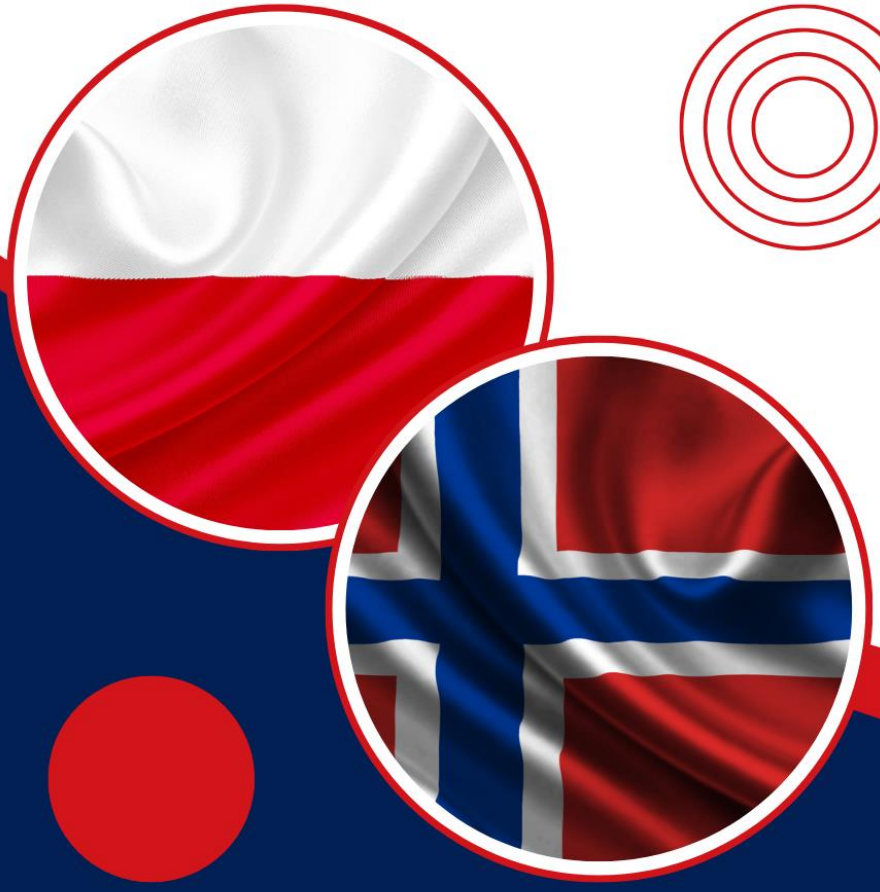
Ministry of Justice
Republic of Poland

Norway grants



REPORT OF THE POLISH-NORWEGIAN WORKING GROUP

on mediation in civil disputes and out of court conflict resolution

December 15, 2024

WARSAW & OSLO

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1. The framework of the expert working group

This Report is the result of the work of the Polish-Norwegian working group on mediation and out of court conflict resolution in civil disputes. The group of experts was established to analyze the system and institutions in Norway regarding conducting out-of-court mediation, as well as the methods for referring cases to non-judicial bodies, in order to find the mechanisms to reduce the number of cases brought to courts in Poland and ensure faster, simpler, and more cost-effective dispute resolution for the parties.

1.1. The main objectives

The main objectives of the expert group were:

a. identification of key issues and challenges in mediation in Poland
b. analyzing the Norwegian models of dispute resolution
c. comparison of Polish and Norwegian systems of dispute resolution
d. recommendation of good practices and legislative changes in Poland to enhance application of out of court and court annexed mediation/ ADR, based on Polish and Norwegian expertise

1.2. The list of experts

The following experts took part in the working group:

Ewa Gmurzyńska, P.HD, habil., Professor of Law of University of Warsaw, Faculty of Law and Administration, mediator; Małgorzata Kożuch, P.HD. - attorney, mediator, President of the Mediation Centre at the Polish Bar Council, Researcher at the Department of European Law at the Jagiellonian University; Katarzyna Kazaniecka – Kapała – judge, the Circuit Court in Gdansk, judge coordinator for mediation; Anna Kremplewska - chief specialist in the Mediation Unit, Minister of Justice of Poland; Iwar Arnstad, Head of the International Secretariat of the Norwegian Court Administration; Camilla Lein Damsleth – jurist (Cand.Jur.), senior executive and legal advisor for the Directorate, responsible for the executives of the Norwegian Conciliation Councils; Tove Gjensrud, member of the Oslo Conciliation board, Kristin Kjelland-Mørdre, Head of Court, judge at the Buskerud district Court, Anna Nylund, P.HD. University of Helsinki, Professor of Procedural Law at the Faculty of Law, University of Bergen.

1.3. Timeline

The experts met during:

- two online meetings on May 15, 2024 and September 23, 2024
- in person meeting in Oslo on June 5-7, 2024
- in person meeting in Warsaw on October 22-23, 2024.

Experts also consulted via email and exchanged documents, comments and proposals.

