

Iwona Sierocka

University of Białystok

iwona_sierocka@poczta.onet.pl

Mediation Procedure in Labour Law Disputes

Abstract: The subject matter of the dissertation embraces issues concerning mediation in labour law disputes. The article is focused on the amendments which were enacted into the Civil Procedure Code on 1 January 2016. They should contribute to an increase in significance and popularity of mediation, which is alternative to judicial procedures and relatively inexpensive. As previously, mediation may be conducted under an agreement between the parties (employee and employer) and the mediator or the decision of the court. At present the court may refer the parties to mediation at every stage of judicial procedures and it can proceed in that way many times. Moreover, before the first trial the court may oblige the parties to take part in an information meeting concerning mediation. The aim of the meeting is to impel the parties to reach agreement. In spite of the fact that mediation, as before, is voluntary, the legislator has enhanced instruments which are supposed to restrain the parties from an unjustified refusal to participate in mediation proceedings. According to the Civil Procedure Code, the party may be charged for legal expenses.

Keywords: mediation, mediator, agreement, employer, employee, civil procedure

1. Introduction

The doctrine defines mediation as proceedings aimed at an amicable resolution of the dispute between the parties conducted by the third party (a mediator) who helps the parties reach a settlement¹. Mediation is similarly understood by the European law provisions. Pursuant to Art. 3, letter a of the Directive 2008/52/EC of the European Parliament and of the Council of 21 May 2008 on certain aspects of mediation in civil and commercial matters², 'mediation' means a structured process, however named or referred to, whereby two or more parties to a dispute attempt by

1 See: G. Goździewicz, *Mediacje i arbitraż w polskim prawie pracy*, (in:) G. Goździewicz (ed.), *Arbitraż i mediacja w prawie pracy. Doświadczenia amerykańskie i polskie*, Lublin 2005, p. 10; M. Liwo, E. Nowosiady-Krzywonos, *Mediacja zamiast sądu w prawie pracy*, "Palestra" 2012, No. 3/4, p. 70; M. Sychowicz, (in:) A. Marciniak, K. Piasiecki (ed.), *Kodeks postępowania cywilnego. Tom I. Komentarz. Art. 1-366*, Warszawa 2014, p. 651.

2 Official Journal of the EU L 136 of 24.05.2008, p. 3. The Directive applies to transnational disputes.

themselves, on a voluntary basis, to reach an agreement on the settlement of their dispute with the assistance of a mediator. This process may be initiated by the parties or suggested or ordered by a court or prescribed by the law of a Member State. It includes mediation conducted by a judge who is not responsible for any judicial proceedings concerning the dispute in question. It excludes attempts made by the court or the judge seised to settle a dispute in the course of judicial proceedings concerning the dispute in question.

Mediation has been functioning in Poland since 1991. This institution was first applied in the area of collective labour law as one of the mandatory stages of resolving collective disputes³. Later on, mediation was admitted to criminal cases⁴ and juvenile cases⁵, and in 2005 to civil cases⁶ as well. With regard to civil cases, mediation as an alternative (to litigation) method of dispute resolution is allowed in cases where a settlement is admissible (Art. 10 of the Code of Civil Procedure). That is to say, it particularly concerns labour law disputes (Art. 476 of the CCP). On the other hand, social insurance disputes are excluded from mediation (Art. 477¹² of the CCP). Previously, cases examined in orders to pay or payment procedures could not be referred to mediation too. Since 1 January 2016 such cases may be resolved in mediation unless objections were effectively lodged.

Even though disputes between employees and employers may have been resolved by mediation for over ten years now, this instrument has not attracted too much interest of labour law subjects so far⁷. Marginal importance of mediation, which is recognized as a modern and relatively cheap instrument of conflict resolution, ensues, among others, from a lack of sufficient knowledge about this institution practice possessed by practitioners⁸. This fact and the amended provisions of the Code of Civil Procedure⁹ have spurred discussion on mediation in labour law. Issues concerning initiation and pursuit of mediation in labour law disputes with a particular focus on recent changes will be discussed below.

