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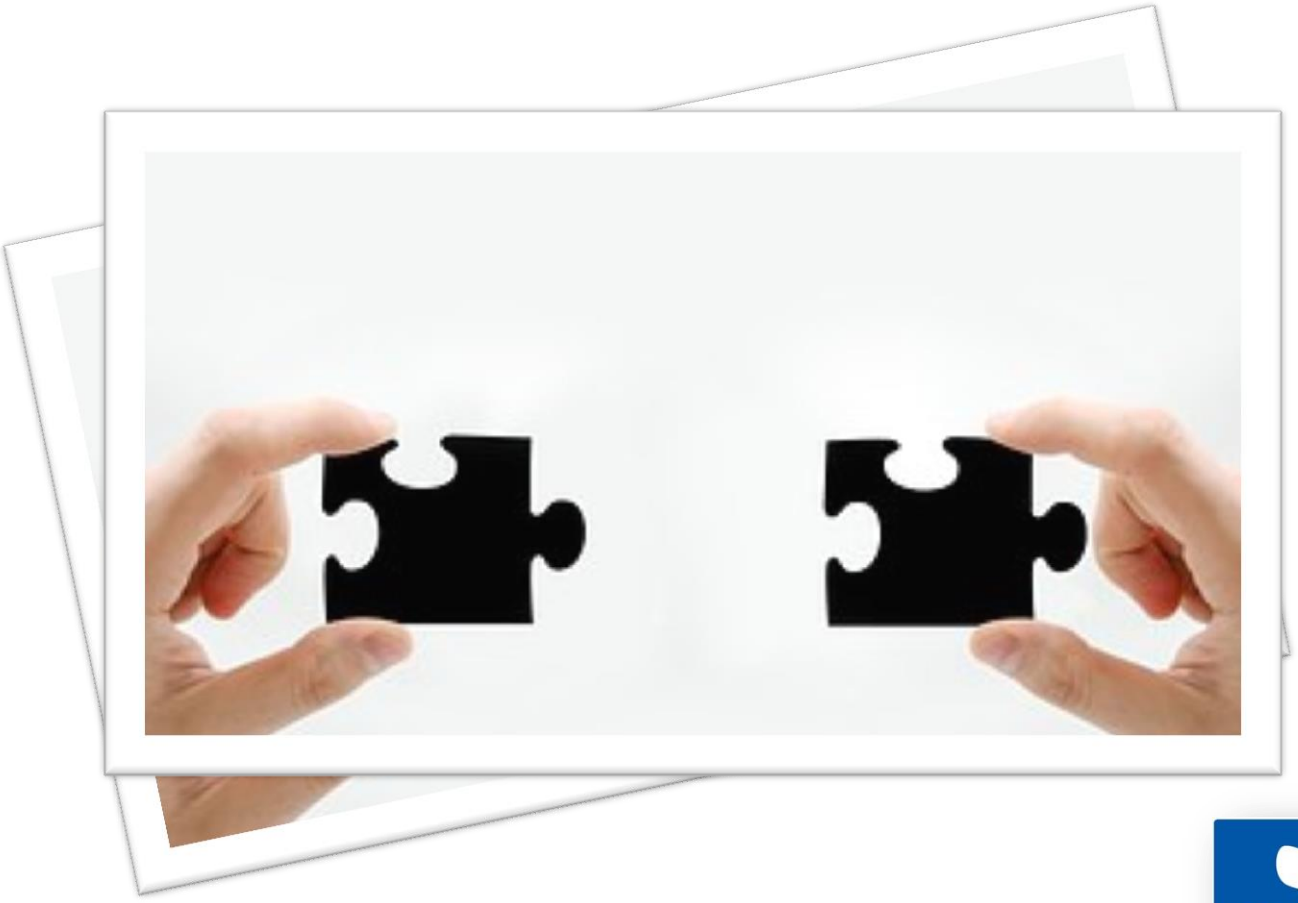
FINAL REPORT

Diagnosis of the use of mediation and of the reasons for its lower than expected popularity



MASZ PRAWO DO MEDIACJI

Project: „Promoting alternative methods of dispute resolution”
(Operational Programme „Judicial capacity building and cooperation / Improvement of the efficiency of justice” / implemented under the Norwegian Financial Mechanism 2009-2014)
financed from the Norwegian Funds and from national funds

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LIST OF ABBREVIATIONS

ABBREVIATION	EXPLANATION
ADR	Alternative Dispute Resolution
CATI	Computer Assisted Website Interview
CAWI	Computer-Assisted Web Interview
k.p.c.	Civil Law Code
k.p.k.	Criminal Law Code
KSSIP	National School of Judiciary and Public Prosecution (PL *Krajowa Szkoła Sądownictwa i Prokuratury*)
MS	Polish Ministry of Justice
MŚP	Small and medium-sized enterprises
OPS	Social Welfare Centre
PCPR	Poviat Family Support Centre
HC OP	Human Capital Operational Programme
EU	European Union

SUMMARY

Introduction

The final report on the study entitled "Diagnosis of the use of mediation and of the reasons for its lower than expected popularity" presents the results, conclusions and recommendations developed within the framework of three research areas:

- Area 1: Recognition of training needs of judges, prosecutors and mediators
- Area 2: Specification of the media communication strategy
- Area 3: Diagnosis of the state of use of mediation and causes of lower than expected popularity of mediation.

The study was commissioned by the Crime Victims and Promotion of Mediation Division in the Department of International Cooperation and Human Rights of the Ministry of Justice within the framework of the project entitled „Promoting alternative methods of dispute resolution". The Project is implemented within the framework of Operational Programme „Judicial capacity building and cooperation / Improvement of the efficiency of justice", co-financed under the Norwegian Financial Mechanism 2009-2014.

The state of mediation in Poland - statistics

Analysis of the state of mediation in Poland has been prepared on the basis on report data monitored by the Ministry of Justice and the General Prosecutor's Office.

The level of use of mediation is low at courts and at prosecutor's offices. This conclusion is applicable to all areas of law – the percentage of business law cases referred by district courts to mediation in 2014 constituted 0.25% of all court proceedings (regional courts - – 2.1%), for family law – 0.17%, for civil law - only 0.023% (at regional courts – 0.68%), for labour law – 0.21%, and for criminal law – 0.16%. Worth noting is the uneven distribution of values in individual districts. Mediation has turned out to be more popular in the southern part of the country, excluding business law – in this case, mediation was applied more often in the northwestern part of the country. In some districts, the average value has been exceeded substantially – for civil law, these are the following districts: gliwicki (2.5%), tarnowski (1.6%), krakowski (1.6%), bielski (1.5%), katowicki (1.3%) and łomżyński (1.3%); for labour law - płocki (4.2%), gdański (2.6%), warszawski (1.00%), elbląski (0,9%), opolski (0.6%) and wrocławski (0.4%).

The level of use of mediation at prosecutor's offices is also low – the percentage of cases referred to mediation in years 2011-2014 at all levels of prosecutor's offices exceeded slightly 0.1% of all cases. Nevertheless, efficiency of use of mediation in these cases can be assessed as high – on the average, 7 out of 10 mediation proceedings were concluded by a conciliation agreement.

The problem of the low percentage of cases referred to mediation is not typical for Poland only, but observed throughout the entire European Union. Analyses conducted in 28 countries of the EU indicate that despite the unquestioned advantages of mediation, in the areas of civil and business law, mediation is used in the EU in less than 1% cases. As for the number of mediations, Poland occupies the fourth place (together with Hungary), behind countries having a long tradition of mediations (Germany, the Netherlands, England), or those, which have introduced a legal obligation of introducing a mediator in certain cases (Italy). However, the absolute number of mediation referrals does not warrant an extensive view of the situation. An overview of the number of referrals in the context of the number of cases taken to court, it turns out that Poland is only within the top twenty. The top five positions are occupied by Germany, Italy, the Netherlands, England and Hungary.

The causes of low popularity of mediation in Poland

The reasons for low popularity of mediation in Poland have been indicated from the perspective of individual participants of the mediation process: judges, prosecutors, mediators, the legal community, other professional groups, parties to the dispute, the society and entrepreneurs.

Barriers that prevent increase in popularity among the judges include the fact that they believe firmly in their own conciliation capacities, as well as their schematic way of thinking and proceeding, which does not contribute to referral of cases to mediation. A way to eliminate this barrier is continuous education; however – and this has been identified as yet another difficulty – the activity of judges with regard to participation in mediation trainings is not sufficient. Moreover, the judges often lack practical knowledge with regard to which cases can be referred to mediation (doubts could be clarified thanks to direct exchange of experience between judges and mediators).

Another problem, indicated by the judges, is the insufficient quality of conciliation agreements, which is the matter of preparation of mediators and their background.

Another barrier is the ineffective mediation referral process – lack of fast communication with the mediator, incomplete information on the parties (e.g. lack of phone numbers), delivered to mediators, lengthen the duration of the mediation process.

There is also the problem of insufficient mediator information on the Web pages of regional courts. A solution here could be to provide additional information, in particular, with regard to experience of a given mediator. This should be accompanied by activities allowing for direct communication between judges and mediators, for instance, during the International Mediation Day – Mediation Week. Moreover, the courts are not engaged in activities aimed at popularisation of mediation referrals among the judges (use of mediation is not rewarded in statistics or in work assessment sheets; it is not taken into account in the individual career development plans of the judges as well).

Barriers to popularisation of mediation among **prosecutors** are similar and associated with the established way of thinking, the inadequate training models, which fail to take into account the issue of mediation, as well as lack of certainty as to whether a given case can be referred to mediation or not. The IT system of the prosecution system does not promote use of mediation – in the system, every case, despite having been referred to mediation, has the status „in progress", and recording of the case duration time is not stopped or suspended for the period of mediation.

There is also a number of legal (procedural) barriers that slow down the development of mediation in the preparatory proceedings, which requires changes in the legal provisions. Although amendment of the Code of Criminal Procedure, which came into force on July 1st, 2015, has established favourable conditions for mediation referral, it should be underlined that the solutions proposed require further modifications; for instance, the Code does not allow for independent discontinuance of the proceedings as a result of mediations being closed with a positive effect and damage compensation has been provided.

The main barrier preventing popularisation of mediation among the community of **mediators**, which has been mentioned by all respondents (including mediators) are the insufficient requirements for mediator qualifications (these should be regulated by provisions in the codes and regulations, and further, by an act on the mediator profession). Another problem are the dispersed, inconsistent and incoherent legal provisions, concerning mediation, which should also be brought together in a single document.

Lack of uniform standards of work results in diversified quality of work of mediators. The mediation centres apply different standards with regard to mediator qualifications, which results in building of a negative image of mediators among the judges, prosecutors and lawyers.

In the opinion of the respondents, particularly those representing the community of mediators, the prestige of this function is also lowered by low remuneration levels. Mediators often lack the funds and motivation to raise

their qualifications and to dedicate more time to mediation. The problem of availability of qualified mediators is visible, in particular, in smaller towns and urban areas.

Mediators have also pointed to the time for mediation being too short and they postulated its lengthening from 4 to 6-8 weeks.

The attitudes of the community of **lawyers** do not contribute to popularisation of mediation, either, as its representatives often perceive mediators as their competitors, believing that referral of cases to mediation is not beneficial for them from the economic point of view (the model of remunerating of representatives of the parties to disputes often implies that it is most beneficial for them to lengthen the court proceedings to the maximum). The barrier of distrust between this community and the mediator community can be overcome by continuous education, which should start at the stage of law studies.

An immediate solution might be introduction of the obligation to inform the customer of the possibility of making an attempt to sign a conciliation agreement or refer the case to mediation. The *Legal Counsel Code of Ethics* in Poland, which came into force on July 1st, 2015, the issue has not been discussed at all (although earlier it recommended, but not ordered, informing the customer of such possibility). Such provisions are also missing from the *Notary Public Code of Ethics*. Only the *Attorney Code of Ethics* refers directly to the obligation to recommend the alternative dispute resolution methods

The research has indicated a great significance of **other professional groups**, which often become „the first link" in a conflict situation – that is, the police, court curators, social welfare workers etc. Their knowledge on mediation and commitment to its popularisation are insufficient and require education and promotion. In the case of the police, it also seems necessary to solve the problem of financing of mediation and lack of cooperation with the prosecutors.

From the perspective of the **parties to the dispute**, the main reason for a failure to enter mediation is lack of willingness to participate in the process. Apart from lack of knowledge on mediation and the associated benefit, worth noting is also reluctance of the parties to make decisions with regard to the mode of solving of their dispute – they expect the justice system to make the decision for them.

Another barrier, listed by respondents in this group, is lack of sufficient tools that would encourage the parties to consider mediation; therefore, the recommended solutions include the obligation to inform the court in the settlement of claim whether an attempt was made to resolve the dispute out of court before filing the lawsuit. There are also insufficient economic and taxation incentives, such as those used in Italy (where the parties can benefit from a tax relief if they decide to choose mediation – EUR 500, if mediation is concluded by a conciliation agreement, 250 – if the parties fail to reach agreement).

The low level of social awareness of mediation, the insufficient number of informational and promotional activities, dispersed sources of information are barriers referring to the **entire society and entrepreneurs**. Therefore, long-term informational and promotional activities, using tools adapted to individual types of recipients are recommended (the society; entrepreneurs – small and big entities; parties to disputes – persons, who have already encountered the justice system).

Activities undertaken so far to popularise mediation

The research project included assessment of the activities carried out to popularise mediation in Poland, such as communication, trainings for judges, prosecutors and mediators, activity of the public and voluntary advisory teams on mediation and mediation coordinators at courts.

<u>Communication activities</u>

In the recent years, promotion and information activities have been carried out on the national, regional and local level, addressed mainly to the society in general, parties to disputes and mediators, lawyers

and practitioners of the justice system. One of the most significant events that promote mediation is the Mediation Week, organised since 2013, which is an extension of the International Mediation Day. Other types of promotion included campaigns and other communication activities, implemented by individual mediation centres, courts, as well as the Ministry of Justice. The initiatives undertaken were assessed positively in terms of their range, use of numerous ways of communication and the broad scope of tools and formats (e.g. current affairs programmes, discussions with experts, advertising, social campaigns, flyers and posters, as well as articles and information provided in commercial information portals or the social media). On the other hand, the following components were assessed negatively: short duration and lack of repeatability of activities (which weakens their effect), improper broadcasting time (outside the prime time), chaos and information noise (too many dispersed sources of information), too much information delivered by a single tool (e.g. flyers and information materials being too complex and unclear) and lack of examples from real life (which are most convincing for an average recipient).

Trainings for judges, prosecutors and mediators

The scale of training activity conducted by various entities (such as KSSIP, courts and prosecutor's offices, NGOs and universities) was significant in years 2010-2014. The percentage of judges, who declared their participation in mediation trainings, was above 45%, while the percentage of prosecutors was almost 40%. Despite the large scale, most of the training activities identified should be considered to have been incidental and temporary, depending strongly on availability of EU funds. Assessing the effectiveness of training (defined as the declared number of mediation referrals), it should be underlined that judges, who participated in at least one training, referred cases to mediation more frequently than those, who did not participate in any trainings at all. Effectiveness of prosecutor training turned out to be much lower.

As for trainings organised to develop and update knowledge of the mediators, research has shown that these meet the identified needs (with regard to general knowledge on mediation, as well as the standards of proceeding in dispute solving). Most of the mediators examined had participated in such trainings.

Mediation trainings, conducted in years 2010-2014, were provided separately for individual groups (prosecutors, judges, mediators). In order to increase their effectiveness and to build trust between different groups, it is recommended that joint trainings are organised (for mixed groups), simultaneously for prosecutors, judges, mediators working in a given area, e.g. a given city.

Public and social centres and advisory teams for mediation.

Activities popularising mediation are undertaken by advisory teams and centres established at the central level, as well as at the level of academic and other communities associated with mediation. At the central level, there is the Council for Alternative Dispute and Conflict Resolution Methods at the Ministry of Justice. Until year 2014, there was also the Team for systemic solutions with regard to solving economic disputes out of court at the Ministry of Economy. The task of this Team was to prepare legislative changes on alternative dispute resolution methods for business law disputes, as well as to recommend other activities, outside the scope of legislation.

Examples of activities at the level of academic and other communities associated with mediation include those undertaken by the Mediation Centre of the Foundation of the Faculty of Law and Administration of Silesian University „Facultas Iuridica", the Mediation Centre at the Supreme Bar Council or the Social Council for Alternative Methods of Solving Conflicts and Disputes.

Mediation coordinators at courts

A solution aimed at promoting court mediation was appointment of the court mediation coordinator. Research has shown that in the present format, this solution is not sufficiently effective. Tasks assigned to coordinators are focused mainly on information and promotion, which requires specific qualifications and

competences, and these are often lacked by judges. In order to strengthen the role of the coordinators, the following activities are recommended: formal empowerment of coordinators in the court structure, creation of a closed, specific catalogue of tasks, introduction of a functional allowance or limiting of other professional duties, introduction of activities at the level of the Ministry of Justice, aimed at establishment of a network of mediation coordinators.

Strengths and weaknesses of mediation in Poland, as well as opportunities and threats to its development

Apart from weaknesses of mediation in Poland and threats to its development, the strengths of the system have also been identified. These include: a high supply of mediators, obligatory training with regard to the basis of mediation, introduced by KSSIP as a standard for training of newly appointed judges, integration of the judge community in favour of mediation, low costs of court mediation, as well as gradual inclusion of mediation issues in the legal provisions. Opportunities for development of mediation in Poland include the high potential of organisations associating mediators and mediation centres, the high level of commitment of mediator communities in development of mediation, promotion and cooperation with the justice system, growing interest in mediation in the society, building of new conflict resolution patterns in the mass media, as well as the growing interest of the lawyer community in mediation tools

The strengths and weaknesses of mediation identified, as well as the opportunities and threats for its development have served as a basis for 3 mediation popularisation scenarios: short-, medium- and long-term.

The objective of the short-term scenario – until year 2020 – is to attain the level of 1.1% cases referred to mediation on the national scale. This will require training activity aimed at judges, prosecutors, mediators and other professional groups. Such trainings should be in the form of a pilot programme, encompassing individual districts or provinces. An addition to the above should be publications, conferences and activities aimed at integrating various professional groups associated with mediation. On the other hand, the general public should be the recipient of social campaigns, articles, flyers and promotional and informational events, such as meetings with the inhabitants, picnics, expert duty hours.

The medium-term scenario – until year 2030 – assumes achievement of the level of 3% cases referred to mediation on the national scale. It is expected that positive effects of pilot programmes implemented in the previous years will be popularised among the judges, prosecutors and mediators throughout the country. Mediation should be popularised further in the mass media through social campaigns. This scenario includes the development and coming into force of the act on mediation and mediator profession.

The objective of the long-term scenario – after year 2030 – is to attain the level of 10% cases referred to mediation. It should be assumed that judges would already have experience in referring cases to mediation. This will contribute to an increase in the number of cases referred to mediation and the number of mediations initiated by the dispute parties without any court intervention. This should lead to reduction of the number of lawsuits filed. Even an overall change in attitudes of judges towards mediation, however, will not be effective without a change in mentality of the society. As this is a long-term process, continuation of large-scale communication activities, repeated over time, informing and encouraging the parties to use this conflict resolution method, will be of key importance.

1 INTRODUCTION

This Report presents a summary of results of the study, as well as conclusions and recommendations developed with regard to the three study areas:

1. *Identifying the training needs of judges, prosecutors and mediators,*
2. *Defining a mediation communication strategy*
3. *Diagnosis of the use of mediation and of the reasons for its lower than expected popularity.*

Detailed results for individual areas have been presented in separate reports – for study areas 1 and 2, and in the methodological report of February 2015, and for study area 3 – of July 2015. The results of research works, presented in the previous reports, include: a proposed training programme, addressed to judges, prosecutors and mediators (study area 1), a mediation communication strategy (study area 2), analysis of the state of mediations on the basis of statistical data and from the perspective of individual groups of stakeholders (study area 3). This final report summarizes all works conducted within the framework of individual areas.

The study was conducted by Agrotec Polska sp. z o.o. and commissioned by the Crime Victims and Promotion of Mediation Division in the Department of International Cooperation and Human Rights of the Ministry of Justice (MS).

The study is a part of the project entitled „Promoting alternative methods of dispute resolution". The Project is implemented within the framework of Operational Programme „Judicial capacity building and cooperation / Improvement of the efficiency of justice", co-financed under the Norwegian Financial Mechanism 2009-2014.

The main objective of the programme is a fairer and more efficient judicial system, whereas the main objective of the project is to promote alternative methods of dispute resolution. The project (which will result in an increased number of cases referred to mediation) is aimed to improve the effectiveness and strengthen the efficiency of the judicial system.

2 DESCRIPTION OF THE METHODOLOGY USED

The following research methods and data sources have been used in the report:

1. **Desk research analysis** - legal acts on mediation, research and scientific studies on the state of mediations in Poland and in the EU, information materials concerning mediation, Web pages of mediation centres, mediation training programmes etc.;
2. **Analysis of statistical data** on the number of cases referred to courts and prosecutor offices and the number of cases referred to mediations;
3. **Results of a quantitative survey with representatives of mediators, judges and prosecutors** (the study consisted of two parts: the first was aimed at diagnosis and gathering of facts, and the second was based on assessment of proposed solutions and changes in the mediation system in Poland);
4. **Results of a quantitative survey of a representative sample of the inhabitants of Poland** above 16 years of age;
5. **A quantitative survey, conducted among curators, representatives of secondary schools, NGOs, representatives of the attorneys' and legal advisers' associations and social welfare employees**;
6. **In-depth focus interviews** conducted with the following target groups: the potential mediation participants (representatives of entrepreneurs and the society), mediators, representatives of OPS, PCPR, prosecutors, judges, police officers, curators;

7. **In-depth phone interviews** with mediation coordinators at regional and district courts;
8. **A blog**, which was used to obtain information and opinions from the main groups studied: mediators, judges, prosecutors.

3 THE RESULTS OF THE STUDY

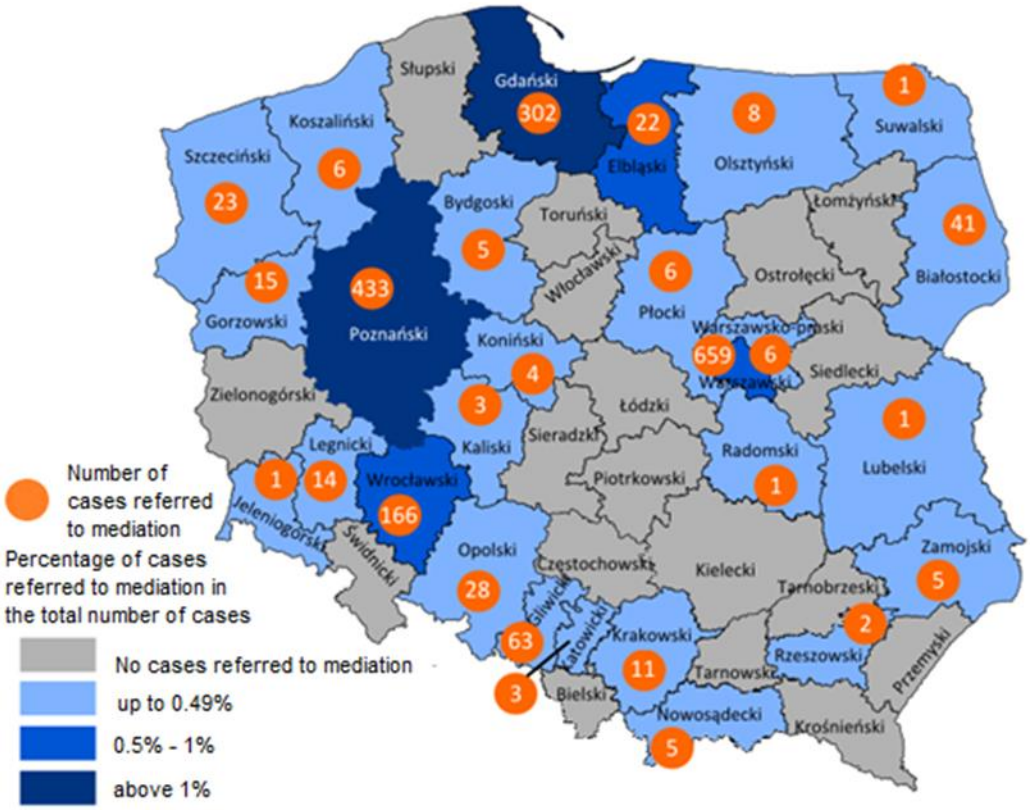
3.1 The current status of mediations in Poland in terms of statistics

The analysis of the state of mediations in terms of statistics was conducted at the level of regional and district courts, and it was divided into categories according to the applicable area of law: business, civil, family, criminal and labour law. The analyses were based on reporting data for year 2014, generated by the Ministry of Justice. Data on the status of mediations in prosecutor's offices has also been presented.

Cases in the area of business law

In year 2014, district courts referred the total of 1 834 business law cases to mediation, **which constitutes only 0.25% of all court proceedings in this area of the law.** Worth noting are **5 districts, which can be distinguished due to the number of cases referred to mediation.** Districts, in which mediation was used in more than 0.5% cases, included: gdański (302 cases, that is, 1.9%), poznański (433; 1.31%), warszawski (359; 0.97%), wrocławski (166; 0.55%) and elbląski (22; 0.74%). Therefore, it can be pointed out that mediation in business law is **applied more frequently in the north-western part of Poland.** In 18 districts, District Court judges failed to refer any cases to mediation. 10 of these are located in the southern part of the country. It should be underlined that data for the first half of year 2015 indicates an increase in the use of mediation – until June 215, district court judges had referred 2 322 cases to mediation (which constitutes 127% of the number of cases referred in the entire year 2014).

