zakładającej rozróżnienie normy sankcjonowanej oraz sankcjonującej do opisu i wyjaśnienia prawnej konstrukcji zasady poufności mediacji (także w kontekście praktycznego wykorzystania tak rozumianej zasady poufności). Lande wskazał konieczny element normy prawnej – dyspozycję, a także jej dwa składniki: uprawnienie i obowiązek. Dwa ostatnie pojęcia są nieodłącznie związane z realizacją prawa, mającą postać przestrzegania, wykonywania lub stosowania prawa. Niewątpliwie ułatwi to zrozumienie funkcjonowania instytucji mediacji wraz z elementami składowymi, w tym z normami prawnymi tworzącymi konstrukcję prawną zasady poufności.

Słowa kluczowe: mediacja; poufność mediacji; norma prawna; analityczna teoria normy prawnej Landego