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APPLYING MEDIATION IN EDUCATIONAL PRACTICE

WYKORZYSTYWANIE MEDIACJI W PRAKTYCE PEDAGOGICZNEJ

Streszczenie: Wciąż poszukuje się skutecznych form oddziaływań wychowawczych i resocjalizacyjnych. Jedną z nich jest mediacja, której przypisuje się istotne walory pedagogiczne. Celem artykułu jest próba określenia roli mediacji w praktyce pedagogicznej, ze szczególnym uwzględnieniem jej zastosowania w środowisku szkolnym oraz w pracy resocjalizacyjnej z nieletnimi i dorosłymi sprawcami przestępstw. W artykule przedstawiono możliwości wykorzystania mediacji w sprawach karnych, w tym również po wydaniu wyroku, mediacji w sprawach nieletnich oraz mediacji szkolnych o charakterze wychowawczym i resocjalizacyjnym. Udział w mediacjach sprzyja przede wszystkim uczeniu się odpowiedzialności za własne działania oraz rozwijaniu empatii u stron konfliktu.

Słowa kluczowe: mediacja, mediacje szkolne, mediacje w sprawach karnych, mediacje po wyroku, nieletni, sprawcy przestępstw

Abstract: There is an ongoing search for effective forms of educational and rehabilitative interventions. One such approach is mediation, which is attributed with significant pedagogical value. The aim of this article is to define the role of mediation in pedagogical practice, with particular emphasis on its application in school settings and in rehabilitative work with juvenile

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and adult offenders. The article presents possibilities for using mediation in criminal cases, including post-sentence mediation, mediation in juvenile cases, and school mediation with educational and rehabilitative objectives. Participation in mediation primarily supports learning responsibility for one's own actions and developing empathy among the parties involved.

Keywords: mediation, school mediations, mediation in criminal cases, post- sentence mediation, juveniles, offenders

Background

The growing interest in mediation has led to its application in conflict resolution across various settings. In Poland today, it is employed not only in criminal cases but also in disputes arising in schools, workplaces, and even in medical contexts. This article examines mediation in schools and in work with offenders.

Mediation, according to Ch. W. Moore (2012, p. 30), is “the intervention in a negotiation or conflict of an acceptable third party with minimal or no decision-making capacity that accompanies the parties involved in voluntarily moving towards a mutually acceptable agreement”. In addition to resolving specific problems, mediation has the potential to establish or strengthen a relationship based on mutual trust and respect between the parties, or to end the relationship in a way that minimises emotional costs and psychological harm. Moore highlights the role of the mediator as a third party not directly involved in the conflict, which allows the parties to gain a new perspective on their situation (Moore, 2012).

Similarly, A. Kalisz and A. Zienkiewicz (2009, p. 43) define mediation as “a form of dispute resolution based on the specialised, non-manipulative intervention of a third party, impartial and neutral towards the parties and their conflict”. The main goals of mediation are to reach an agreement acceptable to both parties that considers their interests and needs, and “to rebuild positive relations and a basis for cooperation between the parties to the dispute, as well as to foster self-discovery, self-improvement, and so-called internal moral growth” (Kalisz, Zienkiewicz 2009, pp. 43–44).

To summarise, mediation is a method of conflict resolution in which the mediator plays a key role as an impartial, neutral figure bound by confidentiality. Mediation is voluntary and aims to reach a mutually satisfactory agreement.

Numerous classifications of mediation exist in the literature, based on various criteria – for instance, the method by which mediation is conducted (Rogula, Zemke-Górecka 2021). One such classification distinguishes between judicial and non-judicial mediation. Judicial

mediation, which takes place within court proceedings, includes mediation in juvenile cases, criminal cases (including so-called post-judgment mediation), and civil cases (including family mediation). In contrast, non-judicial mediations – also referred to as contractual mediations – occur outside of court and may precede or substitute for formal proceedings. These include political mediations, mediations in collective disputes, civil mediations, crisis mediations, and school mediations (Grudziowska, Lewicka 2010; Kalisz, Zienkiewicz, 2009).

This article will further explore mediation in criminal cases (including post-judgment mediation), mediation in juvenile cases, and school mediation.

Mediation in criminal cases

Mediation in criminal cases belongs to the category of judicial mediation. The main legal act regulating this type of mediation is the Regulation of the Minister of Justice of 7 May 2015 on mediation in criminal cases. The parties involved are the person suspected or accused of the crime and the aggrieved party. The primary objective of this mediation procedure is the redress of harm and damage, taking into account the interests and needs of the victim. In addition, it is essential that the offender assumes responsibility for the offence committed by taking corrective action (Bieńkowska 2012; Grudziecka, Książek 2013; Lewicka-Zelent 2022; Płatek, 2005).