1.4. The topics discussed

- comparison the justice system in Poland and Norway
- discussion on the current status of mediation in the two countries
- the functioning of mediation and other ADR in Poland and Norway in different types of disputes
- the challenges to wider application of mediation in Poland and potential improvements in the application of mediation
- the similarities and differences between Polish and Norwegian legal institutions and legal culture
- application of mediation and other ADR in Norway presented by representatives of the Consumer Authority, Financial Services Complaints Board, Norwegian Conciliation Councils and Norwegian Courts Administration
- application of mediation in Poland presented by representatives of the Financial Supervision Authority, General Counsel of the Republic of Poland, Mediation Centers, Polish Section of the European Association of Judges for Mediation GEMME
- discussion on the free legal aid and free civil counselling system in both countries
- presentation on the court and out of court application of mediation in Norway and in Poland by the Polish and Norwegian experts
- procedure applied at the Conciliation Board in the city of Oslo to resolve small claim disputes
- identification of the main problems and objectives for improvement in the application of mediation in Poland
- definition of possible scope of analyses and recommendations by the expert group

- establishment of what information is needed to proceed with the analysis and recommendations e.g. relevant statistics, detailed information about cases referred to mediation, regulations concerning involvement of lawyers in mediation etc.
- identification of potential solutions of challenges in application of mediation in the Polish justice system, as a partial remedy to overloaded court dockets
- preparation in the form of a bullet points summary of findings by the expert group
- allocation of tasks and framework for subsequent meetings
- preparation of recommendations in the form of bullet points

1.5. The main topics for further discussion and recommendations

The main areas of recommendations of the expert group

In the course of the discussion of the Polish - Norwegian group of experts the following main areas for improvement have been identified for further recommendations:

- reducing court backlogs in Poland through increased application of ADR, particularly mediation
- changing the ratio between the number of civil cases brought in the Polish courts and the number of cases referred to mediation
- diversifying between the types of disputes which can be mediated, particularly in out of court mediation
- decreasing the number of disputes which go directly to the court
- increasing the application of court- annexed mediation

2. Background of the Norwegian and Polish legal system in the context of application of mediation

2.1. Norway

The legal system in Norway is directed toward efficiency. The legal system is structured as a system of gatekeepers – institutions, where disputes are resolved at an early stage out of court and they go to the court only if they are not resolved at the early stage. The gatekeepers system is considered as more efficient since many disputes are resolved without going to court, much faster and at lower costs than court proceedings. There are several institutions in

Norway which resolve disputes at an early stage e.g.: Norwegian Conciliation Council, Norwegian Financial Services Complaint Board, and Settlement Councils. Most significant example of the institutions which resolve many disputes at an early stage are Conciliation Boards (CB). They are appointed at the local government level. Conciliation boards consist of a panel of three people and have jurisdiction over all small claims civil cases (less than 200,000 NOK) and in disputes regarding higher amounts, if parties choose so, and when one or both parties do not have legal representation. Their aim is to help the parties to settle (persuasion, facilitation, informal mediation) and if this attempt fails, the CB can render a binding decision. The procedure is very efficient (30-45 minutes) with mandatory participation of the parties. The parties may appeal to the court, however the rate of appeals is very low and CB have very high success rate. The procedure before CB, as well as before many other mentioned institutions is mandatory before the parties file the case to the court. CB have been part of the Norwegian system since XIX century and therefore part of the Norwegian tradition.

With very few exceptions, all judges in Norway adjudicate in all types of cases, both civil and criminal. In addition to civil cases, most judges also handle cases concerning enforcement proceedings, probate and bankruptcy. As an effect of the emphasis on resolving some of the civil disputes at an early stage, the number of civil cases in Norwegian courts by comparison with Polish courts is very low. Presently there are 12 453 incoming civil cases in the Norwegian courts. However, since most of the smaller cases are solved in the conciliation boards and the complaint boards, the courts mainly handle medium/large cases, complex cases and cases in need of clarification. Because it takes time and resources to handle these types of cases, court mediation is introduced into the Norwegian civil procedure, as more efficient and more satisfactory methods to the parties. What is characteristic for the Norwegian justice system in terms of conflict resolution, is that the judges in Norway may be mediators and they mediate cases outside of their court docket. Most cases referred to mediation at this level are mediated by judges. Judges who want to mediate, participate in a special mediation training. The number of cases mediated by judges is significant. The judges have considerable prestige and they mediate cases efficiently. About 32 % of all civil cases which can be mediated are referred to mediation and the mediation meeting is held within 2 – 3 months after the court has received the writ of summons. The court annexed mediation is quite effective with a 75% settlement rate. During the discussion it was also

noticed that Norwegian citizens trust the public institutions and each other. The level of trust to other individuals, as well as public institutions is over 75%.

2.2. Poland

There are over 14 500 000 civil cases in courts in Poland, with an increase in the number of cases in the recent years.[1] The court system is overloaded with cases, particularly in big cities. The number of all cases which may be referred to mediation out of the total number of civil cases is over 2 million and only 1, 6% of those cases go to mediation. The number of all cases referred to mediation is about 1, 6% of those cases, which can go to mediation.[2] There is no system of gatekeepers. Small number of cases are mediated out of court in mediation centers e.g. some family cases, some commercial cases. The 2023 Justice Scoreboard prepared by the European Commission, provides data on the three key elements of effective national justice systems: efficiency, quality, and independence.[3] It indicates that Poland is the leading country in EU in introducing different initiatives to increase the application of mediation, e.g. information on ADR, introducing mediation coordinators in courts, partial or full coverage of legal aid costs of ADR, full or partial refund of court fees, if ADR is successful; no obligation of lawyer to be present during mediation procedures etc. However, the number of cases referred to mediation in court annexed mediation is still very low, particularly taking into regards the growing number of all civil disputes in the courts. Mediation in civil disputes has been introduced in the Polish legal system in 2005 in the CCP (Code of Civil Procedure) and in spite of efforts in recent years to increase the application of mediation in civil cases e.g. through establishment of Arbitration-Mediation Centers, attempts to standardize certification of mediators and a national register of mediators (still in progress), there is only an insignificant increase in the number of mediations in civil disputes which does not have an important effect upon the justice system. This shows that the model of resolution of civil cases is Poland has to go through major reforms. At the end of November 2024 the Minister of Justice announced the program called 10 Pillars to Improve the Operation of Courts.[4] These are key proposals for organizational and legislative changes that respond to the needs regarding improving the efficiency of the justice system. The 10 Pillars will deal with issues

