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COMPLAINT AGAINST A MEDIATOR AS A MECHANISM FOR CONTROLLING THE QUALITY OF MEDIATION SERVICES FROM A COMPARATIVE LEGAL PERSPECTIVE

Abstract

The article analyses the institution of a complaint against a mediator in the Polish legal system, recognising it as a key mechanism for ensuring the quality of mediation services in the light of Article 4 of Directive 2008/52/EC. The analysis was supplemented by three distinguished models of disciplinary liability, integrating various solutions in force in the EU Member States. The results indicate that effective mechanisms for quality control of mediators' work require the implementation of a system of disciplinary responsibility for mediators in order to ensure high ethical and professional standards. In Poland, this system is poorly developed, and the regulations in force are incomplete, taking the form of quasi-disciplinary responsibility of mediators. The lack of effective disciplinary procedures, limited competences of supervisory bodies and the lack of obligation to comply with the codes of ethics undermine the credibility of mediators and trust in mediation. The comparative legal analysis distinguished three models of disciplinary liability of mediators in the EU: centralised, decentralised and hybrid. They differ in their supervisory structure, scope of competences and complaint-handling mechanisms. The conclusions from the conducted analysis emphasise the need to harmonise the regulations in force in Poland, including the introduction of transparent and dedicated complaint procedures as well as the expansion of the catalogue of sanctions and their effects. Such

actions will enable the achievement of the objectives of Article 4 of Directive 2008/52/EC by ensuring the effectiveness of mechanisms for controlling the quality of mediators' work and strengthening public confidence in mediation.

KEYWORDS

quality of mediation, control of the mediator, disciplinary liability of the mediator

SŁOWA KLUCZOWE

jakość mediacji, kontrola mediatora, odpowiedzialność dyscyplinarna mediatora

I. INTRODUCTION

Mediation regulated by 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 has come 'of age' since its entry into force.[1] However, the formal 'age of majority' of mediation does not correspond to its maturity, which should be manifested in well-established, stable and effective mechanisms of functioning in the legal system and society. These are the features that determine the level of trust in mediation.[2] The lack of maturity of the mediation institution is manifested in the discrepancies between EU Member States in the harmonisation of Article 4 of Directive 2008/52/EC, which is crucial for ensuring effective mechanisms for quality control of mediation and from which two main obligations arise.

The primary obligation is focused on the proper preparation of mediators, development of good practices, quality standards, codes of ethics, high training requirements, accreditation and rules for maintaining registers of mediators.[3] The secondary one is focused on effective control mechanisms and improving the qual-

[1] 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 [2008] OJ L 136/24, hereinafter 'Directive 2008/52/EC'.

[2] See: Włodzimierz Broński and others, 'Research report on public needs and expectations regarding the National Register of Mediators and competency gaps in mediator training' (John Paul II Catholic University of Lublin 2021) 17, 56–58 < https://krm.gov.pl/materialy-do-pobrania> accessed 3 May 2025; Włodzimierz Broński and others, 'Readiness to Use Mediation – Judges and Entrepreneurs Perspective' (2024) 20 Utrecht Law Review 21, 24 <https://utrechtlawreview.org/articles/10.36633/ulr.1020> accessed 8 May 2025.

[3] See: Marek Dąbrowski, 'Assessment of the Correct Implementation of Article 4 of Directive 2008/52/EC of 21 May 2008 on Some Aspects of Mediation in Civil and Commercial Matters

ity of services through compliance with applicable standards, professional ethics and the expectations of the parties. They enable simultaneous monitoring, evaluation and improvement of the quality of mediators' work, in particular, by establishing the right of mediation participants to file complaints against mediators. This power plays a key role in the secondary quality control mechanism, which allows for a response in the event of improper performance of duties, triggering disciplinary liability of mediators. Complaint procedures that ensure compliance with the principles of mediation can effectively monitor the quality of mediators' work, supporting compliance with ethical and legal standards. Such a mechanism also promotes corrective action, education and prevention of future violations, which in turn increases trust in mediators. Therefore, 'mediation providers should establish and maintain fair and effective complaints and disciplinary mechanisms to deal with disputes concerning mediators or administrators of mediation processes'.[4]

The 'age of majority' of the institution of mediation, therefore, requires the development of effective mechanisms for controlling the quality of the mediation services provided.[5] This is crucial for building the parties' trust in the mediators and the mediation process itself, as well as for ensuring its effectiveness. Hence, the subject of the present article is the analysis of the secondary mechanism for controlling the quality of mediators' work in the form of a complaint against a mediator, which is a tool for social control of the quality of mediators' work and is part of the system of disciplinary liability in this profession. This analysis covers models of disciplinary liability of mediators developed on the basis of the integration of solutions in force in selected legal systems of the European Union Member States. The aim of the article is to justify the need to implement in the Polish legal system the right of mediation participants to file complaints against mediators within the framework of disciplinary liability of mediators, which should constitute an integral part of the system ensuring the appropriate quality of mediators' work, fully implementing the objectives specified in Article 4 of Directive 2008/52/EC.[6]

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in the Polish Legal System' (2022) 14 Krytyka Prawa 5 <https://repozytorium.kozminski.edu.pl/pub/7077> accessed 4 May 2025.