A defendant accused of a crime may benefit in several ways from a positive mediation outcome. As K. Purc-Kurowicka (2023) notes, the legislator has introduced several provisions in the Criminal Code and the Code of Criminal Procedure for situations in which the offender has reconciled with the victim, repaired the damage, or reached an agreement with the victim regarding compensation. These provisions include: the possibility for the court, at the request of the victim or another authorised person, to impose a penal measure in the form of an obligation to make good the damage or provide reparation; conditional discontinuation of proceedings (applicable when the penalty does not exceed five years' imprisonment); conditional suspension of the execution of a custodial sentence not exceeding two years, a penalty of restriction of liberty, or a fine imposed independently; and the institution of extraordinary mitigation of punishment. Each of these measures requires the fulfilment of specific conditions (Purc-Kurowicka 2023; Act of 6 June 1997 – Criminal Code). Furthermore, Article 53 § 3 of the Criminal Code states that when imposing a penalty, the court shall also take into account the positive result of mediation conducted between the victim and the offender (Act of 6 June 1997 – Criminal Code). However, as emphasised by K. Purc-Kurowicka (2023,

p. 102), “a positive result of mediation should influence the decision to be taken by the trial authority in the case, but it will never prejudice the decision to be made by the court.”

The aforementioned benefits for the defendant may unfortunately foster instrumental motivations for participating in mediation. Therefore, it is essential to emphasise the rehabilitative dimension of mediation in criminal cases, particularly the offender’s assumption of responsibility (Bieńkowska 2013; Chmielewski 2013). Assuming responsibility entails the obligation to fulfil the agreed forms of compensation. This aligns with the compensatory aim of punishment and its role in the specific prevention of reoffending (cf. Cieślak, 1995). This is also evident in post-judgment mediation. The aim of imprisonment, as stated in Article 67 of the Criminal Code – namely, “arousing in the convicted person the will to cooperate in shaping his socially desirable attitudes, in particular the sense of responsibility and the need to observe the legal order, and thus to refrain from returning to crime” – corresponds closely with the goals of mediation (Trojanowska 2020).

An important aspect of mediation is enabling the offender to understand the consequences of their offence in various spheres of the victim’s life (Bieńkowska 2011; Rękas 2011; Waluk 2008). During a mediation session, the defendant has the opportunity to hear directly from the other party. This fosters cognitive empathy, i.e. the ability to adopt the other’s perspective. This form of empathy is closely linked to the readiness to make amends (Lewicka-Zelent 2016). Through awareness of the harm and suffering caused, the perpetrator is offered an opportunity to express regret, remorse, apology, and provide compensation (Rękas 2011). In this way, they assume responsibility for the offence committed. When the offender participates in mediation and complies with the agreed settlement, the compensatory purpose of criminal punishment is also fulfilled. J. Waluk (2008) also notes additional benefits for the offender, such as the opportunity to participate in resolving their own case and to engage in self-determination. Participation in this form of restorative justice also offers a chance to avoid stigmatisation and reintegrate into society.

As mentioned above, mediation in criminal cases can offer significant benefits to the offender and support their rehabilitation. However, it must primarily serve the victim and meet their needs and interests. Among the key advantages is the possibility of negotiating compensation that satisfies the victim – whether in emotional form (e.g. an apology) or material form. Participation in such proceedings provides an opportunity to alleviate the psychological, financial, or physical effects of the offence and to reduce secondary victimisation (Bieńkowska 2013; Chmielewski 2013). The victim becomes an active subject in a structured process where they can express their emotions and make the offender aware of the impact of the offence – the

resulting damage and the extent of the harm. They participate actively in the conversation and are able to decide or co-decide on matters of personal importance. Victims often report the satisfaction of being heard and having the opportunity to present their own version of events. Many also value the ability to ask questions and receive answers – such as why the offender targeted them or what their motives were. The emotional dimension is significant: mediation allows for the expression of anger, and through the process, anxiety and fear of the offender may be reduced. Participation in mediation can offer a space for reconciliation and emotional relief (Bieńkowska 2011; Grudziecka, Książek 2013; Rękas 2011; Waluk 2008).

Society also benefits from mediation in criminal cases as a form of pedagogical intervention. First and foremost, it restores the social order disrupted by the offence (Consedine 2004). A. Rękas (2011, p. 17) also points out that “it enables an increased sense of security in society, thanks to a greater chance of proper rehabilitation of offenders, and thus reducing the number of recidivists; on a broader level, it can lead to an improvement in social communication; it can lead to an increase in people's tolerance towards each other; it provides legal education of society; it enables a change in the attitude of society from a repressive penal policy towards a re-education and rehabilitative policy; it favours the activation of society and its involvement in preventive and rehabilitative activities”.