[1] For example in Circuit Court in Gdansk - Civil Disputes Department, the number of cases has increased by 230% -- from 1418 cases per year in 2018 to 4731 cases in 2023. The number of cases assigned to each judge increased 6 times in recent years -- each judge had to handle 120 cases in 2018 and 800-900 cases in 2024.
[2] However, some researchers indicate that the number of cases which may be referred to mediation is much higher, thus realistically the number of cases sent to mediation is evaluated by some as only 0.5% of all cases which may be mediated.
[3] https://commission.europa.eu/document/db44e228-db4e-43f5-99ce-17ca3f2f2933_en [14.12.2024].
[4] https://ruleoflaw.pl/bodnars-10-pillars-for-the-judiciary/ [14.12.2024].

of court experts, digitalization, Swiss franc cases, and increasing the number of positions for assisting judges. One of the ten pillar announced by the Minister of Justice is mediation which focuses on professionalization of mediators, making mediation proceedings more efficient, introducing mandatory mediation meetings in certain categories of cases, as well as pre-trial mediation built into the existing system of free legal assistance.

3. Recommendations for Poland

Based on the discussions and meetings with several organizations, representatives of courts and public institutions from Norway and from Poland the group of experts prepared the primary recommendations presented in this Report. They are based on the assumptions that the civil cases which are filed in the courts are very different. According to the Report it is necessary to make a distinction between different types of cases in order to apply various methods for their resolution at different stages. The Model presented in the Report proposes two major stages for conflict resolution:

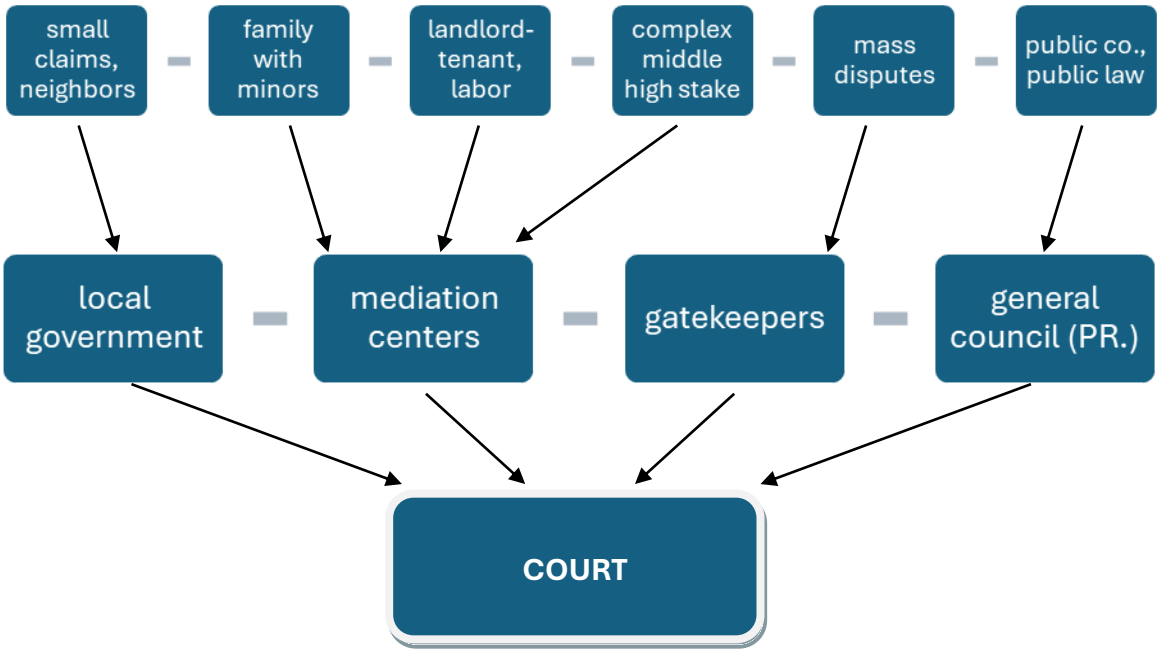
Stage One:

An early stage, out of court dispute resolution of different kinds of disputes

Stage Two:

Introducing mandatory court annexed mediation, particularly in complex cases

RESOLUTION OF CIVIL DISPUTES MODEL



Following that model the proposals are divided into three major categories:

I Early, out of court conflict resolution

II Court annexed mediation

III Other proposals

At the end of the Report there are recommendations for stakeholders of mediations (judges, attorney and parties) and how to motivate them to use mediations more often, as well as the priority recommendation for pilot projects and research.

