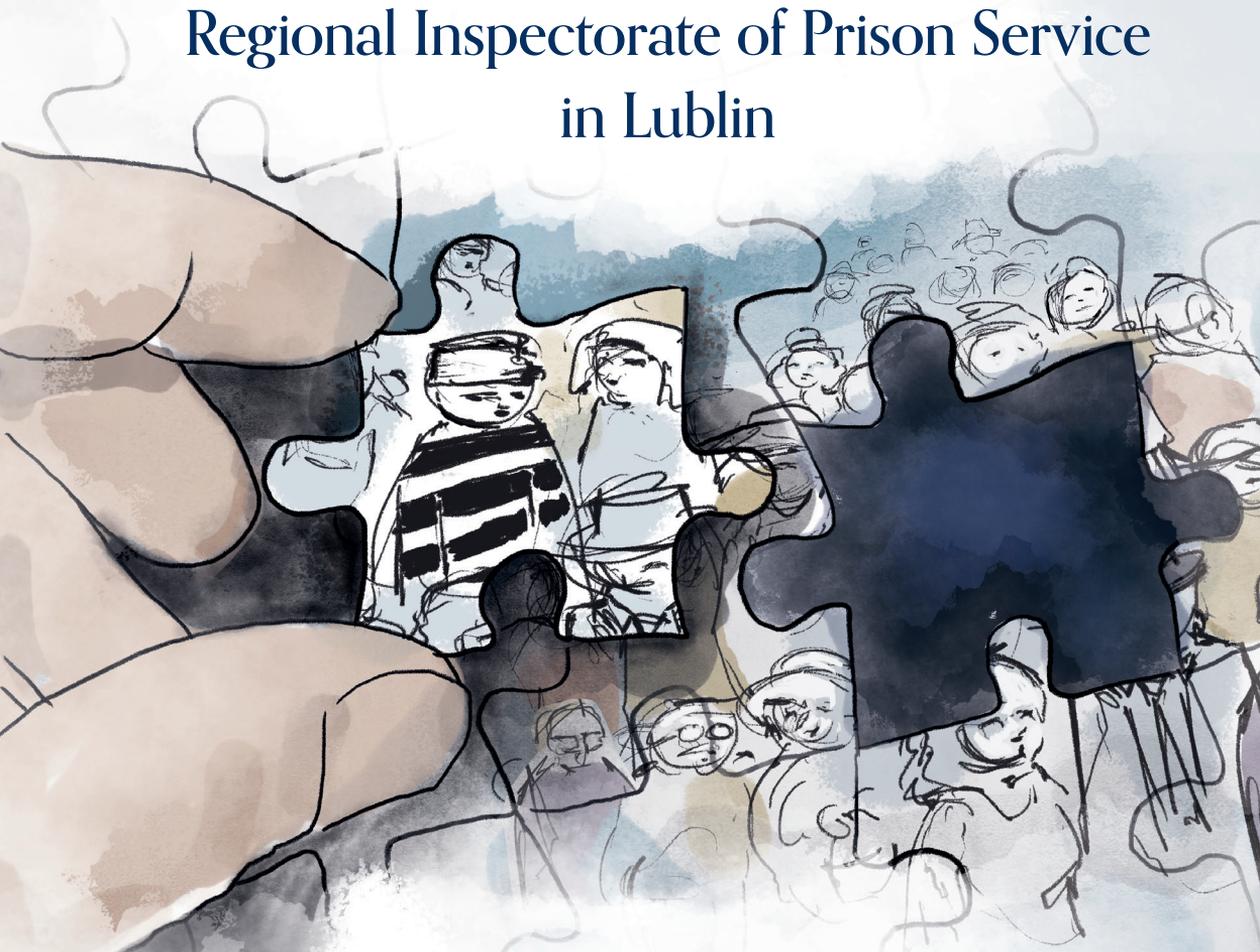




Implementation of the post-conviction mediation model on the example of the pilot programme implementing the concept of restorative justice in the Regional Inspectorate of Prison Service in Lublin



ED. AGNIESZKA LEWICKA-ZELENT

IMPLEMENTATION OF THE
POST-CONVICTION MEDIATION MODEL
ON THE EXAMPLE OF THE PILOT
PROGRAMME IMPLEMENTING THE
CONCEPT OF RESTORATIVE JUSTICE
IN THE REGIONAL INSPECTORATE
OF PRISON SERVICE IN LUBLIN

ed. **Agnieszka Lewicka-Zelent**

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ed. **Agnieszka Lewicka-Zelent**

The project entitled “Pilot programme implementing the concept of restorative justice in the Regional Inspectorate of Prison Service in Lublin” financed by the Justice Fund administered by Minister of Justice



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Table of contents

Introduction	9
Chapter 1. Restorative justice in the context of post-sentence mediation <i>(Anna Gmurowska, Grzegorz Skrobotowicz)</i>	15
I.1. The concept of restorative justice	15
I.2. Conflict resolution methods according to the concept of restorative justice. .	22
I.3. Mediation in prison isolation	27
Chapter 2. Assumptions and process of the pilot project <i>(Anna Gmurowska)</i>	31
II.1 Introduction	31
II.2 Main objective of the project, target audience and place of implementation .	32
II.3. Steps in implementing the post-sentence mediation pilot programme.	35
II.4 Progress in the implementation of mediation during the imprisonment phase	38
II. 5. Positive effects of the individual project tasks.	41
II. 6. How project activities have contributed/may contribute to addressing the causes of crime?	43
II. 7. Organisation and conduct of research	45
Chapter III Pilot programme and mediation after sentencing from the perspective of the sentenced and the victims, as well as coordinators and supervisors for restorative justice and mediation <i>(Agnieszka Lewicka-Zelent, Grzegorz Skrobotowicz, Anna Gmurowska)</i>	65
III. 1. The principles of the methodology of the research carried out <i>(Agnieszka Lewicka-Zelent)</i>	65
Aims of the Study	65
Key issue and detailed questions	66
Research Methods, Tools and Instruments.	66
Subjects – project participants	67
Organisation and Course of the Study	68
III.2. The level of satisfaction of the participants of information meeting with a mediator and the belief in being ready to take part in the mediation after sentencing in the opinion of the inmates who used the mediator’s duty in the penitentiary units <i>(Anna Gmurowska)</i>	69
Fundamentals of research methodology	69
Characteristics of the Detainees Participating in the Mediator’s duties . .	71
Feedback from inmates on the increase in their knowledge of mediation, gained during the mediator on duty.	73

The inmates' assessment of their satisfaction after the meeting with the mediator	73
Prisoners' opinion on the perceived benefits of participating in a briefing meeting with a mediator, including aspects that did not meet with the approval of the prisoners	74
Prisoners' Views on Their Willingness to Mediate	76
Detainees' Fears of Entering Post-Sentence Mediation	77
Summary	78
III. 3. Sentenced Persons' Views on Mediation after Conviction (<i>Anna Gmurowska, Agnieszka Lewicka-Zelent</i>)	81
Fundamentals of research methodology	81
Characteristics of convicts participating in post-sentence mediation	82
Prisoners' experiences of mediation prior to joining the project	83
Prisoners' doubts and concerns regarding entering mediation after sentencing.	83
Scope and Effect of Mediation Meetings From the Prisoners' Perspective	84
Benefits of prisoners' participation in post-sentence mediation - in the opinion of prisoners	85
Attitudes of prisoners participating in the project towards post-sentence mediation	88
Summary	91
III. 4. Opinions of the victims on post-judgment mediation and their experiences in mediation with the participation of the convicted person (<i>Anna Gmurowska</i>)	94
Fundamentals of the study methodology	98
Characteristics of the victims participating in post-judgment mediation and in the study.	99
Experiences of the victims in mediation before joining the project.	100
Doubts and concerns of the victims about their involvement in post-judgment mediation	100
Scope of mediation, form and effects of mediation meetings from the perspective of the victims	101
Advantages derived from the victims' involvement in post-judgment mediation	101
Attitude of the victims to post-judgment mediation	102
Summary	104
III. 5. Opinions of the public prosecutor on using post-judgment mediation (<i>Grzegorz Skrobotowicz</i>).	108
Attitudes under the survey methodology	109
Participants of the study	110
Preliminary proceeding and court trial	110
Enforcement proceeding.	114
Mediation as an effective component of the social reintegration of the convicted person	117
Readiness of the penal institutions to conduct criminal mediation	119

Opinions of the public prosecutors on the knowledge of the convicted persons of mediation at the stage of the enforcement proceeding and obtaining information on the dissemination of mediation	119
Summary	121
III. 6. Opinions of the restorative justice and mediation coordinators and consultants on the pilot programme and post-judgment mediation (<i>Anna Gmurowska, Agnieszka Lewicka-Zelent</i>)	123
Fundamentals of the study methodology	124
Characteristics of the restorative justice and mediation coordinators and consultants participating in the study	125
Project activities carried out by the restorative justice and mediation coordinators and consultants	125
Expectations and concerns of the corrective justice and mediation coordinators and consultants with regard to the implementation of mediation in the penal institutions.	126
Cooperation of the restorative justice and mediation coordinators and consultants with different entities in the framework of the project. . .	127
Advantages derived from participating in the project, as recognized by the surveyed restorative justice and mediation coordinators and consultants	129
Difficulties in the performance of the pilot programme, as viewed by the surveyed restorative justice and mediation coordinators and consultants	130
Manner in which the project participants - the prisoners functioned, as viewed by the surveyed restorative justice and mediation coordinators and consultants.	131
Opinions of the restorative justice and mediation coordinators and consultants on the ongoing pilot programme	133
Summary.	135

Chapter IV Standardization of the mediation procedure in the penal institutions
(Aleksandra Rusin-Batko, Karolina Włodarczyk, Agnieszka Markocka) 139

4.1. Standards as criteria for achieving the desired objectives.	139
4.2. Activities of the Social Council for Alternative Dispute Resolution Methods by the Minister of Justice, including the standards	141
4.3. The Integrated Qualifications System as a milestone towards the standardization of mediation.	144
4.4 Standards for the mediation procedure under the conditions of prison isolation	152

Chapter V Practical implications, guidelines and recommendations for the development of post-judgment mediation. 163

5.1. Guidelines and recommendations for post-judgment mediation practice <i>(Anna Gmurowska, Agnieszka Lewicka-Zelent, Grzegorz Skrobotowicz)</i> . . .	163
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Practical recommendations proposed on the basis of the opinions of the victims participating in post-judgment mediation.	163
Practical recommendations proposed on the basis of the opinions of the convicted persons participating in post-judgment mediation	164
Practical recommendations proposed on the basis of the opinions of the mediators participating in post-judgment mediation.	165
Practical recommendations proposed on the basis of the opinions of the restorative justice and mediation coordinators and consultants . .	165
5.2. Opportunities and challenges for mediation under the conditions of prison isolation on the basis of the information received from the officers of the Prison Service, mediators and professional court probation officers (<i>Aleksandra Rusin-Batko, Karolina Włodarczyk, Agnieszka Markocka</i>)	167
5.3. On the path towards the development of mediation - several remarks upon the project summary and prospects of new solutions (<i>Aleksandra Rusin-Batko, Karolina Włodarczyk, Agnieszka Markocka</i>)	171
Conclusion (<i>Agnieszka Lewicka-Zelent</i>)	175
Bibliography	181

Introduction

Activities promoting alternative methods of resolving conflicts and disputes, based on the concept of restorative justice, and, above all, mediation, attract increasing interest not only among researchers, but also professionals, for whom they constitute a valuable working method in the process of rendering professional support services to clients, probationers and persons under custody. Mediation occupies an important place in the area for the formation of civil society and positive social relations, in which there is a human being “capable of establishing and maintaining, even against all odds, a solidarity relationship with others based on dignity, reason, freedom and responsibility”¹. The dignity of the human person (human subjectivity) is a fundamental value and the source of all other human freedoms and rights (Article 30 of the Polish Constitution)². According to M. Bielecki, “the enforcement criminal law protects both the dignity of persons serving their sentences, but also those who are affected in one way or another by the situation of the detainees (e.g. victims, family, Prison Service)”³.

N. Christie⁴ argues that a specific type of conflict constitutes a crime and that attorneys have deprived the parties of a possibility to resolve it. Conflict resolution does not serve to restore social order. In a narrow sense, a conflict with the law is a symbolic conflict arising from a violation of the legal norms of a society. In a broader sense, it corresponds to a relationship conflict due to its significant level of escalation and the extent of other conflicts covered thereby. Such a conflict involves at least two people who have assigned roles - the perpetrator and the victim. The perpetrator has contributed to significant harm to another person (the victim). However, irrespective of the specific roles played by the parties in

¹ P. Frączak, M. Rogaczewska and K. Wygnański, *Głos w dyskusji na temat wizji rozwoju społeczeństwa obywatelskiego w Polsce*, 2005, p.5. https://niw.gov.pl/wp-content/uploads/2021/07/2005_Piotr-Fraczak-Maria-Rogaczewska-Kuba-Wygnanski.-Glos-w-dyskusji-na-temat-wizji-rozwoju-spoleczenstwa-obywatelskiego-w-Polsce-Copy.pdf accessed: 26 September 2022

² Constitution of the Republic of Poland of 2 April 1997 (Journal of Laws [DzU] of 1997, No. 78, item 483, as amended).

³ M. Bielecki, *Ochrona godności osoby skazanej w prawie karnym wykonawczym. Wybrane aspekty*, Lublin 2018, p. 160.

⁴ W. Zalewski, *Sprawiedliwość naprawcza. Początek ewolucji polskiego prawa karnego?* Gdańsk 2006, p. 169.

conflict with the law, their needs are not met. In this sense, they become dependent on each other in this difficult situation in the form of the committed crime. The link between the perpetrator and the victim is expressed in the process of satisfying each other's needs, hidden expectations and set goals. The conduct of one party is the source of the conduct of the other. The perpetrator expects to be forgiven and allowed to rectify their mistakes, and the victim expects to be understood, apologised to and compensated. To end this specific type of conflict, both parties shall make an effort to seek a solution that meets all their needs⁵.

Subjectivity may not be taken from anyone - neither from the victim of a crime nor from the convicted person, who continue to retain their human dignity after the crime was committed. On the other hand, it is a duty of public authorities to respect and protect personal dignity. From the point of view of the constitutional protection of the dignity of the wronged person, as stated by F. Ciepły, the regulations of substantive criminal law, in particular concerning the amount and the premises for the dimension of criminal sanctions adjudged against the perpetrators, are of significant importance⁶. However, not every harm caused by a crime may be compensated based on financial compensation or penal liability. If there is hope and there are reasons to believe that the conflict may be resolved by the parties, if the parties are willing to participate voluntarily in the process of determining the forms of redress and if there is a chance that the offender understands the consequences of the committed wrongdoing and the victim is able to understand the situation, they should participate in the mediation hearing. Then, in the presence of an impartial mediator, the parties may jointly negotiate the most favourable solutions for themselves and even cause the extinction of the existing criminal law conflict underlying the offence⁷.

Victims of crime and persons under sentence of imprisonment, capable of exercising their rights, who have a sense of authority and control over their own actions, who may consciously decide their own destiny in accordance with their own needs, who are voluntarily active in solving problems and disputes are considered members of a mature civil society, as described, *inter alia*, by the following authors: P. Frączak, M. Rogaczewska and K. Wygnański⁸. The devel-

⁵ A. Lewicka-Zelent, *Gotowość osób pozbawionych wolności do zadośćuczynienia osobom pokrzywdzonym*, Lublin 2017, p. 117.

⁶ A broader discussion of the issue of human dignity as it relates to the legal status of victims and perpetrators of crime under criminal law see: F. Ciepły, *Konstytucyjne aspekty prawnokarnej ochrony godności ofiar i sprawców przestępstw*, Acta Iuris Stetinensis 4/2017 (20), Szczecin 2017, p. 55-70. E. Grudziwska, A. Lewicka-Zelent, *Uwarunkowania poczucia własnej godności osób pozbawionych wolności*, Warsaw 2020, p. 174.

⁷ See A. Rękas (ed.), *Czy tylko sąd rozstrzygnie w sporze? Mediacja i sądownictwo polubowne*. Informator o alternatywnych sposobach rozwiązywania sporów, Warsaw 2010, p. 54. W. Zalewski, *Mediacja jako instytucja sprawiedliwości naprawczej* [in:] *Mediacja karna jako forma sprawiedliwości naprawczej*, L. Mazowiecka (ed.), Warsaw 2011, p. 23.

⁸ P. Frączak, M. Rogaczewska, K. Wygnański, *Głos w dyskusji na temat wizji rozwoju społeczeństwa obywatelskiego w Polsce*, February 2005, <https://niw.gov.pl/wp-content/>

opment of civil society is also advocated by R. Boguszewski, who argues that “the development of civil society is a desirable state”. According to the author, influencing public affairs not only by means of democratic legal procedures, but also on the basis of citizen interaction, often leads to effective solutions to important social issues⁹.

The society is slowly beginning to realise that many of the conflicts that are at the root of criminal acts may be resolved through voluntary dialogue, reconciliation, reparation of losses and compensation of wrongs suffered, which serves to improve communication, rebuild disrupted social relationships and develop and conclude a satisfactory agreement, understood as the first new stage of self-development. For the implementation of these activities, the conditions under which the parties enter into dialogue are essential. The atmosphere of such dialogue is conducive to the reconstruction of relationships on the basis of principles of restorative justice, with the participation of society and the optimal resolution of cases implying crime.

The search for new solutions to foster the improvement of interpersonal relationships that have been weakened or even interrupted as a result of the crime is challenging, especially when the inclusion of offenders and victims of crime in the restorative justice process is to take place after the court’s verdict, while the convicted person is serving a prison sentence. Given the complexity of the issues, it is worthwhile to focus on the whole process in a broad perspective, in which there is room for dialogue between the parties, but also on the level of awareness of society and its role in taking constructive action and responses beyond criminal sanctions, with regard to each stage of the criminal process.

The development of restorative justice is supported by a wide range of measures, such as the development of procedures, rules, standards for post-conviction mediation or the provision of appropriate conditions and infrastructure to enable safe, voluntary and confidential dialogue between the offender and the victim. It is also important to build a network of institutional cooperation between: judges, prison officers, probation services, academics, mediators and mediation centres, prosecutors, institutions supporting victims, social workers and other entities and NGOs. However, the aforesaid cooperation would not be possible without efficient coordination of public and private initiatives and co-financing or financing of these activities. Before undertaking activities that are part of restorative justice, those working in the justice system, those referring cases to the mediation process and mediators, shall undergo appropriate training to improve their mediation competences, including the acquisition of conflict resolution skills and, above all, adequate preparation for the efficient

uploads/2021/07/2005_Piotr-Fraczak-Maria-Rogaczewska-Kuba-Wygnanski.-Glos-w-dyskusji-na-temat-wizji-rozwoju-spoleczenstwa-obywatelskiego-w-Polsce-Copy.pdf [accessed: 26 September 2022]

⁹ R. Boguszewski, *Spoleczeństwo obywatelskie w teorii i praktyce*, academic editing by R. Boguszewski, Warsaw 2018, p. 5.

and reliable conduct of the restorative justice process together with the objective analysis of conflicts. The training programme should include issues related to the determinants of working with victims of crime, perpetrators and other vulnerable parties. On the other hand, in the dissemination of the idea of mediation and restorative justice in prison conditions, emphasis should be placed on taking measures to modernise rehabilitation methods, taking into account the design of programmes for the social re-adaptation of convicts and the development and implementation of recommended restorative justice programmes. Equally important is the development of a model for the functioning of post-conviction mediation, which is one form of restorative justice that is worth looking at not only through the prism of theoretical or practical considerations, but much more broadly - including from the point of view of undertaking scientific research on the issue and promoting the results obtained. Further reasoning in favour of developing innovative restorative methods and the application of restorative justice in the penal area of justice is reflected in Recommendation No. CM/Rec(2018)8 of the Committee of Ministers [of the Council of Europe] to Member States on Restorative Justice in Criminal Matters, adopted by the Committee of Ministers on 3 October 2018 at the 1326th meeting of the Representatives of Ministers (translated by Anna Matczak, PhD, Restorative Justice. Strategies for Change – Poland).¹⁰.

This monograph is the aftermath of a research project carried out at the Academy of Justice entitled “Pilot programme implementing the concept of restorative justice in the Regional Inspectorate of Prison Service in Lublin” thanks to the funding from the Justice Fund administered by the Minister of Justice and the results of a study on the standardisation of mediation in prison isolation. The main objective of the pilot programme for the implementation of restorative justice was to reduce recidivism and to improve the situation of the crime victims. The project emphasised the support and development of a system of assistance for people victimised by crime and the effective re-adaptation of convicts. Mediation with the participation of convicts incarcerated in penal institutions and detention centres located in the area of operation of the Regional Polish Penitentiary Service in Lublin has made it possible not only to provide assistance to persons wronged by crime, but also to strengthen interventions in the process of social re-adaptation of convicts. More information on the project is available on the project website¹¹.

The studies presented in the monograph focus on an interdisciplinary, systemic approach to the implementation of post-sentence mediation and show the potential of such dispute resolution method, which was piloted in penitentiary units on the territory of the Regional Polish Penitentiary Service in Lublin. The

¹⁰ <https://www.euforumrj.org/sites/default/files/2019-12/polish-coe-rec-2018.pdf> [accessed: 15 August 2022]

¹¹ <https://mediacjaisprawiedliwoscnaprawcza.pl/> [accessed: 26 October 2022]

final result of the analysis of the research results is a proposal of selected practical recommendations and solutions constituting a description of the implementation of the post-conviction mediation model on the example of the pilot justice programme in the Regional Polish Penitentiary Service in Lublin.

The research issues that have been discussed are included in six chapters. The authors of the first chapter, Anna Gmurowska and Grzegorz Skrobotowicz, introduce the reader to the idea of restorative justice and the methods of its implementation, with a particular focus on mediation in a prison setting. Chapter one reviews the current literature on the subject and critically analyses the content related to restorative justice. In the second chapter, Anna Gmurowska presents the assumptions and process of the pilot project. Chapter three shows the basics of the methodology of the research conducted. Additionally, there is a description of the persons involved in the study. The chapter also includes the characteristics of different research methods, techniques and tools used in the various stages and areas of exploration carried out. Last but not least, the authors discuss key research assumptions and the research procedure. The fourth chapter written by Anna Gmurowska, Agnieszka Lewicka-Zelent, and Grzegorz Skrobotowicz identifies the individual research areas included in the ongoing project. This section of the monograph presents the results and conclusions of the research on the potential use of post-sentence mediation. The analysis of the results obtained concerned: persons serving a custodial sentence; victims of crime; mediators; mediation coordinators and supervisors appointed in the penitentiary units involved in the project activities. Chapter five contains the standards for mediation in prison isolation, developed by Aleksandra Rusin-Batko, Agnieszka Markocka and Karolina Włodarczyk, and Chapter six **describes** practical implications and recommendations crucial for the correct and effective implementation of mediation in our country at the stage of serving prison sentences. It is important, especially in view of the need to standardise and systematise the organisation of information meetings with mediators and to develop standards for the conduct of mediation proceedings in Polish penitentiary units. The study culminates in a conclusion. The entire monograph concludes with bibliographical references.

The presented results of the research conducted by the individual authors are innovative in nature. It is the first time that the Polish literature has shown in such a profound and multifaceted way an attempt to implement the model of the concept of restorative justice and post-sentence mediation, which is conducive not only to the development of the system of providing assistance to the victims of crime, but also to more effective re-adaptation of convicts.

On behalf of the members of the research team, we would like to extend our sincere thanks to all the people and institutions involved in the implementation of the project entitled “Pilot programme implementing the concept of restorative justice in the Regional Inspectorate of Prison Service in Lublin” financed by the Justice Fund administered by Minister of Justice. We would like to express our

immense gratitude to the representatives of the Ministry of Justice, the Academy of Justice, the management and prison officers from the area of operation of the Regional Polish Penitentiary Service in Lublin, the representatives of the John Paul II Catholic University of Lublin and Maria Curie-Skłodowska University in Lublin, the management of the Centre for Arbitration and Mediation in Lublin and its mediators, probation officers and judges coordinating mediation from the Regional Court in Lublin and the Regional Court in Zamość, participants in the mediation process, prosecutors, attorneys, graduates of the postgraduate program in *Mediation and Restorative Justice* in the academic year 2020/2021 and all those who contributed to the project. I would like to sincerely thank them for their kindness, understanding, commitment and co-creation of this important innovative project.

Agnieszka Lewicka-Zelent, Academic Editor
Anna Gmurowska, Project Manager
Warsaw, October 2022

Chapter 1.

Restorative justice in the context of post-sentence mediation

Anna Gmurowska,
Grzegorz Skrobotowicz

I.1. The concept of restorative justice

As M. Cieślak notes, criminal law should aim at restoring the state from before the commission of a criminal act by providing the perpetrator with an opportunity to remedy the wrong they have done¹. In a situation where the imposition of a specific punishment does not always produce the desired results and convicts return to the path of crime, the author's postulation seems to be still relevant. It is important and worthwhile to take certain steps, especially when the ineffectiveness of the punitive system is visible and the need for a broader catalogue of alternative methods and measures to respond to crime more prominent, taking into account respect for the rights, needs and interests of victims and involving them and society in voluntary, active participation in the process of responding to crime. According to J. Consedine (recognised as the leader of the global restorative justice movement), restorative justice has become an alternative way of fighting crime and its consequences. The author points out that in a victim-offender restorative justice system, the process does not focus on revenge and punishment, but seeks to heal both the society and individuals². E. Bieńkowska, undertaking research on alternative ways of resolving conflicts between the victim and the perpetrator of a crime, advocates such a remodeling of this traditional system so as to begin to consider the interests and needs of victims and to ensure that they obtain redress in a different, less stressful

¹ M. Cieślak, *Polskie prawo karne. Zarys systemowego ujęcia*, Warsaw 1994, p. 16.

² J. Consedine, *Sprawiedliwość naprawcza. Przywrócenie Ładu społecznego*, Warsaw 2004, p. 228.

manner³. Interest in this issue is beginning to grow and is increasingly being addressed from several perspectives: theoretical, social, legal and practical.

Restorative justice is one of the streams focusing on increasing the role of crime victims, with the idea being that the offender should make good the damage caused as a result of the criminal act. Although it was known and applied - in the form of private punishment - already in ancient times and in the feudal period⁴, it became widespread as late as in the 1970s in Canada, Norway and England, being the extreme opposite of a retributive form of justice⁵, characterised by the state's focus on the criminal act, punishing the offender and using punishment to deter crime, while at the same time ignoring the victim and community⁶. Indeed, in the retributive view, a case involving a criminal offence "(it) is between the perpetrator and the state for the determination of that guilt and the infliction of the appropriate punishment", while "it is for the state authorities to apprehend the perpetrator of the criminal act, to try and punish them legally"⁷. On the other hand, a restorative approach, respects the rights and needs of the victim, their opinions, emotions and stories, which have so far been largely ignored⁸. In turn, M. Maciejewska, citing Nils Christie⁹, stresses that separating the act from its context, "and in particular from social ties, is not an effective way to remedy the harm caused by the crime and to prevent unwanted acts. The

³ E. Bieńkowska, *Postępowanie mediacyjne restytucyjnego jako sposób rozwiązywania konfliktu między ofiarą i sprawcą przestępstwa* [in:] *Teoria i praktyka pojednania ofiary ze sprawcą. Materiały konferencji międzynarodowej (Warsaw, 26-27 styczeń 1995)*, Warsaw 1995, p. 19.

⁴ W. Zalewski, *Sprawiedliwość naprawcza. Początek ewolucji polskiego prawa karnego?* Gdańsk 2006, p. 10-16.

⁵ J. Radziszewska, "Akademicki kaprys" czy "budowanie zrozumienia"? *Refleksje z badań antropologicznych o sprawiedliwości naprawczej*. *Zeszyty Naukowe Uniwersytetu Jagiellońskiego Prace Etnograficzne* 2021, 49, vol. 4, p. 255.

⁶ A. Lewicka (after H. Zehr, after Czernecka-Działuk, Wójcik, 2001) *Sprawiedliwość naprawcza a tradycyjny wymiar sprawiedliwości* [in:] A. Lewicka, E. Grudzińska, *Mediacja sądowa. Alternatywna metoda resocjalizacyjna*, Lublin 2010, p. 61-62.

⁷ E. Silecka-Marek, *Instytucja mediacji w polskim prawie karnym*. *Resocjalizacja Polska* 2020, 19, p. 129.

⁸ J. Radziszewska, *op. cit.* p. 255.

⁹ N. Christie was a Norwegian criminologist and sociologist affiliated with the University of Oslo. His works are a creative contribution to the concept of restorative justice. In his article "Conflicts as Property", published in 1977 in *The British Journal of Criminology*, he presented the concept of conflict resolution (traditionally the domain of criminal law), based on the assumption that the eponymous conflict is the domain of the parties involved and it should be up to them to resolve it. The text has had a huge impact on the science of criminal law, criminology constituting a kind of manifesto of restorative justice. It is worth noting that Christie also dealt with problems of punishment and the organisation of the prison system and its impact on society.

solution to the problem should focus on compensation towards the victim of the crime and the impact of the community of which the offender is a member¹⁰.

When analysing the literature on the subject, one cannot help but notice that authors dealing with the issue of restorative justice define its concept in different ways. It is described by some as the “process” in which the offender and the victim make a conscious effort to redress and forgive, seeking, with the support of others, joint opportunities to resolve the problems arising caused by the wrongdoing. Such a definition is proposed, among others, by D. Jaworska, M. Niełacznna and W. Klaus¹¹. Other authors define restorative justice as an “approach” involving a constructive response to the crime, in such a way as to incorporate the needs of the victim into the process of resolving the problems caused by the crime, and to agree on the offender’s willingness to accept responsibility for their behaviour¹². On the other hand, J. Consedine defines restorative justice as a “philosophy” encompassing a range of emotions related to human thinking that replaces punishment with reconciliation and revenge on perpetrators with the support for victims. The author also proposes community and reunification in place of alienation and insensitivity and instead of negativism and destruction, promotes reparation, forgiveness and grace¹³. According to the same author, restorative justice is also referred to as the “resolution of a case resulting from a crime” by those affected by criminal behaviour, regardless of whether they are victims, perpetrators or family members¹⁴. On the other hand, M. Wright accepted that restorative justice is a “restorative action”, a “dialogue between the victim and the perpetrator, with the possible participation of the community” in the course of which the type of reparation is determined¹⁵. A similar definition is proposed by H. Wantula. According to the author, the perpetrator and the victim, by entering into a “dialogue”, “interact with each other” and participate in a “process of coming to an understanding” in which they may get to know each other better, see each other’s needs more easily and become more sensitive to them. In a meeting with the perpetrator, the crime victim may get answers to questions and fears they had before, they may calm their fears or emotions, such as anger and frustration caused by the criminal act of the perpetrator. The victim may eventually agree to a settlement, reconcile with the perpetrator, show understanding, obtain

¹⁰ M. Maciejewska, *Nils Christie – ojciec norweskiej kryminologii. Koncepcje sprawiedliwości naprawczej i społecznego rozwiązywania konfliktów*, Dialogi Polityczne/Political Dialogues. Journal of Political Theory no. 25, Toruń 2018, p. 48.

