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The Effectiveness of Victim-Offender Mediation in Criminal Proceedings Carried Out in 2011-2014 in the District Court of Białystok in the Light of Files Research

Abstract: This article is based on the results of scientific research conducted within the project “The pilot implementation of the Community Court model in Poland as an institutional bridge between the judiciary, local government authorities and social organizations to facilitate the implementation of restorative justice in practice”. The project was funded by the National Centre for Research and Development under the programme “Social Innovations” according to the agreement No. /IS-1/039/ NCBR/2014. Within the project, fifty court cases, which had been previously referred to victim-offender mediation, were examined. All of them were conducted before the Third Criminal Division of the District Court in Białystok in 2011-2014 (first half). The decisive criterion was the date of the court’s decision to refer the case to victim-offender mediation. The ratio of settlements concluded in the course of victim-offender mediation in criminal cases conducted before the District Court of Białystok is about 10-30% lower in comparison to the national average in each of the studied years. The types of crime which are most frequently referred to mediation proceedings in the District Court of Białystok and in other Polish courts do not differ. The crimes against life and health, honour and personal inviolability, the family and guardianship, property as well as against freedom are the most common. The motions for victim-offender mediation are usually filed by the counsels for the defence and by the accused themselves, and subsequently the court. The best results in mediation settlements are reached in the cases of a joint initiative of the parties. In cases in which the settlement was concluded, the court most frequently applied a conditional discontinuance of proceedings or imprisonment with conditional suspension of its execution. The failure of mediation resulted mainly from the lack of agreement by the parties, and subsequently from the absence or refusal to participate in mediation by the accused or the victims. Mediation completed with a settlement effectively prevents from lodging an appeal against the sentence of the first instance court. The appeal was lodged only in 12.5% of such cases.

Keywords: victim-offender mediation, effectiveness, criminal proceedings

The article presents the results of research conducted within the project “The pilot implementation of the Community Court model in Poland as an institutional bridge between the judiciary, local government authorities and social organizations

to facilitate the implementation of restorative justice in practice”¹. One of the objectives of the project assumed examination of fifty court cases referred to mediation. A main purpose of the project was evaluation of the state and barriers of a wider application of restorative justice methods by the justice system and community participation in criminal proceedings. Apart from lay judges, community (social factor) was understood here as a social organization representative being the so called advocate of public interest, the entity providing a guarantee as a preventive measure as well as a mediator conducting mediation between the victim and defendant. A partial purpose, related directly to files research, was to diagnose selected aspects of criminal proceedings with regard to mediation and its results. Due to editorial profile and limitations, the article presents only some issues that have been examined in connection with the effectiveness of mediation and affecting factors. Furthermore, the institution of mediation in the Polish criminal law has not been described here as this issue is a subject matter of many commonly available scientific studies².

The research embraced selected cases conducted in the Third Criminal Division of the District Court in Białystok in 2011, 2012, 2013 and the first half of 2014. The cases were selected from the list of mediations MED in the above mentioned period while a decisive criterion was a date of the court decision to refer the victim and defendant to mediation.

Table 1. A number of mediations and their results in individual years

Year	Cases referred to mediation		Mediations completed with a settlement		Mediations without a settlement	
	number	%	number	%	number	%
2011	16	32	7	43.75	9	56.25
2012	11	22	4	36.4	7	63.6
2013	14	28	8	57.2	6	42.8
2014 – first half	9	18	5	55.6	4	44.4
Total	50	100	24	48	26	52

Source: the author's own study.

1 The project was funded by the National Centre for Research and Development under the programme “Social Innovations” according to the agreement No. /IS-1/039/NCBR/2014.

2 See, among others, recent publications: L. Mazowiecka (ed.), *Mediacja karna jako forma sprawiedliwości naprawczej*, Warszawa 2011; E. Bieńkowska, *O unormowaniu mediacji w sprawach karnych*, “Prokuratura i Prawo” 2012, No. 1, p. 19-36; L. Mazowiecka (ed.), *Mediacja w praktyce prokuratorskiej – dziś i jutro*, Warszawa 2012; L. Mazowiecka (ed.), *Mediacja karna jako instytucja ważna dla pokrzywdzonego*, Warszawa 2013; D. Szumiło-Kulczycka, *Proces karny a idea sprawiedliwości naprawczej*, (in:) P. Hofmański (ed.), *System prawa karnego procesowego. Tom I. Cz. 2. Zagadnienia ogólne*, Warszawa 2014, p. 365-415; J. Czapska, M. Szelaąg-Dylewski (ed.), *Mediacje w prawie*, Kraków 2014; L. Mazowiecka (ed.), *Unijne standardy programów sprawiedliwości naprawczej*, Warszawa 2015.

