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Mediation in EU countries

Poland

Rather than going to court, it is worth trying to resolve disputes through mediation. This is a form of alternative dispute resolution (ADR) in which a mediator helps the parties to a dispute reach agreement. Both the government and legal practitioners in Poland are well aware of the advantages of mediation.

Who should be contacted?

In 2010 a section was created within the Ministry of Justice to be responsible for mediation issues, currently functional in **the Division for Victims of Crime and the Promotion of Mediation (Wydział ds. Pokrzywdzonych Przestępstw i ds. Promocji Mediacji)** within the Department of International Cooperation and Human Rights. Background information on mediation activities can be found on [the website of the Ministry of Justice \(Ministerstwo Sprawiedliwości\)](#).

In recent years, the Ministry of Justice has been paying particular attention to issues related to the development and popularisation of mediation and other forms of ADR in Poland and increasing the effectiveness of the justice system and its accessibility to citizens.

In 2010 **a network of mediation coordinators** were appointed upon the initiative of the Ministry.

There are currently 120 coordinators (judges, probation officers and mediators), in eight courts of appeal, all the regional courts and in six areas of district courts.

In respect of advice and opinions, the Minister for Justice works **with the Social Council on Alternative Dispute and Conflict Resolution (Społeczną Radą ds. Alternatywnych Metod Rozwiązywania Konfliktów i Sporów)** ('the ADR Council' - email: adr_rada@ms.gov.pl), which plays an important role in promoting the idea of mediation and communication between central government, the justice system and the mediation community.

It was appointed for the first time by Order of the Minister of 1 August 2005 as a body to advise the Minister on issues of alternative dispute and conflict resolution in the broad sense. The achievements of the first term of the Council included the following documents:

[Code of Ethics of Polish Mediators \(Kodeks Etyczny Mediatorów Polskich\)](#) (May 2008).

[Standards for the Training of Mediators \(Standardy Szkolenia Mediatorów\)](#) (October 2007).

[Standards for the Conduct of Mediation and Mediation Proceedings \(Standardy Prowadzenia Mediacji i Postępowania Mediacyjnego\)](#) (June 2006).

The ADR Council was appointed for its second term by Order of the Minister for Justice of 3 April 2009 (amended by the Order of the Minister for Justice of 1 July 2011). The most important document prepared by the Council in that term is [Establishing system changes \(Założenia do zmian systemowych\)](#) (March 2012).

The Council is currently made up of 23 representatives from the field of science and experienced mediation practitioners, as well as representatives of the following nongovernmental organisations, academic institutions and government departments.

The Council's powers consist above all of drafting recommendations for rules on the functioning of the national system of alternative dispute resolution, and also:

adapting the ADR system to the requirements of EU law,

developing a uniform model of mediation in the Polish legal system,

promoting standards for mediation proceedings,

promoting ADR mechanisms as a conflict resolution method among members of the judiciary and judicial staff, law enforcement services and the public,

creating an institutional environment in which particular forms of ADR can develop,

undertaking other ad hoc projects to develop mediation in Poland.

There are also a large number of non-governmental organisations and companies which play an important role in promoting mediation and determining its internal standards. These organisations lay down their own standards in relation to training, requirements for candidates wishing to become mediators, mediation methods, ethical standards and good professional practice. These rules are internal in nature and are directed only to mediators who are members of those organisations.

The **biggest associations** include:

[The Polish Mediation Centre \(Polskie Centrum Mediacji\)](#),

[The Association of Family Mediators \(Stowarzyszenie Mediatorów Rodzinnych\)](#),

[The Polish Association of Mediators \(Krajowe Stowarzyszenie Mediatorów\)](#),

[Partners Mediation Centre Poland \(Centrum Mediacji Partners Polska\)](#),

[The Polish Arbitration Association \(Polskie Stowarzyszenie Sądownictwa Polubownego\)](#),

[The Lower Silesian Mediation Centre \(Dolnośląski Ośrodek Mediacji\)](#).