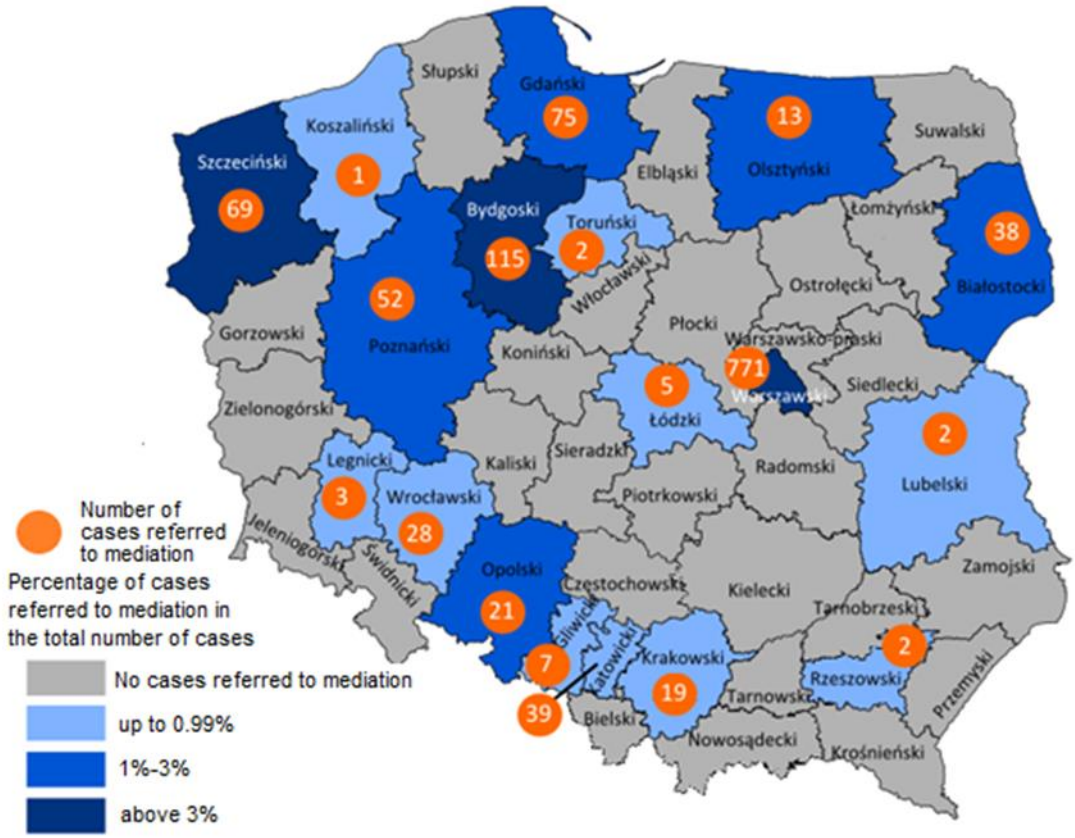
Map 1. Business law cases referred to mediation at district courts in 2014 according to district



Source: Own elaboration on the basis of data obtained from the Ministry of Justice

A higher percentage of cases referred to mediation was recorded in proceedings of the regional courts. At this level, mediation was a mechanism used to solve conflicts in 1262 cases, which constitutes **2.1% of all business law cases subject to regional court proceedings.** Like in the case of the courts of first instance, significant differences were recorded in terms of use of mediations depending on the district. A relatively high level (at least 1% cases referred to mediation) of use of mediation was recorded in the following districts: bydgoski (115; 9.28%), warszawski (771; 5.96%), szczeciński (69; 3.41%), opolski (21; 2.11%), gdański (75; 1.84%), olsztyński (13; 1.45) and poznański (52; 1.02%). Worth noting is the above-average use of mediation tools by the regional court in Bydgoszcz – more than four times higher than the national average. Like in the case of district courts, higher activity in this regard was recorded by districts of the northern part of Poland. It is worth underlining that in 25 district courts, business law cases were not considered. Thus, the real number of districts, in which mediation was not used, was equal to 2 – these were kielecki and częstochowski districts. In the first half of year 2015, regional court judges referred 848 cases to mediation (which constitutes 67% of the value for the entire year 2014).

Map 2. Cases referred to mediation at regional courts in 2014 according to district



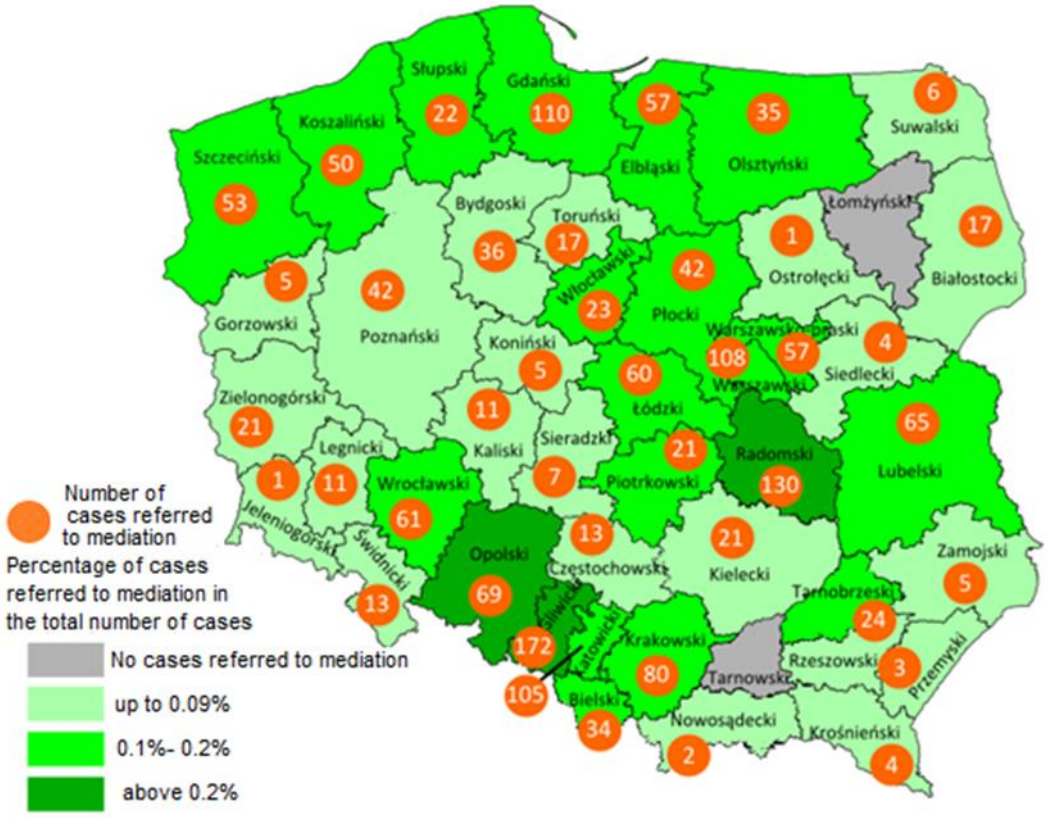
Source: Own elaboration on the basis of data obtained from the Ministry of Justice

With regard to business law, both in the case of district and regional courts, the highest effectiveness of mediation pertained to the same legal qualifications. These were: claims due to contracts for services (at the SRs: 114 out of 300 cases were closed as a result of mediation proceedings; in SOs, these were 66 out of 250 cases), claims due to sales contracts (SRs: 72 out of 300; SOs: 40 out of 250) and claims due to contracts for construction works (SRs: 72 out of 300; SOs: 65 out of 250). In the case of district courts, a visible share of effective mediation was also recorded for claims due to lease or rental agreements (24 out of 300 cases closed in this manner).

Cases in the area of family law

As for family law cases considered by district courts in year 2014, 1 626 of these were referred to mediation, which constitutes as little as **0.17% of all cases**. Differences between individual districts with regard to referral of family law cases to mediation are less visible in comparison with business law. However, there are **three districts, in which the number of cases referred to mediation is slightly higher** – radomski (130 cases referred to mediation, which constitutes 0.59% of all cases), opolski (69; 0.29%) and gliwicki (172; 0.23%). Only in two districts, there were no cases referred to mediation by district courts – these were tarnowski and łomżyński districts; two other (ostrołęcki and jeleniogórski) referred only one case each to mediation. Statistical data for the first half of year 2015 indicate that the level of use of mediation has remained unchanged - the district court judges have referred 873 cases to mediation (which constitutes 54% of all cases referred to mediation in year 2014).

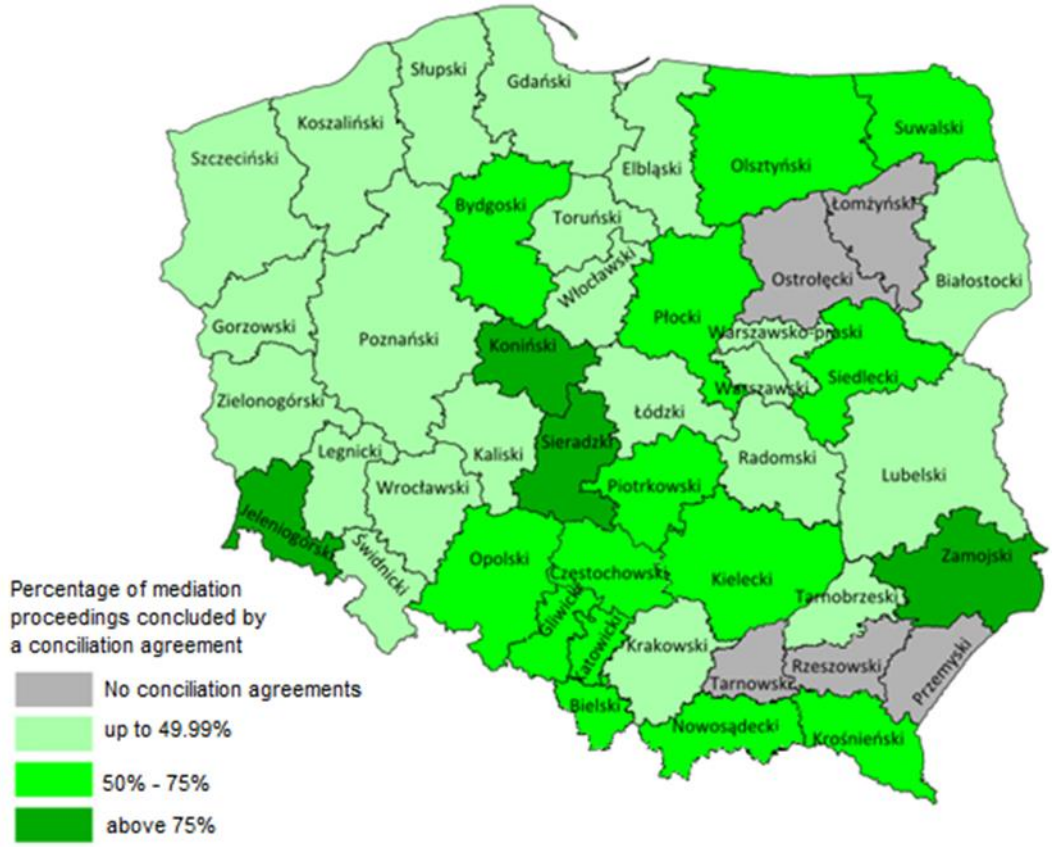
Map 3. Mediation proceedings in district courts in the area of family law, year 2014, according to district



Source: Own elaboration on the basis of data obtained from the Ministry of Justice

As for effectiveness of mediation proceedings, understood as signing of a conciliation agreement, some diversity has been observed at the national level. In four districts, at least ¾ of all mediation proceedings were concluded with signing of a conciliation agreement – these were: zamojski, koniński, sieradzki and jeleniogórski district (where, as indicated above, mediation was used only once). At the national level, on the average, **42% of all mediation proceedings ended with a conciliation agreement.**

Map 4. Conciliation in mediation proceedings at district courts in the area of family law in year 2014 according to district



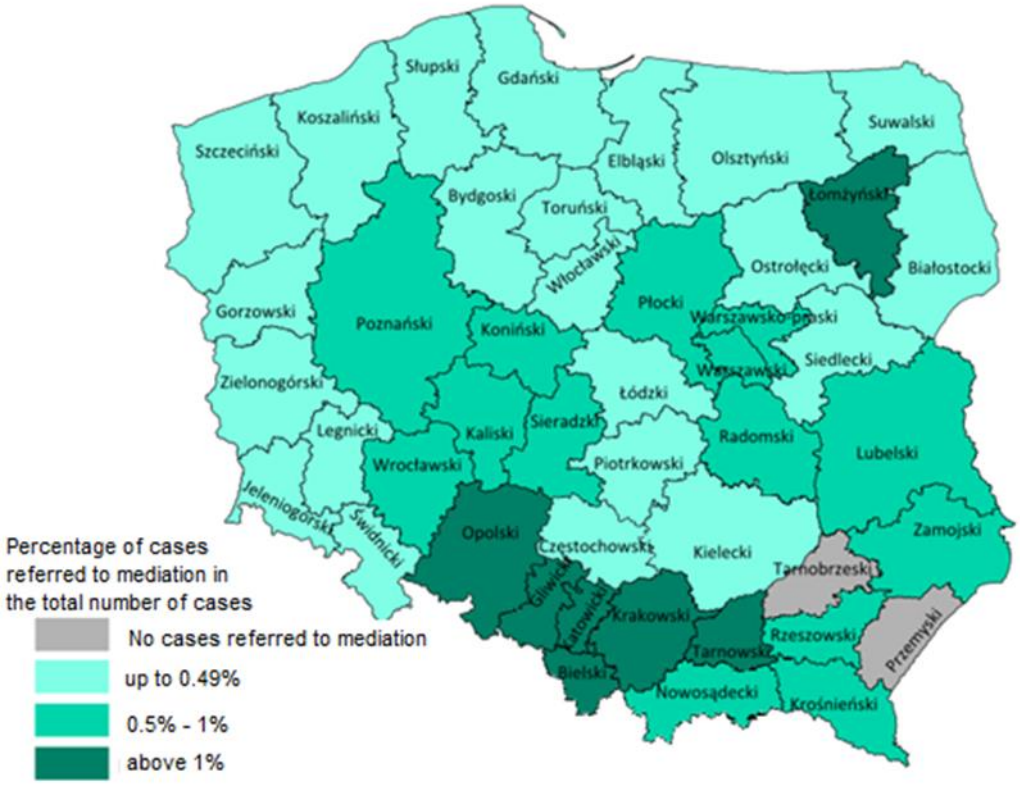
Source: Own elaboration on the basis of data obtained from the Ministry of Justice

As for the area of family law (at the district court level), the highest number of cases closed in this manner were associated with awarding of alimony (28 out of 49 cases closed as a result of use of mediation during court proceedings) and amendment of alimony decisions (18 out of 49). As for non-judicial proceedings, the highest number of cases concluded in 2014 as a result of mediation concerned applications for contact with a minor (186 out of 299 – which is the largest category of cases concluded by a court decision through mediation) and applications for amendment of contact orders (65 out of 299), and, to a lesser extent, termination, suspension or limitation of parental custody (16 out of 299) and determination of the place of residence of a minor (12 out of 299).

Cases in the area of civil law

In the case of civil law proceedings conducted by district courts, the judges decided to refer the case to mediation 1 098 times, meaning that **this alternative dispute resolution measure was applied only in 0.023% of all litigations**. In civil law cases, higher percentages of use of mediation have been observed in the districts of the south-western part of the country - opolski, gliwicki, katowicki, bielski, krakowski and tarnowski. In these districts, district courts referred at least 1% cases to mediation. In two districts, SRs failed to propose mediation (tarnobrzeski and przemyski). According to the data of the Ministry of Justice, in 2015, a higher number of referrals to mediation should be expected – until June 2015, 735 lawsuits had been referred to mediation, which constitutes 67% of all cases solved in this manner in year 2014.

Map 5. Mediation proceedings (civil law cases) at regional courts in 2014 according to district



Source: Own elaboration on the basis of data obtained from the Ministry of Justice

Regional courts used mediation tools more frequently, although the referral level was still very low **– 0.68%** cases referred to mediation. In 7 districts, the percentage of cases referred to mediation exceeded 1%. These districts include: gliwicki (2.49%), tarnowski (1.6%), krakowski (1.57%), bielski (1.5%), katowicki (1.28), łomżyński (1.28%) and opolski (1.04%). Thus, once again, popularity of mediation has been greater in the southern part of the country. Data for the first half of year 2015 indicate a slightly higher level of use of mediation tools – until June 2015, the number of cases, in which the parties were referred to mediation on the basis of a court decision, amounted to 1 297 (which constitutes 60% of all cases referred to mediation in 2014).

As for civil law cases, considered at the district court level, most cases concluded as a result of mediation were associated with claims concerning the legitimate proportion of inheritance (15 out of 124 cases closed as a result of mediation within the framework of legal proceedings in 2014), as well as claims associated with various types of agreements (in total, for sales contracts, contracts for specific work, contracts for construction works, lease or rental, loan agreements and mandate agreements, these were: 32 out of 124 lawsuits). Moreover, in non-judicial proceedings, mediation turned out to be the most effective tool in cases concerning division of joint property (34 out of 63 cases closed in 2014) and inheritance (11 out of 63). In the case of regional courts, civil law mediation is most effective in the case of divorce (12 out of 91 cases closed in this manner) and protection of personal interests (8 out of 91).

Cases in the area of labour law

In labour law litigations, considered by district courts, referral to mediation was recorded 297 times, which means that this alternative dispute resolution method was used for 0.21% of all cases. In 18 districts, cases were referred to mediation by district courts. Above-average percentages of cases referred to mediation were recorded in the following districts: płocki (4.21%), gdański (2.64%), warszawski (0.95%), elbląski (0.87%), opolski

(0.6%) and wrocławski (0.4%). Worth noting is the level of use of mediation in the first half of year 2015 – until June, the district court judges had referred 181 cases to mediation, which constitutes 60% of all cases referred to mediation in 2014. Moreover, a very low level of use of mediation was recorded by regional courts – mediation tools were applied only in **9 cases, constituting 0.06**% of all proceedings. Districts, in which mediation was used, were: warszawski (3 lawsuits), piotrkowski (3), płocki (1), krakowski (1) and gdański (1).

Moreover, with regard to labour law, in the case of regional courts, effectiveness of mediation has been observed to be very low – in year 2014, there were only a few cases closed as a result of mediation. On the other hand, district courts have concluded a significant number of cases by referring them to mediation – these were associated with notices of termination of employment contracts (24 out of 66 cases) and remuneration for overtime (7 out of 66), as well as compensation for labour (6 out of 66).

Cases in the area of criminal law

The share of mediation referrals in criminal law proceedings in **district courts** was generally low. On the average, district courts **referred 3 770 cases to mediation, which constitutes 0.16%** of all proceedings. In general, the level of use of mediation as an alternative dispute resolution method was similar in all districts. None of the districts deviated significantly from the average with regard to use of mediation. Most often, criminal law cases were referred to mediation by district courts in lubelski district (0.57% of all cases). As for regional courts, the percentage of referrals to mediation was even lower. In year 2014, *regional courts referred lawsuit parties to mediation only 7 times.* Mediation tools were used by regional courts in: Krakow (5 lawsuits), Białystok (1 lawsuit) and Płock (1 lawsuit). Worth noting, however, is the tendency of increase in the number of mediation referrals in 2015 – statistical data shows that in the first half of year 2015, 2042 cases were referred to mediation (63% of all cases referred to mediation in 2014)

Mediation at prosecutor's offices

Report data gathered by the General Prosecutor's Office has confirmed that **mediation is rarely used in criminal law cases**. The percentage of cases referred to mediation in years 2011-2014 at all levels of prosecutor's offices ranged between 0.11% and 0.12%. This level was the highest in 2011 – 0.12% cases referred to mediation. In the period of four years, 5 056 cases were referred to mediation; out of these, 4 843 were referred by the prosecutors. Thus, **authorities other than the prosecutor's office**, such as the police, **used mediation only 213 times** in the period of 4 years. Over the years, the number of mediation referrals has been **decreasing**. In 2014, it was lower by almost 20% in comparison with year 2011. At the same time, however, the overall number of cases dealt with by prosecutor's offices has decreased as well. Most often, cases were referred to mediation at the level of the **district prosecutor's offices**. Regional prosecutors referred cases to mediation only sporadically – in years 2010-2014, they took advantage of this opportunity only 4 times (2011 – 1, 2012 – 2, 2014 – 1). Moreover, in the analysed period, none of the appellate public prosecutors referred any case to mediation.

Table 1. Referral of cases to mediation in years 2010-2014 by prosecutor's offices

Specification	Impact of criminal law cases	Referred to mediation	% of criminal law cases referred to mediation	Mediation procedure concluded in the preparatory proceedings	g by a conciliation agr	% mediations concluded with conciliation
2011						
Regional Prosecutor's	5 589	1	0,02%	1	1	100,00%
District Prosecutor's	1 183 280	1 413	0,12%	1 416	1 021	72,10%
Total - 2011	**1 188 869**	**1 414**	**0,12%**	**1 417**	**1 022**	**72,12%**
2012						
Regional Prosecutor's	5 691	2	0,04%	2	2	100,00%
District Prosecutor's	1 144 056	1 288	0,11%	1 288	896	69,57%
Total - 2012	**1 149 747**	**1 290**	**0,11%**	**1 290**	**898**	**69,61%**
2013						
Regional Prosecutor's	5 262	0	0,00%	0	0	
District Prosecutor's	1 124 116	1 211	0,11%	1 188	862	72,56%
Total - 2013	**1 129 378**	**1 211**	**0,11%**	**1 188**	**862**	**72,56%**
2014						
Regional Prosecutor's	5 211	1	0,02%	1	0	0,00%
District Prosecutor's	1 042 137	1 140	0,11%	1 121	802	71,54%
Total - 2014	**1 047 348**	**1 141**	**0,11%**	**1 122**	**802**	**71,48%**

Source: Own elaboration on the basis of data obtained from the General Prosecutor's Office

The effectiveness of mediation remained similar – in years 2011-2014, the percentage of mediations concluded with a conciliation agreement ranged between 69.6% and 72.6%. It would be difficult to determine clear trends in this regard. In general, effectiveness of mediation as the alternative dispute resolution method in solving of criminal law cases should be assessed as high.

Summing up, it is necessary to indicate the relatively low level of use of mediations both in courts and in prosecutor's offices. This conclusion refers to all areas of the law. An area, in which the level of use of mediation is relatively higher, is business law. Mediation can also be recognized as being slightly more popular in the southern part of the country, excluding business law proceedings. With regard to the latter, mediation is more often applied in districts located in the north-western part of the country.

The level of use of mediation by district prosecutor's offices has remained low – in years 2011-2014, about 0.11% of all cases were referred to mediation. At the same time, it should be underlined that **mediation is not used by regional and appellate prosecutor's offices**. However, the effectiveness of mediation in this area should be assessed as high – on the average, 7 out of 10 mediation cases were closed with a conciliation agreement.

The problem of the low percentage of cases referred to mediation is not typical for Poland only, but observed throughout the entire European Union. Analyses conducted in 28 countries of the EU indicate that despite the unquestioned advantages of mediation, in the areas of civil and business law, mediation is used in the EU in less than 1% cases. As for the number of mediations, Poland occupies the fourth place (together with Hungary), behind countries having a long tradition of mediations (Germany, the Netherlands, England), or those, which have introduced a legal obligation of introducing a mediator in certain cases (Italy)[1]. However, the absolute number of mediation referrals does not warrant an extensive view of the situation. An overview of the number of referrals in the context of the number of cases taken to court, it turns out that Poland is only within the top twenty. The top five positions are occupied by Germany, Italy, the Netherlands, England and Hungary.

[1] 'Rebooting' the Mediation Directive: assessing the limited impact of its implementation and proposing measures to increase the number of mediations in the EU, European Parliament's Committee on Legal Affairs 2014.

Table 2. The number of mediations in selected EU member states

Countries	Number of mediations	Number of countries	% of countreis
Germany, Italy, The Netherlands, UK	More than 10 thousand	4	14%
Hungary, Poland	Between 5 and 10 thousand	2	7%
Belgium, France, Slovenia	Between 2 and 5 thousand	3	11%
Austria, Denmark, Ireland, Romania, Slovakia, Spain	Between 500 and 2 thousand	6	21%
Bulgaria,Croatia, Cyprus, Czech Republic , Estonia, Finland, Greece, Lithuania, Latvia, Luxembourg, Malta, Portugal, Sweden	Less than 500	13	46%

Source: Rebooting' the Mediation Directive: assessing the limited impact of its implementation and proposing measures to increase the number of mediations in the EU, 2014

Table 3. The number of cases taken to court in selected EU member states

Countries	Number of lawsuits filed in 2012 (excluding criminal law)	Number of criminal law cases filed in 2012	The percentage of cases referred to mediation [approximately]
Germany	3 897 169	1 167 769	0,257%
Italy	4 010 588	1 532 809	0,25%
The Netherlands	1 258 187	388 847	0,795%
UK	1 760 793	1 310 157	0,568%
Hungary	1 129 126	334 352	0,443%
Poland	10 045 154	1 001 718	0,050%
Belgium	n/a	n/a	n/a
France	2 185 753	1 013 452	0,092%
Slovenia	910 717	72 124	0,220%
Austria	3 489 286	57 668	0,014%
Denmark	2 628 863	152 157	0,019%
Ireland	n/a	n/a	n/a
Romania	1 841 892	192 489	0,027%
Slovakia	638 571	44 167	0,078%
Spain	n/a	n/a	n/a
Bulgaria	392 320	157 079	0,025%
Croatia	1 097 909	347 949	0,009%
Cyprus	36 868	118 410	0,271%
Czech Republic	1 046 760	97 868	0,010%
Estonia	265 301	16 046	0,038%
Finland	524 352	60 072	0,019%
Greece	709 644	n/a	0,014%
Lithuania	280 708	29 208	0,036%
Latvia	70 540	17 290	0,142%
Luxembourg	n/a	n/a	n/a
Malta	4 507	19 131	2,219%
Portugal	718 369	112 482	0,014%
Sweden	197 441	89 804	0,051%

Source: Report "European judicial systems – Edition 2014 (2012 data): efficiency and quality of justice"; the European Commission for the Efficiency of Justice (CEPEJ) 2012

Also worth noting is the high percentage of cases referred to mediation in **Norway**. According to data for year 2011, in the courts of first instance, as many as 14% cases were referred to mediation, and in appellation courts

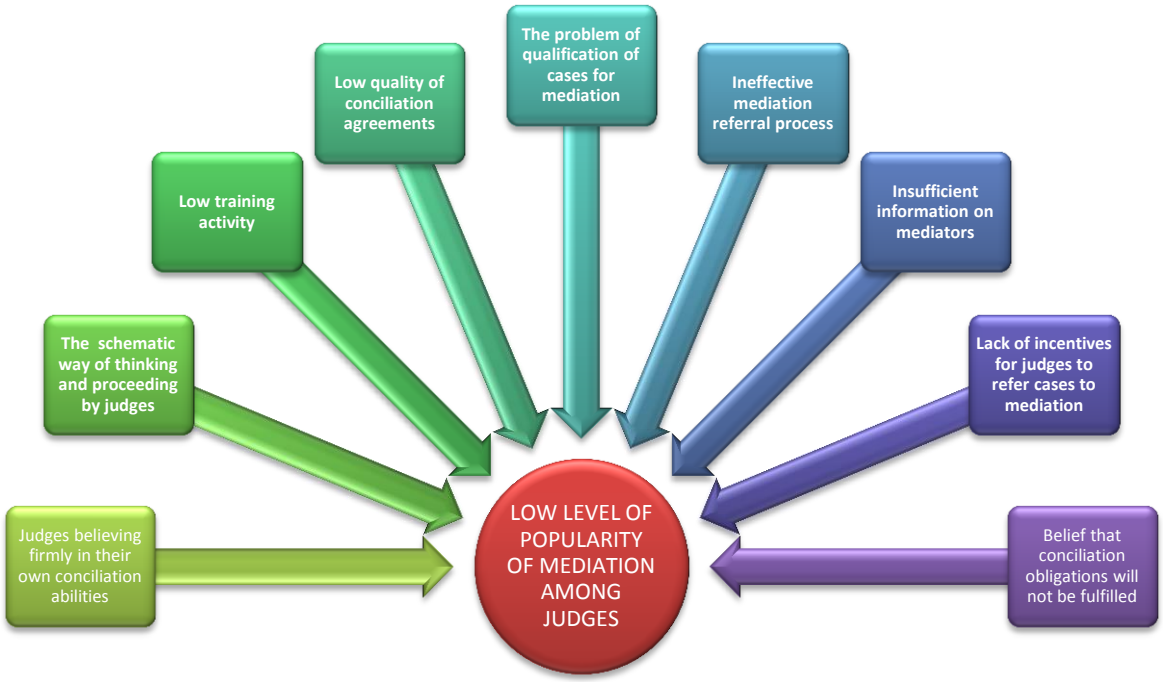
– 5%. This success is associated directly with the mediation system in this country – all mediations are conducted by judges, and mediation itself is strongly anchored in Norwegian law. The process of popularisation of mediation was commenced in 1997 through 6 pilot projects. Positive results of these projects led to introduction of mediation tools as a permanent legal instrument in year 2008. According to a representative of the Norwegian justice system (Mr. Wiggo Storhaug Larssen), the key to success are well-trained judges and legal provisions, which secure a sufficient period of time for court mediations. The qualifications and experience of judges in Norway should be appreciated, as judges are appointed at a late stage of their professional career, which means they have extensive legal or academic experience.