In the analyzed period, each year over a dozen cases were referred to mediation (to the end of September 2014, 13 cases were entered in the MED list). Taking the number of such cases into account (3254 cases in 2011 and 2012, respectively, 3696 cases in 2013, and 3770 cases in 2014³) as well as a number of district and regional courts in Poland (over 360), the Third Criminal Division of the District Court in Białystok is statistically slightly above the average number of cases referred to mediation in one court. Nevertheless, the number of cases potentially suitable for mediation may also be affected by the fact that compared to other appeals, Prosecutors of Białystok Appeal Court very often refer cases they are investigating to mediation already during preparatory proceedings⁴. Therefore a number of such cases is, to a large degree, exhausted in preparatory proceedings, which means their number in court proceedings is inevitably lower. Thus a number of cases annually referred to mediation by the District Court in Białystok that is above the Polish average should be highly assessed all the more.

The effectiveness of mediation understood as a settlement between the victim and defendant reached in its effect varied. Nevertheless, every year embraced by the study it was beneath the Polish average, which for years has reached the same level of 60-70% of mediations completed with a settlement compared to all cases referred to mediation⁵. Altogether, a number of mediations completed with a settlement constitutes nearly half of all mediations out of the fifty examined cases⁶. It should be noticed that in four cases where a settlement was not reached due to discrepancies between the parties, the victims were apologized and the apology was accepted while in another two cases – the parties expressed their mutual willingness to reconcile.

3 Statistical data of the Department of Courts, Organization and Judicial Analyses of the Ministry of Justice, <http://ms.gov.pl/pl/dzialalnosc/mediacje/publikacje-akty-prawne-statystyki/> (19 December 2016).

4 See data in: D. Kuźelewski, *Mediacja w procesie karnym w opinii sędziów i prokuratorów – wybrane zagadnienia*, (in:) C. Kulesza (ed.), *Ocena funkcjonowania porozumień procesowych w praktyce wymiaru sprawiedliwości*, Warszawa 2009, p. 258-259; E. Wildner, *Stosowanie mediacji w postępowaniu przygotowawczym – wybrane zagadnienia*, (in:) J. Czapska, M. Szełąg-Dylewski (ed.), *Mediacje w prawie*, Kraków 2014, p. 289; *Sprawozdania Prokuratora Generalnego z rocznej działalności prokuratury w roku 2010, 2011, 2012, 2013, 2014 i 2015*, <http://pk.gov.pl/sprawozdania/sprawozdania-prokuratora-generalnego-1133-2.html> (19 December 2016). A percentage of cases referred to mediation in preparatory proceedings by Prosecutors of Białystok Appeal Courts in the discussed period compared to the whole country amounted to: in 2011 – 57,5%, in 2012 – 60,3%, in 2013 – 57,8%, and in 2014 – 57,1%. The recent data for 2015 indicate considerable decline of this ratio to 48,7%.

5 Statistical data of the Department of Courts, Organization and Judicial Analyses of the Ministry of Justice, <http://ms.gov.pl/pl/dzialalnosc/mediacje/publikacje-akty-prawne-statystyki/> (19 December 2016). Higher ratios of concluded settlements than in Białystok were also achieved in four Cracow district courts in 2010-2011: respectively 61% out of a total number of 172 cases referred to mediation, and 53% out of 211 cases – see: M. Chalimoniuk-Zięba, G. Oklejak, *Stosowanie postępowania mediacyjnego w sprawach karnych w latach 2010-2011, analiza na podstawie badań aktowych przeprowadzonych w krakowskich sądach rejonowych*, (in:) J. Czapska, M. Szełąg-Dylewski (ed.), *Mediacje w prawie*, Kraków 2014, p. 324. An example of a much lower ratio (29,9%) in older research carried out in Warsaw – see: M. Mendelska-Stec, *Wyniki badań. Funkcjonowanie instytucji mediacji w Polsce*, "Mediator" 2005, No. 3, p. 52-53.

