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MEDIATION AS A METHOD OF RESOLVING CONFLICTS IN AN ENTERPRISE

Conflicts are a permanent feature of the operation of any enterprise.[1] Mediation can be effectively used to resolve them to improve organisational performance. The regular use of this device in companies can be facilitated by their organisational culture. Therefore, in the present study, the issue of organizational culture of an enterprise will be presented first. Then, the essence of mediation as a method of dispute resolution and its practical implementation in Polish enterprises will be described.[2]

1. ORGANISATIONAL CULTURE OF AN ENTERPRISE

In social psychology, there are many different definitions indicating diverse interpretations of conflict. Most often, differences existing between the

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[1] The terms "conflict" and "dispute" will be used interchangeably in this publication.

[2] The basic characteristics of an enterprise functioning as an organisational unit that conducts business activity include: economic, legal, organisational, and territorial distinctness. From the mid-twentieth century, the definition of the term "enterprise" began to change. An enterprise is thought of as a more complex economic entity that focuses not only on profit but also on other aspects, such as social responsibility. M. KABUT and T. MALESA, "Funkcjonowanie przedsiębiorstwa a otoczenie prawne na przykładzie branży samochodowego transportu ładunków," *Acta Universitatis Nicolai Copernici. Zarządzanie* 42, no. 3 (2015): 138. See also: J. JEŻAK, "Przedsiębiorstwo w gospodarce narodowej," in *Podstawy ekonomiki i zarządzania przedsiębiorstwem*, ed. J. Kortan (Warszawa: Wydawnictwo C.H. Beck, 1997), 72. The terms "enterprise," "company," and "organisation" will be used interchangeably in this publication.

viewpoints of parties to a business relationship are highlighted. According to Józef Penc, conflict is "a strong opposite of cooperation; the desire that one party's point of view should prevail over the other's position so that the latter can walk away defeated."[3] There are a lot of situations when contradictions and conflicting interests appear in the life of an enterprise, but they do not always have to lead to an escalation of difficulties. Disputes and differences of opinion can coexist with cooperation and joint problem resolution.

A more detailed definition of conflict is proposed by James Stoner and Charles Wankel. They argue that it is a dispute between two or more members/groups arising from the necessity to share limited resources or tasks, or from having different opinions, goals, values, observations.[4] In this way, they emphasize the importance of forming similar attitudes of organization members. Therefore, the situation of conflict constitutes a measure of the quality of the organisational culture implemented in the enterprise and the extent to which it fulfils a preventive role.

It is difficult to give an unambiguous definition of organisational culture.[5] Elliott Jacques described organisational culture as "a customary way of thinking, feeling and acting which the new members need to be familiar with, or at least partially accept, if they want to be accepted as employees. New members are more or less following suit."[6]

Currently, one of the most frequently quoted definitions of organisational culture is the definition proposed by Edgar Schein, an American social psychologist. According to Schein, organisational culture is "a pattern of basic assumptions, invented, discovered or developed by a group [...], which has proved to be sufficiently valuable and which the new members should adopt as a proper way of perceiving, thinking and feeling."[7]

The core functions of organisational culture are: to enable the understanding of the mission, vision and values of a company; to apply the organisational values to its daily operations; to integrate employees around the

[3] J. PENC, *Zachowania organizacyjne w przedsiębiorstwie* (Warszawa: Wolters Kluwer, 2011), 175–76.

[4] J.A.F. STONER and C. WANKEL, *Kierowanie* (Warszawa: PWE, 1992).

[5] Organisational culture is a concept that made its way into the theory of management organisation more extensively in the 1980s and 1990s, and was born in 1951 and became the subject of research undertaken by many scientists. Research in organisational culture flourished in the 1970s.

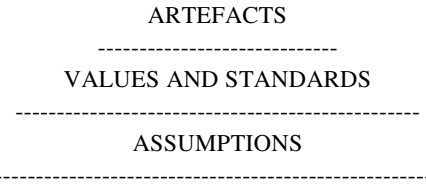
[6] As cited in L. ZBIEGIEŃ-MACIĄG, *Kultura w organizacji* (Warszawa: PWN, 1999), 15.