3.2 The reasons for low popularity of mediation in Poland

3.2.1 Courts and judges

Barriers for popularization of mediation on the side of judges and courts include:

Figure 1. Causes of low popularity of mediation on the side of judges and courts



Source: Own elaboration

The fact that judges believe firmly in their own conciliation abilities. Oftentimes, judges fail to refer cases to mediation is the fact that the judges believe they are able to lead the parties to conciliation before the court by themselves. Most mediators, as well as some judges, however, point out that the judges are mainly focused on closing of the case and issuing a decision, and not on resolving of the dispute for the future. On the other hand, mediation allows for conclusion of a case in the manner that prevents the parties from getting back to the court with yet another dispute. Frequently, the same barrier is activated as the judge informs the parties of the possibility of subjecting themselves to mediation. In particular, it was the mediators, who pointed out during their interviews that the manner, in which the judges inform the parties of mediation, is not encouraging, in particular, for the victim, whose interests are, in general, overshadowed in the Polish justice system that focuses on the perpetrator. As it has been underlined by mediators and by some judges as well, judges are often unable to present to the parties the potential advantages of mediation, such as avoidance of secondary victimization, caused by unpleasant and stressful contacts with official institutions, the possibility to express their emotions, the perpetrator understanding the mistakes made and the necessity to change their behaviour,

undergo treatment or therapy, which leads to mitigation of the conflict. In many cases, delivery of information concerning the possibility of mediation is reduced to procedural issues. Belief of the judges in their own conciliation abilities results in belief among judges and prosecutors that the two groups compete with one another in this regard. **RECOMMENDATION**: It is necessary to enhance awareness, through trainings and exchange of experience, of differences between the roles of judges and mediators and their mutually complementary competences, and not competition. In addition, the training programme should include practical exercises on how to inform the parties of the possibility of entering mediation by presenting the associated advantages and discussing clearly the course of mediation itself. The parties to the conflict must understand the nature of mediation and be able to give their informed consent to participate in mediation.

Undoubtedly, the best solution would be to have the mediator conduct the first information meeting, concerning the mediation tools; however, this would require additional regulations, including resolving of the issue of covering of the costs of such meeting, if the parties finally decide not to enter the mediation process. **RECOMMENDATION**: As a target, it is recommended to provide for a possibility of the mediator to conduct an information meeting, concerning mediation, and the costs of this meeting should be included in the costs of legal proceedings, covered by the State Treasury (both parties should be able to participate in the meeting free of charge).

An example of a country, in which the meeting with a mediator is compulsory, is **Slovenia**. The parties may accept or reject mediation at their discretion, although, if the parties fail to propose referring the case to out-of-court settlement, the court may refer the parties to an obligatory information meeting with a financial penalty for non-attendance. If one of the parties refuses to enter mediation without a reasonable justification, the Slovenian court may also impose additional financial penalties. A similar solution has been applied in Italy, and it has been enriched with additional incentives to participate in the information meeting and not only non-attendance penalties. These include such solutions as: introduction of a fixed fee for the first mediation meeting (EUR 40 per party) and lack of fees for the subsequent meetings, if held, lack of sanctions for withdrawal from mediation after the first meeting, tax incentives for the mediation parties. **RECOMMENDATION:** As it has been rightly noticed by participants of the recommendation workshop, implementation of the Slovenian solutions in Poland is not reasonable at present. Application of penalties for refusal to participate in a meeting with a mediator will not translate to popularisation of mediation in Poland as long as the judges themselves are not convinced of advantages of this solution, which is proven by statistical data, presented in chapter 3.1. Nevertheless, the solution is worth considering and introducing e.g. through a pilot programme. As it has been shown by experience of other countries, introduction of compulsory mediation components translates to the increase in the number of these.

Chart 1. To what extent do you agree with the following statement: *The first initial meeting with a mediator should be compulsory for the parties*

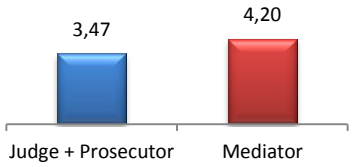
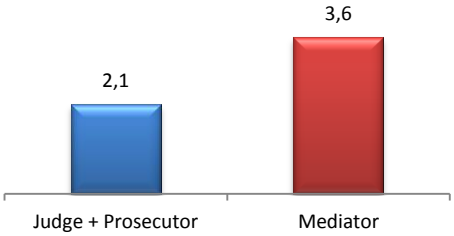


Chart 2. To what extent do you agree with the following statement: *The compulsory nature of referral to mediation should be imposed upon judges for a certain amount of time to allow them to get used to this solution*



Source: own elaboration on the basis of CAWI with judges, prosecutors and mediators, n=117, presentation of average answers according to the scale of 1 to 5, where 1 represented „I definitely disagree" and 5 – „I definitely agree"

Evidence shows that the obligatory mediation components may exert positive impact on the voluntary mediation indicators. A good example here is Italy, where the number of cases subject to obligatory mediation is limited; these include disputes with neighbours, mortgage, rights to land, division of real estate, inheritance, leasing, loans, medical malpractice liability, defamation by the media, agreements, insurance and banking. Legal provisions regulate both types of mediation – both compulsory and voluntary. In Italy, as long as mediation was not compulsory (until year 2011), the number of mediations did not exceed 2000 cases per year. After it became compulsory in some cases (March 2011 – October 2012), the number of voluntary mediations increased to almost 45 000 out of 220 000 lawsuits. When mediation ceased to be obligatory (October 2012 – September 2013), due to a conflict between legal provisions on compulsory mediation and the basic law), along with the number of compulsory mediations, the number of voluntary mediations dropped significantly as well. At present, mediation is once again a prerequisite for commencement of court proceedings in certain cases (since September 2013); as a result, several dozen thousands of both compulsory and voluntary mediations are initiated every month. Introduction of components of compulsory mediation has brought the most significant results, not only by increasing the number of mediations entered, but also by reducing the number of cases taken to court[2]. As it has been underlined by authors of the report 'Rebooting' the Mediation Directive …', in the recent years, legal provisions on mediation have not been amended other than by introduction and then withdrawal from compulsory mediation. Therefore, it can be assumed that it was the only factor, which influenced so significantly the change in the number of mediations, which leads to the conclusion that the most effective tool popularising mediation is its obligatory nature, at least in some cases. This effectiveness exerts positive impact on other types of disputes as well.

The schematic way of thinking and proceeding by the judges. Another problem is reluctance of the judges to refer cases to mediation, due to the schematic way of their thinking and resistance against a change. Nevertheless, most of interview respondents did not support the solution based on making mediation obligatory. They admit that such solution would improve the statistics; however, they are of opinion that it would not contribute to perception of mediation as an effective dispute-solving tool. In addition, even preparation of a detailed list of cases, which qualify or do not qualify for mediation, in the case of obligatory referral, will not prevent situations, in which mediation will be applied, although it should not be (e.g. when one of the parties to the conflict is weaker than the other). **RECOMMENDATION:** The decision on qualification of a case for mediation should be a sovereign decision, made by the judge or the prosecutor, and judges should be encouraged to refer cases to mediation only within the framework of educational and promotional activity.

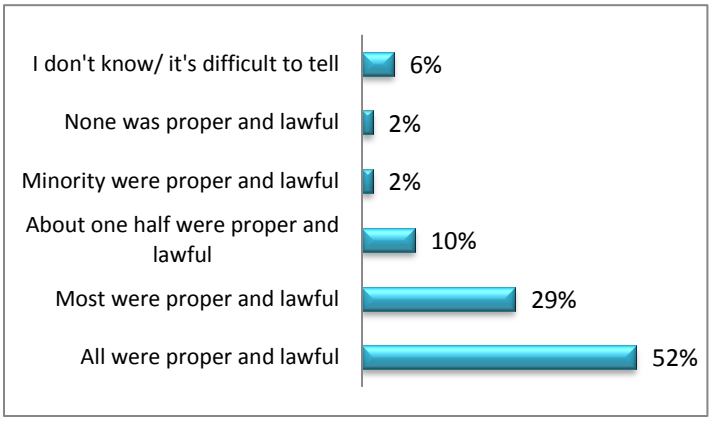
Low level of training activity among judges and insufficient effectiveness of training. Research conducted with a representative sample of judges indicates that the percentage of judges, who declare having participated in mediation trainings, is 47% - in this group, 19% have participated several times or more, and 28% - only once. Training activity should be assessed as insufficient, considering that a single training is usually not enough. As it has been noted by focus group participants within the framework of this research project, the trainings are often attended by the same – most active – persons. The trainings are assessed positively in terms of their quality and usefulness. In addition, assessing the effectiveness of training on the basis of the declared frequency of referrals to mediation, it should be underlined that judges, who have attended at least one training, tended to refer more cases to mediation than persons, who did not participate in any trainings at all. The barrier of trust between the legal and mediation communities has not been eliminated, which is mainly due to the fact that the trainings were organised for uniform groups, without any consultations with mediation experts, which resulted in a failure to develop an easily reproducible model of cooperation between the judge, the parties and the mediator for the sake of effective conclusion of mediation. **RECOMMENDATION:** A significant component of work on the joint vision of mediation development is constant broadening of

[2] 'Rebooting' the Mediation Directive: assessing the limited impact of its implementation and proposing measures to increase the number of mediations in the EU, European Parliament's Committee on Legal Affairs 2014.

knowledge in this regard. As it has been pointed out by the mediators and judges examined and shown by experience, the best solution is to engage mixed groups (prosecutors, judges, mediators) in a single training, conducted for persons working in a given area, e.g. in the same city.

RECOMMENDATION: Knowledge on mediation should be transferred at the stage of apprenticeship for judges, prosecutors, legal counsellors, attorneys, notaries and even bailiffs. In order to complete the apprenticeship programme, it is necessary to undergo the training cycle as specified in the apprenticeship curriculum, developed by the Ministry of Justice, which consists of classroom learning and practical training in courts, prosecutor's offices and law firms. Upon completion of this programme, the apprentice is entitled to undergo the professional exam, consisting of the written and the oral part. All of these stages (theory, practice, exam) can be enriched by adding in-depth mediation training, and the Ministry of Justice should take this fact into account, developing the training programmes in cooperation with entities, which are responsible for their assessment.

Chart 3. Assessment of quality of the conciliation agreements signed in the opinion of judges and prosecutors



Source: own elaboration on the basis of a quantitative survey with judges, prosecutors, mediators (judges n= 40; prosecutors=21)

It would be beneficial to include this topic not only in law studies, but also in the curricula of such faculties as psychology, education, resocialisation, sociology[3]. This will contribute to treating mediation as the proper way of solving conflicts, not only in the area of law. The present trends indicate that mediation is becoming a component of the curriculum; however, the amount of time dedicated to it is insufficient – the classes are too short, based exclusively on lectures that present the definitions and legal basis for mediation. **RECOMMENDATION:** Inclusion of the topic of mediation in the study curriculum would require multifaceted action on the part of the Ministry of Justice (promotion of this idea in association with various events in the academic world), mediation centres (particularly those operating at universities) and the universities, which are already implementing mediation curriculum packages (it is important to make sure these are not limited to theory), which contributes to promotion of the best practices.

Low quality of conciliation agreements. Judges and prosecutors criticise mediators for the quality of conciliation agreements (which should thus be perceived as a field for improvement of mediation trainings). Although the problem is not encountered frequently (most judges and prosecutors assess the conciliation agreements they have dealt with as properly devised and lawful), it has emerged during focus interviews and the recommendation workshops, where it was underlined that for the judge, the quality of the conciliation agreement is of key significance and translates to perception of professional skills of the mediator, as the quality of the mediation process itself.

RECOMMENDATION: It would be the proper solution to organise meetings of regional/ district court judges with mediators for the purpose of discussion of the provisions of conciliation agreements, concluded in the area of criminal, family, business law etc. The result of such meetings should be instructions for development

[3] It is worth noting that this solution has been assessed in the EU as contributing most significantly to promotion of mediation in comparison with various other solutions, which do not require legislative changes (research conducted in 28 member states of the EU in year 2014, commissioned by the European Parliament: 'Rebooting' the Mediation Directive: assessing the limited impact of its implementation and proposing measures to increase the number of mediations in the EU, 2014.

of conciliation agreements, indicating clearly, which provisions may be taken into account by the court, and which may not. A mediation coordinator, representing a given court, could be responsible for organisation of such meetings.

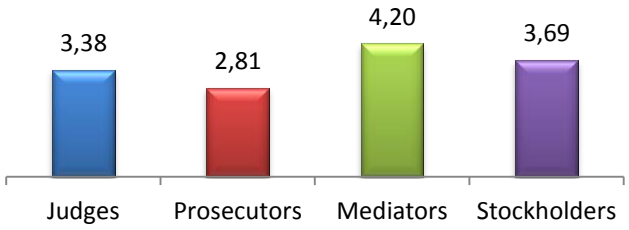
Mediators, being aware of the problem of insufficient quality of conciliation agreement, have partially blamed for this state of affairs the judges, who fail to provide feedback information concerning the conciliation agreements being prepared. In the opinion of mediators, this problem could be solved thanks to templates, developed by judges and made available to mediation centres, which would meet the formal requirements of a conciliation agreement. This solution, however, does not seem to be an optimum remedy, as each individual case is different, and the approach of judges towards the content of the conciliation agreements may vary. Worth considering, on the other hand, is a solution, which could eliminate such problems, as lack of feedback from courts, perception of conciliation agreements by judges and the extent, in which such agreements are accepted by courts. **RECOMMENDATION:** Two alternative solutions can be recommended here: (1) the courts can be obliged to add a mediator to the list of addressees of the court decision copy – in such case, the mediator would be informed of whether a given conciliation agreement has been accepted fully, and, if not, which parts of it have been accepted by the court; (2) another solution could be to send a copy of the documentation to the mediator only if the judge has questioned acceptability of any aspects of the conciliation agreement and has dismissed the motion in whole or in part. As most conciliation agreements are proper and accepted by judges in whole, the second solution would impose a much lesser burden on the court registries. Implementation of these solutions would have to be preceded by amendment of the legal provisions in force.

A challenge to a judge may be a conciliation agreement that goes **beyond the scope of the subject of the dispute** originally referred to mediation. In most cases, such situation is encountered in the area of family law, where several cases are in progress at a given court (or at several different courts), for instance, concerning alimony, applications for contact with a minor and allocation of parental custody. In a situation, in which the conciliation agreement encompasses all of the controversial issues, the judge may face a difficult situation, in which a part of the agreement encompasses the scope of the subject of the dispute, and a part does not. According to judges, who are experienced in mediation referrals, the problem is only apparent, and there are several solutions. First of all, the judge may approve the mediation agreement only in parts, which are associated with the scope of the subject of the dispute. Secondly, the judge may encourage the parties to withdraw all of the remaining lawsuits or request a referral to mediation, which will be only theoretic (as conciliation has been reached), while allowing the parties to reclaim ¾ of the registration fees[4]. **RECOMMENDATION:** The issue of the content of conciliation agreements and proceeding in a situation, in which the conciliation agreement goes beyond the scope of the subject of the dispute, should be a component of a training for judges. No additional regulations are necessary in this regard.

[4] The court returns ¾ of the registration fees paid, if conciliation agreement is reached as a result of the mediation process.

Qualification of cases for mediation – lack of a uniform approach of persons referring cases to mediation. According to most mediators, there are no cases, which could be – by definition – disqualified for mediation. Among judges, this percentage is much lower (it is the lowest among the prosecutors). In cases that involve a mental disorder or an addiction, there may be a risk of inability to enforce performance of the conciliation agreement. Such cases, in which the circumstances indicate the unequal status of the parties (e.g. abuse of a family member, harassment etc.) should not be automatically excluded from referral to mediation, although they do require particular sensitivity of the judge, as well as thorough analysis. As a result of ineffective mediation, one of the judges gave the example of a situation, in which one party, being a victim of abuse, accepted the conditions provided by the other party during the mediation process only because of fear of revenge.

Chart 4. To what extent do you agree with the statement: *Mediation can be used in most types of cases*



Source: quantitative study: judges (n=182); prosecutors (n=188); mediators (n=473), stakeholders: curators, high schools, social welfare, attorneys (n=1283), presentation of average answers according to the scale of 1 to 5, where 1 represented „I definitely disagree" and 5 – „I definitely agree"

There is a certain category of cases, which is believed to be particularly fit for mediation. These are private and family affairs, some of the disputes between neighbours, as well as cases involving employment relationships. In these categories, mediation referral should be applied by definition, while alternative solutions should be applied in exceptional cases. Compulsory mediation referral does not seem to be a good solution (even if applied for a limited period of time, as indicated by some of the research participants, to convince the judges and prosecutors of the advantages of mediation), because every case should be approached individually. Both sensitivity of the judge and their trust in the mediator, who must make sure that both parties feel safe during mediation, is of significance here.

Table 4. Counterindications for referral to mediation

	Judge + Prosecutor	Mediator
Mental illness	80%	84%
Intellectual disability	67%	83%
Addiction (diagnosed or suspected by judge)	30%	49%
Emotional or physical disproportion between the conflict parties	17%	16%
Offences prosecuted by public indictment	17%	13%
Domestic violence (art. 207 of CPC)	13%	34%
Mobbing cases	10%	13%
Causing of bodily injury (art. 157 of CPC)	10%	16%
Unlawful threats (art. 190 § 1 of CPC	7%	11%
Disproportion between the parties due to their legal and financial position	3%	1%

Source: own elaboration on the basis of CAWI with judges, prosecutors and mediators, n=117

Taking the above into account, **it is not reasonable to promote mediation as a universal conflict-solving tool**. Thus, it is not a good idea to promote mediation as being „fashionable", but popularise it whenever it seems to be a reasonable solution. However, it should be pointed out that judges and prosecutors find it difficult to assess eligibility of individual cases for mediation, which has been pointed out during qualitative research. The respondents, representing these two groups, underlined that although they have broad theoretical knowledge, they lack a practical approach to the issue of eligibility of cases for mediation. A solution here, however, is not to develop a practical textbook/ manual dedicated to the issue of referral to mediation, although some of the judges and prosecutors participating in qualitative interviews

proposed such initiative. In the quantitative survey, a small part of the respondents supported the development of a document describing cases, which, due to their specific nature, are not eligible for mediation – a document, which could be used by a judge/ prosecutor while making the decision to refer a given case to mediation. Surely, during selection of individual cases, contacts with mediators may turn out to be useful, as, taking advantage of their experience, the latter may indicate, which cases may potentially be solved positively. **RECOMMENDATION:** It is an optimum solution to show the judges and prosecutors (preferably, through presentation of the best practices), in which cases mediation can be particularly successful, and to indicate the components that pose a particular risk for mediation success. An intermediate solution has been introduced in England, where the judges have received a set of guidelines that, however, do not specify, which cases are eligible for mediation; instead, they indicate, which factors should be taken into account when making the decision. These factors include: the nature of the case, whether the parties have tried other methods to reach agreement, the relationship between mediation costs and lawsuit costs, impact of mediation on the lawsuit duration (whether the mediation process may lengthen the lawsuit proceedings), and the chances for a positive result of mediation. **RECOMMENDATION:** A solution, which will make it easier for the judge to make the decision on referral of the parties to mediation in the course of the court proceedings, at the same time making the parties aware of the fact that every dispute should be preceded by assessment of whether a given dispute can be solved out of court, may be introduction of the obligation to inform in the lawsuit filed of an attempt to solve the dispute out of court before filing of the lawsuit. Such regulation has been provided in the draft act on supporting of alternative dispute resolution methods, developed by the office of the Minister of Economy. An example of a country, in which this solution has been implemented, is Norway – the act on civil disputes obligates the parties to attempt to solve the dispute out of court before a lawsuit is filed.

The ineffective mediation referral process. Perhaps, the insufficiently effective mode of referral of cases to mediation by courts and prosecutor's offices is not a significant barrier preventing popularisation of mediation in Poland; nevertheless, promotion of the best practices in this regard may accelerate and improve the quality of mediation proceedings, thus changing the approach of the judges to this instrument, making it more positive. Three main approaches of mediation referral among the judges and prosecutors can be distinguished:

- Firstly, by choosing the mediator's name from the list of mediators, available on the Web page of the appropriate regional court; this applies in a situation, in which the judge has not encountered a mediator,
- Secondly, by choosing a tested mediator – not necessarily on the basis of own experience, but also by asking other judges to recommend the best person;
- Thirdly, by cooperation with the mediation centre – the judge expresses interest in referring a given case to mediation, and the decision to indicate a specific mediator is made at the centre.

Judges and prosecutors underline the effectiveness of the latter two methods – in their opinion, as a result of cooperation with the mediation centre, the cases are dealt with by mediators having high qualifications, which are consistent with the standards of a given centre.

Worth noting is the commitment of judges and prosecutors, who direct cases to mediation, in raising of the quality of the entire process. It is a good practice to contact a given mediator to find out whether they would be willing to engage in a given case and whether they have enough time to conclude the mediation process in 30 days, before the case is referred to such mediator. **RECOMMENDATION:** Therefore, it should be confirmed by the court registry, even before the mediation referral decision is issued, that a given mediator is ready to engage in mediation in a given case. It seems that such practice should be an ordinary component of day-to-day cooperation between courts/ prosecutor's offices and mediation centres and mediators. A different solution has been applied by one of the judges, who, when discussing with the parties the possibility of referral of their case to mediation, orders a short break to call the chosen mediator directly to ask about their

availability. Extraordinarily significant for the possibility of immediate commencement of mediation – in particular, taking into account the one-month deadline, imposed by the act – is providing the mediator with information, allowing them to contact the parties to the dispute quickly (e.g. phone numbers or e-mail addresses).

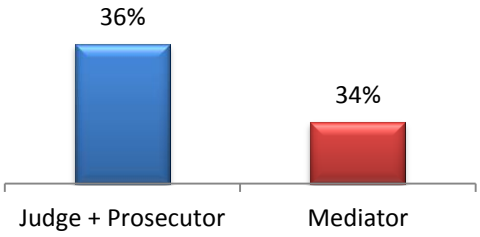
Insufficient mediator information on the Web pages of regional courts. Case referral to tested or recommended mediators is a response to three problems, pointed out by judges and prosecutors:

- Firstly: the problem of lack of regulations for the profession of a mediator, specification of any standards and requirements (as a result, as it has been pointed out by members of the focus groups, one can become a mediator even after a short, theoretical training – therefore, it is better to choose a trustworthy person);
- Secondly: the problem of insufficient knowledge on the nature of work of mediators and the mediation process itself, which influences the level of trust in the tool (as it has been noted by one of the judges, only the effectiveness of mediation, that is, reaching of a conciliation agreement, which is consistent with the requirements of the judge, is a reliable indicator of the quality of work of a given mediator – therefore, it is „safer" to choose a person, who has experience;
- thirdly: insufficient mediator information on the lists of mediators, published on the Web pages of regional courts.

The need to develop further information on the pages of district courts was subject to quantitative research and it was discussed during the recommendation workshop.

More than one half of both of the groups examined (judges and prosecutors, as well as mediators) were of opinion that the present scope of information available on the Web pages was sufficient, which confirms the assumption that some of the judges and prosecutors have developed an individual approach to selection of mediators for specific cases.

Chart 5. The percentage of respondents indicating that mediator information, available on the Web pages of regional courts, is insufficient – additional information should be made available



Source: own elaboration on the basis of CAWI with judges, prosecutors and mediators, n=117

Nevertheless, the percentage of respondents indicating the need to broaden the scope of information published on the lists of mediators is significant. **RECOMMENDATION:** It is necessary to consider the possibility of broadening of the scope of mediator information published. Persons, who were of opinion that the scope of information made available should be modified, most often pointed to a detailed description of mediator specialisations and the description of their experience.

Table 5. Demand for additional mediator information

Type of additional information	**Percentage**
A detailed description of the cases, in	79%
A description of experience in	68%
Affiliation to mediation centre	61%
Number of mediation trainings	55%
Other	29%

Source: own elaboration on the basis of CAWI with judges, prosecutors and mediators, n=38

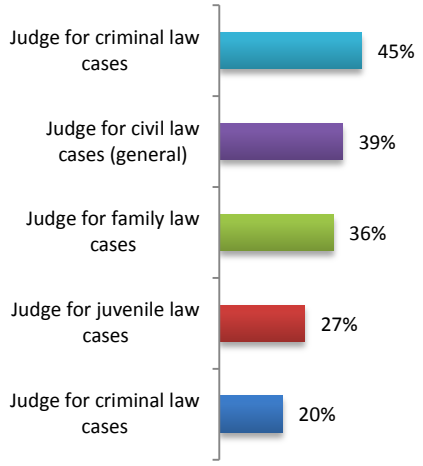
Apart from the issues listed in table 4, respondents indicated to the need for additional information, such as: detailed data on the trainings conducted, the number of mediations conducted, the city of mediation (one of the respondents indicated the problem of frequent publishing on the Web page of the court of the mediation centre address instead of the address of residence of a specific mediator), languages spoken by the mediator, education and profession, and even the photograph. **RECOMMENDATION:** It seems to be an optimum solution to make it possible to put a link on the Web page of

the regional court to a Web page, containing detailed information on the mediator. Such Web page would be administered by the mediator, who would publish significant information, including scans of training certificates. This would allow the mediator to develop a personal „business card", similar to profiles published by such services as GoldenLine or LinkedIn.

Participants of the recommendation workshop have pointed to the necessity of verification of this data by courts. **RECOMMENDATION:** Mediation coordinators at the regional courts should be responsible for verification of mediator information – to the extent possible, depending on availability of information and needs of the judges at a given court.

Lack of incentives for judges to refer cases to mediation. Despite the obvious statistical advantages of mediation, such as shortening of the proceedings (this relationship has been noticed by almost one half of all judges), some of the judges argue that mediation lengthens the case consideration process (16.5% judges). The average duration of a lawsuit in Poland is 480 days (according to the World Bank report „Doing Business 2014"), while the average lawsuit cost is 23.5% of the value of the subject of the dispute. According to research conducted in the EU on the cost and time of court proceedings, the average duration of the mediation proceedings in Poland is 42 days, while the average value of the costs of these proceedings constitutes only 5% of the value of the subject of the dispute[5]. At present, civil law disputes lack a solution, which would consist of maintenance of statistics during civil law cases, excluding the duration of mediation from duration of the proceedings. This translates to a negative assessment of lengthiness of the proceedings. **RECOMMENDATIONS**: The judges recommend changes to the work assessment sheets and individual career development plans for the judges to make sure that – contrary to the present situation –duration of legal proceedings does not include the mediation process, and the work assessment sheet and the individual career development plan of the judges includes information concerning mediation referrals.

Chart 6. Percentage of judges referring to difficulties in enforcement of conciliation provisions as a barrier for popularisation of mediation



Source: own elaboration on the basis of CATI with judges, prosecutors and mediators, judges: n=182

Belief that conciliation conditions will not be fulfilled. Many judges and prosecutors express the opinion that it is difficult to execute conciliation agreements in practice. Among judges, this belief is particularly strong in the case of criminal cases. If the conciliation agreement is not executed, it cannot be enforced automatically as it is not a civil law agreement. Therefore, it cannot be made enforceable, unless it is incorporated into the court sentence. A conciliation agreement, concluded before a mediator, has legal effect after it has been approved by the court, same as a conciliation reached before the court. The same mechanism as in Poland has been implemented in most EU member states. **RECOMMENDATION:** Information on significance of court approval of conciliation agreements, concluded before mediators, should be included in the information and promotion activities, aimed at the potential mediation participants. The necessity to clarify the legal consequences of conciliation agreements, which have not been approved by the court, should be included in the standard proceedings of mediators.