6 One of the qualified cases which resulted in no settlement was actually more complicated. The victim and three defendants took part in mediation completed with an apology and settlement concerning damages and compensation; then their case was excluded for a separate examination. The other two defendants did not turn up at a mediation meeting – thus mediation failed in their case.

Table 2. A number of mediations and their results with regard to the course of proceedings

A course of proceedings	Cases referred to mediation		Mediations completed with a settlement		Mediations without a settlement	
	number	%	number	%	number	%
Ordinary	5	10	3	60	2	40
Simplified	23	46	14	60.9	9	39.1
Simplified changed into ordinary	9	18	3	33.3	6	66.7
Private prosecution	13	26	4	30.8	9	69.2
Total	50	100	24	48	26	44

Source: the author's own study.

Even though mediation (alternative to a settlement session) is a mandatory element of private prosecution, only 26% of cases referred to mediation were conducted under this course. Participants of such mediations were also the least amicable – only 4 in 13 (30.8%) mediations under such a course finished with a settlement. Overwhelming majority of cases involving mediation were still carried out in the then functioning simplified criminal proceedings whilst in some cases the course of proceedings was changed into ordinary. Cases finished under a simplified course brought the highest ratio of settlements among all courses – 60.9%.

Table 3. A number of mediations and their results with regard to a type of offence

A type of offence	Cases referred to mediation		Mediations completed with a settlement		Mediations without a settlement	
	number	%	number	%	number	%
Against life and health	19	38	4	21.1	15	78.9
Against transport safety	2	4	2	100	0	0
Against freedom	4	8	1	25	3	75
Against family and guardianship	8	16	7	87.5	1	12.5
Against honour and personal inviolability	9	18	4	44.4	5	55.6
Against the employees' rights	1	2	1	100	0	0
Against property	7	14	5	71.4	2	28.6
Total	50	100	24	48	26	52

Source: the author's own study.

On the basis of legal classification of prohibited acts the defendants were charged with, types of offences that were most often referred to mediation were established as well as those which were most suited for mediation due to their final result. As in some cases the charges embraced two and more concurrent provisions, to simplify the situation such acts were classified into categories with regard to their main aspect, e.g. abuse or cruelty (Art. 207 § 1 of the CC) concurrent with bodily injury (Art. 157 § 1 or § 2 of the CC) or battery (Art. 217 § 1 of the CC) were classified as offences against family and guardianship, deprivation of freedom (Art. 189 § 1 of the CC) concurrent with bodily injury (Art. 157 § 1 or § 2 of the CC), aggravated assault (Art. 158 § 1 of the CC) or battery (Art. 217 § 1 of the CC) were classified as offences against freedom. In effect thereof, it may be concluded that among all cases referred to mediation in the discussed period, most of them (38%) involved prohibited acts against life and health (bodily injury under Art. 157 § 1 or § 2 of the CC and aggravated assault under Art. 158 § 1 of the CC), next – offences against honour and personal inviolability (defamation – Art. 216 § 1 of the CC, insult – Art. 206 § 1 of the CC, and battery – Art. 217 § 1 of the CC), against family and guardianship (abuse and cruelty – Art. 207 § 1 of the CC), and against property (robbery – Art. 280 § 1 of the CC, damage of property – Art. 288 § 1 of the CC). The above data confirm conclusions ensuing from the research carried out by other authors related both to mediation in preparatory proceedings⁷ and court proceedings⁸. The above mentioned kinds and types of offences constitute a main subject of mediations in different proportions; they are also accepted by the literature and practitioners as acts that are best suited for conciliation and settlement before a mediator⁹.

Disregarding offences against transport safety and employees' rights due to their single occurrence, the highest effectiveness of mediation was recorded with regard to offences against family and guardianship (settlements in 87.5% cases) and against property (71.4%). The lowest ratio of settlements occurred with regard to cases against life and health (only 21.1%).

7 See: E. Wildner, *Stosowanie...*, *op. cit.*, p. 291.

8 See: data on mediations in Lublin district courts in 1998-2002 – R. Kaszczyszyn, *Rozwój i sytuacja mediacji w Polsce na przykładzie ośrodka lubelskiego*, "Mediator" 2003, No. 2, p. 40. Subsequent research carried out in Lublin confirm that in these courts in 2006-2011 (first half) cases involving offences against family and guardianship, freedom, life and health, and property were most often referred to mediation – see: G.A. Skrobotowicz, *Mediacja karna – studium przypadku*, (in:) J. Czapska, M. Szeląg-Dylewski (ed.), *Mediacje w prawie*, Kraków 2014, p. 305-308. In Cracow courts in 2010-2011 this order was as follows: offences against family and guardianship, life and health, property, honour and personal inviolability, freedom and transport safety – see: M. Chalimoniuk-Zięba, G. Oklejak, *Stosowanie postępowania mediacyjnego...*, *op. cit.*, p. 326.