[7] E. SCHEIN, *Organizational Culture and Leadership*, 4th ed. (San Francisco: Jossey Bass, 2010), 23; see also A. WOROCH, "Kultura organizacyjna," in *Zespół—Kultura—Projekt*, ed. W. Olejniczak (Szczecin: ZPSB, 2009), 32; K. PIWOWAR-SULEJ, "Kultura organizacyjna i jej wpływ na działalność projektową—studium przypadku," *Marketing i Rynek* 5 (2014): 143.

company's mission, vision and values; to make the employees aware how the company perceives issues which it finds crucial; and finally to provide the employees with models of behaviour for specific situations.[8] Organisational culture therefore defines standards and behavioural patterns in line with the company's values, which should be followed on a daily basis by all members of the organisation.

Organisational culture is multifaceted. Schein divides it into three levels: artefacts, norms and values, and basic assumptions (Figure 1).

Figure 1. Three levels of organisational culture according to E. Schein.



Source: Own study based on SCHEIN, *Organizational Culture and Leadership*, 23–24.

Organizational culture is based on the assumptions and beliefs adopted by the participants in an organization, which have a philosophical and ideological character. They are characterized by secrecy and difficulty in interpretation.[9] We take them as obvious criteria of good conduct or action. They provide information about how the members perceive the corporate environment over time.[10]

On the next level of the pyramid, over assumptions, are norms and values. They shape day-to-day rules of conduct. Norms are defined as unwritten rules prescribing certain behaviours in recurring situations within an organisation. They define what to strive for and what to avoid, and how to achieve that. Values, on the other hand, make it clear what is important for an organisation. A distinction is made between declared norms and values (slogans, rules of conduct or codes of ethics) and respected (observance of

[8] Ł. SUŁKOWSKI, *Procesy kulturowe w organizacjach* (Toruń: Difin, 2002), 56.

[9] J. KISIELNICKI, *Zarządzanie organizacją. Zarządzanie nie musi być trudne* (Warszawa: WSHiP, 2005), 228.

[10] Schein groups the basic assumptions into two categories: adaptation to the environment and internal integration. The first category is visible in the organisation's use of its main mission, functions and individual tasks. The other category embraces the common language and system of concepts, the awarding of prizes and penalties, division of powers and authorities. M.J. HATCH, *Teoria organizacji* (Warszawa: PWN, 2002), 216.

recommendations and regulations an undertaking), which constitute the moral backbone of the organization.[11]

As Figure 1 shows, at the upper level of the pyramid there are artefacts. These are external symbols visible to everyone and are the most visible elements of the organisational culture. They are divided into: physical artefacts (employees' clothing, interior design, colours, the way production halls are organised); behavioural artefacts (behavioural patterns, ceremonies and rituals in the company, the way clients are dealt with); language artefacts (language used in the organization, legends, myths).[12]

Organisational culture is a set of values, beliefs, behaviours and attitudes that helps the members to understand what the organisation stands for, what it considers important and how it operates. Its essence is the ability to organize the rules of corporate functioning.[13] The way conflicts are understood, resolved and managed within the company also depends on its culture. If the corporate culture is competitive and committed to achieving goals at all costs, it can cause the conflict to be perceived negatively. In such a situation, competition will be the most frequently chosen style of conflict resolution. It will affect the atmosphere at work, weaken motivation to work, deteriorate the way employees communicate with each other and build relationships. However, if the enterprise properly manages conflict situations, its employees will treat the conflict as a natural phenomenon, present in their daily functioning, which should be resolved amicably. This will foster enhanced cooperation and the realisation of the company's interests in the future.

2. THE ESSENCE OF MEDIATION

The organizational culture of an enterprise is connected with specific values, leadership style and form of communication. One of its manifestations

[11] J. KOGUT, "Kultura organizacyjna na przykładzie przedsiębiorstwa branży energetyczne," *Zeszyty Naukowe Politechniki Częstochowskiej. Zarządzanie* 18 (2015): 84.