3.1. Out of court dispute resolution

Efforts need to be made to increase out of court dispute resolution and resolve some disputes at the early stage before they go to court to lower number of cases filed in court. This goal can be achieved by the following proposals:

3.1.1. Differentiation among the types of cases which may be referred to mediation

Not all disputes are the same. The cases should be differentiated based on their value, predominate emotional non-legal issues, who is the party, what is at stake, involvement of the public entities, potential benefits of different ADR and court proceeding to the parties and to

the public. In Poland there is no differentiation of the cases from the point of view of which procedure should be applied first – hearing (trial), mediation or other ADR. Right to court is interpreted literally, meaning that everyone has a right to bring the case to the court, without any limitations or additional procedural requirements.

It is appropriate to analyse the differences between various types of cases and identify the methods and stage at which they can be resolved. Since very often the issue of access to court is raised while mandatory out of court and court annexed mediation is discussed, it is worth noticing that even in out of court mandatory ADR/mediation, the right to court can be executed by the parties. It is only postponed for relatively short period of time, due to the nature of the case and benefits of ADR/mediation to the justice system, public and individual parties. Here are examples of cases which should be differentiated based on their specific features, which make them more suitable for out of court ADR.

a. Family disputes concerning custody, residence and contact with children

These disputes can be treated as a separate category because of the benefits mediation brings for minor children and families by application of amicable, less stressful and conciliatory proceedings in comparison to the highly stressful and adversarial court proceedings. Although it may not be the case in all of them, a majority of those cases have predominately emotional issues. Because of the importance of protection of minors as an underlining value in mediation, at least a few hours of free out of court mediation is proposed as a good start before the cases are filed in a court. If no agreement is reached, the case can go to court where in court mediation should be attempted.

b. Small claims disputes (the amount should be determined)

The justification for treating small civil cases as a separate category comes from the very high costs of those disputes in comparison to middle/high stake cases and involvement of the entire justice system in those cases (filing the case, scheduling hearings, time of the judge and court clerks, appeals). Mediation at the earliest possible stage, before the case is brought to the court, should be required and should be the primary method to deal with small claims disputes because of the relatively low costs of mediation and no burden for the justice system. Additionally the hybrid methods or more directive non- binding methods should be considered in small claim cases (see Recommendation 3.1.4).

c. "Mass claims" disputes

They are almost identical disputes where the facts of the disputes are similar. They are e.g. claims under insurance contracts, bank loans and banking contracts. Those disputes can be referred to mandatory mediation and/or AI tools designed to assist in the process of resolving these cases. In spite of being similar, in the courts they are resolved individually, not as class action cases, and they require the full attention of the justice system. Costs of such cases are as high as high stake, complex civil cases. The example of such cases include the so called Swiss franc cases which increased in recent years the number of cases judges had to deal with, in some jurisdictions by 50% and increased significantly court backlogs.

d. Relationships disputes where non-legal factors are highly relevant

Those are cases with predominantly emotional issues. The legal issues are often used in those cases mainly for strengthening the negotiation position. They include certain relationships between parties such neighbour disputes, tenant – landlord disputes, and relationship breakdowns with economic and emotional aspects.

e. Public law disputes, especially large construction cases, property law cases, environmental law cases, cases which involve state owned companies; high stake disputes with participation of public companies

Such cases often require participation of an expert witness and the presentation of several expert opinions which significantly lengthens the court proceedings and increases the cost for the public.

3.1.2. Gatekeepers – using the existing system

There are several well established public institutions in Poland which have the potential to play the role that gatekeepers play in Norway. Thus far, the overall number of cases resolved by those institutions at the early stage, before court proceedings, by comparison to the number of disputes in the courts is marginal. Many of these institutions recognize their duties to resolve conflicts at an early stage as rather symbolic. What is needed is building the system of gatekeepers with consistent and sustainable leadership in promoting and sponsoring out of court dispute resolution by the Polish government. Some of those institutions for example KNF (Polish Financial Supervision Authority) and General Counsel to RP play an important role in resolving many disputes out of court through mediation. The number of those mediated

and resolved cases are meaningful for the legal system. Others such as Finance Ombudsman, National Trade Inspection, Ombudsman for Airplane and Train Passengers Rights and Association of the Polish Banks have the potential for being gatekeepers. Existing institutions could play more significant role as a first step in resolution of certain conflicts.

Recommendations:

The system already exist thus increasing the number of specialized full time mediators in these institutions and emphasis on out of court conflict resolution could help to increase the number of mediated cases and decrease the number of cases which are filed in the courts. Besides a leadership of the government in promoting ADR/mediation in public institutions through e.g. pledge or declaration of public institution to mediation/ADR is needed.

3.1.3. Out of court mandatory mediation

Requirement to participate in an early stage out of court mediation (aka: primary mediation, presumptive mediation, pre-emptive mediation)

There are no regulations in Poland which encourage out of court mediation as a first step before the case is filed in court. It is proposed to introduce a requirement to participate in mediation, before the case is filed in the court, in certain categories of cases. They may include family disputes with participation of minors, consumer disputes, labor disputes, other disputes with predominantly emotional interests (neighbor, landlord –tenant disputes), and complex cases with the participation of public entities and public and state companies. The requirement to participate in mediation should be limited, to a certain period of time e.g. no longer than 3 months. This would postpone a potential court litigation only by a short period of time. After that time parties would not have an obligation to stay in mediation. This way, in spite of mediation being mandatory, the parties still have guaranteed access to justice. Art. 47 of the Charter of Fundamental Rights of the European Union guarantees the „Right to an effective remedy and to a fair trial". If after 3 months the parties decided that mediation is ineffective they still go to trial. Additionally, it is important to noticing that mandatory mediation is based on a wider understanding of the access to justice concept, as not only a right to a fair trial but also a right to an effective remedy, including alternative dispute resolution methods.