[5] Source: The Cost of Non ADR – Surveying and Showing the Actual Costs of Intra-Community Commercial Litigation; Survey Data Report, The ADR Center, Rome 2010 See: http://nawokandzie.ms.gov.pl/numer-22/wokanda-numer-22/mediacje-bardziej-atrakcyjne.html (access date: 6.07.2015).

3.2.2 Prosecutor's offices and prosecutors

The following can be listed as barriers preventing promotion of mediation among prosecutors:

The established way of thinking of the prosecutors. Since the beginning of their career, a prosecutor is trained to work as a public prosecutor, whose task it is to formulate the accusation, supervise and conduct the proceedings, concluded by filing and supporting the indictment at court. Most prosecutors are convinced that mediation brings no advantages for the parties, particularly the victim. In the Polish criminal proceedings, the authorities are focused mainly on the crime and the perpetrator. Only emphasis on the circumstances of the victim and the court decision, which would be most advantageous for them, may convince prosecutors to make wider use of mediation tools.

The situation is worsened by lack of trainings that would present mediation as the dispute solving tool in preparatory proceedings during apprenticeship and work of assistants. Such trainings, if any, are limited to theory and usually they are not conducted by mediation practitioners. **RECOMMENDATION:** Alternative dispute resolution tools should be a permanent, obligatory component of law studies, implemented as practical exercises and workshops, attended by mediators and prosecutors, who use mediation tools.

The inadequate prosecutor training model. The model of trainings for prosecutors in the field of mediation is not an optimum one. Almost 56% of all prosecutors, participating in the quantitative survey within the framework of this research project, have never participated in trainings on practical application of mediation; only one out of ten have undergone training in this regard. **RECOMMENDATION:** It is necessary to conduct cyclical trainings for prosecutors, attended by mediators and psychologists, using mainly the workshop techniques. The objective of such trainings would be to include the prosecutor, as the active party of mediation, making it possible for them to share the experience of the victim and the perpetrator participating in mediation. It is the only way to overcome the barrier, listed above, that is, mental reluctance of prosecutors, preventing them from accepting mediation.

Focus on statistical effectiveness of the prosecutors. Even though prosecutors make their decision independently, they are under the pressure of time due to the common belief that the most significant aspect of preparatory proceedings is the speed, at which it is conducted. This approach does not contribute to referral of individual cases to mediation, as the prosecutors are convinced that such referral could result in the threat of being accused of delaying the proceedings. In each district public prosecutor's office in Poland, there is the SIP IT system, which records all of the process events in a given case. SIP is the main tool used for data analysis – in particular, to calculate the duration of the proceedings and the number of incoming cases and the number of concluded cases. According to the statistics, if a case is referred to mediation, its duration is calculated continuously. Although, according to regulation of art. 23a § 2 of the Code of Criminal Procedure, the mediation time is not included in the procedure time; however, in practice, this process remains a dead letter, since in the SIP system, the case, despite being referred to mediation, is listed as "ongoing" and it is continued. This system is a significant problem, faced by prosecutors, as, in the light of the numbers, it „reduces" their effectiveness, while the

Table 6. Reasons for judges and prosecutors to abstain from referring proceedings to mediation

	Judges	Prosecutors	Mediators
Conviction of threats associated with lengthening of case duration without the possibility of suspension	11,5%	23,4%	12,7%
Unclear legal provisions on mediation	13,7%	19,7%	13,1%
Conviction of lack of advantages of mediation for the parties	15,9%	18,6%	14,6%
Conviction of lack of advantages of mediation for the victim	3,8%	13,3%	7,4%
Conviction of lack of advantages of mediation for the accused	4,9%	8,0%	7,0%

Source: quantitative research: judges (n=182); prosecutors (n=188); mediators (n=473)

prosecutor is "held accountable" for the duration of court proceedings. In practice, this means that the district procedure, controlling the status of all cases every month, verifies, in particular, the number of cases listed as long-term (e.g. lasting more than three months, six months and older). **RECOMMENDATION:** It is necessary to modify the SIP to make sure that counting of the preparatory procedure takes into account the time designated for mediation.

The legal (procedural) barriers, which prevent development of the institution of mediation in preparatory proceedings. In general, as many as 20% prosecutors, participating in the quantitative research, have pointed to unclear regulations with regard to mediation as the main reason for a failure to refer cases to mediation (among judges, this percentage amounted to 14%, and among mediators - 13%). An extensive amendment to the code of criminal procedure, which came into force on July 1st, 2015, provides a better and a more comprehension vision of the institution of mediation; however, it is still possible to point out some of the flaws of the regulations in force, such as: lack of an original basis for dismissal of the case due to a positively concluded mediation process and remedying of damages. Depending on the stage of the process, conclusion of the mediation agreement may result in withdrawal of the motion for prosecution (at the stage of preparatory proceedings), conviction without a trial (art. 335 of the code of criminal procedure), conditional dismissal of the proceedings during a meeting (according to art. 336 of the code of criminal procedure, the prosecutor may – instead of presenting the indictment – prepare and file at the court a motion for such dismissal) or plea bargaining (art. 387 of the code of criminal procedure). **RECOMMENDATION:** It would also be desirable to introduce in the criminal code a possibility of dismissal of the proceedings due to a positively concluded mediation or lack of grounds to continue the proceedings, if the objectives of punishment have been achieved. This could result in greater interest in participation in mediation, and definitely – a decisive limiting of the subsequent costs, borne by the State Treasury in association with the case.

In the case of offences prosecuted upon the motion of the victim, there is no possibility of suspension of the criminal procedure until complete implementation of the provisions of the conciliation agreement. Lack of any instruments, allowing for enforcement of these,[6] as well as the fact that a dismissed case cannot undergo another procedure, may lead to a situation, in which the victim is afraid of the risk that their damages will not be remedied. **RECOMMENDATION:** It is desirable to get the opportunity to suspend the proceedings until actual performance of the conciliation agreement or exercise of other legal protection measures, securing the resulting claims. The threat of renewed proceedings could serve as a motivating factor for the perpetrator. Another barrier, which discourages those willing to use mediation, is lack of clear legal provisions, stating that a prosecutor may refer a case to mediation in proceedings that have already been initiated, however, before issue of the decision on presentation of accusations (if, formally, the perpetrator still acts as a witness).

Uncertainty of prosecutors as to whether a given case can be referred to mediation. Like in the case of the judges, the barrier that prevents referral of cases to mediation by prosecutor is the uncertainty of whether a given **case is eligible for mediation**. A small number of prosecutors believe that mediation can be used in most types of cases (the average of answers on the scale of 1 to 5, where 1 means „I definitely agree" and 5 – „I definitely disagree", amounted only to 2,81 – which is much lower in comparison with other professional groups, including judges and mediators). Counter-indications for use of mediation, according to prosecutors, include mainly cases of the most serious crimes (such as homicide), the material, physical and mental disproportions between the parties, as well as cases concerning domestic violence (which has even been reflected by the guidelines of the General Prosecutor on the mode of proceeding to counteract domestic violence of 2011[7]). During in-depth interviews, however, most respondents expressed the view that no case

[6] In the quantitative survey with judges, prosecutors and mediators, the prosecutors listed difficulties in execution of the conciliation agreement as a significant barrier.

[7] According to guidelines of year 2011: *During the preparatory proceedings, [it is recommended] by definition, not to refer cases concerning domestic violence to mediation, unless special circumstances suggest that such decision would be reasonable.* However, in

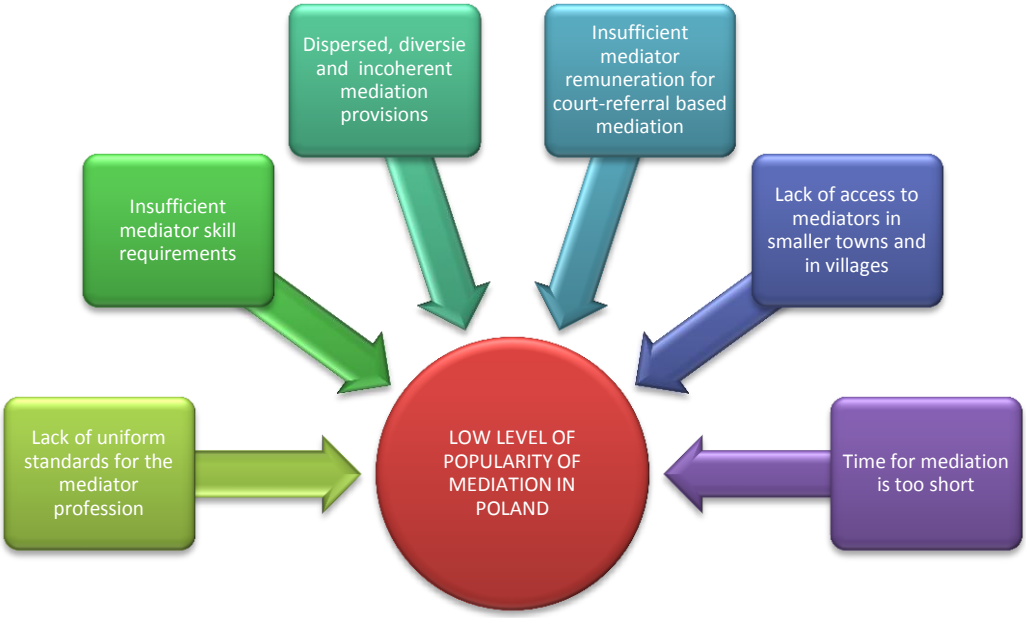
should be rejected „by definition" as ineligible for mediation, while the categories of cases listed above require particular carefulness when being referred to mediation.

RECOMMENDATION: Categorization of cases suitable for mediation should not be based on top-down standards. Lack of possibility to initiate mediation should be based only on unique conditions of a given case, such as attitudes of the parties, a specific physical state, and on an informed decision of the appropriate body, and not an arbitrary indication of the category of crimes, for which mediation is possible. Qualification of cases for mediation should thus be subject to trainings and exchange of experience between the prosecutors.

3.2.3 Mediators

The following can be listed as barriers preventing promotion of mediation, associated with the mediator community and identified by this group:

Figure 2. Reasons for little popularity of mediation, associated with the mediation community



Source: own elaboration

Lack of uniform standards of the mediator profession and insufficient qualification requirements. The mediator profession still remains unregulated. In civil law proceedings, no statutory requirements have been presented with regard to the mediator, which means that almost anyone can become a mediator. Only in the criminal proceedings, mediators must have some knowledge; in the case of the minors, both knowledge and education is required. The problem of lack of standards for the mediator profession translates into the low level of trust in judges and prosecutors and mediation tools themselves.

recommendations of 2014, this provision has been mitigated by stating that *decisions on referral of domestic violence cases to mediation should be made with due diligence.*

According to the quantitative research results, the main stakeholder for amendments of the law with regard to mediation are the mediators. It is often the group, which most often recommended introduction of changes both in the mediator profession and in the mediation process.

Table 7. Barriers preventing popularisation of mediation in Poland

A barrier for popularisation of mediation in Poland is...	Judges	Prosecutors	Mediators	Stakeholders
The low level of skills of mediators	3,07	2,93	3,10	3,48
The fact that anyone can become a mediator	3,15	3,23	3,33	3,61

Source: quantitative survey; teachers (n=182); prosecutors (n=188); mediators (n=473), Stockholders: curators, high schools, social welfare, attorneys (n=1283), average answers have been placed along the scale of 1 to 5, where 1 means "I definitely disagree" and 5 - "definitely agree"

In all mediation areas, opinions concerning inadequate requirements with regard to mediator qualifications are similar. This results in the necessity to introduce the appropriate legal regulations in this regard. The same need has been indicated by an answer to another question in the quantitative research – according to judges, prosecutors and mediators, the mediation market is self-regulatory and distinguishes between the good and the bad mediators. There is no unique approach among the groups examined as to whether standardization of the profession should take place on the basis of a separate legal act or taken into account in individual legal provisions – such as regulations of the Minister of Justice (legal codes). For sure, the tasks assigned to mediators are not defined sufficiently clearly by internal regulations of mediation centres; thus, a problem is posed by diversified requirements/ standards applied to mediators in various mediation centres. The initiator of this process should be the Ministry of Justice. It should be noted that the Code of Ethics for Mediators in Poland[8] was developed by the Social Council for Alternative Dispute and Conflict Resolution Methods at the Ministry of Justice (during its first term of office). However, in the opinion of mediators participating in the research project, not all mediation centres were willing to accept it, as they believed they had too little to say in the process of development and consultation associated with the Code. In order to increase the level of acceptance of such document by the mediator community, the team developing the Code should, first of all, attempt to implement the good solutions and principles described in the codes of individual mediation centres, and secondly – subject the document to extensive consultations in the mediator community.

RECOMMENDATION: It is a postulate of all groups (including judges and prosecutors, as well as mediators) that a uniform code of mediation ethics should be developed and adopted by all mediation centres in Poland.

Among those, who pointed to the need to standardize the profession of a mediator with appropriate legal provisions, most indicated the need for standardization of the profession with specific legal provisions; most refer to the need to include the following topics:

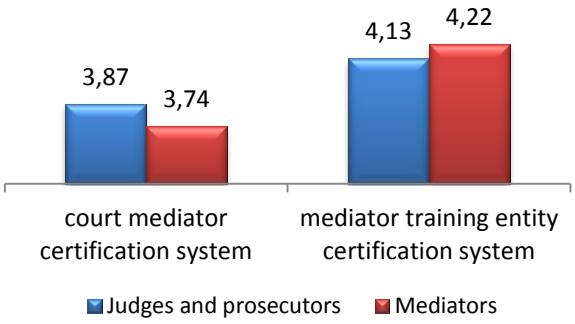
- Education level
- Education field (optional, only one in three mediators perceives the need for such regulations)
- Completed theoretical trainings in mediation,
- Completed interpersonal and communication trainings,
- Completed trainings in legal provisions,
- A completed practical mediation workshop.

[8] Code of Ethics of Mediators in Poland, approved by resolution of the Social Council for Alternative Dispute and Conflict Resolution Methods at the Ministry of Justice, May 2008.

When asked about other components, worth considering in the legal provisions, the respondents referred to the following:

- Age of the mediator (30 years or more)
- The rule that professionally active judges, prosecutors, attorneys, legal counsellors and other persons, acting before the court, should not conduct mediation,
- The obligation of systematic trainings, e.g. updating of qualifications through an annual training (at the same time, a financial barrier was mentioned, particularly in the case of mediators, who have no experience in conducting large numbers of cases simultaneously, and they do not treat it as their main source of income; the need to provide additional financing for such training has been mentioned.

Chart 7. Reasonability of introduction of the mediator certification system and mediation centres



Source: a quantitative survey conducted among judges, prosecutors and mediators; average answers have been placed along the scale of 1 to 5, where 1 means "I definitely disagree" and 5 - definitely agree

Presented below is the **mode of regulation of the mediator profession in individual EU member states** [9].

Austria: In order to reach the list of certified mediators, a mediator must be 28 years old or older, complete the theoretical and practical mediation trainings (the total number of theory and practice hours is 300 to 500), pass the exam and purchase civil liability insurance. A mediator is removed from the list after 5 years, if they fail to undergo at least 50 hours of advanced mediation training.

Bulgaria: The act on mediation prohibits combining the function of a court mediator and a profession associated with the justice system (a judge, prosecutor, a court official). The act specifies strictly the conditions, which must be met by a mediator-to-be, including the number of theory and practice training hours (in total – 60) and passing of an exam (which consists of a test and a simulation of mediation and an interview with the candidate).

France: As for the approach to regulation of the mediator function, until recently, we had been closest to France, where, like in Poland, there were no rigid conditions or uniform standards to be met by a mediator. These were established individually by various mediation centres, and the regulation on court mediators stated in general that mediators must not have a criminal record, they must have the qualifications necessary to run specific types of cases and be a trustworthy and independent person. An amendment to the act has defined more precise requirements with regard to the qualifications, specifying, among other things, the type of knowledge (training) that a mediator should have in individual areas of mediation.

Germany: Also in Germany, until year 2014, there had been no strict regulations for mediators, and individual mediation centres defined the requirements that had to be met by "their" mediators. In 2014, a regulation came into force, specifying the conditions of certification of mediators (the number of training hours, requirements for trainers, requirements, training for mediators etc.). The regulation also provides for a transitional period for mediators, who had been trained before these provisions came into force.

Italy: Every mediator must belong to a mediation centre accredited by the Ministry of Justice. A mediator can be any person, who has completed education at the level equivalent of the Polish *licencjat* (bachelor) degree, who has completed the appropriate number of mediation training hours (in total, 50). The number of training hours

[9] Based on: 'Rebooting' the Mediation Directive: assessing the limited impact of its implementation and proposing measures to increase the number of mediations in the EU, European Parliament's Committee on Legal Affairs 2014.

does not seem to be very high (individual mediation centres specify their own requirements); however, at the same time, the obligation to raise qualifications continuously has been introduced (at least 18 hours of training in the next 2 years), as well as the obligation to conduct the first 20 mediations under the supervision of an experienced mediator.

Slovenia: In Slovenia, the act on ADR specifies very „soft" requirements for mediators (no criminal record, education level: above high school); at the same time, however, it requires completion of a training, conducted in accordance with the curriculum developed by the Ministry of Justice. In Slovenia, regulations concerning mediations are very general, which is intentional – many issues other than those of key importance can be regulated by the free market.

Denmark: Only law graduates, such as judges and attorneys, can be mediators. The courts themselves select judges, who are qualified to conduct mediation processes. On the other hand, the attorneys are selected for this purpose by the Danish administrative court.

Hungary: Requirements for mediators are regulated by the act on mediation and the regulation on qualifications of mediators. These documents specify in detail the required level of education, as well as the number of hours of theoretical and practical training. Mediators are also obliged to raise their qualifications constantly.

A great majority of all respondents – judges, prosecutors and mediators – believe it is reasonable to introduce **a certification system for entities that train mediators**. A less numerous group sees the need for introduction of a system for certification of court mediators (in particular, mediators themselves are not enthusiasts of this solution). Taking into account the fact that we already have more than 2.5 thousand mediators in Poland, effective implementation of mediator certification could be complex and costly, as well as time-consuming. **RECOMMENDATION:** It seems more reasonable to introduce a system for certification of mediator training entities. It would thus be good if the Ministry of Justice, together with the Social Council for Alternative Dispute and Conflict Resolution, the Team for systemic solutions with regard to solving economic disputes out of court at the Ministry of Economy, as well as the mediation community, initiated a debate on the subject.

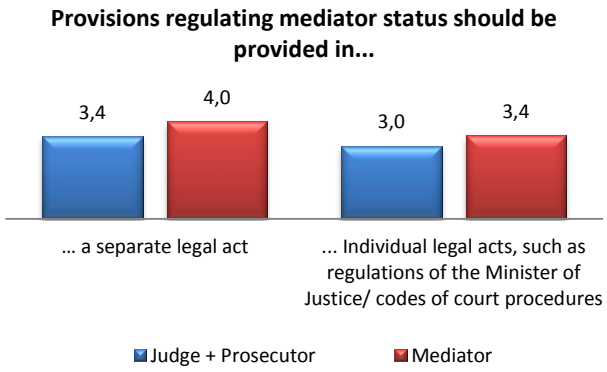
Accreditation of mediator training centres has been introduced in the following EU member states: Bulgaria, Italy, Greece (mediators are prepared by the public training institutions), Great Britain (a certificate is renewed each year, and the basis for such renewal is fulfilment of the requirements specified by the Civil Mediation Council, associating more than 80 mediation centres), Belgium (accreditation for mediation centres and mediators is provided by the Federal Commission, which applies varied criteria for various areas of mediation), Croatia (the Ministry of Justice maintains a list of accredited centres and mediators), Portugal (indirectly, as the Portuguese Ministry of Justice approves the training curricula, and not the training centres), Spain (there are no specific requirements for such institutions, and accreditation is equivalent to including a given entity on the list of training and educational institutions). As it has been indicated by statistical data for individual EU member states, there is no significant correlation between the mediator and mediation centre accreditation system and the number of mediations[10]. Undoubtedly, however, regulations concerning the mediator profession contributes to greater transparency of the system and increases the prestige of the profession.

Dispersed, inconsistent and incoherent mediation regulations. It is necessary to raise the prestige of the mediator function, as well as the standards required of court mediators and to introduce a mechanism for verification of their qualifications. Apart from regulation of requirements, defined for mediators, it is time for a multifaceted reform of the mediation law. During the interviews, the respondents underlined that the Polish legal provisions on mediation were dispersed, incoherent, inconsistent and flawed in many respects, as well as ineffective – that is, they fail to translate to an increase in the number of mediation processes. It is necessary

[10] 'Rebooting' the Mediation Directive: assessing the limited impact of its implementation and proposing measures to increase the number of mediations in the EU, European Parliament's Committee on Legal Affairs 2014.

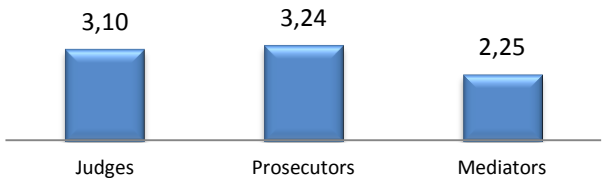
not only to amend the legislation on a casual basis, but also to respond to the need of a far-fetched reform of the mediation proceedings and introduction of a single legal act, which would regulate mediation issues in a complex manner. This is perceived as necessary mainly by the mediators examined; however, research conducted among judges and prosecutors has also shown that they are more eager to support this solution instead of having to deal with a situation, in which mediation issues are regulated by different documents – regulations and codes of court procedures (Chart 8). **RECOMMENDATION:** In the light of the problems and needs described, the Ministry of Justice should engage in a debate on development of the act on mediation and on professional mediators.

Chart 8. Opinions with regard to modification of legal provisions concerning mediators



Source: quantitative research: judges + prosecutors (n=30; mediators (n=87)

Chart 9. To what extent do you agree with the statement: *The remuneration for mediators in court mediation is sufficient*



Source: quantitative research: judges (n=182); prosecutors (n=188); mediators (n=473), stockholders: curators, upper-secondary schools, social welfare, attorneys (n=1283), average answers have been placed along the scale of 1 to 5, where 1 means "I definitely disagree" and 5 - "definitely agree"

Analysis of changes in legal provisions and emergence of legislative documents, associated with mediation in various EU member states, shows that the most popular approach was gradual inclusion of the issue of mediation in the legislation in force. For instance, in Bulgaria, mediation was first taken into account in the civil law code (2004); afterwards, in 2007, a regulation was introduced to specify the requirements for mediators and mediation centres (including mediator training centres). In year 2011, the act on mediation came into force. Also in Germany, only in year 2012, the act on mediation became the governing document in relation to many provisions in various codes and regulations at the national and the provincial (*land*) level.

Insufficient remuneration for mediators working on the basis of court referrals. The low remuneration for mediators is identified as a significant barrier, preventing development of mediation in Poland. The problem of remuneration for mediations conducted on the basis of court referrals is regulated by the provisions of a regulation of the Minister of Justice of November 30th, 2005 (Journal of Laws of 2006 no. 239 item 2018) concerning the level of remuneration and refundable expenses of mediators in civil law proceedings, issued on the basis of the statutory authorisation, provided for in art. 98^1 § 4 of the Code of Civil Procedure.

In lawsuits for concerning property rights, remuneration for the mediator is equal to 1% of the value of the subject of the dispute, however, no less than PLN 30 and no more than PLN 1000 for the entire mediation process (§ 2 item 1 of the regulation). Thus, remuneration of the mediator does not depend on the time of mediation, the number of mediation meetings or the nature of the dispute. This may lead to a situation, in which the maximum remuneration level of PLN 1000 is grossly disproportionate to the effort, if the mediation process is applied in a complex business case, where getting familiar with the documentation may take many hours, and the proceedings may require many mediation sessions. On the other hand, in the case of small-

scale disputes concerning property rights, where the value of the subject of the dispute does not exceed PLN 1 000, the mediator earns PLN 30. With such rates, it can be expected that court mediations in lawsuits concerning property rights will be conducted by persons with insufficient qualifications (or availability of business mediators will be low due to their low number), while those having extensive knowledge and experience will prefer to engage in processes other than court mediations. **RECOMMENDATION:** It is recommended to raise both the lower and the upper limit of mediator remuneration in cases related to property rights. It is also a good idea to allow the parties and the mediator to establish an additional remuneration for the mediator in particularly complex cases or those involving particularly high amounts.

In lawsuits concerning property rights, in which the value of the subject of the dispute cannot be established, and in lawsuits for other rights, remuneration of mediators for the first mediation meeting is PLN 60, and for each subsequent meeting – PLN 25 (§ 2 item 2 of the regulation of the Minister of Justice of November 30th, 2005, Journal of Laws of 2005 no. 239, item 2018). Also these rates of mediator remuneration seem to be very low, although diversification of the remuneration level for the first and the subsequent sessions should be assessed positively. Such regulation motivates the mediators to complete the mediation process as quickly as possible, preventing abuse with regard to the number of meetings held. **RECOMMENDATION:** It is recommended that the mediator remuneration rates are raised for lawsuits concerning property rights, in which the value of the subject of the dispute cannot be determined, and for lawsuits concerning other rights, while maintaining the difference between the rates for the first and the subsequent meetings.

> *"With such remuneration, you cannot deal with mediation professionally", one of the mediator says, „as you have to earn a living elsewhere, so mediation is only good as an additional job. This is why there are many people in mediation, who have no proper background and knowledge. The remuneration levels should be adjusted urgently, as otherwise, only fiends and those committed to the community will engage in mediation – probably, with a poor effect".* [entry in the research project blog]

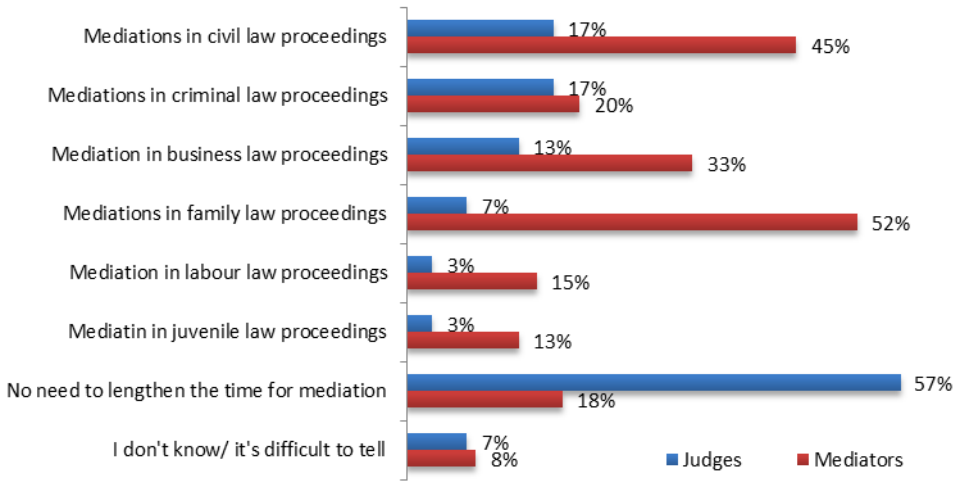
The regulation of the Minister of Justice on the level of remuneration and refundable expenses of mediators in civil law proceedings specifies clearly the types of expenses refunded to the mediator (costs of travel, notifications addressed to the parties, office supplies used, rental of rooms necessary to conduct the mediation meeting). Among mediators participating in the study, some pointed out that the time of waiting for a refund of these costs is sometimes very long. In some situations, the parties refuse to meet their obligations, incurred by voluntary referral to mediation, with regard to payment of mediation costs. Mediators are forced to face this problem. **RECOMMENDATION:** It seems to be an optimum solution for the court to act as an agent in transferring of refunds of mediation costs to the mediator, meaning that the payment for mediations is covered by the court, which then enforces this payment from the parties to the dispute.