[4] See: European Commission for the Efficiency of Justice (CEPEJ) 'Mediation Development Toolkit on Ensuring Implementation of the CEPEJ Guidelines on Mediation. European Code of Conduct for Mediation Providers' (CEPEJ 4 December 2018) < www.coe.int/en/web/cepej/mediation-tools> accessed 3 May 2025.

[5] See: European Commission for the Efficiency of Justice (CEPEJ) 'Mediation Development Toolkit on Ensuring Implementation of the CEPEJ Guidelines on Mediation. Mediation Pilot Monitoring Checklist' (CEPEJ 27 June 2018) 8 < www.coe.int/en/web/cepej/mediation-tools> accessed 3 May 2025.

[6] See: European Commission for the Efficiency of Justice (CEPEJ) 'European Handbook for Mediation Lawmaking (CEPEJ 14 June 2019) 37 < www.coe.int/en/web/cepej/mediation-tools> accessed 3 May 2025.

The conclusion emphasises the need to supplement and harmonise regulations in order to ensure greater transparency and responsibility of mediators for the quality of mediation processes, which could contribute to increasing public confidence in both mediators and the institution of mediation itself.

II. COMPLAINT AGAINST A MEDIATOR IN THE FRAMEWORK OF DISCIPLINARY LIABILITY IN THE POLISH LEGAL SYSTEM

In the Polish legal system, a complaint against a mediator's actions is an unregulated institution, which appears increasingly often in a non-normative space. It has become a tool for mediation participants to report their reservations to the presidents (chief judges) of regional courts in response to the improper performance of their duties by mediators. Although the right to lodge a complaint is constitutional in nature and may constitute an 'effective mechanism for controlling the quality of mediation services', ensuring the implementation of Article 4(1) of Directive 2008/52/EC, this right and the procedure for handling complaints are not directly regulated in Polish law. However, the widespread use of mediation, the varying forms of training, or lack thereof, for mediators, the different styles of mediation and the varying experience of mediators, combined with the lack of obligation to comply with certain standards and codes of ethics, create a real risk of an increase in complaints and claims against mediators.[7]

The specific nature of the regulation of the legal status of a mediator in Poland, in the context of the right of participants to file complaints about improper performance of duties under disciplinary liability of mediators, requires explanation. To put it simply, the Polish legal system distinguishes two groups of mediators: 'permanent mediators' – registered on the lists kept by the presidents of regional courts[8] or entered on the list of mediators in criminal cases,[9] and 'non-permanent mediators' – not registered or included on the lists. In the case of unregistered mediators, there is no disciplinary liability system or possibility of filing complaints for improper performance of duties, also in cases when they have

[7] See: AKC Koo, 'Exploring Mediator Liability in Negligence' (2016) 45 C.L.W.R. 165, 166.

[8] See: Art 157 (b) (1) of the Act of 27 July 2001 Law on the System of Common Courts consolidated text [2024] JoL 34.

[9] See: para 2 of the Act of 7 May 2015 Ordinance of the Minister of Justice on mediation proceedings in criminal matters [2015] JoL 716. On quality control of mediation in criminal cases, see: Julien Lhuillier, 'The Quality of Penal Mediation in Europe' (CEPEJ 22 August 2007) 1–15 <https://rm.coe.int/1680747b73> accessed 4 May 2025.

been entered on the lists of mediators kept by non-governmental organisations or universities establishing mediation centres. These centres are not obliged to regulate disciplinary liability procedures, and their regulations often exclude liability for acts or omissions, limiting the mediator's liability to cases of wilful misconduct. This means that neither the mediator nor the centre is liable for gross negligence or failure to exercise due diligence, and the system of disciplinary liability of unregistered mediators or those operating within mediation centres is autonomous. As a result, mediation participants are not able to file complaints against unregistered mediators, which weakens the quality standards of mediation services. This situation may reduce the motivation of mediators to comply with professional ethics and mediation standards, especially in the absence of sanctions and guarantees ensuring the safety of the mediators and the parties. The lack of disciplinary liability may be perceived as a concession for inappropriate conduct, jeopardising the interests of the parties and undermining public confidence in mediation, while at the same time preventing the quality control of services required by Article 4 of Directive 2008/52/EC.