9 See: H. Pawlak, *Mediacja w świetle danych Ministerstwa Sprawiedliwości*, (in:) Konferencja naukowa: "Mediacja w polskiej rzeczywistości" (11 September 2002), Warszawa 2003, p. 15; D. Wójcik, *Poglądy sędziów na temat mediacji w sprawach karnych*, (in:) K. Krajewski (ed.), *Nauki penalne wobec problemów współczesnej przestępczości. Księga jubileuszowa z okazji 70. Rocznicy urodzin Profesora Andrzeja Gaberle*, Warszawa – Kraków 2007, p. 560; D. Kuzelewski, *Mediacja w procesie karnym...*, *op. cit.*, p. 249; D. Kuzelewski, *Mediacja w polskim procesie karnym w ocenie prokuratorów i sędziów*, (in:) C. Kulesza (ed.), *Porozumienia karnoprocesowe w praktyce wymiaru sprawiedliwości*, Białystok 2010, p. 157-162.

Table 4. A number of mediations and their results with regard to entities applying for mediation

Entities applying for or informing about mediation	Cases referred to mediation		Mediations completed with a settlement		Mediations without a settlement	
	number	%	number	%	number	%
Court (upon the parties' consent)	10	20	3	30	7	70
Defendant's motion	10	20	6	60	4	40
Victim's motion	2	4	0	0	2	100
Both parties' motion	6	12	6	100	0	0
Defence Counsel's motion	14	28	5	35.7	9	64.3
Victim attorney's motion	3	6	0	0	3	100
Prosecutor's motion (upon the parties' consent)	1	2	1	100	0	0
Total	50	100	24	48	26	52

Source: the author's own study.

Motions for mediation were mostly submitted by the defendants and their Defence Counsels (altogether nearly half of all motions). The court was also quite active therein but most cautions (instructions) were made in private prosecutions, where mediation is anyway a mandatory element of the proceedings alternative to a settlement session whilst victims and their attorneys showed small interest (altogether their initiative in only 10% cases). In one case, it was recorded in the files that the prosecutor applied for mediation upon the consent of the parties even though he or she is not entitled to such an initiative under Art. 23a § 1 of the CCP¹⁰.

It is not surprising that the most effective mediations were those carried out upon the amicable motion of both parties, where a settlement was reached in all cases. The amicable motion itself confirmed willingness to reconcile and reach a settlement. On the other hand, absolute failure of mediations motioned by the victims or their attorneys draws attention. In none of five such cases mediation finished with a settlement; moreover, in three cases a mediation meeting was not held at all: in one case the defendant did not agree to mediation, in the second case the defendant did

10 The above cited research carried out in Lublin reveal slightly different proportions with regard to initiating mediation: defendants and their Defence Counsels (44,0%), amicable motion of the defendant and victim (34,8%), the victims and their attorneys or statutory representatives (15,7%), court (3,7%), and public prosecutor (1,8%) – see: G.A. Skrobotowicz, *Mediacja karna...*, *op. cit.*, p. 311. On the other hand, Cracow research reveal a very active role of the court within this scope (72% cases), which not only provided the parties with necessary information but, in some cases, also referred the case to mediation in a session without the parties' participation under Art. 339 § 4 of the CCP, entrusting the mediator with a duty to obtain the parties' consent. Defence Counsels and defendants themselves motioned for mediation in 22% cases, the victim and their attorneys in only 3% cases, while the amicable motion of the defendant and victim occurred in 2% cases – M. Chalimoniuk-Zięba, G. Oklejak, *Stosowanie postępowania mediacyjnego...*, *op. cit.*, p. 324-325.

not turn up, and in the third case the files were returned to the court by the mediator without carrying out mediation.