In addition, professional bodies carry on institutionalised activities for the promotion of mediation. These include:

[The Supreme Bar Council Mediation Centre \(Centrum Mediacyjne przy Naczelnej Radzie Adwokackiej\)](#).

[The National Association of Lawyers Commercial Mediation Centre \(Centrum Mediacji Gospodarczej przy Krajowej Izbie Radców Prawnych\)](#).

Mediation centres of some Regional Associations of Lawyers (Okręgowa Izba Radców Prawnych)

Mediation centres of some Regional Councils of Notaries (Okręgowa Rada Notarialna)

Non-governmental organisations, within the scope of their statutory duties, and universities may have lists of permanent mediators (*stały mediator*).

Information about the lists and centres are provided by the Presidents of district courts. Lists of mediators in criminal matters and cases involving minors are provided by the Presidents of district courts.

In which areas is recourse to mediation admissible and/or the most common?

Disputes can be resolved through mediation in a number of areas. Under Polish law, mediation can be used in respect of the following matters:

civil

commercial
employment law
family law
minors
criminal
judicial-administrative

Detailed information on mediation can be found in [brochures and leaflets produced and distributed by the Ministry of Justice](#).

Mediation is most widely used today in criminal and civil matters. In 2011-2012, family and commercial areas saw the most rapid growth in mediation.

Are there specific rules to follow?

Mediation is a voluntary way of resolving disputes and conflicts and is conducted on the basis of:

A mediation agreement (**out-of-court mediation**)

A decision of the court for referral to mediation (**mediation referred by the court**).

If the parties do not choose a mediator, the court is entitled to appoint one to participate in the proceedings from a list of persons holding suitable qualifications. In criminal matters and cases involving minors the court appoints the mediator.

Mediation is governed, inter alia, by the Code of Civil and Criminal Procedure, the Law of Procedure in Cases Involving Minors and the Law on Costs in Civil Cases. Instruments of subordinate legislation have also been enacted governing detailed mediation procedure in respect of specific types of cases.

In respect of **minors** the regulation governs:

the conditions to be met by institutions and persons authorised to conduct mediation proceedings,

the registration of institutions and persons authorised to conduct mediation proceedings,

the training of mediators,

the scope and conditions of access of mediators to the case file,

the form and scope of the report on the progress and outcome of the mediation proceedings.

The regulation on **criminal matters** lays down:

The conditions to be met by institutions and persons authorised to conduct mediation proceedings.

The appointment and dismissal of institutions and persons authorised to conduct mediation proceedings.

The scope and conditions of access of institutions and persons authorised to conduct mediation proceedings to the case file.

The method and procedure to be followed in mediation proceedings.

In **family cases** additional requirements apply for mediators concerning their education and experience (psychology, teacher training, sociology or law, and practical skills in conducting mediation in family cases).

An implementing regulation lays down the amount of remuneration and reimbursable expenses of mediators in civil proceedings (see below - What is the cost of mediation?)

Information and training

Basic information on mediation in Poland can be found on [the website of the Ministry of Justice](#), including, inter alia: extracts from legal instruments concerning mediation, international mediation legal instruments and [documents and recommendations drawn up by the ADR Council](#), as well as electronic versions of posters which are published to promote the idea of mediation. [Up-to-date information is also published on activities promoting mediation](#) and activities at national and regional level in connection with International Conflict Resolution Day. The website also brings together [information, translations of legal instruments and examples of good practice from other countries](#).

Mediation issues are covered in general legal training and in the training of prosecutors and judges, and are also included in the training programmes of judges and prosecutors at [the National School of the Judiciary and Public Prosecutors \(Krajowa Szkoła Sądownictwa i Prokuratury\)](#).

Training for mediation coordinators commissioned by the Ministry of Justice to prepare for the role of mediation coordinator has been carried out in the following areas: communication, team management and working with mediators.