¹¹ D. Jaworska, M. Niełacznna, W. Klaus, *Sprawiedliwość naprawcza a mediacja - konkurentki czy sojuszniczki* “Mediator” no. 31, Warsaw 2004, p. 4.

¹² B. Czarnecka-Działuk, D. Wójcik, *Mediacja. Nieletni przestępcy i ich ofiary*, Warsaw 1999, p. 121.

¹³ J. Consedine, *Sprawiedliwość naprawcza, Przywrócenie ładu społecznego*, Warsaw 2004, p. 228.

¹⁴ J. Consedine, *Wyrównywanie szkód spowodowanych przestępstwem. Restorative justice and probation*, “Mediator” no. 27, Warsaw 2003, p. 4.

¹⁵ M. Wright, *Przywracając szacunek sprawiedliwości*, Warsaw 2005

compensation or some other solution to their satisfaction. The perpetrator, in turn, when confronted with their victim, begins to see the meaning and significance of the law they have violated and begins to understand the gravity of their behaviour. It may help the perpetrator to cease the socially negative behaviour¹⁶. H. Wantula also emphasises how an important effect of the process of reaching an agreement, even if it is not ultimately concluded with a settlement, is the consolidation or assimilation of ethical and legal norms, the awareness of playing an active role in one's own case, respect for the dignity of the perpetrator and the aggrieved person, strengthening their role in society and even in the justice system¹⁷.

J. Waluk is of the opinion that the following conditions should be met in order to speak of restorative justice:

- providing assistance to the victim should be the first reaction of society,
- the perpetrator should make reparation for their act to the victim or to society,
- parties should be allowed to meet and exchange views,
- any form of redress that the parties have worked out together by agreement should be accepted and not questioned,
- the local community should be involved in the rehabilitation process,
- when the perpetrator of the act is unknown, the victims should be assisted¹⁸.

Restorative justice has been the focus of numerous international organisations for several years¹⁹. At this point, it is important to highlight the growing interest in restorative justice in the Member States of the European Union, which have seen an increasing number of research findings indicating the effectiveness of restorative justice and the satisfaction of participants in the restorative justice process. The Directive of the European Parliament and of the Council of 25 October 2012, establishing minimum standards on the rights, support and protection of victims of crime and replacing Council Framework Decision 2001/220/JHA, introduced a legal definition of “restorative justice”. Article 2(1)(d) of the cited Directive,

¹⁶ H. Wantula, *W drodze do pozasądowego rozwiązywania konfliktów. Dane, uwagi, propozycje* [in:] *Teoria i praktyka pojednania ofiary ze sprawcą. Materiały konferencji międzynarodowej* (Warsaw, 26-27 January 1995), Warsaw 1995, p. 70.

¹⁷ Ibidem, p. 70.

¹⁸ J. Waluk, *Mediacja jako forma sprawiedliwości naprawczej - korzyści dla stron. Sprawiedliwość naprawcza a mediacja*, Warsaw 2004, p. 3.

¹⁹ For instance: In 1999, the Committee of Ministers of the Council of Europe adopted Recommendation No.R.(99)19 on the use of mediation in criminal matters, and the UN Economic and Social Council adopted Resolution 1999/26 entitled: “Development and implementation of mediation and restorative justice practices in criminal matters”; in 2000, the UN Economic and Social Council formulated the first international standards for restorative practices in a document entitled: “Basic Principles for the Use of Restorative Justice Programmes in Criminal Matters”, and on 8 December 2000, with the support and financial assistance of the European Commission, the first European restorative advocacy organisation, the European Forum for Victim-Offender Mediation and Restorative Justice, commenced its work.

states that “restorative justice shall mean any procedure whereby the victim and the offender are given the opportunity, subject to their free consent, to participate actively in the resolution of the matters arising from the offence with the assistance of an impartial third party”²⁰. In addition, soft international law expressed in the form of guidelines, recommendations, although not legally binding on the states to which they are addressed, may also provide a great deal of interpretative guidance, clarify concepts and give a fresh perspective on existing norms. A momentous example of this is Recommendation No. CM/Rec(2018)8 of the Committee of Ministers [of the Council of Europe] to Member States on restorative justice in criminal matters, adopted in 2018. Indeed, restorative justice is recognised as a method by which the needs and interests of the parties may be identified and met through balanced, fair and collaborative action. Furthermore, the potential benefits of applying restorative justice to the justice system, which may complement or provide an alternative to traditional criminal proceedings, were acknowledged. Additionally, it was recognised that there was a need to strengthen the involvement of parties, including victims and perpetrators of crime, other parties affected by crime and the wider community, in identifying and redressing the harm caused by crime. The Recommendation includes the definition of restorative justice, calling it “a process that enables those harmed by a crime, and those responsible for the harm if they voluntarily consent, to actively participate in the resolution of a case arising as a consequence of the commission of that crime with the assistance of a trained and impartial third party (hereinafter referred to as a ‘facilitator’²¹)”. The Recommendation sets out the basic principles of restorative justice; promotes standards for the application of restorative justice in the context of criminal procedure; provides recommendations for restorative justice services; and encourages the continued development of restorative justice and the development of innovative restorative methods. It is addressed to all institutions (public and

²⁰ THE DIRECTIVE 2012/29/EU OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 25 October 2012, establishing minimum standards on the rights, support and protection of victims of crime, and replacing Council Framework Decision 2001/220/JHA (Official Journal of the European Union L 315/57). See more: <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32012L0029&from=DE> [accessed: 7 September 2022].

²¹ Cf. a person who mediates a business meeting, facilitates the flow of information and solves problems; a person who is involved in the process of making things easier for others. In dictionaries, the word *facilitation* (French *faciliter* “to facilitate”, in Latin *facilis* “easy”) as - in the most general terms - refers to the mutual stimulation of behaviour of group members, and from here it is only a step to the definition of *facilitator*, who observes such behaviour, stimulates and supports the group in reaching its goal. Source: <https://sjp.pwn.pl/poradnia/haslo/facilitator;10384.html> [access: 7 September 2022]. In Poland, it has been accepted that an impartial third party mediating a dispute with the aim of either resolving or mitigating the conflict between the parties is a “mediator”.

private) operating within the criminal justice system, making referrals to restorative justice programmes, or which may use the value of restorative justice in their work²².

It should be emphasised that both academics and judiciary experts are becoming increasingly interested in the effectiveness of the programmes undertaken based on the application of restorative justice methods. The aforementioned effectiveness is considered, among other things, through the prism of crime prevention. B. Czarnecka-Działuk, dealing with the preventive aspects of restorative justice, stresses that many studies and broad literature show that restorative justice interventions have an impact on the issue of recidivism²³. The author undertakes a consideration of the issues analysed thereby and cites the research analysis, including recommendations for penal policy, contained, *inter alia*, in the 2010 final report of the European project "Restorative Justice and Crime Prevention", which constitutes a part of the European programme "Fighting Crime". As B. Czarnecka-Działuk mentions the report states that crime prevention and restorative justice focus on "managing the future" by guiding, directing and influencing future behaviour rather than holding individuals accountable for their past conduct. "While crime prevention is future-oriented, restorative justice attempts to link the past (making individuals accountable for their actions) with future goals and expectations of reparation and reintegration"²⁴. The effectiveness of restorative justice programmes in the context of crime prevention is evidenced by a number of research findings referred to by the author. These include studies by J. Bonta²⁵,

²² Recommendation No. CM/Rec(2018)8 of the Committee of Ministers [of the Council of Europe] to Member States on restorative justice in criminal matters (adopted by the Committee of Ministers on 3 October 2018 at the 1326th meeting of the Representatives of Ministers). Translated by Anna Matczak, PhD. See. https://mediacjaisprawiedliwoscnaprawcza.pl/wp-content/uploads/2020/12/Rekomendacja-Nr-CM_Rec_2018_8_Komitetu-Ministrow-RE-dot.-sprawiedliwosci-naprawczej-w-sprawach-karnych.pdf [accessed: 7 September 2022].

²³ B. Czarnecka-Działuk, *Profilaktyczne aspekty sprawiedliwości naprawczej – prezentacja wyników badań nieletnich uczestników mediacji* [in:] *Rozwiązywanie sytuacji konfliktowych w wymiarze jednostkowym i społecznym* (academic editing by M. Plucińska), Poznań 2014, p. 278-279. [https://repozytorium.amu.edu.pl/bitstream/10593/12713/6/Martyna_Plucińska_\(red.\)_Rozwiązywanie_sytuacji_konfliktowych_2014_WNS_UAM.pdf](https://repozytorium.amu.edu.pl/bitstream/10593/12713/6/Martyna_Plucińska_(red.)_Rozwiązywanie_sytuacji_konfliktowych_2014_WNS_UAM.pdf) accessed: 1 October 2022

²⁴ *Ibid*, s. 278, after *Restorative Justice and Crime Prevention. Presenting a theoretical exploration, an empirical analysis and the policy perspective*, 2010, p. 3.

²⁵ In a study conducted in Winnipeg, using a control group, offenders who participated in a restorative justice programme were significantly less likely to reoffend than a matched group of offenders with similar offences who were placed on probation. With each year of the criminal record check, the differences in recidivism rates for the two groups became larger and larger. See research by J. Bonta: *Restorative justice and Crime Prevention. Presenting a theoretical exploration, an empirical analysis and the policy perspective*, 2010, cited in: <https://repozytorium.amu.edu.pl/bitstream/10593/12713/6/Martyna%20Pluci%C5%84ska%20>

L. Forsythe²⁶, H. Schütz²⁷, L.Herman, H. Strang²⁸, as well as K. J. Bergseth and A. Bouffard²⁹.

In conclusion, the concept of restorative justice has impact on the justice system and criminal policy, including legal norms. It has been recognised that, in many cases, it shall not be possible to achieve the objectives of criminal proceedings without giving the parties the opportunity to reach an agreement, preceded by an understanding of the source of the offence, of the offender's motives, or without giving the offender the chance to understand the consequences of their behaviour, and to express remorse or to offer appropriate moral or financial compensation. It was understood that the criminal process may not neglect the actual needs of the victim, their natural right to influence the course and outcome of the trial. The restorative justice programmes being implemented constitute a real opportunity to prevent crime.

%28red.%29_Rozwiazywanie%20sytuacji%20konfliktowych_2014_WNS%20UAM.pdf , p. 278, accessed: 1 October 2022

²⁶ Much lower recidivism rate among juveniles whose cases were referred to mediation than in the control group. The study found that reoffending in the group referred to mediation was 20 per cent and 48 per cent in the control group, a difference of up to 28 per cent. See research by L. Forsythe: *An Analysis of Juvenile Apprehension Characteristics and Reapprehension Rates*, after: E. G. M. Weiterkamp, Research on Victim Offender Mediation. Finding and Needs for the Future, in: Victim-Offender mediation in Europe. Making restorative justice work, Leuven University Press, Leuven 2000, p. 107, cited at: [https://repozytorium.amu.edu.pl/bitstream/10593/12713/6/Martyna_Plucińska_\(red.\)_Rozwiazywanie_sytuacji_konfliktowych_2014_WNS_UAM.pdf](https://repozytorium.amu.edu.pl/bitstream/10593/12713/6/Martyna_Plucińska_(red.)_Rozwiazywanie_sytuacji_konfliktowych_2014_WNS_UAM.pdf) , p. 278, accessed: 1 October 2022

²⁷ The recidivism of juveniles participating in mediation was 14 per cent over 3 years, compared to 33 per cent in the group where fines were imposed, which means a more than double the recidivism of juvenile mediation participants when compared to the control group. The referenced study by H. Schütz H. Scutz: H. Schütz, *Die Rückfallhäufigkeit nach einem Außergerichtli*, cited at: https://repozytorium.amu.edu.pl/bitstream/10593/12713/6/Martyna%20Pluci%C5%84ska%20%28red.%29_Rozwiazywanie%20sytuacji%20konfliktowych_2014_WNS%20UAM.pdf , p. 278, accessed: 1 October 2022

²⁸ Lawrence W. Sherman and Heather Strang, after analysing a number of studies, including one involving a control group, found that restorative justice may produce better outcomes for more serious offences than for petty crimes, contrary to popular belief. See L. Herman, H. Strang, *Restorative justice. The evidence*, The Smith Institute, London 2007, p. 16–18, 68–71, cited at https://repozytorium.amu.edu.pl/bitstream/10593/12713/6/Martyna%20Pluci%C5%84ska%20%28red.%29_Rozwiazywanie%20sytuacji%20konfliktowych_2014_WNS%20UAM.pdf , s. 279, accessed: 1 October 2022

²⁹ Analysis of the research has shown that restorative justice programmes are effective for different groups of juvenile perpetrators. See K. J. Bergseth, A. Bouffard, Examining the Effectiveness of a Restorative Justice Program for Various Types of Juvenile Offenders, "International Journal of the Offender Therapy and Comparative Criminology" XX (X)/2012, p. 1–22. cited at https://repozytorium.amu.edu.pl/bitstream/10593/12713/6/Martyna%20Pluci%C5%84ska%20%28red.%29_Rozwiazywanie%20sytuacji%20konfliktowych_2014_WNS%20UAM.pdf , s. 279, accessed: 1 October 2022

1.2. Conflict resolution methods according to the concept of restorative justice

Conflict resolution according to the concept of restorative justice may take place through a variety of methods, understood as consciously applied ways of proceeding and as all procedures designed to achieve the desired goal. Through these methods, with the assistance of an impartial third party, the crime victim and the perpetrator have the opportunity to voluntarily participate in the resolution of the issues arising from the crime³⁰. According to A. Muszyńska, the concept of restorative justice proposes several methods of conflict resolution, such as mediation, conferences, reconciliation circles, negotiations. They all presuppose a meeting between the victim and the perpetrator, dialogue, agreement on the terms of reparation and lessons learned for the future³¹.

Undoubtedly, they share a common denominator, which is a voluntary meeting between the victim and the perpetrator, presupposing a dialogue between them aimed at reaching a solution. The grounds for the developed solution, also known as an agreement or settlement, are that the offender accepts responsibility for their behaviour, agrees to compensate for the harm or damage caused and draws conclusions for the future. Therefore, restorative justice may take different forms, models, functions and methods of implementation. The aforesaid concept may also be based on certain principles and pillars. This wide spectrum of application of the concept of justice is manifested not only in the literature on the subject, but also in the recommendations addressed to the EU Member States, including Poland³².

M. Wright points out that typical restorative justice models include conferencing, direct mediation, indirect mediation, group communications and community reparations councils. Mediation is the most popular. Face-to-face mediation is that model of restorative justice where the mediator, the offender and the victim meet together to resolve issues and disputes. In indirect mediation, on the other hand, the victim and the offender do not have direct contact with each other, and

³⁰ Annex to Recommendation No. CM/Rec(2018)8 of the Committee of Ministers [of the Council of Europe] to Member States on restorative justice in criminal matters, p. 4. See: https://mediacjaisprawiedliwoscnaprawcza.pl/wp-content/uploads/2020/12/Rekomendacja-Nr-CM_Rec_2018_8_Komitetu-Ministrow-RE-dot.-sprawiedliwosci-naprawczej-w-sprawach-karnych.pdf [accessed: 7 September 2022].

³¹ A. Muszyńska, *Naprawienie szkody wyrządzonej przestępstwem*, Warsaw 2010, p. 10.

³² Recommendation CM/Rec(2018)8 of the Committee of Ministers [of the Council of Europe] to Member States on Restorative Justice in Criminal Matters (adopted by the Committee of Ministers on 3 October 2018 at the 1326th meeting of the Representatives of Minister) and Annex to Recommendation CM/Rec(2018)8 of the Committee of Ministers [of the Council of Europe] to Member States on Restorative Justice in Criminal Matters See: https://mediacjaisprawiedliwoscnaprawcza.pl/wp-content/uploads/2020/12/Rekomendacja-Nr-CM_Rec_2018_8_Komitetu-Ministrow-RE-dot.-sprawiedliwosci-naprawczej-w-sprawach-karnych.pdf [accessed: 7 September 2022].

the mediator meets individually once with the victim and once with the offender. It is worth imitating the conferences organised in New Zealand, characterised by the fact that, in the case of serious offences, the parties concerned as well as their relatives and family members may participate in meetings, generally led by two mediators, sharing proposals for resolving conflicts. An interesting model is group communications whereby a group of perpetrators who have committed acts of a similar nature and a group of victims enter into the roles of the other party. In turn, community reparations councils of five people review the case and develop a work plan for the perpetrator³³.

M. Bocheński points out that the institutions used to implement the concept of restorative justice include mediation, conciliation, arbitration, reconciliation between the perpetrator and the victim, apology to the wronged party, determination of the manner of reparation of damage based on more or less formal negotiations, inclusion of the perpetrator in a certain system of socially useful work for the benefit of the local community. These methods, often referred to as alternative dispute resolution (ADR), are often used to resolve disputes. ADR - *Alternative Dispute Resolution* constitutes a deformed method with minimal judicial review³⁴.

The Senate of the Republic of Poland, in a resolution of 3 June 2004 on penal policy in Poland, expressing its approval of the idea of restorative justice, pointed out that “the best means of implementing the idea of restorative justice are non-consensual penalties, connected with subjecting the offender to a probationary period, during which they should fulfil the obligations imposed on them by the competent authority. Of these duties, the most important should be the reparation of the damage and moral injury caused to the victim”³⁵.

The principles of restorative justice, as set out in Recommendation No. CM/Rec(2018)8 of the Committee of Ministers [of the Council of Europe] to Member States on restorative justice in criminal matters, indicate that restorative justice often takes the form of “a dialogue (direct or indirect) between the victim and the perpetrator of the crime; in which other persons directly or indirectly affected by the crime may be included, if appropriate”. What is more, depending on the country, restorative justice may refer, among other things, to victim-offender mediation, criminal mediation, restorative justice conferences, group family conferences, adjudication circles or mediation circles³⁶.

³³ M. Wright, op. cit., p. 180.

³⁴ M. Bocheński, *W kierunku sprawiedliwości naprawczej*, Palestra 3-4/2012, p. 267 Source: <https://palestra.pl/pl/czasopismo/wydanie/3-4-2012/artykul/w-kierunku-sprawiedliwosci-naprawczej> [accessed: 17 September 2022].

³⁵ Resolution of the Senate of the Republic of Poland of 3 June 2004 on penal policy in Poland, “Monitor Polski” of 15 June 2004, item 26, no. 431.

³⁶ Recommendation No. CM/Rec(2018)8 of the Committee of Ministers [of the Council of Europe] to Member States on restorative justice in criminal matters (adopted by the Committee of Ministers on 3 October 2018 at the 1326th meeting of the Representatives of Ministers).

As emphasised by M. Tabernacka, in Poland, the concept of restorative justice is mainly implemented in the form of mediation in criminal cases between the victim and the adult perpetrator of the criminal act and mediation in juvenile proceedings³⁷. In addition, the idea of restorative justice is popularised in the school environment through the promotion of school and peer mediation as a means of non-violent conflict resolution. In this context, the developed Standards for Peer and School Mediation in Schools and Other Educational Institutions, recommended since November 2017 by the Ombudsman for Children³⁸ are definitely noteworthy.

On the other hand, Matczak draws attention to one of the most recent developments in the theory and practice of restorative justice, namely the process of shaping social life and urban space implemented in cities through the prism of restorative justice principles and values. We are referring in particular to the concept of restorative justice cities, gradually implemented in Poland (mainly in Wrocław) based on the experience of cities and countries such as: Hull, Bristol, Brighton and Hove in the UK; Como and Tempio Pausania in Italy; Leuven in Belgium; Whanganui in New Zealand, or Oakland in the United States³⁹. At this point, it is worth adding that numerous activities following the values of restorative justice and shaping the process of social life are carried out in the Lublin district. They are being implemented on a pilot basis in prison isolation,⁴⁰ in school and academic settings and as part of inter-institutional cooperation for mediation and amicable forms of dispute resolution⁴¹, which makes it possible to state that Lublin also pretends to be a city of restorative justice.

Translated by Anna Matczak, PhD. See. https://mediacjaisprawiedliwoscnaprawcza.pl/wp-content/uploads/2020/12/Rekomendacja-Nr-CM_Rec_2018_8_Komitetu-Ministrow-RE-dot.-sprawiedliwosci-naprawczej-w-sprawach-karnych.pdf [accessed: 7 September 2022].

³⁷ M. Tabernacka, *Negocjacje i mediacje w sferze publicznej*. Warsaw 2018, p. 147.

³⁸ Standards of peer and school mediation in schools and other educational institutions, Ombudsman for Children, Warsaw, November 2017. See <http://brpd.gov.pl> [accessed: 28 September 2022].

³⁹ A. Matczak, *Czym jest miasto sprawiedliwości naprawczej?* *Archiwum Kryminologii*, (XLIII/2), 2021, p. 399-427. <https://doi.org/10.7420/AK2021.19> [accessed: 28 September 2022].

⁴⁰ See Project “Pilot programme implementing the concept of restorative justice in the Regional Inspectorate of Prison Service in Lublin”, financed from the funds of the Justice Fund administered by the Minister of Justice, implemented in 2020-2022 on the territory of 10 penitentiary units of the Lublin district <https://mediacjaisprawiedliwoscnaprawcza.pl/>

⁴¹ On 13 June 2022, the Lublin Agreement for Mediation and Amicable Dispute Resolution was established. The signatories of the Act of Appointment were the Deputy Minister of Justice, the Vice-Chancellor of the Catholic University of Lublin and representatives of the following units: The Lublin Voivodship Office, the Marshal’s Office of the Lublin Voivodship, the Voivodship Police Headquarters in Lublin, the Lublin Business Club, the Bug River Border Guard Unit, the Regional Court in Lublin, the Regional Inspectorate of Prison Service in Lublin, the Municipal Family Support Centre in Lublin, the Catholic Association

When analysing different approaches towards conflict resolution in the paradigm of restorative justice, it is impossible not to consider its essential tasks, principle functions and pillars.

B.D. Meier, when examining restorative justice from the point of view of the tasks it fulfils or is supposed to fulfil, lists the following functions of restorative justice:

- compensatory function - to compensate for the damage,
- preventive function - to prevent further offences,
- inclusive function - to include victims in the proceedings for the purpose of meeting the needs of the victim,
- victim-perpetrator relationship function - to resolve the conflict that has occurred and to improve the relationship between the victim and the perpetrator,
- social function - to consider the interests of society in terms of preserving social order⁴².

Based on her own research conducted in 2014 on persons serving a prison sentence, Lewicka-Zelent pointed out that “restorative justice should serve psychological functions in terms of purification, which takes the form of forgiveness of the offender by the victim and arousing regret and reflection in the offender with respect to the criminal act committed”⁴³. Therefore, it may be assumed that restorative justice also has the function of psychological purification.

The Committee of Ministers of the Council of Europe has identified as fundamental principles of restorative justice that could form the basis for strengthening wide-ranging criminal justice reforms among the Member States of the European Union:

- the principle of stakeholder participation - expressed in the possibility for parties to actively participate in the crime solving process;
- the principle of reparation - recognising and repairing the harm that the crime has caused to individuals, relationships and society in general;
- the principle of voluntariness - meaning that a restorative justice process may only take place if the parties, having been informed in advance of the nature of the process and its possible outcomes and consequences, voluntarily agree to participate in it, with the parties being able to withdraw their consent at any time during the process;

for People in Need “Agape” and the “Przystań” Family Integration Association. See https://www.kul.pl/na-kul-powolano-lubelskie-porozumienie-na-rzecz-mediacji.art_99487.html [accessed: 28 September 2022].

⁴² B.D. Meeier, (1999). *Sprawiedliwość naprawcza – zarys koncepcji*. [in:] B. Czarnecka-Działuk, D. Wójcik (ed.), *Mediacja. Nietelni przestępcy i ich ofiary*, Warsaw 1999, p. 47.

⁴³ A. Lewicka-Zelent, *Sprawiedliwość naprawcza w poglądach osób pozbawionych wolności*, *Chowanna* 2, 2015, p. 303; See <https://bazhum.muzhp.pl/media/files/Chowanna/Chowanna-r2015-t2/Chowanna-r2015-t2-s293-313/Chowanna-r2015-t2-s293-313.pdf> [accessed: 28 August 2022].

- the principle of confidentiality - conversations during the restorative justice process should remain confidential and may not be used later unless agreed by the parties;
- the principle of universality - meaning that the type, gravity and location of the offence alone should not, in the absence of other conditions, prevent victims and offenders from benefiting from the restorative justice process. Restorative justice services should also be available at every stage of the criminal justice process, including the enforcement stage.

Other important principles of restorative justice are: thoughtful and respectful dialogue; equal concern for the needs and interests of those involved; procedural fairness; consensual joint settlement; focus on repairing harm, reintegration and achieving mutual understanding; and avoidance of domination⁴⁴.

M. Płatek believes that restorative justice transforms the conflicted parties into active decision-makers who, during confrontation, engage in dialogue and jointly develop a consensus based on three pillars:

1. Right of the victim to compensation for the harm suffered,
2. Obligation of the perpetrator to compensate for the wrongdoings,
3. Participation of the parties and the community in the process leading to restitution by the perpetrator of the harm caused⁴⁵.

The latter - the third pillar - is complemented by two aspects, i.e. the support of the mediator, which is essential for reaching an agreement, and the conscious effort undertaken by the offender and the victim to solve the problem. The author of the above modifications is O. Sitarz⁴⁶.

P. Szczepaniak emphasises that consensus is the standard for mediation, similarly as in the case of the whole concept of restorative justice. The author, while recognising that the introduction of restorative justice in the enforcement phase of the sentence involves the empowerment of the prisoner's role and the axis of restorative proceedings, including rehabilitation, becomes the desire for reparation, still continued looking for an answer to the question "Is prison an appropriate place to conduct mediation meetings?". The answer was affirmative and the author also indicated that an individual rehabilitation plan for a prisoner could become an individual mediation plan. Central to this arrangement is the relationship between the victim and the offender and the accompanying dialogue that may eventually lead to a settlement. It is a prerequisite that the offender/convict actively seeks to repair the harm caused by the crime and redeem the fault with their actions. According to Szczepaniak, post-sentence mediation between the offender and the victim is "safe mediation", as it takes place between

⁴⁴ Recommendation No. CM/Rec(2018)8 of the Committee of Ministers [of the Council of Europe] to Member States on restorative justice in criminal matters.

⁴⁵ M. Płatek, *Teoria sprawiedliwości naprawczej* [in:] M. Płatek, M. Fajst (ed.), *Sprawiedliwość naprawcza. Idea. Teoria. Praktyka*, Warsaw 2005, p.10-11.

⁴⁶ O. Sitarz, *O mediacji w ogólności* [in:] O. Sitarz (ed.), *Metodyka pracy mediatora w sprawach karnych*, Warsaw 2015, p. 14-18.

the conflicting parties after the offender has been tried by independent courts. The author understands that in order to introduce mediation into the enforcement proceedings, especially in the setting of an absolute institution, a deliberate effort must be made and consideration must be given to the role that could fall to the penitentiary staff in the post-sentence mediation process⁴⁷.

1.3. Mediation in prison isolation

Focusing on the role of mediation in Polish enforcement criminal law, one fundamental assumption must be made, namely the mediation process is not *strictly* a rehabilitation method nor is it a variant of therapy. It is not advice or intermediation and may not be considered a *panacea* for the entire and complex issue of crime⁴⁸. Certainly, some elements of mediation may play a partly rehabilitative or therapeutic role or may help the victim or the offender to take certain actions, but mediation as such is neither of them. The institution of mediation was introduced as a form of response to the demands of society for a more effective fight against crime and for protection of the interests and rights of crime victims, which needs to be taken into account during pending criminal proceedings.

Current reality shows that Poland is a “harsh state” - i.e. one that often applies isolation penalties⁴⁹. Thus, there is an “overcrowding problem” in prisons and detention centres where convicted prisoners serve their sentences and the queues of people waiting to serve their validly imposed isolation sanctions are growing⁵⁰.

It should be noted that currently in the Polish criminal law system, it is common to separate the public from the institutions of trial, conviction or enforcement of punishment. Therefore, the public does not take an active part in the various stages of the proceedings, especially enforcement, and does not implement positive individual prevention. Polish society has always been geared towards isolating the suspect, the accused or the convicted⁵¹. Individuals who have been targeted by the judiciary are treated as “lepers” by the public, the community⁵²,

⁴⁷ P. Szczepaniak, *Wybrane problemy wprowadzenia mediacji po wyroku*, Mediator, 14 (2), 2000, p. 16-18.

⁴⁸ A. Staszewska, *Sprawiedliwość naprawcza*, 2003, no. 2, <http://www.pismo.niebieskalinia.pl/index.php?id=12>

⁴⁹ T. Cielecki, *Problemy z mediacją karną (bezdroża mediacji I)*, [in:] Mediacja dla każdego, (ed.) L. Mazowiecka, Warsaw 2010, p. 84.

⁵⁰ J. Migdał, *Resocjalizacja skazanych – utopia czy wyzwanie. Perspektywy wykonania kary pozbawienia wolności*, 2010, no. 4 (44). See more “Skazania prawomocne z oskarżenia publicznego - dorośli - w latach 2002-2018” - <https://www.sw.gov.pl/strona/statystyka-roczna> and “Statystyka roczna” - <https://isws.ms.gov.pl/pl/baza-statystyczna/opracowania-wieloletnie/> (accessed: 15 July 2021 08:00 PM).

⁵¹ T. Cielecki, *Problemy z mediacją karną (bezdroża mediacji I)*, [in:] Mediacja dla każdego, (ed.) L. Mazowiecka, Warsaw 2010, p. 85.

⁵² Cf. M. Wright, *Naprawa krzywd w społeczeństwie czy sprawiedliwość przyszłości?*, Med. 2005, no. 35 (4/2005), p. 26.

neighbours and often even family. Unfortunately, there is also a lingering media vision of isolating convicts, hence removing them from society.