In the case of 'permanent mediators' entered on the lists kept by the presidents of regional courts, disciplinary liability for improper performance of duties is illusory. It is not initiated by the mediation participants by way of a complaint, but consists in authorising the presidents of regional courts to remove a permanent mediator from the list in the event of the mediator failing to properly perform duties. The right to notify the president of the regional court that issued the decision on entry on the list of permanent mediators of each case, justifying removal from that list due to improper performance of duties, lies exclusively with the court, not the parties. The decision on removal is made by the president of the court after initiating administrative proceedings, which may be initiated ex officio.[10] This is the only regulation of the disciplinary liability of permanent mediators, which constitutes only an apparent and ineffective mechanism for controlling the quality of mediation services provided. The regulations constructed in this way have numerous flaws that limit their effectiveness.

Firstly, granting the court the exclusive power to notify the president of the regional court and the president to initiate disciplinary proceedings to remove a mediator from the register limits effective control over the quality of mediation services provided. This is particularly important in cases of improper performance of duties by a mediator, as it excludes the possibility of supervision and enforcement of high professional standards by the mediation participants. Mediation participants are not listed among the entities authorised to file complaints against the

[10] See: para 10 of the Act of 20 January 2016 Order of the Minister of Justice on keeping the list of permanent mediators [2016] JoL 122.

mediator, nor do they have the status of a party within the meaning of Article 28 of the Code of Administrative Procedure.[11] As a result, their supervisory role may be limited solely to pursuing claims for damages against the mediator, provided that damage has occurred, excluding the possibility of holding the mediator liable for disciplinary action. This leads to a situation in which control over compliance with service quality standards remains limited and improper performance of duties is, in practice, not subject to disciplinary sanctions. In terms of granting a mediation participant the right to file a complaint against a mediator in the Polish legal system, the Voivodeship (Provincial) Administrative Court expressed the position that 'information on the need to initiate proceedings by the competent body[12] can be obtained from any source, even anonymous. (…) If the body finds that the application to initiate the proceedings was filed by an entity that does not have the status of a party, and moreover, the proceedings may be initiated ex officio, then the body may initiate the proceedings ex officio, even though in fact it learned about errors in the conducted proceedings or the need to initiate new proceedings in connection with the application filed by an unauthorized entity'.[13] The analysis of this position is crucial for assessing the rights of the mediation participants to file a complaint against the permanent mediator for improper performance of his duties. It follows from this that a complaint filed by an unauthorised entity participating in mediation may – but does not have to – result in the initiation of disciplinary proceedings. The president of the regional court is authorised to initiate proceedings ex officio, but may also, pursuant to Article 61a §1 of the Code of Administrative Procedure, issue a decision on refusal to initiate proceedings if he finds that the person filing the complaint is not a party within the meaning of the provisions of administrative procedure, without initiating proceedings ex officio, which will ultimately exclude the initiation of disciplinary proceedings against the mediator. In addition, it should be remembered that mediation participants have the right to choose a permanent, registered mediator in out-of-court mediation not initiated by the court. In such cases, neither the court nor the president of the regional court has access to information about any possible improper performance of duties by the mediator. The only entity authorised to submit reservations in the form of a complaint is the mediation participant, who is not granted the right to file a complaint under substantive law, which results in the lack of an effective mechanism for controlling the quality of mediation services. As a result, the participants' reaction to improper provision of services

[11] Act of 14 June 1960 Code of Administrative Procedure consolidated text [2024] JoL 572, hereinafter 'KPA'.

[12] The president of the district court which maintains the list of mediators in a particular court.

[13] Case III SA/Wr 229/ 22 May 2023 Voivodship Administrative Court in Wrocław <https://orzeczenia.nsa.gov.pl/doc/96B2A1AB36> accessed 3 May 2025.

may only be to refrain from using mediation again, and in the event of damage occurring – to seek liability for damages.

Secondly, the Polish legal system has a significant deficit of regulations concerning the administrative procedure in cases of disciplinary liability of a mediator for improper performance of duties. The current legal status does not provide for provisions guaranteeing the maintenance of procedural standards, especially in terms of the principle of confidentiality of mediation or the participation of the parties to mediation in disciplinary proceedings. The lack of developed regulations may lead to ambiguity and limited transparency in the process of considering violations of mediators' obligations. Additionally, a significant problem is the insufficient regulation of the legal framework related to the guarantee function of this process, in particular, with regard to the deadline within which a party may file a complaint after finding that the mediator has not performed their duties properly.

