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3E –RJ-MODEL

The 3E Model for a Restorative Justice Strategy in Europe
Greece, United Kingdom, Bulgaria, Finland, Hungary, Poland, Spain
(including research also in Turkey, the Netherlands, Denmark, Germany)
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Restorative justice in Poland
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A. Introduction

According to Article 87 (1) of the Polish Constitution there are in Poland the following sources of law: the Constitution, statutes, ratified international agreements and ordinances. Statutes are passed by the Parliament while the Council of Ministers, the Prime Minister and particular ministers are authorized to issue ordinances. There is no case law in Poland in the proper meaning of the term. The judgments of the courts, including the judgments of the Supreme Court, have an impact on the judicial practice, but – at least in the theory of law - they do not create law. In practice, however, the Supreme Court judgments, as well as the judgments of appellate courts, are monitored by practitioners. As a result, the courts of law usually adapt their jurisprudence to the legal opinions pronounced by higher courts. It should be added that the situation is different as far as the Constitutional Court is concerned. The judgments of the Constitutional Court shall have universally binding application and shall be final.

Basic legal acts regulating the criminal justice system are the following:

- a) the Criminal Code,
- b) the Code of the Criminal Procedure,
- c) the Code on the Execution of Sentences.

These three currently binding codes were passed in 1997 and came into force on 1st September 1998. The criminal codification of 1997 completed the process of reforms of the criminal law that took place in Poland after the totalitarian state had collapsed in 1989. The basic aim of the reforms was to adjust the criminal law to international standards as well as make it more humane, liberal and rational. Some of changes introduced to the criminal codification were influenced by the fact that in 1991 Poland joined the Council of Europe. As a result, in 1993 the European Convention for the Protection of Human Rights and

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Fundamental Freedoms was ratified by Poland, and in 1994 – the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment. In 2004 Poland became the member of the European Union.

The 1997 Criminal Code regulates the criminal responsibility of adult offenders who committed crimes and misdemeanours. Those suspected of petty crimes (in other words contraventions, in Polish referred to as *wykroczenia*) are dealt with under the Code of Petty Crimes of 1971. Petty crimes comprise mainly petty traffic offences as well as petty thefts and some other property offences. Currently, the most severe penalty provided for by the Code of Petty Crimes is the penalty of arrest for from 5 up to 30 days. Additionally, the Fiscal Criminal Code of 1999 regulates the criminal responsibility for tax and other finance offences and petty crimes.

As for the sanction system, the 1997 Criminal Code provides for penalties, penal measures, community penal measures and safety measures. Among penalties the Code enumerates the following:

- a) fine (as a rule imposed according to the system of day-fines),
- b) liberty limitation (to some extent similar to the community service known in West-European countries; the penalty may be imposed for the period from one month to one year, and exceptionally – to 2 years),
- c) imprisonment from one month to 15 years,
- d) 25 years of imprisonment,
- e) life imprisonment.

The catalogue of penal measures includes such measures as:

- a) the deprivation of civic rights,
- b) a ban on driving,
- c) a ban on exercising certain offices, certain professions or certain activities,
- d) a ban on contacts with certain persons,
- e) an obligation not to enter certain places or areas,
- f) property confiscation,
- g) making the sentence publicly known,
- h) an obligation to repair the damage or to pay financial benefit.

A separate chapter of the 1997 Criminal Code regulates community penal measures that are related to the probationary period: conditional discontinuation of the proceedings,

conditional suspension of the execution of the penalty and conditional early release from a prison.

Safety measures, such as for example the placement of the offender in a psychiatric institution or institution for alcohol-addicted persons, may be imposed (in some cases it is obligatory) on offenders who lack culpability or have diminished culpability due to mental illness or mental retardation, or under certain circumstances on offenders who are alcohol or drug addicted as well as on certain categories of sexual offenders.

The catalogue of penalties in the 1997 Criminal Code covers penalties ordered from the most lenient to the most severe. Such ordering of penalties was a deliberate strategy applied by the legislator in order to indicate to the judge that a more severe penalty may be adjudged only if there is no ground for imposing a more lenient one. Additionally, in Article 58(1) of the 1997 Criminal Code the principle of imprisonment as *ultima ratio* has been formulated. According to this regulation, if the act provides for the choice of the type of penalty, the court may impose the unsuspended imprisonment only if the purposes of punishment cannot be served by another penalty or penal measure³.

Provisions concerning the criminal procedure are contained first of all in the 1997 Code of the Criminal Procedure. As was in the case of the Criminal Code, the reform of the Code of the Criminal Procedure carried out in the 90s aimed also at adjusting the criminal process to the standards of the democratic state of law. Basic principles of criminal procedure, such as the fair trial principle, the principle of the presumption of innocence as well as the principle of considering cases within a reasonable time were strengthened in this Code. At the same time, the victims rights were strengthened at each stage of criminal proceedings, among others by introducing the institution of victim-offender mediation. Generally, during the work on the draft of the 1997 Code of the Criminal Procedure the legislator made efforts to compromise between the rights of the accused on the one hand and the protection of witnesses and victims on the other hand. Another important issue was to make criminal procedure both more efficient and more effective, and to allow minor and medium-level offences to be dealt with faster and more economically in order to leave enforcement agencies more time for dealing with serious offences⁴.

³ More on the criminal sanctions system in Poland see in: Stańdo-Kawecka and Krajewski 2010, Polen, pp. 702-705.

⁴ Mozgawa and Szumski 2000, Promoting the Rule of Law & Strengthening the Criminal Justice System, p. 90.

Criminal proceedings in Poland is based on the principle of legality, what means that the competent authority has a duty to initiate the prosecution of any offence, if prosecution is legally permissible and justified by facts. However, there are some exceptions from the principle of legality in favour of the opportunity principle provided for by law (for example by provisions concerning a crown witness). The vast majority of offences are prosecuted on public accusation. Some offences prosecuted on public accusation are complainant offences; in cases related complainant offences the competent authority has power to prosecute only when the complainant requests this. The majority of offences are classified as noncomplainant offences prosecuted on public accusation. In respect of such offences the competent authority has a duty to prosecute regardless of the opinion of the complainant. The 1997 Code of the Criminal Procedure provides also proceedings initiated on private accusation which refers certain misdemeanours, such as for example insult, minor assault or minor bodily injury.

The criminal process in a broad meaning is divided into three stages:

- a) the preliminary proceedings,
- b) the judicial (sentencing) stage,
- c) the stage of the enforcement of imposed sanctions and measures.

According to Article 297 of the Code of the Criminal Procedure the objectives of the preliminary proceedings are as follows:

- a) to establish whether a prohibited act has been committed and whether it constitutes an offence,
- b) to detect the perpetrator and, if necessary, to effect his/her capture,
- c) to collect data on the suspect,
- d) to elucidate the circumstances of the case, including the extent of the damage,
- e) to collect, secure and record evidence to the extent required.

The preliminary proceedings is conducted by public prosecutors, and, within the scope provided for by law, by the police. In cases determined in law, other agencies, such as Border Guard authorities, the Internal Security Agency, the Central Anti-Corruption Agency, have the same powers in the preliminary proceedings as the police. In the course of the preliminary proceedings the victim (the injured person) is a party of the proceedings. At the sentencing (judicial) stage the victim has the status of a party of the court proceedings provided he/she is a private prosecutor, subsidiary prosecutor or civil plaintiff. Regardless of whether the victim has the status of a party in the course of the sentencing stage, he/she

has powers granted by law, such as for example: to fill a motion concerning the imposition on the offender the obligation to repair the damage, to take part in the meeting of the court in cases concerning conditional discontinuance of the proceedings, to be present at the court hearing or to fill a motion on referral the case to mediation.