On the other hand, convicts, in the vast majority of cases, state that the imposed punishment is completely disproportionate to the crime they committed⁵³. They blame the justice system, defence lawyers, experts, witnesses or even the victims of the crime for this state of affairs, while failing to see their own role in the wrongdoing or damage caused. Moreover, they are burning with the desire for revenge or retaliation against the victim, which translates into the victim's fear and anxiety, consequently making them call for a wider application of isolation punishment. The situation loops around and does not lead to any constructive solution to the problem. It should also be pointed out that a prisoner sentenced to absolute imprisonment is "removed" from society and, in the case of suspended imprisonment, the convict may lose their job or may have difficulty finding a new job. Such a person, without the support of loved ones, falls into poverty and often the only solution, in their opinion, is to commit another crime. As a consequence, the court rules that the conditionally suspended sentence be enforced, which results in overcrowding in prisons and detention centres. It is illogical and absurd that a person who violates legal and social norms is subjected to "treatment" in an environment detached from the society, in which the crime occurred, i.e. in a closed penitentiary unit. Even more incomprehensible is the fact that there are rules in such prisons that are completely different from those that are effective when people are "at large". A convict who finds themselves in such a "new" world must submit to these rules in order to be able not only to serve, but even to survive the sentence imposed. It makes their maladaptation to the ethical and moral norms of the "normal world" even more prominent. This state of affairs may be summed up as the offender being "thrown" outside of society with no practical possibility of return. Citizens want to disassociate themselves from such a person, let alone see the need to help them return to a normal life after completing the sentence. It begs the question: How could society participate in the rehabilitation process of the convict? The answer could be in the form of the results of the conducted mediation proceedings⁵⁴.

To change the current mentality and public view, changes must be made to the state security system in the way of functioning of the subsystem responsible for crime prevention, which also regulates the issues of victims of criminal acts, and hence also mediation in criminal cases⁵⁵. At this point, attention should be drawn to the recommendations contained in Recommendation No. R (87) 19 of

⁵³ F. Ciepły, P. Słowik, *Więzienie to nie uzdrowisko*, 2009, no. 186- <https://archiwum.rp.pl/artykul/884069-Wiezienie-to-nie-uzdrowisko.html>

⁵⁴ M. Grudziecka, J. Książek, *Narodziny idei wprowadzenia mediacji w Polsce*, [in:] *Mediacja*, (ed.) L. Mazowiecka, Warsaw 2009, p. 328.

⁵⁵ T. Cielecki, *Problemy z mediacją karną (bezdroża mediacji I)*, [in:] *Mediacja dla każdego*, (ed.) L. Mazowiecka, Warsaw 2010, p. 89.

the Committee of Ministers of the Council of Europe⁵⁶. The guidelines regulated by this recommendation point to the need to create appropriate agendas in the Member States at the various levels of government, i.e. national, regional and local. The tasks of these delegations are to focus on the development and dissemination of knowledge of crime prevention. The recommendation also indicates the need for development of the area of protection of the rights of persons victimised by crime, taking into account the institution of mediation for this purpose. This line of development in prevention, adopted 34 years earlier, was upheld by the Council of Europe in its subsequent recommendation⁵⁷ of 24 September 2003. The Committee of Ministers stated that the use of only traditional criminal law models and legal coercive measures had proved to be insufficient in effectively reducing the spread and impact of crime as well as in combating emerging new forms of criminal acts across Europe. Therefore, in this context, improvements and specific changes are needed.

As I. Aersten mentions, prison is not the best place to teach an inmate to be responsible for their behaviour or to attempt to right the wrong done. However, victims often want and even need to express their feelings and talk to their abusers about the crime that was committed or agree on reparation for the damage suffered even after conviction⁵⁸. Such a need may build up throughout the pre-trial and subsequent court proceedings in a situation where the authorities conducting the relevant stage of the criminal process have not resorted to one of the ADR tools, such as mediation. Therefore, the conflicting parties did not have the opportunity to talk calmly about the crime committed or to discuss compensation for the harm caused. With the above in mind, the importance of post-sentence mediation may not be neglected⁵⁹.

Penitentiary units indicate that recourse to mediation while serving an isolated sentence is a tool mainly beneficial to the offender, who wants to leave the walls of the prison as soon as possible and is willing to do everything to make this happen, while the person harmed by the crime potentially does not obtain analogous benefits from participating in mediation⁶⁰. Such a point of view, certainly

⁵⁶ Recommendation No. R (87) 19 of the Committee of Ministers of the Council of Europe of 17 September 1987 on the prevention of crime. See also Recommendation No. R (2000) 20 on the role of early psycho-social interventions in crime prevention.

⁵⁷ Recommendation No. R (2003) 21 of the Committee of Ministers of the Council of Europe of 24 September 2003 on partnership in crime prevention. The Recommendation defines, among other things, the concept of “crime prevention” and points to the need to use, alongside the traditional model of approaching the crime and the offender, prevention institutions involving the public and local authorities.

⁵⁸ Aersten I., *Victim-offender mediation with serious offence*, [in:] Crime policy in Europe, Good practices and promising examples, F. Dunkel, H. von Hofer (ed.), Strasbourg 2004, p. 81.

⁵⁹ A. Dzierżyńska, M. Łagodziński, *Mediacja po wyroku*, 2006, no. 37 (2/2006), p. 12-13.

⁶⁰ A. Siedlecka-Andrychowicz, *Mediacja w sprawach karnych*, [in:] Mediacje. Teoria i praktyka, (ed.) E. Gmurzyńska, R. Morek, Warsaw 2018, p. 355 et al.

in some situations, would be justified, but it may not be the only point of reference or be taken as a rule. Many times the interests of the victim are overlooked when the court makes its final ruling and, consequently, the victim of the crime feels neglected or even marginalised by the procedural authorities, thus losing trust and confidence in the effectiveness of the justice system as a whole. The aim of improving this situation is to conduct mediation proceedings at the stage of enforcement of punishment. The victim could expect that the inmate for the possibility of early termination of their sentence shall undertake to repair the harm caused. In many cases, the victim does not even care so much about material reparation as about getting an apology, talking to the perpetrator, finding out their motives and why they became the target of the criminal act. In the area of non-material reparation, there is no risk that the convict shall offer to fulfil all their obligations in the future just to shorten their sentence, as the attitude and actions of the convict would have to change while they are still in the penitentiary.

Chapter 2

Assumptions and process of the pilot project

Anna Gmurowska

II.1 Introduction

The mere popularisation of mediation and restorative justice is not enough for the needs and interests of the parties, including the victims of crime, the perpetrators of crime, others affected by crime or even the wider community to be identified and met. Apart from punishing the perpetrators, there have not been enough activities to allow their participation in the reparation of the harm caused by the crime. Nor has a model previously been developed for the operation of post-sentence mediation, which is one form of restorative justice. To fill this gap, the project entitled “Pilot programme implementing the concept of restorative justice in the Regional Inspectorate of Prison Service in Lublin” financed by the Justice Fund administered by Minister of Justice was developed. The project was initiated by the Academy of Justice¹ (until 31 March 2021 under the name University of Criminology and Penitentiary Studies in Warsaw). The implementation of the project, planned for the period from 20 April 2020 to 30 June 2022, was carried out in close cooperation with the Head of the Regional Inspectorate of Prison Service in Lublin, under agreements concluded with the John Paul II Catholic University of Lublin and with the Lublin Arbitration and Mediation Centre operating at the Catholic University of Lublin.

This chapter presents the assumptions and progress of the project “Pilot programme implementing the concept of restorative justice in the Regional Inspectorate of Prison Service in Lublin”, as an opportunity for the development of mediation in Polish penitentiary units. The objectives of the project and the activities carried out have been described, including such matters as the organisational issues and implementation steps of the pilot programme, the results achieved, the positive effects of the various tasks, and the organisation and conduct of the research. Data sources included unpublished project documentation, in particular: the project data sheet and amendments to the project data sheet; the interim

¹ Read more about the Academy of Justice at <https://swws.edu.pl/>

project report; the final project report; documentation from mediation standpoints and anonymised documentation from mediations drawn up by mediators involved in project activities; the results of conducted research; correspondence on project matters; reports on project implementation, including reports drawn up by: the project manager and representatives of the project department, by mediation coordinators appointed in penitentiary units and by mediators; studies prepared by representatives of the prison service presented during working meetings and thematic briefings; as well as information collected from judges, probation officers and other circles concerning the pilot.

II.2 Main objective of the project, target audience and place of implementation

The main objective of the project was to reduce recidivism and improve the situation of people victimised by crime, while the tool supporting this objective was mediation with the participation of inmates in penitentiary units located in the area of operation of the Regional Inspectorate of Prison Service in Lublin. A key objective of the project was to support and develop the system of assistance for victims of crime and effective readaptation of convicted offenders as well as to increase the number of experts in criminal mediation, including mediation conducted in prison settings. The main objective was supported by complementary specific objectives identified in the project data sheet²:

- raising awareness of restorative justice and mediation;
- raising the level of reparation to victims and their relatives for harm caused by prisoners;
- restoring balance in the environment of the perpetrator and the victim;
- shaping desirable social attitudes among inmates;
- raising awareness of restorative justice and mediation among prisoners, victims of crime, families of victims, attorneys, prison officers and professional probation officers;
- increasing the number of cases referred to mediation in criminal cases, also after conviction;
- raising offenders' awareness of the consequences of their behaviour and making them understand the harm they have caused to victims, their families, their own relatives, and the community³.

² Data sheet to the Minister of Justice for entrustment of tasks under the funds of the Fund for Victims' Aid and Post-Penitentiary Assistance - Justice Fund for the implementation of the project entitled "Pilot programme implementing the concept of restorative justice in the Regional Inspectorate of Prison Service in Lublin") (unpublished typescript of the project data sheet), Academy of Justice, Warsaw 2020;

³ A. Gmurowska, *Sprawiedliwość naprawcza – program pilotażowy w okręgu lubelskim na tle zaleceń zawartych w Europejskich Regulach Więziennych oraz Rekomendacji Nr CM/Rec(2018)8 Komitetu Ministrów [Rady Europy] dla państw członkowskich dotyczącej*

The following tasks (project activities), fostering the development of innovative restorative methods and the application of restorative justice in the penal field, correlated with the established project objectives:

- improvement of the qualifications of prison and probation officers by organising and running postgraduate studies in mediation and restorative justice;
- preparation of mediation rooms at the penitentiary units of the Regional Inspectorate of Prison Service in Lublin and out-of-court mediation with the participation of inmates;
- mediation on-call services in the penitentiary units of the Regional Inspectorate of Prison Service in Lublin;
- appointment of mediation and restorative justice coordinators at the Regional Inspectorate of Prison Service in Lublin (where costs related to the appointment of mediation coordinators from among prison officers were financed by the prison service);
- education of the public by spreading the idea of mediation and restorative justice;
- conducting research and analysis and dissemination of results⁴.

The project objectives and the correlating six project tasks of significant social relevance were challenging, as it was anticipated that the introduction of post-sentence mediation could generate a number of practical problems. To minimise the risk of possible failure, the implementation of the project involved the building of an institutional and interdisciplinary network of cooperation between representatives of different environments, in particular: academia, the prison officers, mediators and mediation centres, judges, probation officers, prosecutors, representatives of social assistance, institutions supporting victims, non-governmental organisations and other entities interested in promoting alternative methods of dispute resolution.

The direct addressees of the project were those participating in post-sentence mediation, i.e. people deprived of their liberty, victims of crime and even their families. In addition, the project also directly targeted prison officers and employees as well as probation officers. They participated in postgraduate studies in mediation and restorative justice, so they could prepare their charges for the mediation process, undertake activities aimed at modernising rehabilitation methods or social readaptation of convicts, participate in research on scientific issues related to the implemented project as well as improve the process of project

sprawiedliwości naprawczej w sprawach karnych, in: *Mediacja w kierunku ugody*, academic editing M. Romanowski, Warsaw 2021, p. 70-71, after: Data sheet for the Minister of Justice for entrustment of tasks under the funds of the Fund for Victims' Aid and Post-Penitentiary Assistance - Justice Fund for the implementation of the project entitled "Pilot programme implementing the concept of restorative justice in the Regional Inspectorate of Prison Service in Lublin") (unpublished typescript of the project data sheet), Academy of Justice, Warsaw 2020.

⁴ A. Gmurowska, *Sprawiedliwość naprawcza – program pilotażowy (...)*, op. cit., p. 75-76.

implementation in penitentiary units, coordinate cooperation with mediators, judges, other institutions, etc. The project involved mediators from the Lublin Arbitration and Mediation Centre, whose task was to conduct mediation duty in penitentiary units and mediation with the participation of inmates. The recipients of the project indirectly included representatives of other professional groups (e.g. attorneys, counsels, legal advisers, prosecutors, the police), institutions and NGOs with objectives converging with the concept of the implemented project⁵.

Key project activities were carried out in the Lubelskie Voivodeship, particularly in ten penitentiary units subordinate to the Head of the Regional Inspectorate of Prison Service in Lublin, i.e. in: Prison in Biała Podlaska⁶, External Ward in Zabłocie⁷, Prison in Chełm⁸, Prison in Hrubieszów⁹, Prison in Opole Lubelskie¹⁰, Prison in Włodawa¹¹, Prison in Zamość¹², External Ward in Zamość¹³ and in the

⁵ Final report. Summary of the project entitled “Pilot programme implementing the concept of restorative justice in the Regional Inspectorate of Prison Service in Lublin” and the results of research and recommendations in the field of standardisation of mediation in prison isolation (unpublished typescript of the report by A. Lewicka-Zelent, G. Skrobotowicz and A. Gmurowska), Academy of Justice, Warsaw 2022.

⁶ the oldest penitentiary unit in the Lublin region intended for penitentiary recidivists, which also houses a ward for temporarily detained prisoners, a semi-open ward and a ward for alcohol-dependent prisoners. The capacity of the unit is 395 beds. See <https://sw.gov.pl/strona/opis-okregowy-inspektorat-sluzby-wieziennej-w-lublinie> [accessed: 26 September 2022].

⁷ a penitentiary unit of the semi-open and open type intended for penitentiary offenders, subordinate to the Penitentiary Institution in Biała Podlaska. The capacity of the unit is 125 beds. See <https://sw.gov.pl/strona/opis-zaklad-karny-w-bialej-podlaskiej> [accessed: 26 September 2022].

⁸ a closed-type unit for convicted male recidivists with custody suits, a semi-open-type ward for men and a therapeutic ward for recidivists with non-psychotic mental disorders or mental retardation. The capacity of the unit is 706 beds. See <https://sw.gov.pl/strona/opis-okregowy-inspektorat-sluzby-wieziennej-w-lublinie> [accessed: 26 September 2022].

⁹ a closed-type unit for repeat offenders with custody suits and semi-open-type units for first-time offenders and juveniles. Prisoners with physical disabilities may also serve their sentence in the unit. The capacity of the unit is 630 beds. See <https://sw.gov.pl/strona/opis-okregowy-inspektorat-sluzby-wieziennej-w-lublinie> [accessed: 26 September 2022].

¹⁰ a closed-type prison for male convicts serving a sentence of imprisonment for the first time and juveniles with two separate wards for pre-trial detainees and a separate ward of a semi-open-type establishment for male convicts serving a sentence of imprisonment for the first time. The capacity of the unit is 627 beds. See <https://sw.gov.pl/strona/opis-okregowy-inspektorat-sluzby-wieziennej-w-lublinie> [accessed: 26 September 2022].

¹¹ a penitentiary unit of the closed and semi-open type for recidivists, in which the Continuing Education Centre operates. The capacity of the unit is 507 beds. See <https://sw.gov.pl/strona/opis-okregowy-inspektorat-sluzby-wieziennej-w-lublinie> [accessed: 26 September 2022].

¹² penitentiary unit for male convicts serving their first custodial sentence, including juveniles. The capacity of the unit is 644 beds, including 285 in the Prison in Zamość and 359 in the subordinate External Ward in Zamość. See <https://sw.gov.pl/strona/opis-okregowy-inspektorat-sluzby-wieziennej-w-lublinie> [accessed: 26 September 2022].

¹³ The External Ward in Zamość, which is subordinate to the Penitentiary Institution in Zamość, is a penitentiary unit of the semi-open type, intended for 359 male convicts serving

Remand Prison in Lublin¹⁴ and Remand Prison in Krasnystaw¹⁵. The consideration of penitentiary cases and the supervision of the enforcement of criminal sentences in these units belonged (depending on the location of the individual prisons and detention centres) to the jurisdiction of two courts: Regional Court in Lublin and Regional Court in Zamość. Therefore, the penitentiary units, already at the conception stage of project creation, were divided into two groups¹⁶.

II.3. Steps in implementing the post-sentence mediation pilot programme

The project was implemented in stages. The first phase covered the period from June 2020 to June 2021, the second phase covered the period from July 2021 to February 2022 and the final phase included the completion of the project, a summary of its effects and the development of practical recommendations.

Firstly (stage one), organisational measures were taken to launch and run a postgraduate course in “Mediation and Restorative Justice”, dedicated to prison officers and professional probation officers, and inter-university scientific and didactic cooperation was established between the project initiator and the John Paul II Catholic University of Lublin. Secondly, rooms were selected in the penitentiary units included in the pilot programme to be used for on-call mediators, information meetings and mediation. The rooms were equipped with furniture, computer hardware and printers, the purchase of which was funded under the project, while Internet access for mediation using electronic means of communication was provided and funded by the prison service. Mediation coordinators and supervisors have been appointed in penitentiary units from among prison officers with mediation knowledge and skills. The Academy of Justice entered into an agreement with the Catholic University of Lublin and Centre

their sentence for the first time. See <https://sw.gov.pl/strona/opis-oddzial-zewnetrzny-w-zamosciu> [accessed: 26 September 2022].

¹⁴ the largest penitentiary unit in the Lublin region, for women and men in pre-trial detention, as well as male and female convicts serving their sentences for the first time. The unit also has a diagnostic centre for psychological-penitentiary examinations and a ward for the so-called “dangerous” inmates. The nominal capacity of the unit is 1,048 beds. See <https://sw.gov.pl/strona/opis-okregowy-inspektorat-sluzby-wieziennej-w-lublinie> [accessed: 26 September 2022].

¹⁵ a unit for recidivists qualified to serve their sentence in a semi-open and open facility. The capacity of the unit is 275 beds. See <https://sw.gov.pl/strona/opis-okregowy-inspektorat-sluzby-wieziennej-w-lublinie> [accessed: 26 September 2022].

¹⁶ Group one consisted of units under the Regional Court in Lublin: Custody Suite in Lublin, Penal Institution in Chełm, Penal Institution in Opole Lubelskie, Penal Institution in Włodawa, Penal Institution in Biała Podlaska and External Ward in Zabłocie. The second group consisted of units subordinate to the Regional Court in Zamość: Penal Institution in Zamość, External Ward in Zamość, Custody Suite in Krasnystaw and Penal Institution in Hrubieszów.

for Arbitration and Mediation to organise and conduct information meetings for inmates (mediation on-call services) and mediation with convicts in prisons and detention centres so that mediators ready to take part in the pilot programme could begin their office hours and information meetings with inmates, followed by mediation procedure. The COVID-19 pandemic and the associated restrictions caused several months of delays in the start of mediation on-call services and meetings. However, it was the time for the development, consultation and implementation by the project manager¹⁷ of the necessary project documentation, in particular the documentation related to mediation on-call services, or the Rules for the organisation and conduct of extrajudicial mediation at the stage of enforcement proceedings, defining the principles of organisation and detailed conditions of out-of-court mediation conducted by a mediator at the stage of enforcement proceedings between parties to a conflict, in which at least one of the parties was a convicted person serving a prison sentence, incarcerated in a penitentiary unit located on the territory of the Regional Inspectorate of Prison Service in Lublin¹⁸. Mediators started their office hours in penitentiary units in August 2020 and mediation meetings in November 2020. According to the project, the on-call services were to be rendered in each unit for 4 hours once a week (an average of 4 on-call services per month).

In the meantime, a research team was set up to undertake academic research into the feasibility of post-sentence mediation, to analyse the course of the pilot programme and to develop a model for the operation of mediation as a form of restorative justice at the stage of enforcement of the sentence imposed. A broader description of the organisation and conduct of this research is provided later in this chapter, while a detailed analysis of the research findings is contained in Chapter Four. Measures have also been taken to spread the idea of mediation and restorative justice after sentencing. A project website was designed: <https://mediacjaisprawiedliwoscnaprawcza.pl/>, radio spots advertising mediation were broadcast on Radio Lublin and Radio Free, mediation coordinators and supervisors held talks and workshops for convicts in penitentiary units preparing them for the mediation process, organised numerous competitions related to the topic of mediation, posted important information about the pilot project on websites. The Academy of Justice distributed leaflets, posters and promotional material about the pilot programme. Promotional materials were distributed to penitentiary units participating in the pilot project, to the Arbitration and Mediation Centre in Lublin, to mediators involved in project activities, and interested parties located in the Lublin voivodeship: prosecutor's offices, courts, probation teams, the police, the District Family Assistance Centre, social welfare centres,

¹⁷ Project manager - second lieutenant Anna Gmurowska, assistant at the Institute of Legal Studies at the Academy of Justice, university lecturer, mediator.

¹⁸ <https://mediacjaisprawiedliwoscnaprawcza.pl/wp-content/uploads/2020/12/Regulaminy-mediacji-pozasadowych-na-etapie-postepowania-wykonawczego-Pilotaz.pdf> [accessed: [10 September 2022]]

the Regional Chamber of Legal Counsels in Lublin, the Regional Bar Council in Lublin, members of the research team, as well as students of the postgraduate course on “Mediation and Restorative Justice” conducted by the Academy of Justice within the framework of the project. 40 graduates have completed postgraduate studies in this field, including 20 prison officers and 20 probation officers¹⁹.

During the second phase of the implementation of post-sentence mediation, all the tasks initiated in 2020 were continued and the first pilot modifications and improvements were introduced, which not only allowed to address the issues identified during the implementation of the first phase of the project, but also contributed to minimising the risk of failures at a later stage in this innovative undertaking and even made it possible to introduce new solutions and improvements. For example, taking into account the specificity of individual penitentiary units, especially their purpose, functions or capacity, the target values of the planned mediation indicators were modified and their achievement was made more realistic by adapting them to the comments made by mediators and the actual needs of convicts who applied for mediation. Originally, the project assumed the same number of mediations in each penitentiary unit (i.e. 5 mediations in 2020, 10 mediations in 2021 and 5 mediations in 2022), which turned out to be unrealistic in the course of the project. Therefore, the target value of the mediation indicator was adjusted to the total number of all mediation procedures initiated by convicts, regardless of the type and location of the penitentiary unit where they served their sentence (200 mediations throughout the project period). On the other hand, prison officers, in cooperation with the mediators and the project manager, developed good practices that resulted in specific, positive solutions that could be applied in similar conditions in other prisons and detention centres. The mediators developed a tool, i.e. the form to inform the prison administration when a convict enters the mediation process in order to give the convict the so-called “100 criterion” in the Central Database of Persons Deprived of Liberty for the time period between entering mediation and its completion. The tool hid an element of innovation, as it served to suspend the transport of the inmate to another penitentiary unit until the mediation process was completed. Another noteworthy solution was the cooperation between mediation officers-coordinators and non-governmental organisations working to assist victims as well as other entities (social welfare centres, family assistance centres), helping to prepare victims for their informed participation in the mediation process together with the convicted person. This initiative was in line with the project’s leading objective, namely to support the system of assistance to people victimised by crime.

¹⁹ The interim report “Development and dissemination of research on mediation in prison isolation. Standardising the conduct of mediation in prison settings - interim report (as for 30 June 2021)”. (unpublished typescript of the report by A. Lewicka-Zelent, G. Skrobotowicz and A. Gmurowska), Academy of Justice, Warsaw 2021.

Throughout the project implementation period, mediators played a crucial role, not only conducting information activities for inmates as part of their on-call duties in the penitentiary units, but also and above all organising post-sentence mediations - including the use of electronic means of remote communication (telephone, video calls via Skype); they worked together with mediation coordinators, judges and probation officers, participated in studies and carried out dissemination activities of the project activities²⁰.

The third and final phase fell between March 2022 and October 2022 and included: on-call mediation services and meetings until June 2022; completion of the second edition of the postgraduate course in Mediation and Restorative Justice; modification of the project timeframe; and preparation of the final report and evaluation of the project. In July 2022, a conference “Summary of the activities carried out under the project entitled ‘Pilot programme implementing the concept of restorative justice in the Regional Inspectorate of Prison Service in Lublin’ financed by the Justice Fund administered by Minister of Justice” was organised, with the participation of the Deputy Minister of Justice, Marcin Romanowski, PhD. The conference, organised in Lublin by the Academy of Justice, was aimed to discuss the prospects for the development of post-sentence mediation in Poland as well as the challenges during the implementation of the project and the successes of this pilot programme. Speakers at panel discussions included Deputy Minister of Justice, Marcin Romanowski, PhD, representatives of the courts, prison officials, mediators participating in the project, and academics, including staff from the Maria Curie-Skłodowska University in Lublin, the John Paul II Catholic University of Lublin and the Academy of Justice. The final activity to close the project was to summarise the effects of the pilot programme, develop practical recommendations as well as produce and disseminate a scientific publication.

II.4 Progress in the implementation of mediation during the imprisonment phase

The activities provided for in the pilot programme focused mainly on the development of mediation at the stage of imprisonment, which was intended not only to support the effective rehabilitation and social readaptation of convicted prisoners, but also to enable those who had been the victims of crime to take part in a dialogue with the offender regarding the type of reparation for the harm caused. The effects of the initiated mediation procedure in the period from the beginning of the project until 30 June 2022 are shown in the table below.

²⁰ Final report. Project summary

Table 1. Statistical summary - plan versus implementation of project mediation for the period 20 April 2020 to 30 June 2022.

YEAR	Plan - number of mediation procedures scheduled per year	Implementation - number of mediation procedures initiated in the reporting year (indicators) and the achievement level of the indicator (percentage) in relation to the mediation procedures scheduled in the reporting period			
		total number of mediation procedures initiated	number of mediation procedures initiated and concluded by way of settlement	number of mediation procedures initiated that did not result in a settlement	the achievement level of the indicator (in percentage) in relation to the planned mediation procedures in the reporting year
2020 (20/04/2020 - 31/12/2020)	50	6	6	0	12%
2021 (01/01/2021 - 31/12/2021)	100	95	92	3	95%
2022 (01/01/2022 - 30/06/2022)	50	72	54	18	144%
Total for the period from 20.04.2020 to 30.06.2022	200	173	152	21	86.5%

Source: A. Gmurowska, on the basis of mediation documentation produced by mediators from the Centre for Arbitration and Mediation in Lublin involved in project activities

As may be seen from the above data, out of 200 scheduled mediations throughout the project period, a total of 173 mediations involving inmates were initiated, of which 152 mediations resulted in a mediation settlement. The lowest achievement level of the indicator with respect to the mediation procedures carried out was in 2020 (12 per cent), mainly due to factors such as: restrictions due to pandemic COVID-19, the procedure for the development and implementation of the Rules of Procedure of mediation at the stage of enforcement proceedings, or the gradual increase in the awareness of inmates about mediation as a new form of dialogue with the victim. In contrast, the highest achievement level of the indicator was in 2022 (144 per cent), when the COVID-19 pandemic situation had stabilised and the pilot programme had already been in place and its

effects had been noticeable. At that point, the inmates were already much more aware - than at the beginning of the pilot programme - of the role of mediation in their lives, making them more willing to initiate mediation procedure. Mediation meetings with mediators on duty in penitentiary units and numerous educational and promotional activities on mediation carried out during the project by prison officers played a special role in raising the awareness among prisoners²¹.

Based on the mediation documentation provided by the mediators (the personal data of the mediation participants were anonymised), it appears that the level of mediation settlements concluded in relation to the mediation procedure initiated, expressed as a percentage, should be considered relatively high, (87.86 per cent), as shown in the table below.

Table 2. Mediation effectiveness level - percentage of mediation agreements concluded in relation to mediation procedures initiated

YEAR	Number of mediation procedures scheduled per year	Number of mediation procedures initiated and completed in the reporting period			Effectiveness of mediation expressed in percentage (ratio of the number of mediations concluded with a mediation settlement agreement to mediation procedures initiated)
		Total	with mediation settlement	without mediation settlement	
2020 (20/04/2020 - 31/12/2020)	50	6	6	0	100
2021 (01/01/2021 - 31/12/2021)	100	95	92	3	96.84
2022 (01/01/2022 - 30/06/2022)	50	72	54	18	75
Total for the period from 20.04.2020 to 30.06.2022	200	173	152	21	87.86

Source: A. Gmurowska, on the basis of mediation documentation produced by mediators from the Centre for Arbitration and Mediation in Lublin involved in project activities

²¹ Final report. Project summary (...), Warsaw 2022

The effectiveness of post-sentence mediation was determined as a percentage by comparing the number of mediations concluded with a mediation settlement to the number of mediation procedures initiated during the relevant period of the pilot programme. The highest effectiveness was recorded in 2020, when six out of six mediation procedures initiated were concluded with a mediation settlement agreement. The lowest effectiveness was recorded in 2022, when out of 72 mediation procedures initiated - 54 resulted in a mediation settlement and 18 without any settlement. In total, throughout the project period, out of 173 documented mediation procedures initiated - 152 resulted in a settlement agreement, indicating that the mediation settlement agreement closure rate reached 87.86 per cent. According to the authors of the final report - the success rate of mediation introduced at the enforcement stage - was considered high²².

At this point, it is also worthwhile to take a closer look at the progress of the information meetings conducted by mediators during their office hours organised in prisons and detention centres, where the pilot programme was implemented. A total of 826 on-call sessions were conducted over the two-year programme period, during which mediators conducted information meetings on mediation for 3302 hours. Inmates, throughout the project period, benefited from such meetings with a mediator 4095 times (some used on-call services multiple times)²³.

II. 5. Positive effects of the individual project tasks

Task	Positive effects of the task
Task 1. Improving the qualifications of prison staff and officers and probation officers - organisation of postgraduate studies in mediation and restorative justice.	The participation of prison officers and professional probation officers in the postgraduate studies improved their knowledge in the area of mediation and the concept of restorative justice as well as their competence in conflict resolution in compliance with the principles of the restorative justice paradigm. The class provided the specialists with theoretical and practical knowledge on how to prepare offenders for mediation. They were able to use the information and skills they gained in alternative conflict resolution when working with inmates, which may have indirectly increased interest in mediation and caused inmates to want to undertake mediation.

²² Final report. Project summary (...), Warsaw 2022

²³ A. Gmurowska, Summary of on-call services carried out by mediators during the project period (unpublished typescript of report dated 4 July 2022 as for 30 June 2022), Academy of Justice, Warsaw 2022.