Thirdly, there is currently no requirement for mediators to comply with even arbitrarily selected codes of ethics or mediation standards that could serve as a point of reference for assessing their conduct in the context of reliability and proper performance of duties. Therefore, it is not clear what criteria should be used by presidents of regional courts when assessing the conduct of mediators. This leads to limiting the assessment solely to the procedural aspects of the regulation of mediation proceedings and the obligations arising therefrom, which is insufficient in the context of informal and limited regulation of mediation. It also constitutes a breach of the obligation under Article 4 of Directive 2008/52/EC to provide support to mediators and organisations providing mediation services in complying with codes of conduct. Introducing the obligation to comply with codes of ethics selected at the stage of entry on the list of mediators could significantly facilitate the assessment of the quality of mediators' work. This is particularly important in the light of the lack of a normative requirement for mediators in civil cases to guarantee proper performance of their duties, which indicates the need to standardise and specify ethical standards in this area.[14]

Fourthly, the evaluative nature of the norm providing for 'improper performance of duties' is crucial for the application of the sanction resulting from it. The observation of such a violation results in the automatic removal of the mediator from the register, without the need to prove its materiality or persistence. The literal interpretation of the provisions does not specify whether the breach must be of a repeated or serious nature, which implies that any breach of obligations may

[14] In Poland, this requirement does not exist for civil mediators but only for criminal mediators, see: para 4(7) of the Act of 7 May 2015 Ordinance of the Minister of Justice on mediation proceedings in criminal matters [2015] JoL 716.

constitute grounds for removing the mediator from the register. This approach emphasises that this sanction may be imposed already for a single violation, which makes it particularly severe in the context of disciplinary liability of mediators.

Fifthly, the current system of sanctions for improper performance of duties is insufficient, being limited only to the removal of a mediator from the list, without the possibility of applying more lenient measures, such as warnings, reprimands, an obligation to train or participate in co-mediation. The lack of gradation of sanctions does not take into account the different degrees of violations, which makes it difficult to respond flexibly to cases that may have different degrees of severity, requiring a different approach. The introduction of a differentiated system of sanctions, including various degrees and forms of response, is crucial to increasing the effectiveness of supervision, improving the quality of services and motivating mediators to maintain high professional standards.

Sixthly, there are no legal regulations excluding or limiting the possibility of resubmitting an application for entry on the list of mediators after being removed from the register. In the Polish system, there is no single, nationwide register of mediators. Lists of mediators are maintained by the presidents of the regional courts for the area of jurisdiction of a given judicial district. Mediators have the right to apply for entry on the lists in all regional courts, but there are no regulations governing the obligation to transmit information about removal from the register in one court to other courts. Consequently, the removal of a mediator from the list in one court does not result in automatic removal from the lists kept by other courts. This is particularly incomprehensible, as the decision to enter a mediator on the list in one court constitutes the basis for entry in another court on the basis of the mediator's request.[15] However, removal from the list in one court does not entail consequences in the form of removal in other courts.

The current defects in the regulation of the system of disciplinary liability of permanent mediators weaken its effectiveness, which translates into the apparent disciplinary liability of mediators. The current provisions are insufficient and not only do they not ensure the effectiveness of Article 4 of Directive 2008/52/EC in terms of establishing effective mechanisms for controlling the quality of mediation services, but they also do not meet the requirements of the Directive at all. Moreover, they do not grant mediation participants the right to file a complaint or initiate disciplinary proceedings, even though these participants are direct recipients and natural subjects of evaluation of the quality of the mediation ser-

[15] Art 157d (4) of the Act of 27 July 2001 Law on the System of Common Courts consolidated text [2024] JoL 34.

vices provided.[16] The lack of clear ethical standards, consequences for improper performance of duties or a system for exchanging information on entries and deletions from the list of mediators contributes to the inefficiency of the disciplinary liability system. As a result, the current system does not provide effective mechanisms for supervision over the quality of mediation services provided and does not hold mediators accountable for improper performance of their duties, which may lead to lower quality standards and confidence in mediation in Poland. Thus, it does not implement the recommendations that 'where mediators breach a code of conduct, member states and mediation stakeholders should have in place appropriate complaints and disciplinary procedures'.[17]

