

## The Qualifications of Mediators in Civil Matters, Including Employment Disputes, in Poland and Romania

Katarzyna Antolak-Szymanski

Dr., Associate Professor, SWPS University, Warsaw, Poland, correspondence address: kantolak@swps.edu.pl

 <https://orcid.org/0000-0003-4853-5816>

Mihai Cărăbaș

Dr., Babeș-Bolyai University, Cluj-Napoca, Romania, correspondence address: carabas@carabaslungu.ro

 <https://orcid.org/0009-0006-4153-8394>

### Keywords:

mediator,  
qualifications,  
mediation,  
civil and  
employment matters

**Abstract:** Mediation is increasingly promoted as an effective means of dispute resolution within the European Union, especially in civil cases. However, in Member States that lack a strong tradition of mediation, such as Poland and Romania, mediation has developed slower than expected. In this paper, the authors argue that one reason for this may be the lack of qualified mediators for civil and employment cases in both countries. They claim that legislators should enact higher qualification standards, including requiring specialized knowledge and ensuring that mediator certification is not outsourced to private mediation organizations with low-quality training programs.

### 1. Introduction

The qualifications of mediators are an important topic of discussion among lawmakers, lawyers, and academics. Mediator quality may be the most important factor in whether or not the mediation will be successful. In parts of the world without a long tradition of mediation, such as Eastern Europe, this is particularly vital. Low-quality mediators may lead parties (individuals and businesses) who are new to mediation to quickly conclude that the entire process is deficient, and not worth trying a second time. A difficult question faced by legislators, however, is exactly how mediator quality may be improved. The state may opt to impose minimum

qualification standards for mediators, which could cover basic aspects such as age, education, and training. For specialized types of mediation, such as employment matters, the legislator may also require that the mediator possess specific knowledge in that field. While many mediation skills are generic, in the sense that they can be utilized in all types of disputes, a mediator's knowledge of a particular field or law may enhance their ability to resolve these types of specific disputes.

Another option is for the state to effectively outsource mediator training and qualification standards to private mediation associations or organizations. These organizations may develop their own training programs and standards, allowing individuals to join them for a fee. Following such training, these individuals would receive a certificate from the respective mediation organization. Parties may then judge for themselves the value of a mediator certified by one association or another, depending on the training quality and reputation of the certification programs that they offer.

Another option is to leave the area of mediator qualifications either very lightly regulated or virtually unregulated. While mediator qualifications are vital, as noted above, the legislator may decide that the parties' autonomy to choose whomever they want (and trust) to be their mediator overrides concerns about setting higher qualification standards, with the latter potentially excluding numerous people from the field of mediation.

This article aims to present and analyze the choices made by the legislator regarding mediator qualifications in Poland and Romania in civil cases, including employment disputes. Poland has taken the path of regulating mediator qualifications lightly at first, and then adding more requirements over time. Romania has relied heavily on private organizations to certify mediators based on the completion of private training programs which they offer. The number of mediations in Poland has gradually increased over the last decades, including up to the present (2023). The situation is different in Romania where the number of "certified" mediators has increased, but at the same time, the number of mediations has declined. We contend that this demonstrates that the issue of mediator quality should not be entirely outsourced to private organizations, which offer certification for a fee. Instead, the state should take reasonable and balanced steps to ensure the minimum qualifications of mediators, including requiring specialized knowledge for specific fields, including employment and labor disputes.

## 2. Poland

### 2.1. Establishing Regulations on Mediation

Mediation in Poland first became a popular issue when the provisions on mediation in civil matters entered into force on December 10, 2005.<sup>1</sup> The introduction of regulations on mediation into the Code of Civil Procedure (CCP) was an important step towards disseminating this method of dispute resolution. The legislator intended to enable the parties in civil cases to use mediation as extensively as possible.<sup>2</sup>

However, despite the interest in this procedure of civil dispute resolution, it is not widely used. While the use of mediation in civil matters is regularly increasing, the growth rate is very slow. Mediation is becoming increasingly popular among disputed parties and courts that have the option of referring the parties to mediation. One of the main goals of introducing mediation in Poland has undoubtedly been the attempt to relieve the caseload of the state judiciary. Mediation is known in the Polish legal system because it is used in resolving collective disputes in the field of labor law, criminal proceedings, juvenile proceedings, and administrative court proceedings. However, there are differences between these proceedings and mediation in civil cases, mainly due to the private law nature of cases subject to civil mediation.

Implementing mediation to the CCP in 2005, (under Art. 183<sup>1</sup>–183<sup>15</sup> CCP) was a way to meet both European and global trends.<sup>3</sup> Recommendation No. 10 of 2002 of the Committee of Ministers of the Council of Europe on mediation in civil matters<sup>4</sup> defines mediation as a dispute resolution process in which the parties, with the participation of one or two mediators, negotiate to reach a settlement. In 2002, the European Commission issued the so-called Green Paper on Alternative Dispute Resolution in Civil

---

<sup>1</sup> Act of July 28, 2005 amending the Code of Civil Procedure and some other acts, (Journal of Laws of 2005 No. 172, item 1438).

<sup>2</sup> Justification of the government's draft act amending the Code of Civil Procedure, the Civil Code and the act on court costs in civil cases, Sejm Print No. 3213.

