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Adam Zienkiewicz
University of Warmia and Mazury in Olsztyn, Poland
ORCID: 0000-0002-2824-7123
adam.zienkiewicz@uwm.edu.pl

# Objectives of Mediation and Selection and Implementation of Mediation Strategies and Techniques by Mediators in Civil Disputes – Study Report (Part III – Interviews)

## *Cele mediacji a dobór i stosowanie strategii i technik mediacyjnych przez mediatorów w sporach cywilnych – sprawozdanie z badań (część III – wywiady)*

ABSTRACT

Studies of understanding and identification of mediation objectives, strategies and techniques and the effectiveness of mediation proceedings are justified from the cognitive and practical perspectives. The aim of this paper is to present the report of an empirical study, devoted to the subject matter mentioned above, conducted by the author as part of the scientific activity financed by the Polish National Science Centre. The paper is complex in nature – it deals with the research, concept and methodological threads. The empirical study was conducted in Poland, with Polish mediators participating in it, providing mediation services mainly in one of the Mediation Centres operating at District Chambers of Legal Advisors, making up the National Network of Legal Advisor Mediation Centres. However, considering the universal and utilitarian nature of the issue in hand, the comparative potential, originality and cognitive value of the study findings may be of interest to both Polish and international scientists and practitioners of mediation as an amicable form of holistic legal dispute management. Given the scope and depth of the issues addressed, the article is divided into three parts. This text (part III) contains significant, selected data gleaned from in-depth interviews with mediators, as well as their concise discussion and major conclusions and the summary of the whole scientific activity.

**Keywords:** mediation objectives; mediation strategies; mediation techniques; mediator; civil disputes

CORRESPONDENCE ADDRESS: Adam Zienkiewicz, PhD, Dr. Habil., Professor at the University of Warmia and Mazury in Olsztyn, Faculty of Law and Administration, Department of Theory and History of Law, Obitza 1, 10-725 Olsztyn, Poland.

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## INTRODUCTION

This text is the third part of the paper, whose aim is to present a report of a preliminary (pilot) empirical study, conducted by the author as part of a scientific project, titled "Objectives of mediation and selection and implementation of mediation strategies and techniques by mediators in civil (including commercial) disputes between entrepreneurs" financed by the Polish National Science Centre.[1] Given the scope and depth of the issues addressed, the article is divided into three parts. The first part presented the subject, scope and objectives of the research and the general research hypotheses, followed by the course of the research and the major methodological assumptions, including the main research tools: a survey questionnaire and an interview scenario.[2] The second part of the article was devoted to selected results of the empirical study, i.e. detailed data based on the questionnaire survey, a brief discussion and the most important conclusions.[3] The third part contains selected relevant data obtained from in-depth individual interviews with mediators, their discussion and conclusions, including a summary of the entire scientific activity, i.a., in the context of mediation practice and a further, more comprehensive scientific study of mediation as an amicable form of holistic management of legal disputes.[4]

To maintain the continuity and comprehensiveness of the disquisition, one should refer the reader to the first and the second parts of the paper. This study dealt mainly with mediation objectives in civil cases in connection with the selection and application of mediation strategies and techniques applied by Polish mediators – trained lawyers (also professional legal advisors), providing mediation services mainly in one of the Mediation Centres operating at District Chambers of Legal Advisors, making up the National Network of Legal Advisor Mediation

[1] This text was prepared as part of the scientific activity performed by the author in 2020, titled "Objectives of mediation and selection and implementation of mediation strategies and techniques by mediators in civil (including commercial) disputes between entrepreneurs", conducted as part of a competition entitled Miniatura 3, announced and financed by the Polish National Science Centre (decision no. 2019/03/X/HS5/00850). Selected general preliminary results of the research are presented in A. Kalisz, A. Zienkiewicz, *Mediacja w sprawach gospodarczych jako narzędzie wspierające sukces w biznesie*, Warszawa 2020, pp. 133–137.

[2] See A. Zienkiewicz, *Objectives of Mediation and Selection and Implementation of Mediation Strategies and Techniques by Mediators in Civil Disputes – Study Report (Part I)*, "Studia Iuridica Lublinensia" 2021, vol. 30(5), pp. 601–618.

[3] See idem, *Objectives of Mediation and Selection and Implementation of Mediation Strategies and Techniques by Mediators in Civil Disputes – Study Report (Part II – Survey Questionnaires)*, "Studia Iuridica Lublinensia" 2022, vol. 31(1), pp. 213–236.

[4] For more on managing legal disputes holistically, see idem, *Holizm prawniczy z perspektywy Comprehensive Law Movement*, Warszawa 2018, pp. 248–275 and the literature cited therein.

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Centres.[5] The general aim of this study was to determine how the above-mentioned mediators understand, set and prioritize goals of mediation proceedings in civil disputes, especially commercial ones. This is followed by identification of the way of choosing and applying various mediation strategies and techniques, with respect to the mediation objectives in a specific case.[6]

Apart from theoretical studies, the scientific activity presented here involved an empirical study, which included a detailed survey addressed to mediators at all the 19 Mediation Centres operating at District Chambers of Legal Advisors, which make up the national network, with 25 mediators from all over Poland participating. Moreover, according to the plan, 10 semi-structured, in-depth individual interviews with mediators were conducted, the mediators being trained lawyers (practising the legal advisor profession), working at one of the five selected mediation centres – parts of the national network of the Mediation Centres of Legal Advisors. The choice of the group of mediators and the representative sample for the preliminary (pilot) study was adequate to the subject matter, scope and objective of the study.[7]

[5] See Centrum Mediacji, *Ogólnopolska Sieć Ośrodków Mediacji Radców Prawnych*, http://mediacje.kirp.pl/osrodki-mediacji-oirp (access: 22.7.2022).

[6] The adopted understanding, classification, and description of the superior (further) and inferior (closer) objectives of mediation discourse, in the personal, interpersonal, social, psychological, communicative, and negotiation-informational dimensions, respectively, are presented in A. Zienkiewicz, *Studium mediacji. Od teorii ku praktyce*, Warszawa 2007, pp. 96–123. At this point, it is worth noting the complex axiological level, relevant both to the amicable forms of dispute management (including mediation), as well as to processes of judicial application and interpretation of the law within a given legal order, visible, e.g., in various approaches to justice and concepts of its administration. For more, see M. Kordela, *Inter- and Extra-Legal Axiology*, "Studia Iuridica Lublinensia" 2020, vol. 29(3), pp. 29–38; L. Leszczyński, *Open Axiology in Judicial Interpretation of Law and Possible Misuse of Discretion*, "Studia Iuridica Lublinensia" 2020, vol. 29(3), pp. 39–54; W. Dziedziak, *Thoughts on the Notion of Justice*, "Studia Iuridica Lublinensia" 2021, vol. 30(2), pp. 139–148; A. Kalisz, A. Zienkiewicz, *Wymierzanie sprawiedliwości a mediacja*, [in:] *Rozdroża sprawiedliwości we współczesnej myśli filozoficzno-prawnej*, eds. B. Wojciechowski, M. Golecki, Toruń 2008, pp. 263–274; A. Zienkiewicz, *Mediation als eine Form der Justiz*, [in:] *Mediation als Verfahren konsensualer Streitbeilegung. Die deutsche, polnische und ukrainische Perspektive*, ed. T. de Vries, Frankfurt am Main 2012, pp. 3–22.

[7] More about the sociological and legal methods, techniques, and research tools (including those applied in the scientific activity presented here), see, e.g., A. Pieniążek, M. Stefaniuk, *Socjologia prawa. Zarys wykładu*, Kraków 2001, pp. 130–149; *Leksykon socjologii prawa*, eds. A. Kociołek-Pęksa, M. Stępień, Warszawa 2013, pp. 128–139. More about the methodology of social studies and methodological issues of the science of law, see, e.g., E. Babbie, *Badania społeczne w praktyce*, Warszawa 2004; K. Grzeszkiewicz-Radulska, *Metody badań pilotażowych*, "Acta Universitatis Lodziensis. Folia Sociologica" 2012, no. 42, pp. 113–114; S. Nowak, *Metodologia badań społecznych*, Warszawa 1985; L. Sołoma, *Metody i techniki badań socjologicznych. Wybrane zagadnienia*, Olsztyn 1995; K. Opałek, *Problemy metodologiczne nauki prawa*, Warszawa 1962; Z. Ziembiński, *Metodologiczne zagadnienia prawoznawstwa*, Warszawa 1974; J. Stelmach, B. Brożek, *Metody prawnicze*, Kraków 2004.