Mediator remuneration in criminal law cases is established in the Regulation of the Minister of Justice of January 11th, 2012 (Journal of Laws no. 108, item 1026 and of 2004 no. 4, item 25), amending Regulation of June 18th, 2003 on the amount and mode of calculation of expenditures of the State Treasury in the criminal proceedings (Journal of Laws of 2003 no. 108 item 1026). It states that the costs of mediation proceedings include: a flat-rate payment for the mediation procedure in the amount of PLN 120 and a flat-rate payment for delivery of letters associated with mediation, amounting to PLN 20, regardless of the number of letters delivered. These rates have remained unchanged since year 2003, and according to mediators, as well as judges and prosecutors, they are disproportionately low to the costs of work associated with mediation. In addition, the remuneration remains the same regardless of the number of meetings and duration of the mediation process. **RECOMMENDATION:** It is recommended that remuneration of mediators in criminal law cases is raised, taking into account the rates for each mediation meeting.

Lack of access to mediators in smaller urban centres and in the rural areas. Another factor, which influences low popularity of mediation, is lack of access to mediators in smaller urban centres and in the rural areas. Organisations, which popularise mediation and associate mediators, operate mainly in large cities, which, on the one hand, limits access to information for potential participants from small towns and villages, and on the other hand – limits access to mediators. As a result, the level of awareness of the possibility to take advantage of mediation in small towns and in the rural areas has remained very low. This is particularly visible in the case of business mediations, where good knowledge by the mediator not only of legal provisions, but also of the specific nature of activity of enterprises, e.g. technological solutions, are often the key success factors. Due to the small number of cases, there are no business mediators in small towns and villages or they are unable to gain experience in complicated business cases. **RECOMMENDATION:** Popularisation of mediation in business cases on a local scale could encourage the parties to take advantage of services rendered by mediators from large urban centres. Lack of business law mediators on the list of mediators of a given court may be compensated by popularisation of business mediator associations among the judges.

The time for mediation being too short. Particularly in the group of mediators, the barriers preventing popularisation of mediations listed included the insufficient time for mediations, combined with the mode of transfer of cases to mediators, which is ineffective. According to the respondents, the time period of 30 days[11] is inadequate, taking into account the diversified needs in this regard. There is a great divergence of views in this regard among mediators, judges and prosecutors, as well as a divergence of expectations in this regard, depending on the area of the law. Judges and prosecutors relatively more often perceive the need for changes in the areas of civil, criminal and business law. On the other hand, mediators tended rather to point out the need for changes in family, civil and business law. **RECOMMENDATION:** It would be reasonable to lengthen the duration of the proceedings from 4 to 6-8 weeks[12] or allow for application of flexible solutions in this regard.

Chart 10. Opinions on the necessity to lengthen the time for mediations, taking into account the area of the law



Source: own elaboration on the basis of CAWI with judges, prosecutors and mediators, n=117

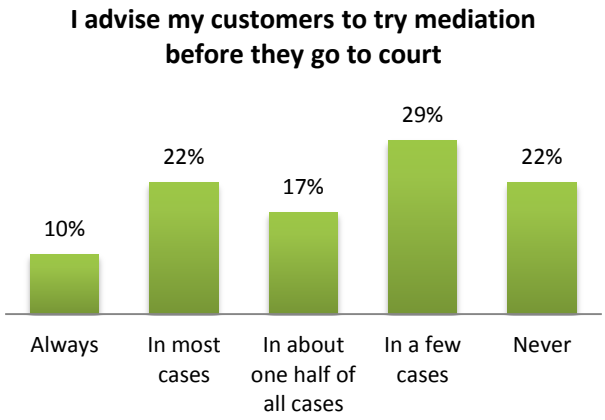
3.2.4 Attorneys, legal counsels, notaries

Problems with popularization of mediations, emerging among lawyers, such as attorneys, legal counsels, notaries etc. include:

[11] Art. 23a. § 2. k.p.k.: Postępowanie mediacyjne nie powinno trwać dłużej niż miesiąc (...).Art. 18310. § 1. k.p.c. Kierując strony do mediacji, sąd wyznacza czas jej trwania na okres do miesiąca (...).
[12] The average mediation period is 42 days.

A low level of interest in mediation among legal counsels. During group interviews with judges, prosecutors and mediators, the issue of reluctance of this group of stockholders to take advantage of mediation was underlined many times. Research aimed at diagnosing attitudes of legal counsels towards mediation, conducted by the Institute for Law and Society[13] showed that almost one half of all legal counsels had participated in mediation proceedings, representing the parties. At the same time, almost 4 out of 10 legal counsels had never encountered mediation directly. Moreover, the research conducted became a source of valuable knowledge on the attitudes of legal counsels towards the real use of mediation. 51% legal counsels never proposed participation in mediations before filing a lawsuit, or proposed this solution in a minority of cases. Only 1 out of 10 legal counsels always recommends mediations to their customers. In addition, 38% of all legal counsels declared that their responses to proposals to refer cases to mediation were negative, as a result of which their customers decide not to take advantage of mediation. On the basis of in-depth interviews and literature, it can be expected that the scale of this problem is similar among other communities of lawyers.

Chart 11. Legal counsels – active offering of mediation to customers



Source: J. Winczorek, P. Maranowski, Mediacja w oczach radców prawnych. Raport z badań, Institute for Law and Society, Warsaw 2014

At the same time, at the declarative level, legal counsels present a positive attitude towards mediation as an alternative dispute resolution method. They pointed to usability of mediation for the parties, including the additional advantages that go beyond solving of a legal dispute, such as increasing of autonomy of the parties, controlling of emotions or developing a multifaceted agreement. At the same time, the legal counsels noticed the dysfunctional nature of the Polish mediation system. Particular emphasis was put on difficulties associated with professionalization, related mainly to the low level of remuneration of mediators, negative attitudes of the parties, the fact that lawyers are convinced of low effectiveness of mediation, low quality of information provided to the parties by the courts and a tendency of the judges to treat court proceedings as a field of their discretionary authority[14]. These difficulties will be mitigated by implementation of various activities, listed in the previous chapters, aimed at increasing popularity of mediation among the judges and the general public and solving the problem of low remuneration of mediators.

Legal counsels perceive legal disputes as antagonistic – as a sort of a zero-sum game, and they do their best to occupy positions that allow their customers to maximize their benefits at the expense of the other party. This makes it harder for lawyers to act as mediators and as representatives of the parties in mediation proceedings. [J. Winczorek, P. Maranowski, Mediacja w oczach radców prawnych. Raport z badań, Institute for Law and Society, Warsaw 2014]

A barrier of distrust between the lawyer and mediator communities. There is a great need for integration of these communities for the purpose of exchange of experiences and building of trust, which would result in more frequent referral of cases to mediation. In the opinion of group interview participants – judges, prosecutors and mediators – barriers on the part of legal counsels and attorneys are so strong that it is necessary to consider whether activities aimed at popularising mediation among this group

[13] Jan Winczorek, Paweł Maranowski, Mediacja w oczach radców prawnych. Raport z badań, Institute for Law and Society, Warsaw 2014.
[14] J. Winczorek, P. Maranowski, *Mediacja w oczach radców prawnych. Raport z badań*, Institute for Law and Society, Warsaw 2014.

have any sense at all. It is better to focus on convincing the dispute parties to exercise mediation, as their opinion is (or should be) decisive. **RECOMMENDATION:** Undoubtedly, popularisation of mediation among attorneys, legal counsels and notaries is one of the biggest challenges in the context of informational and promotional activities, which should not be given up. Over the long-term perspective, it is necessary to bring the topic of mediation to the level of university law studies and legal training, in particular, using practical exercises and workshops, attended by mediators.

Lack of financial incentives to use mediations. The respondents pointed out that in many cases, dispute resolution through mediation is not consistent with the best interest of representatives of the parties. They are able to obtain greater financial benefits by participating in a lawsuit (the longer the lawsuit, the greater the amounts earned). **RECOMMENDATION:** The courts, when establishing attorney or legal counsel fees due to legal representation, should also take into account the activities undertaken for the purpose of solving disputes out of court before filing the lawsuit, as well as during the court proceedings. At present, there are no regulations, which would indicate clearly the possibility of awarding of higher costs, taking into account engagement of the representatives in the mediation process. Amendment of legal provisions should encourage attorneys and legal counsels to propose mediation and other alternative dispute resolution methods, also before commencement of the court proceedings. Implementation of the recommendation would require an amendment to the regulation of the Minister of Justice of September 28th, 2002 on fees for attorneys and coverage by the State Treasury of the costs of unpaid duty counsel (Journal of Laws no. 163 item 1348, as amended) and the regulation of the Minister of Justice of September 28th, 2002 on fees for legal counsel services and covering by the State Treasury of costs of unpaid services of court-appointed legal counsels (Journal of Laws no. 2002 no. 163 item 1349).

Insufficient emphasis on the obligation to inform the customers of the possibility to take advantage of mediation. Until July 1st, 2015, the *Legal Counsel Code of Ethics* in Poland recommended (but not ordered) informing the customer of the possibility to attempt to reach a conciliation agreement or refer the case to mediation, if such solution was consistent with the best interest of the customer. In the Code approved by the Extraordinary National Convention of Legal Counsels on November 22nd, 2014, which came into force on July 1st, 2015, no such provision can be found; the Code does not refer in any way to the role of legal counsels in informing of the possibility of engaging in mediation and support for the parties in reaching agreement without a lawsuit. Such provisions are also missing from the *Notary Public Code of Ethics* [15]. Only the *Attorney Code of Ethics* refers directly to the obligation to recommend the alternative dispute resolution methods [16].

As it has been indicated by statistical data for the 28 EU member states, there is a correlation between the obligation to inform the customer of alternative dispute resolution methods and the number of mediations. In 20 countries, including Poland, there are no such legal provisions, and in 8 countries, they exits, and only in one country (Italy) a failure of the attorney to fulfil this obligation results in sanctions. Among the countries, in which such obligation exists, the number of mediations is greater (Germany, the Netherlands, England, Italy). In Italy, the lawyer is obliged to inform the customer in writing not only of the possibility to take advantage of mediation, but also to provide detailed information on tax incentives and other benefits, associated with use of this tool. A customer has the right to terminate the agreement with the lawyer, who has failed to provide this information. As it has been underlined in the publication entitled *'Rebooting' the Mediation Directive*, '... this solution has contributed to a substantial increase in the level of awareness of significance of mediation in the lawyer communities. **RECOMMENDATION:** Amendments to the appropriate professional codes of ethics are

[15] Resolution no. 19/97 of the National Chamber of Civil Law Notaries of December 12th, 1997 (as amended) on the Notary Public Code of Ethics

[16] The code of ethics for attorneys, passed by the Supreme Bar Council on October 10th, 1998 (resolution no. 2/XVIII/98) with amendments introduced by the resolution of the Supreme Bar Council no. 32/2005 of November 19th, 2005 and resolutions of the Supreme Bar Council no. 33/2011 – 54/2011 of November 19th, 2011. The provision states as follows: An attorney is obliged to aim at solutions, which allow the customer to reduce the costs, and recommend settlement of the dispute out of court, if such solution is consistent with the best interests of the customer. Attorney Code of Ethics).

recommended to obligate the professional legal representatives to inform their customers of the possibility to take advantage of mediations – including presentation of an estimated breakdown of costs of the mediation and court proceedings.

3.2.5 Other professional groups

Barriers that prevent popularisation of mediation, indicated by other professional groups, include:

Insufficient involvement of persons, who become the „first link" in the case of a conflict, in popularisation of mediation. These persons include: police officers, curators, social welfare officers, employees of psychological, educational and family counselling centres, teachers, school counsels, priests and psychologists. The tasks of these persons should include promoting of mediation, including indication of specific reliable sources of information on the subsequent steps of mediation proceedings. All of these groups are not expected to have expert knowledge and provide counselling to the potential beneficiaries, but they should only serve as agents in transferring of information. Some of the cases could be referred to mediation at the level of the police or other persons representing the "first contact link". At present, a large part of representatives of the above institutions and professions does not know exactly what mediation is all about; however, as it has been shown by the results of quantitative research and qualitative interviews in these groups – they perceive mediation as an effective alternative to lawsuits in conflict solving. It is necessary to underline the potential of these groups as the first links of contact in the case of a conflict, in particular, in the area of family law, juvenile and criminal law. **RECOMMENDATION:** It is necessary to take advantage of positive attitudes of various professional groups towards mediation and implement activities – mainly in the area of promotion, information and training to contribute to popularisation of mediation. Therefore, it is a good idea to provide trainings for these groups, to invite them to participate in events associated with the Mediation Group, take them into account in distribution of flyers, posters and other materials.

The police – the problem of inconsistent information. Mediators in criminal law cases indicated that police officers (and prosecutors) often lacked the proper knowledge on eligibility of cases for mediation. The research has shown that, in fact, knowledge on mediation in criminal law cases is not uniform. As it has been underlined by one of the police representatives during the interview, the same case was eligible to be referred to mediation by the police according to one prosecutor, while in the opinion of another, it was not. If the police refers a case to mediation, such decision is usually based on their individual relations (consultations) with specific prosecutors. This conclusion confirms the great significance of training, informational and promotional activities among the prosecutors and the need to popularise such activities.

The police – the problem of non-enforceability of conciliation agreements. One of the problems, referred to by a representative of the police during the interview, is lack of tools that would allow for enforcement of provisions of the conciliation agreement before a lawsuit is filed at a court or a prosecutor's office (many cases could be concluded thanks to referral to mediation by the police, without involving courts and prosecutor's offices, at the investigation stage). In a situation, in which one of the parties ceases to fulfil the conditions of the conciliation agreement, there is no legal possibility of enforcement, since such conciliation agreement has no legal force. **RECOMMENDATION:** Introduction of a possibility of suspension of the investigation for the time of performance of the conciliation agreement could improve its enforceability.

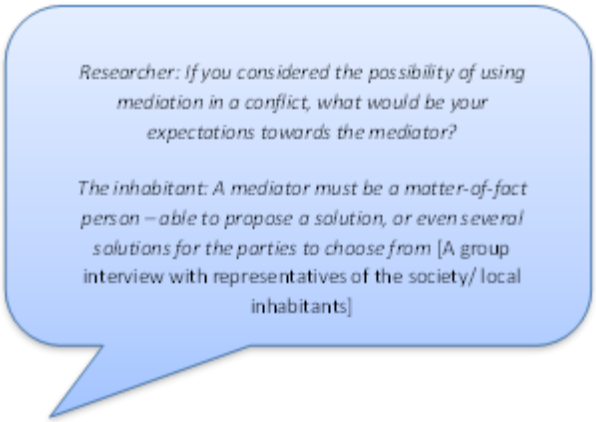
The police – the problem of mediation cost coverage. The code of criminal procedure indicates that the cost of mediation in criminal cases is covered by the State Treasury (art. 618 § 1 clause 8 of the CCP and art. 619 § 2 of the CCP). The body, which refers a given case to mediation, is obliged to cover these costs (art. 618 of the CCP and 619 of the CCP). **RECOMMENDATION:** Provision in the budget of the police of funds for mediation proceedings from the state budget (e.g. estimation of the budget on the basis of statistical data on the number of cases referred to mediation in the previous year) could eliminate this barrier.

The police – the problem of insufficient knowledge on mediation. A large number of cases subject to proceedings are dismissed due to the fact that no crime has been ascertained, or the level of social harm of the act – in the opinion of the police or the prosecutor's office – is insignificant. Usually, the dismissal decision is the right one, although it often leaves the parties to the conflict in a difficult situation, without providing them with the expected assistance in solving of the problem. Therefore, knowledge on mediation – in criminal and civil law cases, including family law – is essential for police officers. It will allow them to distinguish between crimes and conflicts and refer the latter to mediation. In the light of the fact that police officers are not aware of the possibilities that are provided by mediation to the parties to the conflict[17], they are unable to refer cases to mediation in their everyday work or provide the parties to the dispute with the appropriate information. **RECOMMENDATION:** Trainings for police officers should be conducted (taking into account specific examples and good practices); it is also a good idea to organise meetings with mediation practitioners (mediators, judges and prosecutors), to distribute informational and promotional materials (such as flyers, information brochures, manuals) and invite the police to participate actively in organisation of the Mediation Week.

3.2.6 The parties to the conflict

The following can be listed as barriers, preventing promotion of mediation due to attitudes of the parties to the conflict:

Expectations towards the justice system and reluctance to make decisions with regard to solving of the conflict. Reluctance of the Poles to participate in mediation is partially caused by lack of readiness to take responsibility for the conflict, in which they participate. The Poles prefer decisions to be made by external institutions, thus the enormous number of lawsuits filed and the small number of court and out-of-court mediations. Moreover, the mediators and judges examined pointed out that participation in mediation was often perceived by the parties as admitting that they share responsibility for the conflict. The potential parties to mediation expect the mediator to propose specific ways of solving the conflict. This shows that mediation is perceived as an informal equivalent of court proceedings, in which the solution is offered to the participants, and not worked out by them. **RECOMMENDATION:** Information and promotion activities, aimed at the general public and the parties to the conflict, should state clearly the role of the mediator, as well as the tasks and challenges faced by the parties to the conflict during mediation. In the media, it is necessary to point to mediation advantages; however, building of an image of mediation as a tool for easy problem solving should be avoided. The respondents, assessing individual information and promotion campaigns, conducted in Poland in the recent years, have often pointed to the overly optimistic slogans, such as "Mediation: it is free of charge" or "Mediation does wonders". The issue of the form of the message, which can be tempting, but not fully realistic, requires careful consideration, as its long-term effectiveness may be limited.



Insufficient tools, persuading the parties to consider mediation. Apart from the barrier associated with little knowledge on mediation and low level of social awareness of alternative dispute resolution methods, there are several external factors as well, which do not encourage the parties to consider mediation thoroughly. These include: failure of the judge to inform the parties of such possibility or delivery of incomplete, unclear or simply

[17] Na On the basis of: *Możliwości stosowania mediacji na etapie postępowania przygotowawczego przez policję. Opinia prawna*, Stowarzyszenie Interwencji Prawnej, Analizy, Raporty, Ekspertyzy 2/2007

discouraging information, negative attitudes of representatives of the parties towards mediation and lack of easy access to information on mediation. Taking all of these into account, it is a good idea to consider introduction of a tool that would encourage the parties to verify whether mediation in a given case may be successful, which would definitely broaden their knowledge on alternative dispute resolution measures. **RECOMMENDATION:** It is recommended to introduce the obligation of the plaintiff to inform the court in the statement of claim of whether an attempt to settle the dispute out of court was made before filing a lawsuit. This will require complementing of the catalogue of formal prerequisites for the statement of claim by adding the obligation to clarify whether the parties have made an attempt to mediate or use any other alternative dispute resolution measure, and to explain why such measures could not be recommended in a given case.

Insufficient economic and tax incentives for the parties. At present, the Polish legislation lacks the sufficient economic and tax incentives to use mediations. Such incentives are used in some of the EU member states, such as Italy, where the parties can take advantage of a tax relief if they refer their case to mediation. If the mediation process is concluded by signing of a conciliation agreement, the tax credit amount is up to EU 500, if not – up to one half of this amount[18]. Another incentive is reimbursement of the court fee. Such solution is applied in Poland (as well as Bulgaria, Romania, Hungary), where the party receives a reimbursement of 75% of the court fee paid when filing the lawsuit, if conciliation is reached as a result of mediation. A good solution is to make the cost reimbursement level dependable on the stage of the process, during which the parties decide to refer the case to mediation – the earlier they do it, the greater the reimbursement. **RECOMMENDATION:** The court mediation costs should be included in the court fees. In the case of out-of-court mediation, applications for approval of the conciliation agreement should be free from a court fee. The level of reimbursement of the court fee should depend on the stage of the proceedings – e.g. the fee should be reimbursed fully, if conciliation is reached at the preliminary stage of the proceedings. Another solution is to include the mediation costs in court expenses, which would allow the parties to be released in whole or in part from costs of mediation based on court referral. An incentive for entrepreneurs, on the other hand, could be based on recognition of costs associated with reaching of the conciliation agreement and mediator remuneration as costs of earning profit (subject to taxation). Insufficient financial incentives for the parties are not a key problem that prevents popularisation of mediation in Poland. This is proven by the statistics – in the case of mediation proceedings in criminal and juvenile law cases, the mediation costs are borne by the State Treasury, which, nevertheless, is not translated to the number of mediation referrals being greater in comparison with cases, in which these costs are borne by the parties to the dispute. Barriers that prevent development of mediation are much more complex, which is discussed in the present report; however, in the opinion of the research participants, the financial issues are also of significance.

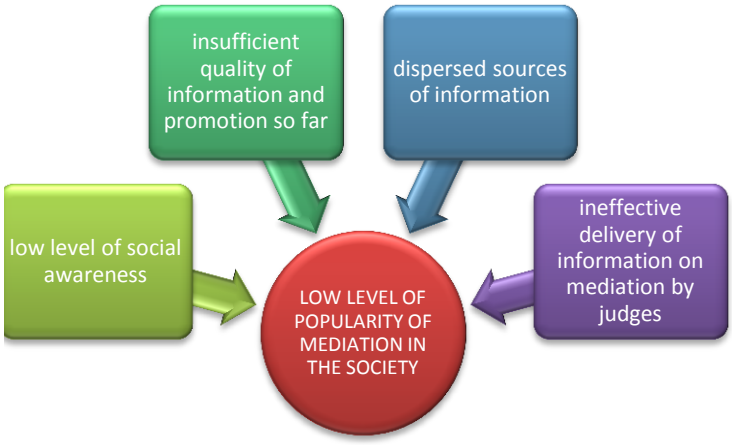
[18] Quantifying the cost of not using mediation – a data analysis; European Parliament's Committee on Legal Affairs 2011.

3.2.7 The society

There are certain significant barriers that prevent development of mediation, which are associated with the characteristics of the Polish society.

Low level of social awareness with regard to mediation. Desk research (including the study conducted in 2011 by TNS OBOP[19], statistical data on the number of cases referred to mediation, qualitative data from desktop studies) and analysis of data gathered during the present research has indicated a low level of knowledge on mediation in the Polish society, that is, among the potential participants of mediation. The low level of social awareness in the field of use of mediation should be considered to be a key barrier, preventing the sufficient use of mediation, on the part of the society.

Figure 3. Causes of low popularity of mediation in the society



Source: Own elaboration

In year 2015, only slightly more than a half of the population of Poland (52.6%) understood the term 'mediation'. The result achieved is 10 percentage points higher in comparison with year 2011 and similar to the level of year 2008, when 51% respondents were familiar with the term[20]. Knowledge of the concept of mediation depends on several sociodemographic variables. The sociodemographic groups, which are characterised by a low level of familiarity with mediation, include: inhabitants of the rural areas, persons with elementary, grammar, vocational and secondary education, inhabitants of the central, eastern and western region and males. These groups should be the principal recipients of activities aimed at promoting mediation.

In addition, a large part of the society does not know the sources to be used in order to obtain in-depth, reliable information on mediation. This situation should be examined in the context of challenges for effective informational and promotional activities. Although the respondents were able to indicate several sources of information on mediation, these were mainly Web-based sources, and their reliability was undermined even by the respondents themselves. **RECOMMENDATION:** It is recommended that informational and promotional activities refer to a single Web page address (such as the page of the Ministry of Justice), provided to recipients of the activities. The word „mediation" should be clearly associated with the source of knowledge on mediation in the informational and promotional activity.

Insufficient quality of the informational and promotional activity so far. The low level of use of mediation in Poland is due to insufficient promotion. A detailed analysis of the scope of informational and promotional activities and their effectiveness, including indication of strengths and weaknesses of the activity conducted, as well as the associated recommendations, has been presented in the *Methodological report* for the 1st and 2nd area of research, while a summary of the analyses conducted can be found in subchapter 3.1.1 of this report.

[19] Final report on the public opinion survey „Image of the justice system, assessment of the reform of the justice system, the current level of social awareness of alternative dispute resolution measures and rights of victims of crimes, TNS OBOP, Warsaw 2011

[20] Final report on the public opinion survey „Image of the justice system, assessment of the reform of the justice system, the current level of social awareness of alternative dispute resolution measures and rights of victims of crimes, TNS OBOP, Warsaw 2011

Dispersed sources of information. The potential mediation participants can use many sources of information on mediation; at the same time, they are recipients of a number of activities with regard to promotion of alternative dispute resolution measures. Such situation leads to chaos and information noise, which is a result of involving too many broadcasters. This phenomenon is particularly well visible on the Internet, where individual sources of information are not linked in any way. The society encounters the problem of lack of a uniform definition of mediation. The dispersed, often incoherent sources of information contribute to reluctance to use mediation. The number of Web pages, containing information on mediation, is very high. These include the Web service of the Ministry of Justice, pages of individual mediation centres, as well as various databases of knowledge on mediation (such as http://www.mediacje.lex.pl/). The diversity of these surely leads to information chaos, as the recipients are not able to identify the most reliable source of knowledge. On the other hand, as it has been indicated by research results, the level of recognition of such Web pages is very low and they are visited mostly by people wishing to broaden their knowledge on mediation. **RECOMMENDATION:** It would be a good idea to establish specific Web space (or develop the existing resources) to create the basic source of knowledge on mediation, which could be reached from any other page (e.g. by placing the address in the useful links section).

Ineffective delivery of information on mediation by judges. Another reason for the low level of knowledge among the inhabitants, and thus a failure to use mediation on the broad scale is the improper (that is, unclear and fragmentary) delivery of information on mediation to the parties of disputes during the preliminary trial. It is also necessary to note the unused potential of letters, sent to the parties prior to initiation of the court proceedings. The solution in itself is a very good initiative; however, it is necessary to improve the clarity of information delivered. . **RECOMMENDATION:** The judge training materials should include a template of a letter to be sent to the parties, containing information on the benefits of mediation.

Summing up, it should be underlined that the level of knowledge of the inhabitants and their attitudes towards the institution of mediation is a significant factor, limiting application of mediation on a broad scale. The attitudes of individual groups, as well as mentality of the Poles have been assessed in the course of the analysis as components, which lead only to limiting of effectiveness of the activities conducted. These factors should be treated as a certain constant variable – they are the unchanging circumstances of the activities conducted. Therefore, particular importance should be attached to the informational and promotional activities planned. The objective of the strategy of activities popularizing the alternative dispute resolution measures should be to transform mentality of the society, which is possible within the framework of the long-term perspective scenario[21].