2. Legal basis of mediation

Pursuant to Art. 183¹ § 2 of the CCP, mediation proceedings may be carried out under a mediation agreement or court decision. For this reason, mediation has been

3 Act of 23 May 1991 on resolution of collective disputes, uniform text: Journal of Laws of 2015, item 295.

4 Act of 6 June 1997 – Code of Criminal Procedure, uniform text: Journal of Laws of 2016, item 1749.

5 Act of 15 September 2000 on amending the Act on Juvenile Proceedings, Journal of Laws No. 91, item 1010.

6 Act of 28 July 2005 on amending the Code of Civil Procedure and some other Acts, Journal of Laws No. 172, item 1438.

7 Ministry of Justice data reveal that in 2013, 324 labour law disputes were referred to mediation in the basis of a court's decision, 57 of which completed with a settlement.

8 See: A. Majerek, *Problematyka kwalifikacji mediatorów sądowych*, (in:) J. Czapska, M. Szeląg-Dylewski (ed.), *Mediacje w prawie*, Kraków 2014, p. 45-46.

9 Act of 10 September 2015 on amending some Acts due to supporting out-of-court methods of dispute resolution, Journal of Laws, item 1595.

divided into conventional, also known as contractual, private or out-of-court, and court referred, also known as court ordered¹⁰.

In a mediation agreement the parties, in particular, define the subject of mediation and a mediator, or a manner of his or her choice (Art. 183¹ § 3 of the CCP). Opposite to civil law relations, where the subject of mediation can be generally defined, in labour law disputes it must be precisely provided¹¹. Thus a contractual decision envisaging mediation in all labour law disputes existing between the parties and resulting from employment relation is insufficient¹².

Due to the lack of reservations envisaged by the Code as to the form of this agreement, it may be concluded in an oral or written form or even allegedly through an expressed consent by the party to mediation when the other party applied for it. The first form of mediation is the most advantageous due to evidence. A mediation agreement may be concluded at any time. Parties to the employment relation may do this both before and after the dispute, before a court trial or during litigation.

Decisions concerning mediation may be concluded in a separate agreement or as an autonomous clause directly in the agreement referring to the legal relation under which a dispute may arise in the future, e.g. in an employment contract¹³.

The doctrine treats a legal nature of a mediation agreement differently. Some believe that a mediation agreement is a type of the so called procedural agreement, i.e. an agreement where a main direct effect is manifested on the procedural level and where the parties' will is directed towards the modification of rules of civil procedure¹⁴. By concluding this agreement, a dispute is handed over to mediation; none of the parties acquires financial or non-financial benefits in effect thereof¹⁵. Others claim that a legal contractual relation arises between the mediator and the parties to a dispute (an employee and employer) – the agreement which is subject to the provisions of the Civil Code concerning contracts of agency¹⁶. M. Malczyk disagrees claiming that a mediation agreement can neither be treated as a contract of agency nor any other service contract subject to the provisions on contracts of agency because it is not a contract obliging to perform a set of legal and factual actions¹⁷. M. Pazdan thinks the same claiming that since a mediation agreement does not generate any

10 See: M. Macyszyn, M. Śledzikowski, Umowa o mediację w prawie polskim – wybrane zagadnienia, "ADR" 2015, No. 3, p. 5.

11 See: D. Dziensiuik, M. Latos-Milkowska, Mediacja a specyfika spraw z zakresu prawa pracy, "PiZS" 2011, No. 1, p. 20.

12 See: K.W. Baran, Mediacja w sprawach z zakresu prawa pracy, "PiZS" 2006, No. 3, p. 2.

13 See: K.W. Baran, (in:) K.W. Baran (ed.), Procesowe prawo pracy. Wzory pism, Warszawa 2013, p. 118.

14 See: K. Weitz, Mediacja w sprawach gospodarczych, (in:) System prawa handlowego. Tom 7. Postępowanie sądowe w sprawach gospodarczych, Warszawa 2007, p. 248; E. Stefańska, (in:) M. Manowska (ed.), Kodeks postępowania cywilnego. Komentarz, Warszawa 2015, p. 512.

15 See: R. Kulski, Umowy procesowe w postępowaniu cywilnym, Kraków 2006, p. 170 et seq.

16 See: A. Marek, Mediacja – sposób rozwiązywania sporów pracowniczych, "St. Prac." 2008, No. 3, p. 12; J. Kuźmicka-Sulikowska, Podstawa prawna odpowiedzialności cywilnej mediatora, "ADR" 2008, No. 3, p. 85; P. Sobolewski, Mediacja w sprawach cywilnych, "PPH" 2006, No. 2, p. 36.