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Only mediators from such mediation centres were eligible to participate in the survey, which had a team of experienced mediators. Moreover, various regions of Poland should be represented in the study and not only the largest but also medium-sized cities and towns. Mediators from Mediation Centres at District Chambers of Legal Advisors in Bydgoszcz, Lublin, Olsztyn, Warsaw, and Wrocław took part in this scientific activity. In each of the centres mentioned above, interviews were conducted with two mediators selected from among the leaders of the centre, i.e. persons with considerable mediation experience, often also performing managerial and coordination functions in the mediation centre, and therefore additionally equipped with knowledge of the specificity and statistics of its activities.

The interviews were oral, and the author personally spoke to each of the respondents. The average duration of the interview was about two hours. With the consent of the respondents, the interviews were recorded and then transcribed (only for the use of the researcher while maintaining the confidentiality of the respondents' personal data), which greatly facilitated the collection of the information and its in-depth analysis.

At the beginning of each interview, individual respondents were informed about the topic, scope, objectives of the scientific activity, the nature of the research tool (interview specifics), the entity management, implementation and funding of the research being conducted. Efforts were also made to properly motivate them to give honest and comprehensive answers. Before starting the substantive part of the interview, each interviewee was asked to present his or her professional profile. In this regard, the respondents provided information on their skills and experience in legal assistance as a legal advisor and mediation services as a mediator. Respondents indicated their specialisations and the types of court and out-of-court disputes they had dealt with so far as legal advisers and mediators. In order to avoid misunderstandings, the researcher checked that the respondents had met the basic conceptual grid used in this study and that it was understood by them in accordance with the literature on mediation theory and practice.

The interview was of a semi-structured nature, where, on the one hand, the respondents presented free statements on the given topic, and on the other – they addressed more detailed issues suggested by the interviewer, including answering questions prepared in advance and arranged in an appropriate order. The scope of the interviews was determined primarily by the general aim of the research and the specific objectives of the scientific activity.

Further considerations include the presentation of significant, selected data gleaned from in-depth interviews with mediators, their concise discussion and major conclusions, as well as the summary of the whole scientific activity.

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## DATA (INFORMATION) GLEANED FROM THE INTERVIEWS

Given the editorial limitations regarding the paper size, only selected, significant information from the interviews is presented, and it is provided as bullet points concerning the major issues included in the individual interview scenario, constructed with a view to obtaining relevant data (especially qualitative data), which can be used to accomplish the specific objectives of the scientific activity. Therefore, the information from individual respondents, after its detailed, multi-aspect analysis, was properly grouped. Subsequently, the collected data were aggregated into individual issues to be presented to the readers in a concise manner (points I to X). It was decided to quote their fragments in the text anonymously, adequately to the considerations, in order to present the individual specificity of the answers provided by the respondents, formulated especially in the free statements on the understanding of the essence and objectives of mediation and the main tasks (roles) of a mediator.[8]

### I.

During the interview, the respondents were asked to speak freely about how they understood the essence of mediation and the main tasks (roles) of a mediator. Regarding these issues, information was collected indicating that the respondents perceived the mediation and the role of a mediator in a similar manner, although they emphasised their various potential properties and features, described in particular as:

a) "Mediation is a way of settling a dispute in a broad meaning of the term",
b) "Mediation consists in in-depth work with a conflict, conflict management, establishing how the conflict and its real causes are understood by the parties, the interests and needs of the parties",
c) "Mediation is a diagnostic tool in a conflict",
d) "Mediation is an alternative method for resolving a dispute, i.e. the possibility of settling a conflict between individuals, legal persons, units without legal personality in such a way that is satisfactory and acceptable to both parties. This is definitely a less formalised and more convenient way, which offers greater possibilities, quicker, cheaper, and indisputably better than waiting for the court's verdict. However, the longer I work as a legal advisor, the more I see that it can be different than expected",
e) "Mediation is a negotiation between the parties to a dispute, assisted by an impartial mediator. Basically, this is how I see my role as a mediator, who is an impartial person, trying to listen, define the interests and expectations of

[8] Data from interviews with the mediators will be presented in more detail in an individualised form in an additional study.

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each party, and see whether there are any common grounds and how these common grounds can be made to come closer if they are too far apart",

f) "Mediation is a form which is definitely more friendly to both parties than court proceedings; it gives them much more freedom to create a non-procedural dispute settlement. I mean, there are obviously some procedures, but these are not as formalised as court procedures, i.e. they are more flexible, more friendly, and there is a greater chance for a settlement, if one is reached, to be implemented voluntarily. The main role of a mediator is to streamline communication between the parties. If a mediator is a lawyer, he or she also has other roles, because if we want to make the parties reach an understanding, and to make such understanding implementable, under coercion, in the last resort, then it has to be realistic legally because the parties to a dispute – even if they begin to communicate – often tend to come up with such constructions that cannot be implemented",

g) "Mediation is assistance – a procedure intended to help the parties to find a common solution to the problem, especially if they themselves do not want to or cannot talk or make decisions together, for example, because there is too much emotion or because the dispute has been unresolved for a long time". This is mainly "help provided to the parties to make them understand that the court is not the best solution, that it is better to work out a solution by themselves and move on with it than to wait for the court and how it will approach it". Moreover, "mediation can help the parties to save time and money, and to reduce negative emotions". One of the respondents pointed out: "When it comes to the role of a mediator, I keep telling the parties to a dispute: use the live tool that you have in front of you as best you can. I will show you how; just reach out and use it",

h) "Mediation involves proceedings whose aim is to 'soften' the positions of the parties to a dispute; hence, such terms as 'dispute' and 'confrontation' are avoided in the mediation discourse, and the parties are encouraged to make efforts to resolve the issue rather than to fight to win the case. The essence of mediation lies in its rapidity and efficiency and that the parties are in greater control of what is going on with their case, and they are less disoriented than in a courtroom. It can be summarised with the slogan: 'write your own verdict for yourself'. The parties act as judges, but not ones who make decisions on another person's case but on their own, and the role of the mediator is to see to it that it is done in accordance with the rules of mediation, including the basic one: mutual respect. In order to resolve a dispute, a mediator should give the parties the means to cope with the problem by themselves. And the mediator has a mission, especially that of an educator, who is supposed to help the parties not only to resolve the dispute but also to raise their awareness and culture of dialogue, to improve communication

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and even help people to become better (to grow morally). This requires great emotional wisdom from the mediator",

i) "Mediation is an effective communication platform, encouraging people to speak and to listen so that both parties to a dispute can look at themselves and at the problem, one which gives a unique opportunity not only for reaching a settlement but also for reducing the negative emotions and for reinforcing the belief that it is possible to reach an agreement and cooperate now or in future by promoting the idea of resolving disputes in an amicable manner". "Contrary to stereotypes, monetary, fiscal solutions are not the point even in mediations in commercial disputes, because these are often caused by emotional, psychological or personality issues, which make it necessary to improve communication and relations between the parties in future. Mediation provides the parties with an opportunity for getting closer together, or at least for understanding each other's conditions of operation and for assuming responsibility for themselves and for others",

j) "Mediation helps people to talk in a way that reduces emotional tension, which often accompanies conflicts, so that they start thinking differently, leave the well-beaten paths, patterns, and ways of thinking and let themselves vent their anger. To change the way of thinking, more oriented towards the future than towards what happened, and recriminations about past events, which cannot be changed, but rather such an approach that we are now at a point when it is important what is going to happen, what is going to be better, what can give you more satisfaction, what is going to be more beneficial; to put it in a nutshell: what will be better for you",

k) "Mediation is a procedure which is beneficial even if no settlement is reached because its main purpose is to establish the causes and the essence of a dispute and to eliminate communication disruptions, to open people not only to talking to each other but to each other",

l) "Mediation is a tool which creates healthy conditions for talks, aimed at resolving a dispute. Nevertheless, in my opinion, creating the right atmosphere or enabling the parties to establish contact is the main aim of mediation". "In my opinion, a mediator can be perceived as a specialist in everything. That is, in establishing contact with a party, then arranging a place to meet, arranging the meeting itself and – when the actual mediation starts – creating the conditions for constructive negotiations. This means that it is a person who supports and supervises the process of understanding between the parties",

m) "The essence of mediation lies in that a mediator tries to make the parties communicate so that they resolve the dispute themselves rather than to have someone else decide for them", "so that the solution should not be a rotten compromise, but that we should work out a solution satisfactory to both