<p>Task 2: Preparation of mediation rooms at the penitentiary units of the Regional Inspectorate of Prison Service in Lublin.</p>	<p>The preparation of mediation rooms and office hours of mediators represented an improvement in the availability of dedicated places in penitentiary units and allowed the comfort of a free conversation with a mediator in complete confidentiality.</p> <p>The positive impact of the task was mainly to support the effective readaptation of convicted persons and the development of a system of assistance for victims of crime.</p>
<p>Task 3: Mediation on-call services in the penitentiary units of the Regional Inspectorate of Prison Service in Lublin.</p>	<p>The office hours of mediators in the penitentiary units of the Regional Inspectorate of Prison Service in Lublin were held to provide interested parties with the information on the institution of mediation, in particular on the principles of mediation, the manner of starting and conducting the mediation process, the benefits and costs of mediation. As part of this task, the mediators on duty were also able to initiate mediation procedure at the request of inmates. An increased interest in inmate participation in mediation was one of the positive effects observed.</p>
<p>Task 4: Appointment of Mediation and Restorative Justice Coordinators at the Regional Inspectorate of Prison Service in Lublin.</p>	<p>The appointed Mediation Coordinators, while carrying out their tasks in penitentiary units, worked together with mediators in organising information meetings; and within the framework of their activities, they contributed in particular to: the development of mediation in prison isolation; to ensure efficient communication between inmates and mediators; and to undertake joint meetings with judge mediation coordinators, penitentiary judges, probation officers and other institutions (e.g. social welfare centres, associations) as regards the possibility of using mediation for rehabilitation purposes and for the social readaptation of convicts.</p>
<p>Task 5: Education of the public - spreading the idea of mediation and restorative justice.</p>	<p>Education of the public and dissemination of the concept of restorative justice mediation through distribution of promotional materials in penitentiary units, courts, prosecutor's offices, the police, among probation officers and in social welfare centres as well as radio campaigns conducted contributed to raise awareness of the legal and practical aspects of mediation and the role of restorative justice and, above all, to increase public awareness of the potential for the development of social competences and skills for constructive conflict resolution. Mediators, mediation coordinators in penitentiary units, penitentiary educators, probation officers, postgraduate students of mediation, lawyers, legal advisers also played an important role in disseminating the concept of mediation and restorative justice. Interested parties could also make use of the materials provided on the project website.</p>

<p>Task 6: Research, analysis, diagnosis and dissemination - summary report.</p>	<p>The data of the final report and the monograph may contribute to the further development of restorative justice and the dissemination of research on mediation in prison isolation. They are an expression of the identified needs and potential problems related to the implementation of the pilot programme. Additionally, they may also contribute to minimising the risk of failures in the later introduction of solutions throughout the country. In turn, the developed standards shall allow this type of mediation to be conducted at a high level, in a uniform, systematic manner, which shall also have a positive impact not only on the image of the mediation process and mediators, but also and above all on improving the functioning of the prison system as measured by a reduction in recidivism.</p>
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II. 6. How project activities have contributed/may contribute to addressing the causes of crime?

It was assumed that the activities undertaken as part of the project funding agreement have contributed/may contribute to addressing the causes of crime in the following ways:

- by preparing and creating the best possible conditions and opportunities in penitentiary units for the development of mediation as a form of restorative justice (training of staff with mediation knowledge and skills; studies/training for prison staff in mediation and restorative justice including, *inter alia*, the issues of preventive measures and techniques of relieving tension; establishment and equipment of mediation rooms in penitentiary units; organising mediation office hours and information meetings; development of restorative justice programmes aimed at redressing the wrongdoings inflicted on the victims; incorporation of restorative justice mechanisms into the so-called “liberty programmes”; conducting mediation in prison isolation with the participation of an impartial mediator; financing the costs of the mediation conducted from the Justice Fund; taking into account the settlement reached as a result of mediation for consideration of conditional early release; conducting information and education campaigns concerning the value of restorative justice and the benefits of mediation, etc.);
- by appropriate training of prison staff and probation officers, i.e. the organisation of postgraduate studies on mediation and restorative justice, especially for the staff of educators and teachers supporting the mediation and restorative justice coordinators working in the units and probation officers, given that the knowledge gained during the postgraduate studies

may be used by prison officers and probation officers in the course of their work with inmates, victims and people leaving prison;

- by the acquiring certain social skills by convicts, especially those conducive to constructive conflict resolution (thanks to educational and rehabilitation activities with inmates carried out on the premises of the units, such as workshops, lectures and mediation simulations; implementation of rehabilitation programmes addressed to a selected group of inmates, etc.);
- by increasing interest among inmates in restorative justice and in resolving disputes amicably (through mediation on-call services, information meetings conducted by professional mediators at penitentiary units; mediation with the participation of convicts; educational and rehabilitation activities with inmates and rehabilitation and social readaptation programmes by trained prison staff and probation officers, etc.);
- by creating conditions for a change in the attitudes of inmates, a change in the way in which inmates, victims and society think about alternative dispute resolution methods and restorative justice oriented towards the fullest possible compensation for the harm caused, assuming the active participation of the victim, the perpetrator and persons from the local community in an amicable settlement to redress harm and terminate cases arising from the occurrence of crime (as a result of inmates joining voluntary mediation);
- by using mediation at the stage of imprisonment as an aid to the proper course of rehabilitation of the convict, and by including voluntary access to mediation in the individual programmes of influencing convicts, fostering the repair of relationships between the convict and the persons harmed by the crime, conducive to the redress of grievances or reparation for a criminal event;
- by subjecting convicts to the interventions of the penitentiary and probation services, aimed at introducing and activating restorative justice mechanisms, particularly in preparation for release from prison;
- by encouraging perpetrators to resolve disputes in a constructive manner and to take responsibility for their actions, while enabling them to change for the better, including encouragement to stop committing crimes;
- by assisting in the reintegration of convicts, facilitating compensation and mutual understanding and satisfaction among participants in the restorative justice process (mediation conducted with the participation of professional mediators, support from the prison and probation officers, funding of the costs of mediation conducted from the Justice Fund; taking into account the participation of the convict in the mediation process and the conclusion of the mediation settlement with the periodic assessment of the convict's progress or with the consideration of the application for early release, etc.).

II. 7. Organisation and conduct of research

In line with the assumptions of the project entitled “Pilot programme implementing the concept of restorative justice in the Regional Inspectorate of Prison Service in Lublin”, one of the important tasks was to conduct scientific research and its analysis as well as to examine and evaluate the course of the pilot programme, develop *lex ferenda* proposals, and disseminate access to the results of scientific research. It was planned to produce a partial report and a final report summarising the entire implementation of the research project and to issue a scientific monograph in the form of a peer-reviewed book publication. To this end, a research team was set up, whose members specialised in the subject of mediation. The research team consisted of: Agnieszka Lewicka-Zelent, PhD (Maria Curie-Skłodowska University in Lublin), Grzegorz Skrobotowicz, PhD (John Paul II Catholic University of Lublin), Anna Gmurowska (Academy of Justice) and Aleksandra Rusin-Batko (John Paul II Catholic University of Lublin, Judge of the District Court in Zamość, Head of the Department of Strategy and European Funds in the Ministry of Justice supervising the Mediation Unit) and Agnieszka Markocka (Head of the Mediation Unit in the Ministry of Justice)²⁴.

The research was conducted in stages. The first phase covered the period from June 2020 to June 2021 and the second phase covered the period from July 2021 to February 2022. The research team began its work in June 2020 by developing conceptual documentation, performing library searches, and developing research tools on which to conduct the study.

The main objective of the study was to assess the functionality and effectiveness of the tested solutions (in particular, the pilot mediation on-call services in penitentiary units and mediation with convicts) in the context of how to reduce the recidivism of convicts and improve the situation of persons victimised by crime, which the Academy of Justice adopted as the main assumption of the project implemented. It was also accepted that proposals for model standards of mediation in prison isolation would be developed²⁵.

In the first phase, falling between June 2020 and June 2021, the conducted research focused on:

- the opinions on mediation of prison officers from penitentiary units in the area of the Regional Inspectorate of Prison Service in Lublin;

²⁴ *Data sheet for the Minister of Justice for entrustment of tasks under the funds of the Fund for Victims' Aid and Post-Penitentiary Assistance - Justice Fund for the implementation of the project entitled “Pilot programme implementing the concept of restorative justice in the Regional Inspectorate of Prison Service in Lublin”* (unpublished typescript of the project data sheet), Academy of Justice, Warsaw 2020.

²⁵ Interim report. *Development and dissemination of research on mediation in prison isolation. Standardising the conduct of mediation in prison settings - interim report as for 30 June 2021* (unpublished typescript of the interim report), Academy of Justice, Warsaw 2021, p. 14.

- the views on mediation of family members of detainees and determination of their level of expectation regarding reparation from offenders;
- verification of the current state of implementation of the idea of restorative justice at the stage of enforcement of sentence to isolation as punishment - based on the opinions of a selected group of attorneys;
- creation of the first standards of conducting penal mediation in conditions of prison isolation through the development and implementation of the Rules of Organization and Conducting Out-of-Court Mediation at the Stage of Enforcement Proceedings, within the framework of the implemented project entitled “Pilot programme implementing the concept of restorative justice in the Regional Inspectorate of Prison Service in Lublin”;
- assessment of the satisfaction of inmates in penitentiary units from the area of the Regional Inspectorate of Prison Service in Lublin with respect to their participation in mediation office hours and determination of the extent to which they felt ready to participate in the mediation procedure;
- evaluation of the usefulness of the knowledge, skills and competences acquired by prison officers and professional probation officers who are graduates of the first edition of the postgraduate course on Mediation and Restorative Justice in the academic year 2020/2021, conducted by the Academy of Justice, within the framework of the pilot project implemented, in their professional work, and determination among these graduates to what extent, after participating in the studies dedicated thereto, their attitude towards mediation and restorative justice has changed, especially in the context of the possibility of conducting mediation “after conviction”²⁶.

The presentation of the above research results described in this monograph is based on the authors’ studies, which are the result of more than 12 months of research work carried out as part of the project entitled “Pilot programme implementing the concept of restorative justice in the Regional Inspectorate of Prison Service in Lublin” and included in the individual chapters of the report “Development and dissemination of research on mediation in prison isolation. Standardising the conduct of mediation in prison settings - interim report as for 30 June 2021”²⁷.

Results of surveys conducted among prison officers and probation officers

The first study was conducted in 2020 by Agnieszka Lewicka-Zelent, PhD (Professor at the Maria Curie-Skłodowska University) among prison

²⁶ Interim report..., op. cit. p. 14-15.

²⁷ Interim report. *Development and dissemination of research on mediation in prison isolation. Standardising the conduct of mediation in prison settings - interim report as for 30 June 2021* (unpublished typescript of the interim report), Academy of Justice, Warsaw 2021, p. 5-221.

officers and professional probation officers. They were conducted in eight penitentiary units, including two custody suites and six penitentiary institutions from the area of the Regional Inspectorate of Prison Service in Lublin and in nine district courts subordinate to the Regional Court in Lublin and Zamość. The study involved 140 prison officers and 40 professional probation officers.

Among the group of prison officers surveyed, almost half were women (48.6 per cent). Their average age was 37 years and eight months, and their average length of time in the profession was 10 years and four months, indicating their considerable professional experience. The youngest woman was 26 years old and the oldest was 60 years old. 62 per cent of them were between 31 and 40 years old, and 27 per cent were between 41 and 50 years old. The average length of service in the profession of the officers surveyed was 10 years and 4 months. The shortest length was 4 months and the longest - 25 years. The vast majority of officers taking part in the survey were in the profession for more than 11 years (61 per cent) and a further 20 per cent - between 5 and 10 years, which is indicative of the extensive work experience of most of those surveyed.

Among the respondents, such as professional probation officers, women (65 per cent) outnumbered men (35 per cent). The youngest woman was 26 years old and the oldest was 64 years old. The youngest men (those between 26 and 30 years of age) were the least numerous group. 23 per cent of probation officers were aged between 31 and 40, with the rest aged over 40 (73 per cent). The average for all individuals was 46 years and 4 months. The length of service varied and ranged from 1 to 40 years, with respondents working for an average of 19 years. 8 per cent of the persons in the study group did not have much experience as a probation officer, since they had been employed for between 1 and 5 years. The same number of respondents had been working for 6 to 10 years. The largest number of persons held the post of a curator for 11 to 15 years (28 per cent) and 16 to 20 years (percentage). 30 per cent of the respondents had a length of service between 21 and 30 years.

The aim of the study was to find out the opinions on mediation of prison officers from penitentiary units from the area of the Regional Inspectorate of Prison Service in Lublin and professional court probation officers from district courts subordinate to the Regional Court in Lublin and Zamość.

The main issue of the study was encapsulated in the following questions: What views do the surveyed prison officers have on mediation? What views do the surveyed professional probation officers have on mediation?

The survey was conducted among prison officers using a diagnostic survey method. A survey questionnaire was developed for the project purposes and consisted of 23 questions, 8 of which were open-ended, 5 rated on a Likert scale from 1 to 5 and the remaining 10 were single or multiple-choice questions.

The survey referred, among other things, to such areas as: the knowledge of prison officers about mediation; the educational needs of respondents regarding mediation; the opinions of officers on the experiences and needs

of inmates regarding mediation; and the possibilities of using mediation in work with inmates in the opinion of the prison officers surveyed. It was recognized that in order for prison officers and professional probation officers to be able to encourage inmates to participate in mediation, they themselves should have sufficient knowledge of the subject.

The survey was conducted among probation officers using a diagnostic survey method. A survey questionnaire was developed for the project purposes and consisted of 10 questions, 2 of which were open-ended, 5 rated on a Likert scale from 1 to 5 and the remaining 10 were single or multiple-choice questions.

The following areas were examined: the knowledge of mediation of professional probation officers; the educational needs of professional probation officers with respect to mediation; and the opportunities for using mediation in their work as perceived by the probation officers surveyed.

The study issues and results presented in this monograph are described in more detail by the author in the sub-report in chapter "Mediation involving persons deprived of their liberty. Research study conducted among prison officers and professional probation officers within the framework of the project 'Pilot programme implementing the concept of restorative justice in the Regional Inspectorate of Prison Service in Lublin'"²⁸.

The empirical material collected, made it possible to answer the questions posed: What opinions do the surveyed prison officers have about mediation? What opinions do surveyed professional probation officers have about mediation? What knowledge do respondents have of mediation?

The results of the different study areas indicate that as far as the knowledge of mediation is concerned: prison officers participating in the survey knew more about mediation in a legal context than in a psychological and pedagogical context. More knowledge deficits could be observed with respect to: conflict, negotiation and mediation. Prison officers were aware of some of their knowledge and competence shortfalls related to mediation. Slightly half of the respondents felt they had a basis of knowledge in this area (51 per cent), while nearly a third admitted to having some significant knowledge gaps. Officers were found to be very aware of their limitations as regards the knowledge of mediation. Among professional probation officers, there were also some knowledge gaps with respect to the issue of mediation. It was observed that the probation officers who participated in the study had the greatest knowledge of the differences in negotiation in the context of the mediation process, but also the most significant

²⁸ A. Lewicka-Zelent "Mediacje z udziałem osób pozbawionych wolności. Badania przeprowadzone wśród funkcjonariuszy SW i zawodowych kuratorów sądowych w ramach projektu Pilotaż programu wdrażającego ideę sprawiedliwości naprawczej na terenie Okręgowego Inspektoratu Służby Więziennej w Lublinie" in: Interim report. Development and dissemination of research on mediation in prison isolation. Standardising the conduct of mediation in prison settings - interim report as for 30 June 2021 (unpublished typescript of the interim report), Academy of Justice, Warsaw 2021, p. 49-125.

legal knowledge deficits with respect to mediation and more practical methods of application of its strategies.

In the area of educational needs, it was found that the vast majority of prison officers (85 per cent) had not yet attended any mediation training or mediation meetings (84 per cent). 39 per cent of them expressed a desire to mediate conflicts in their work in the future because of the many benefits they perceived from their clients' participation in mediation. They believed it was an effective method of working with the parties. Officers who were not interested in mediation in a prison or custody suite most often justified this approach by: the lack of mediation competences and skills in mediating conflicts, additional difficulties in their work, the lack of need and ineffectiveness of mediation, or even the conflict between the mediation function and their current professional role. Officers were mostly interested in topics relating to conflict (56 per cent) and manipulation and difficult situations (54 per cent). They were much more likely to expect the development of specific practical skills related to mediation during conflicts between other people (nearly half of the respondents). A third of the respondents wanted to obtain basic knowledge of mediation. They were least interested in knowledge of mediation law and the preparation of mediation documentation. It proves that they need to acquire competences that are directly useful in their professional work. If they had the opportunity to participate in different forms of training in mediation, the greatest number of officers would like to participate in training and courses organised outside the unit (37 per cent), postgraduate studies (32 per cent) and in-unit training (31 per cent), which shows very different preferences in this area. The results showed that there was a great need to improve mediation competences among prison officers.

The educational needs of professional probation officers were equally significant. One in five people have had mediation training to date. A significant proportion of the remaining probation officers (73 per cent) wanted to develop their mediation skills. They were most interested in post-sentence mediation training, on the other hand, the lack of interest in mediation in family cases was probably due to the fact that the participants in the survey were probation officers exercising probation supervision and not just supervision of their wards. Their greatest training needs related to the practical aspects of mediating and resolving conflicts using a variety of techniques (68 per cent), responding to difficult situations, including manipulation by others (65 per cent). Less than half of probation officers would like to gain knowledge of the basics of mediation, including the law, and develop skills to prepare the necessary documentation. 65 per cent of the respondents would like to mediate conflicts involving their wards. So far, none of them have had this opportunity or possibility.

In the area of interest shown by prisoners on mediation, more than half of prison officers (53 per cent) stated that they had never been asked questions about mediation by prisoners and almost a third of them had been asked such questions rarely. It means that in the professional practice of prison officers, inmates

occasionally asked them questions related to mediation. When inmates asked officers such questions, most of the inquiries concerned basic knowledge of mediation, i.e. what is mediation?, what does it involve?, what are the benefits of participating in mediation?, with inmates being more interested in the possibilities of participating in family mediation rather than criminal mediation;

When the respondents were asked to indicate the entities that should conduct mediation classes in penitentiary units, 45 per cent of them stated that mediators should be responsible for such mediation classes in penitentiary units, while according to 13 per cent of the respondents - these should be representatives of the entities mentioned in Article 38 of the Criminal Enforcement Code, i.e. persons from outside prisons and detention centres, when possible. On the other hand, among penitentiary staff, psychologists and penitentiary educators were considered the most competent to teach mediation.

In the area of the use of mediation in their professional work, prison officers rarely mediated informally with prisoners. Almost half of them had never done it and 11 per cent used mediation as a “working tool” with their clients. Their opinions on how mediation could be used in their work were very divided. One in five respondents claimed that it is not possible to use mediation in their work, or rather it is not feasible due to various reasons inherent in the inmates: lack of interest on their part and lack of psychosocial competence or negative attitudes. Several respondents mentioned negative factors in the isolation environment and other aspects that concerned themselves (e.g. lack of mediation competence). The experiences of respondents related to mediation with inmates were limited, albeit encouraging in terms of counteracting the factors blocking the possibility of introducing such a procedure into penitentiary practice.

In the area of use of a mediator by the respondents, less than half of the prison officers wanted to use the assistance of a mediator in their professional work (43 per cent), especially in mediating conflicts with other staff (70 per cent) and superiors (61 per cent). The fewest respondents expected such support when resolving conflicts with prisoners (45 per cent). The vast majority were not prepared to impart knowledge about mediation to inmates (66 per cent). One in four felt that the conflicts presented by inmates were suitable for mediation. Most often, these concerned family matters. The others were convinced or rather inclined to say that conflicts involving their wards should not or could not be resolved in the presence of a mediator. On the other hand, one in four believed that it was possible to use mediation in work with prisoners, highlighting its qualities in terms of quick, effective conflict resolution and taking into account the principle of individualisation. The results showed that the respondents mostly perceived more barriers than opportunities with respect to using mediation in their work with prisoners. A similar question was answered by professional probation officers. The results of the survey showed that 45 per cent of probation officers saw the possibility of using mediation in their work with their wards, indicating some new alternative way of influencing wards. However, 45 per cent had no opinion

on the subject, which was probably related to their level of knowledge and mediation competence. One in five probation officers admitted to mediating informally with their wards, while a further 35 per cent said they sometimes mediated conflicts involving their wards. 43 per cent had never attempted informal mediation and did not want any support from a mediator in their work. In contrast, more than half of the probation officers surveyed (53 per cent) expected professional support from a mediator. Most felt that mediation was most applicable to conflicts between probationers and wards (43 per cent), half thought that mediation was widely used in their professional work in relationships with supervisors and other colleagues.

In the area of establishing personal resources in the form of social competences of the respondents, the purpose was to learn about their predominant style of conflict resolution and determine the level of their response strategies in difficult situations, using three standardised research tools: Based on K. Ostrowska's A-R Questionnaire (2002), B. Kłusek's Conflict Resolution Styles Questionnaire, Kłusek (2009) and Mediation Competence Questionnaire KKM by A. Lewicka-Zelent (2014), it was found that: prison officers very often: tried to solve the problems of each party together and make each party present their view of the problem in a clear way, creating a positive, uplifting atmosphere. They shared their opinions with the other party to the conflict and asked for their comments. They sought the most win-win solutions. Nevertheless, they acknowledged that they often showed the superiority of their position but rarely avoided the other party; they relied on fate when a conflict arose; they tried to refute the other party's positions and refrained from taking any action so that the problem could solve itself. The officers surveyed used mainly a conflict resolution method based on compromise and cooperation, while they were least likely to avoid confrontation in a conflict situation, which means they applied an approach considered the least desirable in interpersonal relations. The probation officers participating in the survey said that they very often: tried to solve the problems of each party together and made each party present their view of the problem in a clear way, creating a positive, uplifting atmosphere. They shared their opinions with the other party to the conflict and asked for their comments. They looked for solutions that were most beneficial to all and avoided those that were least beneficial, bearing in mind the expectations of each party so that everyone was satisfied. They tried to reconcile their wishes. They engaged in discussions, seeking common ground and trying to well understand the other party's position. They did not show the superiority of their position over that of other parties, so they respected them, allowing confrontation with the other party. Probation officers did not rely on fate when a conflict arose, and their predominant style of conflict resolution was collaborative. Depending on the situation, they sometimes used compromises, sometimes adapted or competed, or avoided confrontation. In the context of the study of the level of response strategies in difficult situations, prison officers often: became discouraged and stopped activities during which

they encountered difficulties; looked after their own interests and believed that what they faced depended on the actions they took. Nevertheless, they claimed that they sometimes or rarely behaved in the ways described in the other 40-plus statements from the A-R Questionnaire used to determine strategies for responding in problematic situations. Most preferred an opt-out strategy. 14 per cent liked to manage other people according to their own value system. They were open to new initiatives. In contrast, 12 per cent were not very resilient to frustration, often subordinated themselves to other people and had a rather pessimistic view of the world and people. They preferred stability and were happy to perform familiar tasks, treating them as their duty. They may have difficulty adjusting to new conditions. The vast majority of prison officers were characterised by a low level of attack strategy (93 per cent), meaning that they were guided by rationales in determining the extent to which they could achieve their life goals. They were not very spontaneous and could get attached to certain course of action in difficult situations. None of them were characterised by a high level of ruthlessness, which shows that they respected generally accepted principles and pursued preferred values, especially: health, dignity, truth and love. On the other hand, the probation officers were willing to say that in many situations they were able to find some kind of favourable solution for themselves and were able to look after their interests. They rather believed that what the challenges they faced were determined by their actions. They claimed that they were usually persistent in pursuing what they thought was good for themselves and were able to persuade their views and assert their rights. They confirmed that they were unable to behave in a certain way in problematic situations, e.g. to break down doors or shop windows to get what they wanted, to condemn those who break into shops to get money for alcohol, to take intoxicants, and to lose control under the influence of alcohol. They would not be able to commit suicide or pursue their goals by resorting to means contrary to the law or social and moral norms. It means that the vast majority of probation officers participating in the study were characterised by a low level of attack strategy and ruthlessness (95 per cent) contrary to particular individuals (3 per cent). One in five respondents preferred an opt-out strategy.

In the context of examining the level of mediation competence of the prison officers and probation officers surveyed, it was found that: prison officers participating in the study admitted that they encountered significant difficulties in developing a work programme based on their interpretation of the behaviour of the parties to the conflict, in conducting a mediation monologue, in cooperating with others in carrying out mediation tasks and in maintaining mediation documentation in cooperation with other mediators, which is directly related to their lack of knowledge and skills in this area. However, they rated quite highly some of their mediation skills: the ability to interpret different situations, adapting the way of communication to the specific case, conducting a dialogue, the ability to read and name other people's needs and emotions, building an atmosphere of trust,

the ability to ask the right questions, active listening, problem solving, establishing and maintaining a conversation, drawing conclusions. They claimed to have little trouble keeping secrets, accepting others regardless of their behaviour and beliefs and treating them as partners, providing them with support and respect. The evaluation of the individual statements of the KKM Mediation Competence Questionnaire made it possible to determine that the majority of prison officers have a low level of mediation competence (71 per cent). Probation officers participating in the study said they were able to keep confidentiality, listen to others and respect them. However, they would have difficulties in properly maintaining mediation records in cooperation with other mediators. They should rather be able to consider other people's positions and take their point of view, conduct mediation and negotiations. They saw which areas needed improvement in the context of mediating other people's conflicts. Half of the respondents (48 per cent) had a low level of mediation competence, whereas one in five had adequate competence.²⁹

Results of surveys conducted among family members of detainees

In 2021, A. Lewicka-Zelent conducted a survey among family members of detainees. The aim of the study was to find out the views of family members of prisoners as regards mediation and to establish their level of expectation of redress from offenders, and how do victims understand mediation?

Thanks to the courtesy and assistance of probation officers from the Probation Service Teams operating at the district courts falling within the jurisdiction of the Regional Court in Lublin and Zamość, a survey was carried out among 80 persons wronged by family members who are in penal institutions. The diagnostic survey was conducted in 2021 during the home visits of family probation officers employed in 6 district courts subordinate to Regional Courts in: Zamość (38 per cent) and Lublin (62 per cent).

Eighty family members of persons deprived of their liberty participated in the study. All respondents were of legal age. Women made up 80 per cent of the sample. The vast majority of respondents were women experiencing domestic violence. The age of the subjects ranged from 18 years old (n=3) to 70 years of age. (n=2). Most people were between 38 and 50 years old (51 per cent of the total). The average for all individuals was 43 years and 2 months.

The main issue of the study was encapsulated in the following question: What views do family members of prisoners have on mediation with offenders and what are their expectations of it? How do victims understand mediation?

²⁹ A. Lewicka-Zelent *"Mediacje z udziałem osób pozbawionych wolności. Badania przeprowadzone wśród funkcjonariuszy SW i zawodowych kuratorów sądowych w ramach projektu Pilotaż programu wdrażającego ideę sprawiedliwości naprawczej na terenie Okręgowego Inspektoratu Służby Więziennej w Lublinie"* in: Interim report..., op. cit. p. 114-122.

Based on the analysis of the results obtained, it was found that: more than half of the respondents correctly understood mediation (65 per cent). It was treated as a meeting between the perpetrator and the victim in the presence of a mediator, during which the parties involved were seeking a solution to the conflict, a way of repairing the harm and/or damage caused. The others admitted that they did not know what mediation was or defined it incorrectly. The results of the study further showed that, to date, only individual respondents have participated in family and criminal mediation with a family member who is in prison. It means that the respondents' experiences of constructive conflict resolution or establishing a form of reparation after a crime were very poor. It may be directly linked to their lack of knowledge of mediation. Relatively few respondents were also not interested in participating in mediation with an incarcerated family member (10 per cent). The others declared a willingness to participate in mediation, but did not feel ready to discuss redress with the perpetrators.

Nearly half of those surveyed considered a face-to-face mediation meeting with the offender - a family member - but of these, about 50 per cent expected the meeting to be held outside the prison, and the rest in the penitentiary unit. Other participants in the study preferred to participate in mediation indirectly (only in the presence of the mediator, without the offender) either online (6 per cent) or in the form of one-to-one meetings (39 per cent).

Victims perceived the benefits of participating in mediation after the verdict. A quarter of those surveyed, despite not knowing the benefits of mediation, would like to try to participate or did not see the advantages of mediation, which could be linked to a lack of knowledge. The main advantage of mediation as pointed out by the respondents was the possibility to resolve conflicts, to end problems, to reach an agreement and to lead to a situation in which the person leaving prison would be able to actively participate in family life by, among other things, changing their behaviour to a more socially acceptable one.

Respondents also had the opportunity to express their concerns about participating in post-sentence mediation. However, a few people could not say what they were afraid of, as they had no knowledge of mediation, and a further few had no fears about participating in mediation. 12 per cent felt that perpetrators were unable to honour their mediation commitments, as they had repeatedly demonstrated a lack of responsibility. The fears of the others were related to the anticipation of reprehensible behaviour by those who had harmed them. They were afraid of shouting, manipulation, physical aggression.

Those who took part in the survey were far more likely to expect the offender to take specific action than to simply apologise or even hand over money and other valuables. It was important for them to be respected by the person who had hurt them, to make such person take part in therapy, to go to school or work or to do community service. 7 per cent of respondents wanted to break contact with the perpetrator and feel safe. Nevertheless, it is worth highlighting that, despite the average result for the whole sample, more than half had little or no expectations

of the perpetrators and expressed reluctance to participate in mediation. On the other hand, 18 per cent of the respondents may have showed a demanding attitude towards perpetrators, which may in turn definitely hinder the mediation process.

The age of victims under 45 and over 45 proved not to be significant in terms of giving an opinion on mediation or in terms of expectations of perpetrators. Older people had a stronger need for the person who hurt them to repair the damaged things and commit to participate in therapy. It was wrongly assumed that life experience might prove significant in terms of one's knowledge of mediation as well as willingness and readiness to participate in the procedure. The experience directly related to the mediation itself and the practical knowledge of the mediation meeting were probably more important. Unfortunately, regardless of the age of the victims, significant deficits in these competences were demonstrated. For more extensive information on the study conducted by A. Lewicka-Zelent within the framework of the ongoing pilot programme among family members of victims, see the sub-report "Development and dissemination of research on mediation in prison isolation. Standardising the conduct of mediation in prison settings - interim report as for 30 June 2021"³⁰

Results of surveys conducted among attorneys

Among the studies conducted 2021, whose results are presented in more detail in the interim report, the most noteworthy are those conducted on a specific group of lawyers (advocates, legal advisers, penitentiary judges, prosecutors) by G. Skrobotowicz. In the context of examining the current state of reaching for the idea of restorative justice by these entities at the stage of enforcement of isolation punishments, G. Skrobotowicz applied the exegetical-legal method and the method of diagnostic survey and analysed the research conducted with the use of author's research questionnaires. The author posed the following thesis: "*The use of mediation at the stage of the enforcement of isolation sentences is, first of all, both legally and factually possible (penitentiary units are able to provide all the requirements necessary for the mediation discourse) and, second of all, constitutes an effective element of the process of reintegration (rehabilitation) of the convicted person into society and serves a purpose of the victim of the crime*"³¹. To confirm the above thesis, the author analysed the scientific literature

³⁰ A. Lewicka-Zelent "Opinie członków rodzin osób osadzonych na temat mediacji oraz ich oczekiwania zadośćuczynienia. Badania przeprowadzone wśród osób pokrzywdzonych przez członków rodzin". in: Interim report. Development and dissemination of research on mediation in prison isolation. Standardising the conduct of mediation in prison settings - interim report as for 30 June 2021 (unpublished typescript of the interim report), Academy of Justice, Warsaw 2021, p. 20-45.