Recommendations: Pilot project in one type of disputes.

3.1.4. Out of court two step ADR processes/conciliation

Introducing mandatory out of court two-step process mediation/binding decision or conciliation in certain cases (e.g. small claims, mass cases e.g. banking and loan consumer disputes etc., neighbour, landlord – tenant)

The hybrid forms of resolving small cases is applied in Norway in the form of conciliatory boards, which have proved to be very efficient. Also research shows that the hybrid ADR methods are most effective and ensure that the parties will get the final resolution of the dispute, even if they do not settle. Following the Norwegian example of conciliation boards it is proposed to apply mixed method --mediation first and binding decision next, if the parties do not settle. Those procedures should be applied mainly in small claims and neighbour disputes, as well as landlord-tenant some consumer disputes. The parties would have an obligation to participate in those proceeding before they file the case in the court and they would have a chance to obtain legal advice in small cases and consumer cases, and learn about the limits of their claims and what rights they are entitled to. This way the parties will become an important part of the conversation and play an active part in the entire process while in court attorneys have a dominant role. This proposal, will probably require constitutional amendments, since the binding decision could be appealed to the courts. Another option, is mandatory conciliation (or evaluative mediation) before the case is filed in court. It would give the neutral person with mediation and legal background an opportunity not only to apply mediation skills but also to go a step further and evaluate the case from the legal point of view and propose to the parties a non-binding solution. The small claims, neigbour and possible landlord – tenant disputes could be resolved at the appropriate local government level. Local governments are particularly suitable places for resolving those disputes because the facilities, which are usually close to the place of residence of both or at least one of the party.

Recommendations: pilot project for small claims using MOPS system (City Centers for Social Help).

3.2. Court annexed mandatory mediation

Court annexed mediation according to the model presented in this Report would apply mostly in complex disputes, while a majority of small claims and certain types of matters would mostly be resolve out of court. The courts would deal only with those cases

which are not resolved at the early stage. The proposals aim at introducing mandatory in court (court annexed mediation) or other mechanisms which encourage the parties to mediate after the case is filed in the court.

3.2.1. Mandatory mediation by amendments in CCP

Introducing mandatory mediation by amendments to art. 183[8] CCP - Referring the case for mediation

It is proposed to amend Art. 183 (8) CCP Referring the case for mediation: § 1. *The judge may refer the parties to mediation at every stage of the court proceedings*" to "*The judge refers parties to mediation at every stage of the court proceedings. If one or both parties disagree with the court's referral to mediation they have to present an important explanation not to do so. The judge may take into account the explanation and not refer the case to mediation*." This amendment would give the judges more firm direction to refer the cases to mediation, but also it motivates the parties to participate in mediation. This way the parties have an opportunity to see the benefits of mediation and also seriously consider the judge's referral to mediation before they refuse participation.

3.2.2. Pre-trial preparatory meetings in the complex cases

Using pretrial preparatory meetings for the high stake cases with public and private entities:

Art. 205 CPP provides, *the preparatory hearing is intended to resolve the dispute without the need for further hearings, especially a trial*. They do not resemble an official hearing, but rather a meeting of the judge with attorneys, when the judge directly encourages the parties to resolve the dispute amicably. In addition, she/he often determines the subject of the dispute and its legal basis, as well as the positions of the parties, through questions addressed to the parties. They are used very seldom by Polish judges. They could serve as an efficient tool to direct cases to mediation. In Norway so called planning meetings, which are the equivalent of preparatory meetings, are used routinely by Norwegian judges to send the case to mediation before the trial. The parties do not have to agree to go to mediation, however they have to give the judges sufficient explanation why they do not want to mediate. If the judge considers that the explanation is not sufficient, the judge can still send the case to mediation. With

regard to complex, multi-issues cases and cases involving high-value disputes, some new ideas should be developed to enable more active and effective use of preparatory hearings by Polish judges. Changes are needed so that the judge can more firmly persuade the parties to settle without the need for a trial. Preparatory meetings should be used in high stake cases.

Recommendations: preparing the guidance and training for judges how to conduct preparatory meeting in an effective way; training for judges in how to conduct preparatory meetings in high stake cases;

3.2.3. In-court mediation/conciliation conducted by peacemaker judges (sędziowie rozjemcy)

This proposal is based on experience in Norway, Germany, Austria and Belgium where a judge, can meet with parties to talk openly about whether the agreement between them is possible. Although under art 10 of CCP the judge encourages the parties to reach the agreement at every stage of the court proceeding, the institution of judge-mediator, judge – conciliator or "peacemaker judge" is not known in practice of the Polish legal system. The "peacemaker judge" is much more active than traditional encouragement of the parties to reach an agreement. "Peacemaker judges" do have skills of mediators (mediator training) and they may use their skills, their authority and legal knowledge to encourage and help the parties more efficiently toward amicable solutions. It is worth to note that "peacemaker judges" do not mediate cases from their own docket, but cases of other judges, which is consistent with Preamble (point 11) of the Directive 2008/52/EC of the European Parliament and of the Council of 21 May 2008 on certain aspects of mediation in civil and commercial matters.[5] The experience of Norway and other countries in EU shows, that introduction of this type of practice could be quite effective for those parties who decide not to participate in out-of-court mediation. More active involvement of the judges in amicable solutions may be effective since some parties in Poland may have preference for involvement of the person with more authority, like a judge, particularly when trust is problematic in the relations between the parties.