III. MODELS OF MEDIATOR'S DISCIPLINARY LIABILITY FROM A COMPARATIVE LEGAL PERSPECTIVE

A comparative analysis of the legal regulations concerning the submission and consideration of complaints against mediators within the framework of their disciplinary responsibility reveals a significant diversity of legal and organisational approaches in the Member States of the European Union. This diversity results from different structures, procedures and methods of transposing Article 4(1) of Directive 2008/52/EC.[18] The present article distinguishes three models of handling complaints against mediators within the framework of their disciplinary responsibility: centralised, decentralised and hybrid, which are the effects of the integration of similar legal solutions in force in the EU. The aim of the analysis is to show the diversity of approaches to the disciplinary liability of mediators in the perspective of different experiences and the design of quality control mechanisms for mediation services provided in EU Member States.[19]

[16] In Poland, it is also not possible to fill in evaluation questionnaires after a mediation, although a model of such questionnaires is available, see for example: European Commission for the Efficiency of Justice (CEPEJ) 'Mediation Development Toolkit on Ensuring Implementation of the CEPEJ Guidelines on Mediation. Standard mediation forms' (CEPEJ 4 December 2018) 37–38 < www.coe.int/en/web/cepej/cepej-work/mediation> accessed 6 May 2025.

[17] The European Commission for the Efficiency of Justice (CEPEJ) 'Better Implementation of Mediation in The Member States of The Council of Europe. Concrete Rules And Provisions' (CEPEJ 7 December 2007) 19 <https://rm.coe.int/16807475b6> accessed 5 May 2025.

[18] See: Commission Recommendation of 12 July 2004 on the transposition into national law of Directives affecting the internal market [2005] OJ L98/16; Jędrzej Maśnicki, 'Metody transpozycji dyrektywy' (2017) 8 Europejski Przegląd Sądowy 4.

[19] To understand the philosophy behind the initial creation of the disciplinary procedure with standards of conduct as well as the specific procedures that were adopted in Florida in the US, which was the first state court system to recognise the importance of including a disciplinary procedure

The first of the distinguished models, referred to as centralised, is characterised by supervision over mediators exercised by a central body – the ministry of justice of a given country.[20] Under this model, the ministry is responsible for maintaining a register of mediators, supervising their activities, considering complaints and imposing sanctions for breaches of obligations. The most classic form of this model can be found in the Czech Republic, with similarities also present in Italy and Slovenia. In the centralised model, the list of disciplinary misconduct is usually clearly defined in the act[21] or results from the rules and regulations, as well as codes of professional ethics in force in mediation centres.[22] Failure to comply with these regulations will result in disciplinary liability for the mediator. The right to file complaints is granted to participants in mediation, and complaints are lodged with the appropriate ministry body responsible for the supervision and registration of mediators.

Disciplinary proceedings in this model are carried out in accordance with administrative provisions,[23] which, due to their universal nature, do not take into account the specifics of the mediation procedure or the functioning of mediators in the registers. Alternatively, in some countries, such as Slovenia, the provisions of the regulation governing mediation are applied, which allows for the procedures to be adapted to the specifics of mediation. Under the disciplinary procedure in Slovenia, the complaint is sent to the mediator with a 30-day deadline for response, and then it is forwarded to the Mediator Supervision Commission, which assesses the compliance of the proceedings with the regulations and ethical principles.[24] If violations are found, the Commission requests the Minister to impose disciplinary sanctions. This model is, therefore, distinguished by a diverse, though not very extensive, catalogue of sanctions, including, among others, a written admonition,[25] warning,[26] suspension,[27] and in the event of serious or repeated breaches

in mediator misconduct proceedings, see: Sharon Press, 'Mediator Ethical Breaches: Implications for Public Policy' (2014) 6 Arbitration Law Review 107 <https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2464108> accessed 8 May 2025.

[20] See: para 13 of Act 202/2012 Sb zákon o mediaci (CZ), hereinafter 'Czech Mediation Act 2012'; Art 3 of Decreto 23 luglio 2004, n. 222 (IT) hereinafter 'Italian Decree 2004'; Art 1(5) of Pravilnik o izvajanju mediacije po Družinskem zakoniku Uradni list RS, št 76/19 (SI), hereinafter 'Slovenian Mediation Rules 2019'.

[21] See: para 26 Czech Mediation Act 2012.

[22] Art 16(4) of Decreto Legislativo 4 marzo 2010, n. 28 (IT).

[23] See: para 42 of Act Zákon č. 500/2004 Sb Zákon správní řád (CZ).

[24] Art 36, 37 of the Slovenian Mediation Rules 2019.

[25] See: para 22 of the Czech Mediation Act 2012.

[26] Art 38 of the Slovenian Mediation Rules 2019.