Mediators themselves select from among the courses offered by mediation centres, universities and other entities.

The Ministry of Justice keeps statistics on mediation, including:

the number of referrals to mediation by the court,

the number of settlements reached,

the conditions of settlements (for mediation in criminal matters and cases involving minors),

the number of out-of-court mediation proceedings (for civil mediation).

In connection with project-based activities, in 2010-2011 guides, leaflets and brochures with information on the different types of mediation and their practical use were distributed in courts, provincial police headquarters and mediation centres. There was also a campaign on television, radio and billboards to inform the general public about mediation. The Ministry of Justice regularly updates and distributes brochures, leaflets and notes attached to procedural documents and posters, which are also available free of charge on the Ministry's website.

Poland has celebrated International Conflict Resolution Day for five years, and the Minister for Justice is organising a national conference on the subject. In addition, dozens of smaller conferences, events, seminars and debates are held in many cities at regional and local level to mark the event.

What is the cost of mediation?

Information on mediation is distributed free of charge by the Ministry of Justice. [Research](#) shows that mediation is more cost-efficient than court proceedings.

In criminal matters and cases involving minors **the parties do not pay the costs of mediation** – these are covered from Treasury resources. In other types of cases, **as a general rule remuneration** is subject to agreement between the mediator and the parties. The mediator may however agree to conduct mediation on a pro bono basis.

In civil matters, the costs are borne by the parties. The parties usually pay half the costs each, unless they agree otherwise. In respect of mediation proceedings instigated on the basis of a court decision, the amount of the mediator's remuneration in non-property disputes is PLN 60 (approximately EUR 15) for the first mediation session, and PLN 25 (approximately EUR 6) for each subsequent session. If the proceedings relate to property, the mediator's remuneration is 1% of the value of the subject-matter of the dispute (not less than PLN 30 (approximately EUR 7.5) and not more than PLN 1 000 (about EUR 250)). The mediator is also entitled to reimbursement of expenses (covering, for example, correspondence and telephone costs and room rental. VAT is also added to the costs.

If a settlement is reached which is the result of mediation, 75% of the court fees will be refunded to the party who brought the matter before the court. In divorce and separation cases, 100% of the fees are reimbursed.

In the case of out-of-court mediation, the mediator's remuneration and reimbursement of their expenses are priced by the mediation centre or the parties agree on them with the mediator before the mediation begins. The parties cannot be exempt from bearing the mediator's costs even if they are exempt from paying the court fees. The mediator in both types of mediation (court and out-of-court) may waive their remuneration.

Is it possible to enforce an agreement resulting from mediation?

In civil matters, if the parties have reached a settlement it is attached to the minutes. The mediator informs the parties that by signing the settlement they agree to submit it to the court for approval. The mediator forwards the minutes with the settlement to the court and sends a copy of the minutes to the parties. The court promptly conducts proceedings to approve or give a declaration of enforceability of the mediation settlement. The court will refuse to approve the settlement or declare its enforceability, in whole or in part, if the settlement is contrary to the law, contra bonos mores, intended to circumvent the law, confusing or contains contradictions contrary to the legitimate interests of the employee. A mediation settlement which has been approved by the court and declared enforceable has the legal validity of a court settlement and may be enforced.

Family matters covered by a settlement may relate to reconciliation of spouses, laying down conditions for separation, parental authority matters, contact with children, meeting family needs, maintenance and child support, and property and housing issues. After separation of parents or spouses, matters such as the issue of a passport, choice of the child's education, contacts with other family members and management of the child's property may also be agreed upon. In civil matters the commencement of mediation proceedings interrupts the limitation period.

In criminal matters and matters involving minors, a settlement reached during mediation does not replace a court judgment and is not binding on the court, however the court should honour the content of the decision at the close of the proceedings. The terms of the settlement may cover the following: formal apology, compensation for material and non-material damage, community service, obligations to the party suffering loss, obligations to society as a whole and so on.

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