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The Norwegian Model of Victim–Offender Mediation as an Original System Approach[1]

Abstract: Victim–offender mediation is considered the most widespread restorative justice measure. It is an institution based on a universal scheme of activities involving the victim and the offender, yet it occurs in a diverse legal environment. Various legal systems regulate the prerequisites for the use of mediation differently, defining in which cases it can be used and who can be a mediator, or giving an institutional framework to entities offering mediation services. One of the most interesting European mediation systems has been developed in Norway, which can be considered a pioneering country in terms of the origins of victim–offender mediation. Comprehensive legal regulation of mediation is a Norwegian peculiarity; it will be analysed in this article against the background of Polish solutions. This analysis will be a starting point for outlining the pitfalls and challenges facing mediation in Norway.

Keywords: criminal proceedings, National Mediation Service, restorative justice, victim–offender mediation

Introduction

While the legal systems of the USA, the UK, France or Germany are commonly referred to in Polish literature on mediation, the Norwegian concepts are not, but they are still worth bringing up.

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Firstly, Norway was one of the first countries in Europe to regulate mediation in both criminal and civil cases.[2] Mediation in criminal cases in Norway was introduced in the 1980s; initially, it was a pilot project established in 1981 for juvenile delinquents (persons under 18 who had committed a crime for the first time), and was chronologically the first in European countries (Mestitz, 2005, p. 11). Subsequently, from 1983, conflict resolution boards (*konfliktråd*) were established in individual municipalities to implement experimental mediation projects in their areas.[3] Over time, mediation was expanded to include adult offenders, and the restriction to only first-time offenders was abandoned. Criminal cases were referred to conflict resolution boards based on guidelines and circulars from the Director of Public Prosecutions (Kemény, 2000, p. 84; Kemény, 2005, pp. 102–103; Nergård, 1993, pp. 81–82; Paus, 2005, pp. 505–507).

Secondly, the legal regulation of mediation in Norway is much more detailed than in other, more familiar, legal systems. The experience gained in the 1980s resulted in a law that comprehensively regulated the use of mediation relatively early compared to other countries. It is difficult to identify a legal system where, as in Norway, there is a separate act of statutory rank that regulates in detail the systemic and procedural aspects of mediation in criminal cases and other secondary legislation. In addition to the regulation, there are also circulars from the Director of Public Prosecutions.

The Act Relating to Mediation by the National Mediation Service (the National Mediation Service Act) (*Lov om megling i konfliktråd*) was passed on 15 March 1991 and contained general rules concerning the institution of mediation, as well as provisions relating to the procedure itself.[4] Under it, disputes arising because one or more persons had inflicted damage or loss on or otherwise offended another person could be referred to mediation (§ 1 of the Act). Mediation could be used to resolve both criminal and civil disputes. Provisions implementing the Act were issued in the form of the Regulation Relating to Mediation by the National Mediation Service (*Forskrift om megling i konfliktråd*) introduced by a royal decree of 13 August 1992.[5]

2 The first pieces of legislation on mediation in criminal matters, still in the 20th century, were introduced by Austria (1988), Germany (1990), Norway (1991), France (1993) and Poland (1997). Interestingly, from the start of the first pilot project in 1981 to the adoption of a mediation law was ten years in the case of Norway, while in Poland the period was only two years (Mestitz, 2005, p. 11). This should not be surprising: the countries that started their mediation experimental projects much later (Poland in 1995) could be inspired by the experiences of the pioneer countries and could more easily incorporate the existing regulations into their legal systems.

3 The literal translation of *konfliktråd* as 'conflict resolution boards' existed in older literature. Nowadays, the phrase 'the National Mediation Service' is commonly used in English translations of Norwegian legislation (e.g. Storting (2014)), documents (e.g. Central Administration of the National Mediation Service, 2021), and in more recent literature. This article adopts the latter version.

4 For the English translation of the Act, see Storting (1991).

5 For the text of the Regulation in Norwegian, see Justis- og beredskapsdepartementet (1992).

The Regulation emphasised that mediation is not only an alternative to the traditional justice system but also increases community participation in the conflict resolution process. A new circular from the Director of Public Prosecutions of 6 December 1993 was also issued, in which mediation was considered a very good alternative to traditional justice, aiming to prevent crime and reduce the stigmatisation of offenders (Paus, 2005, pp. 505–507).

A particular feature of the early period of development of victim–offender mediation in Norway was the establishment of relevant legal regulations during the first experiments. One can observe a kind of 'methodical' approach to the establishment of the institutional framework for mediation according to the scheme: proposals and discussion – creation of a programme by the government – establishment of regulations – experimental project phase – enactment of a law and establishment of a nationwide network of the Mediation Service. In other countries, it has usually started with the spontaneous creation of local projects, often varying fundamentally not only in their modi operandi but also in the philosophy adopted. In the absence of legal regulations, the results of mediation have mostly been taken into account by individual prosecutors and judges interested in with the idea of restorative justice. In Norway, due to the circulars issued by the Director of Public Prosecutions and later the adoption of a separate law and amendments to the Criminal Procedure Act, this problem did not exist.