[27] Art 4(4) and (5) of the Italian Decree 222.

of duties or in the event of a disciplinary sanction being imposed on the mediator by the mediation centre to which he belongs – by removal from the register.[28]

The centralised model is particularly advantageous in countries where lists of mediators are not dispersed and are managed by one central body. In this model, mediators are supervised by a central body that ensures uniformity of standards, monitors the quality of services and enforces ethical and professional standards. This solution promotes transparency of activities, which is crucial for maintaining public trust and credibility of mediators. However, in order to effectively implement this model, it is necessary to adapt disciplinary regulations and procedures to the specific nature of mediation, ensuring the protection of its principles, the interests of participants and fair and effective consideration of complaints and control of violations based on specific assessment metrics resulting from particular codes of ethics or standards of mediators' work.

The second of the mentioned models, the decentralised one, takes into account the integration of regulations in force in, among others, Latvia, the Netherlands and Spain, and is characterised by the lack of a central supervisory institution. Supervision over the proper performance of duties by mediators is entrusted to private and autonomous entities. In Latvia, this function is performed by the Council of Certified Mediators, which supervises the quality of mediation by reviewing complaints against certified mediators.[29] In the Netherlands, this responsibility lies with the independent foundation MfN, which manages the register of mediators and upholds the professional standards, among others, by monitoring the quality of services and handling complaints under disciplinary responsibility. In Spain, disciplinary supervision is carried out by mediation centres, which control compliance with quality standards of mediators' work,[30] with the Ministry of Justice exercising only general supervision.

In the presented model, mediation participants have the right to file complaints against the mediator and the procedure for their consideration is regulated in detail in the relevant rules and regulations, which guarantee their quick consideration

[28] For example in Romania, in addition to these sanctions, there is a fine of up to 500 Lei Romanian, see: Nicoleta E Buzatu, 'The responsibility of the mediator' (2013) 4 AGORA International Journal of Juridical Sciences 10 <https://univagora.ro/jour/index.php/aijjs/article/view/849/197> accessed 7 May 2025.

[29] Art 25(4) Mediācijas likums 'Latvijas Vēstnesis', Nr 2014/108.1 (LV), hereinafter 'Latvian Mediation Law 2014'.

[30] Art 5(3) Ley 5/2012, de 6 de julio, de mediación en asuntos civiles y mercantiles (ES), hereinafter 'Spanish Mediation Act 2012'.

and compliance with the key principles of mediation, including confidentiality.[31] Complaints may concern breaches of statutory obligations, mediation principles or professional ethics by a mediator,[32] and may even be the result of 'dissatisfaction with their work' as a mediator.[33] Persons designated by institutions supervising the quality of mediators' work are appointed to consider complaints. This model is also distinguished by a diverse catalogue of sanctions.

In Latvia, if the complaint is found to be justified and a material violation of the regulations governing the activities of certified mediators or professional ethics standards is found during disciplinary proceedings, the mediator's certificate expires.[34] In the Netherlands, the consideration of a complaint may result in the imposition of sanctions in the form of a reprimand, suspension of registration or removal of the mediator from the register. These decisions may be appealed against to the Minister of Justice and then to court.[35] In addition, the complainant has the possibility to submit a complaint to the Independent Disciplinary Commission of the Disciplinary Mediators Foundation (STM), responsible for disciplinary jurisdiction over affiliated mediation institutions. In Spain, the mediation institution to which the mediator belongs may also be held liable for failure to fulfil the obligations arising from the mediation function entrusted to the mediator.[36]

This model involves entrusting liability for the quality of mediation services exclusively to autonomous, specialised entities, excluding the Ministry of Justice. In order to ensure transparency, dedicated complaint-handling procedures are available to participants in mediation processes. Despite its numerous advantages, this model may have limitations, such as the lack of direct control and supervision by public institutions. Private supervision of mediation may reduce the incentive to maintain high standards and enforce sanctions, especially when the primary goal is to protect the mediation centres' own reputation, their priorities and different interpretations for breaches of the same duties.[37] However, this model may prove more appropriate in countries where there are scattered registers of mediators and different institutions maintain separate lists, formulating their own standards and obligations. However, the effectiveness of such an approach depends on the

[31] See: Art 4(4.1) (Complaints procedure MfN register, 2025) <https://mfnregister.nl/content/uploads/Klachtenregeling_2025.pdf> accessed 3 May 2025, hereinafter 'Complaints procedure MfN 2025'.
[32] Art 13 Latvian Mediation Law 2014.
[33] Art 1(d) Complaints procedure MfN 2025.
[34] Art 22(1) Latvian Mediation Law 2014.
[35] Art 22 (3) and (4) Latvian Mediation Law 2014.
[36] Art 14 Spanish Mediation Act 2012.
[37] Jonathan Crowe, 'Mediation Ethics and the Challenge of Professionalisation" (2017) 29 Bond LR 5, 8 <www.austlii.edu.au/au/journals/BondLawRw/2017/2.pdf> accessed 7 May 2025.

obligation of mediators to comply with established norms and standards in order to ensure consistency of service quality despite the decentralisation of the system.