The beginnings of interest in the restorative justice approach in Poland took place in the early-90s of the XX century. At that time the group of people who were members of the Senate Chancellery⁵ or the Penitentiary Association "Patronat"⁶ had the possibility to visit mediation centres in Germany. As they decided to develop and implement victim-offender mediation in Poland, in 1995 they formed a Team for the Introduction of Mediation in Poland. Initially the team was working within the Penitentiary Association "Patronat" and was supported by the Heinrich Böll Foundation from Germany. In the same year in Poland took place the first international conference on restorative justice. In the late-90s matters concerning the restorative justice approach, and particularly victim-offender mediation, were frequently discussed in the Polish criminal law literature⁷. In publications mediation was usually defined as "an attempt taken up voluntarily by both parties – offender and victim – at resolving the conflict arising from the crime and coming to an agreement with regard to redress, with the help of an impartial moderator"⁸. In 1996 the first volume of a quarterly journal "Mediator" was published in Poland. Since 1996 "Mediator" has been published regularly. It has been addressed to mediators, judges, and practitioners of law, as well as to school teachers and all those interested in mediation, restorative conferences and other restorative justice practices. Undoubtedly, "Mediator" has contributed significantly to the popularization of alternative forms of resolving conflicts caused by crimes.

Academics and practitioners who supported the idea of introducing restorative justice practices to the Polish criminal law pointed out that this could bring many benefits to victims, perpetrators of crimes, the criminal justice system and the society. In the mid- and late-90s the benefits of victim-offender mediation within the criminal justice system were frequently stressed in publications and papers presented during conferences. Among benefits of mediation to the victim the following were mostly enumerated:

⁵ Senate is the second chamber of the Polish Parliament; the first chamber is Sejm.

⁶ The Penitentiary Association "Patronat" is NGO which tasks are among others to help prisoners and ex-prisoners, as well as victims of crimes.

⁷ See for example: Bieńkowska1995 (Ed.), *Teoria i praktyka pojednania ofiary ze sprawcą*; Czarnańska-Działuk 1997, *Wprowadzenie w Polskę mediacji pomiędzy ofiarą i sprawcą przestępstwa*, pp. 70-80 ; Bieńkowska, Czarnańska-Działuk and Wójcik 1998, *Postępowanie mediacyjne w nowej kodyfikacji karnej*, pp. 207-248.

⁸ Wójcik 2000, *Restorative Justice*, p. 145.

- a) the opportunity to obtain financial, moral or symbolic reparation,
- b) the opportunity to actively participate in criminal proceedings and have the impact on its course,
- c) the possibility to express crime-related emotions, such as fear, anxiety, anger, aggression,
- d) the opportunity to raise the awareness of the perpetrator concerning the damage and harm caused by the criminal act,
- e) the possibility to reduce the victim's fear of crime as well as to avoid secondary victimization of the victim.

With regard to perpetrators of crimes, victim-offender mediation could bring them such benefits as the possibility to find an agreed solution to the conflict caused by the criminal act, to better understand the consequences of their actions and compensate the effects, to gain a mitigation of punishment and in some cases to avoid stigma connected with formal sentencing. Positive results of introducing victim-offender mediation for the whole society were also indicated, including the promotion of integration, tolerance and understanding in the society, preventing reoffending and reducing crimes by effective responses to committed criminal acts as well as reducing the costs of the execution of sentences⁹.

At the same time when matters concerning restorative justice approach started to be discussed in Poland, the experimental programme of mediation between victim and juvenile offender was prepared. The first experimental programme of mediation was carried out in 1996 within the juvenile justice system, because family courts and family judges dealing with juveniles in Poland have a relative broad scope of discretion which allowed them to refer cases to mediation without changing of legal provisions. Authors of the experimental programme took also into account that – as in other countries – the social support for mediation would be higher in cases of juvenile offenders than adult offenders. The programme was initially implemented in 5, and then in 8 family courts. One of the objectives of the experiment was to examine the possibility of incorporating mediation into the Juvenile Act of 1982, and also into the adult criminal law¹⁰. Undoubtedly, positive results of this programme contributed to the introduction of mediation and conciliation into the criminal codification of 1997. Therefore, the first experimental programme of mediation was carried

⁹ Bieńkowska, Czarnecka-Działuk and Wójcik 1998, *Postępowanie mediacyjne w nowej kodyfikacji karnej*, pp. 232-235.

¹⁰ Wójcik 2003, *Instytucja mediacji w sprawach nieletnich w Polsce (teoria i praktyka)*, p. 40.

out in juvenile cases, but legal regulations concerning mediation were introduced at first in the adult criminal law, and some years later, this is in 2000 – in the Juvenile Act of 1982. It should be added that provisions concerning mediation were incorporated in the criminal law during the last stage of works on drafts on the Criminal Code and the Code of the Criminal Procedure which were finally adopted by the Parliament in 1997.

The 1997 Code of the Criminal Procedure provided for two new institutions: mediation and conciliation. According to the Article 320 of the Code, the public prosecutor might, on his own initiative, or with the consent of parties, refer the case to a trustworthy institution or person in order to conduct a mediation between the suspect and the injured person, provided that it was relevant in connection with a respective motion to the court. Therefore, this Article allowed the public prosecutor to direct the case to mediation in the course of preliminary proceedings in two situations:

- a) where the prosecutor was going to prepare and file with the court, instead of an indictment, a motion concerning the conditional discontinuation of the proceedings,
- b) where the prosecutor was going, with the consent of the accused, to attach to the indictment a motion to sentence the accused without conducting a trial.

The results of mediation, if the public prosecutor referred the case to mediation, had to be taken into account while deciding on filing with the court one of the two above mentioned motions. The court had also the right to refer the case to mediation, but only at the phase of preliminary examination of charges.

In addition to mediation the 1997 Code of the Criminal Procedure brought in the institution of conciliation between victim and offender. Under Article 341 § 3 of the Code, if the court found it purposeful because of the possibility of reaching an agreement between the accused and the injured person on the matter of redressing damage or compensation, the court might adjourn the session and designate a suitable time-limit for the parties. On a motion from the accused and the injured the court announced a suitable break or adjourn the session obligatory. In the case of conciliation, unlike mediation, the agreement on the reparation of damage or compensation was to be reached between the accused and the injured person without mediator. The results of such an agreement were taken into account by the court while deciding on the conditional discontinuation of the proceedings. Generally, the preliminary proceedings might entail mediation, but no conciliation. In the course of preliminary court hearing both institutions might be applied, but during the trial and

sentencing only the conciliation was possible. Such regulations resulted probably from the efforts made by the legislator to ensure efficiency and time-saving during the trial phase¹¹.

With regard to the criminal substantive law it should be mentioned that according to the 1997 Criminal Code positive results of mediation carried out between the victim and the offender or the settlement reached by them in the proceedings before the public prosecutor or the court are listed among the sentencing criteria. Victim-offender reconciliation, repairing the damage by the offender or reaching by the offender and victim an agreement on the manner of reparation of the damage broadens the possibility to conditionally dismiss the proceedings as well as may constitute a premise for extraordinary mitigation of a penalty. The provisions of the 1997 Criminal Code referring victim-offender mediation and conciliation generally has remained unchanged since 1998 when this Code came in force. The relevant provisions of the 1997 Code of the Criminal Procedure, however, were amended in 2003 in order to expand the legal basis for the possible use of mediation.

B. Legal Framework of Restorative Justice

In publications on restorative justice it has been noticed that there are almost as many definitions of restorative justice as there are academics, practitioners, and policy makers interested in this approach. There are also significant differences of views on what practices and principles it embraces. However, most authors and practitioners agree that restorative justice approach encompasses values, aims and processes which attempt to repair the harm caused by criminal behaviour. Most supporters of restorative justice also agree that among its fundamental values there are:

- a) mutual respect,
- b) the empowerment of all parties involved in the process,
- c) accountability,
- d) consensual, non-coercive participation and decision-making,
- e) and the inclusion of all the relevant parties in dialogue, namely offenders, victims and members of the wider community in which the crime was committed¹².

¹¹ Wójcik 2000, Restorative Justice, p. 146.

¹² Hoyle 2007, Restorative Justice: the Potential for Penal Reform.

The Polish criminal law contains many provisions concerning the imposition on the offender the penal measure consisting in the obligation to repair the damage caused by the crime committed. Such a measure may, or in some cases has to be imposed in addition to the penalty or instead of punishment. The obligations to repair the damage or to apologize to the victim may, or in some cases have also to be imposed by the court while sentencing the perpetrator to the penalty of liberty limitation (similar to community service in other countries), deciding on the conditional discontinuation of the proceedings or conditional suspension of the penalty. The possibility to oblige the perpetrator to apologize to the victim or repair the damage has also been provided by the juvenile law. Such obligations, however, do not constitute restorative justice practices, because they are imposed by courts without the participatory process 'whereby the parties with a stake in a particular offence come together to resolve collectively how to deal with the aftermath of the offence and its implications for the future'¹³.

When defining the restorative justice process according to the questionnaire addressed to practitioners surveyed within this project (3E-RJ-Model) as "any measure, procedure, programme, practice and initiative which aims to resolve the conflict between an offender of a crime and the victim by restoring the harm done and/or the relationship disturbed, within a voluntary and organized process – which can replace or complete the traditional criminal justice or juvenile justice one – being based upon the interaction of the affected parties (the offender, the victim and where appropriate, members of the community), and upon the understanding and the dialogue between them, generally with the help of an impartial third party/person that delivers, manages or/and facilitates the process", it should be stated that in Poland the only forms of restorative justice practices within the adult criminal justice system are mediation and conciliation, while within the juvenile justice system – mediation and restorative justice conferences. It should be added that both mediation and conciliation have been regulated by law, but restorative justice conferences within the juvenile justice system had been organized in a limited scope, on an experimental basis and without legal provisions. Generally, restorative justice practices in criminal cases have been in Poland integrated into the criminal justice system. Mediations are conducted out of court by impartial mediators who are not linked with the criminal justice system.

¹³ Marshall 1996, *The Evolution of Restorative Justice in Britain*, p. 37.

According to the 1997 Criminal Code, an adult offender is a perpetrator of an offence committed after having reached 17 years of age. However, in exceptional cases related most serious crimes 15- or 16-years old offenders may also be criminally responsible under the provisions of the Criminal Code. Therefore, 17-years old perpetrator is not a "juvenile" in the meaning of the Polish criminal law, but he/she is criminally responsible under general provisions referring adult offenders, what is contrary to the United Nations Convention on the Rights of the Child of 1989. Under Article 40 of the Convention States Parties recognize the right of every child alleged as, accused of, or recognized as having infringed the penal law to be treated in a manner consistent with the promotion of the child's sense of dignity and worth, which reinforces the child's respect for the human rights and fundamental freedoms of others and which takes into account the child's age and the desirability of promoting the child's reintegration and the child's assuming a constructive role in society. A "child" for the purposes of the Convention means every human being below the age of eighteen years unless under the law applicable to the child, majority is attained earlier (Article 1).

Juvenile justice system in Poland has been regulated by provisions of the 1982 Juvenile Act (*Ustawa o postępowaniu w sprawach nieletnich*; hereafter: the JA) based on a welfare and paternalistic approach. The notion of a "juvenile" under the 1982 JA covers:

- a) perpetrators of "punishable acts" what means acts or omissions prohibited under criminal law as offences, finance offences or selected petty crimes committed after having reached 13, but before 17 years of age; and also
- b) persons under 18 who show signs of problem behaviours, referred to by the legislator as "signs of demoralization".

To both juvenile perpetrators of "punishable acts" and juveniles showing "pre-delinquent" behaviours ("signs of demoralization") the same educational and medical measures may be applied. The educational measures include:

- a) a reprimand,
- b) supervision by parents, a guardian, a youth or other social organization, a workplace, a trustworthy person or a probation officer,

- c) applying special conditions, such as repairing the damage, making an apology to the victim, performing unpaid work for the benefit of the victim or local community, taking up school education or a job, taking part in educational or therapeutic training, avoiding specific locations, refraining from the use of alcohol and other intoxicants,
- d) a ban on driving,
- e) forfeiture of objects gained through the commission of a punishable act,
- f) placing a juvenile in a youth probation centre,
- g) placing a juvenile in a foster family,
- h) placing a juvenile in a suitable institution or organization providing education, therapy or vocational training,
- i) placing a juvenile in a residential youth educational centre.

Medical measures may be applied to juveniles who are suffering from mental deficiency, mental disease, some kind of mental disorder or from alcohol and drug addiction. These measures imply placing juveniles in a psychiatric hospital, other suitable health care institutions, a social welfare institution or a suitable youth educational centre. Both educational and medical measures are applied to juveniles for an indeterminate period of time. As a rule these measures terminate when a juvenile reaches the age of 18, but in some cases their duration may be extended to his/her 21st birthday. The family court that executes the measures may change, revise or repeal them at any time if it is advisable for educational reasons. Correctional measures, which consist in suspended or unsuspended placement of a juvenile in a correctional house, may be applied only to perpetrators of 'punishable acts' prohibited under criminal law as offences or finance offences. The correctional measures are also applied for an indeterminate period of time. The juvenile placed in a correctional house can stay there not longer than up to 21 years of age, although he/she may be granted conditional release earlier.

Under the 1982 Juvenile Act juvenile cases are dealt by family courts which have broad scope of discretionary powers that should be used in the best interest of the child. The proceedings in juvenile cases are governed by provisions that constitute a specific "mixture" of both civil and criminal procedure modified by the 1982 JA. One of the main features of the proceedings is the rule that family judges and family courts are competent at all stages of the proceedings in juvenile cases. It is the family judge who institutes the preparatory

proceeding (referred to by the 1982 JA as “explanatory proceeding”). It is also the task of the family judge to gather evidence of “demoralization” or a “punishable act” alone or by ordering the police to do some activities. At the adjudicating stage, the case has usually been dealt with by the same family judge who carried out the “explanatory proceeding”. What is more, during the stage of execution of the imposed measures the same judge is responsible for their implementation, including their revising, changing or repealing, depending on educational needs of the juvenile.

As was mentioned above, under influence of the international movement related the restorative justice approach, in 1996 the victim-offender mediation programme was introduced in Poland within the juvenile justice system, firstly on an experimental basis. Finally, mediation in juvenile cases was legally regulated in the year 2000 through amendments to the 1982 JA; the amendments have been in force since 2001. In 2001 the Minister of Justice acting on the basis of authorization contained in the amended JA issued an ordinance on mediation in juvenile cases.

According to Article 3a of the JA, as added in 2000, the family court, while acting on the initiative or with the consent of both the juvenile and the victim, may at any stage of the proceedings transfer the case to mediation by an institution or a trustworthy person. “Juvenile cases” in the meaning of the 1982 JA include cases due to “punishable acts” committed by juveniles as well as cases due to “signs of demoralization”. In the doctrine of the juvenile law it is emphasized that juvenile cases may be referred to mediation only if they are connected with the commission of an act prohibited by the criminal law, because only in these cases may be a personalized injured person. On the contrary, in juvenile cases due to “signs of demoralization” consisting in truancy, using alcohol or drugs, or running away from home, mediation is not possible, because of lack of victim¹⁴. In the light of the JA, mediation is voluntary and requires informed consent of the juvenile perpetrator and victim. The family court shall have such informed consent before deciding to refer the case to mediation. It has also a duty to inform the parties of the nature and meaning of mediation. The JA does not provide for legal restrictions on referring juvenile cases to mediation. In the doctrine of the juvenile law it has been noticed that mediation is excluded in cases of juveniles who require the application of medical measures, such as for example the placement in a psychiatric hospital¹⁵. It is also emphasized that juvenile cases should not be

¹⁴ Bieńkowska 2009, *Mediacja w sprawach nieletnich*.

¹⁵ *Ibidem*.

referred to mediation if there are many victims or perpetrators in the same case, the case is connected with the organized crime or the amount of damage caused to the victim as a result of the juvenile offence is significantly high¹⁶.

Under § 2 of the 2001 ordinance of the Minister of Justice on mediation in juvenile cases, juvenile cases are referred to mediation particularly where relevant facts are not in doubt what means that both the victim and the offender confirm basic facts of the offence. Mediation is confidential. The task of a mediator is to facilitate the parties to resolve the conflict between them. While deciding on the referral of the case to mediation, the family court determines the date on which should receive a report on the results of the mediation, not longer than 6 weeks. Exceptionally, this period may be extended for a fixed term, not longer than 14 days. The results of the mediation reported to the family judge or family court by the mediator are taken into consideration when deciding the case. The family judge may drop the proceedings unconditionally at an early stage as a result of successful mediation. However, the conditional discontinuation of the proceedings is excluded in juvenile cases. The positive results of mediation, and particularly the performance by the juvenile obligations arising from agreement reached in mediation, may be also taken into account by the family court while deciding on the measures (educational or correctional) applied to the perpetrator.

As was pointed out earlier, provisions of the JA allows the family court to refer the case to mediation at any stage of the proceedings, including the stage of the enforcement of imposed measures. Positive results of mediation conducted at the latter stage may be taken into consideration when the family court decides to revoke or change adjudicated measures or to release the juvenile conditionally from a correctional institution.

The 1982 Juvenile Act does not contain any provisions on restorative justice conferences. In practice, however, there were some pilot programs aiming at introducing restorative justice conferences within the juvenile justice system. The pilot program "Mediation – a form of restorative justice" carried out in 2004 by the Polish Centre for Mediation and the Ministry of Justice included restorative conferences conducted by mediators. These conferences involved victims, offenders, family members, representatives of local communities, local authorities, schools and other institutions. Another program

¹⁶ Klaus 2005, *Sprawiedliwość naprawcza dla nieletnich w Polsce*, p. 177; Wajerowska-Oniszczyk 2011, *Mediacja w polskim prawie nieletnich*.

carried out by the Polish Centre for Mediation in 2005 ("Back home again – application of restorative justice in social reintegration of juvenile offenders") focused on juvenile offenders supervised by probation officers or placed in correctional institutions and educational centres. It aimed to introduce restorative justice conferencing in three cities in Poland in order to make juveniles responsible for their actions (to responsabilize juveniles) as well as actively involve local communities in the process. Among other goals of the program the following were enumerated: spreading the restorative justice ideas, convincing professionals working with juvenile offenders about the applicability and effectiveness of restorative justice as well as preparing and training professionals to run restorative justice conferences¹⁷. These two pilot programs were implemented on a small area. They did not result in a national program of restorative justice conferences.

Restorative justice practices, this is mediation and conciliation, have been integrated into the adult criminal law. As a result of the amendment introduced in 2003, the provisions of the 1997 Code of the Criminal Procedure provide for broader legal basis for mediation as it was before. The legislator amended previous provisions on mediation because they were strongly criticized. According to the 1997 Code of the Criminal Procedure before the amendment, the referral of the case to mediation was possible only at early stages of the criminal proceedings: in the course of the preliminary proceedings as well as at very early stage of court proceedings during the preliminary judicial verification of the indictment. The public prosecutor was allowed to direct the case to mediation only if it was relevant in connection with a motion to the court concerning the conditional discontinuation of the proceedings or sentencing the accused without trial. What was also criticized was the fact that the period of mediation was included in the period in which the preliminary proceedings should have been completed. As a result public prosecutors were reluctant to direct the case to mediation because of concerns about the delay in the completion of the preliminary proceedings¹⁸.

After the 2003 amendment of the Code of the Criminal Procedure mediation became admissible at every stage of the criminal procedure. Article 23a introduced in 2003 provides that the court, and the public prosecutor in the course of the preliminary proceedings, may on initiative or with the consent of both the injured person and the accused direct the case

¹⁷ Fellegi 2005, Poland, pp. 41-42.

¹⁸ Rękas 2002, *Mediacja w praktyce wymiaru sprawiedliwości – szanse i zagrożenia*, pp. 12-14.

to mediation. In the doctrine it has been pointed out that these provisions are of a rather laconic type¹⁹. They do not contain any limitations on referring the case to mediation due to the type of the offence or the type and amount of the punishment provided for the offence. Therefore, under Article 23a every case may be referred to mediation at every stage of the criminal proceedings provided that both the injured party and the accused came forward with such initiative or agreed to mediation.

In some cases the preliminary proceedings may also be conducted by the police. In the course of the preliminary proceedings the case may be directed to mediation by the police or the public prosecutor depending on which of these authorities conducts investigation. Courts may refer the case to mediation at any level of the judicial proceedings (up to the final judgment), however, the possibility to refer the case to mediation by the court of the second instance during the appellate proceedings has been a matter of controversy²⁰. In cases prosecuted on private accusation the court on the motion or with the consent of both the injured person and the accused may direct the case to mediation instead of designating a conciliatory session. What is more, Article 23a of the Code of the Criminal Procedure may also be applied at the stage of the execution of penalties. As a result, victim-offender mediation is also possible for offenders serving their penalties²¹.

It should be added that under provisions amended in 2003 time necessary to prepare and conduct mediation has been excluded from the statutory limited amount of time prescribed by law for the police or public prosecutors investigation. Undoubtedly, this change was introduced by the legislator in order to promote mediation in the preliminary proceedings and encourage public prosecutors as well as the police to use this institution frequently. At the same time Article 23a §2 of the Code of the Criminal Procedure provides that the mediation process should not last longer than 1 months. By setting one-month deadline for conducting mediation the legislature wanted to avoid the excessive length of the criminal prosecution. In practice, however, in some cases one month may be too short period to prepare and conduct mediation. In such exceptional cases may be set a time limit longer than one month²².

¹⁹ Kuźelewski 2009, *Mediacja w procesie karnym w opinii sędziów i prokuratorów – wybrane zagadnienia*, pp. 245-246.

²⁰ *Ibidem*, p. 258.

²¹ Winiarek 2005, *Mediacja po wyroku*, p. 201.

²² Bieńkowska 2009, *Mediacja w sprawach karnych*.

Provisions on conducting victim-offender mediation are contained in the 2003 ordinance of the Minister of Justice on mediation in criminal cases. According to these provisions, a mediator after receiving the case directed to mediation has the following obligations:

- a) to contact the victim and the offender (either suspected or already formally accused) to appoint times and places of individual pre-mediation meetings,
- b) to organize pre-mediation individual meetings with each of the parties in order to inform them about the idea of mediation, rules of the mediation process and their rights,
- c) to conduct victim-offender mediation sessions "face-to-face",
- d) to help parties in writing down terms of the negotiated agreement,
- e) to monitor the fulfilment of the agreement.

The 2003 ordinance on mediation in criminal cases regulates *expressis verbis* direct mediation connected with "face-to-face" meeting between the injured person and the suspect or formally accused. The possibility of conducting indirect mediation is questionable. According to some authors, indirect mediation is also possible²³.

After the mediation, the mediator draws up a written report and submit it to the authority (the police, public prosecutor or court) which referred the case to mediation. The report should include, inter alia, information on the results of mediation process. In cases where agreement was reached between the victim and the offender it is attached to the report.

It should be added that although the provisions of the 1997 Code of the Criminal Procedure on mediation were significantly changed in 2003, the institution of conciliation between the victim and the offender remained basically unchanged. Under Article 341 § 3 of this Code, if the court found it purposeful because of the possibility of reaching an agreement between the accused and the injured person on the matter of repairing the damage or compensation, the court might adjourn the session and designate a suitable time-limit for the parties. On a motion from the accused and the injured person it is obligatory for the court to announce a suitable break or adjourn the session. Unlike mediation, in the conciliation process the agreement on the reparation of the damage or compensation is to be reached between the accused and the injured person without mediator.

²³

Ibidem.

It is generally accepted that positive results of mediation as well as conciliation in criminal matters should influence the final decision of the proceedings. The 1997 Criminal Code provides for several possibilities to take into account these results. First of all, this Code among community penal measures related with the probationary period enumerates the conditional discontinuation of the proceedings. Unlike the previous criminal codification of 1969, under the 1997 Criminal Code exclusively courts, and not public prosecutors, have powers to take decisions on the conditional discontinuation of the proceedings. The preconditions of the conditional discontinuation of the proceedings determined in the Article 66 § 1 of the Code are as follows:

- a) the guilt and social consequences of the act are not significant,
- b) the circumstances of its commission do not raise doubts,
- c) the attitude of the perpetrator who was not previously sentenced for an intentional offence, his personal characteristics and his way of life provide reasonable grounds for positive prognosis.

According to Articles 66 § 2 and 3 of the Code, the conditional discontinuation of the proceedings shall not be applied to the perpetrator of an offence for which the statutory penalty exceeds 3 years of deprivation of liberty. However, in the event that the injured person has been reconciled with the perpetrator, the perpetrator has repaired the damage or the injured person and the perpetrator have made agreement on the manner of reparation of the damage, the conditional discontinuation may be applied in cases in which the statutory punishment does not exceed 5 years of deprivation of liberty. Therefore, victim-offender reconciliation, repairing by the offender the damage done to the victim or making agreement on a manner of such reparation broaden the possibility to apply the conditional discontinuation of the proceedings by the court.

As regards the possibility to discontinue the criminal proceedings unconditionally by the public prosecutor or the court on the basis of positive results of mediation or conciliation, it is a controversial issue. Some practitioners are of the opinion that in such a case it is possible to dismiss the proceedings unconditionally on the basis of Article 1 § 2 of the Criminal Code stating that a prohibited act whose social consequences are insignificant shall not constitute an offence²⁴. According to others, victim-offender reconciliation, repairing by the offender the damage done to the victim or making agreement between parties does not

²⁴ Kuźelewski 2009, *Mediacja w procesie karnym w opinii sędziów i prokuratorów – wybrane zagadnienia*, p. 250.

change the social consequences (social dangerousness) of the offence committed and cannot constitute a ground for unconditional discontinuance of the proceedings. In 2004 the Supreme Court stated that in the case of offences prosecuted on public accusation positive results of victim-offender mediation might influence only the type and amount of the penalty or the use of penal measures connected with the probationary period, but they could not lead to discontinuation of the criminal proceedings (V KK 261/04). The situation differs in the case of offences prosecuted on private accusation; Article 492 of the Code of the Criminal Procedure states explicitly that criminal proceedings shall be unconditional discontinued due to victim-offender reconciliation, including reconciliation resulted from mediation.

Subsequent regulations, which allow the court to take into consideration positive results of mediation or conciliation, are contained in Article 53 of the 1997 Criminal Code in which principles of the imposition of penalties or penal measures have been formulated. In these regulations positive results of mediation as well as the settlement reached without a mediation in the proceedings before the public prosecutor or the court are enumerated among the sentencing criteria: by imposing the penalty, the court shall also take into consideration the positive results of the mediation between the injured person and the perpetrator, or the settlement reached by them in the proceedings before the public prosecutor or the court. On the basis of Article 60 § 2 of the Criminal Code, the court may apply an extraordinary mitigation of the penalty in particularly justified cases when even the lowest penalty stipulated for the offence in question would be incommensurate, and particularly if the injured person and the perpetrator have been reconciled, the damage has been repaired, or the injured person and the perpetrator have agreed as to the manner of reparation for the damage.

The Code of the Criminal Procedure as well as the Juvenile Act provide for that the case may be referred to an institution or trustworthy person in order to carry out mediation. Mediation on behalf of an institution has been conducting by a person designated by it. Conditions to be met by institutions and individuals in order to carry out mediations are regulated by the ordinances of the Minister of Justice on mediation in juvenile cases as well as on mediation in criminal cases. Persons who can become mediator have to be at least 26 years old. They also have to speak fluent Polish, have the full rights as a citizen, have some experiential background and guarantee the due performance of duties. The 2001 ordinance on mediation in juvenile cases requires that candidates for mediators have to undergo a

specialised training organized according to specified standards. Mediators involved in criminal cases are not obliged to take part in this specialised training. Institutions and trustworthy persons who are authorized to conduct mediations shall be registered by regional courts. Public prosecutors, the police or courts who have decided to refer a case to mediation are also responsible for selecting the institution or trustworthy person from the list of registered mediators.

Mediations in Poland are conducted out of courts in order to ensure its confidentiality and impartiality. Persons who are employed in an institution dealing with administration of justice may not be mediators. Specialised trainings for mediators are provided by the Polish Centre for Mediation and other institutions. Some universities also offer courses for mediators.

C. Actual Situation of Restorative Justice

In last years in Poland many initiatives have been undertaken which aimed at promoting the restorative justice approach among academics, practitioners, politicians and public opinion. Many different institutions and organizations have participated in those initiatives, such as parliamentary commissions, The Human Rights Defender (Ombudsman), the Ministry of Justice or the Polish Centre for Mediation. As a rule, such initiatives focused on victim-offender mediation. In 2003 a conference on mediation in the European Union and in Poland was organized by the Commission of Justice and Human Rights of the Sejm, Office of Research of the Sejm Chancellery and the Polish Centre for Mediation. Papers presented during this conference as well as the discussion were published in 2003 in the Bulletin of the Office of Research of the Sejm Chancellery²⁵. In 2004 under the auspices of the Polish Senate a conference was organized on preventing and combating crime by means of probationary measures. In recommendations adopted during the conference much attention was given to restorative justice. The vast majority of participants considered that the criminal policy in Poland should be based primarily on the idea of restorative justice. Criminal proceedings should not be focused on revenge, but should aim to compensate the victim and the community and to reintegrate offenders. In the light of the recommendations, mediation was seen as the best way to implement the ideas of compensation for damages resulting

²⁵ Szymańczyk and Chodura (Eds.) 2003, *Mediacja w krajach Unii Europejskiej i w Polsce*.

from crime and to prevent reoffending. Participants of the conference stressed the need to ensure availability of mediation in criminal cases as well as juvenile cases at every stage of the proceedings, particularly in the preliminary proceedings, and during imprisonment. They supported the creation of adequate conditions for mediation, the organization of mediation centres and mandatory training of mediators²⁶.

The Human Rights Defender (Ombudsman) as well as the Defender of the Rights of a Child for many years have also been involved in activities supporting the protection of the rights of victims, including the development of victim-offender mediation. In October 2010, for example, the Ministry of Justice and the Defender of the Rights of a Child organized a conference on mediation as a new way of resolving conflicts. Another entity strongly involved in the promotion of victim-offender mediation in Poland is the Polish Centre for Mediation, a non-governmental organization created by transformation of the previous Team for the Introduction of Mediation in Poland. It has played important role in training mediators, preparing standards of mediation and popularizing the ideas of restorative justice.

Among other entities acting for the dissemination of the ideas of restorative justice in criminal matters the Polish Ministry of Justice should be mentioned. Since 2005 the Social Council of Alternative Methods of Resolution of Conflicts and Disputes has been operating under the Ministry of Justice. This Council is an advisory group for the Minister of Justice on issues concerning Alternative Dispute Resolution (ADR). Its tasks include development of standards of mediation and creation of institutional conditions for the development of ADR in Poland. The work carried out by the Council aims to increase the importance of reconciliation and mediation within different areas of law: the criminal, juvenile, family, civil, labour and administrative law. Additionally, the Ministry of Justice has conducted wide-ranging information and education campaigns on mediation and other alternative ways of dispute resolution addressed to the society as well as to different professional groups within the criminal justice system. As part of these campaigns, courses on mediation were organized for judges, prosecutors and the police, leaflets containing information on victim-offender mediation were widely disseminated and two compendiums were prepared. The first compendium is entitled: *"Czy tylko sąd rozstrzygnie nasz spór? Mediacja i sądownictwo*

²⁶ Senat Rzeczypospolitej Polskiej 2004, Zapobieganie i zwalczanie przestępczości w Polsce przy zastosowaniu probacyjnych środków karania. Materiały z konferencji zorganizowanej przez Komisję Ustawodawstwa i Praworządności pod patronatem Marszałka Senatu RP Longina Pastusiaka 1-2 grudnia 2003 r.

polubowne" ("Will only the court decide our dispute? Mediation and arbitration") and refers to the methods of Alternative Dispute Resolution²⁷. The second one entitled "*Jestem pokrzywdzony przestępstwem i co dalej?*" ("I am a victim of a crime and what next?") is a guidebook for the injured party containing information on his/her rights in the course of the criminal proceedings, including the right to mediation²⁸. Both booklets have been sent to courts, public prosecutor offices, local administration offices as well as associations of mediators in order to be distributed among those interested in alternative methods of dispute resolution.

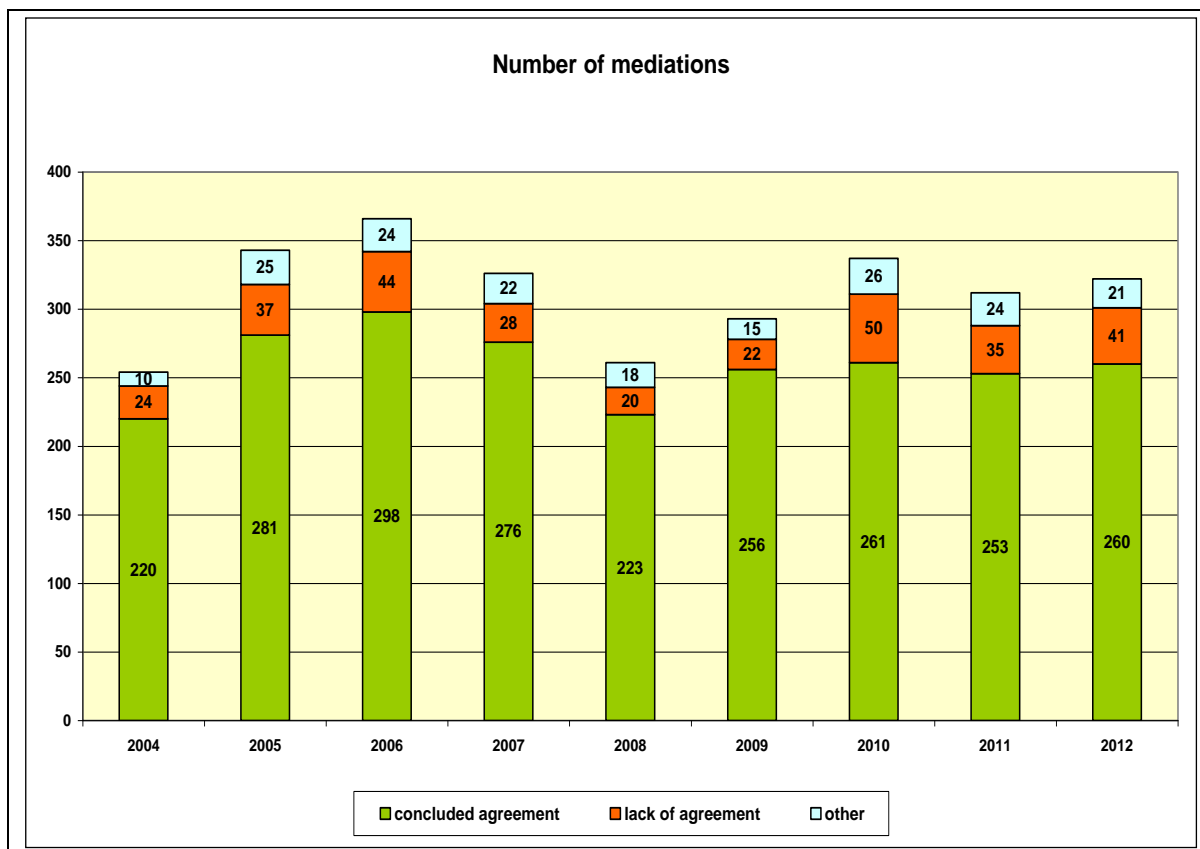
Given the amount of efforts aiming at promoting mediation in criminal cases it may be surprising that so far they have not brought the expected results. In practice, the scope of victim-offender mediation has been very limited in both adult criminal cases and juvenile cases. As far as juvenile offenders are concerned, in the period of from 2004 to 2008 family courts adjudicated yearly about 26-28 thousands of juveniles due to punishable acts²⁹. The number of mediations in juvenile cases in the years 2004-2012 oscillated between 254 and 366 (Figure 1). Thus, the ratio of juvenile offenders participating in mediation in comparison to the number of juvenile perpetrators of "punishable acts" adjudicated by family courts amounted to 1-1,5 %.

Figure 1. Number of mediations in juvenile cases in the years 2004-2012

²⁷ Rękas (Ed.) 2010, Czy tylko sąd rozstrzygnie nasz spór? Mediacja i sądownictwo polubowne.

²⁸ Sroka (Ed.) 2010, Jestem pokrzywdzony przestępstwem i co dalej?.

²⁹ Czarnecka-Działuk and Wójcik 2011a, Reagowanie na czyny karalne i demoralizację nieletnich – koncepcje teoretyczne, statystyki i opinie sędziów rodzinnych, p. 876.



Source: *Postępowania w sprawach nieletnich (rodzinnych) w sądach powszechnych zakończone w wyniku postępowania mediacyjnego w latach 2004-2012* (statistical data of the Ministry of Justice available online: <http://ms.gov.pl/pl/dzialalnosc/mediacje>)

In 2010 the Institute of Justice³⁰ carried out empirical research concerning the opinions of family judges and professional probation officers dealing with family and juvenile cases on measures applied to juveniles. Family judges and professional probations officers in the whole country were asked to fill out a questionnaire. Finally, the questionnaire was filled out by 1063 professional probation officers (66 % of the total number of probation officers asked to take part in the research). The ratio of family judges who filled out the questionnaire (311 persons) was much lower and amounted to 26 % of all family judges what indicates that judges were reluctant to participate in the research³¹.

³⁰ The Institute of Justice is a research centre in Poland which carries out empirical studies of the practice of courts and prosecution offices as well as monitors the trends of crime, crime policy and functioning of the country's justice system.

³¹ Czarnecka-Działuk and Wójcik 2011b, Reagowanie na czyny karalne i demoralizację nieletnich w opinii sędziów rodzinnych, p. 693.

Several questions contained in the questionnaire related to victim-offender mediation. In the opinion of about 80 % of family judges mediation was available in the area of their court district. According to judges, they obtained information on mediation from several sources: from other judges, mediators, legal acts, conferences, seminars, literature and trainings. Nearly one third of surveyed judges (29 %) participated in a specialized training in mediation. The vast majority of judges stated that juvenile cases should have been referred to mediation due to the possibility to resolve the conflict. However, 167 out of 311 surveyed judges (54 %) declared that they had never referred any juvenile case to mediation. Family judges who participated in a specialized training in mediation opted for wider use of mediation frequently than judges without such a training³². One of the questions contained in the questionnaire related steps which should be made in order to broaden the use of mediation in juvenile cases. The surveyed judges pointed to such activities as informing the parties about mediation by the police, promoting mediation in media as well as improving the access to mediation services³³.

It seems that the limited use of mediation in juvenile cases to some extent is connected with the paternalistic welfare approach to juvenile offenders included in the JA. This approach is focused on needs of juvenile offenders who are considered as victims of negative personal, family and school circumstances and not as moral agents responsible for their behaviour. Victim-offender mediation as well as other ways of diverting children in conflict with the law away from judicial proceedings in order to avoid their potentially negative effects are not found important by family judges whose tasks are not "punitive", but "protective" and "educational". At the same time, the needs of victims are considered not as important as the social and educational needs of juvenile offenders. Educational value of victim-offender mediation seems to be appreciated by a few family judges who are personally interested in restorative practices.

As regards adult offenders it may be seen from the Figure 2 that the number of cases dealt with by use of mediation has been increasing since 2003 when provisions of the 1997 Code of the Criminal Procedure were changed in order to broaden the use of mediation. The total number of mediations within the adult criminal justice system, however, is still very

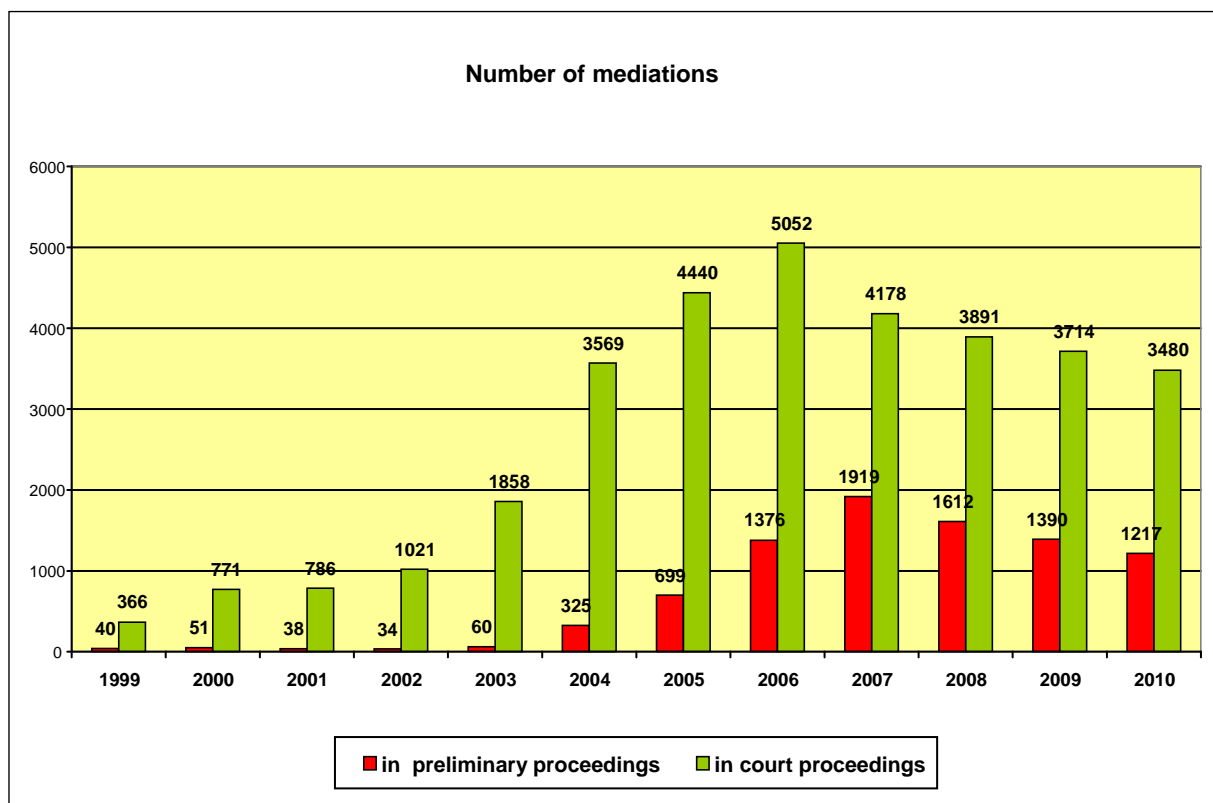
³² Ibidem, p. 705.

³³ Ibidem, p. 707.

limited; in the years 1999-2008 there were 208-513 thousands adult sentenced offenders³⁴. In comparison to the number of proceedings conditionally discontinued (21- 38 thousands in the years 1999-2008) the number of mediations in last years (approximately 5-6 thousands yearly) also seems rather modest. What is more, the majority of criminal cases were referred to mediation by courts. The reform of the criminal procedure in 2003 did not result in the use of mediation for large-scale at the stage of the preliminary proceedings. In about 60-90 % cases referred to mediation by public prosecutors, the police and courts in the years 1999-2010 an agreement was reached between the victim and the offender.

For the years 2011-2012 data on the number of mediations in the course of preliminary proceedings are not available. The number of mediations conducted after referring the case by courts amounted respectively to 3,251 in 2011 and 3,252 in 2012.

Figure 2. Number of mediations in adult criminal cases in the years 1999-2010



Source: *Postępowania mediacyjne na podstawie art. 23 a k.p.k. w powszechnych jednostkach organizacyjnych prokuratury oraz Postępowania w sprawach karnych w sądach powszechnych zakończone w wyniku postępowania mediacyjnego w latach 1998-2012* (statistical data of the Ministry of Justice available online: <http://ms.gov.pl/pl/dzialalnosc/mediacje>)

³⁴ *Prawomocne skazania i warunkowe umorzenia – osoby dorosłe – w latach 1999-2008*, statistical data of the Ministry of Justice available online: <http://bip.ms.gov.pl/pl/dzialalnosc/statystyki/statystyki-2010>

The opinions of judges and public prosecutors on mediation in penal matters have recently been surveyed by O. Sitarz, A. Jaworską-Wieloch, D. Lorek, A. Sołtysiak-Blachnik and P. Zawiejskiego. Judges considering criminal matters (over 300) and public prosecutors (over 500) from two court regions were asked to answer questions included in a questionnaire. Finally 174 persons filled out the questionnaire, including 64 out of over 300 judges and 110 out of over 500 public prosecutors. According to the research, during the three years prior to the survey 15 public prosecutors (14 % of all prosecutors participating in the research) and 47 judges (73 % of all participating judges) referred a criminal case to mediation. A relatively large proportion of judges referring cases to mediation seems to indicate that in the survey took part first of all those judges who had personal experience in this form of restorative justice. At the same time 95 (86 %) surveyed public prosecutors and 17 (27 %) judges admitted that they did not refer any case to mediation during the past three years. Among reasons justifying not referring criminal cases to mediation the following were mostly enumerated by respondents:

- a) cases are not suitable for mediation,
- b) mediation makes the time of the proceedings longer,
- c) mediation makes the proceedings more costly,
- d) there is lack of the possibility to discontinue the preliminary proceedings conditionally or unconditionally as a result of agreement reached in the course of mediation,
- e) the attitudes of the parties and severe conflict between them exclude reaching an agreement.

In the opinion of 23 (15 %) of respondents, the assessment concerning the suitability of a case for mediation should be made on an individual basis. According to 6 respondents (4 %) criminal cases are generally not suitable for mediation because crime is a public matter and not a private matter which may be subject to mediation. The remaining judges and prosecutors indicated several reasons excluding mediation in some cases such as:

- a) particular seriousness of the offence committed,
- b) the danger of re-victimization in cases in which the victim is resourceless due to age or psychophysical state,
- a) a complicate factual state,
- b) a previous criminal record of the offender,

- c) a certain type of the offence (against sexual determination, finance offences, drug or economic crimes).

Interestingly, according to a vast majority of judges criminal cases should be referred to mediation in the preliminary proceedings. The opinions of public prosecutors, however, were divided; over half of them (52 %) stated that the best stage for referring the case to mediation was the court proceedings and 44 % indicated the preparatory proceedings (4 % of public prosecutors had no opinion on that matter). The majority of both judges and public prosecutors rejected the possibility of mediation during the stage of enforcement of the judgment.

Most respondents did not inform the parties on the possibility to direct the case to mediation. The researchers emphasize that to hand over to the injured party the official written notice on his/her rights during the criminal proceedings cannot be regarded as an effective and sufficient information on the possibility of mediation in penal matters.

Generally, more than half of the respondents (59 %) were supportive for broadening the use of mediation in penal matters. At the same time they indicated several obstacles to that purpose. Public prosecutors mostly suggested the introducing of the possibility to complete the case during the preliminary proceedings as a result of mediation as well as changes in the way of the registration of the lengths of proceedings in the statistics. According to the Code of the Criminal Procedure (Article 23a) the duration of the mediation proceedings is not included in the duration of the preliminary proceedings, however, the case referred to mediation is shown in statistics as a "running case" what implies that public prosecutors have to explain to their superiors why the preliminary proceeding is still not completed³⁵.

In 2012 empirical research on mediation was carried out by M. Chalimoniuk-Zięba and G. Oklejak, the trainees of the National School of Judiciary and Public Prosecution. The research was conducted in four district courts in Krakow and included among others the analysis of adult criminal cases referred to mediation by these courts in the years 2010-2011. The overall number of cases referred to mediation amounted to 383, including 172 cases in 2010 and 211 in 2011. Taking into account the total number of criminal cases received by these courts, the proportion of cases referred to mediation was 1,7 % in 2010 and 2,3 % in

³⁵ Sitarz, Jaworska-Wieloch, Lorek, Sołtysiak-Blachnik and Zawiejski 2012, Mediacje karne w opiniach stron postępowania oraz sędziów i prokuratorów – wyniki badań ankietowych. Część II – Opinie skazanych oraz sędziów i prokuratorów.

2011. In the analyzed period the vast majority of cases were referred to mediation at the initiative of the court (72 %). One in five cases was referred to mediation at the initiative of the defense lawyer. The referral of the case to mediation at the initiative of the accused, the victim or his/her representative as well as at the initiative of both the victim and the offender took place occasionally. In 303 out of 383 cases referred to mediation the mediation proceedings were completed. Two in three completed mediation proceedings (65 %) resulted in an agreement reached between the victim and the offender. Most mediation proceedings related offences against family and care, bodily injury as well as property offences.

Most criminal proceedings in which an agreement was reached in the course of mediation were conditionally discontinued by the courts (58 %). Nearly one in five proceedings (19 %) was unconditionally discontinued. In the remaining cases non-custodial penalties were imposed on offenders such as fine (2 %), the penalty of liberty limitation (4 %) or suspended imprisonment (16 %); none of the accused was sentenced to unsuspended imprisonment. Interestingly, in one case in which an agreement was reached in the course of mediation the accused was later acquitted by the court. Generally, the results of the research are promising and indicate that mediation at the stage of the court proceedings may be beneficial for both the victim and the offender. At the same time mediation may contribute to shortening proceedings and be economically efficient. In practice, however, the use of mediation to a large extent depends on personal attitudes of judges; some of them direct relatively large amount of cases to mediation while others prefer the swift completion of the case by sentencing the accused to a certain penalty or penal measure with his/her consent without trial³⁶.

It may be hoped that the information and education campaigns on mediation and other alternative ways of dispute resolution carried out by the Ministry of Justice will contribute to the rising the public awareness and using mediation in criminal cases frequently. The practitioners indicate that some further legislative reforms are also necessary in order to broaden the use of mediation. First of all the legislator should consider the introducing of the possibility to discontinue of the preliminary proceedings by a public prosecutor if he/she is of the opinion that the agreement between the victim and the

³⁶ Chalimoniuk – Zięba and Oklejak 2013, Postępowanie mediacyjne w sprawach karnych w świetle badań aktowych przeprowadzonych w krakowskich sądach rejonowych, paper presented at the Department of Criminology of the Jagiellonian University in February 2013 (unpublished).

offender justify it³⁷. Other important matter refers the introducing of the possibility to decide on unconditional discontinuation of the proceedings by courts in cases in which the damage was repaired or compensated as a result of mediation agreement³⁸. The legislator, however, seems to be interested not so much in restorative justice as in "negotiated justice" enabling to sentence the accused with his/her consent without trial what enables to complete the case in a fast way. Thus, the legislator should also try to balance the requirements for speed proceedings with the requirements for procedural justice in order to provide for the parties to be treated in a fair and just way.

D. ANNEX

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³⁷ Murzynowski 2003, Ocena nowelizacji przepisów Kodeksu postępowania karnego w odniesieniu do instytucji mediacji, p.36

³⁸ Rękas 2002, Mediacja w praktyce wymiaru sprawiedliwości – szanse i zagrożenia, p. 22.

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