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## THE IDEA OF RESTORATIVE JUSTICE IN THE ECONOMIC AND SOCIAL DIMENSION

*The purpose of this article is to present the principles of restorative justice in the context of normative acts in force in the Polish law. Among the different types of mediation, those of economic nature were detailed, whose implementation conditions the effectiveness of the work of businesspeople in a significant way. The article highlights the benefits of consensual resolution of economic conflicts.*

### Introduction

The beginning of each century is characterized by a strong critique of the various spheres of human activity, which contributes to making changes, often for the better. Summarizing actions of Polish (but not only) courts in the twentieth century, they can be considered to have been ineffective and not meeting the expectations of citizens [17, 20]. Among the reasons for this state of affairs a number of factors are enumerated, which L. Morawski [16] identifies as differentiation processes in terms of social, functional and moral aspects. The objectification of “clients” of a court of law and depriving them of the opportunity to actively participate in resolving conflicts in which they are involved, are just some of the charges against the contemporary administration of justice. As a result, “new” solutions are searched for that would satisfy Poles. A special group consists of businesspeople, on whom the economic development of our country largely depends. They are also not immune to problems associated with conducting business and often exercise their rights through the courts. It is therefore important to examine to what extent are Polish businesspeople facilitated / impeded (juridically) while reaching an agreement with their business partners.

Polish legislators, due to the criticism of the current judiciary system, seeks forms of resolving legal conflict alternative to court proceedings, [24, 30], in which there is room for the needs of the parties. [23] The conditions for this are created by the idea of restorative justice, which is increasingly spreading in the social and economic lives of Poles. Originally, restorative justice was associated exclusively with the process taking place in the perpetrator-victim relationship i.e. at the level of criminal cases [27]. And although still prevailing is the view that it applies to a situation in which one person has committed a crime against another, it is beginning to be applicable to other areas of life (education or commerce) [11]. Defining justice in such a way as does J. Consedine [2], allows the transfer of mediation onto different areas. According to the author it is a philosophy which replaces punishment with reconciliation, revenge with help to the victims, insensitivity with the union, and destruction with restoration and forgiveness.

Restorative justice aims at compensation to the victims, usually in the form of financial compensation, property restitution and an apology. In practice, various forms of restorative justice are used: conferences, mediations, adjudication panels and others [25]. Because of the universality of conflict situations, different types of mediation are also distinguished: criminal, juvenile and civil cases, which are governed in the Polish law [14].

Conducting economic mediations in our country is essentially governed by two normative acts. Poland, as a member of the European Union, through the the EU Directive 2008/52/EC from 21.05.2008 was obliged to adjust the national law to EU requirements within three years. [32] The new regulations were to contribute to increasing the availability of judiciary system to citizens and to enable them to participate in mediation. This, in turn, aims at reducing transaction costs and improving relations between citizens [18].

The Code of Civil Procedure [7] regulates in detail the process of mediation. In the course of court proceedings, the court may refer the parties once to participate in mediation, (Art. 183 § 2 CCP), which is governed by principles of: confidentiality (Article 259 CCP), acceptability, freedom of choice, impartiality and neutrality. [6] They create the possibility of solving the ensuing conflict with the full involvement of the parties and with the help of a professional intermediary. In the event of reaching a mediatory agreement, it becomes the enforcement order (Art. 777 § 1 point 2 CCP), and the plaintiff is entitled to reimbursement of 75% of the paid fee (Art. 79 section 1 point 2) [21].

On 09.23.2013 the Minister of Economy appointed the Mediation Team with aims to promote the idea of restorative justice in the field of commercial dispute resolution. The use of alternative methods of resolving conflicts favours the elaboration of normative acts facilitating businesspeople in their economic activities [28].