Table 5. A number of mediations and their results with regard to a number of victims and defendants taking part in mediation

A number of victims	A number of defendants	Cases referred to mediation		Mediations completed with a settlement		Mediations without a settlement	
		number	%	number	%	number	%
1	1	36	72	18	50	18	50
1	2	5	10	2	40	3	60
1	3	2	4	1	50	1	50
1	6	1	2	0	0	1	100
2	1	2	4	1	50	1	50
2	2	2	4	1	50	1	50
2	3	1	2	0	0	1	100
3	3	1	2	1	100	0	0
Total	-	50	100	24	48	26	52

Source: the author's own study.

Overwhelming majority of mediations were carried out according to the following scheme: one victim and one defendant (72% of all cases) and a settlement reached in the middle of the process. Multifaceted schemes on both sides occurred much more rarely while from this perspective, the most interesting one was a successful mediation between three defendants and three victims, however, it was indirect mediation. Considering all schemes other than one victim and one defendant altogether, we can notice their slightly lower efficiency (6 out of 14 mediations completed with a settlement, i.e. by 42.9%).

Table 6. The content of a settlement and the content of a final ruling finishing the proceedings

The content of a settlement	The content of a ruling finishing criminal proceedings	Mediations completed with a settlement	
		number	%
Apology, apology accepted	Discontinuation	4	16.7
Apology and other intangible conditions, or apology and redress of damage or compensation	Conditional discontinuation	12	50

Apology and other intangible conditions, or apology and redress of damage or compensation	Sentence of deprivation of liberty from 6 months to 2 years suspended for specified time, possibly redress of damage or compensation	8	33.3
Total	-	24	100

Source: the author's own study.

Table 6 depicts the impact of a settlement on the content of a ruling finishing criminal proceedings. In four cases involving private prosecution this impact was clear because they finished with reconciliation, and the court was obliged to discontinue proceedings under Art. 492 § 1 of the CCP. In one of the above cases, although the content of the settlement concluded before a mediator was read, the court applied legal grounds under Art. 491 § 1 of the CCP due to unexcused failure to attend an adjourned settlement session by a private prosecutor who was duly notified. The remaining cases were grouped into two categories in a simplified manner – cases finished with a conditional discontinuation of criminal proceedings (half of all cases completed with a settlement after mediation) and a sentence of deprivation of liberty (sometimes accumulated) with suspended enforcement (33.3% cases). Custodial sentences involved minimum 6 months and maximum 2 years of deprivation of liberty. Both kinds of sentences were preceded by settlements which, apart from apologies, in some cases included various intangible obligations, e.g. not to threaten or use negative language or gestures nor undertake prohibited acts against the victim, not to insult the victim by saying words commonly considered as insulting and follow norms of community life, not to use physical and psychological violence, not to drink alcohol and undertake rehabilitation treatment, not to undertake self-willed garden works in the victim's premises, to unload vehicles without causing nuisance for exiting the defendant's premises, stop taking photos and making films of the victim's family, to show mutual respect, not to use vulgar words, to live peacefully with the neighbours and maintain personal contacts limited to necessary interactions with the neighbours, to limit mutual contacts to common greetings, or not to defame each other. In 11 cases completed with a conditional discontinuation of proceedings or a sentence of suspended deprivation of liberty, the settlement reached in mediation contained an agreement about damages or compensation¹¹.

In one case (driving a vehicle under the influence of alcohol – Art. 178a § 1 of the CC, and causing a traffic accident and grievous bodily injury by driving under the influence of alcohol – Art. 177 § 2 of the CC in connection with Art. 178 § 1

¹¹ In Cracow courts judgments in cases where a settlement was reached were slightly more varied. Similar to Białystok, absolute deprivation of liberty was never imposed while conditional discontinuation of proceedings (58% cases) was most often imposed; the second place was taken by discontinuation of proceedings (19%). Conditionally suspended deprivation of liberty was applied in only 9% of cases – see: M. Chalimoniuk-Zięba, G. Oklejak, *Stosowanie postępowania mediacyjnego...*, *op. cit.*, p. 329.

of the CC), mediation completed with a settlement was the basis of the prosecutor's consent to voluntary submission to a penalty by the defendant. Initially, the prosecutor did not agree to such a motion declaring a demand for deprivation of liberty for four years and a driving ban for eight years but he supported the defence counsel's motion for mediation. Thanks to the settlement reached during mediation the prosecutor changed his mind and, together with a statutory representative of the victim, accepted the defence counsel's motion for a cumulative penalty of deprivation of penalty for two years conditionally suspended for the probation period of five years and supervision of a probation officer as well as a cumulative ban on driving motor vehicles for eight years. Apart from the above case, the court accepted a motion for voluntary submission to a penalty by the defendant in four cases where mediation finished with a settlement (in cases with mediation without a settlement sentences under Art. 387 of the CCP were not recorded at all).