3.2.8 Entrepreneurs

In the case of entrepreneurs, it is possible to speak of the same barriers in popularising of mediation as in the case of the society or parties to conflicts. These include mainly:

Insufficient knowledge on mediation and the associated benefits. Making the decision to engage in mediation in business matters, entrepreneurs act on the grounds other than persons in civil disputes – in many cases, their reasons are less emotional and personal and more rational, perceived in the context of costs and benefits. These components should be considered when developing the message to be addressed to this group. By definition, entrepreneurs aim at solving their disputes without assistance of the court due to the high costs and long duration of the court proceedings. In addition, dispute solving through mediation does not lead to deterioration of relationships between entrepreneurs, giving them an opportunity to continue their business cooperation. Entrepreneurs have also underlined the significance of this tool in terms of their image – solving of disputes at court exerts negative impact on the external image of the company.

[21] See chapter 3.6.

In the case of smaller enterprises, a significant level of similarity of attitudes and knowledge on mediation to the society in general can be noticed. **RECOMMENDATION:** A group of smaller enterprises should be subject to long-term communication activity like the society in general. In the case of large enterprises, the arguments should refer to time-saving, image improvement, the possibility of continuing cooperation after solving the dispute with a given business partner.

Lack of tools motivating entrepreneurs to use mediation before they go to court. In the area of business law, mediation may also act to prevent the future business conflicts. These can be prevented at the stage of conclusion of the contract. It is enough to include a mediation clause, in which the parties undertake to use mediation in the case of a dispute before filing a lawsuit. This clause serves as a basis for solving of the dispute at an early stage, when the emotions are not so intense as to prevent reaching a compromise. Introduction of such solution not only prevents conflicts, but also acts as a very effective mediation popularisation tool. **RECOMMENDATION:** On the one hand, it is thus a good idea to promote such mediation clauses in the contract (by publishing templates of civil law agreements); on the other hand, these can be introduced as obligatory tools by a resolution of the Minister of the State Treasury in agreements concluded by state-owned enterprises.

An exemplary mediation clause: *The parties unequivocally agree that in the case of any dispute arising in association with this agreement or resulting from it, the parties shall make an attempt to solve such dispute through mediation as the alternative business dispute resolution method , before or instead of filing a lawsuit. If mediation fails to bring a satisfactory solution to the dispute, the parties may file a lawsuit.*

3.3 Activities undertaken so far to popularise mediation

3.3.1 Communication activities

In the recent years, informational and promotional activities were implemented on a national, regional and local level by various entities and institutions. These were aimed at the three main social groups:

- The society as a whole
- Parties to the dispute or conflict
- Mediators, lawyers and practitioners of the justice system: judges and prosecutors.

One of the most significant promotional activities in Poland is the **Mediation Week**, organised since 2013, which constitutes a broadening of the scope of activities associated with the International Mediation Day. Every year, the Ministry of Justice engages in informational and promotional activities and encourages common law courts to participate in the initiative, as well as the General Prosecutor's Office, the General Police Headquarters, as well as the lawyer associations of attorneys, legal counsels, notaries, bailiffs. However, the key role in organisation of the mediation day and week is played by the mediation communities. As a result of their joint activity, there are conferences, meetings and seminars organised throughout the country – events addressed to individual communities (e.g. the judges), but also reflecting the joint perspectives of different professional groups (e.g. judges, legal counsels and mediators). Duty hours and meetings with mediators are organised on behalf of the general public.

Apart from the annual celebration of the international mediation day, communication campaigns and activities have been conducted by individual mediation centres, courts and the Ministry of Justice.

In the social campaigns, organised so far, the broadcasters have used a broad spectrum of communication tools. These have included: television, press, radio, the Internet, flyers/ brochures, posters, competitions,

location-based games, duty hours of mediators / experts, conferences, meetings, seminars and mediations simulations.

The activities undertaken have been assessed positively with regard to:

- The scope of activity – domestic, regional and local activities were carried out;
- Using of many communication channels – this allows for achievement of various objectives, as some channels (mainly the printed materials: flyers, posters, brochures) are used mainly to deliver information on a given phenomenon, get the recipients used to something new), while other channels (e.g. television, radio, direct meetings) play a persuasive role and influence the shaping of attitudes;
- A broad spectrum of tools and forms – using of several tools within the framework of a single channel increases the chances of reaching a broader group of recipients. In addition (like the channels), some tools may focus on informing on the phenomenon and others on shaping of attitudes and transferring knowledge.

The following components of communication activities were assessed negatively:

- Duration and lack of repeatability of activities – effective social campaigns, aimed at changing of attitudes, must be of long-term nature. The duration and repeatability of activities constitute weaknesses of the campaigns conducted so far;
- Inappropriate emission time in the media (radio, television) – despite preparation of the appropriate materials, the campaign was limited (probably due to costs) to broadcasting outside the prime time period;
- Chaos and information noise – both of these phenomena are a result of involving of too many broadcasters, engaged in their own (often separate) communication activities (informing of and promoting of mediations). These phenomena are particularly clearly visible on the Internet, where no links are displayed between individual sources of information;
- Too much information within the framework of a single tool – attempts were made to deliver as much information as possible in flyers and information materials, which resulted in poor clarity of these materials. In addition, the materials of this kind do not play a promotional role any longer – they become sort of information brochures, which are read much more eagerly by persons, whose attitudes towards mediation are already positive;
- Inappropriate selection of cases to illustrate the mediation case types – this applies to promotional materials, prepared by the Ministry of Justice and made available on the Web page[22]. Some of the illustrations presented could not be intuitively associated with the topic presented (e.g. presentation of a car crash to depict mediation in a criminal case);
- Lack of examples from real life – effective informational and promotional activities require depicting of everyday life situations of ordinary citizens. Presentation of conflicts and disputes should refer to emotions and it should depict the effects of a failure to solve these.

According to the assessment, presented above, communication associated with the concept of mediation as a dispute solving method should take place on two levels:

- General impact on the social conflict patterns, where the expected result would be a change in social attitudes towards mediation – at this level, long-term activity is necessary;

[22] http://ms.gov.pl/pl/dzialalnosc/mediacje/publikacje-akty-prawne-statystyki/materialy-promocyjne/

- Impact on individual target groups, where the expected result would be increased knowledge on mediation in these groups and increased willingness to use mediation (either as parties or as entities referring cases to mediation) – this level requires direct activity, which would result in an increase in the number of persons using mediation, an increased number of referrals to mediation, an increase in the number of those declaring having knowledge on the concept of mediation, a broader presence of the issues of mediation in the public debate – in particular, in the media.

In the case of the inhabitants, the most effective communication channels are television and the Internet, as well as information materials (flyers), as well as all kinds of direct activities (information delivered at courts, at the police stations, direct meetings, location-based games, simulations etc.). In this case, it is necessary to separate persons, who are parties to disputes, who are subconsciously oriented at acquiring knowledge on conflict solving measures, from persons, who are not parties to any disputes (they are not potentially interested in the mediation message). In the case of the former, the message may include mostly printed materials (flyers, brochures[23]), meetings and information delivered directly (the police, courts, prosecutor's offices) or the Internet (provided that the person searching there is able to find a reliable, valuable source – e.g. Web pages of courts or a page dedicated to mediation only). As for the latter group, more appropriate seem to be placement of the appropriate content in various TV series, soap operas, current affairs programmes and documentaries, as well as all kinds of actions such as „a mediation tent", location-based games, contests etc.

Entrepreneurs require modified, flexible communication channels and tools as the group, which is still characterised by a relatively low level of awareness in the field of mediation. For this group, Internet can be used (in particular, the business portals, law and business portals, Web pages of courts), entrepreneur associations, entities performing services on behalf of small and medium-sized enterprises, such as accounting offices, accountants, legal counsels, plenipotentiaries and offices (Social Welfare Office, revenue offices, commercial departments of courts).

The research project included analysis of communication activities in the field of mediation, undertaken in various countries (Germany, Austria, France, Belgium, Great Britain (England/Wales), Norway, Sweden, Slovenia, the Czech Republic (on the basis of a desktop study[24]. A benchmark study allows for indication of the following success factors in popularisation of the concept of mediation and working out of positive social attitudes towards this tool:

- Promotion of mediation and popularisation of information at the local level;
- Implementation of pilot programmes to popularise court mediations, which allow for complex implementation of mediation mechanisms in single courts or in selected areas (e.g. a single commune) – which reduces the costs, at the same time allowing for testing of new solutions with participation of all of the concerned groups and institutions;
- Promotional, informational and educational activities being aimed at a broad spectrum of recipients: judges, prosecutors, mediators, police officers, social welfare workers, NGOs, legal counsels, representatives of local self-governments and public institutions, entrepreneurs, teachers, students etc. – always through an individualised approach to each group;
- Building of knowledge and awareness among the legal counsels, plenipotentiaries and attorneys, who are a very significant group that exerts impact on the decisions made by their customers and, at the same time, may perceive the benefits of mediation;

[23] E.g. attached to submissions

[24] The analysis included Web pages of entities engaged in development of mediation, publications, promotional and informational materials, instructions and textbooks, legislative and other documents.

- Coherence of the message, that is, engaging in informational and promotional activities by a single entity, e.g. the Ministry of Justice, the Mediation Council – the organisation associating the mediation centres;
- Cyclical or permanent character of promotion – cyclical or permanent events are more effective than single-time events;
- Building of unity in the mediation community – joint informational and promotional undertaking, involving judges, prosecutors and mediators and other groups, which allows these communities to get to know each other better and build mutual trust;
- Use of modern technologies to promote mediation (e.g. as a topic of TV series), inform of mediation (films, recordings), teach mediation (e-trainings, e-seminars, networking of mediators), without disregarding the traditional forms (meetings, seminars, mediation days, textbooks, articles);
- Involving other ministries/ state entities other than the Ministry of Justice in mediation promotion (e.g. the ministry of education, social welfare, economy, health)
- Easy access to detailed mediation information – where to go, what are the costs and who is to pay, what is the course of mediation and enforcement of provisions of the conciliation agreement; such information should be complex and it should not be dispersed;
- Informing of the real advantages of mediation to the parties – shorter times, lesser costs and less emotional burden in comparison with a court case;
- Addressing of promotional and educational activities at students and teachers (school mediation), as well as the local communities (neighbourhood mediation) – which contributes to building of the mediation culture and establishing of its firm position.

3.3.2 Trainings for judges, prosecutors and mediators

The market of trainings, information and education activities on mediation is fragmentary and segmented depending on the target group. It should be stated that most of the training activities in the field of mediation, conducted in years 2010-2014, was aimed at individual communities (prosecutors, judges, mediators). It should also be underlined that most of the training activities, aimed at individual target groups in this period, were only temporary and strongly dependent on additional financing from European funds.

The scale of these activities, however, was substantial. Despite the lack of monitoring and lack of available statistics on the number of participants of individual activities, it can be stated on the basis of the results of CATI, conducted with a representative sample of judges, prosecutors and mediators, that in years 2010-2014, most of the mediator representatives examined participated in trainings on mediation. The percentage of judges, who have declared having participated in such training, exceeds 45%, and the percentage of prosecutors – almost 40%.

Training activities aimed at judges and prosecutors

The training organiser, indicated by the respondents, differs depending on the target group. Most judges participated in trainings organised by courts and by the National School of Judiciary and Public Prosecution. Similarly, the prosecutors, who declare participation in mediation trainings, usually list the two sources : trainings organised by KSSIP and internal trainings at their prosecutor's office.

In the period discussed, judges and prosecutors as the main target group were subject to – apart from internal court training – with project activities of two institutions: the Ministry of Justice „*Promoting of access to the justice system*" and the project of KSSIP „*Professional training of justice system employees*", as well as periodic trainings, organised by these institutions.

The Ministry of Justice organised trainings aimed, among others, at this target group within the framework of the programme „*Facilitating access to the justice system*". One of the products of this research project was training of 300 judges in the field of alternative dispute resolution methods.

KSSIP organised the following training activities in mediation in years 2010-2014:

1. Mediation in family matters and legal assistance in cross-border disputes in the European Union: How to improve the practices? 2012
2. „Alternative dispute resolution methods. Mediations" – starting from year 2011;
3. A training for judges passing verdicts in family and juvenile law cases – starting from year 2012;
4. A training for newly appointed judges. One of the permanent parts of the school curriculum are trainings for newly appointed judges. They are obliged to participate actively in the training conferences, organised exclusively for this group. They are also obliged to complete several training modules using the KSSIP e-learning platform – one of the obligatory modules is dedicated to mediation;
5. A system project within the framework of Activity 5.3 of HC OP *„Professional training of the justice system employees",* which takes into account the need to improve the competences of judges in the field of mediation.

The training offer for judges and prosecutors is proposed mainly by the ADR Academy, a training system developed by the European Negotiations and Mediations Academy ENMA and the Union of Regional Mediation Centres.

When assessing the training activities, aimed at judges and prosecutors, evaluation questionnaires were assessed (available only within the framework of the system projects of activity 5.3 of the HC OP, implemented by the Ministry of Justice and KSSIP), the training programme was analysed, as well as opinions of representatives of institutions implementing these projects and opinions of the academic community. The statistical correlation between training participation and frequency of mediation referrals and opinions on mediators was also examined.

Analyses indicate the random character, high level of diversity and fragmentation of knowledge of prosecutor and lawyer communities in the area of mediation. Obtaining of broad knowledge required the judges and prosecutors to participate many times in trainings organised by various entities and conferences. This resulted in numerous repetitions of information delivered by representatives of the community during seminars, conferences and trainings in the field of mediation. It can be concluded that the assumed objective of **creating the "critical mass"** of judges and prosecutors **was not achieved.** Education and training activities in years 2010-2014 resulted rather in creation of „mediation focal points" at individual courts/' prosecutor's offices, without achieving the „spill over" effect.

Another feature of the training activity was **concentration in uniform communities**, which failed to result in development of an easily repeatable model of cooperation between **the judge, the parties and the mediator** for the purpose of effective conclusion of mediation. The barrier of distrust between the lawyer communities and the mediator communities was not eliminated either. In these groups, however, there is a **strong need for integration** of these communities for the purpose of exchange of experience and building of trust, which would result in more frequent referral of cases to mediation.

Assessing the effectiveness of training on the basis of the declared frequency of referral of cases to mediation, it should be underlined that the judges participating in at least one training in the analysed period referred cases to mediation more often than those, who did not participate in trainings at all. On the other hand, assessing the effectiveness of training with regard to bringing the communities of mediators and judges closer and contributing to their integration, a reverse correlation has been found. Judges participating in trainings on mediation more often tend to express negative opinions on the quality of preparation of mediators in comparison with judges, who have not participated in the trainings. This correlation exists also in terms of control of the changing practice of referring cases to mediation. It indicates counter-effectiveness of the training activity with regard to the sub-criterion, mentioned above. This counter-effectiveness should be assigned to implementation of trainings aimed at uniform groups, without any consultations with the mediator community.

The effective of trainings aimed at prosecutors is much lower in terms of impact of participation in trainings on the frequency of referral of cases to mediation. There is no statistically significant correlation in this regard. It should be underlined, however, that the integration effect, referred to above, has been observed. Prosecutors participating in trainings in mediation tend to assess the competences of mediators critically less often than prosecutors, who do not participate in the trainings.

Trainings for mediators

Mediators obtained their knowledge on mediation mainly from NGOs, mediation centres, universities and commercial training companies. Almost one in four mediators also mentioned the Ministry of Justice as the organiser of trainings attended in years 2010-2014.

In years 2010-2014, there was a crystallized market of trainings and education for mediators. Apart from certification trainings organised by numerous mediation centres, there are extensive basic training and complementary training blocks, compliant with the standards proposed by the Ministry of Justice, offered by the National Centre for Mediation and the ADR Academy. An alternative offer – less popular among mediators – are trainings offered by the Polish Mediation Centre, which are also consistent with the standards of the Ministry of Justice.

Apart from regular trainings, mediation qualifications can also be earned within the framework of postgraduate university studies (at the external university branches) in all provincial capitals in Poland. The number of hours during postgraduate studies varies from 180 to 360 instruction periods. The opinion of the academic community is positive, in particular, in terms of combining law, psychological and practical knowledge. However, attendance levels are low (about 40 students per year) and has been decreasing in the recent years.

Analysis of training curricula, training materials and opinions of representatives of the academic communities, implementing mediation and managers of training projects, aimed at mediators and potential mediators indicates that the standard of these activities is sufficient in terms of general knowledge on mediation and complementary skills of mediators with regard to relations with the parties. These trainings, however, are not available in all provinces. A financial barrier may also emerge, taking into account the fact that the average cost of basic training is PLN 1600, and of complementary training – PLN 600.

Deficit has also been observed in the area of raising of qualifications of mediators in cooperation with representatives of the parties, the judge and the prosecutor during court mediations. In fact, development of conciliation agreements is a constant component of the ADR Academy training; however, these standards are not identical with the requirements and limitations of court mediation. There is a visible tendency to develop the training curricula aimed rather at mediation outside court in civil law, which is the basic source of income in mediation. This results in the market deficit of criminal and juvenile law mediation. There are very few complementary trainings on these aspects of mediation; however, these fail to relate to skills necessary to engage in difficult criminal law cases and they do not encompass the practice of cooperation with judges and prosecutors.

Expectations and training needs of judges, prosecutors and mediators

A desk research analysis of the assumptions and subject of trainings aimed at practitioners and the potential institutional participants of mediation (Ministry of Justice, KSSIP, National Mediation Centre, Lower Silesia Mediation Centre) and analysis of training and conference materials, research studies conducted in this area in years 2011-2014 indicates the need to both continue the **general training**, aimed at judges and prosecutors, who had not participated in trainings on mediation and to organise **legal and practical training** on individual aspects of the mediation process.

The following detailed aspects, reported by individual professional groups as questionable and unclear in the mediation process, have been identified as a result of desk research analysis.

Special training needs of judges

Presented below are the problems and deficits, identified in the community of judges in the area of mediation and cooperation with mediators, as well as trainings proposed in response to these deficits.

Table 8. Special training needs of the judges

Deficit/ problem	Training topic
The principles and quality standards for performance of the profession of the mediator are not respected by judges. Judges are not sure whether the content of the conciliation agreement and the entire mediation procedure respects fully the legal provisions in force. The practice of mediator indicates the existence of very diversified approaches to the issue of conciliation by judges. Some judges are also convinced that mediators tend to give in to the stronger party, and thus the content of the conciliation agreement rarely protects the best interests of the victim. Lack of practice in cooperation with mediators results in low frequency of referrals to mediation. Most judges tend to cooperate with mediators that they know.	Cooperation with the mediator during the mediation procedure. Consulting of the conciliation agreement provisions. Presentation of the conciliation options in accordance with the legal provisions in force.
The court may refer the parties to mediation in the course of the preparatory procedure, or until the end of the first trial (except for divorce cases etc.). The judges do not know the arguments that they could use. Usually, they are not taught to use the language of benefits of mediation and they are unable to deliver this information to the parties.	Techniques and methodology of persuading the parties to give consent to mediation in an open procedure (after the preparatory period).
Lack of full knowledge of the judges on the impact of mediation on the economy of the process has been diagnosed. Many judges are convinced of higher costs of enforcement due to ineffectiveness of conciliation agreements arising from mediation and they are not aware of the potential reduction of court fees due to lack of the main trial (if the parties are referred to mediation during the preparatory proceedings).	Economic advantages of the process. Methodology of shortening of the mediation process.

Reduction of costs may also result from reduction of the number of trials (withdrawal from witness hearing as a result of signing of the conciliation agreement). The judges also fail to notice the possibility to reduce the costs even further due to shortening of the mediation procedure.	
The judges often – in particular, in criminal law cases – fail to refer cases to mediation, assuming that the criminal law institution proceedings fulfil the function of the compensation. A frequently encountered barrier, preventing application of mediation, is belief of the judges that their task is not to take into account the best interests of the parties.	Mediation and other court-related forms of compensation.
The judges are obliged to consider the content of the conciliation agreement when passing a sentence. However, many judges have concerns with regard to definition of legal terms in this regard.	Legal issues with regard to court decisions based on a conciliation agreement in criminal law cases. Analysis of the level of impact of the conciliation on the degree of social harm of the act.
Judges are not aware of the importance of prevention of mediation procedures. In many cases, they underestimate the issue of repeated victimization of the victim as a result of the trial.	Social and preventive benefits of mediation.

Source: own elaboration

Special training needs of prosecutors

Presented below are the problems and deficits, identified in the community of prosecutors in the area of mediation and cooperation with mediators, as well as trainings proposed in response to these deficits.

Table 9. The special training needs of prosecutors

Deficit/ problem	Training topic
The justification and premises as in the case of judges. Prosecutors are also most eager to work with mediators that they know and value.	Cooperation with a mediator during the mediation procedure. Consultations with regard to the provisions of the conciliation agreement. Presentation of the conciliation options in accordance with the legal provisions in force. The catalogue is not closed, but proposals are made to introduce provisions consistent with the legislation in force.
A prosecutor may refer the parties to mediation; however, they often lack competences to persuade the parties to engage in mediation.	Techniques of persuading the parties to participate in mediation.
Prosecutors are not aware of the importance of prevention in the mediation proceedings. In many cases, they underestimate the issue of repeated victimization of the victim as a result of the trial.	Social and preventive benefits of mediation.
If one of the parties to a dispute is assigned the status of a suspect, the prosecutor considers the case to be closed. Mediation, however, becomes reasonable in a situation, in which no allegations have been made as the evidence material is not clear. Prosecutors are not sure	The mediation proceeding methodology, when the suspect pleads innocent and there is no clear and obvious evidence.

whether at a given stage of the case they may persuade the parties to mediate. The situation would be advantageous for the prosecutor proceeding statistics, as prosecutors do not maintain mediation statistics and is unable to suspend the proceedings for the time of mediation.	Mediation conducted with a suspect remaining in detention.
Prosecutors are aware of various decisions resulting from the same conciliation agreement upon the same legal classification of the offence. This situation leads to doubts. There is a need to discuss various solutions and their application for various legal classifications.	Doubts with regard to classification of conciliation. When the indictment, when the conditional discontinuance of proceedings, when the motion for a ruling without a trial, or an extraordinary mitigation of sentence, conditional waiver of punishment.

Source: own elaboration

Special training needs of mediators

Presented below are problems and deficits identified in the mediator community in the area of mediation and cooperation with the justice system and proposed trainings to respond to these deficits.

Table 10. The special training needs of mediators

Deficit/ problem	Training topic
It is necessary to develop the knowledge of mediators on the content of conciliation agreements, their compliance with the law, knowledge on the significance of individual components of the conciliation agreement. Mediators have insufficient knowledge of the court terminology, the basic aspects of inconsistency between the conciliation provisions and the legal provisions according to various legal classifications.	The issue of consulting the content of the conciliation agreement with the judge in terms of legal correctness. Development of the conciliation agreement in accordance with the MAKRO model.
Recommended trainings include psychological techniques of supporting people in reaching of conciliation agreements, particularly in civil law cases, techniques of preventing manipulation.	Effectiveness in establishing of conditions of the conciliation and conducting the entire mediation process despite the difficult participants. Preventing the so-called deadlock in mediation.
Little popularity of business mediation is associated with low competences of mediators, the fact that knowledge becomes outdated quickly, and the competences in the area of finances and managerial economy are low. Mediators themselves mention the need to get familiar with the difficult, specialist materials and lacking of the sense of "partnership" in the mediation procedure due to lack of knowledge on the subject of the conflict. The growing popularity of business mediations results in increased interest in this field among mediators. There are no market trainings in this regard available.	Legal knowledge – reading of the case files, with particular emphasis on business mediation. Real estate management legislation.
The number of class actions is growing, which results in increased demand for mediation services in this regard.	Class action mediation as a part of labour law and business mediation.

Source: Own elaboration

3.3.3 Public and social centres and advisory teams in mediation

Until present, there have been two advisory bodies at the central level with regard to alternative dispute resolution methods – the Social Council for Alternative Dispute and Conflict Resolution Methods at the Ministry of Justice (still operating) and the Team for systemic solutions with regard to solving economic disputes out of court at the Ministry of Economy (liquidated in 2014).

The Social Council for Alternative Dispute and Conflict Resolution Methods at the Ministry of Justice. The first Council is the advisory team of the Minister of Justice for the broadly understood issues of Alternative Dispute and Conflict Resolution Methods. Experts of the first term of office of the Council were appointed in 2005 on the basis of a regulation of the Minister of Justice. The Council consists of experts of the legal and mediation communities. The tasks of the Council include: development of the standards of behaviour of mediators, development of the mediator training standards, development of the ethics code, as well as promotion of the ADR mechanisms as the methods for solving of conflicts between employees of the justice system, the law enforcement agencies and the society, development of favourable institutional conditions for development of mediation in Poland and promotion of mediation declarations.

Team for systemic solutions with regard to solving economic disputes. The second team listed was appointed by the Minister of Economy a little later – in 2013. The tasks of experts belonging to the team include: assessment of the need for introduction of legislative changes in the field of out-of-court business dispute resolution and preparation of recommendations of such changes, as well as recommendations of non-legislative means of promotion of out-of-court methods of settling of business disputes. Like in the case of the Council at the Minister of Justice, the team consisted of experts representing the lawyer and mediation communities. The team concluded its work by presenting, in July 2014, a set of recommendations, which constituted the basis for works on the act on supporting of alternative dispute settlement methods.

Assessment of the activity of the central advisory bodies. Although the initiatives, constituting the advisory bodies, referred to above, have been appreciated by the mediator community, group interviews conducted among mediators indicated a rather negative assessment of their activity. From the perspective of mediators, the selection of experts participating in both teams was rather unfortunate, as they lack experts – practitioners, who would deal with mediation in everyday work in the area of criminal, family, civil and labour law. In addition, the mediators underlined that the teams developed the principles and standards that were often dedicated to business disputes concerning items of high commercial value, often of international significance. Thus, in the opinion of the respondents, the solutions developed were inadequate to the reality of mediation concerning lower level cases.

Advisory centres and teams established at the level of academic and other communities associated with mediation. The examples of activities at the level of academic and other communities associated with mediation include those undertaken by the Mediation Centre of the Foundation of the Faculty of Law and Administration of Silesian University „Facultas Iuridica", the Mediation Centre at the Supreme Bar Council or the Social Council for Alternative Methods of Solving Conflicts and Disputes. These activities are aimed at discourse, exchange of information, integration of the mediator community, creation of a basis for harmonious cooperation with the lawyer community, including lawyers – mediators.

In general, even despite the negative opinion of the some of the mediators, the functioning of advisory teams at the Ministry of Justice and the Ministry of Economy should be assessed positively. Appointment of advisory bodies leads to promotion of alternative methods of solving of conflicts and introduction of mediation standards. **RECOMMENDATION:** Activities should be considered, however, which would be aimed at reaching agreement within the mediation community, that is, experts representing different alternative teams. Moreover, the mediators expect a change in the standards of activity of the central advisory bodies – it is necessary to implement the formula of consultation of the proposed solutions and standards with the mediator community.

3.3.4 Mediation coordinators at courts

A solution aimed at promoting court mediation was appointment of the court mediation coordinator.

The function of the mediation coordinator in the Polish justice system is not established within the formal court structure – therefore, the persons performing this function receive no privileges or functional allowances due to this fact. The coordinator is appointed by the president of a given court, who also specifies the scope of tasks of such person. They should have the broadest possible knowledge on mediators within their area and be able to amend the list of mediators, approved by the court president.

Recommendations of the Ministry of Justice have not been published in form of official documents, containing specific descriptions of tasks. In the field of appointment of a mediation coordinator, the decision of the court president is decisive. The Ministry of Justice has no instruments, which would allow for interfering with solutions applied by individual courts.