³¹ G. Skrobotowicz, "Obecny stan sięgania po ideę sprawiedliwości naprawczej na etapie wykonywania kar izolacyjnych (raport cząstkowy). Badania przeprowadzone na określonej grupie prawników (adwokaci, radcy prawni, sędziowie penitencjarni, prokuratorzy) w ramach projektu „Pilotaż programu wdrażającego ideę sprawiedliwości naprawczej na

on the subject and conducted an empirical study on a selected group of addressees. The author adapted the research tool individually to each subject (attorneys, solicitors, penitentiary judges, prosecutors), taking into account the extent of the subject's competence and the possibility of the subject's influence on the occurrence of mediation at the stage of solitary confinement sentences. On the one hand, the aim was to enable the standardisation of the research carried out and, on the other, to introduce an individual approach to each target group. The questionnaire survey was addressed to: penitentiary judges adjudicating in the Regional Court in Lublin and the Regional Court in Zamość, prosecutors from different levels of prosecution offices from the Regional Prosecution Office in Lublin, professional attorneys (selected attorneys/legal advisers), mediators participating in the project and representatives of the administration of penitentiary units and prison officers involved in the implementation of the pilot programme. According to the author, the choice of the above-mentioned research group was dictated by practical considerations, as the aforesaid entities have or may have an influence on the initiation of mediation proceedings or the outcome of the mediation conducted, which may be significant in terms of the decisions made by these entities with regard to the convicted and possibly the victim. The survey included the following questions on the conduct of mediation at all stages of the judicial process:

- What are the arguments in favour of referring parties to mediation at the pre-trial/court/enforcement stage (split between the enforcement of solitary and non-solitary punishment)?
- What are the arguments against referring parties to mediation at the pre-trial / trial / enforcement stage (split between the enforcement of solitary and non-solitary punishment)?
- What offences should be referred to criminal mediation at the pre-trial / trial / enforcement stage?
- What measures should be taken to make criminal mediation more widespread at the pre-trial / court / enforcement stage?
- Mediation agreements concluded at what stage should be taken into account in proceedings on conditional early release from serving the remainder of the sentence.
- To what extent can mediation constitute an effective part of a convict's reintegration process into society?
- To what extent is the kind / type of prison in which the convicted person is serving a sentence of solitary confinement relevant to the referral of parties to mediation at the enforcement stage?

tereniu Okręgowego Inspektoratu Służby Więziennej w Lublinie" in: Interim report. Development and dissemination of research on mediation in prison isolation. Standardising the conduct of mediation in prison settings - interim report as for 30 June 2021 (unpublished typescript of the interim report), Academy of Justice, Warsaw 2021, p. 141-142.

- To what extent is the system according to which the convicted person is serving a sentence of solitary confinement relevant to the referral of parties to mediation at the enforcement stage?
- To what extent, in your opinion, are prisons ready to conduct face-to-face mediation on their premises (especially closed prisons)?
- To what extent would the creation of separate rooms dedicated to mediation meetings and the addition of the person of the mediator as an entity entitled to enter the penitentiary unit to the Criminal Enforcement Code improve the process of using mediation at the enforcement stage?
- How many prisoners serving custodial sentences are aware of mediation and the possibility of using it at the enforcement stage?
- What knowledge do convicts have of criminal mediation?
- Do sentenced prisoners serving custodial sentences feel ready to participate in mediation during the sentence phase?
- How should information about mediation be communicated within the prison unit? What information do prisoners have about criminal mediation?

However, it turned out that the attorneys included in the survey were not interested in completing the survey questionnaires. Penitentiary judges did not fill out any questionnaire, advocates from the Regional Bar Council in Lublin completed one questionnaire, legal advisers from the Regional Chamber of Legal Advisers in Lublin also completed one, and prosecutors filled out 29 questionnaires. According to G. Skrobotowicz, the interest and willingness of a select group of lawyers to engage in the development of alternative dispute resolution was therefore marginal.

The purpose of the survey of prosecutors was to determine their current position on the recourse to criminal mediation, with a particular focus on the enforcement phase of the proceedings. The survey tool consisted of 25 questions, both test and blanks, which had to be filled in on the basis of their knowledge and work experience acquired at work. The questionnaires were addressed to the common organisational units of prosecutor's offices in the area of the Regional Inspectorate of Prison Service in Lublin and to the National Public Prosecutor's Office. The greatest response was seen in district prosecutors' offices (17 out of 29 questionnaires sent, representing 59 per cent of all completed forms). A total of 29 research questionnaires were completed. The data received showed that approximately 59 per cent of the respondents were women, while men made up 41 per cent. Almost half of the respondents (48 per cent) were between the ages of 35 and 45. The second largest group in terms of numbers was those aged over 45 and before 55 (approximately 35 per cent). The others were either under 35 or over 55, but before 60. There was an almost even split between those with 5-15 years of seniority (38 per cent) and those with more than 15 years and at the same time less than 25 years (34 per cent). The rest had more than 25 years of seniority (14 per cent) or declined to state seniority (14 per cent).

The study sought answers to questions concerning the arguments ‚for’ as well as ‚against’ referring conflicting parties to mediation, both the pre-trial and court stage. The most important part of the study, however, focused on the role of mediation and its importance and steps that should be taken to develop penal mediation at the stage of the enforcement of sentences and punitive measures. The topic deserved special analysis as it represented an empirical gap in the current literature³².

The author of the study, analysing the data collected, found that prosecutors do not, in the case of non-solitary confinement, attribute much importance to mediation at this stage of the criminal process. Respondents cited more reasons for denying the legitimacy of mediation than for the legitimacy of recourse to mediation, providing such grounds as, for example, the additional burden on the State Treasury, the lapse of time since the offence was committed and legislative shortcomings that translate into a real impact on how the sentence is served. Among the claims in favour of mediation during the enforcement phase of an imposed isolation sentence, prosecutors chose the following: “prevention as a rehabilitation element of the offender”; “reconciliation between the parties” and “the financial aspect if it would involve leaving the penitentiary early”.

None of the interviewees linked mediation at the stage of serving an adjudicated prison sentence to the institution of conditional early release from serving the rest of the isolation sentence, which does seem to be a potential mediation argument from the prisoner’s point of view.

In pointing out the arguments against referral to mediation at the imprisonment stage, the prosecutors mainly mentioned: additional costs for the penitentiary units (the State Treasury), the necessity to enforce the punishment imposed (rather than modifying it due to the potential results of mediation), the lack of justification for mediation at this stage of the criminal process and the potentially adverse and stressful impact of the penitentiary unit on the victim / victim of the criminal act, for whom the penitentiary unit may be a negative experience. However, if the aggrieved person were willing to participate in the mediation, it would then be reasonable to conduct the mediation in an indirect/‘pendulum’ manner or by means of remote communication (e.g.: Skype / MS TEAMS / ZOOM).

According to the prosecutors, the mediation process at the stage of enforcement of the sentence should mainly cover offences against: property (25 per cent of responses), honour and bodily integrity (15 per cent of responses); life and health (10 per cent of responses); safety in communication (13 per cent of responses); family and guardianship (10 per cent of responses); freedom of conscience and religion (8 per cent of responses). Offences against public safety (5 per cent

³² G. Skrobotowicz, *“Obecny stan sięgania po ideę sprawiedliwości naprawczej na etapie wykonywania kar izolacyjnych (raport cząstkowy). Badania przeprowadzone na określonej grupie prawników (adwokaci, radcy prawni, sędziowie penitencjarni, prokuratorzy) w ramach projektu „Pilotaż programu wdrażającego ideę sprawiedliwości naprawczej na terenie Okręgowego Inspektoratu Służby Więziennej w Lublinie”* in: Interim report... p. 156.

of responses), liberty (3 per cent of responses), and sexual freedom and morality (1.5 per cent). Some prosecutors (8 per cent of responses) felt that no persons affected by any crime should be referred to mediation at this stage, which the author believes is negative for the development of the mediation procedure.

On the question of the prosecutors' opinion whether, in their opinion, in the case of a procedure for conditional early release from serving the rest of the sentence, the court would take the results of the mediation that took place at the pre-trial/court stage or would it also take/and the results of the mediation conducted at the enforcement stage. As part of this issue, more than 66.5 per cent of the respondents considered that in the case of proceedings on conditional early release from serving the remainder of the sentence, the court would obligatorily take into account both results of mediation (i.e. mediation conducted at the stage of pre-trial/court proceedings and mediation conducted at the stage of enforcement proceedings); in turn, 21 per cent of the respondents said that the court would only take into account the results of mediation from the enforcement stage, while according to 12.5 per cent of the respondents - the court would only take into account the results of mediation from the pre-trial/court proceedings. The analysis of the data led to the conclusion that, according to the majority of prosecutors (more than 87.5 per cent of the answers given), the court would take the result of the mediation from the enforcement stage (either only such result or in combination with the result of the pre-sentence mediation). From the perspective of prosecutors - mediation during the enforcement of the sentence would be important for deciding on the application of a probation measure. Mediation could also constitute an effective part of the process of reintegration of the convict into society.

One in three respondents (34 per cent) thought that mediation could be an element of reintegration only in some cases, 17 per cent of the prosecutors surveyed thought that mediation could be an element of reintegration in most cases, one in five thought that mediation at the enforcement stage was not part of the reintegration process at all, and finally 28 per cent of the respondents chose the response 'difficult to say clearly'.

More than 60 per cent of respondents considered that the type of prison was irrelevant in terms of referring parties to mediation at the enforcement stage, which meant that, in their opinion, the type of prison unit was not an obstacle to referring parties to an amicable path.

Other findings illustrated that 70 per cent of the surveyed prosecutors did not see any negative correlation between the type of prison and referring parties to amicable resolution of conflict.

Generally, respondents (54 per cent) did not identify a negative impact of the system in which the convicted person is serving a custodial sentence on referring parties to mediation. The vast majority of prosecutors had no knowledge of the ongoing pilot programme and the changes it entails, as 64 per cent of those surveyed had no opinion as to the readiness of prisons and custody suites

to conduct mediation and 18 per cent believed that penitentiary units were not ready to conduct direct mediation at all. Only 7 per cent stated that only some units were ready for mediation, whereas the same number (7 per cent) of respondents indicated that essentially all penitentiary units were ready. Therefore, the information about the readiness of penitentiary units to hold mediation meetings should have been disseminated among prosecutors more widely.

Half of the respondents (50 per cent) found it difficult to indicate an answer relating to the issue of creating dedicated rooms in penitentiary units for mediation meetings and adding the provision to the Criminal Enforcement Code regarding the person of the mediator as an entity entitled to enter the penitentiary unit, which could help in referring cases to mediation. For 39 per cent of respondents, such an action could help in referring cases to mediation, but was not a necessary element for referring cases to mediation, while 11 per cent of respondents felt that such activities would not help in referring cases to mediation at all.

According to the majority of respondents, there was little or practically no knowledge among inmates as regards the possibility of using mediation at the enforcement stage (as stated by a total of 86 per cent of respondents). According to the vast majority of respondents (96 per cent), the level of knowledge of mediation possessed by prisoners sentenced to imprisonment was basic.

Prosecutors felt that the readiness of inmates to participate in mediation at the enforcement stage was at a very low level (according to respondents, 41 per cent of inmates did not feel ready to undergo criminal mediation at the enforcement stage at all; 37 per cent of respondents felt that a maximum of 20 per cent of inmates felt ready; and in the opinion of 15 respondents, a maximum of 50 per cent of inmates felt ready to participate in mediation at the criminal stage and only 7 per cent felt that essentially all inmates felt ready to do so). The respondents recognised that the most effective ways of informing inmates (information channels) about the possibility of mediation were: information provided by prison officers, announcements on the information board and leaflets, which means that the activities inside the penitentiary unit constituted, in the opinion of the respondents, the best method for informing inmates about mediation.

Prosecutors saw the greatest opportunity in promoting mediation during information/social media campaigns conducted in various forms and aimed at different recipients, including professional attorneys.

The most important findings of the study on the group of attorneys are the following: the information on criminal mediation should at least be recalled by experts dealing with this topic, as among the answers sent there were some that did not correspond to the legal state; in the opinion of attorneys - mediation in criminal cases, regardless of the phase of the trial, is dedicated to certain crimes, while in other cases, its potential or the possibility of using such a procedure was not considered; prosecutors were not convinced about applying criminal mediation as an important institution in the justice process, which was interpreted by G. Skrobotowicz as a kind of 'lack of faith' in the effectiveness of this ADR

tool. For a complete picture of criminal mediation, responses from penitentiary judges and barristers and solicitors were missing, given that their contributions could shed a different perspective on the topic under study or complement existing research. There have been difficulties in obtaining opinions from the legal community (prosecutors, penitentiary judges, advocates and solicitors) on the possibility of mediation at the stage of enforcement proceedings and, what is more, they showed no interest in the pilot programme. The above may also have been influenced by the COVID-19 pandemic in the country. It was considered encouraging to obtain the information from the mediators involved in the pilot programme, who stated that the pilot post-sentence mediation project was extremely popular with inmates.³³

Findings from a survey of postgraduates in mediation and restorative justice taught by the Academy of Justice in the 2020/2021 academic year

Therefore, one of the tasks under the project that the Academy of Justice had to execute was to conduct two editions of postgraduate courses in mediation and restorative justice, dedicated to prison officers and professional probation officers. The first edition of the study was for the 2020/2021 academic year and the second for the 2021/2022 academic year. Therefore, postgraduates in mediation and restorative justice constituted another study group. In each edition, 20 prison officers and 20 professional probation officers were trained, for a total of 80 persons. The study was conducted by Anna Gmurowska, Aleksandra Rusin-Batko and Agnieszka Markocka.

Following the completion of the first edition of the postgraduate course, a group of 40 graduates were invited to participate in a voluntary, anonymous survey. The aim of the study was to find out the opinions of prison officers and professional probation officers on the usefulness of the knowledge, skills and competences acquired during the aforementioned studies in their professional work. 33 completed questionnaires were received. Professional probation officers accounted for more than 54 per cent of the population surveyed and prison officers for almost 46 per cent of the respondents. Women made up 67 per cent of respondents and men 33 per cent. More than 48 per cent of the respondents were aged between 35 and 45 years, 30 per cent were aged over 45 years, and more than 21 per cent were 25 to 35 years old. The survey mainly focused on the evaluation of the usefulness of the knowledge, skills and mediation competences acquired by prison officers and probation officers in their professional work. In addition,

³³ G. Skrobotowicz, *“Obecny stan sięgania po ideę sprawiedliwości naprawczej na etapie wykonywania kar izolacyjnych (raport cząstkowy). Badania przeprowadzone na określonej grupie prawników (adwokaci, radcy prawni, sędziowie penitencjarni, prokuratorzy) w ramach projektu „Pilotaż programu wdrażającego ideę sprawiedliwości naprawczej na terenie Okręgowego Inspektoratu Służby Więziennej w Lublinie”* in.: Interim report... p. 125- 171.

graduates answered questions that were designed to determine: to what extent - in their opinion - their mediation competences and skills had increased in the context of the content-related study program; to what extent - after completing their dedicated mediation studies - their attitudes towards mediation and restorative justice had changed; and to what extent their confidence in mediation had increased. The survey also served to identify respondents' willingness to develop mediation competence and further training in their preferred specialisation as well as to finally verify to what extent they agreed with the following statement: "For the development of restorative justice, in particular the development of mediation at the enforcement stage, it is necessary to establish cooperation between the penitentiary judge, the director of the penitentiary/detention centre, the correctional commission, the prison staff, the court probation officer of the disputing parties, the mediator and the whole legal community.

The results of the above study were included in the interim report of the project³⁴, showing that the majority of respondents (over 70 per cent) found that the subjects and content covered by the curriculum were definitely or sufficiently useful in their professional work. They indicated the following subjects as especially useful: Models and functions of mediation (79 per cent); Settlement and required documentation in mediation proceedings (76 per cent), Training in criminal mediation (73 per cent), Role of the mediator in mediation proceedings (73 per cent) and Training in constructing mediation settlements at the stage of enforcement of penalties and other punitive measures (69 per cent). Therefore, it may be assumed that the curriculum was relevant to the respondents' needs and usefulness in their professional work.

The respondents rated the increase in their knowledge, skills and mediation competence after completing their dedicated studies as follows:

- the knowledge significantly increased in the case of 37 per cent of respondents and 'rather' increased for the same percentage of respondents (37 per cent), in the case of 21 per cent, the knowledge moderately increased, and for the rest (3 person), it increased a little or not at all;
- the skills significantly increased in the case of 49 per cent of respondents, for 18 per cent, the skills increased to a very high degree (37%), for 24 per cent - to a moderate degree, and for the rest (3 per cent) - to a low degree or not at all;

³⁴ A. Gmurowska, *Recognition of the usefulness of the knowledge, skills and competences acquired by prison officers and professional probation officers who are graduates of the first edition of the postgraduate course on Mediation and Restorative Justice in the academic year 2020/2021, conducted by the Academy of Justice, within the framework of the pilot project implemented, in their professional work, and determination among these graduates to what extent, after participating in the studies dedicated thereto, their attitude towards mediation and restorative justice has changed, especially in the context of the possibility of conducting mediation "after conviction"*, in: Interim report... p. 186- 221.

- mediation competence significantly increased for 46 per cent of the respondents, for 24 per cent of the respondents it increased to a very high degree (37 per cent), for 21 per cent - to a moderate degree and for the rest (3 per cent) - to a low degree or not at all.

It should be noted that, due to the restrictions resulting from the Covid-19 pandemic, classes were mainly online via Ms Teams tool (on-site classes were only in the first and last sessions). Some respondents saw the need for more discussion of post-sentence mediation, more extensive information on criminal proceedings, including offences prosecuted *ex officio* and upon request, and more practical classes (which was difficult in the online education format).

According to the respondents, the completion of postgraduate studies in mediation and restorative justice increased their confidence in mediation (for 46 per cent the increase was to a very high degree, for 39 per cent to a 'rather' high degree, for 9 per cent to a moderate degree and for the rest to a low degree). In addition, some respondents also mentioned such aspects and additional benefits as: the possibility to be included in the list of mediators and to be able to conduct mediation; their own widespread promotion of the concept of mediation; personal development; new professional opportunities; use of the acquired skills not only in their work with wards but also in their personal affairs; the chance for promotion; a change in their attitude towards the possibility for convicts to participate in mediation and, in particular, to see it as an asset for convicts and victims; the financing of their studies from the Justice Fund.

The vast majority of graduates participating in the survey (85 per cent) were ready to further develop their mediation competences and showed interest in continuing their training in a broader area, especially in the family specialisation. However, the aspect of payment for such studies was important, as less than half of those who expressed their willingness to further their education in this area were interested in paid training.

Over 78 per cent of the respondents believed that the development of restorative justice, in particular the development of mediation at the enforcement stage, it is necessary to establish cooperation between the penitentiary judge, the director of the penitentiary/detention centre, the correctional commission, the prison staff, the court probation officer of the disputing parties, the mediator and the whole legal community. 60 per cent of the respondents strongly agreed with this statement, more than 18 per cent 'rather' agreed, 15 per cent were undecided (as they chose the option - 'difficult to say') and only one person disagreed that "for the development of restorative justice, and, in particular, the development of mediation at the stage of enforcement proceedings, it is necessary to establish cooperation between the penitentiary judge, the director of the penitentiary/detention centre, the correctional commission, the prison staff, the court probation officer of the disputing parties, the mediator and the whole legal community.". With the above in mind, the results may be interpreted as a recommendation to establish

more cooperation between the aforesaid entities in order to introduce and develop post-sentence mediation.

A description of the results of the study conducted by A. Gmurowska among inmates using on-call mediator services in penitentiary units in the period from the second half of 2020 to June 2021 and then in the period from July 2021 to February 2022, to investigate the level of satisfaction with on-call mediation and inmates' readiness for mediation are presented together in Chapter 3.

In the second phase of the research work, falling between July 2021 and February 2022, the following study was conducted to:

- learn about the experiences and opinions of inmates participating in post-sentence mediation in penitentiary units;
- learn about the opinions and experiences of victims of crime who have participated in 'post-sentence' mediation;
- learn about the opinions and experiences of mediators conducting 'post-sentence' mediation;
- learn about the opinions and experiences of mediation coordinators and guardians organising the post-sentence mediation in penitentiary units;
- continue the research (initiated between the second half of 2020 and June 2021) to investigate the level of satisfaction of inmates using the mediator on duty in the penitentiary unit and their willingness to mediate;
- standardise the mediation procedure in prison isolation.

The results of the above studies are described by the authors in Chapter 3.

Chapter III

Pilot programme and mediation after sentencing from the perspective of the sentenced and the victims, as well as coordinators and supervisors for restorative justice and mediation

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III. 1. The principles of the methodology of the research carried out

Agnieszka Lewicka-Zelent

Aims of the Study

By carrying out the project titled „Pilot Programme Introducing the Notion of Restorative Justice of the District Inspectorate of the Prison Service in Lublin” aimed, among others, to learn the opinions of the units interested in the introduction of mediation after sentencing to the penitentiary practice, as well as for mediations carried out in the conditions of prison isolation, as well as the proposed solutions in the scope of disseminating the idea of restorative justice, and to develop the model standards of conducting mediation in the conditions of penitentiary solitude and recommendations for the penitentiary science. The works also assumed carrying out an analysis of scientific tasks and the presented model which aimed to prevent future crimes, due to the use of alternative methods of solving conflicts based on the principles of restorative justice at the stage of imprisonment by the prisoners.

The cognitive specific objectives shall include:

- learning the opinions of the detainees on the mediation duties;
- learning the opinions of the detainees on the mediations following sentencing;

- learning the opinions of the victims on the mediations following sentencing;
- learning the opinions of the mediators on the mediation after sentencing and the introduced programme;
- learning the coordinators and supervisors for restorative justice and mediation regarding the implemented programme and mediation;

The practical aim of the programme was to develop the recommendations and standards of carrying out mediations after the sentence in the conditions of prison isolation.

Key issue and detailed questions

The key issue was directly related to the aim of the project and related to finding out: What opinions on the mediations after the sentencing including the implemented programme, are expressed by the detainees, the victims, as well as mediators, coordinators and supervisors on restorative justice and mediation?

Multiple additional key detailed questions have also been defined, in line with each specific objectives:

- What are the opinions on mediation duty expressed by the detained attendees?
- What opinions on mediations after sentencing are expressed by the detainees, the participants of the mediation meetings?
- What opinion on mediations are expressed by the victims, by the participants of mediation meetings?
- What are the views regarding the implemented program and mediations are held by the mediators who participate in the project?
- What views of the implemented programmes and mediations are held by coordinators and supervisors for restorative justice and mediation?

Due to the diagnostic nature of the question, no working hypotheses were formed.

Research Methods, Tools and Instruments

In order to achieve the stated objectives, studies have been carried out using the diagnostic survey method. They used the tools in the form of a survey questionnaire and an interview:

- a) "Questionnaire survey - survey of the level of satisfaction of inmates in penitentiary units located at OISW in Lublin under the mediator's duty and their feeling of readiness to participate in mediation," (questionnaire survey addressed to the participants of the project inmates) participating in the mediation duty, authored by: A. Gmurowska in consultation with Dr G. Skrobotowicz, UMCS Professor A. Lewicka-Zelent, PhD),
- b) "Interview and survey questionnaire - experiences of mediation participants Section. A related to inmates who participate in mediation under

- the ongoing pilot project” (survey questionnaires and interview questionnaires for inmates participating in mediation as part of an ongoing pilot project, led by UMCS Professor A. Lewicka-Zelent, PhD. G. Skrobotowicz, PhD, A. Gmurowska, A. Rusin-Batko and A. Markocka),
- c) „Interview and survey questionnaire - experiences of mediation participants Section B related to the victims who participate in mediation under the ongoing pilot project”(survey questionnaires and interview questionnaires for inmates participating in mediation as part of an ongoing pilot project, led by UMCS Professor A. Lewicka-Zelent, PhD. G. Skrobotowicz, PhD, A. Gmurowska, A. Rusin-Batko and A. Markocki).
- d) “Interview and survey questionnaire – section C. Mediators’ experience in the participation in pilot study,” (Survey and interview questionnaires for the mediators of CAM O/Lublin who take up mediation duties and mediations following the ruling of the judge, authored by: UMCS Professor A. Lewicka-Zelent, PhD. G. Skrobotowicz, PhD, A. Gmurowska, A. Rusin-Batko and A. Markocka),
- e) “Interview and survey questionnaire – section D. the experience of the officers, mediation coordinators selected in the penitentiary units operating within the OISW in Lublin from the participation in the pilot programme”, (surveys and interview questionnaires for the coordinators and supervisors for mediation from penitentiary units active in the area of the OISW in Lublin, authored by: UMCS Professor A. Lewicka-Zelent, PhD. UMCS, G. Skrobotowicz, PhD, A. Gmurowska, A. Rusin-Batko and A. Markocka).

The specifics of the research project indicate its exploratory nature. It was assumed that, in the process of constructing an optimal model for the implementation of mediation after spending time in the penitentiary setting, the opinions of those interested in the use of restorative justice principles in penitentiary isolation, the people involved in the project (convicted persons, victims of crime, mediators, mediation coordinators and supervisors), would form the basis. Considering such multidimensional perspective of the issues addressed regarding post-sentence mediation, a wide array of specialists were invited to participate in the research: lawyers, mediators and rehabilitation educators.

Subjects – project participants

The persons specified below were invited to take part in voluntary, anonymous surveys: project participants (convicts) who attend mediation duty and mediation meetings carried out at penitentiary units subordinate to the District Inspectorate of the Prison Service in Lublin, victims participating in post-conviction mediation, mediators from the Arbitration and Mediation Centre in Lublin involved in project activities, as well as coordinators and supervisors for restorative justice and mediation. appointed from among Prison Service officers in the penitentiary units where the project was implemented.

The groups of respondents were quantitatively diverse, due to the specific nature of the specific part of the survey being conducted. The received information served as the foundation for analysing the data, presenting the results of the research and formulating practical conclusions based on it.

Organisation and Course of the Study

The research were carried out under the project titled: „Pilot programme implementing the idea of restorative justice on the territory of the Regional Inspectorate of the Prison Service in Lublin”, funded by the Ministry of Justice, by a research team comprising academics from the Higher School of Justice, the John Paul II Catholic University of Lublin, the Maria Curie-Skłodowska University in Lublin, and employees of the Mediation Unit at the Ministry of Justice).

The studies started in June 2020 and lasted until February of 2022. They have been carried out with the support of numerous actors and institutions, in particular the employees of the courts, the Prison Service and mediators. During the period June 2020 – June 2021, the satisfaction levels of four inmates were measured in the District Prison Service Inspectorate in Lublin including the participation of a mediator and the study has also determined the level of their readiness to participate in mediations following the sentencing. The remaining studies where inmates participated as a party in a mediation meeting, the mediators, the victims and the coordinators and mediators for restorative justice and mediation have been carried out in the period from June 2021 until February 2022.

The collected data allowed to assess the functionality and the effectiveness of the proposed solutions (in particular the Pilot on-call duties of the negotiators in penitentiary units and mediation meetings with the participation of the inmates and the victims).

III.2. The level of satisfaction of the participants of information meeting with a mediator and the belief in being ready to take part in the mediation after sentencing in the opinion of the inmates who used the mediator's duty in the penitentiary units

Anna Gmurowska

Within the framework of the implemented pilot project, support for the effective re-adaptation of convicts, promotion and support of initiatives and undertakings of an educational and informational nature in the field of alternative methods of conflict resolution in the paradigm of restorative justice, were made possible, among others, by increasing the availability of mediators in prisons and detention centres and organising information meetings within the framework of mediators' duty hours introduced in penitentiary units¹. Organising and managing the duties of mediators has been one of the key challenges of the project².

Commencement of pilot information meetings for inmates, conducted by mediators at penitentiary units from the Lublin district, aimed at providing the inmates who expressed interest with the information regarding the institution of mediation, in particular about the principles of mediation, how to start it and the course of mediation proceedings, as well as about the benefits of mediation and the essence of restorative justice. The availability of mediators in the penitentiary units and the conduct of information meetings were intended to encourage inmates to try mediation in a given case, in particular regarding the redress of harm caused to the victim of a crime. Meetings with the mediator on duty were intended to allow inmates to make an informed decision about whether to initiate or enter the mediation process. This, in turn, was supposed to increase the number of cases referred to mediation after sentencing and thus, indirectly, contribute to a more effective readaptation of convicts and a reduction in recidivism.

Fundamentals of research methodology

The purpose of the survey was to learn about the opinions of inmates using the mediator's duty in the penitentiary units from the area of the Regional Inspectorate of the Prison Service (OISW) in Lublin, regarding the level of their satisfaction with participation in information meetings with the mediator and their feeling of readiness to participate in mediation after conviction. In addition, the data collected may serve as a guideline for assessing the relevance and usefulness

¹ Project fiche, op. cit. p.2.

² Task 3. Mediators who remain on duty in the penitentiary units of the Regional Inspectorate of the Prison Service in Lublin, in: project „Pilot programme implementing the idea of restorative justice on the territory of the Regional Inspectorate of the Prison Service in Lublin” financed from the funds of the Justice Fund managed by the Minister of Justice. Project fiche, op. cit. p.2.

of the mediation duty, which has been piloted in penitentiary units in the Lublin district.

The primary research question was: What opinions are expressed by inmates using mediator duty in the penitentiary units of the Regional Inspectorate of the Prison Service (OISW) in Lublin regarding their satisfaction with participation in the information meetings with the mediator and their feeling of readiness of inmates to participate in mediation after conviction?

The following specific questions were formulated to answer this main research question:

- 1) How do the imprisoned assess the increase of the usefulness, information and knowledge regarding the mediation, learned during the mediator's duty in relation to the knowledge obtained before the information meeting with the mediator?
- 2) How do the inmates rate their satisfaction level after the participation in such information meeting with the mediator?
- 3) What is the opinion of the inmates regarding the perceived benefits from participating in an information meeting with the mediator, and what is their opinion regarding what they did not like during such meeting?
- 4) How possible that is that in the future the inmates are going to decide to participate in mediations in the case where they are temporarily arrested or in a case where they are serving a custodial sentence?
- 5) For what purpose or on what issue would detainees choose to participate in mediation in the future?
- 6) What fears did detainees have (if any), prior to participating in mediation?