[12] Ibid.; see also M. KOSTERA and S. KOWNACKI, "Kultura organizacyjna," in *Zarządzanie. Teoria i praktyka*, ed. A.K. Koźmiński and W. Piotrowski (Warszawa: PWN, 1996), 442; Cz. SIKORSKI, *Drogi do sukcesu. Profesjonalizm kontra populistyczna kultura organizacyjna* (Warszawa: Difin, 2007), 35.

[13] See M. KOPCZEWSKI, B. PĄCZEK, and M. TOBOLSKI, *Istota kultury organizacyjnej w zarządzaniu przedsiębiorstwa*, accessed November 26, 2018, http://www.ptzp.org.pl/files/konferencje/kzz/artyk_pdf_2012/p084.pdf.

is the way of resolving organisational disputes. There are cultures in which the primary value is to achieve results. If an employee does not achieve specific results, there is no room for them in the organisation. In such a culture conflicts are usually resolved with the use of authority. The superior imposes a solution disregarding the sense of justice and the co-workers' needs.

Dispute resolution by means of dialogue is promoted by a culture geared towards concern for its employees. An organisation with this sort of culture perceives its own role as protective and tries to achieve its goals in dialogue and promotion of cooperation, and often participation of the managing personnel. The underlying elements of such a culture are trust in the employer and—in a conflict situation—the search for a win-win solution. Solutions, even those with adverse effects, are based on the principles of fairness and respect. The flow of information is transparent and dialogue-supporting.

Mediation is a basic method for resolving conflicts through dialogue. The essence of mediation is expressed in out-of-court proceedings involving the two parties at dispute and a third party acting as a mediator in order to iron out an agreement. Thus, mediation is widely used in the area of social and economic relations, taking various forms and names, and has been used in dispute resolution for thousands of years.[14] It is present under civil law and labour law, constituting a universal formula of proceedings. *De lege lata*, none of the branches of law contains a legal definition of mediation. A juxtaposition and comparison of the regulations governing this institution permits a claim that mediation is a voluntary method of dispute resolution (Art. 183^1 para. 1 of the Code of Civil Procedure)[15]conducted by a mediator. Within this framework, the parties to a conflict retain full control over the course of the proceedings and its outcome, seeking a settlement.[16]

[14] See S. KORDASIEWICZ, "Historyczna i międzynarodowa pespektywa mediacji," in *Mediacje. Teoria i praktyka*, ed. E. Gmurzyńska and R. Morek (Warszawa: Wolters Kluwer, 2009), 32–50.

[15] Act of 17 November 1964—the Code of Civil Procedure, Journal of Laws 2018, item 155, as amended [hereinafter referred to as CCP].

[16] See J. RAJSKI, "Rola mediacji przy rozwiązywaniu sporów związanych ze stosunkami w obrocie gospodarczym," in *Prawo prywatne czasu przemian. Księga pamiątkowa dedykowana Profesorowi Stanisławowi Sołtysińskiemu*, ed. A. Nowicka (Poznań: Wydawnictwo Naukowe UAM, 2005), 912; R. MOREK, *Mediacja i arbitraż (art. 183^1–183^{15}, 1154–1217 KPC). Komentarz* (Warszawa: Wydawnictwo C.H. Beck, 2006), 40; A. JAKUBIAK-MIROŃCZUK, *Alternatywne a sądowe rozstrzyganie sporów sądowych* (Warszawa: Wolters Kluwer, 2008), 44; P. WASZKIEWICZ, "Zasady mediacji," in *Mediacje. Teoria i praktyka*, 93; A. BUDNIAK, "Zasady mediacji w polskim i niemieckim postępowaniu cywilnym," *Kwartalnik ADR. Arbitraż i Mediacja* 2 (2012), 119–120; T. ERECIŃSKI, "Komentarz do art. 183^1," in *Kodeks postępowania cywilnego. Komentarz. Postępowanie rozpoznawcze*, ed. T. Ereciński (Warszawa: LexisNexis, 2012), 852; W. BROŃSKI, "Europejskie regulacje dotyczące mediacji w sprawach cywilnych i gospodarczych," *Roczniki Nauk Prawnych* 21,