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parties", "we change the way people see the world around and relations which connect us with another person, obviously with no manipulations",

n) "It is important that the mediator should be an expert. Obviously, an expert in improving relations, emotions and venting anger but also an expert in realistic and concrete agreements and the conditions for its approval",

o) "In general, mediation is the complete manifestation of the functioning of the civic society, which solves its problems on its own and in an amicable manner".

## II.

The surveyed mediators were asked to identify the main mediation objectives. A majority of the respondents stressed that the objectives of a specific mediation procedure depend on the specificity or the type of the case (e.g. whether it is a commercial, civil or family dispute).

The most frequently mentioned main objectives of the mediation discourse included: a diagnosis (including understanding) of the conflict between the parties, finding a hidden cause of the conflict (i.e. its real causes and the parties' needs, interests and factors affecting their actions), seeking the space (field) for understanding, resolving the dispute by negotiation supported by an impartial and neutral mediator through a settlement taking into consideration the real interests and needs of both parties. One of the respondents pointed out: "Apart from the most tangible dimension, i.e. signing a settlement agreement, ending the dispute, sometimes it provides space for finding out what the other party really thinks. Because – particularly in the case of business entities – when a decision-maker appears at a meeting, it turns out that such a person becomes aware at that moment that there was a problem, about which the personnel had not informed him".

It was also brought up in the interviews that it is important for the conflicting parties to have the mediation procedure improve their communication and mutual respect. It was shown that its objective was sometimes "to increase mutual respect", to teach the parties "to talk", to improve the culture of the dialogue so that "they do not use descriptive, judgemental words inadequately and avoid vulgar or crude language". One of the mediators said in this context: "And one can surely learn it. And suddenly you can discover that you can talk without quarrelling, and yet be satisfied with the conversation". An educational objective of a mediation procedure was also noticed, when the ability to listen, to argue and to diagnose the cause of the conflict can be strengthened.

Moreover, improvement of relations between the parties and rebuilding their cooperation for the future were emphasised as important aims of mediation, especially in family and commercial cases (with long-term contacts of the entrepreneurs). One of the respondents pointed out: "When it comes to the personal objectives,

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I think that the parties can find something out; mainly, they find out that the other party is also a human being. And, basically, they are often surprised: Oh, I did not know that a simple handshake, when a settlement has been reached, gives you so much joy that it is a completely different kind of relation, that there is no hostility. This whole atmosphere of a courtroom and a conflict is obviously associated with some pretensions and masks…, because they will not show that they are weak. And suddenly, during the mediation, they can show their face without fear of losing it". Another mediator admitted that "improvement of relations between the parties is definitely a mediation objective, including often in commercial cases… even separated from the essence of the conflict, it has a sort of a general human dimension. If you improve your relations with someone, after some time you will improve your relations with the whole world. This has a sort of spiritual dimension".

Respondents also saw the mediation objectives in its psychological dimension, such as, for example, the need to be heard and appreciated, to understand the circumstances of one's actions, to vent off negative emotions or to reinforce processes of introspection (self-reflection) and self-determination. One of the mediators pointed out: "A party which is given time to speak their mind and to vent off their emotions, they are becoming ready to put forth new claims or set new directions in their actions. And this is associated with the need to be heard and with self-determination". Another respondent pointed out that: "I think that mediations can make people develop better than any other technique, I can confirm this empirically", "mediation is working with emotions, with narratives, with motivations". Another respondent said: "I conducted a mediation process in which there was a dispute between two business partners, and one claimed to be treated with disrespect by the other, he needed to be treated like a partner – something that the other party did not see. We worked on it in the mediation, to make this other party see it and satisfy this need".

Some respondents emphasized the mediation objective as an assessment of the reasonableness and, if needed, support for apology, forgiveness and reconciliation of the parties. With respect to the mediation objective, mediators pointed out that in some cases, "the conflict concerned the principle, it was all about apologising…, about making these people reconcile…, come back to their family", "these future relations – these are the mediation objectives"; there were many threads, but reconciliation was the real objective. And that they made peace with each other – this is the absolute symbol of satisfying the claim". One of the respondents pointed out in the interview: "It is very frequent in civil disputes that an apology changes the atmosphere of mediation, really. There was this plaintiff and the defendant, a conflict between neighbours, before the court, after 4 or 5 sessions, it escalated strongly, and when this defendant said: Mrs. Maria – I remember this mediation clearly, it was very intense – I apologize for that. And suddenly, all bad emotions left her, and they reached a settlement within an hour. All it took was to say 'I'm

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sorry'." Another mediator admitted: "It so happened that there were several disputes in courts, the parties were… they exchanged roles of plaintiffs and defendants and covering all these disputes with mediation helped to resolve them and, ultimately, the parties to reconcile. On the other hand, if a settlement cannot be reached, then it is important for the parties to start talking and listening to each other because this is a good omen for future cooperation". Referring to his practice, one of the respondents said that apologies, forgiveness and reconciliation of parties in mediation "can and do happen, but… to me, mediation is mainly a strict technique, a kind of discipline and, really, to solve a problem we do not need to come to like each other, apologize and fall into each other's arms". These objectives of a mediation process can be achieved as if on the way; still on this thread, the mediator admitted that "if I wanted to approach these objectives openly, especially with the players I have to play with, that is, with legal advisors, attorneys and businessmen, who often resemble a bay full of sharks, well, you know, I would not be reliable to them if I emphasised this aspect too much".

Several respondents stressed the transformative aspect of mediation (transforming the parties in the behavioural and personal aspects, even with their moral growth). One of them pointed out that it is its objective "sometimes to support the process of people excelling personally – I see it as a sort of mission because the parties can leave the mediation better people, almost like after a confession in church". In another interview, when showing the parties' attitude in a labour law dispute, which ended with a settlement, a mediator pointed out that the employer showed goodwill to the employee, who had a history of negative behaviour towards him. And he described the employee's attitude with these words: "He regretted what he had done very much… I think he is never going to do anything like this in his life". Another respondent said that sometimes "in family mediations, the therapeutic dimension is very important, for example, in divorce-related cases". Another respondent talked in similar lines: "An ideal mediator is a psychologist and a lawyer, that is, he will conduct proper therapy and then draw up a settlement and will fix the problem". When asked whether he uses psychological knowledge and techniques, another mediator admitted: "Absolutely. I spent several years studying them, and I'm in touch with them, on an academic level, all the time. And, honestly, what I have learned about a psychological crisis, what I have learned in crisis interventions – let me tell you this: it is the main source of tools I use in my work, and not only in mediations but also in a courtroom". She also said in this interview that "sometimes mediation is a sort of therapy for the parties".