17 See: M. Malczyk, (in:) A. Góra-Błaszczkowska (ed.), Kodeks postępowania cywilnego. Tom I. Komentarz. Art. 1-729, Warszawa 2016, p. 591.

obligation to perform a legal action, it cannot be treated as a contract of agency. Furthermore, it does not have features of a civil law company agreement too. In effect, mediation should be treated as an agreement *sui generis* regulated partly in the Code of Civil Procedure and Civil Code¹⁸. This opinion is shared by R. Morek, who believes that it is much more accurate to claim that mediation is an agreement *sui generis* – of a mixed nature – showing similarity to both substantive law agreements and procedural agreements. A procedural nature of this agreement is confirmed by the place of regulating this institution, its main objective, which is resolution of a conflict and reaching a settlement between the parties, and a legal effect it evokes (Art. 202¹ of the CCP). Whereas its substantive law nature is confirmed by a lack of jurisdictional competence of a mediator and the fact that mediation may be alternative to litigation¹⁹. Ł. Błaszczak is of a similar opinion – he defines this agreement as a separate type of a nominate contract regulated outside the Civil Code, mutually binding but not mutual and creating a legal relation of a permanent nature²⁰. This last opinion is the most convincing. It is worth emphasizing that in the light of the regulations of the Code of Civil Procedure, the parties to the agreement should attempt to resolve a conflict before the initiation of litigation; a settlement that is not confirmed by the court is also binding whilst a procedural effect is the result of actions pursued by the parties that are not always litigants. In effect thereof, a mediation agreement should be qualified as an agreement of substantive law regulated by the Code of Civil Procedure.

In order to make the parties settle a dispute amicably before bringing the case to a court, the legislator obliged a plaintiff to inform in a petition whether the parties tried to resolve their dispute in mediation, and if such an attempt was not made, to explain why. Failure to include information about mediation in a petition does not evoke negative consequences for the party; its lack, in particular, is not a circumstance justifying a return of the petition.

Pursuant to Art. 183¹ § 2 of the CCP, mediation may also be initiated under the court's decision to refer the case to mediation. Previously, the court was entitled to issue a relevant decision to close the first session scheduled for a hearing while after its closure it was possible exclusively upon a mutual request of the parties. Moreover, such actions could only be undertaken once during the proceedings. Presently, the court may take advantage of this right at every stage of the proceedings and, significantly enough, more than once. New regulations provide courts with more flexibility and increase chances for an amicable resolution of a conflict thus shortening the pro-

18 See: M. Pazdan, Umowa o mediację, (in:) Księga pamiątkowa ku czci Profesora Janusza Szewca. Prace z wydziału prawa i ochrony własności intelektualnej, Kraków 2004, p. 264.

19 See: R. Morek, Umowa o mediację i jej charakter, (in:) M. Pazdan, W. Popiołek, E. Rott-Pietrzyk, M. Szpunar (ed.), Europeizacja prawa prywatnego, tom I, Kraków 2008, p. 773.

20 See: Ł. Błaszczak, Charakter prawny umowy o mediację, "ADR" 2008, No. 1, p. 26.

ceedings too. It happens that at the beginning of litigation the parties are absolutely against mediation while later they become more willing to undertake it.

Referring the parties to mediation, the court establishes its duration (prolonged) for up to three months. The need to introduce changes within this scope ensued from the previous practice. Considering that mediations generally lasted longer than a month, prolonging the initially adopted time limit, the legislator made a possibility of reaching a settlement real. A three-month period is instructive in nature. Upon an amicable request of the parties or due to other important reasons, time limit for mediation may be prolonged if it contributes to an amicable resolution of the dispute. Time of mediation is not counted into time of litigation. A presiding judge generally schedules a hearing after the lapse of a specified time period. It may be designated before this date if just one party to the conflict declares they do not agree to mediation.