The third of the distinguished models, the hybrid one, is the result of the integration of solutions functioning, among others, in Belgium, Austria, Lithuania and Greece. It is characterised by the participation of specialist bodies established on the basis of legal acts, such as the Disciplinary and Complaints Committee in Belgium,[38] State Guaranteed Legal Aid Service with the Mediators' Work Evaluation Commission in Lithuania,[39] and bodies appointed by the Minister of Justice, e.g., the Advisory Council for Mediation in Austria[40] or the Central Mediation Commission in Greece, with a functioning Ethics and Disciplinary Control Commission.[41] These entities supervise, create regulations, receive complaints, conduct proceedings and impose sanctions or issue opinions[42] for the Minister of Justice regarding disciplinary liability of mediators.

Mediation participants have the right to file complaints against mediators for disciplinary offences that may result from actions or omissions that violate obligations arising from laws and ethical codes in Belgium,[43] Code of Ethics for Accredited Mediators in Greece[44] or obligations arising from the European Code of Conduct for Mediators in Lithuania.[45] An important guarantee solution is to grant mediation participants the right to file a complaint within three years from the moment of the breach of obligations by the mediator in Belgium[46] and two years in Greece.[47] The procedure for handling complaints is specified in detail in the rules and regulations, e.g., in Belgium, where a five-page complaint form is attached to the regulations[48] or in the Act, as in Greece, in the section on 'disci-

[38] Art 1727 Gerechtelijk Wetboek 1967 (BE).
[39] Art 5(1) Lietuvos Respublikos civilinių ginčų taikinamojo tarpininkavimo įstatymo Nr. X-1702 pakeitimo įstatymas 2017 (LT), hereinafter 'Lithuanian Mediation Act 2017'.
[40] See: para 4 and 5 Zivilrechts-Mediations-Gesetz, BGBl I Nr 29/2003 (AT), hereinafter 'Austrian Mediation Act 2003'.
[41] Art 10(1) Νόμος 4640/2019 Διαμεσολάβηση σε αστικές και εμπορικές υποθέσεις ΦΕΚ A 190/30.11.2019 (GR), (Law 4640/2019 Mediation in civil and commercial matters) hereinafter 'Greek Mediation Law 2019'.
[42] See: para 14 Austrian Mediation Law 2003.
[43] Art. 1727(2) GERECHTELIJK WETBOEK 1967 (BE) and Art 21(2) Règlement de procédure de la Commission disciplinaire et de traitement des plaintes du 29 septembre 2020 (BE), hereinafter 'Rules of Procedure of the Disciplinary 2020'.
[44] Art 17(b)(1) Greek Mediation Law 2019.
[45] Art 4(3) Lithuanian Mediation Law 2014.
[46] 21(1) Rules of Procedure of the Disciplinary 2020.
[47] Art 17(c)(1) Greek Mediation Law 2019.
[48] See: Art 8(1) Rules of Procedure of the Disciplinary 2020.

plinary law'.[49] The hybrid model is also characterised by the widest range of sanctions of all models, including warnings, reprimands, the obligation to complete an internship, suspension, and removal from the list of mediators. In Austria, after obtaining the opinion of the Mediation Commission, the Minister of Justice may remove a mediator from the register if, despite a warning, the mediator grossly or repeatedly violates his or her obligations.[50] In Belgium, the Disciplinary Commission may impose a warning, a reprimand, an obligation to complete an internship or order the mediator to practice only in co-mediation, as well as suspend the mediator for up to one year or withdraw the registration.[51] In Lithuania, upon detection of violations, the Commission may issue a warning, publish a public warning or remove a mediator from the list.[52] In Greece, disciplinary sanctions include a written reprimand, temporary withdrawal of accreditation for up to one year, or permanent withdrawal.[53] In addition, the consequence of imposing a disciplinary sanction and deletion from the register is a three-year ban on re-entry.[54] Additionally, each country has an appeals procedure in which the final instance is court proceedings.