Recommendations: Guidelines and training for judges on case selection to mediation, communication with the parties and attorneys at the initial case assessment stage, as well as during the preparatory meeting stage could assist judges in the selection of civil cases for mediation and giving convincing arguments to the parties why to use mediation. Additionally

[5] https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv%3AOJ.L_.2008.136.01.0003.01.ENG [14.12.2024].

sample templates for the various mediation activities would be helpful for the judges. Such documents are in fact already produced by GEMME. They should be popularized as soft tools for the judges.

3.3. Other proposals

Other possible recommendations:

3.3.1. Introducing the model of a full-time mediator/conciliator for cases of a certain type

Introducing full or part time mediators in certain cases such as banking/insurance consumer disputes, small claims, landlord – tenant disputes, is justified by similarity of the issues and potential solutions in those cases, as well as a large number of similar cases. Full time mediators/conciliators who specialize in certain disputes would speed up the process and lower the costs of resolving disputes. The selection of cases resolved by full time mediators should be based on assessment of the number of certain cases filed in courts and similarity of issues e.g. energy price increases, valorizations, etc. Model of fulltime mediators is to certain extent applied in Poland in the so called Swiss franc cases, which are solved in mediation in KNF by a group of mediators, who now specialize in this kind of case. Because of the similarity of the issues and the solutions those mediations are relatively fast in comparison to complex cases.

3.3.2. Selection of cases for mediation at an early stage, after the case is filed in the court

The number of cases referred to mediation in Poland is very low and only 1,6% of all cases which can be mediated are sent to mediation. Judges in Poland are overloaded with work and often the argument is given that they do not have time to select cases for mediation. The trainees for judges at the National School of Judiciary and Public Prosecution in their 3rd year could, after receiving appropriate training in mediation and conciliation, as part of their apprenticeship, select cases for mediation and recommend to judges the mediation route. Such system would relieve judges from selecting and analyzing the cases which are suitable for mediation, which presently seems to be an obstacle in referring more cases to mediation. At the same time, such a system would serve as practical training of judicial trainees. Also,

adding mediation training to the curriculum at the National School of Judiciary and Public Prosecution would not constitute a significant budgetary expense. Norwegian experience suggests that the training should be conducted by team of two - a mediator and a judge experienced in mediation and workshop should consist of practical role plays.

Recommendations: Adding mediation training to the curriculum at the National School of Judiciary and Public Prosecution. Considering possibility to select cases for mediation by third year participants of the School.

3.3.3. Informative meetings about mediation, conducted under art. 183 (8) para.4 CCP

Presently, informative meetings are conducted by mediators and they are not very effective. Lawyers consider them as a waste of time. According to CCP the meeting can also be conducted by judges and assistant judges, but in practice they are not. If information meetings are conducted by judges, which was the original intention of introducing that provision, the judges could, using their prestige and authority, convince the parties to use mediation and increase the effectiveness of those meetings. The problem in Poland is that circa 50% of parties refuse to participate in mediation directed by the courts. However, if they would meet with a judge, who handles their matter and makes the referral, most likely they would take the advice of the judge into account.[6]

Recommendations: Pilot project concerning effectiveness of the informative meetings led by the judges, in which judges inform the parties about mediation and may direct the case to mediation, unless the party presents a sufficient argument not to mediate. The judge can invite to informative meeting (session) the parties from several cases at the same time (US model), which save judge's time. Additionally, this model would include invitation of mediators to be present during the informative session. The judge referring the parties to mediation could instantly send the case to mediators who are present during the session and mediation could take place the same day.

[6] Unfortunately there is no comprehensive research in Poland on how many court ordered mediations are not conducted because one or both parties refuse to mediate. One research shows that in commercial mediation in the Circuit Court in Warsaw 53% of cases were not mediated because one/ both parties refused mediation. The research has been conducted in 2013-15. It looks like the situation did not improve. For example in the Center for Conflicts and Disputes Resolution at the University of Warsaw in recent years between 25%-30% of the parties in court ordered mediations refused to mediate. The indicated number concerns only those cases when court automatically send the case to mediation without asking preliminary question if the parties do want to mediate. It does not include the number of refusals to mediate when the judges ask the parties directly, before sending the case to mediation, if they want to mediate. Therefore actual percentage of refusals to mediate is much higher than 30%. New comprehensive research is necessary to find out how many court ordered mediation are never mediated.

