MEDIATION IN POLAND

- „vision of justice in the XXIst century”
Introduction - Poland

WARSAW – the capital of Poland

Bialystok – place where I live and where you are always welcomed 😊

http://www.poland.gov.pl/
http://en.wikipedia.org/wiki/Poland
Some facts about the Republic of Poland

National motto (unofficially) "God, Honor, Fatherland"

- Capital – Warsaw
- Official language – Polish
- Government – Republic
- Area – 120,728 sq mi
- Population – 38,120,000
- Currency – Polish zloty (PLN, zł) - 1$ = 3 PLN
- Formation – Unification - Xth century
  - Christianisation – 966
  - Redeclared November 11, 1918
- Accession to EU – May 1, 2004
- Membership – EU, NATO, WTO
- 1st Polish legal document – Dagome Iudex – 991
  - Golden age – XVIth century
- 1st written constitution in Europe – Constitution of May 3rd in 1791 (second in the world - after US)
  - famous Poles – John Paul II, Nicolaus Copernicus, Frederic Chopin, Krzysztof Penderecki, Maria Sklodowska-Curie, Krzysztof Kieslowski, Agnieszka Holland, Andrzej Wajda, Roman Polanski, Czeslaw Milosz, Wislawa Szymborska, Lech Walesa, Marek Kaminski
The beginnings

(Poland – civil law country; no states that is why no federal and states’ laws; there is no case law – precedence law; binding legal rules are included in codes and other legal acts like regulations or decree-laws; legal acts bind the whole country;)

- Mediation – known since the end of World War II or even before;

- The first governmental Think-tank to Provide Mediation Service in Poland was established in 1995;

- After that, first cases were put to the test of mediation process in courts („experimental mediation cases”);

- There has been also a „private” Council which worked on the plan of „Implementation of the mediation process in Poland Since 1992.

- In 2000 the Council converted itself into Polish Mediation Center Association. In 2002 it published „The ethical code of mediators”. 
Was there mediation in Polish law?

- **Civil Law** - Civil Code (1964) – not directly until 2005
  - Civil Procedure Code (1964) - not directly until 2005 (in 1950 Civil Procedure Code–yes, art.231)
  - „arbitration court” and „arbitration in cases of economic activities”
  - Code of Commercial Companies & Partnerships – not directly
  - other legal acts – no until 1997 - Law of hunting

- **Criminal Law** - Criminal Code - no
  - Criminal Procedure Code – not until 1997
  - other legal acts – no until 2001 – The decree-law of mediation in the juveniles cases 2003 – The decree-law of mediation in criminal cases

- **Administrative Law** - Administrative Procedure Code – no
  - other legal acts – no until 2002 – Law of the procedure in front of administrative courts (art. 115 – 118)

- **Labor law** - Labor code – not directly
Next step towards present and future

- **July 2005**
  „The amendment act” establishing legal rules for Mediation in Civil Law
  *(Legal Act changing the Civil Procedure Code, Civil Code and Legal Act of Court
   Expences in Civil Cases)*

  Civil Procedure Code art. 183(1) – 183(15) – Mediation + art. 184 - 186 –
  Arbitration Procedure

- **August 2005**
  Regulation establishing Social Council for Alternative Dispute Resolution next to
  The Ministry of Justice

- **June 2006**
  The standards for Mediation Process and Mediators established by the Social
  Council for Alternative Dispute Resolution next to The Ministry of Justice
Polish mediation in the Civil Procedure Code

- **Rules of the process:** - voluntariness;
  - neutrality;
  - impartiality;
  - confidentiality;
  - disinterestedness;
  - competency (*not directly explicit in the CPC)*;

- **Almost all civil cases can be mediate except of some** (i.e.: affiliation order, incapacitation, presumption of death, declaration of death, ascertainment of the acquisition of an inheritance, etc.);

- **The mediator** - natural person who has full capacity to perform acts in law and who can exercise his/her public rights;
  - not a judge (*but retired judge – yes*);

- **Kinds of mediators** - regular mediators;
  - others;

- **Kinds of mediation process** - the agreement for mediation process;
  - the judge’s order before the trial (on every stage of the trial when both parties agree to mediate);
SWOT Analysis of the Polish mediation

S - Strengths:

- finally added into the main legal civil act;
- good legal frameworks setting the process;
- includes main ideas and goals of the process;
- very detailed;
- has been publicized by media and popularized by NGOs;
- several amount of mediation trainings have already existed;
SWOT Analysis of the Polish Regulation

W - Weaknesses:

- added very late into legal regulation;
- too “fresh” to be considered - judged;
- does not include more precise rules about mediators (their experience and knowledge);
- too formal - rigid and inflexible;
SWOT Analysis of the Polish regulation

O - Opportunities:

- gives a chance to be again on the same level as other, well legal developed, countries;
- gives a chance for developing the process in Poland;
- adjusts to the modern judiciary system;
- gives a chance of developing Poles’ knowledge about the possibilities of resolving differences;
- judges are interested in;
- looking for some patterns from experienced countries;
SWOT Analysis of the Polish regulation

T - Threats possible:
- lack of acceptance by the whole judiciary system and the society;
- lack of well-qualified mediators = disbelief of the process by the judiciary system and the society;
- established but not being used – „dead law“;
- too long time to implement of the process into reality = loosing plenty of time without improvements and development of the process itself;
Defining Mediation