It should be noted here that there were differences of opinion regarding the transformative objectives or use of psychological techniques in mediation. Two mediators expressed caution, even scepticism, about them, pointing out that: "It is possible, but I would not overestimate…" or "I am afraid that if a mediator presented such an idealistic approach, he would get out of his role". Moreover,

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a motive of boundaries and differences between mediation and therapy appeared in one of the interviews, and using the right psychological techniques in mediation by a competent mediator with the consent of both parties was not negated by the respondent. Another respondent pointed out: "I accept the job of a mediator with the parties' emotions, with the right use of communication and therapeutic techniques, but I have my doubts whether a mediator will not become a coach in the end".

It was also noted during the interviews that the implementability of many mediation objectives beyond reaching a settlement was limited, especially in economic cases, if only the parties' representatives were present at mediation sessions. One of the respondents pointed out: "If representatives attend mediation sessions, it is difficult to notice the other, additional value, of sort of introspection, self-development in the parties to the mediation process, which can frequently happen in other mediations, when the parties participate in person". It was stressed that if representatives are bound by strict instructions from their employers, conducting constructive integration negotiations may be a problem, in particular when they try to follow a strategy typical of position negotiations.

After speaking freely on the essence and main mediation objectives and the tasks (roles) of a mediator, the respondents were asked to indicate the level of importance (on a scale from 0 to 10) of the following (potential) objectives of mediation (in general), and further broken down into business, civil and family mediation. The objectives listed by the researcher included, in particular:

a) to conduct meaningful negotiations, to generate options for dispute resolution and to conclude a settlement (with the question whether this was the only or most important objective in any mediation process),
b) to identify and eliminate the causes of the dispute,
c) to improve communication between the parties to the dispute,
d) to improve the relations between the parties,
e) to make the parties, if necessary, perform acts of apology, forgiveness, reconciliation,
f) to rebuild the basis of cooperation between the parties to the dispute for the future,
g) to deepen the processes of self-discovery of the parties to the dispute,
h) to strengthen self-determination (learning) of the parties to the dispute,
i) to satisfy important psychological needs of the parties (among others: the need to vent negative emotions, to be listened to, to be recognised, to understand one's circumstances and motivations, to feel that one plays an important role in the decision-making process),
j) to shape desirable social attitudes and to promote the moral improvement of the parties to the dispute,
k) to extend access to justice in the broad sense,
l) to strengthen the parties' right to choose the form of dispute management,

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m) to strengthen the parties' participation in dispute resolution,
n) to reduce the burden on the courts through mediation and other forms of ADR,
o) to strengthen legal awareness, a culture of dialogue and peaceful forms of dispute resolution.

All of these mediation objectives were identified in the interviews, although not every mediator interviewed focused on each of them in their practice. Differences between the respondents concerned their hierarchisation or importance, but they were not radical. The most important mediation objectives as identified by the respondents (importance between 7 and 10):

a) in commercial cases: to conduct meaningful negotiations, to generate options for dispute resolution and to conclude a settlement (with the question of whether this was the only or most important objective in any mediation process); to identify and eliminate the causes of the dispute; to improve communication between the parties to the dispute; to improve the relations between the parties; to rebuild the basis of cooperation between the parties to the dispute for the future,
b) in civil cases: to conduct meaningful negotiations, to generate options for dispute resolution and to conclude a settlement (with the question of whether this was the only or most important objective in any mediation process); to identify and eliminate the causes of the dispute; to improve communication between the parties to the dispute; to improve the relations between the parties; to make the parties, if necessary, perform acts of apology, forgiveness, reconciliation; to rebuild the basis of cooperation between the parties to the dispute for the future; to shape desirable social attitudes and to promote the moral improvement of the parties to the dispute,
c) in family cases: to identify and eliminate the causes of the dispute; to improve communication between the parties to the dispute; to improve the relations between the parties; to make the parties, if necessary, perform acts of apology, forgiveness, reconciliation; to rebuild the basis of cooperation between the parties to the dispute for the future; o deepen the processes of self-discovery of the parties to the dispute; to strengthen self-determination (learning) of the parties to the dispute; to satisfy important psychological needs of the parties; to shape desirable social attitudes and to promote the moral improvement of the parties to the dispute,

Importantly, conducting constructive negotiations and reaching a settlement in family cases was a mediation objective of only a medium (5–6) value, with the above objectives qualified as more important.

These potential objectives of mediation, earlier listed collectively, which were not qualified as the most important in specific types of (commercial, civil, family) disputes by most respondents, were qualified as the mediation objectives of medium significance.

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It is noteworthy that all the mediators interviewed were of the opinion that conducting constructive negotiations and reaching a settlement by the parties to a dispute is not the only mediation objective. A large majority of respondents reported that in some cases, and a part of the respondents indicated that even in most (including business) cases, which they resolved as the mediators, reaching a settlement was not the most important objective of the mediation.

Apart from identifying and assigning the degree of importance to specific mediation objectives, respondents usually justified their decisions in detail, using examples from their mediation practice. In particular, it was stressed that the specific mediation objectives depend on the case type and its individual specificity: "In commercial cases, it depends on whether it is long-term or incidental contact". Moreover, there were opinions that some mediation objectives could be achieved in stages (e.g. improvement of relations, communication or moral growth), and they require directional, advanced competence from the mediator (e.g. in psychology or communication), his or her proper sensitivity and personal predispositions, as well as the will and proper cooperation of the parties in their implementation.

## III.

Continuing on the types and degree of importance of mediation objectives with respect to specific dispute types, the interviewed mediators were asked to address the issue of how the mediation objectives and their hierarchy is affected by the case specificity. Among the factors with a significant impact on the specific mediation process objectives and their hierarchy, the respondents mentioned the following:

a) the dispute object and type, the level of its escalation,
b) nature of the conflict causes (i.e. conflict of interests, communication, regarding facts, relations, values),
c) type of the parties' interests and needs (e.g. economic, legal, psychological, relation-related or ethical) or those of their relatives (e.g. the good of a child),
d) personality (psychological) traits of the parties (including difficult circumstances associated with their mental disorders, dysfunctional personality, addiction),
e) the level and type of the parties' relation,
f) the impact of third parties on the conflict and the methods for resolving it,
g) the long-term nature of the contacts between the parties (current and predicted for the future).

Moreover, when identifying the mediation objectives, their hierarchy and selection of mediation strategies and techniques in a specific case, one of the respondents referred to his professional and life experience, which allows for being guided by intuition regarding "the ability to identify other people's intentions and needs".

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Some respondents said with disapproval that the course of mediation is sometimes affected by the interest and needs of a lawyer representing a party, including scepticism regarding an amicable resolution of a conflict, caused by the lawyer seeking a higher or additional fee in a lawsuit.

## IV.

The interviewed mediators commented on the ways and stages of a mediation process relating to establishing mediation objectives in various civil cases. The data from the interviews show that, in principle, identification of the main mediation objectives starts at the pre-mediation stage and during the first joint or separate session as part of the mediation proper. However, some respondents said that new mediation objectives could emerge or their hierarchy could change during the mediation discourse. The mediation process is flexible and dynamic, with no fixed phase chronology; as the conflict diagnosis is deepened and the parties to a conflict become more open, the mediation objectives in this specific case can be modified.

The respondents also talked about the preferred period during which the dispute and parties to it are diagnosed. It turned out that a large majority of the respondents, even in commercial cases, often go beyond the narrow subjective and objective analysis of a dispute, performed from the point of view of the parties' economic and legal interests and needs, also paying attention to other relevant issues, e.g. related to communication, relations, psychological (emotional) and ethical (also concerning business ethics). Some mediators pointed to the phase-structured nature of the conflict diagnosis and they admitted that it starts with a narrow analysis and goes on to include significant, subsequent dimensions of a case (including even therapeutic ones).

## V.

The respondents were asked to present their understanding of mediation effectiveness. Regarding the issue under analysis, it was agreed that the mediation effectiveness should not be measured only according to whether the parties reached a settlement because – as was established earlier – the mediation process has additional, multi-aspect objectives (such as identification of the conflict causes, improvement of communication and relations between the parties, reinforcing their self-knowledge and self-determination, and satisfying their significant psychological needs). The majority of the respondents stressed that reaching a settlement is one of the most important mediation objectives and measures of its effectiveness. Unfortunately, they are often regarded as the only criterion of effectiveness by courts or individuals without deeper knowledge of the essence and benefits of a mediation procedure, which determines its additional objectives. The respondents stressed

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that mediation effectiveness cannot be measured or examined solely through one criterion. One mediator even said: "I would not risk measuring the effectiveness of a mediation procedure based on only one parameter".