### **The analysis of the existing research results**

Little is known of research on economic mediation in Poland. A. Kulawczuk [9] analyzed the situation of Polish businesspeople in the field of conflict resolution through the courts. She concluded that the courts are frequently forced to adopt a position on disputes in which items have little value, which greatly burdens them with the number of cases. Ongoing process proceedings are considered too long, which interferes with, or even prevents businesspeople from conducting business. The situation has worsened in this regard after introducing the simplified procedure. About 90% of complaints filed to the European Court of Human Rights in Strasbourg against Poland concerns the excessive length of the proceedings [9, p.12]. Businesspeople are exposed to huge financial losses, which often result in the closure of companies. From the economic and social point of view such a situation is very unprofitable. In addition to the significant deterioration of the situation of the businesspeople and their families, many workers lose their jobs, and the state is obliged to pay them benefits, aggravating the state budget. The participation in the proceedings itself is rated as costly. Another accusation against Polish judicial system is its formal character, which promotes objectification of the parties in the conflict, and disregard for the substantive assessment of the case. The court is perceived

mostly as an institution in which there is no place for emotions and maintaining positive social relationships. Thus, it takes on the characteristics of a contradiction expressed in the antagonism between the parties to the conflict [8, 30]. The lack of a subjective approach to the parties does not certainly favour cooperation and resolving of conflicts with the possibility of their ultimate ending.

In the legal literature and mediatory practice many advantages of restorative justice are indicated, as opposed to retributive justice [29, 22]. It is emphasized that the persons involved in the conflict cooperate aiming to find a solution that will prevent other contentious issues in the future. The parties have an opportunity to express their needs and expectations. It is not the state, but the citizens, who are in control over the ongoing agreement process, in the context of respecting certain social rules.

Thus, economic mediation helps to improve relations between the businesspeople. They have the opportunity to reach for such an agreement in an ensuing conflict that will enable them to maintain further commercial cooperation. Of course, in the economic aspect it forces improvements in the labour market. On the other hand, an intensive exchange of goods and services pays off by obtaining higher profits and increasing revenue to the State Treasury. The implementation of the idea of restorative justice in the sphere of economic conflicts contributes to the recovery of balance in terms of social relationships, which play an important role in conducting business. It favours overcoming barriers and reducing tensions in society [19]. During the mediation meeting, business partners acquire communication skills that can be used in other work-related situations and while cooperating with other businesspeople. The communication aspect of running a business often becomes a key factor in its conduct. [13]

From the point of view of human development psychology, mediation fosters the sense of responsibility for mistakes and independence in decision-making [10]. Thanks to the fulfilled needs of the conflicting parties there is no frustration, which, if intensified, is expressed in aggressive behaviour and hostility characteristic of a competitive style of conflict resolution [5]. "It allows one to look at the dispute from a different perspective, encourage the parties to consider the problem from the point of view of the other side" [19, p.20]. This ability to empathize on a cognitive level is a precious gift in the process of doing business.

An important advantage that the conflicting parties can gain from participating in mediation is achieving a mutually satisfactory solution. The effectiveness of mediation reaches 80%, and business partners have a sense of success and victory. [31] In addition, far lower cost of asserting their rights, "dictate" to side with the principles of restorative justice and not retributive one. In practice, however, economic mediation is conducted relatively rarely, as shown by the statistics presented by S. Pieckowski [18].

### **Developing own research material**

The aim of the pilot case study is to determine the attitude of Polish businesspeople to the idea of restorative justice in the context of economic mediation.

Therefore, a method of diagnostic survey was used and, as a part of it, a technique of a questionnaire of my own construction on “What do I know about economic mediation?”

The results obtained in the study made it possible to answer the following questions:

- How do Polish businesspeople understand economic mediation?
- From what sources do Polish businesspeople obtain information about economic mediation?
- What advantages and disadvantages from participating in economic mediation do the respondents notice?
- What way of achieving conflict resolution do businesspeople prefer?

30 businesspeople were examined in the study, of whom 70% were men. The majority of the group were people aged 38-43 years. The youngest company owner was 27 years old. People who had been running a company for between 4 and 6 years dominated in the group. 80% of the companies operate in urban areas.

In order to determine the level of the business people's knowledge on mediation, they were asked to define the concept (Figure 1) and the identify sources of information (Figure 2).