Reasons for this difficulty of definition

- Flexibility
- Open interpretation of terms such as voluntary and neutrality
- No theoretical base
- Is used in different senses by different users (factors such as economics, politics and self-interest cause people to define and describe mediation in their own purposes)
- Contrast between “private mediation” and various forms of “institutional mediation”
The core features of mediation

- It is a decision-making process
- In which the parties are assisted by a third person, the mediator
- Who attempts to improve the process of decision-making
- To assist the parties reach an outcome to which each of them can assent
Variable features

- The degree to which the parties enter into it consensually, are influenced to participate, or are compelled to take part by the legislature, courts or contract
- The extent of the parties choice of mediator or mediators
- The qualifications, expertise and skills of the mediator
- The independence and neutrality of the mediator
- The extent and nature of the mediator’s interventions, particularly as regards recommending, advising, influencing or persuading the parties
- The mediator’s responsibility towards the parties, towards outsiders, and towards standards of fairness and reasonableness
- The degree to which any settlement is of the parties’ own, consensual making
- The extent to which the process has a therapeutic or educative function
Variable features

- The degree of confidentiality of the process
- The extent and nature of the rules and procedures followed
- The extent to which past controversies are canvassed and future interests are taken into account
- The extent to which any settlement outcome reflects how a court may determine the matter
- The legal status of any settlement outcome
The Uses of Mediation

Mediation can be used for the following purposes:

- To define problems or disputes
- To settle disputes
- To manage conflict
- To negotiate contracts
- To formulate policy
- To prevent conflicts
- Other functions (educational tool, managerial tool)
- The focus in this work
Four Models of Mediation

- Settlement
- Facilitative
- Therapeutic
- Evaluative
Models of Mediation

Settlement Mediation

- Also known as: compromise mediation
- Main Objective: to encourage incremental bargaining towards compromise, at a ‘central’ point between the parties’ positional demands
- Definition of Dispute: in terms of positions, based on parties’ self-definition of the problem
- Types of mediators: high status (lawyer, manager): no necessary expertise in the process, skills and techniques of mediation
- Mediator’s Main Role: determine parties’ ‘bottom lines’ and through relatively persuasive interventions move them in stages off their positions to a point of compromise
Models of Mediation

Settlement Mediation

- Other characteristics: limited procedural interventions by mediator, positional bargaining by parties
- Strengths: Understood by parties culturally accepted, not difficult to do, little preparation needed
- Shortcomings: overlooks parties’ needs and interests, can be manipulated through initial exaggerated claims, difficult to cross last gap
- Areas of Application: commercial, personal injury, industrial disputes
Models of Mediation

Facilitative Mediation

- Also known as: interest-based, problem solving mediation
- Main Objective: to avoid positions and negotiate in terms of parties’ underlying needs and interests instead of their strict legal entitlements
- Definition of Dispute: in terms of parties’ underlying interests – substantive, procedural and psychological
- Types of mediators: expertise in mediation process and techniques: of the subject matter of dispute
- Mediator’s Main Role: conduct the process, maintain a constructive dialogue between the parties and enhance negotiation process
Models of Mediation

Facilitative Mediation

- Other characteristics: low intervention role for mediator, parties encouraged to fashion creative outcomes around mutual interests
- Strengths: can make most efficient use of negotiation opportunities, controlled by parties
- Shortcomings: may not reach an outcome, can be lengthy, requires skills from parties
- Areas of Application: community, family, environmental, partnership disputes
Models of Mediation

Therapeutic Mediation

- Also known as: reconciliation, transformative mediation
- Main Objective: to deal with underlying causes of the parties’ problem, with a view to improving their relationship as a basis for resolution of the dispute
- Definition of Dispute: in terms of behavioural, emotional and relationship factors
- Types of mediators: expertise in counselling or social work, with understanding of psychological causes of conflict
- Mediator’s Main Role: use professional techniques, before or during mediation, to diagnose and treat relationship problems
Models of Mediation

**Therapeutic Mediation**

- **Other characteristics:** decision-making postponed until relationship issues have been dealt with
- **Strengths:** can lead to ‘resolution’ rather than just ‘settlement’ of dispute
- **Shortcomings:** could be prolonged and terminated without any agreement, confuses counselling/mediation roles
- **Areas of Application:** matrimonial, parent/adolescent, family networks, continuing relationship disputes
Models of Mediation

Evaluative Mediation

- Also known as: advisory, managerial mediation
- Main Objective: to reach a settlement according to the legal rights and entitlements of the parties and within the anticipated range of court outcomes
- Definition of Dispute: in terms of legal rights and duties, industry standards or community norms
- Types of mediators: expertise in substantive areas of the dispute, no necessary qualifications in mediation techniques
- Mediator’s Main Role: provide additional information, advise and persuade the parties, bring professional expertise to bear on content of negotiations
Models of Mediation

Evalutive Mediation

- Other characteristics: high intervention by mediator, less party control over outcome
- Strengths: mediator’s substantive expertise used, outcome within range of likely court verdicts
- Shortcomings: blurs mediation/arbitration distinction, does not teach parties skills for the future, additional responsibilities for mediator
- Areas of Application: commercial, personal injury, trade practices, anti – discrimination, matrimonial property disputes
It was a great pleasure to be part of the MEDIATION TEAM!

Thanks a lot for that chance ☺

Each of you are always welcomed in Poland, in Bialystok.