Table 7. The content of a final ruling finishing proceedings where a settlement was not reached

The content of a final ruling finishing criminal proceedings	Mediations without a settlement	
	number	%
Acquittal	1	3.8
Discontinuation	4	15.4
Conditional discontinuation	7	27
Deprivation of liberty from 6 months to 2 years suspended for specified time and redress of damage or compensation	9	34.7
Deprivation of liberty	1	3.8
Restriction of liberty	1	3.8
Fine	1	3.8
Pending case	2	7.7
Total	26	100

Source: the author's own study.

Types of rulings finishing criminal proceedings in cases where a settlement was not reached despite mediation were much more varied than in cases with mediation completed with a settlement. Majority of sentences were suspended deprivations of liberty accompanied with a duty to redress damage or compensation as well as conditional discontinuations of criminal proceedings. There was also one acquittal in the case initiated by subsidiary prosecution about illegal logging of trees with intent to appropriate (Art. 290 § 1 of the CC in connection with Art. 278 § 1 of the CC), which was effected due to a lack of sufficient data to justify the suspicion (Art. 414 § 1 of the

CCP in connection with Art. 17 § 1 point 1 of the CCP)¹². In one case the sentence was passed without a hearing upon the motion of the prosecutor submitted under Art. 335 § 1 of the CCP. In two other cases the court did not accept such a motion.

Table 8. The reasons for not reaching a settlement during mediation

The reason for no settlement reached	Number of cases	%
Failure to appear or refusal to take part in mediation by the defendant/defendants	5	19.2
Failure to appear or refusal to take part in mediation by the victim/victims	4	15.4
Lack of mutual agreement	16	61.6
Remission of the case without mediation	1	3.8
Total	26	100

Source: the author's own study.

Despite the fact that cases were referred to mediation, in as many as 10 cases (20% of all researched cases) mediation failed to reach its main stage, i.e. a meeting between the defendant and victim in the presence of a mediator. The defendants and victims alike in approximately the same number of mediations failed to appear or refused to take part in it. Deducting the above mentioned 10 cases, it turns out that a mediation session itself participated by the parties more often finishes with a settlement than not (60% vs. 40% with regard to mediation where the parties met “face to face”, or indirect mediation – only 4 such cases)¹³.

Table 9. A number of cases in comparison to appeals

Appeal	Cases referred to mediation		Mediations completed with a settlement		Mediations without a settlement	
	number	%	number	%	number	%
Filed	11	22	3	12.5	8	30.8
Not filed	34	68	20	83.3	14	53.8

12 Judgments of Cracow courts were similarly varied in case of unsuccessful mediation; yet they adjudicated more equally with regard to a number of cases than the District Court in Białystok. In a range of 10 to 18% of all cases, the following sentences were passed: conditionally suspended deprivation of liberty and fine, conditionally suspended deprivation of liberty, conditional discontinuation of criminal proceedings, discontinuation of proceedings, acquittal, and fine. Absolute deprivation of liberty was imposed only in one case – see: M. Chalimoniuk-Zięba, G. Oklejak, *Stosowanie postępowania mediacyjnego...*, *op. cit.*, p. 332.

13 The causes of failure to reach a settlement formed differently in Cracow courts. Formal reasons prevailed, i.e. a lack of consent to mediation or failure to appear (51% cases) whilst discrepancies between the parties occurred more rarely (32%) – see: M. Chalimoniuk-Zięba, G. Oklejak, *Stosowanie postępowania mediacyjnego...*, *op. cit.*, p. 330.

A case pending case in a first instance during file research	5	10	1	4.2	4	15.4
Total	50	100	24	100	26	100

Source: *the author's own study.*

Appeals were filed in 22% cases that had been earlier referred to mediation. The efficiency of mediation is best illustrated by the proportion between a number of appeals being filed and settlements reached during mediation. Hence only in 3 out of 24 cases referred to mediation and completed with a settlement (i.e. in 12.5% of such cases) an appeal against the first instance ruling was filed. Two appeals were filed by the defence counsels. In these cases the Regional Court in Białystok upheld the first instance judgments. The third appeal was filed by the prosecutor and in consequence thereof the first instance judgment was reversed in the following way: Art. 66 § 1 and 2 of the CC and Art. 67 § 1 of the CC were adopted as the legal basis of a conditional discontinuation of criminal proceedings against the defendants instead of Art. 66 § 1 and 3 of the CC and Art. 67 § 1 of the CC.