The survey was carried out by means of a diagnostic survey in three time frames: in the period from the start of the mediator duty in penitentiary units until 31 December 2020; in the period from January to 30 June 2021 and in the period from 1 July 2021 to 30 June 2022. The results have been added together.

A questionnaire was selected as the research technique. Questionnaires were used as a means of measuring individual subjective indicators. The following principles guided the creation of the catalogue of subjective indicators and the questionnaire questions assigned to them:

- indicators referred to the attitudes and preferences of the inmates taking part in the survey (declaring an increase in the usefulness of the information and knowledge about mediation gained during the mediator's duty, including declaring their willingness to participate in mediation);
- indicators referred to a limited time horizon – no more than two years;
- The indicators referred to the respondent's current perspective and the questions assigned to them left no doubt that they were about satisfaction with participation in the mediator on duty introduced on a pilot basis in the penitentiary unit during the period under study.

The study used the „Survey questionnaire – measuring the level of satisfaction of the inmates in the penitentiary units in the Regional Polish Penitentiary

Service in Lublin with the participation of a mediator on duty and their readiness to participate in the mediations,” (developed for the needs of the project, authored by: A. Gmurowska in consultation with Skrobotowicz, PhD and UMCS Professor A. Lewicka-Zelent, PhD UMCS, aimed at inmates participating in mediation duty).

The data collected, which is the source for this analysis, is contained in the Final Report of the project³.

Characteristics of the Detainees Participating in the Mediator's duties

A total of 464 respondents took part in the voluntary, anonymous survey. Men made up 98% of the sample, women less than 1%. The remaining respondents did not indicate their gender. The largest group of respondents were inmates residing in the Penal Institution in Biała Podlaska (42% of the sample), followed by inmates from the extramural facility in Zabłocie (nearly 10% of the sample) and the Penal Institution in Opole Lubelskie (over 9% of the sample), while the smallest group consisted of inmates from the Penal Institution in Zamość and the Penal Institution in Włodawa (less than 1% of the sample each). Among the respondents, 103 did not state the name of the unit, representing 22% of the sample.

The age of the subjects was defined in ranges: 17-21 years old, 22-30 years old, 31-40 years old, 41- 50 years old and 51 years old and more. Out of the persons surveyed - 41% of the total were inmates in the 31-40 age bracket, over 20% of the total were inmates in the 41-50 age bracket, followed by inmates in the 51+ age bracket and more than 1% of those surveyed were in the 17-21 age bracket. Of the respondents, 5 did not specify their age range (1% of the sample).

Respondents did not give answers to all the questions. Out of the 464 respondents – almost 77% of the sample had a previous criminal record (n=355). The group with no previous criminal record comprised 72 inmates, i.e. almost 16% of the sample. 8% of the sample, i.e. 37 people, did not respond to questions on the above.

Out of the 464 persons surveyed – 419 were serving a custodial sentence (90%), 18 people were in pre-trial detention, representing less than 4% of the sample, and 27 people (more than 5%) gave no answer in this regard. Among the group serving a custodial sentence - the largest group was made up of prisoners serving a custodial sentence of up to and including 3 years (292 persons, i.e. 63% of the sample). This was followed by inmates who had served terms of

³ A. Gmurowska, “*Measurement of the level of satisfaction of the inmates in penitentiary institutions from the Regional Inspectorate of the Penitentiary Service in Lublin with the participation of a mediator in the duty and the level of their readiness to participate in the mediations. The research carried out among inmates in penitentiary units from the area of the Regional Inspectorate of the Penitentiary Service in Lublin within the framework of the project “Pilot Programme Introducing the Notion of Restorative Justice of the District Inspectorate of the Prison Service in Lublin,”* in Final Report (op cit).

imprisonment of 3 to 5 years – 71 persons, i.e. 15% of the total number of respondents. The smallest percentage (less than 2 per cent) of those serving a custodial sentence was between 10 and 15 years' imprisonment. No answer was provided in this respect by 31 respondents, representing more than 6% of the sample.

Of the 464 responses given, just under 52% of the responses related to serving a custodial sentence in a semi-open prison, over 35% in a closed prison and over 7% in an open prison. Twenty-six inmates, i.e. more than 5%, did not respond in this regard. The largest number of persons – more than 50% of the answers provided indicated that they are serving their prison sentence in the regular system, more than 25% of the answers provided indicated that they are serving their prison sentence in the therapeutic system, in the programmed impact system – nearly 21%, and 4% did not provide any answer to this question.

Of the criminal acts for which the respondents were serving custodial sentences, the following predominated:

- physical abuse, psychological abuse, abuse of a loved one (n=55),
- persistent evasion of maintenance obligation (n=54),
- driving under the influence of alcohol or a drug (n=52),
- theft (n=46),
- burglary (n=37),
- multiple acts (n=35),
- robberies (n=27),
- beating (n=12),
- criminal threats (n=12),
- drug possession, drug trafficking, drug trafficking, drug sharing (n=11),
- fraud (n=10),
- homicide (n=10),
- burglary (n=9),
- extortion (n=9),
- failure to comply with a court order, violation of a court prohibition (n=8),
- causing an accident (n=8),
- severe health impairment (n=8),
- causing a fatal accident (n=5),
- fencing (n=4),
- violation of an officer's physical integrity (n=4),
- failure to comply with sentencing measures (n=4),
- possession of weapons without a permit (n=4),
- fight (n=4),
- destruction of property (n=3),
- misappropriation of property (n=3),
- causing grievous bodily harm with fatal outcome (n=2),
- substitute prison sentence for an unpaid fine (n=2),
- VAT fraud (n=2),
- other (n=32).

There was even a statement 'I am serving a sentence for elements'. Two people indicated that they were in temporary custody.

Feedback from inmates on the increase in their knowledge of mediation, gained during the mediator on duty

Inmates' views on their knowledge of mediation and previous participation in mediation: more than 75 per cent of respondents said they had not previously participated in mediation, and 25 per cent of respondents were of the opinion that they had previously participated in mediation (mainly criminal mediation and family mediation).

Prisoners most often obtained information about the possibility of meeting a mediator on the premises of the penitentiary unit from a Prison Service officer (this was indicated by as many as 60% of the respondents). More than 20% of respondents indicated that they had obtained information about the opportunity to attend an information meeting from an information board. The others stated that they had received such information from: another inmate (about 9% of the respondents), from an educator (about 4% of the respondents), from a leaflet (about 2% of the respondents). The fewest indicated that they obtained such information from a mediator, from the court, from the radio station, from a psychologist.

More than 40% of the respondents assessed that their knowledge of mediation gained through participation in the mediator's duty increased to a sufficiently high degree, for more than 20% of the respondents, their knowledge of mediation increased to a very high degree and for less than 17% of the respondents, it increased to an average degree. For 5% of respondents, it did not increase, and almost 4% of respondents gave no answer in this regard.

The inmates' assessment of their satisfaction after the meeting with the mediator

The inmates who participated at the penitentiary unit in the information meeting conducted by the mediator expressed their opinion on the level of perceived satisfaction with the participation in the mediator's duty.

According to 95% of the respondent population (n=420), the attitude of the person conducting the information meeting (mediator), towards the inmate, was positive. According to 6% of the respondents (n=26), the mediator's attitude towards the inmate was indifferent, and according to five inmates, the mediator's attitude towards the inmate during the mediation meeting conducted was negative. Over 40% of the respondents stated that they were very satisfied (happy) with their participation in the information meeting conducted by the mediator on the premises of the penitentiary unit. Almost the same percentage of respondents felt that they were rather satisfied, and for less than 4 % of the respondents the level of their satisfaction with the participation in the information meeting with the mediator was at a poor level (n=11) or the inmate was not at all satisfied with

the participation in the duty (n=8). Almost half of the respondents (46%) rated the overall atmosphere at the information meeting with the mediator very good. According to the same number of respondents (46%), the overall atmosphere of the meeting with the mediator was assessed as good.

Prisoners' opinion on the perceived benefits of participating in a briefing meeting with a mediator, including aspects that did not meet with the approval of the prisoners

When answering the open-ended question "What did you gain from participating in the information meeting with the mediator, and what did you dislike during the meeting?", inmates indicated various aspects that they liked or disliked. Not all respondents commented on the above. Sometimes their statements were more elaborate and indicated a broader context of feeling satisfied with their participation in the meeting with the mediator. To ensure the transparency of the results presented, the author grouped the responses of the inmates according to categories such as:

- knowledge of mediation, its objectives and process, and the possibility to use mediation, etc. (n=204);
- curiosity and novelty of many things needed (n=61);
- reflection on what can be changed in one's life, opportunities for action and support for development (n=39);
- learning how to solve problems, disputes and important life issues (n=26);
- everything was good, fine, I have no objections (n=18);
- experiencing inner peace, gratitude, contentment, energy for action, greater self-confidence (n=15);
- the person of the mediator and their role in the mediation process and their involvement and assistance in resolving problems (n=13);
- possibility of reconciliation with the victim (n=11);
- the possibility of mediating family issues and resolving family problems (n=8);
- conversation, dialogue (n=8);
- I am ready for mediation; I want to mediate (n=7);
- the initiative of the project and the involvement of others in its implementation (n=7);
- need for reconciliation, amelioration of the committed act (n=7);
- the possibility of reconciliation with a family member (n=4);
- how to avoid people and problems that can get me into trouble (n=4);
- leaving prison early and returning home (n=4);
- the possibility of positive rehabilitation (n=3);
- other (n=2);
- no answer (n=12).

Below are a selection of statements made by inmates about what they gained from participating in the duty mediator. The author believes that the expressions were at least partially worth to cite in order to present the idea of such duties and meetings between inmates with the mediators in penitentiary units (original spelling retained).

- “First of all, information that there is a chance of mediation. Yes mediation in Polish law is VERY necessary, only mediation that is applied and not as a provision in the code. It takes energy and every part of the “Machine” to get the machine going, I simply mean the willingness of the police, the prosecution, the courts, the people need to apply! Mediators needed who will do their duty. Since your pilot mediation project started I have spoken to two Mediation Ladies, such people are needed to get this moving, because after all 99.9% of the cases to be mediated are human tragedies, where after time emotions subside and there comes a moment when both parties need reconciliation.”
- “I felt the urge to apologise to the victims, I feel positive about the opportunity given and the willingness to help with this.”
- “I learned a lot about the possibility of forgiveness.”
- “Openness, impartiality on the part of the mediator and the realisation that I also need to work on myself.”
- “Hope to reclaim the family.”
- “I think very highly of a programme like mediation, it helps a lot, so that you can come to terms with the other side.”
- “An opportunity to speak freely about problems and an opportunity for reconciliation with the aggrieved party.”
- “The information is invaluable that there is such a mediation, someone is giving up their time.”
- “A lot of knowledge about reconciliation with the disadvantaged and a good approach to the other person.”
- “The overall impression is good that someone is trying to help the inmates.”
- “I have gained considerable knowledge and a spark of hope, there is nothing I don’t like.”
- “I have gained knowledge from attending the meeting so that I will be able to seek settlements with those affected by my crimes.”
- “I appreciate the fact that I can voluntarily, without a court, communicate with the victim through mediation.”
- “The offer itself is attractive at the prospect of taking advantage of it and it clearly communicates – we remember you!”
- “During the mediation, a settlement was reached with the family who felt the need to apologise and during which, an agreement was reached.”
- “I gained hope for commutation and inner peace.”
- “I have gained knowledge of other dispute resolution than just litigation.”

- “I found out that even after the verdict it is possible to apply for mediation.”
- “I learnt about many of the aspects I needed to rectify the situation that happened to me.”
- “Because of talking to a mediator, I learned what mediation is, what it is used for and what you can achieve through it, to fix things in your life so that you don’t go back to the penitentiary again . To finally draw the right conclusions.”

Among the inmates’ statements, there were also some which indicated their dissatisfaction with their participation in the mediator on-call sessions organised as part of the pilot programme (original spelling retained): “What I don’t like? – that it lasts too short”; “nothing” (n=6); “(...) I didn’t like the fact that in some cases mediation doesn’t help much or doesn’t apply”; “(...) I didn’t like the fact that this meeting is only after the verdict and not before the verdict”; “I never participated and I won’t because I don’t see the point”; “At the moment we are in the middle of the programme and activities as far as I am concerned, so it is too early to comment”. “My case is not for mediation.” “I had a mediation in a criminal case in 2017, so I knew everything about mediation, and I didn’t learn anything new at the meeting.” “I have gained nothing.”

The statements presented above lead to the conclusion that inmates who participated in information meetings with a mediator, obtained the greatest benefits in terms of: gaining knowledge about mediation, its goals and process, and opportunities to benefit from mediation, etc. (n=204); satisfying their curiosity about the news and the many things they need (n=61); reflecting on the changes they can make in their lives (n=39); learning about ways to solve problems, disputes and important life issues (n=26); experiencing inner peace, gratitude, satisfaction, energy to act, greater self-confidence (n=15); involvement of the mediator and assistance in solving problems (n=13); possibility to reconcile with the wronged person (n=11); possibility to undertake mediation in family matters and to solve family problems (n=8); to start a dialogue about problems, to redress wrongs (n=8); sense of readiness and willingness of inmates to enter mediation (n=7).

Prisoners’ Views on Their Willingness to Mediate

Over 37% of the respondents attending the mediator’s duty indicated a high willingness to participate in mediation (n=173), while approximately 31% of the respondents felt rather ready to participate in mediation (n=142). Per 20% of respondents were undecided whether they were willing to participate in mediation (n=103). Less than 5% of respondents did not feel ready to participate in mediation at all (n=23). Similar results were obtained after collecting responses from inmates to the question “How likely are you to decide in the future to participate in mediation in a case in which you are in pre-trial detention or in a case in which you are serving a prison sentence?” The majority of inmates (37%) indicated that they would be very likely (n=172), a quarter were undecided (n=117), for more than 21% of respondents it seemed rather likely (n=100). In the

case of a group of 26 inmates participating in the study, it was not at all likely that they would choose to enter mediation.

If inmates decided to enter mediation after sentencing, they would most often want to sort out the following issues: family matters; concerning getting out of debt (including maintenance debt); settling custody and upbringing issues and regulating contact with children; repairing the relationship with a close family member; resolving criminal matters; repairing the relationship with a close family member; repairing the damage caused by the crime; settling various types of financial matters; reparation; apologising to the injured parties; reconciliation; forgiveness and understanding by the injured party; early release; division of property. Individual responses included: undergoing drug treatment; divorce; wrongful prosecution; summary conviction; obtaining a suspended sentence with reparation; anything in line with the programme. One person was interested in mediating with the Inland Revenue regarding asset forfeiture. One respondent used the phrase “calculus of probability”.

Detainees' Fears of Entering Post-Sentence Mediation

Respondents were asked to describe their concerns before entering post-judgment mediation. In the majority of cases (over 80%), respondents felt that they had no concerns about entering mediation. However, if they feared anything, it was usually: the “lack of agreement with the other party”; that “the other party will not want to get along”; that “the partner’s mother may be resistant and not agree to mediation”; “the ex-partner’s lack of willingness to talk”; that “mediation will not happen”; “doubt that the wife will agree to mediation”; that “the aggrieved person will refuse mediation;” that “the aggrieved person may have exorbitant claims”; that “mediation has little effectiveness”; that “mediation will be of little use”, that “mediation will prove unsuccessful”, “there will be coercion to mediate with the aggrieved person”; “stress, fear and shame (n=3)”; “brother’s lack of consent to mediation”; that “nothing can be done about my case”; that “I will owe money to the state for the rest of my life”. One person stated that he was “afraid of reprisals from the Penitentiary”. Another was concerned about “difficulties in making contact with the victim”. One respondent stated: “I don’t want to mediate (he feels cheated by his wife after the last mediation because she said something different at the mediation and something different afterwards).” Several people said they were concerned about the low effectiveness of mediation (n=6). In two respondents, there was “anxiety”, as well as “a slight apprehension of meeting during mediation”. One person wrote: “Too little opportunity for interventions/tools related to effective (broad) reconciliation with victims in criminal proceedings, such as monetary compensation, thank you very much for the opportunities provided by this programme - thank you”. One particular statement was “I have no concerns; I am open to mediation. I hope it will help me to continue my family life after I leave the Penitentiary. I will improve contact with my daughters and I would like to fight, in a positive sense,

for my wife, whom I actually love very much, even though I have hurt her a lot with my behaviour.” Another inmate formulated his concern as follows: “The fear is that the Penitentiary will find out about my dreams and do everything to destroy them.” For one respondent, the concern was “scratching old wounds”, while for another it was “drawing out so-called dirt that which is unnecessary and unnerving”.

Summary

A total of 464 inmates participated in the study. The vast majority were men (98% of the sample). The largest group of respondents were those in the 31-40 age bracket (41% of the total), followed by those in the 41-50 age bracket (over 20% of the total). Respondents did not give answers to all the questions. Out of the 464 respondents – almost 77% of the sample had a previous criminal record (n=355). Out of the 464 persons surveyed – 419 were serving a custodial sentence (90%), 18 people were in pre-trial detention, representing less than 4% of the sample, and 27 people (more than 5%) gave no answer in this regard. Among the group serving a custodial sentence - the largest group was made up of prisoners serving a custodial sentence of up to and including 3 years (292 persons, i.e. 63% of the sample). Of the 464 responses given, just under 52% of the responses related to serving a custodial sentence in a semi-open prison, over 35% in a closed prison and over 7% in an open prison. The largest number of respondents served their custodial sentence in the ordinary system (more than 50% of the total number of respondents), more than 25% of respondents served their custodial sentence in the therapeutic system and almost 21% of respondents served their custodial sentence in the programme system.

Of the offences for which respondents were serving custodial sentences, the predominant offences were: offences against the family and guardianship, offences against property, and offences against life and health.

The empirical material collected made it possible to answer specific questions:

1. How do the imprisoned assess the increase of the usefulness, information and knowledge regarding the mediation, learned during the mediator's duty in relation to the knowledge obtained before the information meeting with the mediator?

The inmates participating in the study assessed, in case of more than 40% of the respondents, the level of their knowledge of mediation gained during the information meeting with the mediator (during the mediator on duty), compared to the knowledge they had before joining the pilot programme, increased to a sufficiently high degree, while for a group of 20% of the respondents - to a very high degree, and for a group of just under 17% of the inmates - increased to an average degree. It can therefore be assumed that, as a result of participation in the mediator's on-call sessions, there was an increase in

knowledge of mediation among the inmates compared to the knowledge they had prior to the pilot.

Information regarding the possibility of meeting a mediator on the premises of the penitentiary unit was most often obtained by the inmates from Prison Service officers (as indicated by 60% of the respondents), or from an information board (more than 20% of the respondents), as well as from another inmate (approx. 9% of the respondents). More than 40% of the respondents assessed that their knowledge of mediation gained during participation in the mediator's duty increased to a sufficiently high degree, for more than 20% of the respondents their knowledge of mediation increased to a very high degree and for less than 17% of the respondents it increased to an average degree. For 5% of respondents, it did not increase, and almost 4% of respondents gave no answer in this regard.

2. How do the inmates rate their satisfaction level after the participation in such information meeting with the mediator?

How do the inmates rate their satisfaction level after the participation in such information meeting with the mediator? According to 95% of the survey population (n=420), the mediator's attitude towards the inmates was positive. Almost 80 per cent of the inmates were satisfied with their participation in the information meeting with the mediator, including 40 per cent of the respondents who said they were very satisfied and almost a second number who were rather satisfied with their participation in the information meeting with the mediator. Almost half of the respondents (46%) rated the overall atmosphere during the mediator's on-call time as very good, and the same number of respondents - rated the on-call atmosphere as good.

3. What is the opinion of the inmates regarding the perceived benefits from participating in an information meeting with the mediator, and what is their opinion regarding what they did not like during such meeting?

The inmates who attended the information meetings with the mediator saw a number of benefits. Primarily, they felt that by attending the mediator on-call, their knowledge of mediation had increased. Based on the collected opinions of the inmates, it can be deduced that for many inmates the information meetings with the mediator were something new in the unit, an opportunity to reflect on their lives, to act from the outside, an opportunity to learn about methods of solving problems, disputes and important life issues. Inmates declared that after meetings with the mediator they experienced inner peace, gratitude, contentment, energy for action, greater self-confidence. They were happy that they had been given the opportunity to reconcile with the aggrieved person; that they had been able to enter mediation in family matters, that they had been able to participate in conversations, in dialogue.

A beneficial aspect of the mediator information meetings held in the units was an increase in the willingness of inmates to mediate, which in turn translated into an increase in the number of mediations initiated by inmates.

Respondents were far less likely to report their dissatisfaction with meetings with a mediator. Rather, they did not like the fact that the mediation/Pilot takes too short a time, or that it does not help or concern them in some cases. There were also statements such as: “(...) I didn’t like the fact that this meeting is only after the verdict and not before the verdict”; “I never participated and I won’t because I don’t see the point”; “At the moment we are in the middle of the programme and activities as far as I am concerned, so it is too early to comment”. “My case is not for mediation.”

4. How possible that is that in the future the inmates are going to decide to participate in mediations in the case where they are temporarily arrested or in a case where they are serving a custodial sentence?

Over 68 respondents attending the mediator’s standby service declared that they were ready to participate in mediation (with 37% of respondents declaring that they rather felt ready to participate in mediation and 31% of respondents declared a high willingness to participate in mediation. The majority of inmates were of the opinion that they would choose to participate in mediation in the future after sentencing. For a group of 37% of respondents it was very likely (n=172) and for a group of 21% of respondents it seemed rather likely, A quarter were undecided whether they would enter mediation in the future after the verdict.

5. For what purpose or on what issue would detainees choose to participate in mediation in the future?

The inmates declared that, by entering mediation, they would most often like, for example, to sort out their family affairs, to get out of debt, to mend relationships with a close family member, to repair damage caused by a crime, to settle various financial matters, to make reparations, to apologise to wronged parties, and to settle other matters important to them

6. What fears did detainees have (if any), prior to participating in mediation?

The majority of respondents were of the opinion that they had no concerns before entering mediation. If there were any doubts from them, such as: Will the other party be willing to come to an agreement?, Will the mediation be successful?, Will the aggrieved party have exorbitant claims?, Will the mediation be successful?, Will old wounds need to be torn up?, Will there be coercion to mediate?

III. 3. Sentenced Persons' Views on Mediation after Conviction

Anna Gmurowska, Agnieszka Lewicka-Zelent

In innovative programmes, not previously evaluated, it is extremely important to determine their effectiveness. In penitentiary rehabilitation, the most common criterion for such effectiveness is the rate of return to crime⁴. Unfortunately, I. Niewiadomska⁵ has shown that the effectiveness of imprisonment assessed in the category of recidivism is low. It is therefore worthwhile to carry out an ongoing evaluation of any new programmes implemented in penitentiary units. This is because it is valuable to know what changes and how intensive they have been for the inmates, participants in these innovative interventions⁶. On the basis of the data obtained, it is possible to conclude that a given programme should be generalised (with favourable changes) or that it should be modified or even not recommended for implementation (with no expected changes). Knowledge of these changes can be obtained in various ways: from educators and SW officers in direct contact with convicted programme participants, members of their families and from the convicted persons themselves. It seems most optimal to collect and compare information from all these actors, although this is not always possible. In the ongoing project on mediation with persons deprived of their liberty, it was decided to obtain knowledge from inmates who participated in mediation meetings with victims. The data obtained are subjective in nature, as they reflect the thoughts, feelings and experiences of those deprived of their liberty. However, this does not detract from their value, as post-sentence mediation is aimed at this very group of people and it is their experience that determines whether they will want to participate in mediation in the future and whether they will promote it to their fellow inmates.

In carrying out this part of the survey, the research team received support from the Penitentiary officers who, at the prisons and detention centres included in the project activities, were able to directly access inmates in order to give them questionnaires to complete. The data obtained formed the basis for the development of this chapter of the study.

Fundamentals of research methodology

The aim of the survey was to find out the opinion of convicted persons about the mediation they participated in as part of a pilot project implemented in

⁴ R. Opora, *Reflections on contemporary resocialisation in the context of its effectiveness*, Resocjalizacja Polska, 1, 2010, p. 215.

⁵ I. Niewiadomska, *Osobowościowe uwarunkowania skuteczności kary pozbawienia wolności*, Lublin 2007, pp. 237-238.

⁶ Z. Bartkowicz, *The effectiveness of rehabilitation - in the circle of thorny questions*, Lublin Pedagogical Yearbook, T. XXXV, z. 2, 2016, s. 52.

penitentiary units on the territory of the Regional Inspectorate of the Prison Service in Lublin.

The primary research question was: What are the views of convicted persons participating in mediation meetings while serving their prison sentence on mediation?

The following specific questions were formulated to answer this main research question:

- 7) What experiences did convicts have with post-sentence mediation before joining the pilot?
- 8) What doubts and concerns did the interviewed convicts feel about entering post-sentence mediation in the ongoing pilot project?
- 9) What was the extent and effect of the mediation meetings attended by persons deprived of their liberty?
- 10) What benefits did participants perceive from the mediation meetings conducted under the pilot programme?
- 11) What attitude did convicted persons have towards mediation after participating in the pilot programme?

The study used a questionnaire developed for the purposes of the project „Interview and survey questionnaire - experiences of mediation participants part. Related to inmates who participate in mediation under the ongoing pilot project which was intended to the prisoners participating in the mediations as part of the executed pilot project. Part one of the tool included questions about people deprived of their liberty on the basis of which they could be characterised. In the second part, questions were formulated about their opinions on the project activities. The views of those interviewed on this subject are a direct result of their personal experience of attending mediation meetings.

Characteristics of convicts participating in post-sentence mediation

Sixty-nine convicts who were party to the mediation conducted as part of the ongoing pilot took part in the study. The vast majority were men (96%). The age of the inmates surveyed ranged from 21 to 60 years of age, with the largest number between 31-40 (35%) and 41-50 (30%). One fifth were between 22 and 30 years of age. The remaining part included over 21 years old (15%). A greater proportion of those convicted (64%) had a previous criminal record.

Those participating in mediation were in semi-open (67%), closed (28%) and open (5%) prisons. Fifty-one per cent of them were serving their custodial sentence in the regular system, 44 per cent in the programme-based system and 5 per cent in the therapeutic system. The vast majority of those surveyed had been in prison for up to three years (70%). A further 15 per cent were serving isolation sentences of more than three years and less than five years. The remainder (15%) had been in prison for more than five years. Individuals surveyed were serving criminal sentences for: abuse (n=19), theft (n=15), DUI (n=10), fraud (n=8), non-payment of maintenance (n=7), burglary (n=6), robbery (n=5), destruction

of property (n=5), criminal threats (n=4), drug possession (n=2), battery (n=2), as well as for illegal importation of aliens, attempted murder, violation of bodily integrity of an officer and sexual exploitation of the helplessness or insanity of another person. Many people have been convicted under several articles of the Criminal Code combined.

Prisoners' experiences of mediation prior to joining the project

The majority of pilot participants (71%) stated that they had not received any information on the possibility to participate in mediation during criminal proceedings (pre-trial, court proceedings, before conviction and incarceration in prison/jail). The rest of those under survey (29%) were provided with such information. Of the 29% of respondents who had received information on mediation prior to their conviction and incarceration in prison/jail, 16% had attended mediation meetings.

Those who had not participated in mediation before believed that was the case mainly on the basis of the lack of information about the possibility to participate in mediation (n=28) and the lack of need to do so (n=11), however also on the basis of lack of consent of the victims/affected persons to participate in mediation (n=2). One inmate stated: 'no, because even the lawyer failed to inform me that such a thing even exists, and on top of that he was bent on not letting me go,' while another - "because I thought it was unnecessary for me."

Prisoners' doubts and concerns regarding entering mediation after sentencing

Participants in the mediation shared their doubts and fears before entering the post-judgement mediation conducted as part of the ongoing pilot project. That is due to the fact that it is exceptionally important to identify the factors causing doubt and anxiety in convicts in the context of their elimination in the subsequent mediation programmes carried out in penitentiary units.

More than half inmates (58%) stated they did not feel anxious about participating in mediation. Slight or moderate doubts were each held by 18% of respondents. Six per cent had either strong or very strong concerns.

The inmates who felt some doubts before entering mediation under the implemented project indicated the reasons for the doubts. The seven were concerned that an agreement with the affected person would not be reached. Three persons did not believe that they would be willing to enter into dialogue during the mediation meeting. In contrast, individuals felt anxiety related to the possibility of the victim not honouring the terms of the settlement, the mediator blaming them for the crime committed, the lack of information about the mediation process and/or the victim's willingness to forgive them, the unpredictable reaction of the other party to the mediation and the lack of legitimacy of mediation in a specific crime case.

The eight persons who confirmed their concerns regarding entering the mediation said that their fear were caused by the possible ineffectiveness of the mediation meeting („the conversation may not be helpful to me,’ ‘failure to complete the mediation. lack of satisfaction and dissatisfaction of both parties.’ ‘reconciliation alone is not enough’), failure to reach a settlement (‘I did not reach an agreement’), failure to honour mediation commitments (‘so as not to throw words to the wind’), ignorance of the mediation process (‘because I did not know what mediation was beforehand’) and the need to confront the consequences of the offence committed (‘the fears are justified because I made a mistake’).

Scope and Effect of Mediation Meetings From the Prisoners’ Perspective

Mediation participants indicated the forms of the mediation process. Most participated in indirect mediation, when the mediator would meet once with one party and once with the other party and later provided them with the other party’s information, arguments and proposals, in terms of the settlement and its proposed content (70%). Twenty-one per cent of them participated in mediation conducted electronically (so-called e-mediation), i.e. the mediator conducted the mediation sessions by means of distance communication. The remaining inmates (9%) participated in direct mediation (the meeting took place with the victim in the presence of a mediator) or mixed mediation (partly direct, indirect and using electronic means of communication).

Table 4. Subject matter of the mediation in which the detainees participated

Subject matter of mediation	M	%
Bullying	21	31.8
Theft	17	25.8
Fraud	9	13.6
Criminal threat	8	12.1
Infringement of physical integrity	6	9.1
Insult	1	1.5
Accident.	1	1.5
Other	18	27.3

Less than one-third of those surveyed had participated in mediation where the subject was elder abuse (32%) and ¼ had mediated cases of theft. Fourteen per cent of inmates discussed fraud, 12% discussed criminal threats and 9% discussed violations of bodily integrity. In one case, the subject of mediation

was an insult and in another a car accident. Among other subjects of mediation, participants mentioned: family matters (n=8), including child contact (n=4), battery (n=2), robbery (n=2), drink driving, extortion and destruction of property.

With mediation, the most important thing is the outcome. In 74% of cases, mediation meetings resulted in mediation settlements being drawn up. In contrast, in 11% of cases, there was no agreement between the convicted person and the victim. The others stated that the other party did not finally agree to participate in mediation or the mediation process was discontinued.