According to Art. 10 of the CCP, courts are obliged to aim at an amicable resolution of the case at each stage of the proceedings, in particular by encouraging the parties to mediation. Art. 183⁸ § of the CCP corresponds fully to the above regulation stipulating that a presiding judge may request the parties to take part in an information session concerning amicable methods of dispute resolution, mediation in particular. This meeting may be conducted by a judge, court refendary, judicial clerk, judge's assistant or permanent mediator. Within this scope, Polish regulations are in compliance with Art. 5 of Directive 2008/52. An information meeting is not only to provide important information about mediation but also persuade the parties to take advantage of this alternative method of conflict resolution. A decision on how to hold such meetings has been left to individual courts' discretion. What is more, before the first session scheduled for a hearing, a presiding judge decides if the parties should be referred to mediation. If he or she believes it is first necessary to listen to the parties, a presiding judge may summon the parties to appear in person in a closed session (§ 5). The party that will not attend an information meeting or closed session without any justification may be burdened with the cost of ordered appearance borne by the opposite party. Furthermore, the provisions of the Code of Civil Procedure envisage that if the parties concluded a mediation agreement before the launch of litigation, the court refers the parties to mediation with regard to the defendant's objection raised before the dispute about the essence of the case. New regulations on encouragement and dissemination of knowledge about mediation should contribute to increased popularity of mediation and its importance in resolution of conflicts between the subjects of employment relation.

3. Voluntary mediation

Pursuant to Art. 183¹ § 1 of the CCP, a basic feature of mediation distinguishing it from litigation is its voluntary character. The principle of voluntary participation

applies equally to the parties and mediator, especially if he or she has been selected *ad hoc*. Consequently, neither the motion for mediation submitted by one of the parties (employee or employer) nor referral of the case to mediation by the court are binding. The principle of voluntary participation is fulfilled at every stage of proceedings, which means that each party to the employment relation may refuse to take part in mediation at any time not suffering negative procedural consequences for it²¹. The party that refuses to take part in mediation without any reasonable justification may only be encumbered with the costs of proceedings. Circumstances which do not justify the refusal to the slightest degree should be treated as “no reasonable justification”. It is worth emphasizing that pursuant to Art. 103 § 2 of the CCP in a new reading, a financial penalty may be imposed on every subject refusing to take part in mediation. Previously, negative financial consequences served to discipline the subject who initially agreed to mediation to prolong litigation and then withdrew his or her consent²².

The principle of voluntary participation is also fully enjoyed by a mediator selected *ad hoc*. He or she has the right to refuse a proposal to conduct mediation within a week from the date of being served a motion to carry out mediation. It is not necessary to provide the reasons for the refusal (Art. 183⁶ § 2 point 2 and 3 of the CCP). On the other hand, a permanent mediator is entitled to this only for important reasons, which he or she must immediately inform the parties about if they have been referred to mediation by the court, and the court too (Art. 183² § 4 of the CCP). A refusal is fully reasonable if mediator’s impartiality may arise any doubts. It may occur if the mediator is connected to one of the parties to the dispute, or personally interested in a specific resolution.

The principle of voluntary participation also refers to the settlement reached between an employee and employer. Remembering that a settlement is, in its essence, a compromise between each party’s demands, its content cannot be imposed by a mediator. This conclusion is confirmed in a new Art. 183^{3a} of the CCP, which stipulates that a mediator conducts mediation using different methods aimed at an amicable resolution of a dispute, including supporting the parties in formulating settlement’s proposals or, upon a mutual request of the parties, he or she may indicate ways of dispute resolution which are not binding the parties. The content of the above mentioned provision implies that solutions presented by a mediator are only proposals the parties in conflict may reject not suffering any negative consequences for that.

Voluntary mediation is the effect of the principle expressed in Art. 45 par. 1 of the Polish Constitution, which enshrines everyone’s right to a fair and open trial by

21 See: A. Mucha, Czy obecna konstrukcja prawna mediacji jest efektywna ekonomicznie? O kosztach społecznych mediacji w ujęciu ekonomicznej analizy prawa, (in:) J. Czapska, M. Szelaǳ-Dylewski (ed.), *Mediacje...*, *op. cit.*, p. 64.

22 See: Z. Miczek, *Mediacja w sprawach cywilnych*, PPH 2006, No. 6, p. 12.

an independent, impartial and sovereign court. This feature is also emphasized in the EU provisions (point 13 of the Preamble and Art. 5 of Directive 2008/52).