<sup>3</sup> Anna Kalisz and Eliza Prokop-Perzyńska, "Mediacja w sprawach cywilnych w prawie polskim i europejskim," *Europejski Przegląd Sądowy*, no. 11 (2010): 14–24.

<sup>4</sup> Council of Europe Committee of Ministers, Recommendation Rec (2002)10 of the Committee of Ministers to Member States on mediation in civil matters, September 18, 2002.

and Commercial Law<sup>5</sup> (Green Paper on ADR), which resulted in a lively discussion on the place of mediation in justice systems. One of the fruits of the discussions launched by the Green Paper is the European Code of Conduct for Mediators, adopted on July 2, 2004,<sup>6</sup> which sets out principles that mediators may voluntarily adopt under their own responsibility and which can be applied to all types of mediation proceedings in civil and commercial matters. Significantly, right at the outset, in Item 1.1, the Code requires that “Mediators shall be competent and knowledgeable in the process of mediation. Relevant factors shall include proper training and continuous updating of their education and practice in mediation skills, having regard to any relevant standards or accreditation schemes.” The code does not establish obligatory rules but sets out principles that individual mediators can voluntarily decide to follow, at their responsibility. Organizations providing mediation services can also make such a commitment.

On May 21, 2008, the European Commission adopted Directive 2008/52/EC of the European Parliament and of the Council on certain aspects of mediation in civil and commercial matters.<sup>7</sup> The material scope of the Directive covers civil and commercial matters (Article 1(2)), but the Directive formally applies to cross-border disputes (Article 2). Nevertheless, in accordance with the preamble (Item 8), it is indicated that the application of the provisions of the Directive by the Member States is also permissible for mediation proceedings in domestic cases.

Many countries such as Poland and Romania created regulations for mediations in civil matters before the due date of the Directive, but the Directive also requires that: “Member States shall bring into force the laws, regulations, and administrative provisions necessary to comply with this Directive before 21 May 2011, with the exception of Article 10, for which the date of compliance shall be 21 November 2010 at the latest. They shall forthwith inform the Commission thereof” (Art. 12.1). Therefore,

---

<sup>5</sup> Green paper on alternative dispute resolution in civil and commercial law, Brussels, April 19, 2002, COM(2002) 196 final, [www.op.europa.eu](http://www.op.europa.eu).

<sup>6</sup> See: European Code of Conduct for Mediators, [http://ec.europa.eu/civiljustice/adr/adrec/code\\_conduct\\_en.pdf](http://ec.europa.eu/civiljustice/adr/adrec/code_conduct_en.pdf).

<sup>7</sup> Directive 2008/52/EC of the European Parliament and of the Council of 21 May 2008 on certain aspects of mediation in civil and commercial matters (Official Journal EU L 136 of 24.05.2008, p. 3).

preexisting Polish mediation law needed to be revised, where necessary, to comply with the terms of the Directive. In fact, most Polish mediation laws were compliant with the Directive, and only relatively minor changes were made to make them consistent with the Directive.<sup>8</sup>

Nevertheless, the Directive also envisions ongoing obligations for the Member States to ensure mediator quality. This includes such actions as: “1) encourage, by any means which they consider appropriate, the development of, and adherence to, voluntary codes of conduct by mediators and organizations providing mediation services, as well as other effective quality control mechanisms concerning the provision of mediation services; 2) encourage the initial and further training of mediators in order to ensure that the mediation is conducted in an effective, impartial and competent way in relation to the parties” (Art. 4).

## 2.2. Regulating Mediator Qualifications

Poland has taken a liberal approach to setting qualifications for mediators in civil matters, i.e., keeping the profession open to almost anyone. As explained by the draft of the Codification Commission of CCP, the key to a successful mediation was the mediator’s personality and not their specific knowledge.<sup>9</sup> To some extent this is true. However, as mediations become more complex, there is also value in mediators having specialized knowledge, education, and training. Of course, while appreciating the importance of the mediator’s interpersonal skills, it is also noted that they need to be knowledgeable in various fields such as law, psychology, and economics.

This was an intentional decision, consistent with the doctrine of party autonomy in mediation, i.e., the right for the parties themselves to choose an appropriate mediator for their particular dispute.

At the same time, it is important to mention that the legal regulation of mediator status in Poland is dispersed across various legal acts, both of a systemic and procedural nature. It needs to be emphasized that individual

---

<sup>8</sup> Supplementing Art. 183<sup>12</sup> CCP with the new Section 2<sup>1</sup> serves to implement of Art. 6(1) of Directive 2008/52/EC. Under Art. 6(1) of the said Directive, the possibility of applying for an enforcement clause to a settlement concluded before a mediator by one party requires the express consent of the other party.

<sup>9</sup> See: Justification of the government’s bill amending the Code of Civil Procedure and the Act on Court Costs in Civil Matters, No. 3213, Sejm of the 4th term.

provisions introduce different minimum criteria and requirements for mediators (e.g., in criminal, juvenile, and administrative mediation), and at the same time, the practice of applying the requirements in question varies depending on the authority applying the relevant provisions. This is especially noticeable in the procedure of entry on the lists of permanent mediators and the use of differentiated criteria depending on the particular District Court President.<sup>10</sup>

### 2.3. Qualifications of Mediators in Civil Cases

Initially, when mediation was added to the Polish Code of Civil Procedure (CCP) in 2005,<sup>11</sup> the requirements for being a mediator in civil cases were set at a minimal level. Specifically, anyone with full legal capacity and rights could have been a mediator in a civil case. Only one exception applied: pursuant to Article 183<sup>2</sup> of the CCP, active judges could not be mediators.