Benefits of prisoners' participation in post-sentence mediation - in the opinion of prisoners

People deprived of their liberty participating in the pilot programme were mostly able to point out the benefits of participating in mediation (60%). Twenty-eight per cent found it difficult to identify the benefits of mediation and an incomplete 12 per cent saw no value in this form of restorative justice.

The inmates who perceived the benefits of participating in mediation highlighted:

- “agreement with family members or victims” (n=6);
- “opportunity to leave prison early” (n=5);
- “amicable handling of the problem, dispute satisfactory to both parties” (n=3);
- “amicable redress of grievances” (n=2);
- “obtaining apology and reparation” (n=2);
- “the mediator helps you to understand your mistake” (n=2);
- “more contact with victims” (n=2);
- “expanding your knowledge of mediation” (n=2);
- “material benefit” (n=2);
- “an agreement between the parties without court involvement” (n=2);
- the opportunity to rectify the mistake;
- “signing of the terms of settlement”;
- “an informed opportunity to develop the case”;
- “sincere peace with relief”;
- “an opportunity to rebuild family relationships”;
- “help from another person in legal matters”;
- “easier dispute resolution”.

One person stated: „because my ex-partner does not prohibit me from contacting my son, for which I am immensely grateful’, and the other „the man has committed himself to something good and will pursue it’.

Participants in mediation were also given the opportunity to evaluate selected benefits identified by the researchers in five scopes related to: shaping social attitudes, behavioural consistency, knowledge of restorative justice and trust in mediation.

Table 5. Through participation in the pilot project, and in particular participation in mediation, there are real opportunities to shape desirable social attitudes and even to rebalance the offender and victim environment

This is how I noticed	I did not notice	Difficult to say
75,8%	6,0%	18,2%

Three quarters of the mediation participants said that participation in the pilot programme and especially in mediation provided an opportunity to shape desirable social attitudes and even to rebalance the offender and victim environment. Eighteen per cent had a different opinion and six per cent had no clear opinion.

Table 6. As a result of participation in the pilot project and, in particular, participation in mediation, inmates’ awareness of the consequences of their own behaviour and their understanding of the harm they have caused to others has increased

has not increased at all	has increased slightly	has increased moderately	has increased to a rather large extent	has increased enormously
4,6%	14,1%	25%	21,9%	34,4%

More than half of the mediation participants felt that participation in the pilot programme, and in mediation in particular, had contributed to a large (22%) or very large (34%) increase in their level of awareness of the consequences of their own behaviour and their understanding of the harm they had caused to the victim, the victims, their families, their own relatives, and the community. A quarter of those surveyed rated this increase as moderate, 14% as slight and 5% saw no change in this area.

Table 7. As a result of participation in the pilot project and, in particular, participation in mediation, inmates’ knowledge of mediation as a form of restorative justice has increased

has not increased at all	has increased slightly	has increased moderately	increased to a rather large extent	has increased enormously
7,4%	2,9%	20,6%	30,9%	38,2%

The vast majority of detainees felt that their knowledge of mediation as a form of restorative justice had increased to a high (31%) or very high (38%) degree.

One in five pilot participants rated this increase as average, and 10% of inmates saw little change in this area.

Table 8. As a result of participation in the pilot project and, in particular, participation in mediation, confidence in mediation has increased among inmates

has not increased at all	increased slightly	increased moderately	increased to a rather large extent	increased very significantly
16,2%	4,4%	17,6%	30,9%	30,9%

For the majority of respondents, confidence in mediation increased significantly after the completion of the implemented project (62%). Eighteen per cent considered the increase to be average and 4 per cent considered the increase to be slight. Sixteen per cent of inmates perceived no change in their level of confidence in mediation.

Table 9. Mediation as a form of restorative justice is conducive to reducing recidivism of convicts according to surveyed prisoners

I do not agree at all	I slightly agree	has increased moderately	increased to a rather large extent	has increased enormously
4,4%	8,8%	19,1%	32,4%	35,3%

More than a third of those surveyed (35%) agreed very much that mediation as a form of restorative justice helps to reduce the recidivism of convicted offenders. Almost 33% of them did not support this to a rather high degree, while 19% of the inmates supported this claim to a moderate degree. In contrast, 9% of respondents slightly agreed that mediation could be an effective method of working with convicted persons. The others felt that mediation was not conducive to reducing their recidivism.

Table 10. Mediation as a form of restorative justice promotes improvement of the situation of crime victims in the opinion of surveyed prisoners

I do not agree at all	I slightly agree	moderately agree	agree to a rather large extent	very much agree
6,0%	5,5%	14,9%	37,3%	37,3%

Three quarters of those surveyed confirmed that mediation helps to improve the situation of people who have been harmed by crime (half of whom were convinced of this). Fifteen per cent of moderate inmates agreed with this statement. This means that 6% had a different opinion and a further 6% of those surveyed slightly supported the view that mediation is a good way to support victims.

Attitudes of prisoners participating in the project towards post-sentence mediation

Those participating in the mediation were asked to answer the question: , “Would you use mediation again?”. Fifteen per cent of inmates were not interested in participating in mediation, meaning that 85 per cent of those surveyed would like to participate in mediation again, demonstrating the benefits they derived from it.

The inmates who were keen to enter mediation once again justified their response as follows:

- “there is always a chance of agreement” (n=6);
- “if there was a need for it” (n=3);
- “because it gives me a chance to repair the damage I have done” (n=3);
- “I think there are considerable benefits from mediation” (n=3);
- “good for a third person to talk to the perpetrator” (n=2);
- “because it is better to get along in the presence of a mediator than in court” (n=2);
- “because mediation can influence the verdict” (n=2);
- “apologise” (n=2);
- “atmosphere during meetings and quick resolution of issues” (n=2);
- “quick reconciliation”;
- “mediation is useful to me”;
- “multiple options to end the dispute”;
- “because it is a time-sensitive, cost-free affair and offers an opportunity to reconcile the disputing parties”;
- “because the mediator is nice”;
- “on other matters”;
- “because I have no problem contacting my son”;
- because it obliges;
- “reducing the judicial process to a minimum”;
- “because it is a very good programme, positively affecting the convict”;
- “because I don’t see anything wrong with it”;
- “to receive help”;
- “through mediation I know that the victim is satisfied”;
- “but with the involvement of a mediator of proven competence”;
- “is proving to be very effective in many cases and should be prioritised”.

For 79% of the inmates, the atmosphere at the mediation meeting was very important, and for ¾ of them, the competence and experience of the mediator. A further 69% stressed that the opportunity to have a say was important, 58%

the opportunity to make a decision and 46% the opportunity for redress. Slightly fewer appreciated: the lack of formality of the meeting (31%), the opportunity to listen to the aggrieved person (24%) and to meet them (18%). For 10 per cent of respondents, other circumstances were important such as: „settling the family situation’ „speaking in front of the mediator’ „smooth stress-free performance with a positive end result’ „meeting commitments’ „agreeing to alimony’ „mediator’s involvement, clear message’ „being able to hear my point of view’ „giving the accused person a second chance’ and ‘the conversation and experience of the mediator’.

Table 11. Important factors for detainees participating in mediation

Factors	M	%
atmosphere during meetings	53	79.1
lack of formalities	21	31.3
mediator's competence and experience	50	74.6
Meeting with the victim	12	17.9
opportunity to speak	46	68.7
the possibility of taking a decision	39	58.2
possibility of redress	31	46.3
the possibility of hearing the victim	16	23.9
other circumstances	7	10.4

In addition, five detainees justified why they would not want to participate in mediation in the future. They commented as follows: „I won’t need it’ „because in my case it was different, if I had other issues then yes’ „because there is nothing out of it, I just had the illusion that I was doing everything I could and still it is as it was zero out of it and even a financial loss’ „there is no need for it, I have no conflict with anyone’, and ‘because they lied and are up to no good’. Four per cent of mediation participants noted disadvantages of mediation. Two individuals acknowledged that they had suffered financial losses as a result.

Based on a summary of the gains and losses of participating in mediation, 91% of inmates participating in the pilot and mediation programme would recommend other inmates to participate. Those negative towards mediation justified this as follows: „because it’s crap, it’s supposed to be better and it’s the same”, “there are always chances”, “because the mediator said something different and did something completely different”.

Participants in the mediation would recommend participation to other inmates for the following reasons:

- “the possibility of reconciliation with the aggrieved” (n=8);
- “leniency” (n=3);
- “there is a chance to repair the damage I have done” (n=3);
- “amicable settlement” (n=2);
- “an opportunity to reconcile with loved ones;
- “an opportunity to settle a dispute”;
- “because there are a lot of benefits”;
- “because it leads with little effort to the cancellation of disputes and health or financial costs”;
- “because most inmates have no idea of the benefits of mediation”;
- “because it is constructive”;
- “yes, because this mediation can help”;
- “because you can get along with the other person without any consequences”;
- “everyone should have the opportunity to correct a mistake”;
- “because there are effects”;
- “you can communicate through a mediator”;
- “the possibility of obtaining redress”;
- “clear message”;
- “you can try to reconcile and there are big advantages in doing so”;
- “helps to conclude an agreement between the parties”;
- “because it is a good legal form and many would benefit from this assistance”;
- “I have already recommended it because it can help to resolve disputes between the parties and reduce the damage and penalty to a minimum”;
- “only after verification of the mediator’s competence”;
- “this is the way to consent and transformation”;
- “provides an opportunity for the parties to come to an understanding, bury barriers and build understanding and reconciliation”;
- “for reasons of comfort, competence of the mediator, talking to the other side”;
- “because you can get along, understand, the mediator helps to explain”.

Table 12. Prisoners’ views on court and mediation

has not increased at all	has increased slightly	has increased moderately	increased to a rather large extent
7,4%	2,9%	20,6%	30,9%

The majority of inmates who took part in the pilot programme, including mediation, said that mediation was better than court. Sixty per cent were convinced of this and 15 per cent believed that mediation was a slightly better method of dealing with the consequences of the crime. Nineteen per cent of mediation participants rated it comparably to court. Six per cent of inmates recognised the superiority of court over mediation.

Summary

Sixty-nine inmates who took part in the mediation conducted as part of the pilot project participated in the study. The vast majority were men, people aged between 31 and 50. More than half of them had a previous criminal record. At the time of the survey, she was serving a custodial sentence in a semi-open facility under the regular system. Less than $\frac{3}{4}$ of them have spent up to three years in prison, most often for domestic abuse, theft and drink-driving.

The empirical material collected made it possible to answer specific questions.

1. What experiences did inmates have with post-sentence mediation before joining the pilot?

The previous experience of most inmates with mediation has to be assessed negatively. More than 70% of them said that they had not been informed about the possibility to participate in mediation during criminal proceedings (pre-trial, court proceedings, before conviction and incarceration in prison/jail). In contrast, nearly half of those who gained knowledge of criminal mediation had taken advantage of such an offer. Those who had not participated in mediation meetings in the past argued this mainly on the grounds that they were not informed about the possibility of taking part and that they did not need to do so.

2. What doubts and fears about entering post-sentence mediation were felt by the interviewed detainees in the ongoing pilot project?

Nearly 60 per cent of inmates said that they had no doubts or fears about entering mediation. Individuals were afraid that an agreement would not be reached with the affected person or that they would not agree to participate. However, 65% did not have their concerns confirmed. In other cases, doubts did not disappear and were linked to, among other things, a lack of agreement, a lack of faith in the implementation of joint commitments and a lack of availability of mediators and their limited powers.

3. What was the extent and effect of the mediation meetings attended by convicts?

The vast majority of inmates participated in indirect mediation (70%). Twenty-one per cent of them participated in e-mediation by means of distance

communication. The fewest inmates were participants in direct or mixed mediation.

The most common subjects of mediation were domestic abuse, theft, fraud, criminal threats and violation of bodily integrity. In almost $\frac{3}{4}$ of the cases, mediation meetings resulted in mediation settlements being drawn up.

4. What benefits did convicts perceive from participating in pilot mediation?

The majority of people deprived of their liberty participating in the pilot programme indicated the benefits of participating in mediation (60%). The most frequent points they made were: the possibility to communicate with victims, including family members, and early conditional release from prison. In addition to this, it was important for them to find a solution to the conflict that satisfies both parties, to be able to repair the damage, to apologise to the wronged party, to have a dialogue with the wronged party without court involvement but in the presence of a mediator. Individuals also admitted that they felt relieved after meeting the victim and started working on rebuilding their relationship with their family.

Three quarters of the mediation participants said that participating in the pilot programme, and particularly in mediation, was an opportunity to shape their positive social attitudes and even to rebalance their living environment and those of the victims. More than half felt that mediation contributed to a significant increase in their level of awareness of the consequences of their own behaviour and their understanding of the harm they had caused to the person harmed, the victims, their families, their own relatives, and the community. The vast majority of detainees also said that their knowledge of mediation as a form of restorative justice had increased significantly. Confidence in mediation also increased in the majority of them after the ongoing project. More than two-thirds of the inmates agreed that mediation helps to reduce the recidivism of convicts. Three quarters of those surveyed confirmed that mediation helps to improve the situation of people who have been harmed by crime.

5. What was the attitude of convicted persons towards mediation after their participation in the project?

After participating in the mediation conducted as part of the pilot project, the majority of inmates would consider doing it again in the future. Convicts were motivated by a variety of factors, but most were convinced that mediation was an opportunity to come to an agreement with their victims, to repair the damage they had done, to apologise, to improve their relationships with others without the interference of the court, or to smoothly deal with difficult issues in a pleasant atmosphere. However, one of the prerequisites is to feel the need to resolve a particular conflict in a constructive manner with the involvement

of a competent mediator. Inmates who were not currently embroiled in conflicts unsuitable for mediation, who made financial commitments assessed as losses during mediation or who did not obtain a satisfactory mediation agreement were unwilling to use mediation in the future.

For almost 80% of the inmates during the mediation, the atmosphere at the meeting was very important, and for $\frac{3}{4}$ of them, the competence and experience of the mediator. Fewer valued the opportunity to have a say and make decisions on issues that are important to them. Less than half of the detainees felt that the opportunity to make amends to the victim, the simplified formalism and meeting the victim and listening to them were important issues.

More than 90 per cent of participants in mediation said they would recommend it to other inmates, particularly because of the opportunity to reconcile with the aggrieved parties, make amicable settlements and the chance of conditional early release.

Three quarters of the inmates, based on their experience of participating in the project, rate mediation better compared to court.

III. 4. Opinions of the victims on post-judgment mediation and their experiences in mediation with the participation of the convicted person

Anna Gmurowska

Initiating and conducting the entire mediation procedure requires the consent of the person being a victim of a criminal offence to mediate. It should therefore be assumed that the victim is the central figure in the mediation procedure. However, the victim inextricably implies the state of being harmed. A. Rybak-Starczak, after: R. Kmiecik defines the state of being harmed as an infringement or a threat to a legal right, caused by an event defined as a criminal offence; «the state of infringement or threat to a legal right», being «being a passive (victim-related) correlative of perpetration»; an objective state being a result of a criminal offence⁷, «irrespective of some or other evidence established in the criminal procedure»⁸.

In legal terms, a broad legal definition of the victim is included in the provisions of the Code of Criminal Procedure⁹. In accordance with Article 49(1) of the Code of Criminal Procedure, the victim is a natural or legal person whose legal interests have been directly infringed or threatened by a criminal offence. The provisions of the aforementioned Code also states that the victims are also state or local government institutions not having legal personality and other organizational units having legal capacity under separate laws¹⁰, as well as the insurance undertaking to a specific extent¹¹. Furthermore, the rights of the victim may be exercised by the authorities of the State Labour Inspectorate, if they have revealed a criminal offence or initiated the proceeding while acting within their competences¹². The important thing is that if the victim is a minor or a person being fully or partly incapacitated, his or her right of the victim is exercised by his or her statutory representative or person exercising permanent custody over the victim¹³. On the other hand, if the victim is a helpless person, particularly due to his or her age or health, his or her right of the victim may be exercised by the

⁷ A. Rybak-Starczak, *Pokrzywdzony w postępowaniu karnym* [The victim in the criminal proceeding], Palestra 49/7-8(559-560), Warsaw 2004, p. 73, source: [https://bazhum.muzhp.pl/media/files/Palestra/Palestra-r2004-t49-n7_8\(559_560\)/Palestra-r2004-t49-n7_8\(559_560\)-s73-85/Palestra-r2004-t49-n7_8\(559_560\)-s73-85.pdf](https://bazhum.muzhp.pl/media/files/Palestra/Palestra-r2004-t49-n7_8(559_560)/Palestra-r2004-t49-n7_8(559_560)-s73-85/Palestra-r2004-t49-n7_8(559_560)-s73-85.pdf) [date of access: 28.05.2022]

⁸ Comp. R. Kmiecik, *Ustawowa definicja pokrzywdzonego (uwagi na tle art. 40 k.p.k.)* [The statutory definition of victim (remarks on the basis of Article 40 of the Code of Criminal Procedure)], *Annales UMCS, Sectio G, Ius*, Vol. XXIV, Lublin 1977, p. 165.

⁹ The Act of 6 June 1997 - the Code of Criminal Procedure (i.e. Journal of Laws of 2022, item 1375).

¹⁰ Article 49 § 2 of the Code of Criminal Procedure.

¹¹ Article 49 § 3 of the Code of Criminal Procedure.

¹² Article 49 § 3a of the Code of Criminal Procedure.

¹³ Article 51 § 2 of the Code of Criminal Procedure.

person providing care for the victim¹⁴. It should be noted that in case the victim dies, the rights he or she would enjoy may be exercised by his or her closest relatives or dependants, and by the public prosecutor acting *ex officio* provided that there are no such persons or they are not identified¹⁵.

The foregoing indicates that the manner in which the victim is defined is essential for his or her participation in the procedural activities at a certain stage of the criminal proceeding, including in terms of his or her participation in the mediation procedure. In its Decision of 25 March 2010, the Supreme Court interpreted the victim in the following manner: 'the victim is not only the entity whose legal rights have been directly infringed by a criminal offence, and not through the infringement of another right'¹⁶. As for murder-related cases, the Supreme Court has assumed that the closest relatives of the victim - his or her parents or spouse - may not be deemed to be a victim. As for the criminal offence of murder, the victim's health and life are subject to protection, while the attempt on these values only affects the victim directly. It should therefore be concluded that the health and mental health of the closest family members have been affected indirectly¹⁷.

In the literature on social sciences, the authors dealing with restorative justice usually point out that the category of victims should be considered more broadly. L. Falandysz claims that the closest relatives and dependants of the late victim should be called the 'indirect victims'¹⁸. A. Lewicka-Zelent argues that an even broader view is presented by W. Zalewski and M. Cieślak, claiming that the victim of a criminal offence - presumably the aggrieved person - is not only the person who is directly affected by the criminal offence, but also the society. The authors claim that the victim of a criminal offence deserves a financial, moral compensation, while the society deserves a compensation in the form of compensatory damages for a specific social objective¹⁹. Referring to the studies conducted by D. Frehsee and D. Eppenstein, W. Zalewski recognizes the fact that many victims are not willing to punish the offender, but pursuing their interests, they are ready to seek such methods and alternative solutions (e.g. while joining the

¹⁴ Article 51 § 3 of the Code of Criminal Procedure.

¹⁵ Article 52 § 1 of the Code of Criminal Procedure.

¹⁶ Decision of the Supreme Court of 25 March 2010, IV KK 316/09, Criminal Law Bulletin of 2010, No 3, item 15; Judgment of the Supreme Court - Criminal Chamber of 17 February 2010, III KK 292/09, The Judicature of the Supreme Court in Criminal Cases of 2010, No 1, item 352.

¹⁷ Judgment of the Supreme Court of 23 July 2008, V KK 377/07, The Judicature of the Supreme Court - Criminal and Military Chamber of 2008, item 1525.

¹⁸ L. Falandysz, *Pokrzywdzony w prawie karnym i wiktymologii* [*The victim under the criminal law and victimology*], Warsaw 1980, p. 44.

¹⁹ A. Lewicka-Zelent, *Gotowość osób pozbawionych wolności do zadośćuczynienia osobom pokrzywdzonym* [*The readiness of the persons deprived of liberty to redress to the victims*], Lublin 2017, p. 44.

mediation procedure), which would allow them to satisfy their needs²⁰. An interesting opinion on the adaptation of the victim to difficult situations is presented by M. Grudziecka and J. Książek. Initially, the victim denies any harm he or she may have experienced, and is not willing to discuss the criminal offence. At a later stage, the victim blames the offender for the event, and starts focusing on his or her own suffering, then feeling a desire to retaliate against the offender, and then becomes indignant. Afterwards, he or she becomes emotionally stable and calms down his or her negative emotions, while starting examining the causes of the event and a rational explanation for the difficult conflict he or she has found himself/herself. During the fifth phase, being called the 'balancing' phase, the victim calms down his or her negative emotions, and starts looking for a rational explanation for the conflict. At the end of the adaptation - integration - process, the victims re-evaluates his or her role, and attempts to adapt thereto. When analysing the aforementioned process of the victim's social adaptation, it is deemed that the most optimal, desirable time to involve the victim in the mediation procedure is between the third month following the event and the time corresponding to the balancing and integration phase²¹. The victim may also be involved, obviously with his or her consent, in the mediation procedure when the perpetrator already bears the consequences for the offence committed and serves the imprisonment penalty.

The Council of Europe has recognized the potential advantages of restorative justice with regard to the justice system. Recognizing restorative justice to be a method that may be used to identify and satisfy the needs and interests of the parties through balanced, fair and joint action, the Council of Europe has paid particular attention to empowering the parties, including the victims (those affected by a criminal offence) and the offenders in specifying and remedying the harm caused by the criminal offence. It has been emphasized that the victim of a criminal offence has the right to reach an agreement with the offender, seek apologies, obtain redress, and to become satisfied with the procedure²².

Both the guidance and recommendations for the Member States on restorative justice in criminal cases and mediation in penal matters indicate that the

²⁰ W. Zalewski, *Sprawiedliwość naprawcza. Początek ewolucji polskiego prawa karnego? [Restorative justice. A beginning of the evolution of Polish criminal law?]*, Gdańsk 2006, p. 113.

²¹ M. Grudziecka, J. Książek, *Mediacja sprawdziła się jako instytucja dla pokrzywdzonych [Mediation has proved successful as an institution for the victims]*, [in:] L. Mazowiecka (ed.), *Mediacja karna jako instytucja ważna dla pokrzywdzonego [Criminal mediation as an institution of importance for the victim]*, Warsaw 2013, pp. 64-80.

²² Comp. Preamble to Recommendation CM/Rec(2018)8 of the Committee of Ministers [Council of Europe to Member States concerning restorative justice in criminal matters (adopted by the Committee of Ministers on 3 October 2018 at the 1326th meeting of the Ministers' Deputies) and Preamble to Recommendation No. R (99) 19 of the Committee of Ministers to Member States concerning mediation in penal matters (adopted by the Committee of Ministers on 15 September 1999 at the 679th meeting of the Ministers' Deputies).

well-being and the protection of the victim's interests are highly significant. They simultaneously highlight the significance of promoting restorative justice, including the enabling and facilitation of research studies on restorative justice and the facilitation of the evaluation of programmes or projects that are carried out or financed by the Member States²³.

It should be pointed out that the Polish legal order provides for the Victims and Post-release Assistance Fund, called the 'Justice Fund', managed by the Minister of Justice to promote restorative justice, facilitate programmes and projects for assisting the victims, facilitate research studies on restorative justice and finance the related activities. This Fund is used to finance the following activities, in particular:

- trainings for criminal prosecution bodies and their personnel to enhance their competences in dealing with victims and witnesses, and to promote alternative conflict resolution methods, in particular mediation in family, juvenile and criminal matters²⁴;
- financing alternative conflict resolution methods, in particular mediation in family, juvenile and criminal matters²⁵;
- activities undertaken or entrusted by the manager of the Fund to support and develop a system of assistance for victims and witnesses and post-release assistance, and to address the causes of crimes, in particular:
- promoting and supporting initiatives and actions to improve the situation of victims of crimes and the effective renewed adaptation of the convicted persons; undertaking educational and information projects, including on the causes, conditions and prevention of crimes,
- financing the costs of organizing and conducting education, post-graduate studies, training courses and trainings,
- initiating, organizing and commissioning research and development, and cooperating with other bodies in this field, concerning the situation and needs of victims, witnesses and the convicted persons, as well as the causes, conditions and prevention of crimes,
- raising awareness of the rights of victims and alternative conflict resolution methods, in particular mediation in family, juvenile and criminal matters,

²³ Recommendation 66 of Recommendation CM/Rec(2018)8 of the Committee of Ministers [Council of Europe to Member States concerning restorative justice in criminal matters.

²⁴ Article 43 § 8 point 1b of the Act of 6 June 1997 - the Criminal Executive Code (i.e. Journal of Laws of 2021, item 53, as amended).

²⁵ Article 43 § 8 point 1d of the Act of 6 June 1997 - the Criminal Executive Code (i.e. Journal of Laws of 2021, item 53, as amended).

- measures to support families at risk of dysfunctionality, in particular in the field of prevention and treatment of addiction and shared dependence, as well as the resolution of conflicts within the family²⁶.

The Justice Fund has certainly made it possible to launch pilot actions, research and development work on mediation as a form of restorative justice at the stage of executing the imprisonment service in the Lubelskie Voivodship, with an aim to improve the situation of victims and to strengthen the renewed adaptation of the convicted persons. It was also important to learn about the experiences of the victims participating in pilot post-judgment mediation procedures, in particular to obtain opinions from the victims on such issues as: their concerns and doubts before mediating with the convicted person, the course and completion of mediation, the advantages of mediation, the increased awareness of mediation, and the attitude towards the pilot programme. The gathered data contributed to determining whether the victims had responded positively to mediation in which they had participated, and whether they would be interested in using and promoting it in the future. Without examining potential chances to introduce mediation between the victim and the convicted person, examining potential difficulties in the implementation of this tool of restorative justice, it would be difficult to draw conclusions, make appropriate and feasible modification to mitigate the risk of failure, and subsequently to develop a model for the implementation of post-judgment mediation in the remaining regions of the country.

Presented in this part of the Chapter, the analysis of the victims' opinions on post-judgment mediation and of their personal experience in mediating with the convicted person draws on the data taken from the project final report²⁷.

Fundamentals of the study methodology

The purpose of the study was to learn the opinions of the victims about mediation in which they participated in the framework of the project provided that the convicted person was the other participant in the mediation procedure, serving the imprisonment penalty in a penal institution located within the territory of the District Inspectorate of the Prison Service in Lublin. It was important to learn and understand the attitude of the victims towards post-judgment mediation in terms of the experienced advantages and understanding its meaning.

The overriding problem of the study was formulated in the following question: What are the opinions and experiences of the victims and participants in mediation with regard to the mediation procedure in the framework of the pilot project?

To answer the main research question, the following specific questions were formulated:

²⁶ Article 43 § 8 point 1d of the Act of 6 June 1997 - the Criminal Executive Code (i.e. Journal of Laws of 2021, item 53, as amended).

²⁷ Final report (...), op. cit.

- 1) What experiences did the victims have in 'post-judgment' mediation before joining the pilot project?
- 2) What doubts and concerns did the surveyed victims express about joining the 'post-judgment' mediation procedure in the framework of the pilot project?
- 3) What form did the mediation procedure take, was it completed by concluding a settlement agreement?
- 4) Did the victims recognize a real chance to shape desirable social attitudes or even to restore the balance in the environment of the offender and victim or victims thanks to their participation in the pilot project, in particular in the mediation procedure?
- 5) To what extent did the participation in the mediation procedure in the framework of the ongoing pilot project contribute to raising the victims' awareness with regard to the convicted person understanding the consequences of his or her behaviour and of the harm he or she had caused to the victim?
- 6) What is the attitude of the victims and participants in the pilot project to mediation?
- 7) What do the respondents believe are the advantages from the participation in the mediation procedure in the framework of the pilot project?

The study was conducted with the use of a diagnostic survey method. An original questionnaire was used, developed for the purposes of the project - 'Questionnaire for interview and opinion - experiences of the participants of mediation, part B refers to the victims of a criminal offence, participating in the mediation procedure in the framework of the pilot project'.

The questionnaire consisted of two parts. The first part of the questionnaire contains a set of questions on the socio-demographic characteristics of the respondent. The second part was aimed at learning the opinions of the victims on the ongoing programme and on mediating with the convicted person, on the basis of individual experiences of the victim involved in the mediation procedure.

Characteristics of the victims participating in post-judgment mediation and in the study

It was planned to receive approx. 40 responses during the period of the study, i.e. from 1 July 2021 until 28 February 2022. Such number was based on a total of more than 90 mediation procedures completed and documented by the mediators in the period from November 2020 until 15 February 2022. However, the research team received 9 questionnaires completed in paper form. No response was received through the Google electronic form on the Internet website of the project. It is difficult to determine whether all the victims involved in mediation had access to the questionnaire and what was their factual interest in the study. The results of the study are not representative, which has significantly hampered their analysis. The minimalist research material makes it impossible to formulate

general conclusions for the study group, but it is worth presenting what information was obtained from the victims who had joined the study.

On the basis of the nine received questionnaires, it was established that the study had attracted 6 women and 3 men. The participants were aged 22 up to 51 and more, with the dominating age group being above 51 (5 persons), followed by those aged 22 up to 30 (3 persons) and one person aged 41 up to 50. Of the surveyed victims of a criminal offence, 6 persons stated that they lived in the countryside, while 3 in a city. To answer the question about the relation of the convicted person placed in a prison/detention centre and participating in the mediation procedure in the framework of the pilot project, 5 respondents stated that he or she was a family member, 3 persons that a life partner, while 1 person state that he or she was a foreign person. 'Post-judgment' mediation was usually initiated by the convicted persons ($n=8$), and only one procedure was initiated by the victim. None of the respondents selected other options; irrespective or indicating the convicted person or victim as the initiator of mediation, they could select: a court probation officer, a tutor/officer of the Prison Service, a director of a prison/detention centre, a penal judge or a different person.

Experiences of the victims in mediation before joining the project

The decisive majority of the respondents ($n=8$) were not informed about the possibility to seek criminal mediation at the stage of the preliminary proceeding or court trial, i.e. before the conviction and placing of the offender in a prison/detention centre. Only one of the surveyed persons received information thereon. Two of eight persons, who had not sought mediation before, justified their responses by giving the following reasons: 'no knowledge', 'it is difficult to say'.

Doubts and concerns of the victims about their involvement in post-judgment mediation

The victims involved in the study shared their doubts and concerns they had felt before seeking post-judgment mediation. To answer the following question: 'To what extent did you experience doubts, concerns before seeking post-judgment mediation in the framework of the ongoing pilot project?', the respondents could select the following responses:

- I did not experience any,
- I did experience to a small extent,
- I did experience to a moderate extent,
- I did experience to a large extent,
- I did experience to a very large extent.