After the free talk, the mediators were asked first to state whether they agree or do not agree that the effectiveness of mediation proceedings in civil (including family, commercial) cases can be discussed:

a) "Even when a settlement was achieved at least regarding part of the disputed issues". The respondents gave affirmative answers. One of the mediators said: "It is very often that the agreed issues can be the base for building further; in another attempt at an amicable solution, the parties themselves can cope with the issues that have not been resolved earlier, so it is a success for me; it is not that the mediation failed",
b) "Only when a settlement was achieved during the mediation regarding all the disputed issues". The respondents gave negative answers. An opinion also appeared that this issue should be treated with precision and that one could also talk about partially effective mediation. On the other hand, one of the mediators pointed out that "even the smallest success in mediation is a great success for the parties",
c) "When a settlement was achieved during a mediation which is not only mutually acceptable but also beneficial to both parties (negation of the rule *Volenti non fit iniuria*)". The majority of the respondents gave affirmative answers. It was pointed out that the mutual benefit of the settlement is not directly visible to third parties, including to a court, when the material performance was settled, on the one hand, in return for the attitude or behaviour of the other party concerning non-material goods, including from a non-legal sphere, especially when they are not directly revealed in the settlement. It was also noted that "the opinion on benefits obtained during mediation changes in time. That at the moment of signing the settlement can differ from that a year later and from that 10 years later". Moreover, one of the mediators said that "openly non-symmetric settlement provisions should not be signed in a mediation, as this could mean a 'factory of settlements'. I would feel bad about it. No, no, no, that would be a factory of settlements",
d) "Only when a settlement was reached as a result of the mediation, which is realistic for both parties". The majority of the respondents stressed the importance of a settlement's implementability for its effectiveness, emphasising this feature of a mediation settlement as compared to a court verdict in civil or commercial cases (which, in principle, are not limited by the other party's ability to perform it). It was noted that the realisticness of a settlement agreement provisions can be judged as of the moment of concluding it and in subsequent stages of its implementation, which can be, in different circumstances, beyond the control of the mediator or the parties. Hence, several

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mediators pointed out that the settlement implementability is of importance for the evaluation of the mediation effectiveness, but it should be evaluated as of the moment of conclusion. One of the respondents directly addressed settlements with provisions accepted by the parties but objectively unimplementable: "I cannot accept for ethical, moral, and simply human reasons that a settlement agreement providing for unimplementable performance could be concluded, apart from the fact that it will be invalid. In that case, I would be pretending to conduct the mediation, and the parties would be pretending to mediate". Another respondent spoke along similar lines: "If I knew that a mediation settlement is, in fact, unimplementable, I would definitely have a huge problem with it, which is why I always try to examine the realisticness of the provisions of the draft settlement agreement",

e) "Only when a settlement was reached during the mediation, which was approved by the court". The respondents claimed that it was not necessary to seek court approval for a settlement agreement for the mediation process to be regarded as effective. They pointed out many times that, in practice, mediation settlements are implemented without a court's approval. Some of them decided that if a court refused to approve a mediation settlement agreement, one could say that the mediation process was effective with respect to its significant objective, i.e. resolving a dispute by settlement,

f) "Only when a settlement was reached in the negotiations, which was voluntarily executed by the parties". The respondents did not make the mediation effectiveness conditional upon performing the agreement voluntarily by the parties. Some pointed out that the effectiveness of a mediation process should be separated from the effectiveness of the mediation settlement implementation. Nevertheless, it was stressed that performing a settlement agreement voluntarily testifies to the mediation effectiveness with respect to the dispute resolution, which does not always have to mean that other mediation objectives, such as improvement of communication, relations between the parties and the parties' psychological satisfaction with its course and ultimate outcome, are fully accomplished. One of the mediators said in this context: "This is the power and magic of mediation that if someone, voluntarily and consensually, undertook to do something, then they do not need a court approval; in the majority of my cases, settlements were implemented without being formally approved by a court. It was sometimes needed for various reasons because there is continuity, instalments, deadlines, or to make it enforceable, but this is not an absolute condition for regarding a mediation process as effective",

g) "Only when other significant objectives of mediation were achieved apart from achieving the settlement (e.g. improvement of communication, relation or reconciliation of the parties)". Opinions regarding these issues were

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divided. Some respondents pointed out that for full mediation effectiveness – apart from concluding a settlement agreement – its other significant objectives should be accomplished in the communication and relation-related dimensions. According to others, signing a settlement agreement itself is sufficient for a mediation process to be regarded as effective. Still others stressed that their professional practice showed that reaching a settlement by the mediation parties is not possible until they improve communication and relations. Some of the respondents had the opposite opinions, and they pointed out that concluding a settlement agreement and its implementation can improve relations between the parties and help to build the basis for future cooperation.

Moreover, the respondents were asked whether mediation in a civil case is effective even when the parties did not reach a settlement, but at least some of the mediation objectives were accomplished in the psychological, communicative or relation dimensions between the parties (e.g. constructive communication and the basis for cooperation was restored, or mutual apologies and reconciliation took place)? A large majority of the respondents replied that it depended on the case specificity, but it should be assumed that, on principle, mediation should be regarded as effective if other significant mediation objectives than settlement were accomplished, which is often not the most important mediation objective in a case. One of the respondents pointed out: "I think that whether a settlement agreement is or is not concluded does not make a mediation process effective or not, because frequently, a mediation process results in enabling the parties to establish a peaceful contact, to start a constructive conversation on issues that are not brought up in court, e.g. emotional ones, and to create the grounds for understanding, cooperation and even reconciliation in future".

Moreover, several respondents admitted that they had been informed by judges that even if no settlement agreement was concluded as a result of a mediation process, the parties, once back in the courtroom, were changed and were calmer and more orderly, and they did not show their negative emotions, their mutual communication and relations were better and new motions for evidence were more rational and reasonable. The mediators also referred to their experience (e.g. as legal advisors), which showed that when the parties returned from a mediation not finished with a settlement, they concluded a settlement agreement in court based on the other objectives accomplished in the mediation discourse.

## VI.

The respondents provided their preferences regarding the form of mediation in different types of civil cases (direct mediation, indirect mediation, mixed online mediation), as well as for conducting mediation sessions with the parties alone,

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with the parties' attorneys alone, and with the joint participation of the parties and their lawyers. The respondents pointed out that the form of mediation was largely dependent on the case specificity, including on the objectives of a specific mediation process and the applied mediation strategy. In general, each of the mediators met with direct, indirect, mixed and online mediation in their practice. They stressed the specific nature of each of them, pointing, for example, to the communication and negotiation-related benefits of direct sessions, the possibility of establishing the real causes of a dispute and venting off emotions during separate sessions, the benefits of separate or online sessions, which facilitate contacts between the parties during the COVID-19 pandemic or at a considerable distance from each other or from the mediator's seat. The respondents also noted limitations or weaknesses of individual forms of mediation, e.g. by stressing the risks associated with maintaining confidentiality in online mediation. The majority of mediators mentioned direct and mixed mediation as their preferred forms. It was also stressed that it was reasonable to use direct mediation in some case types, especially when a dispute escalated seriously when strong negative emotions appeared, a considerable inequality of the parties occurred or the parties' wish to meet with the mediator separately was expressed. Moreover, one mediator pointed out that positive results in his practice were often brought by preparing the parties to have a direct conversation after the mediator and other persons present had left the room. Another mediator admitted that he had had the mediation discourse with the parties and with their representatives by phone but that he did not recommend that form of contact. The respondents also pointed to the advantages and potential difficulties of participation in mediation sessions of the parties alone, the parties' representatives alone and with joint participation of the parties and their lawyers.