Research has shown that coordinators have been appointed by the court president in response to the order of the Ministry of Justice, or, in the case of district courts, in response to the initiative of the coordinator for mediator or the regional court president. In general, no contests were organised at the courts for the coordinator position. In the opinion of the coordinators, only in a few courts the competitions were organised; however, the judges were not interested in participating. Usually, candidates for the mediation coordinator function were selected by the president and asked to assume the post. The main criterion applied was experience and knowledge in the field of mediation.

Some of the persons appointed as coordinators were obliged to specify their own obligations. Moreover, in the case of mediation coordinators at the district courts, a significant person initiating specific activities was the regional court mediation coordinator.

Tasks of the mediation coordinator – suggestions of the Ministry of Justice

- Implementation of tasks aimed at bringing the community of judges and mediators closer (e.g. organization of introductory meetings, development of rules of cooperation, analysis of barriers between judges and mediators)
- Engaging in initiatives to promote mediations in consultation with the president of the court (conferences, organisation and encouraging judges to participate in trainings in the field of mediation, organisation of the international mediation day)
- Promoting of the best mediation practices
- Cooperation with visiting judges (with regard to their control tasks)
- Controlling of the content of the court Web page with regard to mediation
- Gathering and verification of information on court mediators (education, trainings, number of mediations conducted and their effectiveness)
- Gathering of feedback from the parties after mediations (maintaining the so-called mediator work sheet)
- Issuing of opinions on the lists of mediator approved by the regional court president

Source: See: J. Toporowski, „Sąd i alternatywne metody rozwiązywania sporów – działania praktyczne", Na wokandzie - kwartalnik informacyjny MS, nr 07/2011

Assessment of activities carried out by mediation coordinators is rather negative. Reasonability of maintenance of this function in the present shape should be questioned. The formula of this function exerts little impact on promotion of application of alternative dispute resolution methods. On the other hand, it leads to tearing the judges away from their duties. The tasks assigned to coordinators are focused mainly on information and promotion, which requires specific qualifications and competences. In the opinion of the respondents, the judges lack these skills in general.

A problem here is lack of formal recognition of coordinators in the court structure, which results in lack of a functional allowance or privileges with regard to the scope of duties. The coordinators have pointed out that a failure to recognise their position in the court structure fails to provide the court presidents with a basis to

provide funds for their remuneration. An additional financial bonus is received only by those coordinators, for whom the presidents have been able to find the funds in the annual court budget. It should be underlined, however, that such situations are observed very rarely.

Another aspect, associated with the mediation coordinator function, is the improper selection of persons to perform this function. In some of the courts, the coordinator functions are performed by persons lacking the desired competences, or even representing interests contradictory to popularisation of mediation as a conflict solving mechanism, e.g. a mediator representing a specific mediation centre.

The coordinator function is not universally recognised in the Polish courts. In the quantitative research conducted, less than ¼ of all judges confirmed the presence of a mediation coordinator at the court, in which they work. One half of all respondents confirmed there was no person responsible for coordination of mediation tasks, and more than ¼ judges were not aware of the presence of the mediation coordinator. Worth noting is also the problem that the judges do not identify themselves with the function performed, which shows that the mediation coordinator function is not associated with real commitment. On this basis, it can be concluded that the judges are not very interested in activities of the coordinators, aimed at promotion of mediation in the local community. Moreover, in the quantitative research, the judges were unable to assess the aspects of work of the coordinators, such as their level of knowledge or impact on the scope of use of mediation. In addition, the judges seem to be convinced that the role of a mediation coordinator is not needed at court (as indicated by 2/3 of all respondents).

The proposed list of tasks of coordinators was developed at the Ministry of Justice and delivered to courts for use. Research has shown that coordinators fail to implement such a wide catalogue of activity. Activities of coordinators are of responsive nature – they are undertaken in response to specific needs, such as lack of a mediator in a given specialisation. This distribution of involvement determines the workload of coordinators throughout the year – most time for activities associated with the coordinator function is dedicated in the autumn season, during preparations for celebration of the International Mediation Day (in Poland, celebrated as the Mediation Week) and in the following period. It should also be underlined that even in this period, these tasks are not dominant for employees working as coordinators (who dedicate about 3 hours per day for these tasks).

Coordinators sporadically promote mediation and best practices in this regard, as well as performance of activities aimed at bringing the judge/ prosecutor/ mediator communities closer, and they are responsible for the content of the Web page of their court with regard to mediation issues. Most coordinators fail to maintain information on mediators as well (their education, trainings completed, number of mediations conducted, effectiveness of mediation), they do not gather feedback from the parties after the mediation and they do not issue opinions on the lists of mediators, approved by the regional court presidents.

In general, the coordinators failed to perform activities aimed at bringing the judge and mediator communities closer, e.g. through organisation of introductory meetings, development of the principles of cooperation or analysis of barriers between judges and mediators. Implementation of tasks in this regard is hindered by unfavourable attitudes and non-availability of the judges. In one of the cases analysed, lack of a positive attitude and flexibility of the judges resulted in withdrawal from any initiatives in this regard.

The indicated low level of activity of the coordinators is partially due to the fact that they have not been assigned the appropriate competences to perform this function. On the one hand, it is necessary to underline the broad catalogue of tasks to be performed by coordinators; on the other hand – their lack of empowerment and ability to implement specific solutions on the basis of their own, autonomous decisions.

RECOMMENDATIONS: Taking into account the research results, presented above, it is necessary to consider the possibility of making changes with regard to the coordinator function. Four strictly interrelated modification proposals can be distinguished.

- Formal empowerment of the mediation coordinator in the court structure

Research has shown that the key barrier to effective activity, carried out on a broad scale, is lack of empowerment of the coordinators in the court structure. This area is associated also with other barriers to effectiveness of coordinators, such as inability to provide them with a functional allowance (which, as it has been underlined by coordinators participating in in-depth interviews, would be of key significance for increasing their motivation), providing of funds for activity of coordinators in the annual budget of the court, lack of competences to make autonomous decisions, e.g. with regard to use of conference rooms for mediator meetings. In the opinion of coordinators, formal empowerment within the structure would result in higher effectiveness of the activities conducted in the field of promotion of mediation.

- Establishment of a closed, specific catalogue of tasks and competences

Lack of a clear catalogue of rights and obligations of mediation coordinators leads to their reduced activity. Moreover, lack of competences prevents them from making autonomous decisions. At present, sometimes, the coordinators are obliged to consult all decisions (even the minor ones, such as meeting organisation) with the court president. Assigning of specific competences to the coordinators would allow them to make binding decisions, e.g. with regard to verification of qualifications, experience and education of mediators entered on the lists maintained by the regional court president.

- Introduction of a functional allowance or significant limiting of the scope of basic duties

It is a good idea to consider the possibility of introducing a functional allowance or substantial limiting of the basic duties of the person performing the mediation coordinator function. The present situation prevents coordinators from getting truly involved in the tasks to be performed by them. Obligations of the coordinator are perceived as complementary, performed only when it is absolutely necessary. In the opinion of the judges, the coordinators should: receive additional remuneration or have a limited scope of the basic professional obligations, or be delegated only to the coordinator tasks. Moreover, the judges were clearly convinced of the significant role of the Ministry of Justice in assigning of tasks to the mediation coordinators.

- Conducting of mediation coordinator networking tasks from the position of the Ministry of Justice

Worth noting is the high added value of networking activities, conducted from the level of the Ministry of Justice. At present, there is a visible lack of activities of this kind. Their significance in exchange of information between coordinators should be underlined. Moreover, the coordinator meetings were a significant field for creation of new initiatives and exchange of experiences. The respondents assessed very highly the activities conducted in the previous years, which, however, have been discontinued. A significant component, from the perspective of development of the coordinator function, is popularisation of good practices – that is, showing how the most active coordinators implement their tasks. For instance, by presenting their activities on behalf of integration of judge and mediator communities and verification of mediator lists in the regional courts (one of the coordinators engaged in interviews in order to verify the substantive knowledge and predispositions to work as a mediator in criminal and juvenile law cases; every year, he sends information to the mediation centres, requesting updates of the local lists of mediators).

3.4 The state of mediation in Poland - a SWOT analysis

Summarising the diagnosis of the causes of low popularity of mediation in Poland and the activities undertaken so far in order to make it more popular, the following strengths and weaknesses of the mediation system in Poland have been identified, as well as the opportunities and threats to its further development.

Table 11. The state of mediations in Poland – a SWOT analysis

Mediation in Poland - strengths	Mediation in Poland - weaknesses
A significant scale of training activities aimed at judges, prosecutors and mediators, the mediation standards worked out A high supply of mediators Integration of the judges supporting mediation Introduction of mediation into the scope of obligatory trainings for new judges Low costs of court mediation The presence of a centre for coordination of the process of popularisation of mediation in Poland at the Ministry of Justice Gradual inclusion of mediation issues in the legal provisions – strengthening of the mediation tool Establishing of the international mediation day in the community of judges and mediators and in the public administration A positive perception of projects promoting mediation	Fragmented, inconsistent, incoherent mediation provisions Insufficient knowledge on mediation among judges and prosecutors Fragmentation and segmentation of the market of trainings and information and education activities in the field of mediation depending on target group No regulations for the mediator profession, no uniform standards and effective requirements Insufficient mediator remuneration for mediation based on court referral Insufficient knowledge of legal terminology by mediators A weak and unclear role of mediation coordinators at courts Low training activity of judges, prosecutors and other professional groups, trainings inadequate to the needs Insufficient availability of trainings for groups, which become the „first link" in the case of a conflict (police, curators, schools, social welfare etc.) The low quality of mediation conciliation agreements and a high diversity of approach of judges to conciliation) No incentives for judges to refer cases to mediation Insufficient focus on mediation in the schooling system No certainty among persons referring cases to mediation with regard to eligibility of individual cases for mediation The mediation time is too short Lack of financial incentives to use mediation in the lawyer community Insufficient emphasis on the obligation to inform the customer of the possibility of using ADR Insufficient tools persuading the parties to consider mediation Insufficient economic and taxation incentives for the

	parties to the dispute Low effectiveness of informational and promotional activities conducted so far
Opportunities for development of mediation in Poland	**Threats to mediation development in Poland**
High potential of the mediator organisations and mediation centres – high potential availability of mediator trainings High commitment of mediator communities to development of mediation, promotion and cooperation with the justice system Possibility of development of diffusion process on the scale of individual courts, in which judges using mediation are hired Increased interest in mediation in the society, building of new conflict solving patterns in the mass media Great popularity of TV series such as Judge Maria Wesołowska, Ojciec Mateusz that allow for mediation product placement Growing interest of the lawyer community in engaging in business mediation processes	Low prestige of the mediator function Lack of trust of the judge, prosecutor and plenipotentiary communities to mediators Perception of mediation by individual communities as a competition for the justice system A barrier of distrust between the legal communities and the mediator community, a sense of competition Conviction of the judges that they have superior conciliation competences, failure to understand the nature of mediation Lack of access to mediators of high quality in smaller towns and rural areas Varied approach to mediation in the mediator community, lack of a shared vision and understanding of mediation Focus on statistical effectiveness of judges and prosecutors Low level of human capital and social trust Reluctance of the parties to decide on their own on the solution

Source: own elaboration

3.5 Recommendations – 3 mediation popularisation scenarios for Poland

Results of the analyses conducted indicate that mediation in Poland is getting toward dichotomization – a division into mediation constituting an alternative to legal solutions (out-of-court mediation) and mediation constituting a component of the court proceedings (court mediation).

The difference in perception of the role of mediation by the lawyer communities (aimed at closing of the case and determination, which party is in the right) and mediation communities (aimed at reaching conciliation, mitigating the dispute and elimination of negative emotions) does not contribute to introduction of mediation in the common court practice.

A factor that determines the relatively rare occurrence of mediation and its low recognition as the method for solving of legal disputes among the parties, as well as reluctance to accept mediation displayed by representatives of parties to disputes are further barriers preventing popularisation of mediation in Polish courts.

This unfavourable diagnosis, which has been confirmed by mediation statistics that are permanently unfavourable despite popularisation of knowledge on mediation in the judge and prosecutor communities, results in the need to remodel the systemic activity aimed at the potential mediation participants (the society in general).

The first assumption, which forms the basis for the vision and its operationalisation, should consist of the conclusion that social change is a slow process and it would not be reasonable to expect a dynamic increase in the number of mediations initiated by parties to disputes. The reason for this is, first of all, the historic and social experience in the field of solving of disputes and conflicts, different from that of the countries that have a high rate of use of mediation, as well as low level of trust among the society and in the justice sector in the role of a mediator. Achieving even of a low level of growth of mediation, requires substantial funds for all-year-round, cyclical, multifaceted campaigns, addressed to the potential mediation participants.

The most effective impulse for development of mediation are the Polish courts and institutions of the justice sector; in other word – the supply side of the process. Experience of other European countries (Norway, Italy) shows clearly that institutional solutions, aimed at courts (judge mediations, mediation quotas allocated to judges) constitute a flywheel of the process, resulting in rapid popularisation of mediation. Taking into account the problems of the Polish justice system, its low effectiveness, this process, in the Polish reality, should take place in stages.

Another assumption, made while constructing scenarios of development and popularisation of mediation in Poland, refers to the mediator status. The mediator status, certification of work of mediator, legal regulations associated with the profession and the remuneration level are problems, which have been diagnosed in this research project as being of key significance for the line of cooperation between the court and the mediator. Trust of both participants of the process – the judge and the mediator – is of key importance here for successful completion of the process, the quality of the conciliation agreement and achieving of effects of the work performed. Nevertheless – due to the tendency of deregulation of legal professions – introduction of formal regulations for the mediator procession does not seem probable in the short-term perspective. The relatively short period of functioning of the market in Poland does not make it possible to estimate the results of such regulation and development, through intra-community consultations, of requirements for the profession, which could serve as a basis for more frequent referral of cases to mediation.

Low popularity of mediation among prosecutors is mainly due to lack of experience, knowledge on the role of mediation in prosecution proceedings and – most significantly – lack of an impulse to take the risk and use mediation in the proceedings. Introduction of these two missing tools in the process will not, however, lead to a radical change, as it has not changed much in the case of the judges. It should thus be assumed that criminal law mediation must search for development impulses mainly in the court. In the opinion of prosecutors and judges, participating in the interviews, introduction of missing tools in the preparatory proceedings will not change the situation radically, causing a substantial increase in the number of cases referred to mediation by prosecutors. Therefore, it should be assumed that criminal law mediations must search for impulses for development, mainly in courts. The respondents are of opinion that when a lawsuit is filed, it is clear, which of the parties is the suspect, and which is the victim, which should, in theory, make it easier to assess whether a given case is suitable for mediation. In the prosecutor's office, if the charges have not been presented, as the evidence is not clear, prosecutors are often unsure whether a given case could be referred to mediation at a given stage.

The segment of mediators as participants of the process is a factor bearing the least risk in the process of popularisation of mediation. The supply of mediators increases, like the interest in postgraduate studies and courses in the field of mediation. It is necessary, however, to care for the quality and standard of work of mediators. The factor, which is the least risky right now, may yet become another barrier preventing popularisation of mediation and the growing role of opinion of end users – parties to the dispute – in a society characterised by low level of trust in public institutions.

3.5.1 The short-term scenario – popularisation of mediation by year 2020

Target until 2020: 1.1% of all court cases on the national scale referred to mediation.

Achievement of the target of 1% of all court cases referred to mediation throughout the country at the end of year 2020 results in the necessity to perform segmentation of tasks at several levels: aimed at judges and prosecutors, mediators, other professional groups and the general society.

The initial state: The initial state, as of year 2015, encompasses the following aspects:

1. Low integration of judge, prosecutor and mediator communities, which results in limitation of mediation referrals to the population of judges that trust one or two mediators; lack of the spill over effect of the training activity conducted so far;
2. Inconsistent knowledge on mediation, visible in the training and conference materials for judge and prosecutor communities and for mediators;
3. Low territorial accessibility of complementary trainings aimed at mediators, accompanied by strong de-standardization of skills;
4. Low popularity of mediation trainings among judges, prosecutors and other professional groups due to low assessment of this topic among these target groups;
5. Diversified demand for trainings among persons interested in the topic, declared interest in numerous detailed mediation issues in all mediation communities;
6. Training deficits with regard to criminal and juvenile law mediations while the court mediation statistics show a deadlock in this segment;
7. Obligatory training on the basis of mediation, introduced as a teaching standard for newly appointed judges.

Activities aimed at judges and prosecutors: Activities aimed at judge and prosecutor communities should be concentrated in selected provinces, characterised by large numbers of cases considered. According to the map, presenting distribution of popularity of mediation in individual provinces depending on the case type, two to three centres should be selected in 5 provinces that are leading in terms of frequency of referral to mediation.

Like in the case of most public programmes, the key factor determining the effectiveness of popularisation tasks are multiplier effects, expressed by the so-called spill over effect, which results in spreading of the tendency to the neighbouring potential beneficiaries/ participants. Following this mode of thinking, it seems that the most effective channel for implementation of promotion of mediation among judges and prosecutors to achieve this effect would be to limit the scope of activity in the indicated time interval to selected judicial districts and to implement tasks concentrated in a given territory on the district and regional level.

The most effective strategy for implementation of trainings dedicated to court mediation is training in the regional court location for a given area (city, commune) and in the location of 1/3 of all district courts in a given district. Selection of the number of locations of the regional courts should depend on the number of judges, prosecutors and mediators, who are active in a given location (city, commune) and the budget for the activities planned.

Selection of this strategy increases the probability of spreading of the good practices through their promotion during conferences and internal trainings, conducted by regional courts using their own funds. This strategy will also allow for measurement of effectiveness of the activities proposed on the basis of court mediation statistics for the courts subject to the training programme. It also responds to the diagnosed problem of low territorial accessibility of complementary trainings for mediators.

The activities proposed could be implemented as a pilot programme, which could then be enriched by additional activities that might increase the dynamics of the court mediation process. Such pilot programme could also respond to the diagnosed low popularity of mediation among judges and prosecutors. The courts could compete for mediation results in the pilot programme participant ranking. Analyses of activities aimed at popularisation of mediation in various EU member states, commissioned by the European Parliament, indicate high effectiveness of the pilot programmes. Such programmes have been successfully implemented in various EU member states. For instance, France has "tested" the compulsory referral to mediation in some family law cases in two districts. On the other hand, in Slovenia, a pilot programme for court mediation was implemented in 2008 in the largest district in the country (from Phare funds). As a result of success of this programme, disputes are now referred to mediation on a daily basis, and other districts commenced implementation of similar programs in the subsequent years.

In order to receive a full response to the deficits, observed in the research, associated with low level of integration of the judge, prosecutor and mediator communities and the low level of standardisation of mediators at the local level, it is recommended that the composition of training participants is mixed. Taking into account the fact that trainings will be conducted at the district level, the community may integrate and the level of trust in mediators as mediation partners may increase.

The status and significance of the pilot programme may also encourage the court presidents to introduce an internal provision on the number of cases referred to mediation. This experiment will allow for determination of effects of such regulation. Integration of the judge community and the mediator community as a result of joint training and communication activity will allow for development of an optimum process of cooperation between the judge and the mediator and for creation of a joint platform of understanding with regard to the role and significance of the mediation process, taking into account the needs of the judge as the main impulse for development of mediation in Poland.

Activities aimed at judges and prosecutors outside the pilot programme should focus on popularisation in the trade journals and information materials of the Ministry of Justice of knowledge on mediation, benefits of use of mediation etc. In other words, mediation should become – in the period under concern – not so much a court practice as the practice of communication with judges and prosecutors for the Ministry of Justice. This will allow for better absorption in this community of the effects of the pilot programme and for making mediation a component of everyday practice.

The IT system of the prosecutor's offices should be modified – this will be the first step to popularisation of mediation in this community[25].

Activities aimed at mediators: The courts within the pilot programme area should be encouraged to introduce an internal mediator list with references from the judges. This may encourage those judges, who are sceptical towards the mediator role, to refer cases to mediation on the basis of "persons recommended by other judges". This will result in further segmenting of the community along the lines of division into court and out-of-court mediators. Mediators should also be recognised as the main actors of promotional activity (mediation days, festivities, contests) on the local scale.

In the remaining area, no specific tasks have been planned. According to the assumptions made, no activities that regulate the mediator profession will be undertaken.

Activities aimed at the society: In the area of implementation of the pilot programme, it is necessary to promote mediation among the potential parties to disputes. Therefore, the following are of significance: local promotion of the pilot programme, festivities, picnics, sponsored articles in the local press, a broad-scale

[25] According to art. 23a § 2 of the CPC, the mediation procedure is not included in duration of the proceedings; however, this provision is not executed in practice, as in the SIP IT system, a case, which has been referred to mediation, has the status „in progress", and its duration is not stopped or suspended.

poster and flyer action in courts participating in the pilot programme. Throughout the country, mediation issues should be presented in popular TV series. The media message should consist of presentation of benefits of court mediation. The key issue here is popularisation of mediation during the course of court proceedings (not instead of such proceedings).

In addition, it is recommended to introduce the aspects of alternative dispute resolution methods in the curriculum of civic education at secondary schools.

Other activities: The following solutions are to be implemented[26]:

- Introduction of obligatory information mediation sessions;
- Imposing on representatives of the obligation to inform their customers of the possibility of using mediation;
- Introduction of the topic of mediation with practical aspects to training programmes
- Strengthening of the mediation coordinator function at courts,
- Amendment of legal provisions to make sure that the courts are obliged to deliver a copy of the court decision to the mediator, who would thus receive information on whether the conciliation agreement has been approved in whole, and if not – which parts of it have been approved,
- Modification of the IT system of prosecutor's offices so that calculation of the preparatory period takes into account the time designated for mediation,
- Amendments to the appropriate codes of professional ethics, obligating the professional representatives to inform their customers of the possibility of mediation – and to present an estimate of costs of mediation and court proceedings.

3.5.2 The mid-term scenario – until year 2030

Objective until year 2030: 3% of court cases in the country referred to mediation, increase by 50% in comparison with year 2020 of the number of cases referred to mediation in criminal law cases, increased number of pre-judicial mediations

Initial state: The initial state as of year 2020, taking into account the effects achieved as a result of implementation of the short-term scenario, includes the following aspects:

1. Increase in the use of mediation as a stage of court proceedings in 5 leading provinces of Poland (as a result of the pilot programme), establishment of a good practice to be popularised throughout the country,
2. General knowledge, among judges and prosecutors, of the standard concept and benefits of mediation,
3. Building of the image of mediation as an effective dispute resolution tool
4. Testing of effectiveness of the internal provision, which defines in advance the minimum number of cases referred to mediation by a given judge in a given period (if such solution is approved by court presidents),
5. The sufficient number of mediators in business, civil and family law cases,
6. The insufficient number of mediators in criminal law cases,

[26] A justification for these solutions and more detailed information can be found in chapter 3.2

7. The first changes in perception of mediation by the parties to the dispute (the party demands mediation or is more eager to accept the court referral to mediation).

Activities aimed at judges and prosecutors: in a given period, activity aimed at judges and prosecutors should be profiled to popularise the best practices, developed in the 5 leading provinces of Poland. Popularisation should be combined at this stage with implementation of effects of best practices, developed in the previous years. It is necessary to introduce the appropriate legal regulations, which impose upon the courts a standard (a recommendation and not an order) to refer an appropriate percentage of cases to mediation. This standard should be monitored on an annual basis (entered in court activity reports). It should be demanded that courts provide explanations with regard to a low number of cases referred to mediation. Another effect of such report should be inviting the judges from a given location to participate in trainings, organised by KSSIP. This solution results in the necessity to include mediation in the regular training programmes of this institution.

It should also be expected that constant cooperation between the judge and the mediator, considering the large scale and long period of implementation of the pilot programme, will contribute to development of a model of cooperation, which should be popularised in courts all around the country. This will result in further segmentation of the community, dividing it further into court and out-of-court mediators.

At the same time, activity should be conducted to popularise the effects of the pilot programme in form of cyclical conferences, addressed to court communities, organised throughout the country. The event should be promoted on the local and regional scale.

Simultaneously, instruments and tools aimed at criminal law cases should be developed. Due to the low number of mediators in criminal law cases and the deadlock in use of mediation in such cases, it is necessary to undertake activity aimed at both aspects. It is necessary to increase rates of the criminal law mediators to at least 70% of the rates of civil law mediators in order to increase the willingness of civil law mediators to get the additional specialisation as criminal law mediators. As for popularisation of mediation in criminal law cases in the Polish courts, it is necessary to provide the courts with day-to-day information on the issues of mediation and conduct further pilot programmes, focused on criminal law cases.

Activities aimed at mediators: On the basis of the best practices of the pilot programme, it is necessary to popularise – and include in the mediator standards – the solutions developed in the field of cooperation between courts and mediators. As a result of popularisation of the internal, court-based list of mediators with references from the judges, the market will undergo further dichotomisation.

It is expected that over the short-term perspective, the court mediator profession will gradually start to professionalise thanks to division of the market into mediators included on the internal lists of the courts and general mediators. Institutional potential and experience will be available, allowing for identification of the assumptions serving as a basis for legal regulations of the mediator profession, allowing for its certification.

There will be increased interest in pre-judicial mediation. A factor, which will contribute to the above, will be introduction of legal provisions prioritising consideration of cases of violation of pre-judicial conciliation agreements.

Activities aimed at the society: Popularisation of benefits of mediation should be continued using the mass media in form of social campaigns in the area of restorative justice. At the same time, there should be social campaigns conducted to promote out-of-court mediation. Mediation techniques should become a part of the curriculum for faculties of education studies.

Other activities: The following solutions are recommended:

- Introduction of obligatory mediation classes in university curricula, not only in law studies, but also at such faculties as education, psychology, resocialisation, sociology.

- Introduction of the obligation to inform – in the statement of claim – of an attempt to solve the dispute out of court prior to filing a lawsuit,
- Development and coming into force of the act on mediation and the profession of a mediator.

3.5.3 The long-term scenario – after year 2030

Objective after year 2013: 10% of all court cases referred to mediation. Stabilisation of the number of court cases on the national scale.

The initial state: The initial state for year 2030 is to encompass the following aspects:

1. Increase in the number of cases referred to mediation on the national scale
2. Increase in the number of criminal law cases referred to mediation,
3. Popularisation of the concept of restorative justice,
4. Professionalization of the mediator profession,
5. Increase in the number of mediations initiated by the parties to the conflict,
6. A decrease in the growth in the number of court cases (increase in the number of pre-judicial mediations).

Activities aimed at judges and prosecutors: As a result of activities implemented within the framework of the short- and long-term scenario, it is expected that it will be possible to increase the number of referrals to mediation through recommendations, and not orders. It should be assumed that the judges will have experience in qualification of cases for mediation. This will contribute to an increase in the number of cases referred to mediation and the number of mediations initiated by the parties to the conflict without interference of the court. This, on the other hand, should result in decreasing of the overall number of lawsuits filed. Suggestions with regard to further systemic solutions should be provided by the judge and prosecutor communities.

Activities aimed at mediators: Continuation of cyclical intra-community trainings should take place.

Activities aimed at the society: Any communication activity aimed at convincing people to accept mediation assume a change in behaviours of the recipients. A change of attitudes is a long-term process, and thus – as it has been mentioned before – large scale communication activities are necessary, which should be repeatable over time. Effectiveness of communication activities depends not only on who conducts such activity and on the means used. The problem, which must be encountered in Poland, is the low level of social capital (the so-called bridging capital) and the associated scarcity of institutional conflict-solving measures, and thus the low level of social trust. Emphasis should be put on informational and promotional activities, aimed at popularisation of out-of-court dispute solving measures. Activities that popularise mediation at the elementary school and higher schooling levels are of key significance.