Thirdly, Norway has a remarkably well-developed and coherent mediation service system that ensures equal access to mediation for all residents of the country. The Act of 1991 required the establishment of the Mediation Service in each municipality (unless two or more set up a joint structure) and guaranteed their state financing. The Regulation of 1992 stipulated that the Mediation Service was an independent institution of local government financed by the state and controlled by the Ministry of Justice. Municipalities were required to provide premises and general assistance to the Mediation Service, arrange practical considerations and manage the staff, but at the same time, they could not use state funds for the Mediation Service's work nor influence its activities. The Ministry of Justice had control over the Mediation Service, and the counties' Chief Administrative Officers supervised and collected statistics and budget reports. In practice, the division of competencies was complex and dysfunctional, and therefore needed to be corrected radically. As a result, since 1 January 2004, the Mediation Service has been placed under the Ministry of Justice as a more centralised and hierarchically subordinated, and therefore more effective, structure. On the other hand, there is a fear that in the long run, the interest in mediation among local communities may decrease (Paus, 2005, p. 515). Currently, under Section 8 of the Act of 2014, the Public Administration Act applies to the activities of the Mediation Service. As a sovereign entity, it cannot accept any instructions or guidelines on how to handle an individual case. This organisational autonomy and independence from the justice system resulted from the philosophy

of strengthening the ability of local communities to resolve minor criminal conflicts (Kemény, 2000, p. 90).

By the end of 2003, there were 36, mostly inter-municipal, offices of the Mediation Service, covering the entire Norwegian territory and with a total of 700–800 mediators. Since 1 January 2004, their number has been reduced to 22 (Kemény, 2005, p. 103). The two-level structure currently consists of the Central Administration of the National Mediation Service in the Ministry of Justice and Public Security as a central administrative unit, and 12 regional offices located in 22 localities and providing access to mediation services in all 356 Norwegian municipalities. On 31 December 2023, 430 mediators and 129 administrative staff worked at the Mediation Service, including 32 at the Central Administration in Oslo (Sekretariatet for konfliktrådene, 2024, p. 7).

The following sections of this paper will present the legal basis of mediation, the organisation of the Mediation Service, and mediation procedures in Norway, with references to mediation in Poland. These will serve as a starting point for assessing the functioning and effectiveness of the Norwegian mediation model. The paper uses a dogmatic and legal comparative method.

1. Legal basis

The first mediation act in Norway and the implementing regulations based on it were in force for 23 years. The current Norwegian law on mediation is based on the new Act Relating to Mediation by the National Mediation Service (the Mediation Service Act) (*Lov om konfliktrådsbehandling (Konfliktrådsloven)*),[6] passed on 20 June 2014, and the Regulation Relating to Mediation by the National Mediation Service (*Forskrift om konfliktrådsbehandling*), issued on 30 June 2014 under Section 1 of the above Act.[7] In addition, the Director of Public Prosecutions issued two circulars under the new Act, dated 16 January 2015 (Circular Containing Preliminary Guidelines for the New Sanctions of Youth Punishment, Youth Follow-Up and Follow-Up within the National Mediation Service) (Riksadvokaten, 2015) and 9 August 2017 (Youth Punishment – Updated Guidelines) (Riksadvokaten, 2017), indicating, among other things, which criminal cases qualify for the procedure in the National Mediation Service.

The Act of 2014 formulated the scope of mediation similarly to the Act of 1991. According to Section 1 of the Act of 2014, the Mediation Service arranges meetings between the parties in disputes that arise because one or more persons have inflicted damage, injury or loss on or otherwise offended another person. In addition, the Mediation Service:

6 For the English translation of the Act, see Storting (2014).

7 For the text of the Regulation in Norwegian, see Justis- og beredskapsdepartementet (2014).

– executes the following criminal sanctions: victim–offender mediation, follow-up by the Mediation Service, youth follow-up and youth punishment;
– handles civil cases brought by the parties or by government agencies, provided the case is suited for processing by the Mediation Service.

In addition to classic mediation, the Mediation Service can organise other types of meetings, including a conference where more affected persons and support persons are present, a youth conference, a specially facilitated meeting, a follow-up meeting or other meetings.

Victim–offender mediation in Poland was legislated for in the Act of 6 June 1997 – Code of Criminal Procedure (*Kodeks postępowania karnego*) (CCP), which entered into force on 1 September 1998. Paradoxically, the provisions on mediation concerning criminal proceedings involving adult offenders were enacted in Poland a few years earlier than the provisions for juvenile proceedings. The original regulations were imprecise and raised many interpretation difficulties (Kużelewski, 2014, pp. 175–183), therefore the CCP was amended in this regard twice, in 2003 and 2013. The current version has been in force since 1 July 2015.

The basic provision regulating mediation is Article 23a of the CCP. As in the case of the Norwegian regulations, the Polish legislature has not defined the detailed scope of cases that can be referred to mediation. Under Article 23a, Section 1 of the CCP, the judge or the court clerk (*referendarz sądowy*), and in the preparatory proceedings the state prosecutor or other agency conducting the prosecution, may on their own initiative, or with the consent of the injured and the accused, refer the case to an institution or an authorised person to conduct a victim–offender mediation. Both parties must be informed about the purposes and principles of the mediation proceedings, including the contents of Article 178a of the CCP (the prohibition on hearing from the mediator, as will be discussed further under the principle of confidentiality). Article 23a of the CCP is even more general than the Norwegian act and does not provide any grounds for referring a case to mediation, nor indicate the explicit purpose of mediation in a criminal process. It only specifies the authorities entitled to decide in this matter, the condition of the parties' consent and the duty of information. The CCP establishes general rules on mediation and regulates the link between the criminal process and the non-procedural mediation process; however, it is not possible to read from these rules what should be achieved through mediation (Kulesza & Kużelewski, 2018, p. 12). This appears to have advantages, as in theory, mediation can be used in any case, even a serious crime with a particular offender and victim. On the other hand, the lack of a specific ground may confuse judges and prosecutors and discourage them from applying mediation.