Post-sentence mediation

A specific form of mediation in criminal cases is that conducted during the sentence enforcement stage. This is referred to as *post-sentence mediation* or, colloquially, *secure mediation*. It involves dialogue between the perpetrator and the aggrieved party. This type of mediation is not clearly regulated by law. There is only a residual provision in Article 162 of the Criminal Code, which is, however, subject to varying interpretations. Some commentators argue that it refers to agreements made during the trial or pre-trial stage, while others interpret it as referring specifically to post-sentence mediation (Lelental 2012; Rękas 2015).

Participation in post-sentence mediation offers many benefits to both parties, many of which overlap with those noted in the context of standard criminal mediation. Importantly, this form of mediation allows the relationship between the perpetrator and the aggrieved person to be redefined after sentencing. This is particularly relevant when the offender's release is imminent and the victim fears possible retribution. Agreements reached during so-called secure mediation can help to answer the critical question: *What happens next?* (Grudziecka, Książek, 2013; Karbarz-Górka 2009).

Preparation for this form of mediation also has a rehabilitative dimension. Since 2014, a rehabilitation programme has been implemented in the penitentiary units under the Regional Inspectorate of the Prison Service in Lublin, including the Włodawa Penitentiary, Opole Lubelskie, and the Lublin Custody Suite. The programme aims to increase the level of readiness for compensation among inmates and to prepare them for participation in post-sentence mediation. It has undergone modifications based on ongoing evaluations of its outcomes. The final version of the programme consists of 30 didactic hours and is titled *Post-Sentence Mediation*. The authors of the programme are Agnieszka Lewicka-Zelent and Ewa Trojanowska, who also implemented it for many years. The programme was donated free of charge to the Central Board of the Prison Service and has been granted the status of a recommended programme. It is now implemented in penitentiary units across Poland by officers trained through specialised courses (Lewicka-Zelent et al. 2023). The programme's specific objectives, alongside enhancing readiness for compensation, include developing participants' empathic abilities and their sense of responsibility (Lewicka-Zelent, Trojanowska 2022).

Mediation in juvenile cases

The current legal framework for mediation in juvenile cases is defined in the Act of 9 June 2022 on the Support and Rehabilitation of Juveniles. This area was previously regulated by the 2001 Regulation of the Minister of Justice.

Pursuant to Article 57 of this Act, this type of mediation involves juveniles, their parents or guardians, the aggrieved party, and their legal representatives or guardians. The authority responsible for referring a case to mediation is the court. Both the juvenile and the aggrieved party must consent to participation and have the right to request mediation. The maximum duration of such mediation is six weeks. The purpose of the procedure is not only to reach an agreement on redressing the damage or compensating for the harm suffered, but also to instil in the juvenile a sense of responsibility for the consequences of their actions.

This type of mediation plays a particularly important role. The legislator explicitly states in Article 3 of the aforementioned Act that “in the case of juveniles, the juvenile's welfare shall be the primary consideration, aiming to achieve favourable changes in the juvenile's personality and behaviour, and, where necessary, to ensure the proper fulfilment by the parents or guardians of their obligations towards the juvenile, taking into account the public interest”. This means that, when referring a case to mediation, the court is guided by the principle of the juvenile's welfare. The aim is not to punish the juvenile, but rather – when necessary, i.e. when the

juvenile shows signs of demoralisation or has committed a criminal act – to apply appropriate measures specified by law, namely educational, therapeutic, or corrective measures (Act of 9 June 2022 on the Support and Rehabilitation of Juveniles, Article 56). Among the educational measures listed in the Act, particular emphasis is placed on “obliging the juvenile to behave in a certain way, especially to redress the damage caused in whole or in part, to compensate for the harm suffered, to perform community service, or to apologise to the aggrieved party” (Act of 9 June 2022, Article 7). This measure corresponds closely to the purpose of mediation proceedings conducted in juvenile cases. Such mediation focuses on reaching a settlement concerning an apology to the victim and redress or compensation. If, in the opinion of the family court, the mediation process has fulfilled its educational function satisfactorily, the court may discontinue the proceedings or refrain from applying further measures. In such cases, mediation becomes an alternative form of educational influence to judicially imposed measures. It may also function as an additional, supportive intervention alongside formal measures provided for in the Act (Konarska-Wrzosek 2000).

The educational nature of mediation is evident. By participating in the process and attempting to reach agreement with the aggrieved party, juveniles learn to take responsibility for their own behaviour (Lewicka-Zelent, Parcheta-Kowalik 2014). The benefits for participants are similar to those associated with mediation in criminal cases. However, in this context, the educational dimension is significantly more prominent. Juveniles are encouraged to propose various forms of compensation and negotiate with the victim to find solutions that meet their mutual needs and interests. The conscious and voluntary fulfilment of these obligations is a manifestation of responsibility for one’s own unlawful conduct (Czarnecka-Dzialuk 2014; Szczepanik et al. 2018). Nevertheless, according to Article 57 of the Act, any undertaking by a juvenile to redress the damage or compensate for harm requires the consent of their parent or legal guardian.

Judge B. Wajerowska-Oniszczyk (2011) highlights that mediation helps juveniles recognise the aggrieved party as a real person who has suffered, which fosters a sense of responsibility and motivates spontaneous efforts to make amends. According to the author, this process has greater educational impact than many formal measures. Similarly, R. Szczepanik, A. Jaros and M. Staniaszek (2018) emphasise that mediation supports personality development by encouraging emotional regulation, recognising and naming emotions, and building self-awareness. A. Suchorska (2015, p. 159) adds that referring cases to mediation at the exploratory stage not only prevents stigmatisation through early avoidance of formal justice procedures, but also enables juveniles to assume active responsibility for their actions from the very beginning.

One of the clearest indicators of the effectiveness of educational mediation is the rate of recidivism. Teenagers who committed a criminal act and participated in mediation were less likely to reoffend than those who did not take part in this informal process (Czarnecka-Dzialuk 2014).

In Poland, however, few such mediations are conducted – approximately 300 per year nationwide (Czarnecka-Dzialuk 2022). These figures show that the educational and rehabilitative potential of this method of conflict resolution remains largely underutilised.

School mediation

There are two main types of mediation implemented in schools and educational institutions. The first is school mediation, which is conducted by an adult mediator in conflict situations between pupils, between teachers, between pupils and teachers, and between parents and teachers. The second type is peer mediation, which is typically carried out by two trained student mediators in conflicts between peers. These mediators, like their adult counterparts, receive appropriate preparation. In peer mediation, an adult mediator is also involved, usually playing a supportive role and supervising the entire mediation session led by students (Duda 2019a; Lewicka-Zelent 2014; Children's Ombudsman 2017; Wojcieszczak 2017).

According to the Standards for Peer and School Mediation in Schools and Other Educational Institutions published by the Children's Ombudsman (2017), mediation is embedded in the school's educational system and benefits all members of the school community – students in conflict, their peers, school staff and the wider school environment, parents/legal guardians, and institutions cooperating with the school.

Among the benefits of school mediation, it is essential to highlight both short-term and long-term outcomes. With regard to its educational value, mediation primarily fosters the development of social competences. Participation in mediation strengthens conflict resolution skills, the ability to cope with difficult situations, cooperation with others, and communication skills—including non-violent communication (Duda 2019a). Those involved in mediation learn to listen actively and gain insight into the other party's perspective – their position, needs, emotions, and feelings. This process nurtures a form of non-judgmental empathy among participants. The use of mediation in school as a conflict resolution method contributes to the development of students' interpersonal skills and serves as a preventive measure against aggression and violence (Duda 2019a; Raszewska-Skałicka 2013).

Conflicting parties take responsibility for their actions by proposing and negotiating corrective solutions with the support of a mediator. This reinforces their sense of agency.

Mediation also helps to build a school culture grounded in cooperation and dialogue. It enhances the quality of school life and supports the effectiveness of teachers' educational work. A necessary condition for the successful implementation of mediation in schools is the development of teachers' competences – particularly in communication and pedagogy (Duda 2019b) – as well as an understanding of alternative conflict resolution methods. A. Lewicka-Zelent (2014) introduced an original mediation programme in two middle schools in the Lublin Province. The results of her research indicate that the Mediation at School programme contributed to an improved school atmosphere.

An indirect effect of implementing mediation in schools is the improvement of peer relations and the strengthening of tripartite cooperation: school – students – parents (Duda 2019a). In the long term, it is worth noting that students' awareness of peaceful conflict resolution contributes to the development of a democratic society (Duda 2019a).

Conclusion

Regardless of the definition of upbringing or resocialisation adopted, the essence of both processes lies in the individual's assumption of responsibility for their own behaviour. Accepting the consequences of one's actions – including unlawful ones – and making voluntary amends to the other party in a conflict are clear manifestations of this responsibility. Participation in mediation, regardless of the type of case, offers the opportunity to develop concrete forms of reparation for damage and harm caused. In addition, mediation can help develop empathy and communication skills. A high level of these social competences is associated with a lower propensity for aggressive behaviour (Lewicka 2006). For this reason, it is essential to foster these abilities in children, adolescents, juveniles, and adult offenders. Mediation, as a method of conflict resolution, can thus be used in both upbringing and resocialisation precisely to shape and strengthen these skills.

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