The form of mediation and the associated role of the mediator are each time agreed by the parties and agreements between the parties and the mediator in charge of the mediation proceedings. It is a non-formalised and flexible process, which is defined and redefined each time by the parties and the mediator.[17] It is subject to constant evolution, which involves separating many models or forms of its conduct and use in legal transactions. However, it should be strongly emphasized that the principles of impartiality, neutrality and independence, as well as the obligation to maintain confidentiality, are essential elements regulating its proper course and determining the nature of the relationship between the mediator and the parties to the dispute. The principle of mediator impartiality is normative (Art. 183^3 § 1 CCP) and applies to parties participating in mediation proceedings;[18] neutrality with respect to the subject matter of the dispute and the needs, positions and proposals formulated by the parties, including their behaviour during mediation;[19] while independence means that the way mediation is conducted cannot be subject to any external pressure and influence.[20] Without these two out-of-code principles, it would be difficult to assume full guarantees of impartiality.[21]

One of the most important principles relating to mediation proceedings is the principle of confidentiality expressed in Article 183^4 CCP. In conjunction with the principle of voluntary participation, it creates safe conditions for unhampered discussion of the parties within the framework of mediation proceedings. The principle of confidentiality of mediation is closely linked

no. 1 (2011): 47–48; K. GAJDA-ROSZCZYNIALSKA, "Mediacja obligatoryjna w postępowaniu cywilnym," *Polski Proces Cywilny* 3 (2012): 444.

[17] K.K. KOVACH, "Mediation," in *The Handbook of dispute resolution*, ed. M.L. Moffitt, and R.C. Bordone (San Francisco: Jossey Bass, 2005), 304.

[18] The scope of the principle of impartiality is not limited in time in any way. It should apply already at the stage of the mediator's decision on running a mediation and should continue until the parties sign a settlement agreement. This rule applies to any mediator, regardless of his or her status. The content of Article 183^3 § 1 CCP does not indicate who the mediator should remain impartial to, although it should no doubt be all participants of mediation.

[19] Its scope has been specified in Standard II of the Mediation Standards, which provides that the mediator does not impose solutions on the parties, is a spokesperson for a fair procedure, conducive to reaching a voluntary agreement. See the Standards for Conducting Mediation and Standards for the Conduct of Mediators, adopted on 26 June 2006 by the ADR Civic Council at the Ministry of Justice, available in Polish at https://www.ms.gov.pl/pl/activity/mediation/publications/legal acts-statistics/download,188,6.html.

[20] The mediator's independence implies imperviousness to any pressure and influence that could affect the conduct, treatment of the parties or that would impact the course of the mediation run by the mediator, as well as the settlement itself. WASZKIEWICZ, "Zasady mediacji," 96–97.

[21] MOREK, *Mediacja i arbitraż*, 57.

to the building of mutual trust between the parties and the mediator and facilitates the search for a compromise position.[22] The purpose of the principle of confidentiality is to enable the parties to have an open discussion and to enjoy freedom during mediation. Therefore, it realises the essence of mediation, expressed in an open and active search for a solution without fear of negative consequences of the formulated proposals, including the fear of information reaching out to outsiders, especially in the event that no settlement has been reached between the parties.[23]

The principle of confidentiality has been regulated quite extensively, and it concerns mainly the mediator, the parties and other persons involved in mediation. It covers each stage of the mediation process from the moment of its initiation, through its course and continues even after the end of mediation. Its scope depends on a decision of the parties which are entitled to limit or exclude it.[24]

As far as the subject matter of mediation is concerned,[25] the Code of Civil Procedure provides that it is closely related to the concept of a civil case provided for in Article 1 CCP. Within the meaning of this provision, civil cases are those concerning relations under civil law, family law, guardianship and labour law, as well as social security cases and others to which the provisions of the Code apply by virtue of special laws.[26] Mediation proceedings

[22] K.K. KOVACH, *Mediation. Principles and practice* (St. Paul: West Academic Publishing, 2004), 263.