The hybrid model constitutes an extremely procedurally extensive and comprehensive form of disciplinary responsibility, integrating mechanisms that ensure effective and fair handling of complaints. It is characterised by completeness and flexibility of procedures, enabling the adaptation of actions to the specifics of mediation, along with the determination of the effects of imposed disciplinary sanctions. In addition, this system provides for an extensive gradation of sanctions, ensuring proportionality of penalties and a precise response to breaches of duties. This model enables effective handling of complaints, prevention of breaches and ensuring transparency, reliability and ethics of the mediation process. It is the foundation of a high-standard mediation system, protecting the interests of participants and building trust in mediation as a dispute resolution tool.

IV. CONCLUSION

In the Polish legal system, mediation participants do not have the right to file complaints against mediators in the event of improper performance of their duties.

[49] Art 17 Greek Mediation Law 2019.
[50] Para 14 Austrian Mediation Law 2003.
[51] Art 21(1) Rules of Procedure of the Disciplinary 2020.
[52] Art 26(1) Lithuanian Mediation Law 2014.
[53] Art 17 Greek Mediation Law 2019.
[54] Art 26(4) Lithuanian Mediation Law 2014.

In practice, rarely filed complaints may only indirectly contribute to the initiation of disciplinary proceedings by the presidents of regional courts ex officio, thus performing a quasi-disciplinary function in relation to mediators. However, the lack of separate procedural regulations regarding the handling of complaints constitutes a significant gap in the legal system, which limits the effectiveness of supervision over the quality of mediation services.

In order to ensure a high standard of quality of mediation services, it is necessary to introduce a control mechanism based on a complaints procedure, focused on disciplinary liability of mediators for improper performance of their duties. Such a system not only performs a sanctioning function but also supports the proper functioning of mediation, ensuring the professionalism of mediators and building the parties' trust in the mediation process. Developing effective and transparent procedures encourages adherence to high ethical and professional standards. It also enables early detection of and response to potential violations. In addition, the complaints procedure has a protective and preventive role at the same time, performing the functions of guarantee and confidentiality,[55] contributing appropriately to protecting the interests and sense of security of both the parties and the mediators, eliminating irregularities and future violations, as well as building trust in mediation and the mediator. A well-organised complaints system helps maintain high ethical and professional standards, which directly translates into the quality of mediation services provided and the credibility of the mediation procedure itself.

The effectiveness of the institution of complaints against a mediator depends on the appropriate shaping of the disciplinary liability system, which fits into the framework of effective mechanisms for controlling the quality of mediation services provided. In centralised models, supervisory bodies must have clearly defined competences and procedures enabling complaints to be dealt with quickly and effectively, while maintaining the confidentiality and autonomy of the mediators' work. Hybrid models combining elements of decentralisation and centralisation may be an optimal solution, provided that a balance is maintained between the independence of mediators and the effectiveness of supervision. The selection of the appropriate model for a specific legal system should result from the specificity and details of legal regulations on mediation, the status of the mediator and the maintenance of the register of mediators in a given country. The formulated models may only serve as a reference point for designing or amending regulations, indicating potential directions of changes in the standards of quality control of mediators' work. However, the implementation of consistent,

[55] On the function of disciplinary responsibility, see: Radosław Giętkowski, *Odpowiedzialność dyscyplinarna w prawie polskim* (Wydawnictwo Uniwersytetu Gdańskiego 2013) 51–52.

transparent complaint procedures, including a catalogue of disciplinary sanctions enabling mediation participants to submit complaints, is crucial for building public trust and improving the quality of mediation services. Thus, the harmonisation of regulations and the consistent implementation of quality control mechanisms for the mediation services provided may contribute to ensuring the full implementation and effectiveness of the objectives arising from Article 4 of Directive 2008/52/EC.

The determination of which of the outlined models of mediators' disciplinary liability would be the most appropriate for the Polish legal system cannot be undertaken in abstraction from the broader normative framework. As a preliminary step, it is imperative to establish a coherent and systemically regulated status of mediators within Polish law. Only upon this normative foundation may a comprehensive and effective system of disciplinary accountability be developed. Such a framework cannot be introduced in the form of piecemeal amendments, by superimposing disciplinary provisions onto the existing, fragmented regulations governing both permanent mediators and ad hoc mediators. A fragmented and incremental approach of this kind would constitute a merely formal exercise, lacking both substantive coherence and the capacity to ensure the quality of mediation services or to foster public trust in the institution of mediation. Consequently, the point of departure must be the harmonisation of the legal status of mediators, encompassing their qualifications, duties, and ethical obligations. Only thereafter should a disciplinary liability regime be constructed, designed to be transparent, proportionate, and normatively consistent. The prospective trajectory of reform may draw upon one of the three comparative models discussed – centralised, decentralised, or hybrid – contingent upon the legislative choices adopted with regard to the regulation and revision of the status of both permanent and ad hoc mediators.

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