Notably, the development of mediation in Poland is supported by the Civic Council for Alternative Methods of Conflict and Dispute Resolution at the Ministry of Justice, which issues various documents creating mediation standards in Poland. These documents are not laws — they are merely recommendations that are expected to be complied with but are not enforceable. Standard VI (adopted by the Council on June 26, 2006) notes that mediators should ensure they have a high level of professional

---

<sup>10</sup> This and other important issues involving mediator status in Poland were analyzed in a research report in terms of social needs and expectations concerning the National Register of Mediators (Polish: Krajowy Rejestr Mediatorów – KRM), including competence gaps in mediator training; see: Research report on social needs and expectations regarding the National Register of Mediators and competence gaps in the field of mediator training, prepared by the John Paul II Catholic University of Lublin, research team: W. Bronski, M. Dąbrowski, P. Sławicki, M. Wiechetek. The report on the research conducted between November 1, 2020 and June 18, 2021, was prepared as part of the project: “Dissemination of alternative methods of dispute resolution by improving the competence of mediators, creation of the National Register of Mediators (KRM) and information activities,” POWR.02.17 .00-00-0001/20. Włodzimierz Broński et al., *Raport z badań w zakresie potrzeb i oczekiwań społecznych dotyczących Krajowego Rejestru Mediatorów oraz luk kompetencyjnych w zakresie szkoleń mediatorów* (Lublin: Katolicki Uniwersytet Lubelski Jana Pawła II, 2021).

<sup>11</sup> Act of July 28, 2005 amending the Code of Civil Procedure and some other acts (Journal of Laws No. 172, item 1438).

qualifications, constantly strive to develop and improve their skills, and maintain a high level of professional ethics.<sup>12</sup>

Mediation training standards adopted by the Council on October 29, 2007, establish a minimum requirement of completing a course comprising at least 40 hours of theoretical and practical training, which must be confirmed by a course completion certificate. In accordance with these standards, mediation training covers the following topics: (1) Basic principles and components of mediation proceedings; (2) Psychological mechanisms of conflict formation, escalation, and resolution; (3) Training of practical mediation skills; (4) Knowledge of the legal and organizational aspects of mediation procedures.<sup>13</sup> These standards apply to all types of mediation. However, since they are not compulsory, not all organizations providing mediation training fully implement the requirements indicated in the standards. It should also be noted that such training does not specialize mediators in conducting certain types of mediation but only covers the basic aspects of mediation. Therefore, the standards suggest (Standard VI) that since different types of mediation require specific skills, mediators should participate in specialized training in specific fields of mediation: criminal, civil (family and economic), and collective disputes.

#### 2.4. 2015–2016 Legal Changes

The CCP was amended on September 10, 2015 (in force since January 1, 2016),<sup>14</sup> which established new categories of mediators in civil matters, the need to create lists of such mediators, and a mechanism to verify their qualifications. No lists of mediators in civil cases were kept prior to this amendment, except those maintained by “social and professional organizations” which were then provided to District Court Presidents (Art. 183<sup>2</sup>(2) CCP).

The new mediator classifications were as follows: *ad hoc* mediator, permanent mediator, and university or non-governmental organization (NGO) mediator. *Ad hoc* mediators are chosen by the parties to mediate

---

<sup>12</sup> Serwis Rzeczypospolitej Polskiej, “Międzynarodowe i Polskie standardy dotyczące mediacji,” accessed March 15, 2023, <https://www.gov.pl/web/sprawiedliwosc/miedzynarodowe-i-polskie-standardy-dotyczace-mediacji>.

<sup>13</sup> Ibid.

<sup>14</sup> Act of September, 10, 2015 amending certain acts in connection with the promotion of amicable dispute resolution methods (Journal of Laws of 2015 item 1565).

a specific case, typically even before court proceedings have started. Permanent court mediators are individuals included in a list of mediators maintained by the district courts. To qualify as a permanent mediator, such individuals must meet certain minimum requirements: (1) being a natural person; (2) having skills and knowledge in mediation; (3) being at least 26 years old; (4) being fluent in Polish; (5) having no criminal record (of intentional crimes); (6) being entered on the list of permanent mediators by the district court. These requirements are listed in the Act of July 27, 2001 — Law on common courts organization under Title IV “Judicial ‘referendaries’, probation officers, court employees, permanent mediators, lay judges and auxiliary bodies of courts.” The qualifications of permanent court mediators are specified in Art. 157a of Chapter 6a.<sup>15</sup> These regulations are supplemented by the new ordinance of the Ministry of Justice dated January 20, 2016.<sup>16</sup>

University or NGO mediators are individuals who have been included in the relevant list by their respective universities or organizations. They may work at a university or NGO mediation center, handling tasks assigned to them by these entities. While such mediator lists are kept by universities or NGOs and not by courts, list information must be provided to District Court Presidents (Art. 183<sup>2</sup>(3) CCP).