4. Initiation of mediation

Mediation starts when a mediator is served a mediation motion with enclosed confirmation of the receipt of its official copy on the other side thereof (Art. 183⁶ § 1 of the CCP). As previously, in situations enumerated in the Act, regardless of a relevant motion being sent, mediation is not launched. Circumstances evoking such an effect embrace, in particular: a refusal to carry out mediation submitted within a week by a permanent mediator, *ad hoc* mediator or a person designated by one of the parties to the mediation agreement where a mediator was not specified as well as no consent given by the other party to carry out mediation by the selected mediator within the same time limit. According to new regulations, if in the situations listed above the party brings a lawsuit for the claim covered by the mediation motion within three months since the day: 1) on which the mediator or the other party submitted a statement in effect of which mediation has not been initiated, or 2) following the day from the lapse of a week on which the mediation motion was served if the mediator or the other party did not make such a statement – with regard to this claim, the effects envisaged for the launch of mediation will be maintained. It results *expressis verbis* from the content of the above provision that the limitation period shall be interrupted if within a statutory time limit – not exceeding three months since the mediator or the opposite party rejected a mediation proposal, and in the event of their silence, within three months since the day on which a statement on refusal could be served – a lawsuit is brought for the claim which was to be resolved in mediation (Art. 123 § 1 point 3 of the CCP).

Mediation proceedings are private. Additionally, the legislator obliges a mediator, parties and other persons taking part in mediation to keep facts they learnt in the course of mediation secret. This requirement is not absolute because pursuant to Art. 183⁴ § 2 sentence 2 of the CCP, the parties may exempt a mediator and other persons taking part in mediation from the ban on not disclosing circumstances which were revealed in mediation. A concerted action of the parties in conflict is necessary within the above scope, which means that the authorization given by only one of them does not exempt from the obligation envisaged in the discussed provision. It should be emphasized that due to its exceptional character, Art. 183⁴ § 2 sentence 2 of the CCP must be strictly interpreted. Considering that solely a mediator and other persons are listed in this provision, the parties to the dispute are obliged to keep any information acquired during mediation secret, without any exception. Moreover, the legislator restricts that invoked settlement proposals, proposals of mutual conces-

sions or other statements made during mediation in the course of proceeding before the court or arbitration courts shall be ineffective.

A purpose of mediation is reaching a settlement²³. In accordance with previously valid provisions, each settlement, i.e. reached during mediation carried out under a relevant agreement or a decision to refer the parties to mediation, had to be confirmed by a competent court. In consequence, immediately after reaching a compromise, a mediator was obliged to submit the minutes of mediation proceedings with the court. The above rules have not been changed in relation to mediations based on a court decision. While in the event of contractual mediations, a mediator submits the minutes if, after reaching a settlement, the party applies to the court for its confirmation. Amending the Code provisions, the legislator intended to enhance the importance of out-of-court settlements. If the parties voluntarily fulfil obligations contained in the agreement, there is no need to engage the court. The court undertakes relevant action upon the party's request. Confirmation of the settlement and making it enforceable – if it is subject to enforcement in executive proceedings – shall be carefully analyzed with regard to, among others, compliance with the law, principles of community life, content and consistence.

5. A mediator

A mediator may only be a natural person with a full capacity to perform legal actions enjoying full civil rights regardless of a nationality, education or profession. The only restriction here is a judge who cannot fulfil this function, except retired judges. During legislative works on the drafted Act of 10 September 2015, it was proposed to extend practice and competency requirements for mediators: they must be competent and have relevant skills and knowledge about mediation, be at least 26 years old, and speak Polish. Moreover, they cannot be validly convicted of an intentional offence or prosecuted for such an offence, and they must be entered in the registry of permanent mediators²⁴. Eventually, the legislator confined himself to previous solutions. Although it does not directly ensue from the Code provisions that a person

23 See: K.W. Baran, *Mediacja...*, *op. cit.*, p. 4 et seq.; K.W. Baran, *Ugody zawarte przed mediatorem w sprawach z zakresu prawa pracy*, (in:) A. Świątkowski (ed.), *Studia z zakresu prawa pracy i polityki społecznej*, Kraków 2006, p. 119 et seq.; R. Flejszar, *Ugodowe rozwiązywanie sporów z zakresu prawa pracy*, (in:) A. Świątkowski (ed.), *Studia z zakresu prawa pracy i polityki społecznej*, Kraków 2010, p. 315 et seq.; A. Marek, *Mediacja...*, *op. cit.*, p. 12-14.