Four of nine responses given confirmed that they had experience moderate doubts and concerns before seeking post-judgment mediation; two persons experience small doubts, while two other concerns negated any concerns. One person had very large doubts before seeking post-judgment mediation.

The respondents could describe the reasons for their concerns. Two persons stated that they had feared to contact the convicted person, who had been convicted repeatedly, before seeking post-judgment mediation. One person reflected on whether seeking mediation made any sense and the offender should be given another chance to improve. Another person questioned whether the other side would take mediation seriously. One respondent justified his or her concerns by saying that ‘the convicted persons should not make any wild promises’.

Further results of the study reflected what the respondents said about their experiences after mediating with the convicted person. One third of the respondents (n=3) stated that upon starting mediation with the convicted person, their previous concerns and doubts proved unfounded. The same number of the respondents found them justified, whereas one person justified that by repeating the argument he or she used to specify the reason for concerns about mediation, i.e. ‘the convicted persons should not make any wild promises’. The remaining respondents (n=3) did not answer this question.

Scope of mediation, form and effects of mediation meetings from the perspective of the victims

Most of the respondents participated in the mediation procedure concerning the criminal offence of theft (n=5). In three cases, the subject of mediation was abuse, in one case both criminal threats and abuse.

The respondents pointed out the form of the mediation procedure. The victims preferred to participate in mediation in a way that would prevent them from contacting the convicted person. Mediation was usually carried out in electronic form (n=4), in three cases the victims participated in indirect mediation, i.e. the mediator held meetings with both parties in turns and provided them with information, proposals and arguments of the other party with regard to concluding a settlement agreement and its proposed content. In two cases, mediation was conducted in direct form, i.e. the victim met the convicted person in the presence of the mediator.

The effect of mediation was positive in 100% of cases. For each victim involved in the study (n=9), the mediation procedure resulted in a settlement agreement. Although the effectiveness degree of the mediation procedure is promising, it should be taken into account that it only illustrates an indicative, approximate picture of the area examined.

Advantages derived from the victims' involvement in post-judgment mediation

To learn what the victims think about the advantages derived from their involvement in mediation in the framework of the pilot programme, six key questions were included in the questionnaire. Four of them were closed questions, one was an open question.

The majority of the victims participating in the study (n=8) did not find it difficult to specify which advantages they derive from their involvement in mediation. One person did not respond to this question. The victims who have recognized the advantages of mediation highlighted the following aspects:

- ‘direct conversation, specifying the rules and further relations’,
- ‘specifying the operational rules’,
- ‘receiving apologies’,
- ‘reimbursing funds’,
- ‘I hope to recover the funds I have lost’,
- ‘the man undertook to do something good and will pursue that’,
- ‘signing the conditions’.

One of the respondents did not recognize any ‘advantages for the offender’.

Upon the completion of the mediation procedure, the victims being parties thereto could evaluate selected advantages with regard to the following aspects: shaping desirable social attitudes, the offender understanding the consequences of his or her behaviour, the increased knowledge of restorative justice and faith in mediation.

The majority of the victims participating in the study (n=8) stated that their participation in mediation provided them with real opportunities to shape desirable social attitudes, or even to restore the balance in the environment of the offender and victim or victims. One person found it difficult to specify if this aspect was recognizable.

The majority of the victims involved in mediation (n = 4) found that their participation in the pilot programme, in particular in mediation, contributed to moderately raising awareness of the sentenced person understanding the consequences of his or her behaviour and of the harm he or she had caused to the victim. Almost one third estimated this increase to be very significant or rather significant. Two persons believed that the increase in awareness was minor.

The respondents also assessed how their knowledge of restorative justice, including mediation, had increased. One third of them found the increase very significant. The same number of victims assessed that their knowledge of mediation had increased rather significantly (n=3), as well as moderately (n=3).

Upon the completion of their involvement in mediation in the framework of the project, most of the respondents found that they had become much more confident about mediation. Nearly 2/3 of the respondents concluded that their confidence in mediation had increased rather significantly (n=5), and 1/3 of them - very significantly (n=3). One person assessed this increase to be moderate.

Attitude of the victims to post-judgment mediation

The victims involved in mediation were asked to answer the question: ‘Would you use mediation again?’. The response to this question was affirmative in 100%, which means that each of the surveyed individual would like to use mediation again.

The victims, who wished to seek mediation again, justified their position by giving the following arguments:

- ‘because it brings positive effects’,
- ‘it is possible to express one’s position’,
- ‘it is possible to shape future relations’,
- ‘it is possible to take decisions in one’s case’,
- ‘because it entails an obligation’,
- ‘it is a good practice to talk to the offender through a third person’.

None of the respondents recognized adverse aspects in relation to participating in mediation, whereas each of them would recommend that other victims should mediate with the convicted person. Not all victims decided to justify why they would recommend other victims to mediate with the convicted person. In two cases, the victims used the expression ‘because it brings effects’. Otherwise, they would recommend that mediation should be sought to improve relations and recover funds.

To answer the following question: ‘What did you find important during the mediation procedure?’, the respondents could answer by selecting several of the following categories:

- the atmosphere during meetings,
- the lack of formalities,
- the mediator’s competences and experience,
- meeting the offender,
- the opportunity to express one’s opinion,
- the opportunity to take a decision,
- the opportunity to obtain redress (moral, financial),
- the opportunity to hear the motives of the offender,
- the opportunity to obtain apologies from the convicted person,
- the remorse of the convicted person,
- other reasons (the victim was to specify what else he or she found important).

As the analysis of the collected data shows, the victims found it to be most important that they could express their opinion during the mediation procedure. Eight persons were of the opinion that the competences and experience of the mediator were very important to them. The victims found the following aspects nearly equally important: the atmosphere during meetings (n=7), the opportunity to express one’s opinion (n=7), and the opportunity to obtain apologies from the convicted person (n=6). Further arguments were related to the opportunity to hear the motives of the offender (n=5), and the lack of formalities (n=5). A slightly lower number of persons appreciated: meeting the offender (n=4), the remorse of the convicted person (n=4), and the opportunity to obtain redress (moral, financial) (n=4). On the other hand, one respondent specified other circumstances: the consent for paying maintenance and performing one’s commitments.

None of the respondents explicitly confirmed that mediation prevailed over court trial. Most of the respondents agreed that 'mediation is slightly better than court trial' (n=3). The statement that 'mediation is better than court trial' was supported by two persons (n=2), and the same number of persons found the mediation procedure to be as good as court trial. Two persons did not give any response in this respect.

Two thirds (n=6) of the victims participating in mediation moderately supported the statement that mediation - being a form of restorative justice - contributed to preventing the offenders from reoffending. Two persons agreed with this statement very largely, and one person to a small extent.

Three fourths of the respondents supported the opinion that mediation contributed to improving the situation of the victims (of whom nearly two thirds of the respondents supported the opinion rather largely, and nearly one third very largely). The remaining respondents were moderate in saying that mediation contributed to improving the situation of the victims.

Summary

The victim may be involved in the mediation procedure at a time when the offender already bears the consequences for the offence committed and is serving the imprisonment penalty. However, joining the mediation procedure requires the individual's voluntary consent to mediate, and the mere awareness of that such a method is available.

The results of the study are not representative, which has significantly hampered their analysis. The analysis of the results was based on the data collected from nine victims involved in mediation in the framework of the ongoing pilot project. It should be emphasized that on the presented results delivered only an indicative view on the victims' attitude to post-judgment mediation as one form of restorative justice. It is therefore difficult to make fair conclusions about the population of victims involved in mediation with the participation of the offenders serving the imprisonment penalty. Although the studies are not representative, they should nevertheless be treated as an important driver for future, broader and more reliable studies on the victims' involvement in the mediation procedures that are conducted according to the principles of restorative justice, which allows the victim to enter into dialogue with the offender.

The study attracted 6 women and 3 men. The age of the respondents ranged from 22 to 51 years and more, with the majority being aged more than 51. Two thirds of the respondents come from the countryside. The convicted person was a family member or close relative to the vast majority of the respondents. One victim was a foreign person to the convicted person. The post-judgment mediation procedure, which the respondents participated in, was mainly initiated by the convicted persons, and only one was initiated by the victim.

The empirical material collected enabled to give an answer to the following specific questions.

1. What experience did the victims have in 'post-judgment mediation' before joining the pilot programme?

The decisive majority of the respondents stated in the study that they had not been informed about the possibility to seek criminal mediation at the stage of the preliminary/court proceeding. They were of the opinion that they had not sought mediation in the past mainly due to the lack of knowledge. Such experiences of the victims may be treated as recommendations addressed to the judicial and criminal bodies to ensure that the parties are fully informed of their rights, the substance of the mediation procedure and the possible consequences of their decision.

2. What doubts and concerns did the surveyed victims express about joining the post-judgment mediation procedure in the framework of the pilot project?

Most of the victims stated that they had certain concerns and doubts before post-judgment mediation, while some found their concerns moderate, and others minor, with one person declaring that his or her doubts before mediating with the offender were very high. Two persons responded that they had had no concerns or doubts before joining the post-judgment mediation procedure. The concerns expressed by the victims referred mainly to: the contacts with the offender, who had been convicted repeatedly; the sense in mediating with the offender; the attitude of the other person to mediation, or the doubts about whether the offender should be given another chance to improve. One third of the respondents found their earlier concerns about mediating with the offender to be unjustified. The same number of persons found their concerns justified, while only one person reflected (as before joining the mediation procedure) on whether the offender would not make wild promises. The remaining victims did not answer this question.

3. What was the form of the mediation procedure, was it completed by concluding a settlement agreement?

Most of the mediation procedures were conducted indirectly and in electronic form, and less frequently in direct form. The victims participated in the mediation procedures that concerned mainly thefts (n=5), abuse, and in one case both criminal threats and abuse. All the mediation procedures attended by the respondents ended positively, and the result of the dialogue between the victim and the convicted person was the conclusion of a settlement agreement.

4. Did the victims recognize a real chance to shape desirable social attitudes or even to restore the balance in the environment of the offender and victim or victims thanks to their participation in the pilot project, in particular in the mediation procedure?

The majority of the respondents (n=8) believed that their participation in the pilot programme allowed them to recognize real opportunities to shape desirable social attitudes, including restoring the balance in the environment of the offender and victim or victims. One person declared difficulties in expressing an opinion thereon.

5. To what extent did the participation in the mediation procedure in the framework of the ongoing pilot project contribute to raising the victims' awareness with regard to the convicted person understanding the consequences of his or her behaviour and of the harm he or she had caused to the victim?

The victims concluded that their participation in the pilot post-judgment mediation programme had moderately contributed to raising their awareness with regard to the convicted person understanding the consequences of his or her behaviour and of the harm he or she had caused to the victim. Nearly one third of the respondents found that their awareness had increased to a very large or rather large extent. Two persons assessed the increase to be minor.

Furthermore, the respondents declared that their participation in the mediation procedure had significantly strengthened their knowledge of this alternative dispute resolution method, while one third of them assessed this increase to be very large. According to another group of respondents (1/3), their knowledge had strengthened to a rather large extent, and to a moderate extent according to the remaining ones.

6. What is the attitude of the victims and participants in the pilot project to mediation?

The victims positively assessed the attitude towards pilot mediation. Each of the respondents would like to refer to mediation again, which was justified by such arguments as: the opportunity to express one's opinion, the opportunity to shape future relations, the opportunity to take a decision in one's case, the effectiveness of mediation, a good practice to talk to the offender through a third person - mediator, mediation entails an obligation.

All those surveyed would recommend that others should seek mediation, but not all of them decided to justify their position thereon. Those wishing to strengthen their message used the following expressions: 'because it brings effects', 'to improve relations and recover funds'.

7. What do the respondents believe are the advantages from the victim's participation in the mediation procedure in the framework of the pilot project?

The victims believe that the key aspect of mediation is first to satisfy their own needs - starting from providing them with secure conditions for talking

with the participation of a competent and experienced mentor, through the atmosphere of understanding during such talks and showing their emotions, to the opportunity to speak out, obtain apologies from the offender. Further aspects mentioned by the victims included: the opportunity to hear the motives of the offender and the lack of unnecessary formalities. They found it equally important that they could meet the offender (n=4), experience the remorse of the offender (n=4), and could obtain redress (moral, financial) (n=4). One persons deemed that other circumstances were important during the mediation procedure - the consent for paying maintenance and performing one's commitments.

When analysing the data, it may be concluded that the majority of the victims participating in the study (n=8) did not find it difficult to determine the advantages of mediation. They specifying the following advantages: direct conversation, specifying the rules and further relations, specifying operational rules (presumably upon the release from the prison), obtaining apologies, the hope to recover one's lost funds, reimbursing funds, signing the settlement conditions. One person deemed it an advantage that the 'the man had undertaken to do something good and would pursue that'. One of the respondents stated that he or she recognized 'advantages for the offender'.

The collected data enable to make the following conclusions: Mediation is slightly better than court trial (n=3) or better than court trial (n=2), or as good as court trial (n=2). Two persons did not give any response in this respect.

Two thirds of the respondents (n=6) declared a moderate support for the statement that mediation as a form of restorative justice contributed to preventing the offender from reoffending. Two persons agreed with this statement very largely, and one person to a small extent.

Three fourths of the respondents supported the opinion that mediation contributed to improving the situation of the victims (of whom nearly two thirds of the respondents supported the opinion rather largely, and nearly one third very largely).

III. 5. Opinions of the public prosecutor on using post-judgment mediation

Grzegorz Skrobotowicz

When analysing the question of the entities entitled to refer cases to mediation, it should be pointed out that there is a body that was to use this amicable procedure from the very introduction of the mediation institution into the Polish justice system²⁸. In accordance with Article 30 of the Constitution of the Republic of Poland²⁹, Chapter II ‘The freedoms, rights and obligations of persons and citizens’, ‘the inherent and inalienable dignity of the person shall constitute a source of freedoms and rights of persons and citizens. It shall be inviolable. The respect and protection thereof shall be the obligation of public authorities’. The body entrusted with this obligation is the Prosecution Service.

The public prosecutor, who is the guardian of the rule of law, is also referred to as a law enforcement officer whose tasks are laid down in the Code of Conduct for Law Enforcement Officials³⁰. The provisions of points 1 and 2 of the aforementioned Code should be introduced herein. The first provision provides that a law enforcement officer is required to perform all the obligations laid down by laws, in particular to protect all persons from criminal offences and to serve the society. The provision of point 2 states that a law enforcement officer ‘shall respect, protect and uphold the dignity and rights of all persons in the performance of his or her duties’. The aforementioned legal regulations form the basis for the public prosecutors to resort to mediation. It is beyond any doubt that serving and protecting the society against criminal offences may be carried out by referring parties to mediation.

At the stage of the preliminary proceeding, the public prosecutor should explain the victim and the alleged offender the role and tasks of mediation both in psychological terms, i.e. the reconciliation between the parties, seeking and obtaining apologies, and in real terms, e.g. remedying the damage caused³¹. The overriding task of the public prosecutor, acting in future as a public prosecutor,

²⁸ Comp. T. Cielecki, *Postawy policjantów, prokuratorów, sędziów i mediatorów wobec mediacji w polskim prawie karnym, na przykładzie okręgu opolskiego. Wyniki badań empirycznych* [*The attitudes of policemen, public prosecutors, judges and mediators towards mediation under Polish criminal law as illustrated by the District of Opole. Results of empirical studies*], [in:] *Prawno-psychologiczne uwarunkowania mediacji i negocjacji* [*The legal and psychological conditions for mediation and negotiation*], St. L. Stadniczeńko (ed.), Opole 2006, pp. 170-187.

²⁹ The Constitution of 2 April 1997 (Journal of Laws of 1997 No 78, item 483, as amended).

³⁰ Resolution of the UN General Assembly No 34/169 of 17 December 1979.

³¹ L. Mazowiecka, *Prawa człowieka i praworządność: mediacja a prokurator* [*Human rights and the rule of law: mediation and the public prosecutor*], [in:] *Mediacja* [*Mediation*], L. Mazowiecka (ed.), Warsaw 2009, p. 160.

is to make the parties familiar with the possible consequences of the settlement concluded during the mediation procedure³².

Attitudes under the survey methodology

The aim of the survey was to verify the following thesis by using the responses received from the public prosecutors: 'Using mediation at the stage of executing isolation penalties is, firstly, feasible both in legal and factual terms (the penal institutions are capable to fulfil all the necessary requirements for mediation discourse), and, secondly, is an effective component to reintegrate (socialize) the convicted person into the society, and also benefits the victim of a criminal offence'.

To confirm the aforementioned thesis, a survey questionnaire containing questions and possible response options to select was developed and its terminology was adapted to the analysed stage of the criminal proceeding.

The questions raised under the study concerned the mediation procedure at all stages of the court trial:

- What are the arguments for referring the parties to mediate at the stage of the preliminary/court/enforcement proceeding (by isolation and non-isolation penalties)?
- What are the arguments against referring the parties to mediate at the stage of the preliminary/court/enforcement proceeding (by isolation and non-isolation penalties)?
- What criminal offences should be referred to criminal mediation at the stage of the preliminary/court/enforcement proceeding?
- What actions should be taken to promote criminal mediation at the stage of the preliminary/court/enforcement proceeding?
- Which mediation settlements should be considered in the process of deciding on conditional early release from serving the rest of the penalty?
- To what extent may mediation become an effective part of the process of reintegration the convicted person into the society?
- To what extent is the category/type of the prison, in which the convicted person is serving his or her isolation penalty, relevant for referring the parties to mediation at the stage of the enforcement proceeding?
- To what extent is the system, under which the convicted person is serving his or her isolation penalty, relevant for referring the parties to mediation at the stage of the enforcement proceeding?
- What do you believe to what extent are the prisons prepared for conducting mediation in direct form on their premises (in particular the closed-end prisons)?

³² A. Murzynowski, *Kontynuacja refleksji na temat instytucji mediacji w procesie karnym* [Continued reflections on the institution of mediation in the criminal procedure], [in:] *Mediacja* [Mediation], L. Mazowiecka (ed.), Warsaw 2009, p. 167.

- To what extent would the creation of separate meeting rooms for mediation and the amendment of the Criminal Executive Code by adding a mediator as an entity entitled to enter the premises of the penal institution facilitate the process of referring to mediation at the stage of the enforcement proceeding?
- How many prisoners serving their imprisonment penalty have knowledge of mediation and the possibility to refer to it at the stage of the enforcement proceeding?
- What is the knowledge of the convicted persons of criminal mediation?
- Do the convicted persons serving their imprisonment penalty feel ready to participate in mediation at the stage of executing the penalty?
- How should information on mediation be distributed within a penal institution?

Participants of the study

The survey questionnaires were sent to common organizational units of the Prosecution Service in the territory of the District Inspectorate of the Prison Service in Lublin and to the National Public Prosecutor's Office. The greatest response was received from the district public prosecutor's offices (17 of 29 questionnaires sent, which accounts for 59% of all the completed questionnaires).

The collected statistics indicate that approx. 59% of the respondents were women, with 41% of the respondents being men. The proportions were similar. A total of 29 survey questionnaires were completed.

Nearly one half of those surveyed (48%) were persons aged 35 up to 45. The second largest group were persons aged over 45 and up to 55 (approx. 35%). The remaining persons were either under 35 years of age or over 55 years of age, but up to 60 years of age. It should therefore be concluded that they are matured.

When analysing the data in terms of seniority, it should be noted that the distribution between those having 5 up to 15 years of service (38%) and over 15 years up to 25 years of service (34%) is practically equal. The remaining ones have over 25 years of service (14%) or have refused to specify their seniority (14%).

To determine the prosecution experience at a specific level of the common organizational unit of the Prosecution Service, the division of persons spread equally in terms of seniority up to 5 years, over 11 years up to 16 years, and over 16 years (in each group 27.5%). The only deviating group were the prosecutors with 5 up to 10 years of service (17%).

Preliminary proceeding and court trial

This part of the questionnaire was to obtain answers to the questions concerning the arguments for both 'in favour' and 'against' referring parties to mediation, both during the preliminary proceeding and court trial. The purpose of the

questions was to attempt to grasp the differences in the perception of the justification or its lack for referring to this ADR tool at these different stages of the criminal procedure. Furthermore, the public prosecutors were asked to specify which criminal offences should be referred to mediation. In this context, the verification focused on potential differences between the preliminary proceeding and court trial.

The following arguments prevailed among those for referring parties to mediation at the stage of the preliminary proceeding³³:

- ‘reaching an agreement between the conflicting parties, e.g. as regards the obligation to remedy the damage’;
- ‘the opportunity to close the case swiftly’;
- ‘to decrease the workload of the public prosecutor’s office and the court’;
- ‘the lack of legal costs’;
- ‘I do not recognize any’.

It should be pointed out that the public prosecutors do recognize two fundamental categories of arguments in favour of referring to mediation at this stage, i.e. the reconciliation between the victim and the suspect and decreasing the workload of the justice system and speeding up the ongoing proceeding. A separate group also included those declaring that they did not recognize any arguments for the legitimacy of referring to mediation.

The arguments against referring parties to mediation, as stated by the respondents, include:

- ‘the prolongation of the criminal procedure’;
- ‘the offender, pursuing the completion of the procedure, may undertake to <anything>’;
- ‘there are no provisions that would directly specify the outcome of mediation for the procedure, e.g. if completed positively - a separate basis for discontinuing the procedure’.

The responses³⁴ given by the public prosecutors to this question enable to conclude that at this stage of the procedure mediation would obstruct the procedure, while the suspects, acting seemingly to reach a reconciliation with the victim, will attempt to ‘negotiate’ the most favourable solution, even at the expense of the male/female victim.

The following question was firmly embedded in the project assumptions and concerned the proposed measures aimed at promoting criminal mediation at this stage of the criminal procedure. Several observations can be drawn from the received responses. Firstly, there were proposals to organize ‘social campaigns’, ‘educate the society more broadly’ in the media, including the ‘social media’, and ‘in the seats of the Police, the Prosecution Service, courts (...)’. Such global actions would target an unlimited number of people. A separate group

³³ The complete summary of answers is included in an annex to this Report.

³⁴ The complete summary of answers is included in an annex to this Report.

of proposed ideas consisted of actions that would directly be addressed to the parties to the conflict. The public prosecutors pointed to ‘showing the positives of reconciliation between the parties’ and ‘communicating the possibility of mediation to the parties on an individual basis’.

Secondly, the respondents expressly indicated the need to ‘train the public prosecutors’ and ‘provide the public prosecutors, police officers, with substantive expert information on the merits of this form of conduct’. These example responses indicate the need, as reported by the respondents themselves, to show them the advantages of mediation, and thus to encourage the body responsible for the preliminary proceeding to use alternative forms of dispute resolution.

Thirdly, the respondents do recognize the need to introduce a separate condition for discontinuing the preliminary proceeding due to effective mediation. ‘Due to the non-existence of an autonomous condition for discontinuing the preliminary proceeding upon the conclusion of a settlement agreement, disseminating mediation at this stage of the procedure does not make much sense, because it is completed by an act of indictment anyway. Concluding a settlement agreement at the stage of the preliminary proceeding will not change anything’. This demand is highly important from the point of view of the public prosecutors, since it can have a real impact on their daily work and should therefore be particularly highlighted and communicated to the Ministry of Justice as a demand for legislative changes.

Fourthly, some of the respondents did not put forward any proposals, which may indicate a lack of ideas as to how mediation should be developed and promoted. This immediately triggers another question about the reason for such an approach. Unfortunately, such a question cannot be answered unequivocally on the basis of the conducted survey, but the resulting responses, e.g. ‘it does not make sense to promote mediation’, do demonstrate that this ADR institution is not popular among the respondents. On the other hand, as mentioned above, the public prosecutors point out the need to promote mediation within their community. The public prosecutors also pointed out that mediation ‘may be more accessible, fast and based on mediators being involved in the so-called <amicable> resolution of a dispute, with more <heart> and less <formalities>’.

The last questions on the preliminary proceeding was to identify which criminal offences should be referred to mediation. Several responses could be selected, so their number exceeded the number of the surveys submitted. The distribution of answers³⁵ was as follows - criminal offences against:

- property (19% of the responses);
- virtue and the integrity of human body (18% of the responses);
- life and health (18% of the responses);
- communication security (17% of the responses);

³⁵ A total of 101 responses were given, which means that each of the respondents selected more than 3 options.

- family and care (12% of the responses);
- freedom (9% of the responses);
- the freedom of conscience and religion (7% of the responses);
- public security (2% of the responses);
- sexual freedom and morality (2% the responses).

According to the respondents, the criminal offences that may be ‘valued’ or the manners for restoring the situation existing before the criminal offence should be resolved in an amicable manner.

An analogous set of questions was asked on the proceedings being at the stage of court trial. Using an analogous descriptive method, it should be noted that the arguments prevailing among those for referring parties to mediation at the stage of court trial are the following³⁶:

- ‘reaching an agreement between the conflicting parties, e.g. as regards the obligation to remedy the damage’;
- ‘limiting the court trial in case the parties conclude a settlement agreement’;
- ‘reducing court costs in case the mediation procedure is successful’;
- ‘shortening the time to adjudicate’.

The arguments put forward by the respondents correspond to those made with regard to the preliminary proceeding. The differences concentrate on the stage of a criminal case and on the advantages for the court that hosts this part of the justice procedure.

The arguments against referring parties to mediation, as stated by the respondents, include:

- ‘the prolongation of the procedure’;
- ‘the possibility to obtain a lower penalty in case the victim is convinced with the use of funds’;
- ‘the non-existence of sufficient legal instruments upon the effective completion of the mediation procedure’.

When analysing the responses concerning the arguments against referring parties to mediation at the stage of court trial, it should first be noted that the number of responses is significantly lower, which may be linked to the position of the public prosecutor (prosecutor) at this stage of the procedure or the factual non-existence of such contraindications.

The following question was to propose measures to promote mediation at this stage of the criminal procedure. In addition to the responses given with regard to the preliminary proceeding, including the need to promote mediation more broadly, the respondents mentioned:

- ‘the amendment of legal provisions for the mitigation of a penalty’;
- ‘making the judges adjudicating on criminal cases with the subject of mediation with the involvement of competent experts’;

³⁶ The complete summary of answers is included in an annex to this Report.

- ‘the amendment of the criminal procedure to allow for discontinuing a proceeding upon the effective completion of the mediation procedure’.

Analogous to the preliminary proceeding, the proposed activities concentrate on promoting the ‘ADR queen’ within the community of judges, in particular those adjudicating on criminal cases and among the society, while paying particular attention to the parties to the conflict. Some of the respondents admitted that ‘I have no opinion’ or ‘I do not come up with’ such ideas.

The last question in this part referred to the criminal offences that should be referred to mediation. The responses were in general consistent with those given at the stage of the preliminary proceeding. The distribution of responses³⁷ was as follows - the criminal offences against:

- property (19% of the responses – the same percentages as for the preliminary proceeding);
- virtue and the integrity of human body (18% of the responses - the same percentages as for the preliminary proceeding);
- life and health (16% of the responses compared to 18% of the responses with regard to the preliminary proceeding);
- communication security (18% of the responses - the same percentage as for the preliminary proceeding);
- family and care (10% of the responses compared to 12% of the responses with regard to the preliminary proceeding);
- freedom (9% of the responses - - the same percentage as for the preliminary proceeding);
- the freedom of conscience and religion (8% of the responses compared to 7% of the responses with regard to the preliminary proceeding);
- public security (2% of the responses - the same percentage as for the preliminary proceeding);
- sexual freedom and morality (0% the responses compared to 2% of the responses with regard to the preliminary proceeding).

The responses given enable to conclude that the respondents do not identify any other value potential of the criminal offences while referring them to mediation at the stage of court trial. The percentage difference is +/- 2%.

Enforcement proceeding

The third part of the survey continues the research thread and focuses on the role and importance and actions that should be taken to develop criminal mediation in the enforcement of the penalties and penal measures adjudicated. This subject deserves special analysis as it constitutes an empirical gap in the current literature.

³⁷ A total of 96 responses were given, which means that each of the respondents selected more than 3 options.

Analogous to the two preceding stages of the criminal procedure, the respondents were first asked to identify both the arguments ‘for’ and ‘against’ referring parties to mediation. The legitimacy of this question is determined by the stage at which the parties to the conflict are. Contrary to the preceding parts of the justice process, innocence is no longer presumed during the enforcement proceeding, and the very approach to a consensual settlement of the conflict may be completely different than before the conviction.

The first question concerned the arguments ‘for’ mediation in case the offender has been adjudicated a non-isolation penalty (a fine, restriction of liberty). The responses given were fundamentally different from those given in the preceding part of the questionnaire, which is understandable, and their number was significantly lower, which may be attributed to the role played by the public prosecutors at this stage of the criminal procedure, in particular with regard to executing the imprisonment penalties. The responses include:

- ‘protecting the victims and their legal situation, assistance in the enforcement of the penalties, penal measures adjudicated’;
- ‘preventing the reoffending’/‘resocialization component’;
- ‘the reconciliation of the parties’.

The vast majority of responses were oriented towards ‘I do not recognize any’. Thus, as for the non-isolation penalties, the public prosecutors do not attach greater importance to mediation at this stage of the criminal procedure.

The arguments ‘against’ mediation at the stage of executing the non-isolation penalties included, among other things, the following reasons:

- ‘additional costs to be incurred by the state’;
- ‘the excessively long time from the date of the criminal offence’;
- ‘the non-existence of regulation on the impacts of the mediation procedure on the enforcement proceeding’;
- ‘the fear of contacting the offender’;
- ‘I do not consider it justified to mediate at this stage’.

Upon the analysis of all the responses, it should be concluded that: firstly, the respondents identify more reasons for refusing the mediation procedure than for seeking mediation, and, secondly, there are three main categories of contraindications: an additional burden for the State Treasury, the lapse of time from the date of the criminal offence, and the legislative gaps reflecting in the real impact on the manner in which the adjudicated penalty is served.

The content of the two following questions was similar, while the only difference was that they referred to the stage at which the adjudicated isolation penalty is executed. The arguments for mediation included:

- ‘preventive measures towards the offender as a resocialization component’;
- ‘the reconciliation of the parties’;
- ‘the financial aspect in case one would be released from the penal institution at an earlier time’.

The remaining responses focused on the lack of justification for mediation in a particular situation. Furthermore, none of the respondents linked mediation at this stage with the institution of conditional early release from serving the rest of the isolation penalty, which seems to be a potential mediation argument from the point of view of the prisoner.

The arguments against referring parties to amicable forms of conflict resolution included:

- ‘difficulties for the victim who would be required to go to the prison in which the convicted person is placed in order to participate in the mediation procedure’;
- ