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Magdalena Skibińska[1]

Mediation in Civil Matters and the Justice System – Constitutional Issues

Keywords: mediation, judiciary, justice system, access to justice, civil matters, mandatory mediation
Słowa kluczowe: mediacja, wymiar sprawiedliwości, system wymiaru sprawiedliwości, prawo do sądu, sprawy cywilne, mediacja obligatoryjna

Abstract

The main purpose of the article is to determine the mutual relations between mediation and court proceedings, as well as to answer the question whether mediation services provided by out-of-court entities should be considered as a part of the justice system and fulfill the constitutional right to court. The conducted research leads to the conclusion that both the judiciary and mediation should be considered as complementary methods of dispute resolution, although the first of them is granted primacy under the Polish Constitution i.a. due to the fact that mediation settlements are subject to court approval and not all types of disputes can be resolved bindingly in mediation. Mediation does not belong *sensu sticto* to the definition of the judiciary and does not fulfill the right to justice but may be included in a broad understanding of the judiciary and therefore its existence according to current regulations does not violate the position and rules of functioning of the judicial system. However, this situation can easily change, if the mandatory mediation planned by the legislator in divorce and legal separation cases comes into force.

[1] ORCID ID: 0000-0003-1676-1157, PhD, Chair of Civil Law, Procedural Law and Comparative Private Law, Faculty of Law and Administration, University of Zielona Góra. E-mail: m.skibinska@uz.zgora.pl.

Streszczenie

Mediacja w sprawach cywilnych a wymiar sprawiedliwości – zagadnienia konstytucyjnoprawne

Celem artykułu jest określenie wzajemnych relacji pomiędzy mediacją a postępowaniem sądowym, a także udzielenie odpowiedzi na pytanie, czy działalność pozasądowych podmiotów w ramach mediacji należy zaliczyć do wymiaru sprawiedliwości i realizuje konstytucyjne prawo do sądu. Przeprowadzone rozważania prowadzą do wniosku, że zarówno sądowy wymiar sprawiedliwości, jak i mediację należy uznać za komplementarne sposoby rozwiązywania sporów, chociaż pierwszemu z nich na gruncie Konstytucji przyznaje się prymat m.in. ze względu na fakt, że ugody mediacyjne podlegają zatwierdzeniu przez sąd oraz nie wszystkie rodzaje sporów mogą być rozwiązane w drodze mediacji. Mediacja nie mieści się w wąskim rozumieniu wymiaru sprawiedliwości, a także nie wypełnia prawa do sądu, ale jest objęta szerokim rozumieniem wymiaru sprawiedliwości i tym samym jej istnienie w świetle obowiązujących przepisów nie narusza pozycji ani zasad funkcjonowania sądowego wymiaru sprawiedliwości. Sytuacja ta może się jednak zmienić, jeśli wejdzie w życie planowana przez ustawodawcę mediacja obligatoryjna w sprawach o rozwód i separację.

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I. Scope of Research

The chosen topic comprises the mutual relations between mediation and court proceedings. The main purpose of the article is to find an answer to the question whether the mediation services provided by out-of-court entities should be considered as a part of the justice system. The answer to this question is particularly important now, when the legislator proposed mandatory mediation in divorce and legal separation cases, because it determines whether or not parties using the mediation to resolve their dispute fulfill the right to court. Therefore, if the answer to this question is positive, the proposed amendment does not affect the realization of the constitutional right to justice. Otherwise, access to justice could be considered seriously limited (at least temporarily) by the introduction of the mandatory mediation.

II. Mediation and Access to Justice

Access to justice (French: *accès à la justice*, German: *Zugang zu Gericht*)[2] – understood as the right to a court action to seek protection of fundamental rights and freedoms of an individual – is regulated in the constitutions of modern democratic states, as well as in international and EU legal acts[3]. Although the legislator did not introduce the concept explicitly, in our legal order the principle of access to justice has been regulated primarily in the Art. 45.1 and Art. 77.2 of the Constitution[4]. The constitutional right of access to justice consists in particular of:

1. the right of access to a court, i.e. the right to institute proceedings before a court – a body with specific characteristics (impartial and independent);
2. the right to a duly shaped judicial procedure conducted according with the requirements of fairness and publicity;
3. the right to a judicial decision, i.e. the right to obtain a binding determination of the case by a court[5].

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[2] R. Morek, *ADR – Alternatywne metody rozwiązywania sporów w sprawach gospodarczych*, Warsaw 2004, pp. 47–48, 68. P. Pogonowski points out that the right to court is also called: the right to legal protection, the right to a justice system, the right to court proceedings, the right to a fair trial, the right to bring an action, the right to defense before a court. P. Pogonowski, *Realizacja prawa do sądu w postępowaniu cywilnym*, Warsaw 2005, p. 1.

[3] H. Duszka-Jakimko, M. Haczkowska, *ADR a zasada prawa do sądu w perspektywie teoretycznej i konstytucyjnej*, [in:] *Alternatywne formy rozwiązywania sporów w teorii i w praktyce. Wybrane zagadnienia*, eds. H. Duszka-Jakimko, S.L. Stadniczeńko, Opole 2008, p. 25; J. Jabłońska-Bonca, *Soft justice w „państwie sieciowym"?*, [in:] *Alternatywne formy rozwiązywania sporów w teorii i w praktyce. Wybrane zagadnienia*, eds. H. Duszka-Jakimko, S.L. Stadniczeńko, Opole 2008, p. 68; Z. Czeszejko-Sochacki, *Konstytucyjna zasada prawa do sądu*, "Państwo i Prawo" 1992, No. 10, p. 14 et seq.; idem, *O wymiarze sprawiedliwości w świetle Konstytucji, międzynarodowych standardów i praktyki*, "Państwo i Prawo" 1999, No. 9, pp. 5–6.

[4] Constitution of the Republic of Poland of April 2, 1997 (Dz.U. No. 78, item 483 as amended).

[5] See e.g. justification of the judgment of the Constitutional Tribunal of 9 June 1997, K 28/97, OTK ZU No. 4 (19) 98, item 50, p. 299; justification of the judgment of the Constitutional Tribunal 16 March 1999, SK 19/98, Z.U. 1999/3/36 (Dz.U. nNo. 22, item 211); justification of the judgment of the Constitutional Tribunal 2 April 2001, SK 10/00, OTK 2001, No. 3, item 52; S. Pilipiec, *Teoretycznoprawne aspekty zasady prawa do sądu*, "Annales Universitatis Mariae Curie-Skłodowska" 2000, sectio G Ius, vol. XLVII, p. 227.

In this sense, the state court should be recognized as the only body competent pursuant to the Constitution to rule on cases. This means that the Constitution provides no grounds for understanding access to justice as including any alternative bodies for resolving (or assisting in the resolution) of legal disputes[6]. At the same time, it does not prevent a dispute from being submitted for resolution by such extrajudicial entities, if such is the mutual intent of the parties concerned. If this method fails, the parties still have an opportunity to assert their rights in court.

It should also be noted that in the jurisprudence of the Polish Constitutional Tribunal and of the European Court of Human Rights, access to justice does not manifest itself only on the formal level as the right to court action, but also on the substantive level as a real possibility of legally effective protection by the court[7]. An important ground for the isolation of the substantive aspect is for a case to be heard by a court "without undue delay" or "within a reasonable time"[8]. In Poland, these time limits often are exceeded, as evidenced by the fact that as much as 90% of complaints before the European Court of Human Rights in Strasbourg against Poland are filed on the basis of lengthiness of court proceedings[9]. Therefore, this aspect sometimes is brought up in the doctrine as resulting in an actual limitation of access to justice[10]. One way to overcome this fundamental problem may be to make more use of ADR methods[11]. In this sense, mediation facilitates access to judicial protection because every dispute resolved in this

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[6] Ł. Błaszczak, *Alternatywne formy rozwiązywania sporów – analiza zjawiska na tle prawa polskiego,* [in:] *Czterdziestolecie Kodeksu postępowania cywilnego. Zjazd katedr postępowania cywilnego w Zakopanem (7–9.10.2005 r.),* ed. I. Ratusińska, Cracow 2006, p. 337; idem with M. Ludwik, *Sądownictwo polubowne (arbitraż),* Warsaw 2007, p. 47 et seq.

[7] H. Duszka-Jakimko, M. Haczkowska, op.cit., p. 29.

[8] Z. Czeszejko-Sochacki, *Prawo do sądu w świetle Konstytucji Rzeczypospolitej Polskiej (Ogólna charakterystyka),* "Państwo i Prawo" 1997, No. 11–12, pp. 103–104; idem, *O wymiarze…*, pp. 8–10.

[9] R. Morek, *ADR…*, p. 68.

[10] Ibidem, p. 69.

[11] A. Wach, *Znaczenie ADR dla realizacji roszczeń w postępowaniu cywilnym,* [in:] *Ewolucja polskiego postępowania cywilnego wobec przemian politycznych, społecznych i gospodarczych. Materiały Konferencyjne Ogólnopolskiego Zjazdu Katedr postępowania cywilnego, Szczecin – Niechorze 28–30.9.2007,* eds. M. Dolecki, K. Flaga-Gieruszyńska, Warsaw 2009, p. 67.

way relieves the judiciary burden, thus reducing the risk of excessive length of proceedings in other cases[12].

III. Should the Procedure of Extrajudicial Mediation be Considered a Part of the Justice System?

Access to justice is related to the administration of justice understood as the activity of the state exercised by an independent judge in an independent court, consisting in issuing specific judgements regarding the rights and obligations of individual entities on the basis of general and abstract norms, in the form of adjudicative, arbitrary rulings issued according with the applicable procedural rules and decision-making norms[13]. The concept of access to justice is analyzed in the doctrine of constitutional law in two aspects: one regarding the subject-matter of the decisions and the other one regarding the bodies competent to issue the decisions[14]. In the first, administration of justice refers to judicial activity comprising the resolution of conflicts arising from legal relationships. This definition is based solely on substantive criteria, referring to the object of activity (legal conflicts) and the manner of action (ruling)[15]. In the second aspect, judicature is equated with the concept of an authority

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[12] More about the effectiveness in achieving this goal see M. Skibińska, *Zalety i wady mediacji jako metody rozwiązywania sporów cywilnych*, "ADR Arbitraż i Mediacja" 2010, No. 3, p. 100 et seq.

[13] H. Duszka-Jakimko, M. Haczkowska, op.cit., pp. 29–30.

[14] Ibidem, p. 30; Z. Czeszejko-Sochacki, *O wymiarze…*, p. 4; Ł. Błaszczak, *Sąd polubowny a sąd powszechny – określenie wzajemnych relacji w świetle przepisów kodeksu postępowania cywilnego*, [in:] *Arbitraż i mediacja jako instrumenty wspierania przedsiębiorczości. Materiały z międzynarodowej konferencji naukowej zorganizowanej przez Zakład Prawa Handlowego i Gospodarczego Wydziału Prawa Uniwersytetu Rzeszowskiego w Rzeszowie w dniach 22–23 września 2006 roku*, eds. J. Olszewski, B. Sagan, R. Uliasz, "Ius et Administratio", Zeszyt specjalny, Rzeszów 2006, pp. 16–19; idem, *Alternatywne…*, p. 334; idem with M. Ludwik, op.cit., p. 48 et seq.; M. Białecki, *Mediacja w postępowaniu cywilnym*, Warsaw 2012, p. 24; M. Jurgielewicz, *Charakter prawny alternatywnych metod rozwiązywania sporów w świetle Konstytucji RP na przykładzie mediacji*, "Mediator" 2007, No. 41, p. 35; T. Ereciński, K. Weitz, *Sąd arbitrażowy*, Warsaw 2008, pp. 19–20; the judgment of the Constitutional Tribunal of 8 December 1998, K 41/97, Z.U. 1998/7/117.

[15] R. Morek, *ADR…*, p. 42.

dealing with the administration of justice, i.e. the court[16]. In this sense, according with the Art. 175.1 of the Constitution, the administration of justice in the Republic of Poland is exercised by the Supreme Court, common courts, administrative courts and military courts. At the same time, common courts administer justice in all matters except those reserved by the statute for the jurisdiction of other courts (Art. 177 of the Constitution) – the principle of monopoly of common courts in the administration of justice[17]. The administration of justice has been entrusted to judges who are independent and are subject only to the Constitution and other acts of law (Art. 178 of the Constitution). In this sense, there is no other justice administration system. The transfer of decision-making powers to a body other than a state court is also excluded[18]. When such a narrow (*sensu stricto*) understanding of administration of justice (authorities and jurisdictional functions) is adopted, it should be stated that out-of-court dispute resolution, including mediation, does not belong to the judiciary[19]. This view dominates in the doctrine and should be fully supported. When the judiciary is understood broadly (*sensu largo*), as including also other bodies and functions serving legal protection, ADR can be regarded as part of the justice system[20].

At the same time, it must certainly be stated – even when the judiciary is understood in the narrow sense – that within the framework set by the Constitution there is a possibility of statutory establishment of bodies which, without having the formal power to deliver binding resolutions of cases, can help the parties resolve the dispute in a non-adjudicative manner and ensure enforceability of the reached settlements [21] (functional limitation of the princi-

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[16] Z. Czeszejko-Sochacki, *O wymiarze…*, p. 3.

[17] R. Morek, *ADR…*, p. 40; Ł. Błaszczak, *Alternatywne…*, p. 334; M. Białecki, op.cit., p. 25.

[18] J. Jabłońska-Bonca, op.cit., p. 68; Ł. Błaszczak, *Alternatywne…*, p. 335; M. Jurgielewicz, op.cit., p. 35.

[19] R. Morek, *ADR…*, p. 42–44; Ł. Błaszczak, *Sąd…*, p. 19; idem with M. Ludwik, op.cit., p. 51; T. Ereciński, K. Weitz, op.cit., p. 20.

[20] A. Zienkiewicz, *Mediator w sprawach cywilnych*, "Rejent" 2005, No. 5, p. 151; idem, *Mediacja jako forma wymiaru sprawiedliwości*, "ADR Arbitraż i mediacja" 2013, No. 4, p. 102 et seq.; R. Morek, *ADR…*, pp. 42, 44, 73.

[21] H. Duszka-Jakimko, M. Haczkowska, op.cit., p. 31; Ł. Błaszczak, *Alternatywne…*, p. 335.

ple of monopoly of common courts in the administration of justice)[22]. In other words, it is referred to as extrajudicial jurisdiction exercised by extra-state and extrajudicial bodies and resulting not so much from the Constitution but from the Code of Civil Procedure[23] and other acts[24]. This concept corresponds to the vision of the state-as-a-network, i.e. a state based on a multi-level partnership of public, state and local government entities, as well as non-public entities, which primary mission is to manage networks, i.e. to provide conditions and to facilitate interactive processes in public and non-public networks[25].

Such an understanding of access to justice enables in Poland the operation of such dispute resolution methods as mediation and arbitration[26]. They do not prejudice in any way the position or principles of the court-based justice system, and at the same time guarantee respecting a "fair, equitable procedure"[27]. That was reflected in the act introducing mediation into our legal order, the assumption being that the choice of mediation as a method of pursuing claims would be up to the parties and that it needs to be based on an agreement between the parties[28]. Thus, mediation is voluntary and its conduct depends on the will of the parties to the dispute, also when the mediation is court-referred[29]. The Polish legislator has not decided to introduce mandatory mediation known in other countries, participation[30] in which is compulso-

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[22] R. Morek, *ADR…*, p. 43.

[23] The Code of Civil Procedure of November 17, 1964 (Dz.U. 2019, item 1460 as amended).

[24] Ł. Błaszczak, *Alternatywne…*, p. 335; followed by M. Jurgielewicz, op.cit., p. 35.

[25] J. Jabłońska-Bonca, op.cit., p. 65 et seq.

[26] Some of them are even called courts, e. g. disciplinary court or court of arbitration. See J. Jabłońska-Bonca, op.cit., p. 68.

[27] H. Duszka-Jakimko, M. Haczkowska, op.cit., p. 33.

[28] See point III of the reasons of the draft act amending the act – Code of Civil Procedure, the act – Civil Code and act regulating court costs in civil matters.

[29] E. Gmurzyńska describes this mediation as *quasi*-mandatory, *Rodzaje mediacji*, [in:] *Mediacja*, ed. L. Mazowiecka, Warsaw 2009, p. 315.

[30] M. Jaksa distinguishes the mandatory referral to mediation from the mandatory participation in mediation. M. Jaksa, *Mediacja cywilna z perspektywy doświadczeń mediatora. Analiza zasad mediacji w przepisach kodeksu postępowania cywilnego*, [in:] *Alternatywne formy rozwiązywania sporów w teorii i w praktyce. Wybrane zagadnienia*, eds. H. Duszka-Jakimko, S.L. Stadniczeńko, Opole 2008, p. 78. The mandatory referral to mediation does not collide with voluntarity of mediation. Therefore, the party still has acces to court.

ry for the parties[31]. It could seriously limit access to justice, even if, in case of mediation failure, the parties would still have the right to institute proceedings in court[32]. Therefore, the introduction of mandatory mediation currently proposed by the legislator in divorce and legal separation cases[33] should be regarded as misconceived not only due to this reason, but also as depriving mediation of one of its most important principles, which is voluntariness.

IV. Relationship between Mediation and Administration of Justice

In many cases, mediation can facilitate the parties' access to broadly understood justice[34]. It has been noticed mainly in economically well-developed countries, in which the costs of seeking justice before state courts are high and at the same time it is difficult to obtain an exemption from court costs[35]. Simultaneously, the doctrine[36] notes that mediation can only open the way to justice when it is "properly implemented, properly developed and duly regulated".

A different position was presented by the European Commission in its Green Paper on alternative dispute resolution in civil and commercial law in relation to all ADR methods. In para. 62, the Commission argued that "con-

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[31] In Polish doctrine some academics propose mandatory mediation in small claims cases, in which the value of claim does not exceed 2000 or 5000 Polish zlotys. See A. Góra-Błaszczykowska, *Kilka uwag procesualisty cywilnego na temat pozasądowych metod rozwiązywania sporów (na przykładzie mediacji)*, [in:] *Alternatywne formy rozwiązywania sporów w teorii i w praktyce. Wybrane zagadnienia*, eds. H. Duszka-Jakimko, S.L. Stadniczeńko, Opole 2008, pp. 59, 63 or in divorce cases – see M. Białecki, op.cit., p. 261.

[32] Similarly: R. Morek, *ADR…*, pp. 50–51; A. Wach, op.cit., p. 67. Differently A. Góra-Błaszczykowska, op.cit., p. 59.

[33] Draft act of 27 February 2019 – amending the act – Family and Guardianship Code and certain other acts, form of the Sejm of the 8th term of office No. 3254, online access: http://orka.sejm.gov.pl/Druki8ka.nsf/0/E6E4F16B8BE6C428C12583AE00523F12/%24File/3254.pdf (30.12.2019).

[34] A. Kalisz, A. Zienkiewicz, *Mediacja sądowa i pozasądowa. Zarys wykładu*, Warsaw 2009, p. 27; K. Weitz, *Mediacja w sprawach gospodarczych*, [in:] *System Prawa Handlowego, t. 7, Postępowanie sądowe w sprawach gospodarczych*, ed. T. Wiśniewski, Warsaw 2007, p. 222.

[35] G. Slapper, D. Kelly, *Sourcebook on the English Legal System*, Routledge 2001, p. 249.

[36] Ibidem, p. 252.

tractual clauses with regard to recourse to ADRs are likely to affect the right of access to the courts as they delay or can hinder the seising of the courts"[37]. In this sense, the Commission even said that ADR methods interfere with access to justice within the meaning of the Art. 6(1) of the European Convention on Human Rights and the Art. 47 of the Charter of Fundamental Rights of the European Union[38].

Like other ADRs, mediation is usually treated as part of the justice system which does not limit the right of access to justice, but is intended to supplement the judicial mechanisms (its function is complementary and not competitive)[39]. It enables parties to use various methods to resolve or settle a dispute, which is demonstrated by the *multi-door courthouse* concept discussed earlier[40]. At the same time, in our legal order, the use of mediation does not exclude the possibility of enforcing one's rights in court[41]. The complementary role of mediation is also manifested in the fact that in some cases mediation can only support the court procedure, but cannot replace it. For example, a divorce can only be pronounced by a court and only a court ruling causes the legal consequences associated with it. On the other hand, a mutual intention of the parties to divorce, even when expressed in public, will never have this power. Such a declaration does not have the legal effects which would be even close to those produced by a decree dissolving a marriage by divorce. In this respect, only a court judgement has a legally validating character. In such cases, mediation can only be used to reconcile the spouses or to determine secondary issues related to the divorce case. In this sense, we can speak of the supreme status of courts in the administration of justice[42]. This status also manifests itself in the court's power to verify the

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[37] COM (2002) 196, p. 25.

[38] Ibidem.

[39] A. Jakubiak-Mirończuk, *Od modelu sądowego do modelu eksperckiego – rozwój instytucji arbitrażu w Polsce*, [in:] *Alternatywne formy rozwiązywania sporów w teorii i w praktyce. Wybrane zagadnienia*, eds. H. Duszka-Jakimko, S.L. Stadniczeńko, Opole 2008, p. 108; A. Wach, op.cit., p. 65; K. Weitz, op.cit., p. 222; A. Zienkiewicz, *Mediator…*, p. 152.

[40] A. Kalisz, A. Zienkiewicz, op.cit., p. 40.

[41] It is the same case with arbitration (e.g. Art. 1205 CCP).

[42] This does not mean though that mediation and other ADR methods should be threatened as second-class justice – see A. Kalisz, A. Zienkiewicz, op.cit., p. 40.

correctness (legality) of any out-of-court solution[43]. With regard to mediation, it is reflected in the Art. 183[14].3 of the Code of Civil Procedure, according to which the court shall refuse to make the settlement agreement enforceable or to approve all or part of the settlement agreement concluded before the mediator if the agreement is contrary to the law or principles of community life, or if it seeks to circumvent the law, or if it is incomprehensible or contradictory.

To sum up, it should be emphasized that today there is a clear tendency for the contractualization of justice. In effect, the role of the court is – within the limits set by law and with the consent of the parties – to exclude certain disputes and civil law conflicts from public court proceedings and to route them for private complaint (consensual) dispute resolution[44]. The relations between ADR and common (state) courts are "symbiotic"[45]. The use (within legal boundaries) of the two ways of dealing with disputes can bring benefits both for the state and for the citizens. At the same time, mediation is not a system of justice nor does it enable the exercise of the right of access to justice within the meaning given to the terms by the Constitution. Moreover, according to the current provisions of the Constitution, one should opt for the judicial primacy in the administration of justice manifesting itself primarily in the court's power to review the results of mediation and the option of the parties to institute proceedings before a court in case of failure of the mediation process to which all parties to the dispute need to have agreed. However, this does not prevent the conflicting entities from using ADR methods, including primarily mediation. The Constitution does not prevent the functioning of mediation in our society. Hence –

[43] A. Kalisz, A. Zienkiewicz, op.cit., p. 39; A. Jakubiak-Mirończuk, op.cit., p. 108; R. Morek, *ADR…*, p. 50. The Constitutional Tribunal has also emphasized this power in its case-law. See the reasons for its ruling of March 13, 1996, in which he stated that if the courts do not resolve legal conflicts themselves, then at least in the realm of justice they should exercise control over the rulings of "*quasi*-judicial" bodies (K 11/95, OTK 1996, No. 2, item 9). See also the ruling of the Constitutional Tribunal of December 8, 1998, K 41/97, OTK 1998, No. 7, item 117.

[44] K. Gajda-Roszczynialska, [in:] *Kodeks postępowania cywilnego. Tom I. Komentarz. Art. 1–729*, ed. A. Góra-Błaszczykowska, Warsaw 2016, p. 110.

[45] This term is used by R. Morek, *ADR…*, p. 73.

as has been emphasized many times in the doctrine[46] – there is no need to amend its provisions in this respect.

V. Summary

The conducted research leads to the conclusion that the parties should be free to choose this method of dispute resolution which best suits them given their individual circumstances. Moreover, both ways of resolving disputes should be regarded as complementary. There are only a few cases in which the legislator decided that a dispute cannot be resolved through mediation and therefore excluded the legal effectiveness of settlements reached in such proceedings. These restrictions reflect a concern for particularly important values, such as the family, and should be considered fully justified. The same applies to the judicial review of mediation settlements carried out pursuant to Art. 183^{14} CCP. In this sense the Constitution establishes a primacy of the judiciary, which however does not exclude out-of-court dispute resolution through mediation.

Although mediation does not fit into the narrow understanding of the administration of justice (neither in terms of competent entities and subject-matter) and does not satisfy the right of access to justice, it may, on the indicated conditions, help in the implementation of the substantive aspect of access to justice, i.e. consideration of the case by the court "without undue delay" meaning "within a reasonable time". In addition, in its current form, mediation falls within the broad meaning of the administration of justice and thus does not prejudice the position or operating rules of the judiciary. In this sense current regulations regarding mediation consist in the frames set by the Constitution. The same cannot be said about the legislator's plans to introduce mandatory mediation in divorce and legal separation cases, participation in which would be compulsory for the parties. This would not only mean temporary inadmissibility of legal action, but could also temporarily limit the parties' access to justice and hence the proposal should be opposed.

[46] Ł. Błaszczak, *Alternatywne…*, p. 338; M. Białecki, op.cit., pp. 26–27.

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