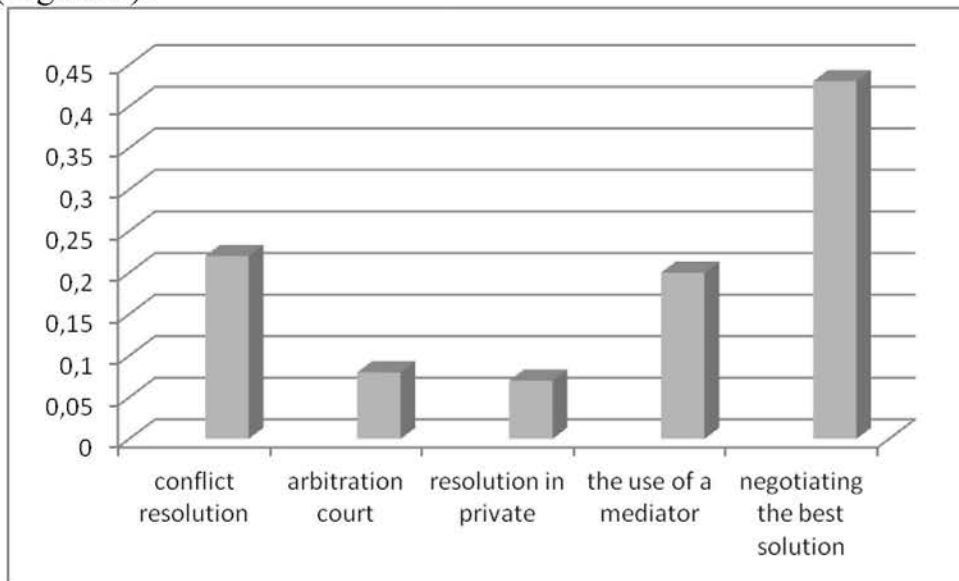


Fig. 1. Economic mediation according to businesspeople

The respondents defined the concept of economic mediation. Their statements were categorized and divided into 5 groups. Almost half of the company owners mistakenly identify mediation with negotiations and, as it seems, the tough ones. The expected solution is obtaining all their goals, that is, the victory. A similar number of people (20%) either emphasize the important role of a mediator in the initiated meetings between business partners or understands mediation as a process of dispute resolution. Of course, the latter position is definitely wrong, as in the case of mediation we should be talking more about the conflicts than disputes and their resolution rather than settling [10]. A few respondents pointed out to the fact that mediations constitute an out of court method of reaching an agreement with the help of constructive ways of resolving conflicts.

Most businesspeople, therefore, properly interpret the concept of mediation. Thus, an inquiry was made as to from where they got their knowledge on the subject (Figure 2).

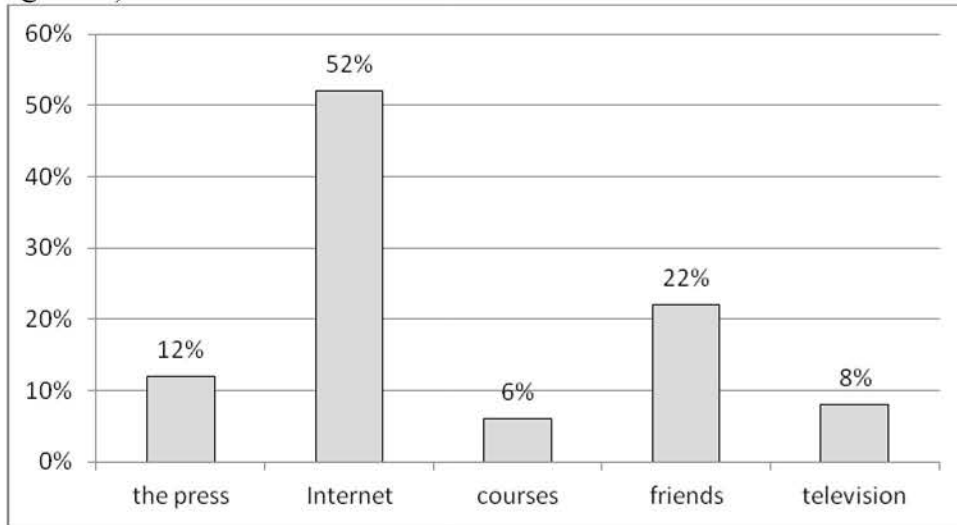


Fig. 2. Sources of information on economic mediation

Half of the respondents received information about mediation from the Internet, which is associated with high availability of this medium and the universality of the contained data. In addition, several company owners heard about the possibility of the resolution of economic conflicts through the courts from friends or on television, or read in the press. It can, therefore, be concluded that the mass media play the decisive role in the transmission of information about the mediation.

Only two people got information about the economic mediation during courses. This suggests that very few company owners had the opportunity to develop their mediatory and negotiating skills in a workshop (Figure 3).

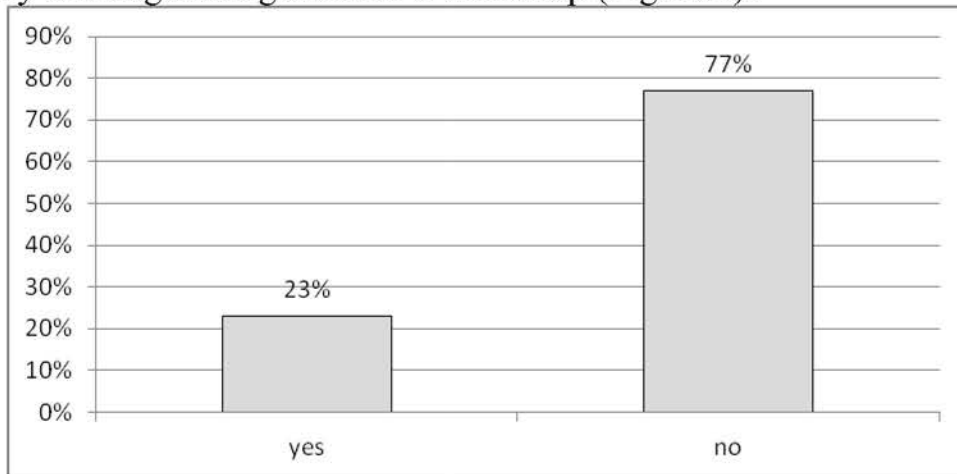


Fig. 3. The participation of businesspeople in mediation courses

The statements made by the businesspeople confirmed that few of them had the opportunity to participate in mediation courses. However, if someone offered them such a form of self-development, almost all of them would benefit from it (87%). It is surprising, therefore, that only two businesspeople acquired information about mediation from an instructor. This suggests an improper implementation of the training objectives, which is largely dependent on the mediator-instructors [12].

An important question from the point of view of the purpose of this article was to determine the attitude of the surveyed businesspeople to the conduct of mediation. Company owners were asked to identify potential defects of mediation (Table 1).

Table 1.

Disadvantages of economic mediation according to businesspeople

Disadvantages of economic mediation	M	Rank
lower prestige of mediation as compared to the court	4.8	1
lack of the culprit	4.6	2
sense of injustice	2.3	6.5
lack of professional mediators	4.3	4
difficulty to convince a partner to mediate	4.4	3
limited role of plenipotentiaries	2.3	6.5
failure to comply with the principle of confidentiality	3.3	5

Respondents believe that the institution of mediation has significantly lower prestige than the judiciary. What also bothers them is the fact that during mediatory meetings the guilty party is not indicated, which is done in the course of the mediation proceedings. Burdening someone with the responsibility for the reprehensible act is important to company owners in the socio-moral context. Mediation, as a voluntary process, can be difficult due to the conviction of business partners of the rightness of resolving conflicts in court. This means that the respondents perceive a prevailing stereotype about mediation in business circles. They also pay attention to the lack of access to well-qualified mediators who would properly lead mediation meetings. According to them, the parties may not sometimes meet the principle of confidentiality, which raises doubts as to whether or not to meet with a mediator instead of a judge. Only a few test subjects are concerned that the worked out agreement can be unfair. They would expect a greater involvement in the mediatory conflict resolution as far as mediators are concerned, which shows a lack of understanding of the concept of restorative justice.

In opposition to the defects, the businesspeople pointed out the advantages of mediation in seeking agreement (Table 2).