24 Proposed changes were similar to the requirements imposed on mediators in criminal cases, see: Regulation of Minister of Justice of 7th May, 2015 on mediation in criminal proceedings (Journal of Laws, item 716), which stipulate that a mediator may be a person who: 1) is a Polish national, is a citizen of another EU Member State, or EFTA member state – a party to the European Economic Area or the Swiss Confederation, or a citizen of another state if pursuant to the EU law provisions he or she is entitled to work or be self-employed within the Republic of Poland under rules specified in these provisions, 2) fully enjoys public civil rights and has a full capacity to perform legal acts, 3) is over 26 years old, 4) is fluent in Polish (spoken and written), 5) has not been validly convicted of an intentional offence or intentional tax offence, 6) has knowledge and skills to carry out mediation, resolve conflicts and establish interpersonal relations, 7) guarantees proper fulfilment of his or her duties, 8) has been entered into a relevant registry.

with relevant essential preparation may be a mediator, it is undoubtedly a mediator who decides about the success of mediation to a large degree. Therefore it should be a person who has appropriate knowledge and experience in mediation, enjoying community respect and trust. Knowledge of law, psychology, ethics and different methods of amicable resolution of dispute is equally important too²⁵. Highly professional mediators positively affect the course of mediation thus increasing a chance of reaching a compromise and enhancing community trust in amicable resolution of disputes.

Within the scope of their statutory tasks, non-governmental organizations, particularly employers' organizations and trade unions, as well as universities (state and private) may keep registers of mediators and open mediation centres. A mediator may be entered into this registry solely upon his or her written consent. Information about registries of mediators and mediation centres is conveyed to the president of a regional court. He or she should be notified about individual mediator's specialization or expertise to facilitate the right choice of a mediator by both the parties and the court. Registries embracing permanent mediators are not binding, which means that mediation may be conducted by a person selected *ad hoc* by the parties to the employment relation or the court (Art. 183⁹ § 1 of the CCP).

The right to choose a mediator is firstly vested in the parties to the proceedings; if they cannot agree thereto, a mediator is selected by the court referring the case to mediation.

As previously, a mediator is obliged to carry out mediation impartially. Added Art. 183³ § 2 of the CCP fully corresponds to this obligation stipulating that the obligation to immediately notify the parties about the circumstances that may evoke doubts as to the mediator's neutrality. The draft's reasoning underlined that the change within the above scope will enhance the mediator's credibility by convincing the parties that they have no conflict of interest with the mediator, in effect of which the conflicting parties will be encouraged to resolve their dispute out-of-court²⁶.

The Code solutions adopted in the above scope correspond to the regulations of Art. 4 of Directive 2008/52 stipulating that Member States shall encourage the initial and further training of mediators in order to ensure that the mediation is conducted in an effective, impartial and competent way in relation to the parties.

A mediator has the right to remuneration for his or her activities and reimbursement of expenses connected with the mediation. These include the cost of travel, notification of the parties, stationery and renting a place to carry out mediation²⁷. Pursuant to the regulations of the Code of Civil Procedure (Art. 183⁵), a mediator may waive their remuneration whereas additional expenses – being obligatory – bur-

25 See: Mediator Code of Ethics prepared by Polish Centre of Mediation, www.mediator.org.pl.

26 See: reasoning to the drafted Act, www.sejm.gov.pl.

27 See: Regulation of Minister of Justice of 30 November 2005 on remuneration and reimbursement of expenses incurred by a mediator in civil proceedings, uniform text: Journal of Laws of 2013, item 218.

den both or one party to the proceedings depending on relevant arrangements. It should also be noticed that the exemption from court costs does not cover expenses connected with the cost of mediation carried out due to the court's referral, which are included in the cost of a trial (Art. 98 and Art. 98¹ of the CCP).

6. Conclusion

Amended provisions of the Code of Civil Procedure, which came into force on 1 January 2016, should contribute to the enhanced importance of mediation in resolving civil cases, especially labour law disputes. A mandatory statement on undertaking mediation made in a petition, participation in an information meeting concerning mediation and, finally, a possibility to refer a disputed case to mediation many times, at every stage of the proceedings, serve the above mentioned purpose. A waived requirement to confirm a settlement negotiated before a mediator each time by the court is not without significance too. Voluntary fulfilment of obligations set forth in an out-of-court settlement does not require the court's involvement. An extended period of mediation carried out on the basis of the court's decision should be approved of. A three-month period increases a chance of an amicable resolution of a dispute.

BIBLIOGRAPHY

- Baran K.W. (ed.), *Procesowe prawo pracy. Wzory pism*, Warszawa 2013.
- Baran K.W., *Mediacja w sprawach z zakresu prawa pracy*, "Praca i Zabezpieczenie Społeczne" 2006, No. 3.
- Baran K.W., *Ugody zawarte przed mediatorem w sprawach z zakresu prawa pracy*, (in:) A. Świątkowski (ed.), *Studia z zakresu prawa pracy i polityki społecznej*, Kraków 2006.
- Błaszczak Ł., *Charakter prawny umowy o mediację*, "ADR. Arbitraż i Mediacja" 2008, No. 1.
- Dzienisiuk D., Latos-Miłkowska M., *Mediacja a specyfika spraw z zakresu prawa pracy*, "Praca i Zabezpieczenie Społeczne" 2011, No. 1.
- Flejszar R., *Ugodowe rozwiązywanie sporów z zakresu prawa pracy*, (in:) A. Świątkowski (ed.), *Studia z zakresu prawa pracy i polityki społecznej*, Kraków 2010.
- Goździewicz G., *Mediacje i arbitraż w polskim prawie pracy*, (in:) G. Goździewicz (ed.), *Arbitraż i mediacja w prawie pracy. Doświadczenia amerykańskie i polskie*, Lublin 2005.
- Góra-Błaszczkowska A. (ed.), *Kodeks postępowania cywilnego, tom I, Komentarz. Art. 1-729*, Warszawa 2016.
- Kulski R., *Umowy procesowe w postępowaniu cywilnym*, Kraków 2006.
- Kuźmicka-Sulikowska J., *Podstawa prawna odpowiedzialności cywilnej mediatora*, "ADR. Arbitraż i Mediacja" 2008, No. 3.
- Liwo M., Nowosiadły-Krzywonos E., *Mediacja zamiast sądu w prawie pracy*, "Palestra" 2012, No. 3/4.

- Macyszyn M., Śledzikowski M., Umowa o mediację w prawie polskim – wybrane zagadnienia, "ADR. Arbitraż i Mediacja" 2015, No. 3.
- Majerek A., Problematyka kwalifikacji mediatorów sądowych, (in:) J. Czapska, M. Szelaǳ-Dylewski (eds.), Mediacje w prawie, Kraków 2014.
- Manowska M. (ed.), Kodeks postępowania cywilnego. Komentarz, Warszawa 2015.
- Marciniak A., Piasecki K. (eds.), Kodeks postępowania cywilnego, tom I, Komentarz. Art. 1-366, Warszawa 2014.
- Marek A., Mediacja – sposób rozwiązywania sporów pracowniczych, "Służba Pracownicza" 2008, No. 3.
- Miczek Z., Mediacja w sprawach cywilnych, "Przegląd Prawa Handlowego" 2006, No. 6.
- Morek R., Umowa o mediację i jej charakter, (in:) M. Pazdan, W. Popiołek, E. Rott-Pietrzyk, M. Szpunar (eds.), Europeizacja prawa prywatnego, tom I, Kraków 2008.
- Mucha A., Czy obecna konstrukcja prawna mediacji jest efektywna ekonomicznie? O kosztach społecznych mediacji w ujęciu ekonomicznej analizy prawa, (in:) J. Czapska, M. Szelaǳ-Dylewski (eds.), Mediacje w prawie, Kraków 2014.
- Pazdan M., Umowa o mediację, (in:) Księga pamiątkowa ku czci Profesora Janusza Szwejki. Prace z wyznaczości i ochrony własności intelektualnej, Kraków 2004.
- Sobolewski P., Mediacja w sprawach cywilnych, "Przegląd Prawa Handlowego" 2006, No. 2.
- Weitz K., Mediacja w sprawach gospodarczych, (in:) System prawa handlowego, tom 7, Postępowanie sądowe w sprawach gospodarczych, Warszawa 2007.