4 CONCLUSIONS AND RECOMMENDATIONS

Table 12. Table of conclusions and recommendations

No.	CONCLUSION	RECOMMENDATION	Recipient
1.	Judges are often unable to present the parties with potential benefits of mediation. Frequently, delivery of information on the possibility of mediation is limited to procedural issues.	It is necessary to conduct trainings for judges – the programme should include practical exercises, conducted by the mediator, on informing the parties of the possibility of mediation by presenting the associated benefits and providing a clear description of the mediation process. It is necessary to provide the possibility of participation in an information meeting conducted by a mediator – the costs of such meeting should be included in the costs of the proceedings (the meeting should be free for both parties). Worth considering is organisation of the obligatory information meeting in form of a pilot programme, used in other European countries.	Ministry of Justice
2.	Training activity so far has been concentrated in uniform communities; as a result, it has not been possible to establish an easily repeatable model of cooperation between the judge, the parties and the mediator for effective conclusion of mediation. The barrier of distrust between the lawyer and mediator communities has not been eliminated. In these groups, however, there is a strong need for integration for exchange of experience and building of trust, which would lead to more frequent referral of cases to mediation.	The trainings should be provided for mixed social groups - mediators, judges, prosecutors, police officers, social welfare workers; at the same time, they should be conducted within a single area, e.g. a city, in which all of these groups work.	Ministry of Justice
3.	Mediation issues are not sufficiently taken into account in the judge, prosecutor, legal counsel, attorney or notary public training. Moreover, mediation is present in the curricula of	The issue of mediation should be included in the judge, prosecutor, legal counsel, attorney or notary public, and even the bailiff training. The Ministry of Justice should take this into account when developing the training curricula in cooperation with other entities issuing opinions on these curricula.	Ministry of Justice

No.	CONCLUSION	RECOMMENDATION	Recipient
	university studies to a limited extent. A significant barrier for development of mediation is the problem of trust between the lawyer and mediator communities.	Completion of the above vocational training should depend on completion of the cycle of trainings, provided in the curriculum established by the Ministry of Justice, including theoretical exercises with mediators and practice at courts, prosecutor's offices, institutions and law offices .	
4.	The activity conducted so far indicates that mediation is becoming a component of the educational curriculum of university studies, but the training is insufficient – too short, based only on lectures presenting the definitions and legal basis for mediation.	Inclusion of the issue of mediation in the university curriculum requires multifaceted activity of the Ministry of Justice (promotion of this concept during various events of the academic communities), mediation centres (particularly those at universities) and the universities, which already teach mediation (important: they should offer more than just theoretical classes) (promotion of best practices)	Ministry of Justice Mediation centres Universities
5.	During research, the issue of low quality of mediation conciliation agreements has been identified.	It is recommended to organise meetings of judges with mediators in districts/ local areas for the purpose of discussion of the content of conciliation agreements depending on the area of law – criminal, family, business law etc. As a result, a manual for development of conciliation agreements should be developed, indicating in detail, which conciliation provisions can be approved by the court and which cannot. The mediation coordinator in a given area could be responsible for such meetings.	Ministry of Justice Mediation coordinators
6.	There is the problem of lack of feedback delivered to mediators by courts, with regard to the judge's opinion on the conciliation agreement and the extent, in which the conciliation agreement has been accepted by the court.	Two solutions can be recommended: (1) obligate the courts to add the mediator to the list of recipients of the court decision – the mediator would thus receive information whether the conciliation agreement was approved in whole, and if not, which parts of it have been approved; (2) sending letters to mediators only, if the judge has questioned any part of the conciliation agreement and has rejected any part of the associated motion.	An administrative solution that can be introduced by courts as a result of recommendation by the Ministry of Justice
7.	A clear assessment of eligibility of cases for mediation is a difficult task for judges and prosecutors. They have broad theoretical knowledge, but they lack a practical approach to eligibility issues.	Eligibility of cases for mediation should be included in judge and prosecutor trainings. Exercises in this regard should be conducted by mediators and they should include some practice, discussion of specific examples of cases, in which mediation may prove particularly useful, as well as the components that need special attention due to the particular risk for success of mediation.	Ministry of Justice

No.	CONCLUSION	RECOMMENDATION	Recipient
8.	The scope of information on mediators, published on the Web pages of regional courts, has been assessed by judges as insufficient. .	The possibility of broadening of the scope of mediator information published should be considered. An optimum solution seems to be placement on the Web page of the regional court of a link to the page containing detailed information on mediators. Such page could be administered by the mediator, publishing significant information, such as scans of certificates earned. Mediation coordinators at regional courts should be responsible for verification of mediator information, to the extent allowed by availability of data and needs of the court judges.	Ministry of Justice Regional courts Mediation coordinators
9.	The research conducted has indicated the problem of lack of incentives for judges to refer cases to mediation.	Changes should be made in the work assessment sheets and individual career plans of judges so that – unlike it is at present – the duration of court proceedings does not include the duration of mediation, and the work assessment sheet and the individual career plans of judges should take into account data on mediation referrals.	Ministry of Justice
10.	In the light of the common focus on statistics among prosecutors, the functioning IT system of prosecutor's offices does not encourage referral to mediation, as the cases, despite having been referred to mediation, remain „in progress" and their duration is not stopped or suspended.	It is necessary to modify the SIP to make sure that mediation time is included in the duration of the preparatory proceedings .	General Prosecutor's Office
11.	There are legal (procedural) barriers that hinder development of mediation in the preparatory proceedings.	The criminal code provisions should include the possibility of discontinuation of court proceedings due to the positive conclusion of mediation and lack of purpose of continuation of the proceedings, as the objectives of punishment have been achieved.	Ministry of Justice
12.	In cases concerning crimes prosecuted upon the motion of the victim, there is no possibility of suspending the criminal procedure until completion of the conciliation agreement.	Legal provisions should be introduced, allowing for suspension of the proceedings until the actual performance of the conciliation agreement or execution of other legal measures, securing the associated claims.	Ministry of Justice

No.	CONCLUSION	RECOMMENDATION	Recipient
13.	The requirements defined for mediators are not sufficiently defined by internal regulations of mediation centres, thus the resulting lack of uniformity of requirements/ standards for mediators at different mediation centres remains a problem.	A uniform code of ethics for mediators should be developed, which should be applied by all mediation centres in Poland.	Ministry of Justice Mediation centres
14.	During research, it was found to be necessary to define precise requirements for mediators with regard to: the level of education, specialisation (this, however, has been raised only by one in three mediators), theoretical mediation trainings completed, interpersonal and communication trainings, s well as trainings in legal provisions and mediation internship.	Provisions ensuring strict regulation of requirements for mediators should be included in the regulation of the Minister of Justice of June 13th, 2003 on mediation proceedings in criminal law cases, the regulation of the Minister of Justice of May 18th, 2001 on mediation proceedings in juvenile law cases and in the code of civil procedure.	Ministry of Justice
15.	A majority of respondents – judges, as well as prosecutors and mediators – believed it was reasonable to introduce a system for certification of mediator training entities.	A system of certification of mediator training entities should be introduced. Thus, the Ministry of Justice and the social councils for ADR should engage in a debate on the subject with the mediator community.	Ministry of Justice
16.	At present, legal provisions in Poland, concerning mediation, are inconsistent, incoherent and dispersed.	The Ministry of Justice should engage in a debate on development of the act on mediation and the mediator profession.	Ministry of Justice
17.	Remuneration for mediators for mediation based on court referrals is insufficient.	Both the upper and the lower limit of remuneration for mediators in disputes related to property should be increased. The parties and mediators should be able to propose an additional remuneration for mediators in particularly complex cases of high value, e.g. above PLN 1 or 2 million. The remuneration rates for mediators should be increased in disputes related to property rights, in which the value of the subject of the dispute cannot be established, as well as in disputes related to other rights, while maintaining different rates for the first and subsequent meetings. The statutory remuneration rates for mediators in civil and family law cases should be	Ministry of Justice

No.	CONCLUSION	RECOMMENDATION	Recipient
		deregulated (introduction of price competition). However, the statutory maximum rate for court mediation, established in reference to the average salary, should be maintained.	
18.	In some situations, the parties are not willing to pay the mediation costs resulting from voluntary submission to mediation. This problem is encountered by the mediator.	It is recommended to implement a solution based on court agency in transfer of the mediation costs to the mediator.	Ministry of Justice
19.	Effectiveness of mediation is influenced by the time for mediation proceedings being too short.	It is reasonable to lengthen the time of the proceedings from 4 weeks to 6 to 8 weeks or allowing of exercise of flexible solutions in this regard.	Ministry of Justice
20.	There are no financial incentives for attorneys and legal advisors to use mediation and other out-of-court dispute resolution methods. At present, there are no regulations that would indicate clearly the possibility of adjudging higher costs, taking into account the involvement of representatives in mediation.	The court, adjudging a fee for attorney or legal counsel activities due to representation, should take into account the activities undertaken in order to solve the dispute out of court before the lawsuit is filed and during the court proceedings. Implementation of this recommendation would require amendment of the regulation of the Minister of Justice of September 28th, 2002 on attorney fees and coverage by the State Treasury of the costs of unpaid duty counsel (Journal of Laws no. 163 item 1348, as amended) and the regulation of the Minister of Justice of September 28th, 2002 on fees for legal counsel services and covering by the State Treasury of costs of unpaid services of court-appointed legal counsels.	Ministry of Justice
21.	Too little emphasis is put on the obligation of attorneys and legal counsels to inform their customers of the possibility of ADR.	Amendments to the appropriate codes of professional ethics are recommended, obliging the professional representatives to inform their customers of the possibility of taking advantage of mediation – including the presentation of an estimate of costs of mediation and court proceedings.	Lawyer communities and organisations
22.	At present, the tools encouraging the parties to consider mediation are insufficient	It is recommended to introduce the obligation to inform the court by the plaintiff in the statement of claims of whether, prior to filing the lawsuit, an attempt was made to resolve the dispute out of court. This will require broadening of the catalogue of formal prerequisites for the statement of claim by adding the obligation to clarify whether the parties have made an attempt to mediate or use any other alternative dispute resolution measure, and to explain why such measures could not be	Ministry of Justice

No.	CONCLUSION	RECOMMENDATION	Recipient
		recommended in a given case.	
23.	Economic and tax incentives encouraging the parties to engage in mediation are insufficient.	The court mediation costs should be included in the court fees. In the case of out-of-court mediation, applications for approval of the conciliation agreement should be free from a court fee. The level of reimbursement of the court fee should depend on the stage of the proceedings – e.g. the fee should be reimbursed fully, if conciliation is reached at the preliminary stage of the proceedings. Another solution is to include the mediation costs in court expenses, which would allow the parties to be released in whole or in part from costs of mediation based on court referral. An incentive for entrepreneurs, on the other hand, could be based on recognition of costs associated with reaching of the conciliation agreement and mediator remuneration as costs of earning profit (subject to taxation).	Ministry of Justice
24.	Lack of tools encouraging entrepreneurs to engage in mediation before filing a lawsuit is a barrier preventing use of mediation in business law cases.	It is recommended to promote among the entrepreneurs inclusion of a mediation clause in the contract, in which the parties undertake to use mediation in the case of any dispute prior to filing a lawsuit. It is recommended to publish templates of civil law agreements, containing such clause. The obligation to include such clause in agreements concluded by state-owned enterprises is recommended – this should be introduced by an appropriate regulation of the Ministry of the State Treasury.	Ministry of Justice Associations of entrepreneurs, business community institutions Ministry of the State Treasury
25.	A solution that was supposed to popularise court mediation was appointment of mediation coordinators at court. Research shows that at present the coordinators fail to fulfil their role and they exert little impact on use of alternative dispute resolution methods.	In order to strengthen the position of coordinators, the following are recommended: formal empowerment of coordinators in the court structure, creation of a closed, specific catalogue of tasks and competences, introduction of a functional allowance or limiting of the scope of other duties, conducting of networking activities in relation to coordinators by the Ministry of Justice.	Ministry of Justice Regional and district courts

Source: Own elaboration

APPENDIX 1. METHODOLOGICAL ANALYSIS

CHARACTERISTICS OF THE RESEARCH PROBLEM

The object of the study in area 1. Identifying the training needs of judges, prosecutors and mediators, was a diagnosis of training activities addressed thus far to professionals involved in mediation, i.e. judges, prosecutors and mediators, carried out thus far, and to diagnose their training needs. In result, it was possible to develop an optimal training programme, addressed to individual groups.

The aim of the study within Area 2. Definition of publicity strategy was to identify and assess hitherto publicity actions undertaken in Poland concerning the promotion of mediation as a tool for solving court disputes. Another step was to develop a publicity strategy, including to define effective publicity forms and tools, and to select the targets of social information campaign, account taken of a specific nature of the mediation system in Poland.

The object of the study in area 3 *Diagnosis of the scale of application of mediation and reasons for too low popularity of mediation compared to the expected one was* the diagnosis and the evaluation of application of mediation, as well as identification of reasons of its too low popularity compared to the expected one, both among the society and the professionals related to mediation. One of the objectives was to indicate directions and addressees of activities whose implementation is going to increase popularity of mediation and, in consequence, result in increased application of medication as an alternative method of dispute resolution with respect to the traditional court proceedings.

RESEARCH QUESTIONS

The research answered the following research questions:

Area 1 - Identifying the training needs of judges, prosecutors and mediators,

1. What has been the experience thus far in implementing training activities addressed to judges, prosecutors and mediators in the field of mediation?
2. What are the strengths and weaknesses of the activities undertaken so far?
3. What were the success factors in and the barriers for the implementation of educational activities (including training activities) addressed to judges, prosecutors and mediators in 2007-2013?
4. What training needs of judges, prosecutors and mediators in the area of mediation can currently be pointed out?
5. What would be the most effective forms of transferring mediation knowledge and skills with a view to broaden the scale of mediation in individual target groups (training, workshops, conferences, promotion of good practices, study forms), broken down into target groups and legal areas of mediation?

Area 2 - Defining a mediation communication strategy.

4. What is the hitherto Polish experience in promoting mediation in Poland?
5. What are the strengths and weaknesses of the activities undertaken so far?
6. What were success factors and constraints in the implementation of hitherto publicity actions promoting mediation?
7. What are effective forms of social information campaign concerning mediation and what is the target group of the campaign?

8. What are good practices of media campaigns concerning mediation in the OECD countries? What are the success factors of building the mediation brand, which can be applied in the publicity strategy in Poland?

Area 3 - Diagnosis of the use of mediation in Poland

1. What is the perception of mediation as a conflict-solving tool by various groups of stakeholders: residents, entrepreneurs, legal advisors/ lawyers, judges, prosecutors, mediators, curators, representatives of social welfare and upper-secondary schools?
2. What is the condition of mediation in Poland with respect to the number of cases referred to mediation and ended with a settlement agreement (also in a territorial layout)?
3. What are the causes of low popularity of mediation (including in division into areas of mediation: civil, family, penal, economic, labour-related)?
4. In which degree is the legal status in Poland conducive to popularisation of mediation as tool for out-of-court solving of conflicts?
5. What is the profit and loss balance in mediation proceedings perceived by all stakeholders? Where do contradictory interests and contradictory perception of profits and losses of individual parties of a mediation procedure result from?
6. Which elements of the mediation system functioning in Norway are possible to adapt in the Polish system of justice?
7. Which legal changes are postulated by mediation stakeholders in Poland? Which legal changes can increase popularity of mediation?
8. How should the activities promoting mediation addressed to individual stakeholders (divided into legal areas of mediation) complement one another?
9. Which activities should be undertaken for the increase in use of mediation as an alternative to traditional court procedures in resolution of disputes and conflicts in individual areas: communication, promotion, education, legal changes, administrative and organisational changes, changes in mentality? Who should be the addressee of these activities and who should perform them?

CHARACTERISTICS OF STUDY METHODS, TECHNIQUES AND TOOLS

As regards the first study area, the Contractor used the following study methods:

9. Analysis of secondary data – legal acts on mediation, information materials concerning mediation, diagnosis of training needs of participants of the projects implemented under the Norwegian Financial Mechanism, central and regional component of HC OP, carried out within the framework of the implemented projects, analysis of reports on the implementation of these projects, and analysis of available results of studies analysing reasons of such a low popularity of mediation;
10. Individual in-depth interviews – with representatives of institutions implementing training projects in the target groups in 2007-2013, and with experts studying the mediation issue (academic researchers);
11. Quantitative CATI survey, with some elements of CAWI – with representatives of mediators, judges and prosecutors. The questionnaire contained questions on the participation in previous educational activities as well as on training needs;
12. Heuristic workshop – with representatives of target groups and of scientific community involved in mediation, and with representatives of legal professions, aimed at developing an optimal plan of

educational activities and at obtaining information based on which the optimal form of educational activities would be recommended to the Contracting Authority. Heuristic interview will allow for confrontation and verification of initial findings of the study by practitioners and experts, thus contributing to more accurate conclusions and recommendations.

As regards the second study area, the Contractor used the following study methods:

1. Analysis of hitherto data – enumerated under the implementation of study area No. 1 in terms of objectives of study area No. 2 and based on additional materials including products and available analysis of results of publicity actions implemented between 2007-2013 under the central component of Human Capital Operational Programme, Norwegian Financial Mechanism and regional component of Human Capital Operational Programme;
2. Quantitative CATI survey, with some elements of CAWI – with representatives of mediators, judges and prosecutors. The questionnaire included questions concerning the evaluation of hitherto publicity actions concerning mediation and the need for such actions in the future, as well as the identification of optimum tools targeted at various target groups;
3. CAWI quantitative research – among probation officers/guardians, high-schools, NGOs, representatives of professional associations of lawyers, social welfare employees, concerning the evaluation of hitherto publicity concerning mediation and the need for such publicity in the future;
4. CATI quantitative study – conducted on a representative sample of Polish inhabitants above 16 years of age;
5. Comparative benchmark – comparative analysis of publicity strategies implemented in selected OECD countries and results of publicity actions in those countries;
6. In-depth interviews with representatives of the Ministry of Justice and advisory bodies such as the Social Council for Alternative Dispute Resolution, Mediation Team by the Minister of Economy;
7. *Clash group* interviews (involving groups in conflict) conducted in the following target groups: mediation recipients (business people and society, potential participants of mediation within the area of civil and criminal law), mediators, representatives of social welfare offices, prosecutors, judges, police officers, probation officers/guardians;
8. Heuristic workshop – with the participation of expert circles, representatives of the Contracting Party and representatives of associations of target groups: associations of judges, associations of lawyers, prosecutors, police officers, probation officers/guardians and NGOs dealing with mediation. Heuristic interview will enable confrontation and verification of initial conclusions of the study within the circle of practitioners and experts, which will contribute to increased accuracy of conclusions and recommendations;
9. Simultaneously, a blog-project was conducted, by means of which information was obtained from the target circles concerning diagnostic analysis and indicated communication channels.

The Contractor used the following study methods as regards the third study area:

1. **Analysis of secondary data:** legal acts on mediation, scientific studies concerning mediation in Poland and perception of this tool by various groups of stakeholders; data collected as part of analyses in areas I and II of the study was also used;
2. **Analysis of statistical data** regarding the frequency of court and out-of-court mediation, preparation of maps;

3. **Results of a quantitative study with the representatives of mediators, judges and prosecutors**; results of a study conducted in January and February 2015 were used, within the scope of which a set of questions regarding evaluation of the condition of mediation in Poland was used and perception of this tool as an alternative for traditional court proceedings in solving disputes and conflicts;
4. **Results of a quantitative study on a representative sample of Polish residents** older than 16; results of a study conducted in January and February 2015 were used; analyses will be conducted with respect to evaluation of perception of mediation as an alternative to traditional court proceedings in solving disputes and conflicts;
5. **Quantitative study among curators, middle schools, non-governmental organisations, representatives of self-government of attorneys and legal advisers, social welfare employees**; results of a study conducted in January and February 2015 were used, as part of which a set of questions regarding the condition of mediation in Poland and perception of this tool as an alternative for traditional court proceedings in solving disputes and conflicts was used;
6. **Focus in-depth interviews** conducted within the following target groups: mediation recipients (business people and society, potential participants of mediation within the area of civil and criminal law), mediators, representatives of social welfare offices, prosecutors, judges, police officers, probation officers/curators;
7. **Telephone in-depth interviews** with a mediation coordinator in district and regional courts;
8. **Quantitative study, II round** – with representatives of mediators, judges and prosecutors, curators, middle schools, non-governmental organisations, representatives of self-government of attorneys and legal advisers;
9. **A blog** as part of which information was procured from target communities regarding diagnostic opinion and opinion poll;
10. **Interview with Norwegian partner.**

A DETAILED DESCRIPTION OF A SELECTION METHOD AND A STRUCTURE OF SAMPLES IN QUANTITATIVE STUDIES

A CATI study with residents

A CATI study with the residents of Poland was carried out on a representative sample n=1000 persons aged 16 and more. The study sample was selected in a random-layered way, whereas the layers were socio-demographic features: sex, age, education, place of residence – Voivodeship and town/city size. Such a sample means that it corresponds to the Polish population aged 16 and more as regards indicated socio-demographic features (proportions in a sample as regards these features are the same as the ones in the population).

The results of the CATI study with the residents of Poland aged 16 and more can be generalized over the entire study population (estimation error amounts to e=3.1% at the 95% confidence level).

Below, a detailed structure of the sample used at the CATI study with the residents of Poland is presented.

Table 1. Structure of the study sample – CATI study with the residents of Poland aged 16 and up

Socio-demographic features		Population	% of N in a column
Respondent's sex	Female	522	52,2%
	Male	478	47,8%
	Total	1 000	100.0%
Voivodeship (NUTS 2) – respondent's place of residence	dolnośląskie	77	7,7%
	kujawsko-pomorskie	54	5,4%
	lubelskie	56	5,6%
	lubuskie	26	2,6%
	łódzkie	66	6,6%
	małopolskie	86	8,6%
	mazowieckie	137	13,7%
	opolskie	28	2,8%
	podkarpackie	55	5,5%
	podlaskie	31	3,1%
	pomorskie	59	5,9%
	śląskie	121	12,1%
	świętokrzyskie	33	3,3%
	warmińsko-mazurskie	37	3,7%
	wielkopolskie	89	8,9%
	zachodniopomorskie	45	4,5%
	Total	1 000	100.0%
Region (NUTS 1) – respondent's place of residence	Central region	203	20,3%
	Southern region	207	20,7%
	Eastern region	175	17,5%
	North-western region	160	16.0%
	South-western region	105	10,5%
	Northern region	150	15,0%
City size – respondent's place of residence	Village	393	39,3%
	A town of up to 50 thousand residents	240	24,0%
	A city between 50 and 200 thousand residents	162	16,2%
	A city over 200 thousand residents (Bydgoszcz, Lublin, Katowice, Białystok, Gdynia, Częstochowa, Radom, Sosnowiec)	160	16.0%
	Warsaw	45	4,5%
	Don't know/hard to say	0	.0%
	Total	1 000	100.0%
Respondent's age	16-29 years	229	22.9%
	30-44 years	272	27.2%
	45-59 years	243	24.3%
	60 years and more	256	25.6%
	Refused to answer	0	.0%
	Total	1 000	100.0%
Respondent's education	Primary or lower secondary	250	25.0%
	Vocational or secondary	541	54.1%
	Post-secondary or higher	209	20.9%
	Refused to answer	0	.0%
	Total	1 000	100.0%

Source: Own analysis based on the surveys conducted

CAWI study with curators, representatives of social welfare institutions, upper-secondary schools, attorneys' and legal advisers' associations and non-governmental organizations

A CAWI study with curators, representatives of social welfare institutions, upper-secondary schools, attorneys' and legal advisers' associations and non-governmental organizations was carried out on the basis of the following contact bases (containing an email address):

- curators/curator organizations database, created on the basis of data included on websites of regional and district courts,
- upper-secondary schools database, created on the basis of data included on websites of education supervision bodies of particular Voivodeships or data acquired directly from the representatives of education supervision bodies of particular Voivodeships,
- social welfare institutions database acquired from the Ministry of Labour and Social Policy,
- non-governmental organizations database transferred by the Ministry of Justice and created on the basis of online data (among others, http://www.ngo.pl/),
- attorneys' and legal advisers' associations, created on the basis of data found on websites of the said associations.

Around 6,000 invitations to email addresses included in databases, encouraging to participate in the study by filling an online questionnaire, were sent. 1,283 representatives of entities invited to participate filled the questionnaire within requested time[27] (including: 40.8% - curators, 36.7% - representatives of social welfare institutions, 21.4% - representatives of upper-secondary schools, 1.1% - others). Responsivity of the study amounted to over 20%, which means that its results can be generalized over examined populations.

CATI study with CAWI elements with judges, prosecutors and mediators

In order to carry out a quantitative study with judges, prosecutors and mediators, the first step was to prepare a contact database. The following were used to its preparation:

- databases acquired through a CAWI electronic form prepared by the Contractor and sent to regional and district courts, regional and district prosecutor's offices, mediator associations, with a request to transfer contact data and indicate a preferred method of research (email/telephone),
- databases found on websites of courts, prosecutor's offices, mediator associations,
- databases transferred directly by the representatives of courts, prosecutor's offices and mediator associations.

Ultimately, we managed to gather contact data of 1,504 judges, 1,018 prosecutors and 2,525 mediators. These data constituted a sampling frame, based on which a random selection of individuals covered by the study was carried out.

The table below presents the executed study samples.

[27] When it comes to the representatives of social welfare institutions, upper-secondary schools, attorneys' and legal advisers' associations and non-governmental organizations, a questionnaire could be filled by one representative of a given entity.

Table 2. Presentation of executed study samples in a quantitative study with judges, prosecutors and mediators

Respondent type	Number
Judge	182
Prosecutor	188
Mediator	473
Total	**843**

Source: Own analysis based on the surveys conducted

The quantitative study with judges, prosecutors and mediators - II round

The study within the framework of the second round used database created in the previous study, which included contact information for 1504 judges and 1018 prosecutors in 2525 the mediators. These data constitute a sampling frame of respondents to the second round of the survey.

The table below is presented a summary of completed research trial.

Table 3. Summary of tests carried out research in the quantitative research with judges, prosecutors and mediators in the second round of the survey.

Respondent type	Number
Judge	22
Prosecutor	8
Mediator	87
Total	**117**

Source: Own analysis based on the surveys conducted

The study lasted 3 weeks. During the study two reminders asking respondents to participate in the study were sent. In the office of the Contractor there was running a help desk, respondents could contact in the event of technical problems or other consultations.

SELECTION CRITERIA AND METHOD OF REACHING FOR RESPONDENTS IN QUALITATIVE RESEARCH

The selection of respondents for qualitative research was intentional. The following methods typing participants were used:

- Indications of the Employer,
- Direct contact with centers of mediation in order to select a representative of the center to participate in the study,
- The authors of publications, articles and research in the field of mediation,
- Beneficiaries of OP HR projects,
- Contact with the secretariats of courts and prosecutors' offices,

- Contact the designated representative of the Police,
- The method of "snowball" - based on indications of other participants of qualitative research.

THE TIMETABLE OF THE RESEARCH WORK

Research work in the study area number 1 and 2 was carried out for two months from the moment when the agreement commissioning the study was signed, i.e. starting on 19 February 2015.

Research work in study area number 3 will take up between two and eight months from the moment when the agreement commissioning the study is signed, i.e. by August 19, 2015. This report presents study results at the end of May 2015.