Table 2.

The advantages of economic mediation according to businesspeople

The advantages of economic mediation	M	Rank
saving time	4.5	4.5
lower costs	3.4	9
maintaining good public opinion	2.9	10
further cooperation with partners	4.8	2.5
final solution to the conflict	2.7	11
satisfaction with the solution	3.8	7
fulfilling the needs	4.3	6
sense of justice	4.9	1
less stress	4.8	2.5
relief for the court	4.5	4.5
acquisition of communication skills	3.6	8

Among the advantages of mediation indicated by the businesspeople the most important proved to be experiencing the sense of justice after the completion of the proceedings, the opportunity to continue cooperation with business partners and less stress than during the trial. Next, the respondents appreciated the economic value of

the mediatory process. They concluded that it contributes to the relief of the court as far as "trivial" cases are concerned and shortening the time of reaching an agreement, which is reflected in the saying "Time is money" [4]. Company owners have also found that mediation frequently favours meeting the needs of the parties to the conflict by obtaining a satisfactory solution. For some of them it was important to be able to minimize the costs associated with resolving a conflict, maintain a good reputation in the social environment and a real improvement in relations with the other party.

The opinions of the surveyed businesspeople should translate into their declared actions in a conflict situation. They were asked, therefore, whether they would prefer to participate in a judicial or mediatory process (Figure 4).

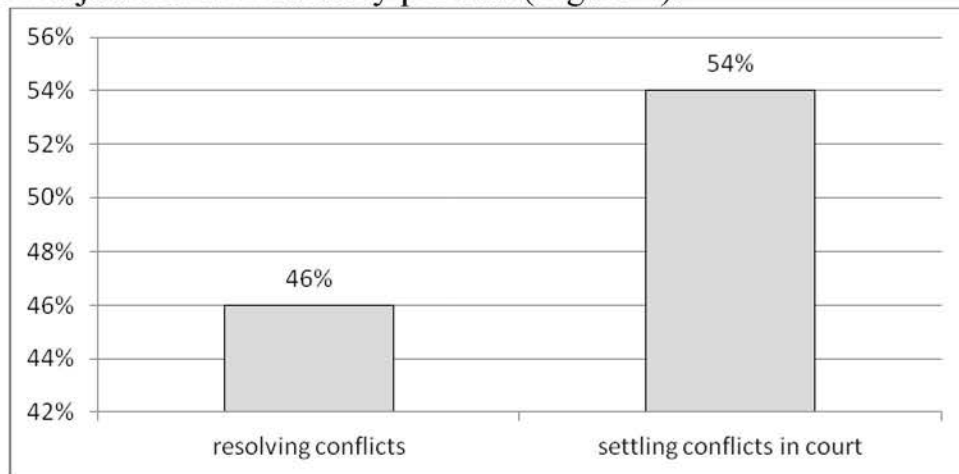


Fig. 4. The preferred method of resolving conflicts

Despite the many advantages of mediation proceedings indicated by the company owners, more than half of them, prefer to resolve conflicts of an economic nature in court. This means that they are not still sufficiently confident of obtaining benefits of taking part in mediation.

### Conclusions

The conducted theoretical analyses indicate greater social and economic values of restorative rather than retributive justice [1]. However, the results of the case study are not as optimistic as one would expect. The majority of the respondents incorrectly understand the idea of restorative justice. Making the distinction between mediations and negotiations is difficult. They see many advantages of resolving conflicts with the assistance of intermediaries. The key factor for them turns out to be obtaining individual benefits of psychosocial, and economic nature. They diminish the value of mediation in a broader social context. A practical recommendation arising from the study is the need to promote awareness among businesspeople about the mediation proceedings during training courses and conferences. However, before this is possible, mediators and mediation instructors should be professionally prepared to spread information and carry out the tasks of mediation.

Let us hope that, in accordance with scientific forecasts, the importance of out-of-court settlements will gradually increase and eventually occupy almost equivalent position to court proceedings [15, 26] and businesspeople will begin to gain tangible benefits from the opportunity to participate in economic mediations.

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