In addition, the respondents presented their attitudes to the different activities at different stages of a mediation process, not only within the so-called mediation proper, but also in pre-mediation and post-mediation.[9] The editorial limitations do not allow for the presentation of detailed information in this regard. It is worth stressing at this point that the data revealed, on the one hand, a certain canon of universal attitudes and behaviours of parties, in line with the standards adopted not only in the Polish legal and social order and, on the other – certain diversity of approach of various mediators, which testifies to their experience, professionalism and their own mediation style. In effect, it was confirmed that a mediation procedure is flexible, and its course and the mediator's activity depend largely on the case specificity, its objectives, the parties' interests and needs, and the causes, object, nature and the degree of the dispute escalation, and on the preferences of the mediator and the parties.

[9] More about the pre-mediation phase, mediation proper, and post-mediation, see, e.g., A. Zienkiewicz. *Studium mediacji…*, pp. 128–137.

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## VII.

The respondents commented on various mediation strategies (including facilitative, evaluative, transformative, mixed strategies and their own practices) and related mediation techniques, including the acceptable degree, extent and methods of the mediator's intervention in the dispute.[10] The majority of the respondents chose to indicate a preference for the use of facilitative, evaluative, transformative, mixed and other strategies regarding mediation in general, and further broken down into civil, family, and commercial mediation. The mixed strategy (combining elements of the facilitative, evaluative and transformative strategy) and an original, individual mediation strategy proved to be the most popular. Two respondents chose the facilitative, and one chose the evaluative strategy. None of the mediators mentioned the transformative strategy alone as the preferred strategy. However, one admitted that he "would put it on top" although he "did not feel competent enough to apply it" and admitted to sometimes applying the principles of the narrative strategy.

Some mediators stressed that the choice of the preferred strategy depended on the case specificity, including on the identified mediation objectives and the parties' interests and needs, and also on whether the mediation session was attended by the parties alone, the representatives alone or by all of them together. Therefore, it was pointed out that a mediator should demonstrate versatility regarding the ability to apply various mediation strategies and techniques, including transitions from one to another and their suitable combinations. One of the respondents said: "In my opinion, orientation towards one mediation strategy or technique can often even prevent the parties from being brought to a settlement. You should not do that".

The respondents also stressed with satisfaction that the current provisions of the Civil Procedure Code give freedom to mediators, allowing more or less interventional mediation strategies, including evaluative strategies if needed. One of the mediators pointed out: "I welcomed the changes in the Civil Procedure Code, that you can finally propose something to the parties when they no longer know what they can do to solve the problem… Obviously, I did it informally before, too. When I knew that the parties wanted it and that they were going to reach a settlement".[11] Along similar lines, another respondent said: "As long as the parties

[10] More about the assumptions and selection of various mediation paradigms, strategies, and techniques, see *ibidem*, pp. 38–49, 170–207; idem, *Różnorodny paradygmat mediacji – odpowiedź na wielocelowość dyskursu mediacyjnego*, "Kwartalnik ADR. Arbitraż i Mediacja" 2008, no. 2(2), pp. 61–77. Cf. A. Rau, E. Sherman, S. Peppet, *Processes of Dispute Resolution: The Role of Lawyers*, New York 2002, pp. 358–370, 423–431; L. Riskin, *Understanding Mediator's Orientations, Strategies and Techniques: A Grid for the Perplexed*, "Harvard Negotiation Law Review" 1996, vol. 1(7), pp. 7–51; R. Bush, J. Folger, *The Promise of Mediation: The Transformative Approach to Conflict*, San Francisco 2005.

[11] The respondent meant Article $183^{3a}$ of the Civil Procedure Code, which states: "A mediator conducts mediation by applying various methods aimed at amicable dispute resolution, including by

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give me space, that is, they express such a wish for me to suggest something or ask directly, what would you say here, what would you do, then I always try to help them, I try suggesting ideas for consideration that could be included in the settlement agreement and ask them what they think about it. Sometimes, in some cases, I say clearly that it is difficult for me to judge the situation and I do not have any suggestions". Another mediator admitted: "I thought from the start that if the parties came to mediation without representatives, then it was a good thing for the mediator to suggest to them the road they could follow to reach a settlement. The parties can decide whether the suggestion is acceptable to them or not. However, when the mediator abstains totally, it often destroys the sense of mediation and prevents it from being conducted, and we have no such chance in a mediation process in which we could reach an agreement by suggesting something". Another mediator admitted with respect to the paradigm of the evaluative mediation that: "I love spreading a vision before the parties of even the worst court verdict, predict possible scenarios; this often helps to rationalise the case perception and to reject emotions, to see that mediation has an advantage in that parties can decide for themselves how their dispute will be resolved by settlement".

The respondents also claimed that the transformative objectives and mediation strategy should sometimes also be implemented in commercial disputes. For example, one of the mediators pointed out: "Sometimes you would like to accomplish transformative objectives, including improvement of relations between the parties in commercial mediation. And this works – for example, the manager's attitude changes. By mediation, we show him or her how beautiful the world can be if we do not base our business only on mercantile objectives, taking advantage of the partner's weakness, because this is – I think – a sort of mission in mediation: to improve interpersonal relations and to show the parties in a mediation process what we actually live for – to cooperate rather than to kill or fight each other".

Most of the respondents addressed the methods for applying the selected strategies and a broad catalogue of mediation techniques in various civil cases and a range of other – often difficult – practical issues. Detailed data on these issues will not be presented here because of the limited size of this paper. One should at least point out here that the issue of the application of various mediation techniques covers: hearing out, storytelling, asking questions, paraphrasing, tuning in, sharing, reflecting, venting off, rephrasing, appreciating, effect projection, role reversal, brainstorming, observation, analysis, selection, non-verbal communication techniques, motivational techniques, impasse breaking. Respondents also addressed a number of difficult practical issues, such as: the importance of legal and evidentiary issues and the mediator's familiarity

supporting the parties in formulating settlement propositions, or propose methods for the dispute resolution at a joint request of the parties, such propositions not being binding on the parties". See Act of 17 November 1964 – Civil Procedure Code (consolidated text, Journal of Laws 2021, item 1805).

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with the case file with a view to the accurate identification of mediation objectives and the effectiveness of the mediation discourse, handling situations of significant imbalance or passivity of the parties to the dispute (with respect to each of them, while maintaining the principle of impartiality and neutrality by the mediator), the proper application of the so-called "realisticness test", the constructive conduct of negotiations with the mediator's participation, ways of establishing a consensus space and generating options for resolving the dispute, the preferred techniques for working on the content, form and drafting of a settlement agreement, the diverse roles of lawyers in mediation (including their potentially negative or positive impact on accomplishing the mediation objectives), rules of participation of other experts in mediation proceedings and its effects, and co-mediation.

## VIII.

The mediators identified and commented on various factors influencing the selection and application of particular mediation strategies and techniques, also regarding the achieving of the objectives of a specific mediation procedure. The following factors were noticed and addressed in particular:

a) the type, complexity and nature of a dispute causes,
b) the type and hierarchy of the parties' established interests and needs,
c) the dispute duration and degree of escalation,
d) long-term nature of predicted contacts, possible cooperation of the parties in future,
e) the parties regarding the economic and legal aspects of the case as the priority,
f) the parties regarding the psychological and social aspects of the case as the priority,
g) a mediator's preferred mediation strategy,
h) the parties' preferences regarding the methods of the mediator's intervention.

Moreover, two of the respondents admitted that intuition and emotional intelligence are among the important factors with the greatest effect on the choice of a mediation strategy or technique. For example, one of the mediators pointed out: "In my opinion, a mediator uses intuition and emotional intelligence in the analyzed aspect and knows the theoretical foundations, but, in fact, ready behaviour patterns cannot be planned for each case".

## IX.

The interviewees were asked to identify the most useful mediation strategies and techniques for achieving specific types of mediation objectives (including negotiation, communication, psychological, relational, or personal and behavioural development of the disputing parties). In addition, respondents were asked to

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grade the effectiveness of the main mediation strategies (and related techniques) with respect to mediation in general and further broken down into civil, family and commercial mediation.