[23] M. SYCHOWICZ, "Komentarz do art. 183^4," in *Kodeks postępowania cywilnego. Komentarz do art. 1–366*, ed. A. Marciniak and K. Piasecki (Warszawa: Wydawnictwo C.H. Beck, 2016), 1:773; M. MISZKIN-WOJCIECHOWSKA, "Prawne gwarancje poufności mediacji gospodarczej i cywilnej — ocena regulacji prawa polskiego na tle wybranych rozwiązań w prawie obcym," *Kwartalnik ADR. Arbitraż i Mediacja* 2 (2010): 23; MOREK, *Mediacja i arbitraż*, 59.

[24] See W. BRONIEWICZ, *Postępowanie cywilne w zarysie* (Warszawa–Łódź: PWN, 1978), 52; M. ULIASZ, *Kodeks postępowania cywilnego. Komentarz* (Warszawa: Wydawnictwo C.H. Beck, 2008), 275.

[25] Due to the scope of the addressed subject matter, only the subject of mediation as regulated in CCP will be presented.

[26] It is argued in the doctrine that the legal structure of a civil case is based on a material and legal criterion relating to the nature of the legal relationship from which the case arises and a formal criterion, covering a group of "other cases" which are not of a civil nature in the material-law sense, but which have been transferred to civil proceedings. Civil cases in the material sense are therefore those arising from legal relations based on equality of parties and equivalence of benefits, and thus arising from civil, family and guardianship law and labour law relations. Civil cases in the formal sense are social security cases and other matters which, under the provisions of CCP and special acts, are subject to examination in civil proceedings. From the point of view of the material scope of mediation in civil cases, civil cases in the material sense are of fundamental importance. In cases concerning social security claims, under Article 477^{12} CCP, the

are admissible in cases where it is possible to reach a settlement.[27] Therefore, the subject of the settlement and mediation may be legal relations in which the parties have the possibility to exercise their rights and claims independently. A settlement may be concluded in the process of awarding a claim, establishing a legal relationship or a right, as well as in the process of shaping a legal relationship, except in cases where the party cannot dispose of the subjective right or a legal relationship.[28] The subject matter of a settlement may be civil law relationships regardless of their source, i.e. relations resulting from contracts, tort or unjust enrichment.[29] This is a very extensive category, which means that the subject matter of settlement cases is much broader than that of non-conciliatory cases.[30]

Mediation, like the institution of amicable resolution of conflicts, regulated by law, on the one hand, supports dialogue, opens the parties to the search for common points despite the difference in positions, boosts their confidence in their own skills and gives them the opportunity to actively assert their rights, faster than by judicial procedure, and creates a friendly working environment within the organisation. On the other hand, it enables mutual relations and trust between people to be developed properly. The social capital which is based on the awareness of differences of interest and readiness to engage in dialogue, can become an important factor in the development of an enterprise.[31]

admissibility of concluding a settlement agreement was excluded, partly due to the fact that the relevant provisions are mandatory. See K. PIASECKI, "Tytuł wstępny. Przepisy ogólne," in *Kodeks postępowania cywilnego z komentarzem. Postępowanie rozpoznawcze. Księga pierwsza. Proces*, ed. J. Jodłowski and K. Piasecki (Warszawa: PWN, 1989), 1:9 and 25; W. SIEDLECKI, *Postępowanie cywilne. Zarys wykładu* (Warszawa: PWN, 1977, 10); A. MARCINIAK, "Tytuł wstępny. Przepisy ogólne," in *Kodeks postępowania cywilnego. Komentarz do art. 1–366*, 20–22.

[27] A. SZPUNAR, "Z problematyki ugody w prawie cywilnym," *Przegląd Sądowy* 9 (1995): 6.

[28] PIASECKI, *Tytuł wstępny. Przepisy ogólne*, 59.