The act specifying the Polish statutory regulations is the Regulation of the Minister of Justice of 7 May 2015 on Mediation in Criminal Matters (*Rozporządzenie w sprawie postępowania mediacyjnego w sprawach karnych*), which specifies the

conditions that must be met by an institution or persons authorised to conduct mediation proceedings, how such institutions or persons are appointed and dismissed, the scope and conditions of granting them access to case files, as well as the scope of reports on the results of mediation proceedings, bearing in mind the need for the efficiency of these proceedings. Nevertheless, it does not go as far as the Norwegian legislation in defining the rules for the working of the Mediation Service or the activities carried out by the mediator.

A criminal case in Norway can be referred to mediation in three situations. Under Section 71a of the Criminal Procedure Act (*Lov om rettergangsmåten i straffesaker (Straffeprosessloven)*) of 22 May 1981, the prosecutor may do this if he or she considers that the offender's guilt would be proven and sees the usefulness of such a measure.[8] This can also be done based on Section 53 of the Act Relating to the Execution of Sentences, etc. (the Execution of Sentences Act) (*Lov om gjennomføring av straff mv (Straffegjennomføringsloven)*) of 18 May 2001 by the Norwegian Correctional Service (*kriminalomsorgen*), which, in consultation with the convicted person, determines the precise contents of the community sentence (*samfunnsstraff*) within the limits set by the court in its judgment.[9] The third possibility is provided for in Section 37(i) of the Penal Code (*Lov om straff (Straffeloven)*) of 20 May 2005 (entered into force 1 October 2015), which indicates participation in mediation as one of the special conditions for suspension of a sentence.[10]

2. The Mediation Service and mediators

Currently, there is only one model of victim–offender mediation in Norway – through the Mediation Service – but it encompasses a wide variety of objectives, depending on local circumstances, historical background and the degree of professionalism and beliefs of the coordinators. This diversity is considered a weakness of Norwegian mediation. At the same time its usefulness, even necessity and inevitability, in the early development of the mediation idea is also recognised (Paus, 2005, p. 516).

The main tasks faced by the Mediation Service include 1) strengthening the capacity of local communities to deal with petty crime and other conflicts; 2) offering alternatives to more lenient criminal sanctions and increasing the variety of these sanctions; 3) controlling juvenile delinquency more effectively through quicker and less complicated case proceedings; 4) making sanctions more rational and understandable for young offenders; 5) motivating parties to reach an agreement by

8 For the English translation of the Act, see Ministry of Justice and the Police (1981).
9 For the English translation of the Act, see Storting (2001).
10 For the English translation of the Code, see Storting (2005).

paying attention to the situation of both victims and offenders (Kemény, 2000, p. 89; Paus, 2005, pp. 515–516).

Mediators are not professionals, although they should have the appropriate skills to cope with the task and are appointed for a four-year term of office by an appointment committee consisting of one representative designated by the municipal council, one representative from the police, and the head of the mediation office (Section 4 of the Act of 2014). They must be over 18 years of age, have Norwegian or Nordic citizenship or be registered as a resident of that country within the last three years before their appointment, have the aptitude to act as a mediator and reside in the municipality where they are applying to be a mediator (Section 5). The Act has a catalogue of situations that exclude the appointment of a mediator, related to a punishment for a specific penalty. Employees of the prosecuting authority who are competent to prosecute, police staff who have police authority and students at the National Police Academy in their practice year also cannot be appointed mediators (Sections 6 and 7).

The Polish legislature has adopted a different model for the organisation of mediation services. Poland does not have a uniform, centralised mediation service like the Norwegian one. A pluralistic and decentralised model has been chosen, in which the mediation proceedings may be conducted by institutions or persons registered by the president of a particular district court after complying with certain conditions, somewhat similar to but more precisely specified than in the case of Norwegian mediators.[11] The Polish CCP also provides for more extensive exclusions from the possibility of acting as a mediator. Under Article 23a, Section 3, a professionally active judge, prosecutor or assessor prosecutor, or a trainee in these professions, or a juror, court clerk, assistant judge, assistant prosecutor or an

11 An institution shall be entitled to conduct the mediation proceedings if it meets the following four conditions: 1) under its statutory tasks it was appointed to perform mediation, rehabilitation, protection of the public interest, protection of important individual interests or protection of liberties and human rights; 2) it ensures that the mediation process is carried out by persons who comply with the formal requirements for conducting mediation specified in Section 4 of the Regulation of 2015; 3) it possesses the organisational and human resources for the conduct of mediation; 4) it is registered in the list of institutions or persons competent to conduct mediation that is held in the district court (Section 3 of the Regulation of 2015). A person shall be entitled to conduct the mediation proceedings if he or she meets the following conditions: 1) is a Polish citizen, a citizen of another EU Member State, a Member State of the European Free Trade Association (EFTA) or a party to the Agreement on the European Economic Area or of the Swiss Confederation, or a citizen of another country, if, under the provisions of European Union law, he or she is entitled to take up employment or self-employment on the territory of the Republic of Poland under the rules set out in those provisions; 2) fully benefits from civil rights; 3) is at least 26 years old; 4) is fluent in Polish; 5) has no criminal record for an offence; 6) has the skills and knowledge to conduct mediation proceedings, resolve conflicts and establish interpersonal relations; 7) guarantees proper execution of his or her duties; 8) is registered in the list that is held in the district court (Section 4 of the Regulation of 2015).

official of any other authority which prosecutes offences is disqualified. Additionally, mediation proceedings cannot be conducted by a person to whom the restrictions specified in Articles 40 and 41, Section 1 of the CCP apply in a given case.[12]

Stronger protection of the principle of confidentiality is provided for in the Polish CCP. Mediation proceedings are conducted impartially and confidentially (Article 23a, Section 7), and it is not permitted to examine a mediator as a witness concerning facts learnt from the accused or the injured while conducting mediation proceedings, except for the information about offences referred to in Article 240, Section 1 of the Criminal Code (Article 178a of the CCP). In the Polish criminal process, the prohibition on hearing from the mediator is absolute. Except for a dozen or so of the most serious offences, there is no possibility of hearing from the mediator, which is a fair solution and protects the accused's guarantees of the right to defence.