3.3.4. Profession of mediators

Organizing the profession of mediators:

Although the profession of mediators in Poland was not a subject of the detailed discussion and analyses of the experts due to lack of time, the group of experts concluded and consider the profession of mediators as an important part of the reform in Poland. It is necessary to introduce high standards for mediators and for conducting mediation since there is no state certification system. High standards are important to ensure trust of parties, attorneys and judges in mediation. In Poland, there is no central list of mediators. The standards for training of mediators are very general, qualification and education requirements are non-existing, different ethical rules apply to mediators depending which mediation center they belong to. Additionally, recently the Civic Council for ADR at the Ministry of Justice (created in 2006) was dissolved. It created a vacuum for standards in mediation (training and conducting mediation), prepared as a soft law by the Council in 2006 and 2007. The goal to ensure high professional standards in mediation will be served by the following:

- introducing requirements of standardized basic training for mediators and specialized training, depending on the type of cases conducted
- requirements for continuing education of mediators
- introducing the functions of full time/part time mediators at courts and other public institutions. Such mediators will be appointed based on public competition, which ensures the selection of the most skilled mediators. The affiliation of mediators should be non-judicial, but functionally linked to the type of cases the mediator will handle
- introducing mediators' fees which would reflect the workload in a particular case (e.g model 1+3+7). The proposed model is based on Norwegian experiences. Mediator conducts an information meeting (1 h) and if the parties agree to the mediation, there is a fixed fee for 3 hours or for 7 hours, depending of its length. If mediation is longer that lump sum fee is set
- creating the body which will overlook mediators' ethical behavior, requirements of training and continuing education

3.3.5. Leadership and promotion of applications of ADR methods in disputes with participation of public entities/state companies and local government

Leadership of the central government e.g. Ministry of Justice and local governments is necessary for the promotion of ADR. That leadership should not only include proposal of legislative changes but also different activities among public entities, as well as the general public. The application of ADR methods: mediation/conciliation/facilitation/arbitration are more efficient and cheaper than court proceedings and thus are highly justified by the nature of public parties. Promotion of ADR methods as default methods in case of disputes with participation of public stakeholders could also have a domino effect and serve as promotion of ADR for the general public. The promotion of ADR in the public sector may be achieve e.g. by Pledge to ADR/Mediation by public entities – obligation to propose mediation or other ADR, unless it is against the law on public finances and including ADR clauses in the contracts in which public entities are parties.

Recommendations: 1. involvement of the central government, as well as local governments in promotion of ADR e.g. through routine inclusion in all contracts signed by those entities ADR clauses and promotion of ADR by introducing the Pledge to ADR/Mediation by public entities, including e.g. Ministry of Justice as a leader.

4. How to motivate stakeholders of mediation to use more mediation

4.1. Attorneys/ Legal Counselors

- Introducing financial incentives for attorneys-at-law and legal counselors to receive a remuneration for representing the client in mediation on the level which would be satisfactory to lawyers, particularly by comparison to remuneration received while representing the client in court.
- Introduction of the requirement that the attorney/legal counselor has to inform his client about the costs of the trial and the risk of loss versus the costs and other advantages of the agreement/mediation, e.g. confirmed by signature of the party about receiving and understanding the information.

- Mandatory training in mediation/ADR, which includes simulation, during the apprenticeship for advocates and legal counselors.
- Including subject of mediation in the professional exam for attorneys and legal counselors.
- Promote and intensify improvement of lawyers' qualifications to represent the clients in mediation through trainings organized by a local bar.
- Emphasize the role of lawyers as problem-solvers and gatekeepers. One of their predominant roles is help the parties to choose the most appropriate forum and filter the cases which go to mediation, other ADR and to court.
- Encouraging professional organizations of lawyers to promote and introduce above mentioned changes in their curriculum.

4.2. Judges

- Providing mediation trainings for judges, which include mediation simulations, simulation of preparatory meetings, how to select cases for mediation, how to inform and encourage the parties to mediate.
- Introduction the mediation coordinator (judge) in the regional courts, similar to those in circuit courts, who would play an important role in promotion of mediation among judges, coordination of mediation efforts, organizing cooperation between judges and mediators.
- Including mediation in judges' evaluations (where appropriate).
- Including mediation simulation, preparatory meeting simulation etc. in the training during the apperenticeship for judges.
- Including the subject of mediation in the professional exam for judges.
- Creation of guidelines for judges on case selection for mediation and communication with the parties at the initial case assessment.

4.3. Parties

- Information campaigns about mediation (e.g. mediation weeks in courts; publishing Mediation Courier once or twice a year, available for the parties in an interesting graphic form online and in printed version).
- Information about mediation provided for the parties from lawyers and judges.

- Mediation promotion in mass media.
- Considering fee reductions or free mediation in some cases.

4.4. Mediators

- Introducing a possibility of referring parties by a judge not to a specific mediator according art. 183(9) para. 1 CCP but instead to mediation center, which would choose a mediator who specializes in certain types of disputes. This would also enable co-mediation and would also make it easier for novice mediators.
- Introducing high standards for mediators.
- Creating mediators' organization/body to oversee ethical standards and requirements concerning continuing education.
- Introducing full-time on site mediators at the courts and at other public institutions.

5. Priority recommendation of possible pilot projects

Recommendation of four priority pilot projects

The group of experts recommend four priority projects. Three of them are focused on out of court mediation, the fourth one focuses on strengthening the in court mediation

I Using an existing system of free legal aid and free civil counselling in small claims disputes

It is recommended to consider a project within the system of free legal aid and free civil counselling in MOPS in small claim disputes. This project would use existing structure to apply mediation or conciliation in small claims disputes. Such system should be set up with possible participation of full time/or part time staff, who has legal and mediation background/training. Alternatively to mediation it should be considered an application of conciliation (evaluative mediation) in small claims disputes by conciliator with mediation skills and legal background, who helps the parties to resolve the disputes but also can evaluate the case from the legal perspective and propose solutions. Online dispute resolution should be also part of that project.