It is important to recognize that all three categories of mediators are not necessarily mutually exclusive. It may be possible for a permanent mediator to also be listed as a university mediator, and a university mediator may also perform some *ad hoc* mediations, etc. Despite the changes brought by the 2016 amendment, the required qualifications for permanent mediators in civil cases are still quite low.

Private mediation organizations may establish their own requirements. These may include: (1) required mediation training hours; (2) an internship with a practicing mediator, where the prospective mediator attends and assists in at least four mediations; (3) continuing education obligations; (4) obligations to work *pro bono* for the organization.

---

<sup>15</sup> Act of July 27, 2001 – Law on common courts organization, consolidated text of Journal of Laws of 2023, No. 117.

<sup>16</sup> Ordinance of the Minister of Justice of January 20, 2016 on maintaining a list of permanent mediators, Journal of Laws of 2016 item 122.



Theoretically, setting and maintaining higher qualification standards for mediators may allow private organizations to offer better mediation services and achieve higher settlement rates. However, to date, there have been no scientific studies on this question in Poland.<sup>17</sup>

## 2.5. Special Qualifications and Rules for Mediators in Labor Law Cases

Polish law does not require mediators to have additional, special qualifications for different types of civil cases such as commercial or employment matters. This may create some problems in mediating these types of cases, since the mediator may not understand the context of the dispute.

Workplace relationships are governed by specific legal regulations which mediators should know.<sup>18</sup> Under employment law, employees are granted extra protection measures. This principle should also be reflected in the content of mediation agreements. If the settlement is not sufficiently protective of workers' rights, the court may not approve it (Art. 183<sup>14</sup>(1) CCP).<sup>19</sup> However, the legislator has not specified any requirements for mediator qualifications in employment cases in this regard. Indeed,

---

<sup>17</sup> See: Rafał Morek, "Poland," in *EU Mediation Law Handbook*, eds. Nadja Alexander, Sabine Walsh, and Martin Svatos (Netherlands: Wolters Kluwer, 2017), 616.

<sup>18</sup> For more about the specific aspects on labor or employment mediation, see: Grzegorz Goździewicz, *Arbitraż i mediacja w prawie pracy (Arbitration and Mediation in Labor Law)* (Lublin: Katolicki Uniwersytet Lubelski, 2005), 9–28; Krzysztof Wojciech Baran, "Mediacja w sprawach z zakresu prawa pracy," *Praca i Zabezpieczenie Społeczne*, no. 3 (2006): 2; Włodzimierz Broński, "Mediacja w rozwiązywaniu sporów zbiorowych," *Roczniki Nauk Prawnych* 26, no. 4 (2016): 40; Marian A. Liwo and Edyta Nowosiadły-Krzywonos, "Mediacja zamiast sądu w prawie pracy," *Palestra*, no 3–4 (2012): 69–79; A. Marek, "Mediacja – sposób rozwiązywania sporów pracowniczych," *Służba Pracownicza*, no 3 (2008): 11–14; Katarzyna Jurewicz-Bakun, "Mediacja jako jedna z form rozwiązywania sporów indywidualnych w prawie pracy," *Praca i Zabezpieczenie Społeczne*, no. 3 (2021): 41–49.

<sup>19</sup> See: Piotr Prusinowski, "Pojęcie wynagrodzenia za pracę a dopuszczalność zawarcia ugody sądowej," *Praca i Zabezpieczenie Społeczne*, no. 7 (2012): 29–35; Dorota Dziensiuik and Monika Latos-Miłkowska, "Mediacja a specyfika spraw z zakresu prawa pracy," *Praca i Zabezpieczenie Społeczne*, no. 1 (2011): 24; see also: Radosław Flejszar, "Ugodowe rozwiązywanie sporów z zakresu prawa pracy," *Studia z Zakresu Prawa Pracy i Polityki Społecznej*, no. 1 (2010): 315–328; Krzysztof Wojciech Baran and Marcin Wujczyk, "Z problematyki ugód w sprawach z zakresu prawa pracy," in *Pozasądowe sposoby rozwiązywania sporów pracowniczych*, eds. Agnieszka Góra-Błaszczkowska and Katarzyna Antolak-Szymanski (Warsaw: Dom Wydawniczy Elipsa, 2015), 44–63.

the legislator has not formulated any specific, additional requirements regarding the education, professional preparation, qualifications, or experience of mediators in labor law cases.