Regarding these issues, an attempt was made to calibrate the effectiveness of various strategies. The highest level of effectiveness for commercial, civil and family disputes was assigned by the respondents to their own mediation strategy and a mixed strategy. However, a majority of the mediators were of the opinion that there were no simple relationships or rules of selection and applying specific strategies to mediation objectives and dispute types, as each case is different, so the individual subjective and objective specificity of each case has to be taken into consideration. Some respondents stressed that one could successfully apply various mediation strategies and techniques to accomplish objectives of the same type ("sometimes one objective can be accomplished in different ways"). Therefore, one cannot confirm that a specific strategy or technique is effective in one type of objectives of dispute types and is not effective in others.

## X.

At the end of the survey, the respondents were given an opportunity to make a free statement not only summarizing the research subject matter but also related more broadly to any aspect of mediation practice, the activities of the mediator community, relevant legal regulations or relating to other court or out-of-court forms of settling legal disputes. The vast majority of them have benefited from this, providing additional, valuable information to expand the research material, whose detailed presentation exceeds the planned framework of this paper. However, one should mention here the issues discussed in the final statements:

a) justifiability of wider application of mediation and methods of popularising knowledge about mediation (it was stressed that synergy, cooperation of various circles, is needed, including judges, mediators, lawyers, entrepreneurs, people from the media and education sectors),
b) optimisation of the Polish legal regulations concerning mediation,
c) improving mediators' professionalism,
d) providing proper education on mediation in law studies and in permanent education of lawyers, including judges,
e) supervision of mediators to develop proper mechanisms of care about their professional level, mental hygiene, prevention of professional burnout,
f) more frequent contacts between mediators and judges at conferences, meetings, etc. and developing rules of contacts between mediators and the court (e.g. to find out whether the proposed settlement agreement provisions have a chance for approval),
g) greater involvement of judges in promotion and referring cases to mediation,

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h) obligatory nature of the first mediation meeting (or the obligatory nature of mediation in some types of civil disputes),
i) raising and greater diversification of the remuneration paid to mediators in civil cases referred by the court and making it dependent not only on the value of the dispute object, but also on the difficulty and complexity of the case, the amount of the mediator's work and time needed for conducting the mediation process,
j) establishing a professional self-governing organisation of mediators and granting a status of the profession of public trust to mediators.

## DISCUSSION AND CONCLUSIONS FROM THE DATA GLEANED FROM THE INTERVIEWS

The interviews provided a significant amount of qualitative data associated with the choice and application of various mediation strategies and techniques with respect to establishing the objectives of a specific mediation process and perceiving a mediation process as effective. Moreover, both the correctness and utility of the research tool (the survey questionnaire) were verified. A concise, summary discussion of the information from the interviews with the mediators should start by stating that the data (with the other details, which cannot be presented due to the limited size of the paper) enabled the author to accomplish the general research objective and to address detailed research problems, in particular:

a) ways of understanding the mediation objectives, their types and hierarchy by the mediator group under study,
b) conditions under which mediation in civil (including commercial) cases are recognised as effective in part or in whole,
c) ways and the stage of establishing the aims of mediation,
d) the mediators assigning and comparing the aims of civil (including commercial) mediations to the right catalogue of mediation objectives in the personal, interpersonal, social, negotiation-information, communication and psychological dimensions,
e) preference of the mediators regarding the application of a specific mediation strategy (e.g. various types of facilitative, evaluative or transformative strategy) or their combination,
f) the course and the main factors affecting the choice of specific mediation strategies and techniques for accomplishing specific objectives of mediation in a civil (including commercial) case,
g) preferences of the mediators under study regarding the form of mediation in civil (including commercial) cases (direct, indirect, online, mixed mediation),

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h) ways of applying the preferred mediation strategies and techniques by the mediators under study in civil cases, including commercial cases,
i) effectiveness of the main mediation strategies and techniques employed by the mediators in civil (especially commercial) cases.

Being aware of the risk of simplification in a synthetic presentation of the main conclusions, one can state the following.[12]

The mediators participating in the study (who also work as legal advisors) are open to a holistic diagnosis of legal disputes while also perceiving their relevant non-legal dimensions. The respondents understand the essence and objectives of mediation, and the role of a mediator in multiple aspects, seeing potential fields of his or her activity in the negotiation, information, economic, legal, communication, relation, psychological and ethical dimensions. They link the identification and hierarchy of the objectives of a specific mediation process, as well as the choice of specific mediation strategies and techniques to be applied for accomplishing them with various subjective and objective factors arising from the dispute specificity. The respondents mainly prefer a mixed mediation strategy (combining elements of the facilitative, evaluative and transformative strategy) and an original, individual approach (mediation style). Some of them are also open to the transformative paradigm in mediation, supporting – if needed – not only improving one's self-knowledge or self-determination of the parties but also acts of apology, forgiveness and reconciliation of conflicting parties and their positive behavioural and personal transformation (including moral growth to "make people better" owing to mediation).

Direct sessions and a mixed form, with separate meetings, is the preferred form of mediation in civil cases. The respondents admitted that – if needed – they also use typical indirect and online mediation.

During the interviews, the mediators presented (based on anonymised examples) various ways of applying the preferred strategies and various mediation techniques in civil, family and commercial disputes, as well as in difficult situations associated with significant inequality of the parties' resources, their passivity or an impasse in the negotiations. The issue of the effectiveness of different mediation strategies and techniques in civil, family and commercial cases, also in the context of different mediation objectives, was also addressed. Apart from the attempt made by some respondents to calibrate the effectiveness of different strategies (with the mixed strategy seen as the most effective), a majority of the mediators were of the opinion that there were no simple relationships or rules of selection and applying

[12] The author is aware of the risk of some simplifications or omissions in the presentation of results and conclusions, given the editorial limitations of the text. Nevertheless, he wishes to encourage the readers particularly interested in this subject matter to analyze the data provided herein on their own, to draw their own conclusions, and subsequently to contact the author in order to present and discuss them.

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specific strategies to mediation objectives or dispute types, as each case is different, so the specificity of the case and of the parties has to be taken into consideration each time. Some respondents stressed that one could successfully apply various mediation strategies and techniques to accomplish objectives of the same type. Therefore, one could not state that a specific strategy or technique was effective in one type of objective or dispute type and not effective in others.

The majority of the mediators admitted that they allowed the cooperation of the parties and of the mediator with other experts (e.g. a tax advisor, a psychologist, an appraiser, etc.) in mediation. They made taking up such cooperation conditional upon the specificity of a dispute and on the parties' consent. This shows that a majority of the respondents can be open to working within an interdisciplinary team of experts (collaborative team) as part of holistic dispute management.[13]

Finally, the mediators provided significant data on the effectiveness of mediation. It was agreed that it should not be judged only by whether the parties reached a settlement because – as was established earlier – the mediation discourse sometimes has additional, multi-aspect objectives (such as identification of the real conflict causes, improvement of communication and relation between the parties, reinforcing their self-knowledge and self-determination, and satisfying their significant psychological needs). The majority of the respondents stressed that reaching a settlement is one of the most important mediation objectives and measures of its effectiveness. The respondents pointed out that mediation effectiveness could not be judged or examined solely from the perspective of one criterion. Significantly, a large majority of the respondents thought that an effective mediation process did not have to end with a settlement agreement if other mediation objectives were accomplished. A settlement agreement does not have to resolve all the moot points – it is important that it should be acceptable and beneficial to both parties and implementable, at least as of the moment of conclusion. Court approval for a settlement agreement or its voluntary performance is not necessary for the mediation process to be regarded as effective.