II Mandatory out of court mediation

It is recommended to consider a pilot projects for out of court mandatory mediation, in the same types of cases e.g. family matters (e.g. concerning custody, residence and contact with children), neighbourhood disputes, landlord – tenant disputes or other types of cases with an emotional component. Those disputes should be referred to mandatory early stage mediation which is free (or partially free) for the parties.

III Introducing full time/part time mediators in public administration and local government for resolving internal organisational disputes

It is proposed to consider a pilot project on the level of existing structure of local governments and public administration (gminy, starostwa) to appoint full time mediators to resolve internal disputes. In some cities in Poland there are initiatives called "City Friendly for Mediation" including Warsaw, Poznań, Wrocław. This initiative could be utilized to apply a pilot program.

IV Joint training in mediation for judges and lawyers in mediation

It is proposed to organize joint trainings for judges and attorneys/legal counsellors in mediation. Such training would enhance application of mediation in courts and out of courts. It would include preparing the guidance and training for judges on how to conduct preparatory meetings in an effective way; training for judges how to conduct preparatory meetings in high stake cases [point 3.2.2 of the Report], guidelines and training for judges on case selection to mediation, communication with the parties and attorneys at the initial case assessment stage, helping the parties more efficiently to strive toward amicable solutions [point 3.2.3 of the Report], promote and intensify improvement of lawyers' qualifications to represent the clients in mediation; emphasize the role of lawyers as problem-solvers and gatekeepers [point 4.1 of the Report].Such training would include mediation simulations and role play. It is recommended that the training will be conducted by mediator/attorney and judge.

6. Priority recommendation of possible research projects

Recommendation of possible research projects

The proposed researches aim at finding out what are the real costs of civil disputes filed in court for the parties and for the justice system, as well as to find out possible answers of why there is a low application of mediation in Poland in regards to three group of stakeholders.

Four priority research projects

1. What are the **costs** of civil court cases in different types of cases: small claims, family, complex, high stake cases?
2. **Parties:** In what cases and in how many cases of different types (civil, family, commercial, labour) do parties refuse to take a part in mediation and why?
3. **Judges:** In what cases and in how many cases do judges refer cases to mediation? Why they do and why they do not? How many judges use preparatory meetings? What are the obstacles to the use of preparatory meetings?
4. **Attorneys/legal counsellors**: When do they recommend mediation to their clients? Why they do, why they do not. What is the content of the information? What are the benefits of mediation for the clients and for attorneys? What incentives need to be introduced so lawyers will routinely inform their clients about mediation?

	RECOMMENDED PRIORITY PILOT PROJECTS	RECOMMENDED PRIORITY RESEARCH PROJECTS
1	**Using an existing system of free legal aid and free civil counselling in small claims disputes.** It is recommended to consider a project within the system of free legal aid and free civil counselling within MOPS in small claim disputes. This project would use existing structure to apply mediation or conciliation in a small claims disputes. Such system should be set up with possible participation of full time/or part time staff, who has legal and mediation background/training. Alternatively to mediation it should be considered an application of conciliation (evaluative mediation) in small claims disputes by conciliator with mediation skills and legal	**Costs:** What are the costs of civil court cases in different types of cases: small claims, family, complex, high stake cases?

	background, who helps the parties to resolve the disputes but also can evaluate the case from the legal perspective and propose solutions. Online dispute resolution should be also part of that project.	
2	**Mandatory out of court mediation** It is recommended to consider a pilot projects for out of court mandatory mediation, in the same types of cases e.g. family matters (e.g. concerning custody, residence and contact with children), neighbourhood disputes or mass claim disputes. Those disputes should be referred to mandatory early stage mediation which is free (or partially free	**Parties:** In what cases and in how many cases of different types (civil, family, commercial, labour) do parties refuse to take a part in mediation and why?
3	**Instituting the position of full time/part time mediators in public administration and local government for resolving internal organisational disputes.** It is proposed to consider a pilot project on the level of existing structure of local governments and public administration (gminy, starostwa) to appoint full time mediators to resolve internal disputes.	**Judges**: In what cases and in how many cases do judges refer cases to mediation? Why they do and why they do not? How many judges use preparatory meetings? What are the obstacles to the use preparatory meetings?
4	**Joint training in mediation for judges and lawyers in mediation** It is proposed to organize joint trainings for judges and attorneys in mediation. Such training would enhance application of mediation in courts and out of courts. It would include preparing the guidance and training for judges on how to conduct preparatory meetings in an effective way; training for judges how to conduct preparatory meetings in high stake cases, guidelines and training for judges on case	**Attorneys/legal counsellors**: When do they recommend mediation to their clients. Why they do, why they do not. What is the content of the information? What are the benefits of mediation for the clients and for attorneys? What incentives need to be introduced so lawyers will routinely inform their clients about mediation?

	selection to mediation, communication with the parties and attorneys at the initial case assessment stage, helping the parties more efficiently to strive toward amicable solutions, promote and intensify improvement of lawyers' qualifications to represent the clients in mediation; emphasize the role of lawyers as problem-solvers and gatekeepers. Such training would include mediation simulations and role play. It is recommended that the training will be conducted by mediator/attorney and judge.	