A number of cases with mediation but without a settlement where an appeal was filed amounted to 30.8% of all such cases. It means that appeals were filed almost three times more often when mediation did not lead to an agreement between the defendant and victim. Out of 8 appeals filed in such cases, 6 appeals were filed by the defendants' defence counsel or defendants themselves. In 5 of them the judgment was upheld and the appeal was found absolutely groundless while in one case the judgment was reversed (the ruling on a joint and several duty of the defendants to redress damage suffered by the victim amounting to PLN 100 was reversed whilst the amount of the joint compensation to be paid by the defendants for the victim for the afflicted harm was lowered to PLN 10,000; and the first instance judgment was upheld within the remaining scope). In one case the appeal was filed both by the defence counsel and auxiliary prosecutor's attorney. Nevertheless, the judgment was upheld and both appeals were found absolutely groundless. The last case was more complicated because the appeal was filed twice against the judgment of acquittal by a subsidiary auxiliary prosecutor – first the Regional Court in Białystok reversed this judgment and referred the case for re-examination and then, after repeated proceedings in the first instance and appeal filed against another judgment of acquittal, the court upheld the judgment and found the appeal absolutely groundless.

Table 10. A number of cases referred to mediation by individual judges and mediation effects

A judge (F) female; (M) male	Cases referred to mediation		Mediations completed with a settlement		Mediations without a settlement	
	number	%	number	%	number	%
No. 1 (M)	1	2	1	100	0	0
No. 2 (F)	4	8	1	25	3	75
No. 3 (M)	5	10	2	40	3	60
No. 4 (M)	8	16	6	75	2	25
No. 5 (F)	7	14	2	28.6	5	71.4
No. 6 (F)	13	26	7	53.8	6	46.2
No. 7 (F)	10	20	4	40	6	60
No. 8 (F)	2	4	1	50	1	50
Total	50	100	24	48	26	52

Source: the author's own study.

During the studied period, 8 judges referred cases to mediation, among whom the most active were judges No. 6 and 7 (altogether 46% of cases). Of course, we cannot draw too far-reaching conclusions about the causes of different number of cases referred to mediation by individual judges illustrated in Table 10. It is affected not only by specificity of each case and the parties' will but also a total number of cases heard by each judge, which can depend on many factors. Hence we cannot draw conclusions about the statistics connected with mediation efficiency because even a choice of a specific mediator does not guarantee success.

Table 11. Mediators appointed by individual judges

A judge (F) female; (M) male	A mediator (F – female; M – male)						Total
	No. 1 (F)	No. 2 (M)	No. 3 (M)	No. 4 (M)	No. 5 (F)	No. 6 (F)	
No. 1 (M)	0	0	1	0	0	0	1
No. 2 (F)	0	0	0	0	2	2	4
No. 3 (M)	0	0	5	0	0	0	5
No. 4 (M)	0	2	2	1	3	0	8
No. 5 (F)	0	1	2	0	2	2	7
No. 6 (F)	1	0	0	0	2	10	13

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No. 7 (F)	0	0	0	0	2	8	10
No. 8 (F)	0	0	1	0	1	0	2
Total	1	3	11	1	12	22	50

Source: the author's own study.

Data included in Table 11 are not to assess mediation efficiency; yet they reveal if judges have their own “permanent” or “favourite” mediators, or whether they attempt to diversify individuals entrusted by them to carry out mediation. Three judges (No. 3, 6 and 7) had definitely fixed preferences appointing mostly the same mediator. Mediator No. 6 received 18 out of 22 cases just from the judge No. 6 and 7. Interestingly enough, male judges are more willing to appoint male mediators (in 10 out of 14 cases, i.e. in 71.4% of cases) whereas female judges mainly designated female mediators (in 32 out of 36 cases, i.e. in 88.9% of cases). Only the judge No. 4 and 5 referred cases to mediation to 4 mediators out of 6 who were appointed to carry out mediation in the studied period.