Apart from providing detailed data, the interviews (like the surveys) confirmed the correctness of the general research hypotheses. Firstly, the research assumption that during mediation proceedings in civil cases (including commercial ones) conducted by mediators (who are lawyers by education who are also practicing as legal advisors), various communicative, psychological, relational and ethical goals are often achieved, which go beyond the narrow treatment of the mediation discourse as the only qualified form of negotiation between the parties to a dispute, with the participation of an impartial and neutral intermediary, in order to conclude a settle-

[13] More about the holistic dispute management and the collaborative team, see A. Zienkiewicz, *Holizm prawniczy…*, pp. 248–275; S. Gutterman, *Collaborative Law: A New Model of Dispute Resolution*, Denver 2004, pp. 97–244, 435–443.

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ment agreement, focused exclusively on economic and legal issues. Secondly, the assumptions in civil cases which lead mediators to apply (and also combine) various mediation techniques to improve the effectiveness of mediation proceedings help to accomplish various mediation objectives in the personal, interpersonal and social dimensions identified in a given case. Moreover, the results of the interview helped to falsify the view (expressed in some circles) that lawyers acting as mediators in civil (particularly commercial) cases focus mainly only on the economic and legal objectives of mediation and aspects of the parties' dispute, usually applying the intervention mediation strategy of an evaluative type. The study results showed that the majority of the respondents applied various techniques typical of different mediation strategies, which indicates that the mediators' own individual mediation or mixed strategies dominate among the studied group of mediators.

To sum up, the respondents (who also work as legal advisors) pointed out that both legal knowledge and experience were helpful in the work of a mediator, if only in drawing up and evaluating provisions of settlement agreements with respect to the possibility of their approval by the court and realistic implementation. For example, one of the mediators admitted: "My legal knowledge helps me tremendously. If I did not have the armour of the knowledge of the Family and Guardianship Code, the civil law, commercial law, I might agree to put illegal or ineffective provisions in a settlement agreement". Additionally, the great importance of appropriate personality traits of a mediator and the usefulness of competence in psychology and interpersonal communication was emphasized. The interviews showed that all the respondents did their jobs as mediators professionally and with great commitment and treated the rules of professional ethics very seriously. Therefore, they fit the statement perfectly in the preamble to the Standards for Mediation and Mediator's Conduct, adopted by the Minister of Justice's Board of Trustees for Alternative Dispute Resolution: "The success of mediation as an effective method of conflict resolution depends largely on the mediators' professionalism and the high level of their professional ethics".[14]

## CONCLUSIONS

To summarise the scientific activity presented in this three-part paper, including the theoretical and empirical study (including a survey and an interview), one should point out that it has provided a lot of significant findings, as well as qualitative and

[14] See Społeczna Rada ds. Alternatywnych Metod Rozwiązywania Konfliktów i Sporów przy Ministrze Sprawiedliwości, *Standardy prowadzenia mediacji i postępowania mediatora uchwalone przez Radę w dniu 26 czerwca 2006 r.*, https://bip.men.gov.pl/wp-content/uploads/sites/2/2019/07/standard-mediacji-opracowany-przez-spoleczna-rade-ds.-alternatywnych-metod-rozwiazywania-konfliktow-i-sporow-przy-ministrze-sprawiedliwosci-2006-r..pdf (access: 1.8.2022).

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quantitative data, which could be used to accomplish the general research objective and specific research tasks. Moreover, both the justifiability and correctness of the study methodology (methods, techniques and research tools) were verified. Apart from supplying detailed data, the results of the scientific activity confirmed the correctness of the general research hypotheses.

This study provided insight into how Polish mediators – lawyers (who also work as legal advisors), understood, established and hierarchized the mediation process objectives in civil, family and commercial disputes. This was followed by the identification of the way of choosing and applying various mediation strategies and techniques with respect to the mediation objectives in a specific case. It was also confirmed that the effectiveness of mediation proceedings, which should not be judged only by whether a settlement agreement was signed or not, may depend on a number of factors of both subjective and objective nature, one of the most important of which is the level of professionalism of the mediator, i.a., in terms of accurately determining the multi-aspect objectives of a mediation procedure (in a negotiation, communication, relation, psychological and ethical dimensions) and selecting and applying suitable mediation strategies and techniques to achieve them. The study confirmed the general thesis that the proper choice and application of mediation strategies and techniques was usually a necessary condition for accomplishing the properly identified, multi-aspect objectives of a specific civil, family or commercial mediation process and that effective and wide application of mediation can bring personal, interpersonal and social benefits.

The research provided new knowledge in the area presented above, which – apart from the cognitive effect and data interpretation – will help the author to attempt to formulate the optimization models regarding the choice and methods of employing specific mediation strategies and techniques to improve the effectiveness of mediation proceedings in civil, family and commercial disputes. Moreover, the knowledge obtained from this study will help the author to prepare a more comprehensive, comparatist research project to address the mediation objectives as well as the selection and adjustment of mediation strategies and techniques by mediators (not only qualified lawyers) in various types of civil, family disputes, including those involving labour law, juvenile cases and penal and administrative cases. The final, comprehensive study material allows an attempt at developing a methodology for the optimum identification of the mediation objectives and their hierarchization in various types of legal disputes, followed by the right choice and effective application of specific mediation strategies and techniques, which would provide the comprehensive accomplishment of the objectives of the mediation proceedings. These – apart from a dispute resolution by concluding a settlement agreement – could also include eliminating the conflict causes, improvement of communication and relations and restoring the foundation of cooperation between the parties, and sometimes even producing positive behavioural transformation

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(including moral growth), apology, forgiveness and reconciliation.[15] This fits into the process of seeking optimization of mediation practice and conducting further, more comprehensive scientific research concerning mediation as an amicable way of holistic management of legal disputes, as an element of the entirety of life situations (personal, family-related, social and professional) of the parties to a conflict.[16]

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[15] Cf. A. Zienkiewicz, *Prawnik jako peacemaker – przeprosiny, przebaczenie, pojednanie w opanowywaniu sporów prawnych*, "Ruch Prawniczy, Ekonomiczny i Socjologiczny" 2019, vol. 81(4), pp. 43–57.

[16] For more on a holistic approach to managing legal disputes, see A. Zienkiewicz, idem, *Holizm prawniczy…*, pp. 248–275 and the literature cited therein.

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ABSTRAKT

Prowadzenie badań nad rozumieniem i identyfikacją celów mediacji, wykorzystywanymi strategiami i technikami mediacyjnymi oraz efektywnością postępowań mediacyjnych posiada istotne uzasadnienie poznawcze i praktyczne. Celem artykułu jest przedstawienie sprawozdania z badań empirycznych poświęconych wymienionej problematyce, przeprowadzonych przez autora w ramach działania naukowego sfinansowanego przez Narodowe Centrum Nauki. Artykuł ma złożony charakter, podjęto w nim zarówno wątki naukowo-badawcze, koncepcyjne, jak i metodologiczne. Prezentowane badania empiryczne przeprowadzone zostały w Polsce, z udziałem polskich mediatorów, świadczących usługi mediacyjne przede wszystkim w ramach jednego z ośrodków mediacji funkcjonujących przy Okręgowych Izbach Radców Prawnych, tworzących tzw. Ogólnopolską Sieć Ośrodków Mediacji Radców Prawnych. Mając na uwadze uniwersalność i utylitarność podejmowanych zagadnień, ich potencjał komparatystyczny oraz oryginalność i wartość poznawczą uzyskanych wyników badań, mogą one zainteresować nie tylko krajowych, lecz także unijnych czy międzynarodowych przedstawicieli nauki i praktyki mediacji jako polubownej formy holistycznego opanowywania sporów

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prawnych. Zważywszy na zakres i stopień szczegółowości podjętych zagadnień, artykuł składa się z trzech części. W niniejszym tekście (stanowiącym część III) zaprezentowane zostały istotne, wybrane dane, wynikające z przeprowadzonych z mediatorami pogłębionych wywiadów indywidualnych, a także ich zwięzłe omówienie i główne wnioski oraz podsumowanie całości działania naukowego.

**Słowa kluczowe:** cele mediacji; strategie mediacyjne; techniki mediacyjne; mediator; spory cywilne

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