Norwegian mediators are bound by the principle of confidentiality in the course of mediation and regarding the personal data of the parties. This principle is guaranteed not only by criminal liability for violating the obligation of confidentiality: a court of justice cannot admit evidence that a witness cannot give without breaching his or her duty of confidentiality unless the court weighs the importance of observing the duty of confidentiality against the importance of obtaining information in the case and decides by a court order that the witness must give evidence. Unless both parties consent, the witness cannot give evidence concerning what the parties have acknowledged or offered during mediation (Section 9 of the Act of 2014).

The rules for the recruitment of mediators are provided in Section 2 of the Regulation of 2014. Recruitment is the task of the Mediation Service; the head of the mediation office determines the number of mediators needed. Vacancies are made public, and written applications are sent to the head of the mediation office, who draws up a list of candidates and may recommend those he or she considers most suitable. The selection shall take place by a majority of the committee members, and in the event of a tie, the head of the mediation office shall have the deciding vote.

Candidates are offered basic training consisting of four days of theoretical training and three days of practical training (Paus, 2017, p. 31). Apart from that, mediators attend meetings and seminars several times a year, where they have the opportunity to exchange experiences and discuss current problems. Although one's type of education is not a criterion for being selected as a mediator, they are mostly educated people, such as teachers, lawyers, businessmen, former policemen and managers and directors. On average, a mediator deals with one case per month (Kemény, 2005, pp. 107, 112). Mediators receive remuneration and reimbursement

12 The restrictions listed in Article 40 refer to a judge disqualified by virtue of law from participation in a case (a judge so-called *iudex inhabilis*). Article 41, Section 1 refers to a judge disqualified where circumstances arise that might give rise to justified doubts as to his or her impartiality in a case (a judge so-called *iudex suspectus*). Both provisions apply accordingly to a mediator.

of expenses at rates set by the Ministry of Justice and Public Security (Section 2 of the Regulation of 2014). In 1996, a code of ethics for mediators and staff involved in mediation was established on the initiative of the heads of the mediation offices (Paus, 2005, p. 520).[13]

There are advantages and disadvantages in both systems of mediation service described above. The Norwegian Mediation Service is structurally closely linked to the state and therefore does not have the same freedom and autonomy as independent institutions (usually NGOs) and individual mediators. Instead, thanks to better control over the recruitment of mediators (which is decided by a collegial body independent of the judiciary and not by the president of the court alone, as in Poland), a limited number of vacancies, the provision of obligatory training and the principle of a fixed term of office for mediators, greater professionalism of mediators and mediation services is guaranteed. In addition, the coordinators and professional administrative staff of the offices of the Mediation Service, using their knowledge and experience based on their everyday jobs, exercise constant control over mediators. In Poland, on the other hand, it is the prosecutors, judges or court clerks themselves who appoint an institution or an individual mediator to conduct mediation proceedings, choosing them in a discretionary manner from a list kept at the district court, based on their individual preferences and experience. They also do not have any influence on the upskilling of the mediators. Once a person is included in the list at the county court, he or she can mediate for years without being reviewed.

3. Mediation procedure

In Norway the parties participate in the mediation meeting voluntarily (their consent must be real and informed), in person and generally cannot be represented by a proxy. If one party is younger than 18, his or her guardians must also consent to the case being handled and are entitled to attend; if the guardian is unable or unwilling to protect the party's interests in the case, a provisional guardian must be appointed under the provisions of the Guardianship Act. The Mediation Service may permit the parties to have one or more persons supporting them in the meeting, who cannot be an advocate or legal adviser. The Mediation Service may allow indirect mediation (Sections 11, 12 and 15 of the Act of 2014). As a rule, mediation must be handled by the mediation office for the municipality where the complainant or the victim lives or is staying. In cases referred by the prosecuting authority, the latter decides which mediation office should handle the case, but the mediation office may agree with the prosecuting authority that the case will be referred to a different office. The parties must have a chance to express their views on the matter in advance (Section

13 These guidelines are under the 'Ethical Guidelines for the Public Service in Norway' governing public services (Central Administration of the National Mediation Service, 2021, p. 12).

13 of the Act of 2014). In cases referred by the public prosecutor's office or a public institution, consent to mediation must usually be obtained before the case is referred to the Mediation Service (Section 4 of the Regulation of 2014). The mediation office determines how many mediators will be mediating in each case; in cases with more than one mediator, a main mediator must be appointed (Section 14 of the Act of 2014). The proceedings are free of charge for all parties, and they are also entitled to a free interpreter (Sections 1 and 16 of the Act of 2014).