Table 12. A number of cases carried out by individual mediators and their effects

A mediator (F – fe- male; M – male)	Cases referred to mediation		Mediations completed with a settlement			Mediations with no settlement reached		
	number	%	number	% of me- diations of a given mediator	% of me- diations completed with a set- tlement	number	% of me- diations of a given mediator	% of me- diations with no settlement reached
No. 1 (F)	1	2	0	0	0	1	100	3.8
No. 2 (M)	3	6	1	33.3	4.2	2	66.6	7.7
No. 3 (M)	11	22	6	54.5	25	5	45.5	19.3
No. 4 (M)	1	2	0	0	0	1	100	3.8
No. 5 (F)	12	24	6	50	25	6	50	23.1
No. 6 (F)	22	44	11	50	45.8	11	50	42.3
Total	50	100	24	-	100	26	-	100

Source: the author's own study.

As indicated above, 6 mediators carried out mediations in the discussed period while half of them was appointed in 45 cases (90% of all mediations)¹⁴. Despite equal

14 Uneven distribution of cases among mediators in the District Court in Białystok is nothing extraordinary considering, e.g., Cracow courts, where one mediator (out of 74 persons and one institution) “monopolized” mediation service because in two years he was appointed to mediate in 338 cases out of 383, at the same time achieving

distribution of mediations with regard to sex, female mediators received 35 cases (70%). Among three leaders who carried out the largest number of mediations, the ratio of success – measured by a number of settlements in relation to all mediations carried out by a given mediator – amounted to 50% with a slight advantage of mediator No. 3. The following conclusions may be ensued from the presented results of the case files research:

- even though the District Court in Białystok is slightly above the average number of cases distributed statistically onto one court (district and regional courts altogether) in Poland, the efficiency of mediation measured by the mediation ratio where settlements were reached in all cases referred to mediation is much lower than the Polish average (this ratio is by app. 10-30% lower in each year embraced by the study),
- only 26% of cases referred to mediation were initiated by private prosecution whilst the ratio of effective settlements was the lowest among all courses of procedure (30.8%), which contradicts the idea of amicable resolution of such cases strongly emphasized in the Code of Criminal Procedure,
- types of offences that are most often subject to mediation in the Regional Court in Białystok is not different from such cases in other courts – they most frequently embrace offences against life and health, honour and personal inviolability, family and guardianship, property, and freedom,
- defence counsels and defendants themselves most often apply for mediation, to be followed by the court, whereas the best result in the form of a settlement is achieved by mediation when both parties apply for it; the initiative of the victim and his or her attorney failed completely because no settlement was reached in any mediation,
- overwhelming majority of mediations (72%) are carried out with the participation of one defendant and one victim,
- none of the cases where a settlement was reached finished with a sentence of absolute deprivation of liberty – in most cases the court applied a conditional discontinuation of proceedings or suspended deprivation of liberty; whereas cases not completed with a settlement were much more variously resolved by the court, nevertheless, most often (in 1/3 of cases) the courts sentenced to suspended deprivation of liberty and conditional discontinuation of proceedings; relatively seldom did settlements result in voluntary submission to a penalty,
- the most frequent cause of failure to reach a settlement was a lack of agreement between the parties (61.6% cases), then failure to appear or refusal to take part in mediation by the defendants or victims,

80% efficiency in reaching a settlement and never applying for prolongation of time limit to terminate mediation – M. Chalimoniuk-Zięba, G. Oklejak, *Stosowanie postępowania mediacyjnego...*, *op. cit.*, p. 325-326.

- mediation completed with a settlement efficiently prevents appeals against the ruling closing the case in a first instance court; an appeal was filed in only 12.5% cases; nearly all appeals – both when a settlement was and was not reached – were not effective and the appeal court upheld judgments finding appeals absolutely groundless,
- individual judges usually appointed the same person as a mediator in their cases; mediators' "diversification" was rare.

Due to the fact that community representatives and lay judges do not act before the court, participation of mediators in a district court in criminal proceedings is now the most significant manifestation of the presence and active role of social factor in a criminal trial. The conclusion ensuing from the interviews carried out with the practitioners of the judiciary and law enforcement as well as probation officers is worth emphasizing here, i.e., practitioners see the potential of the model of a community court and are greatly interested in applying its elements in the Polish criminal trial. They believe that currently mediation between the victim and offender should play a key role.

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