



„mediation moves“ – regulating mediation

national mediation laws in critical comparison

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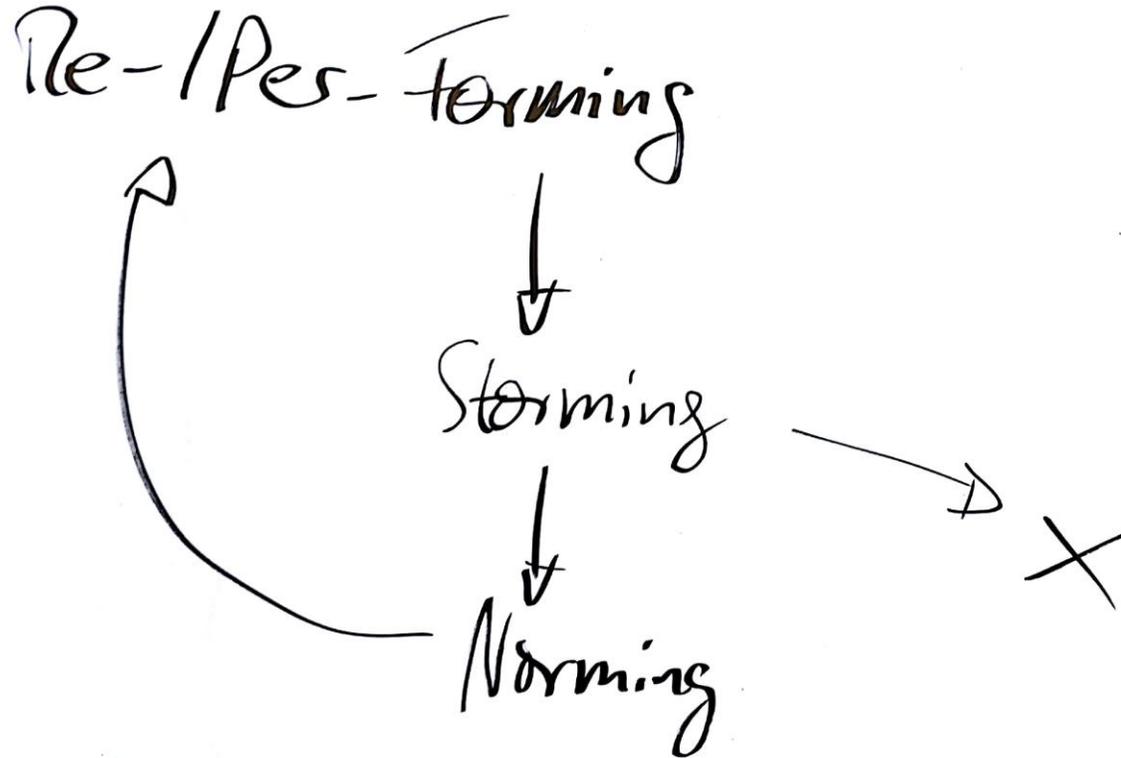
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Do we need Regulation?



Poland



I. mediation regulation approach: explicit and implicit goals

- a. statutory law, which motivate judges and parties
- b. information meeting with mediator and mediation *per se*
- c. reduction of court fees
- d. new profession - enrolled court mediators

- e. reduction of substantial court verdicts
- f. snow ball effect for ADR tools
- g. community implications





II. selected examples of particularly interesting regulatory details

a. provisions in civil procedural law

obligation to inform court in the first paper, what kind of ADR tools were taken by parties before lodging claim under the condition of redirection of motion to information meeting with mediator

b. cost of court proceeding

if the case is settled in the mediation taken during pending procedure court fees are reduced to 1/4 (3/4 is given back based on court decision)

c. court mediators enrolled on list are the first ones to whom judges are obliged to direct cases



Poland



III. resonance of the legal profession, mediators, the general public etc.

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training courses in law societies (advocates and legal advisors)
raising numbers of private courses in mediation and negotiation
great awareness of alternative tools to court proceedings

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reservation among some lawyers
sophisticated approach to process of mediation
„war” among mediators who are lawyers and others



Poland



Qualification standards

In general, a liberal approach, almost anyone can be a mediator

Theoretically this is consistent with **party autonomy**, and the view that interpersonal skills are more important than knowledge.