The course of the mediation procedure is similar in both countries. In Norway, the preparatory activities and the face-to-face meeting of the parties are regulated in Sections 4 and 5 of the Regulation of 2014. Once the case has been registered and other necessary administrative activities have been carried out, the mediator contacts the parties, informs them of the purpose and consequences of the mediation, and sets a date and place for the meeting. Mediation may take place anywhere, but it should not be held on the parties' premises. The parties themselves shall seek to resolve the conflict. The mediator may propose possible solutions based on what the parties bring to the meeting. In violent cases, it is standard procedure for the mediator to meet each party in advance of the actual mediation session to create an atmosphere of trust and for the mediator to see if it is right to resolve the case through mediation (Paus, 2005, p. 517). In Poland, all mediation proceedings follow a standardised five-stage scheme.[14] Indirect mediation is also allowed under Section 15 of the Regulation of 2015: if a direct meeting of the suspect or the accused and the injured is not possible, the mediator may indirectly conduct the mediation proceedings, giving the information and proposals on the settlement to both parties. The mediation proceedings shall not be conducted on premises occupied by the participants or their families (unless in justified cases, with the consent of the participants) or in the buildings of the authorities entitled to refer the case to mediation (Section 13 of the Regulation of 2015).

The agreement reached by the parties must be set out in writing and be signed by the parties. If the obligation to pay compensation is agreed upon, the agreement must stipulate the amount to be paid and when payment is due, as well as a clear statement of whether it represents the final settlement between the parties. If the party is a minor, it also requires approval from his or her guardian. The mediator approves the agreement in writing unless it unreasonably favours one of the parties

14 Immediately after receiving the order to refer the case to mediation, the mediator 1) makes contact with the injured and the suspect or the accused, setting the date and place of meeting with each of them; 2) conducts individual meetings with the suspect or the accused and the injured, informing them about the nature and principles of the mediation proceedings and the rights of the parties; 3) conducts the mediation meeting with the participation of the suspect or the accused and the injured; 4) assists in the formulation of the content of a settlement between the suspect or the accused and the injured; and 5) verifies the implementation of the obligations (Section 14 of the Regulation of 2015).

or is unfortunate for other significant reasons.[15] In cases referred by the prosecuting authority, each of the parties may withdraw from an agreement by informing the mediation office within two weeks after the agreement has been approved by the mediator, except when it has been fulfilled. When mediation has been completed, the mediation office must forward the case documents to the prosecuting authority with information as to whether the parties have entered into an approved agreement. Once the agreement has been fulfilled, the mediation office must promptly send confirmation of this to the prosecuting authority (Sections 17, 18 and 20 of the Act of 2014). If mediation or agreement is not reached, the case must be returned to the prosecuting authority immediately, usually no later than three months after the referral, with information on why the mediation session did not take place or the agreement was not reached (Section 6 of the Regulation of 2014).

If the agreement is found difficult to implement or is broken, the parties have the opportunity to renegotiate it at a new meeting. The prosecuting authority is notified of the content of the renegotiated agreement. Failure to agree on a new settlement shall result in the notification of the prosecuting authority, along with the reasons and other relevant information, any statements by the parties and the opinion of the Mediation Service on the consequences to which the breach of the settlement should lead. The parties are obliged to notify the Mediation Service of the fulfilment of the agreement or the breach of its terms. The decisions of the Mediation Service are not subject to appeal (Sections 7, 8, 9 and 10 of the Regulation of 2014).

The possibility of refusing to accept the agreement if it unjustifiably favours one of the parties or cannot be accepted for other important reasons grants the mediator certain jurisdictional power, placing him or her somewhat closer to the position of an arbitrator. This may be disputable, since the mediation is an extra-judicial proceeding and only the judicial authorities have the competence to act with decision-making powers. On the other hand, the refusal to accept an agreement while the mediation procedure is still in progress has practical value, as it significantly shortens the proceedings. Using parallels with criminal proceedings, it is justified to believe that this provision guarantees the principle of equality of arms. Another original concept is the possibility of renewing mediation if the agreement appears to be difficult to implement, there has been a change in circumstances that make the agreement unreasonable or the agreement has been violated for other reasons. This fact confirms the intention of the Norwegian legislature that the resolution of the conflict by a court is a last resort.

15 Although not always possible, forgiveness and reconciliation are considered the most important outcomes and goals of a mediation meeting. The agreement is often formulated and written down by the parties themselves. Most often, it includes only the conclusion itself – either in the form of a statement that the parties consider the case to be over, the offender apologises to the victim and his or her apology is accepted, or a description of actions to restore the previous relationship between the parties, such as compensation for damages by the perpetrator, even in a symbolic way (Paus, 2000, p. 299).

The Polish provisions on the conclusion of an agreement between the participants in mediation are concise compared to the Norwegian ones. Article 23a, Section 6 of the CCP only requires that when the mediation proceedings are concluded, a report of its course and results is drawn up by an authorised institution or person. An agreement voluntarily signed by the accused, the injured and the mediator is enclosed with the report, whereas Article 107, Section 3 of the CCP indicates that the mediation agreement will be the executory clause after being made enforceable by the judge or court clerk. If the mediation proceedings have not been completed within the time limit set by the prosecutor or judge and the participants wish to continue the proceedings, the mediator shall immediately draw up and submit information on the progress of the proceedings to the authority that referred the case, specifying the reasons for the expiry of the time limit. In justified cases, the authority that referred the case to mediation, at the request of the mediator, may extend the deadline for the time necessary to complete the proceedings (Section 17 of the Regulation of 2015). It would be a good idea to copy the Norwegian solutions regarding renewing mediation if the agreement appears to be difficult to implement, there has been a change in circumstances that make the agreement unreasonable or the agreement has been violated for other reasons.