Art. 183<sup>9</sup>(1) CCP states that if the parties fail to appoint a mediator, the court that referred them to mediation shall appoint a mediator with appropriate knowledge and skills in mediating cases of a given type, taking into account permanent mediators in the first place. This means that parties to employment disputes — the employee and employer — may first choose the mediator based on their own preferences. They may select a mediator from a list of court mediators or a list kept by an organization, or a mediator who is not listed anywhere (*ad hoc* mediator) but has full legal capacity and rights (excluding active judges). This may happen where the mediation is based on the parties' agreement to mediate (contract mediation) or where the court directs the parties to mediation (court mediation). In situations where the parties have not selected a mediator and their case is being referred to mediation by the court, the latter shall also appoint a mediator with the appropriate knowledge and skills in mediating cases of a given type. In practice, in such situations, courts appoint mediators who are included in their official lists (permanent mediators). Yet, it is difficult to select a mediator with appropriate knowledge and skills in employment mediation. This problem results from a lack of legal requirements for mediators to specialize in employment matters. To be included in the court's mediator list, it is sufficient for the given person to meet the general requirements listed above (being a natural person with skills and knowledge in mediation, aged 26 or older, fluent in Polish, with no criminal record [of intentional crimes]). The Ordinance of the Minister of Justice of January 20, 2016, on maintaining a list of permanent mediators requires that an application to be included in a list of permanent court mediators shall be accompanied by copies of documents confirming knowledge and skills in the field of mediation, i.e.: information on the number of mediations conducted; a list of published articles or books on mediation; opinions of mediation centers or natural persons on the applicant's mediation knowledge and skills; documents confirming the applicant's education and training in the field of mediation and specifying their specialization (Section 5.1). It is difficult to interpret what "specifying their specialization" actually means because there are no legal requirements concerning specialization in mediation in employment matters.

That the CCP lacks any requirements for labor and employment mediators to have at least basic knowledge of labor law and workplace relations is controversial. The literature widely criticizes the legislator in this regard, suggesting changes and the establishment of good practices.

When including mediators in their lists, mediation centers usually require candidates to have completed some kind of specific training. Another potential requirement may be having experience in mediation or labor disputes. Some have also noted the need to encourage the establishment of mediation centers at law faculties to capitalize on their experienced cadre of employees and graduates.<sup>20</sup> Yet, it would be unreasonable to impose such requirements on *ad hoc* mediators because the mediating parties choose them based on their own preferences. Mediation centers should, however, associate with professional mediators since incompetence may prolong the proceedings, burdening the mediating parties without bringing them the desired outcome. One thing to note is that resolving the problem of training and certificate requirements should not be left to mediation organizations alone. The introduction of common, mandatory criteria for the verification of mediator candidates should also be required by statute.<sup>21</sup>

One may assume that with regard to the group of permanent mediators entered on the lists of court mediators, verifying the qualifications of mediators, including those handling labor disputes, would be the responsibility of the National Register of Mediators. Outcomes of the project “Dissemination of alternative methods of dispute resolution by improving the competence of mediators, creation of the National Register of Mediators (KRM) and information activities” (due to be completed by August 31, 2023) include establishing a public and open ICT system register — National Register of Mediators. This is related to the need to adapt the applicable legal provisions, in particular regarding the transition from the regional system of mediator lists kept by District Court Presidents to a nationwide register. As indicated in the project Report, the purpose of the mediator lists is

---

<sup>20</sup> see: Jan Olszewski, “Guidelines for the development of arbitration,” in *Arbitration and Mediation. Practical Aspects of Using Regulations*, ed. Jan Olszewski (Rzeszów, 2007), 246.

<sup>21</sup> Jakub M. Łukasiewicz, “Zasada szybkości postępowania,” in *Zarys metodyki pracy mediatora w sprawach cywilnych*, eds. Aneta M. Arkuszewska and Jerzy Plis (Warsaw: Wolters Kluwer business, 2014).

unclear today because they merely confirm someone's registration as a mediator and not their professionalism. As part of the Report, the respondents raised the need to introduce specializations and establish different entry criteria for individual specializations.<sup>22</sup>

### 3. Romania

#### 3.1. Origins

The institution of mediation as an alternative dispute-resolution method has relatively recent origins in Romania after the historic downfall of the communist regime in 1989. Thus, the year 1996 saw the Foundation for Democratic Changes partner with the Canadian International Institute for Applied Negotiations, the Canadian Embassy in Bucharest, the Association of Universities and Colleges of Canada, and the Delegation of the European Union Commission in Bucharest under the PHARE Democracy program to officially bring this new institution (for Romania) to public attention.

Though without a strong resonance but with growing public support, mediation seemed in the 2000s to be on the right track to truly become an alternative way of resolving disputes. The first national regulation to directly refer to mediation was Law No. 168/1999 on the settlement of labor disputes. Article 26 provided that “if the conflict of interest has not been resolved as a result of the conciliation organized by the Ministry of Labor and Social Protection, the parties may decide, by consensus, to initiate the mediation procedure.” In 2003, the foundations for a pilot Mediation Center in Craiova were laid with the involvement of the Ministry of Justice, local courts, and the US Embassy.

Following the above initiatives, the year 2006 saw Romania pass Law No. 192/2006 on mediation and the organization of the mediator profession, which seems to be the moment from which mediation has had all the premises to become widely used, offering the results promoted by its supporters.

Unfortunately, the normative effects have not been as expected, making mediation a seldom-used tool. Through more than 15 amendments/annotations/interpretations to Law No. 192/2006, mediation in Romania has gone through different stages — some resulting in its evolution. The most

---

<sup>22</sup> Broński et al., *Raport z badań w zakresie potrzeb i oczekiwań społecznych*, 17.

notable ones include the amendment that came into force in early 2013,<sup>23</sup> obliging the parties to contact a mediator prior to initiating a lawsuit before the national courts. Therefore, litigants are “forced” to learn about the advantages of mediation and obtain a relevant certificate to prove this, which is necessary for a lawsuit to not be dismissed as inadmissible before the courts.

The rigorous manner in which the parties are forced to become acquainted with the advantages of mediation only causes frustration among them and many actors involved in the judicial system, effectively turning the procedure into a formality devoid of substance and results. What has gained momentum along with this obligation, however, is the number of authorized mediators, mediator trainers, mediation centers, and other organizations built around the institution of mediation.

### 3.2. Qualification Standards

To become a professional mediator, the following conditions must be met:

- having full legal capacity;
- having higher education;
- having work experience of at least 3 years;
- being medically fit for this activity;
- having a good reputation and no criminal record of crimes that could damage the prestige of the profession;
- having completed the mediator training courses under the conditions stated by law, or a postgraduate master’s degree in mediation accredited according to the law and approved by the Mediation Council;
- being authorized as a mediator under Law No. 192/2006.<sup>24</sup>

The conditions imposed by the law can be considered fair, imposing minimum status and mediation training requirements on the mediator. Nonetheless, the real problem lies not in the regulation of the mediator’s status and requirements but rather in the way those are applied. This primarily applies to the mediator training courses, which mostly represent mere formalities, where the only condition to graduate is to pay the required fees.

---

<sup>23</sup> Emergency Ordinance No. 90/2012.

<sup>24</sup> Art. 7 of Law No. 192/2006 on mediation and the organization of the mediator profession.

The body responsible for supervising mediation activity and authorizing the trainers and courses mentioned is the Mediation Council, an autonomous body with a legal personality, established by Law No. 192/2006.

Labor law also includes special provisions on mediator specialization, i.e. Law No. 367/2022 on social dialogue, which was preceded by Law No. 62/2011 (also on social dialogue), the provisions of which expressly mention the possibility of resolving collective labor disputes through arbitration or mediation. At the same time, “In order to promote amicable and expeditious settlement of collective labor disputes, the Office for Mediation and Arbitration of Collective Labor Disputes shall be established at the ministry responsible for social dialogue, hereinafter referred to as the Mediation Office.”<sup>25</sup> This entity operates based on a regulation approved by the order of the minister responsible for social dialogue. Unfortunately, while these provisions had been enforced under the previous Law on social dialogue, the new Law does not seem to have been approved, rendering the Mediation Office non-functional.

It is worth mentioning a draft resolution<sup>26</sup> on the organization and functioning of the Office for Mediation and Arbitration of Collective Labor Disputes, which mentions a special qualification of mediators in labor disputes (authorized under Law No. 192/2006). Therefore, not every authorized mediator can work in the field of collective labor disputes — only those who graduate from a specialized professional training program authorized by the Office (and join the Body of Mediators of Collective Labor Disputes) are allowed to do so.

Although this area is still subject to special regulation regarding mediation, some aspects seem to have been overlooked and remain inapplicable due to the lack of implementing regulations and necessary correlated legislation.

---

<sup>25</sup> Art. 140 and subsequent articles of Law No. 367/2022.

<sup>26</sup> “Hotărâre privind organizarea și funcționarea Oficiului de Mediere și Arbitraj a Conflictelor Colective de Muncă,” FNSA, accessed March 2, 2023, [https://www.fnsa.eu/ctrl/Home/2018/HG\\_Oficiul\\_de\\_mediere\\_si\\_arbitra.doc](https://www.fnsa.eu/ctrl/Home/2018/HG_Oficiul_de_mediere_si_arbitra.doc).

### 3.3. Mediation in Decline

Up-to-date data and statistics on mediation at the national level are not publicly available. The website<sup>27</sup> of the Mediation Council is not being updated (and is often dysfunctional), presenting outdated or irrelevant information for mediation as a conflict resolution measure (e.g. administrative information, elections, committee members, etc.).

Thus, mediation seems to be “suspended” at the national level. Any search, whether in specialized journals, on legal content websites, websites of other entities involved in mediation, or on official websites of institutions or public authorities, produces results dating back several years ago when mediation became accessible due to the mandatory procedures mentioned above. With the abolition of these provisions by their being declared unconstitutional, mediation has faded into obscurity. There have been a few exceptions, however, with some in the online environment (mediators) arguing that the COVID-19 pandemic marked the right moment for the population to resort to alternative methods of dispute resolution.<sup>28</sup> Yet, not even the pandemic seems to have encouraged litigants to turn to such procedures.

We believe that there are multiple reasons why mediation has disappeared almost entirely from the national landscape, including legislative incoherence combined with the lack of monitoring regarding the usage level and satisfaction of mediation service users,<sup>29</sup> as well as the lack of other key performance indicators, inadequate authorized mediator training due to poor quality trainers and courses, the lack of accurate information offered to the public regarding the real advantages of mediation, and over-formalization of professional bodies.

---

<sup>27</sup> [www.cmediere.ro](http://www.cmediere.ro).

<sup>28</sup> March 2nd 2023, <https://www.juridice.ro/676326/medierea-poate-fi-o-solutie-viabila-pentru-solutionarea-disputelor-in-mediul-online.html>, <https://www.juridice.ro/678603/solutia-justitiei-de-suspendare-transforma-intr-o-necesitate-possibilitatea-avocatorilor-de-a-ape-la-la-mijloace-alternative-de-solutionare-a-conflictelor-clientilor-lor.html>

<sup>29</sup> Constantin Adi Gavrilă, interview by Alina Matei, *Juridice.ro*, December 4, 2019, <https://www.juridice.ro/666698/constantin-adi-gavrila-mediatorii-trebuie-sa-actiuneze-pentru-a-reconstrui-credibilitatea-si-increderea-societatii-in-mediere.html>.