[29] M. PYZIAK-SZAFNICKA, "Ugoda," in *System Prawa Prywatnego. Prawo zobowiązań—część szczegółowa*, ed. J. Panowicz-Lipska (Warszawa: Wydawnictwo C.H. Beck, 2004), 8: 858.

[30] The subject matter of a settlement agreement cannot be intangible rights, personal rights, e.g. in the area of state rights and in matters concerning non-transferable rights; however, exceptionally, the subject matter of the settlement may be some non-transferable rights, e.g. in the case of use or personal servitude in terms of waiving them, or modification and determination of the content of a legal relationship. See PYZIAK-SZAFNICKA, "Ugoda," 8: 858–859; J. JAGIEŁA, "Tytuł wstępny. Przepisy ogólne," in *Kodeks postępowania cywilnego. Komentarz do art. 1–366*, 115.

[31] A. WĄSOWSKA, "Mediacje budują zaufanie społeczne," *Na Wokandzie* 27 (2016): 28. The report *Diagnoza społeczna 2015* predicts that within a few years Poland will exceed the wealth threshold above which further investment in human capital will no longer be sufficient to sustain development. Then, social capital, based on such values as cooperation, reciprocity, trust, social networking, communication and proactivity, will become crucial. See *Diagnoza społeczna 2015.*

3. THE PRACTICE OF USING MEDIATION IN POLISH ENTERPRISES AS ILLUSTRATED BY PILOT STUDIES

The analysis carried out so far in this study show that mediation is an institution that allows an organization to manage interpersonal relations and resolve already existing conflicts with the participation of a mediator. It is an expression of the organisational culture of a specific enterprise and a useful tool for building its value.[32]

For the purpose of this study, pilot studies were conducted in 2018 in 20 enterprises in Poland. The research outcomes permit a conclusion that mediation is used by all of the surveyed business entities, especially as a method of solving individual and collective labour disputes. The basic normative act regulating mediation in individual labour disputes is the Code of Civil Procedure. Mediation may be initiated on the basis of an agreement between the parties or a decision of the court before which the case is pending. Mediation proceedings may result in an agreement or lack of agreement between the parties. The directive of conduct expressed in Article 243 of the Labour Code[33] indicates that in the event of a dispute, the employee and the employer should strive to resolve the dispute amicably. The positive effect of mediation is materialized in the settlement concluded before the mediator. A settlement can regulate claims as well as a legal relationship. In addition, it may apply to all or some claims arising out of a particular legal relationship. It is sufficient that the reasons for the uncertainty of the legal relationship are subjective.[34] The essence of a settlement depends on making concessions[35] to each other by. The reciprocity of concessions does not determine equivalence, and a concession made by one party does not have to be matched by a concession by the other.[36] The material scope of an agreement on employment issues may actually concern any matter relating to an employment relationship.[37]

Warunki i jakość życia Polaków. Raport, accessed November 26, 2018, http://www.diagnoza.com/pliki/raporty/Diagnoza_raport_2015.pdf.

[32] E.M. RUNESSON and M.L. GUY, *Mediating Corporate Governance Conflicts and Disputes* (Washington: International Finance Corporation, 2007), 5–6.

[33] Act of 26 June 1976—the Labour Code (Journal of Laws 2018, item 917, as amended [hereinafter referred to as LC].

[34] S. DMOWSKI, "Ugoda," in *Komentarz do Kodeksu cywilnego. Księga trzecia. Zobowiązania*, ed. G. Bieniek (Warszawa: LexisNexis, 2011), 2: 1022.

[35] See Decision of the Supreme Court of 8 September 1973, file ref. no. I KR 446/14, LEX no. 1793712.

[36] SZPUNAR, *Z problematyki ugody*, 11.

[37] The subject matter of the settlement may not be the employee's renunciation of remuneration or transfer of this right to another person (Art. 84 LB). See Judgement of the Supreme Court

Mediation also serves as a convenient channel of communication with trade union organisations. The respondents declare the use of mediation institutions as the second stage of proceedings in solving industrial disputes. As a method of dispute resolution adopted in Article 10 of the Act on resolution of industrial labour disputes,[38] due to its obligatory nature, it constitutes a unique form of mediation.[39] It cannot be ignored when bringing industrial action immediately after the stage of collective bargaining is over. It is intended to put an end to a dispute by means of agreement reached by the parties[40] without resorting to coercion.[41] It is a kind of dispute resolution technique designed to curb negative emotions or reduce the intensity of the dispute. Mediation entails such aspects making the parties more receptive to arguments, laying ground for cooperation, working out many possible options for ending the dispute, or restoring direct communication between the parties involved in the dispute.[42]

By giving the disputing parties means of controlling the content of the settlement, mediation shapes their sense of control and responsibility for decisions made as well as creating space for building lasting relationships based on dialogue and trust. Thus, in a dispute between co-workers, subordinates and management, it makes it possible to know the real interests of each of the participants, and not only their officially represented positions, and their own proposals for solutions that otherwise would not have a chance to

of 2 February 2000, file ref. no. I PKN 503/99, in *Orzecznictwo Sądu Najwyższego. Izba administracyjna, Pracy i Ubezpieczeń Społecznych* (2001), no.12, item 411; A.M. ŚWIĄTKOWSKI, *Kodeks pracy. Komentarz* (Warszawa: Wydawnictwo C.H. Beck, 2016), 533. In addition, under the labour law, it is prohibited to enter into agreements aimed at limiting the employee's right to pension benefits. See Judgement of the Supreme Court of 14 June 2012, file ref. no. I PK 229/11, LEX no. 1232231; T. BIELSKA-SOBKOWICZ, "Ugoda XXXV," in *Kodeks cywilny. Komentarz. Zobowiązania. Część szczegółowa*, ed. J. Gutowski (Warszawa: Wolters Kluwer, 2017), 4: 769.

[38] Act of 23 May 1991 on resolution of collective labour disputes, Journal Laws 2018, item 399, as amended.

[39] L. CICHOBŁAZIŃSKI, "Mediacje transformacyjne i ich rola w kształtowaniu stosunków pracowniczych na przykładzie rozwiązywania sporów zbiorowych," in *Rozwiązywanie sytuacji konfliktowych w wymiarze jednostkowym i społecznym*, ed. M. Plucińska (Poznań: Wydawnictwo Naukowe Wydziału Nauk Społecznych Uniwersytetu im. Adama Mickiewicza w Poznaniu, 2014), 43.

[40] In collective labour law, the equivalent of a mediation agreement is a mediation agreement. The constitutive feature of the agreement is a concerted declaration of will by the parties to the industrial dispute. A. TOMANEK, "Mediacja i arbitraż," in *Zbiorowe prawo pracy. Komentarz*, ed. K.W. Baran (Warszawa: Wolters Kluwer, 2016), 416.

[41] K.W. BARAN, *Zbiorowe prawo pracy. Komentarz* (Warszawa: Wolters Kluwer, 2010), 416.

[42] See A. KALISZ and A. ZIEMKIEWICZ, *Mediacja sądowa i pozasądowa. Zarys wykładu* (Warszawa: Wolters Kluwer, 2009), 44–46; L. CICHOBŁAZIŃSKI, *Mediacje w sporach zbiorowych* (Częstochowa: Wydawnictwo Politechniki Częstochowskiej, 2010), 43.

exist. For we are dealing with people who want to achieve goals that are relevant to them.

Our research shows that mediation is also used to amicably resolve disputes between business entities within capital groups. In practice, in the event of a dispute, ad hoc committees/teams are set up to mediate between the companies and to work out a joint settlement in consultation with all parties, in accordance with the best interests of each company. If it is not possible to reach an agreement between the companies, the committee/team presents recommendations on how to proceed with the dispute in order to resolve it using other alternative dispute resolution methods (e.g. arbitration).

By emphasizing the utility of mediation, the surveyed business entities declare that one of its basic objectives is to create conditions for constructive talks and attainment of a common position; building organisational culture in the company and maintaining good relations between employees; creative problem-solving; building good relations with stakeholders. The respondents, when listing the benefits resulting from its use, most often state that through mediation the company does not lose customers, suppliers, etc., but strengthens its cooperation with them in the future. Mediation also makes it possible to avoid strikes and protest actions as well as long-lasting court disputes. In the case of financial claims of the other party, it keeps costs to a minimum. It is also an institution willingly used to promote understanding if there have been problems with meeting deadlines for various tasks.

The organizational culture of a company and its corporate governance are materialized in the development and implementation of good practices,[43] which contributes to increased standards of functioning and management of an enterprise.[44] According to our respondents, employee mediation is a good practice. A conversation supported by a mediator eliminates the air of superiority from the employee–employer relationship. The mediator is a guarantor of balance between the parties in the employment relationship. In addition, mediation encourages the emergence of many other good practices,

[43] The definition of good practice is based on several criteria. Good practice is first and foremost a specific action bringing positive outcomes. In addition, it must comply with the positive law and moral standards in force in the community. An action identified as good practice must be available to other entities in similar circumstances, in a different location. Good practice is also characterised by innovation and efficient use of resources. In addition, it must be subject to evaluation on an ongoing basis (self-evaluation). See A. KARWIŃSKA and D. WIKTOR, "Przedsiębiorczość i korzyści społeczne: identyfikacja dobrych praktyk w ekonomii społecznej," *Ekonomia Społeczna. Teksty* 6 (2008): 6–8.

[44] Codes of laws are informative and normative in nature. They function at the level of the enterprise's organisational culture.

which in turn translates into better functioning of the enterprise. Admittedly, the codes adopted in enterprises, such as the code of ethics, the code of organizational culture, the corporate code of conduct, Best Practices of WSE Companies, there are no explicit references encouraging the use of this institution, but mediation is used to resolve disputes on the basis of applicable laws. Moreover, as emphasised by all the respondents, it determines good conduct in the workplace and helps to make daily decisions. It reinforces the employees as a team and builds the image of a stable and responsible enterprise.

CONCLUSION

In conclusion, it should be emphasized that an enterprise is a natural environment for mediation as a method of dispute resolution. As a tool which is used well by companies, it strengthens their potential by improving cooperation in interpersonal relations and helping to implement the standards set out in it, which are addressed by the values determining how employees perceive each other and how the company is perceived outside.

Mediation also enables early detection of problems and inflammatory points in the enterprise and unleashes the potential of conflict, showing its positive dimension. The techniques used by an impartial, neutral and independent mediator, who is obliged to maintain confidentiality, support dialogue, ensure proper communication, cooperation and creative problem-solving.

Finally, mediation helps to find as quickly as possible an optimal and effective business solution to a dispute, satisfying all parties to the dispute, while maintaining positive business relations in the future and reducing the risk of further conflicts. Its use also demonstrates the transparency of procedures within the company and indirectly shows the conviction manifested by the company about the importance of relations with customers and their equal treatment.

Bearing in mind the benefits of mediation, we should consider the possibility of including this institution in the codes of good practice used by enterprises, as it is still rarely used in Poland. In this way, mediation will gain in popularity over time, and by bringing tangible benefits it will be fixed in the mindset of employees and contribute to the competitiveness of domestic enterprises. In addition, the inclusion of mediation in entrepreneurial policies

can further encourage young talents and help attract top-grade employees. Surveys show that employees currently expect higher labour standards from their employers in addition to higher wages.[45]

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MEDIATION AS A METHOD OF RESOLVING CONFLICTS IN AN ENTERPRISE

Summary

Mediation is a useful form of managing relationships and resolving conflicts in an enterprise. The use of mediation results from the organizational culture of the enterprise. As an institution regulated by law, it is a tool for solving individual and collective labour disputes. It also fosters dialogue, ensures proper communication, cooperation, and creative problem solving. The pilot studies carried out in 20 Polish enterprises show that they use mediation, yet still quite rarely.

Key words: mediation; conflict; enterprise; organizational culture; labour disputes.

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