This view may not be correct, however.

There are extra qualifications required for mediators in specific types of cases: family law, criminal law, and juvenile cases.



Poland



Qualification standards

In addition, since 2016, **civil mediators** are placed into three categories: ad hoc, permanent and university- or NGO- affiliated

Permanent mediators have additional qualification standards, and a general obligation to accept cases in which they have been selected (by the parties or the court)

Private organizations may have higher standards (training, etc.)
- example of PCM





Qualification standards- labor and commercial cases

A strong argument exists for heightened mediator qualifications in labor cases and commercial cases.

In labor cases, knowledge of labor/employment law is essential. Labor mediations must consider the special position of the employee in the context of Polish labor law.

In commercial cases – likewise, specialized knowledge is important.



Poland



Qualification standards- perceptions, reactions

Different groups view the question of mediator qualifications in different ways:

- Attorneys
- Mediators
- Academics
- Parties...



Poland



Qualification standards – hot topics and related issues

The introduction of mandatory information procedure in family cases

Mediator qualifications in the context of mandatory mediation:

Higher standards? More government regulation?

Or should a liberal approach be maintained?





I. mediation regulation approach: explicit and implicit goals

Explicit Goals

- Access to justice
- Enforcement of private autonomy
- Introduction of modern ADR methods
- Balanced promotion of a comprehensive legal system

Implicit Goals

- Improvement of previous law
- New impetus to the establishment of mediation in Greece





II. selected examples of particularly interesting regulatory details

- Mandatory mediation
- Enforcement of settlement
- Obligatory presence of legal counsel
- Regulation of the cost of mediation
- Certification and accreditation of mediators





III. resonance of the legal profession, mediators, the general public etc.

- Mainly negative from bar associations and judges
- Mainly positive from mediators and economic factors (“big players”)
- Lack of information of the general opinion still to be observed,
- partially negative influence by judges and lawyers
- Mass media: interested and mainly positive



Germany



I. mediation regulation approach: explicit and implicit goals

Explicit Goals

- furthering of procedural diversity
- promoting of mediation as such

Implicit Goals

- establishing a constructive conflict culture
- relieving the justice system of inefficiencies
- providing access to justice





II. selected examples of particularly interesting regulatory details

- Interplay between court-offered mediation and out-of-court mediation
- Regulation of the profession:
 - „mediator“ as an unprotected term
 - (self-)„certified mediator“ if certain preconditions are fulfilled
- as a „mediation“ in the sense of the law can be conducted by everyone,
 - no public funding
 - no right to refuse to give evidence in criminal trials
 - no mandatory confidentiality rules for the parties





III. resonance of the legal profession, mediators, the general public etc.

- **Politics:** conflict between „free market“-mediation and court-offered mediation during
- **General Public:** self-certification: does this really foster consumer trust?
- **Scientific Community:** erratic regulation:
 - Law on the furthering of mediation and other out-of-court conflict resolution procedures
(Gesetz zur Förderung der Mediation und anderer Verfahren der außergerichtlichen Konfliktbeilegung)
(inspired by EU-Directive)
→ reference point: mediation
 - Consumer conflict resolution/conciliation (Verbraucherstreitbeilegungsg)
(inspired by EU-Directive)
→ reference points: consumer contract, accredited consumer conciliation body
 - ODR (EU-Regulation) → reference points: consumer online contract, accredited consumer conciliation body
 - → relationship among the different conflict-resolution procedures (effects of one procedure on another one, shift from one to another etc.) is **still largely unregulated**



Ukraine



I. mediation regulation approach: explicit and implicit goals



Ukraine



II. selected examples of particularly interesting regulatory details



Ukraine



III. resonance of the legal profession, mediators, the general public etc.



Controversial Topics

- (in what form) is mandatory mediation a good thing?
- how should the costs of mediation be regulated/
how can mediation be subsidized without an over-regulation
of the profession?
- what fields of possible regulation should lawmakers refrain from?
- what is the main achievement of mediation promoters
in the respective countries?
- what is the main obstacle to a further establishment of mediation
in the respective countries?
- do we need model regulation for settlement and enforcement clauses?
- ...