In figures (which are not being updated), this failure is highlighted by the existence of more than 10,000 mediators,<sup>30</sup> 140 mediation organizations, and 143 individual trainers,<sup>31</sup> all likely handling fewer than 1,000<sup>32</sup> mediation procedures nationwide.

We believe that a revival of the mediation institution can only be achieved through a fundamental reform, starting with a coherent legislative regulation, and a reconstruction of the public image, and credibility of mediation with the internal help of professional and dedicated mediators. Even in such conditions, we consider the path towards a functional mediation procedure to be a difficult one, especially due to the negative image of mediation built up in the public space and the legal system over the nearly two decades since mediation has been officially regulated in Romania.

#### 4. Conclusions

In both Poland and Romania, there is a lack of empirical studies on whether or not there is a direct link between the introduction of higher qualification standards for mediators and the rise or fall in the number of mediations in each country. Still, some general statistical information on mediation, as well as other circumstantial evidence, exists in both countries that may shed some light on this question.

In Poland, the main regulation introducing basic mandatory qualifications for mediators was enacted in 2016. The years 2015–2016 saw a relatively big rise in the number of mediations; however, the rate of increase remained relatively stable thereafter. Most likely, establishing basic mediator qualifications (particularly for mediators selected from lists maintained by courts) solidified the state of mediation in Poland, creating a stable baseline for the growth of mediation in the country.

With respect to at least one specialized form of mediation — employment mediation — the figures appear to show a greater correlation between the 2016 law and the growth of mediation in that field. Between 2006 and 2015, the annual number of mediations was 33, 74, 107, 252, 195, 65, 284,

---

<sup>30</sup> According to the mediators list available at: <https://www.cmediere.ro/mediatori/?page=213>.

<sup>31</sup> “Trainers list,” The Mediation Council, accessed March 15, 2023, <https://www.cmediere.ro/tablouri-liste/lista-formatorilor/18/>.

<sup>32</sup> Estimated figure as there is no official information available for the past 5 years.



324, 297, and 512, respectively. After the 2016 amendment adding certain qualification requirements, the number of employment mediations increased quite dramatically each year. In the years 2016–2021, the number of mediations in each respective year went from 1,409 to 1,751 to 2,099 to 2,651 to 3,501 to 3,636. It can only be assumed that the 2016 change in regulations, including those concerning the criteria to be met by mediators included in court lists, contributed to the development of labor and employment mediation.

However, the number of cases in both civil mediation and specialized employment mediation has plateaued in the last couple of years. This marks the right moment for the Polish legislator to further increase the mandatory mediator qualifications. The standards should not be raised so high as to exclude broad categories of individuals who could potentially serve as mediators but rather focus on the enhancement of mediators' knowledge in specialized fields, including labor and employment matters.<sup>33</sup>

In Romania, basic qualifications for mediators were introduced by law in 2006, somewhat earlier than in Poland. These qualifications included the mandatory completion of a training course authorized by a Mediation Council, and it was this requirement that may have contributed to the undoing of mediation in Romania. The quality of training courses has varied widely, and it has become possible to complete them by simply paying the required fee. This has led to a surge in the number of mediators in Romania, with as many as 10,000 of them in the country, and a commensurate

---

<sup>33</sup> It is important for both employees and employers that mediation be conducted by a person who has knowledge of labor law. This is also vital from the perspective of ensuring correct settlements in employee disputes, which should take into account compliance with applicable regulations, including labor law, the specificity of which is manifested through employee safeguards. In addition, the relationship between the employee and the employer has its own specific nature related to the fact that the employee is the weaker link in this relationship, and as such, mediation brings a risk of significant inequality of the parties involved. In this regard, understanding the specificity of labor disputes, mediators should be prepared to conduct them in a specific way thanks to specialized training, which should go beyond the mediators' basic knowledge and general skills. Efforts to popularize mediation in matters relating to labor law should focus on providing qualified, neutral labor mediators (i.e., mediators with verified qualifications in labor law, potentially included in a special list of labor mediators), and raising awareness of these qualifications and the process of mediation in general among employers and employees.

reduction in the number of mediation cases, reaching a low of 1,000<sup>34</sup> in recent years. Thus, in Romania's case, the sub-par quality of the mandatory training courses and the ease with which they can be completed has led the public to perceive mediation (and mediators themselves) as a relatively low-quality solution. This, in turn, has led mediation in Romania to spiral downwards, almost to the point of oblivion.

It is recommended that the Romanian legislator create objective quality standards for the mandatory mediation training courses and proceed to enforce these standards in practice. This should be accompanied by a revitalization of the national Mediation Council to ensure that it provides up-to-date information on the state of mediation in the country and fulfills its role to effectively promote the development of mediation.