For both countries, positive results from mediation can have a significant impact on the criminal trial and its outcome. The Norwegian Penal Code, Section 34 provides the possibility of suspension of a sentence of imprisonment in part or in full by the court for two years (ordinarily) with the imposition of one or more special conditions under Sections 35 to 37. Such a measure indicated in Section 37(i) is participation in mediation by the Mediation Service and compliance with any agreement entered into during the mediation proceedings. By the same terms under Section 60, the court may defer sentencing for a probation period even if guilt is deemed proven. If the positive results of the mediation are considered exceptional reasons, even if guilt is deemed proven, the court may waive sentencing (Section 61 of the Penal Code) or the prosecuting authority may waive the prosecution of the offence for two years (Section 69 of the Criminal Procedure Act). If none of the above options is applied, the court may at any time take the results of mediation into account when sentencing and impose a milder punishment compared to if no mediation had been applied.

In Polish criminal proceedings, in addition to the conditional waiver of the prosecution (Article 63 of the Penal Code), conditional suspension of a sentence of imprisonment (Article 69, Section 2 of the Penal Code) or the imposition of a milder punishment or a punitive or probationary measure (Article 53, Section 3 of the Penal Code), the positive outcomes of the mediation proceedings may influence extraordinary mitigation of punishment (Article 60, Section 2 of the Penal Code), lack of objection of the injured party to the accused's conviction without trial (Articles 335 and 338a of the CCP), voluntary submission to punishment (Article 387 of the CCP) and upholding the terms of the mediation agreement to the

sentence (e.g. reparation of damages, financial restitution, compensation of moral injury, personal or community service, the obligation of the accused to change his or her behaviour, to undertake anti-drug or anti-alcohol therapy or to apologise to the victim). In private prosecution cases, mediation concluded by reconciliation results in an obligatory unconditional waiver of criminal proceedings (Article 492, Section 1 of the CCP). The legislatures of both countries thus provide a wide range of possibilities to take into account the results of mediation in the criminal trial.

4. Pitfalls and challenges

The evaluation of the first mediation experiences in Norway was not unequivocally positive. Among other things, negative phenomena were pointed out: conflict resolution boards received trivial cases that would have been discontinued anyway (instead of being an alternative to imprisonment, mediation became an alternative to discontinuation); the impact of cases was negligible (almost half of the boards did not receive any mediation cases); the police showed little interest in mediation and referred fewer cases than was possible; the boards dealt with offenders under 15 years of age, who are not subject to criminal liability at all; cases referred to the boards were only criminal cases, although the boards should deal with various types of conflict; a professionalisation of mediators was feared (Falck, 1992, pp. 133–134; Nergård, 1993, p. 83).

Among the most important pitfalls and challenges for the future are the issues of ensuring the quality of the work of the Mediation Service, voluntary participation in mediation and the unification of the main purpose of mediation. Concern is expressed about the educational aspect of mediation. It is argued that the willingness of society to help prevent crime may lead to overreaction and situations where one of the parties is used to gain a certain effect on the other party. Another problem is the close connection of the Mediation Service with the traditional justice system. On the one hand, it has the appropriate status and financial support, but on the other, such a situation may lead to a violation of the principle of voluntary participation in mediation, because where there is a threat of punishment and being given a criminal record, the offender will choose this mode for its short-term effect even if he or she is not interested in reconciliation, while the victim, using this type of psychological coercion, may seek to impose his or her terms of agreement. In addition, there is the risk that the Mediation Service may be influenced by the authoritative culture of law enforcement agencies and their definitions of parties, values and objectives. Therefore, the main dilemma is that the Mediation Service is a hybrid that combines features of a state institution and of an independent organisation (Paus, 2005, pp. 524–526).

The lack of diverse mediation programmes in Norway is characteristic; instead, there is a large number of uniform Mediation Service offices subject to a unified law.

The paradox is that the state has formalised mediation, which was intended to grow as a grassroots initiative separate from the justice system. Nevertheless, mediation remains an alternative means of responding to crime, not against the justice system but within it (Kemény, 2000, pp. 84–85).

The strong integration of mediation into the official justice system, despite criticism from 'orthodox' followers of the idea of grassroots development of alternative measures to criminal punishment, does not seem to have caused any major deviations. Statistical data on the number of cases referred to the Mediation Service (despite the recent unfavourable trend, discussed below) and the clear predominance of positive assessments given by the parties towards mediation indicate that it is not a facade but is a real alternative to court proceedings (Lundgaard, 2015, p. 632). The somewhat compromising nature of the positioning of mediation in the Norwegian legal system (a 'centrally controlled' institutionalisation including full state funding and, on the other hand, far-reaching autonomy in the sphere of mediation proceedings and guarantees of the independence of the heads of the mediation offices and mediators, the latter remaining non-professionals originating from local communities) reflects social relations in the Scandinavian countries based on the ethos of dialogue, agreement and cooperation. Moreover, the top-down imposition on local authorities to establish the Mediation Service has undoubtedly dynamised the development of the institution and guaranteed access to mediation for all members of society.

Another problem is related to efficiency, regarded as the number of cases referred to the Mediation Service annually. Table 1 presents how many criminal cases per year have been referred to mediation over the past 30 years in Norway and Poland. It should be noted that the first cases in Poland were referred to mediation at the end of 1998, i.e. after the CCP of 1997 came into force.

Table 1. Number of criminal cases referred to mediation in Norway and Poland in the years 1994–2023

Year	Number of referrals to mediation service	
	Norway	Poland
1994	1,963	–
1995	2,964	–
1996	3,178	–
1997	2,795	–
1998	3,025	12
1999	3,002	406
2000	2,840	822

2001	2,922	824
2002	2,174	1,055
2003	3,229	1,918
2004	3,937	3,894
2005	4,264	5,139
2006	4,521	6,428
2007	4,513	6,097
2008	4,497	5,504
2009	4,663	5,104
2010	4,371	4,806
2011	4,144	4,671
2012	3,977	4,544
2013	3,824	4,845
2014	3,325	4,839
2015	3,419	4,046
2016	3,133	5,005
2017	3,093	5,002
2018	2,638	4,544
2019	2,383	4,676
2020	1,931	3,534
2021	1,804	4,365
2022	1,825	4,121
2023	1,879	3,817
Total	96,233	100,018

Source: own elaboration based on Paus, 2015; Sekretariatet for konfliktrådene, 2024, p. 13; Ministerstwo Sprawiedliwości, 2024

In both countries, a significant upward trend occurred during the same period between 2005 and 2009. It is difficult to identify any universal, specific reason influencing the increased interest in mediation in countries that differ in demography, social structure and legal culture. A decline followed this period in both countries, but it was more significant in Norway (a 43.5% decrease between 2014 and 2023). The sharp decrease between 2019 and 2020 was certainly related to the COVID-19 pandemic; however, after the end of the pandemic, there has been no sharp increase

in the number of criminal cases referred to mediation in Norway, while in Poland the number of cases referred to mediation has almost returned to pre-pandemic levels. Together with the decade-long decline in the number of cases referred to the Mediation Service by the prosecuting authority, the severity and complexity of the cases have increased (Sekretariatet for konfliktrådene, 2024, pp. 8–10, 13).

On the other hand, due to a significant increase in civil cases and criminal cases that were previously discontinued (mainly against minors under 15, who are not criminally liable), the total number of cases referred to mediation in Norway is gradually increasing. In 2023, in addition to 1,879 criminal cases, 2,560 cases that were previously dismissed and 3,050 civil cases (7,489 in total) were referred to mediation. At first glance, it is clear that civil mediation and previously discontinued cases are replacing mediation in criminal cases, but it is difficult to find any logical connection. The greatest decline is observed in the Mediation Service in districts with large populations, which reinforces the unfavourable development nationwide (Sekretariatet for kontfliktrådene, 2023, pp. 14–15). In-depth research is needed to clarify the reasons for this. Practice thus shows that mediation in Norway is not a dead institution, but the continuing downward trend, especially in criminal cases, may be worrying. On the other hand, comparing the demographic aspect, in Poland, which is seven times more populous, only about twice as many mediations in criminal cases have been registered in recent years.

The decrease in the number of criminal cases in Norway after 2014 may also be because the close link between the Mediation Service and the judiciary has increased since the Act of 2014 entered into force, which charged the Mediation Service with the task of supervising the implementation of the newly introduced sanctions for juvenile delinquents aged 15–18, i.e. youth punishment (*ungdomsstraff*) sentenced by courts and youth follow-up (*ungdomsoppfølging*) sentenced by courts or referred by prosecutors. This has so far not been associated with mediation, which raises concerns that the councils will be considered more as quasi-executive authorities, justice system agendas with a strong professional component rather than independent arenas of handling conflicts in local communities with the help of lay mediators who are members of these communities (Andersen, 2015, pp. 114–118; Christie, 2015, pp. 109–113; Paus, 2017, pp. 42–53). These concerns may impact a lack of confidence from parties who have not previously encountered the Mediation Service and who may believe that it will not be neutral. However, it is important to note that participation in mediation improves trust and reduces the fears of participants, as over 90% of surveyed victims and offenders participating in mediation, parents of minors and supporters would recommend it to others (Paus, 2018, p. 43).

Already in the first years of the Mediation Act being in force, negative phenomena were observed, such as the perception by the Minister of Justice, the Director of Public Prosecutions and some heads of the mediation offices and mediators of mediation being a narrowly understood means of crime prevention rather than as

a forum for comprehensive conflict resolution, as well as the punitive approach of some mediators towards offenders (Kemény, 2000, p. 91). A lively discussion on whether mediation should be settlement-driven or process-oriented ended with the conclusion that it essentially combines elements of both of these concepts, although more attention should be paid to the mediation process itself than to the search for agreement. The focus on agreement does not automatically prove the punitive nature of such mediation (Kemény, 2000, p. 93).

In the past, attention has also been paid to the existence of a very clear net-widening effect. An increasing number of juveniles under the age of 15, who were held as not responsible for their acts, participated in mediation because of the hope of law enforcement authorities that it would be a preventive measure against committing crimes in the future (Dullum, 1996, p. 94). This is confirmed by the data collected in Table 2. In 2023, the Mediation Service received 87.8% more criminal cases that had previously been discontinued than in 2014 (mainly against minors under 15.

Table 2. Number of cases referred to mediation in Norway between 2014 and 2023 after previous discontinuation by the public prosecutor's office

Year	Number of referrals to Mediation Service
2014	1,363
2015	1,488
2016	1,340
2017	1,512
2018	1,439
2019	1,420
2020	1,622
2021	1,978
2022	2,121
2023	2,560
Total	16,843

Source: own elaboration based on Sekretariatet for konfliktrådene, 2023, p. 15; Sekretariatet for konfliktrådene, 2024, p. 14.

In addition, there have been problems in the functioning of the Mediation Service itself. Firstly, there were significant differences in the content of agreements reached in similar cases. Secondly, some victims requested at least minimal financial compensation, which was often beyond the offender's capacity (Brienen & Hoegen, 2000, p. 728).

When it comes to evaluating mediation regulation, there is a perception that the advantages outweigh the disadvantages. The latter include, in particular, the restriction in the circular of the Director of Public Prosecutions on the use of mediation in less serious cases and the treatment of this institution almost exclusively as an alternative measure to punishment (Kemény, 2005, p. 106).

Another negative phenomenon is that society in general is unaware of the functions and tasks facing the Mediation Service, which results in the need for the coordinators of the mediation offices to focus on providing information to the public, law enforcement agencies and community organisations (Paus, 2000, p. 290). On the other hand, the interest of political elites and the government in developing mediation as a response to crime (especially juvenile delinquency) results in about 90% of cases being referred to the Mediation Service by the police and prosecuting authorities (Kemény, 2000, p. 91).

Conclusion

The legal regulation of victim–offender mediation in Norway is a phenomenon on a European scale. It is not only, as in other countries that have created a legal framework for mediation, the general provisions of the penal codes or the codes of criminal procedure that constitute the ground for referring a case to mediation and the issuing of a certain procedural decision by the procedural authorities based on its results. Above all, it is a separate and quite extensive piece of legislation regulating the systemic aspects of the National Mediation Service, the status of the mediator and, in a comprehensive manner, the rules and procedure for the use of mediation. Paradoxically, the legal regulation of referring a case to mediation is very general, with no specific grounds or purpose; an analogous situation applies with Polish regulations. This has advantages and disadvantages: the positive aspect is universality, as theoretically mediation can be used in any case, even a serious one, involving a particular offender and victim. On the other hand, the lack of a specific ground may discourage judges and prosecutors from using mediation in criminal cases.

Due to the relevant provisions of the penal codes and the criminal procedure codes, in both countries the use of victim–offender mediation gives the judicial authorities broad opportunities to take its results into account as part of the final judicial decision. The courts may, for example, conditionally suspend the execution of a sentence of imprisonment, defer sentencing for a probation period, waive sentencing, extraordinarily mitigate the punishment or impose a milder punishment. The prosecuting authority may conditionally waive the prosecution of the offence. By using mediation, this kind of flexibility in choosing the appropriate sanction allows for an adequate criminal response to the offence with maximum involvement of the victim and the offender.

There is a noticeable evolution of the Mediation Service towards a closer relationship with the justice system. Until 2014, a network of mostly cross-municipal, independent mediation centres operated separately from the official justice system, providing only institutional support to non-professional mediators. The transfer of the Mediation Service under the new Mediation Service Act from municipal structures to state structures and the creation of a two-level structure, i.e. the Central Administration of the National Mediation Service in the Ministry of Justice and Public Security and 12 regional offices, has centralised this institution and forced it back into the framework of procedural formalism. This is happening against the assumption that mediation should be an alternative measure to formalised criminal proceedings and should take place outside the official agencies of the justice system, an assumption that is one of the cornerstones of the idea of restorative justice. The outcomes of mediation proceedings alone are supposed to be the 'link' with the procedural authorities.

The addition of new powers to enforce juvenile justice response measures has further linked the Mediation Service to the justice system. By entrusting the supervision of the execution of youth punishment sentenced by courts and youth follow-up sentenced by courts or referred by prosecutors, the Mediation Service has become a kind of executive body for juvenile criminal proceedings. Thus a 'hybrid' institution has been created, where non-professional staff (mediators) on a semi-voluntary basis implement the idea of the participation of a civic factor (society) in the resolution of criminal conflicts, while professionals exercise authority functions (decision-making, enforcement) concerning juveniles who have been subjected to certain measures of reaction to a criminal act. There is a concern that the Mediation Service will cease to be associated with neutrality towards the parties and the act itself, which is characteristic of restorative justice and mediation. In this regard, the Polish model of a pluralism of institutions and individuals entitled to mediate seems more secure from the point of view of realising the assumption that mediation entities should be autonomous and independent from the judiciary. This is facilitated by the decentralisation of the policy on the appointment of those authorised to mediate in criminal cases, which has been entrusted to dozens of presidents of district courts. In contrast, the more formalised Norwegian model is certainly more favourable to ensuring the professionalism of mediators and mediation services.

The duality of the tasks of the Mediation Service as an institution that is part of the judicial machinery, as indicated above, may provoke a perception and evaluation of mediation in terms of seeking maximum efficiency regarding the rate of settlements reached so that conflict resolution by the court is a last resort. This line of thinking is guided by the Norwegian Mediation Service Act, which provides for the possibility of renewing mediation if the agreement appears to be difficult to implement, there has been a change in circumstances that make the agreement

unreasonable or the agreement has been violated for other reasons, which is original compared to other legal systems.

Another determinant of mediation effectiveness is worrying: the statistics show a downward trend in the number of mediation proceedings conducted annually by the Mediation Service. Perhaps this is due precisely to the perception of the Mediation Service as an institution more and more closely linked to the justice system and its agenda than as a community support entity. Secondly, an increasing number of cases are coming to mediation in the Mediation Service that were previously discontinued by the judicial authorities, most often against juveniles under 15 who are not criminally responsible anyway. In this way, the judicial authorities seem to be looking for the possibility of any response to criminal acts, treating the mediation procedure as an educative measure to prevent an offender from feeling impunity.

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