The lack of determination of mediator qualifications in both Poland and Romania, including the requirements regarding their preparation to conduct mediation, education, professional experience, and above all, mediation quality control mechanisms, raises justified reservations regarding the guarantee of proper mediation proceedings in civil cases. Directive 2008/52/EC of the European Parliament and of the Council of May 2008 on certain aspects of mediation in civil and commercial matters does not introduce specific requirements regarding the minimum qualifications of mediators or their certification, which is decided by national legislators. However, Art. 4(1) and (2) of the Directive state that Member States should ensure effective mechanisms to control the quality of mediation services, and support mediator training in order to guarantee effective, impartial, and competent mediation to the parties.

Therefore, it is important that the national legislators in Poland and Romania further guarantee mediator professionalism in civil and labor disputes, including by introducing additional requirements regarding their qualifications.

---

<sup>34</sup> Estimated number.

## References

- Adi Gavrilă, Constantin. Interview by Alina Matei. *Juridice.ro*, December 4, 2019, <https://www.juridice.ro/666698/constantin-adi-gavrila-mediatorii-trebuie-sa-actiuneze-pentru-a-reconstrui-credibilitatea-si-increderea-societatii-in-mediere.html>.
- Baran, Krzysztof Wojciech, and Marcin Wujczyk. “Z problematyki ugód w sprawach z zakresu prawa pracy.” In *Pozasądowe sposoby rozwiązywania sporów pracowniczych*, edited by Agnieszka Góra-Błaszczkowska and Katarzyna Antolak-Szymanski, 44–63. Warsaw: Dom Wydawniczy Elipsa, 2015.
- Baran, Krzysztof Wojciech. “Mediacja w sprawach z zakresu prawa pracy.” *Praca i Zabezpieczenie Społeczne*, no. 3 (2006): 2–6.
- Broński, Włodzimierz, Marek Dąbrowski, Piotr Sławicki, and Michał Wiecheteck. *Raport z badań w zakresie potrzeb i oczekiwań społecznych dotyczących Krajowego Rejestru Mediatorów oraz luk kompetencyjnych w zakresie szkoleń mediatorów*. Lublin: Katolicki Uniwersytet Lubelski Jana Pawła II, 2021.
- Broński, Włodzimierz. “Mediacja w rozwiązywaniu sporów zbiorowych.” *Roczniki Nauk Prawnych* 26, no. 4 (2016): 35–49.
- Dzieniaś, Dorota, and Monika Latos-Miłkowska. “Mediacja a specyfika spraw z zakresu prawa pracy.” *Praca i Zabezpieczenie Społeczne*, no. 1 (2011): 19–27.
- Flejszar, Radosław. “Ugodowe rozwiązywanie sporów z zakresu prawa pracy.” *Studia z Zakresu Prawa Pracy i Polityki Społecznej*, no. 1 (2010): 315–328.
- Goździewicz, Grzegorz. *Arbitraż i mediacja w prawie pracy. Arbitration and Mediation in labor law*. Lublin: Katolicki Uniwersytet Lubelski, 2005.
- Jurewicz-Bakun, Katarzyna. “Mediacja jako jedna z form rozwiązywania sporów indywidualnych w prawie pracy.” *Praca i Zabezpieczenie Społeczne*, no. 3 (2021): 41–49.
- Kalisz, Anna, and Eliza Prokop-Perzyńska. “Mediacja w sprawach cywilnych w prawie polskim i europejskim.” *Europejski Przegląd Sądowy*, no. 11 (2010): 14–24.
- Liwo, Marian A., and Edyta Nowosiadły-Krzywonos. “Mediacja zamiast sądu w prawie pracy.” *Palestra*, no. 3–4 (2012): 69–79.
- Łukasiewicz, J. M. “Principle of speed of proceedings.” In *Outline of the methodology of mediator’s work in civil cases*, edited by A. M. Arkuszewska and Jerzy Plis (2014, Lex).
- Łukasiewicz, Jakub M. “Zasada szybkości postępowania.” In *Zarys metodyki pracy mediatora w sprawach cywilnych*, edited by Aneta M. Arkuszewska and Jerzy Plis, 77–80. Warsaw: Wolters Kluwer business, 2014.
- Marek, A. “Mediacja – sposób rozwiązywania sporów pracowniczych.” *Służba Pracownicza*, no. 3 (2008): 11–14.

- Morek, Rafal. "Poland." In *EU Mediation Law Handbook*, edited by Nadja Alexander, Sabine Walsh, and Martin Svatos. Netherlands: Wolters Kluwer, 2017.
- Olszewski, Jan. "Guidelines for the development of arbitration." In *Arbitration and mediation. Practical aspects of using regulations*, edited by Jan Olszewski, 243–252. Rzeszów, 2007.
- Prusinowski, Piotr. "Pojęcie wynagrodzenia za pracę a dopuszczalność zawarcia ugody sądowej." *Praca i Zabezpieczenie Społeczne*, no. 7 (2012): 29–35.
- Serwis Rzeczypospolitej Polskiej. "Międzynarodowe i Polskie standardy dotyczące mediacji." Accessed March 15, 2023. <https://www.gov.pl/web/sprawiedliwosc/miedzynarodowe-i-polskie-standardy-dotyczace-mediacji>.
- The Mediation Council. "Trainers list." Accessed March 15, 2023. <https://www.cmediere.ro/tablouri-liste/lista-formatorilor/18/>.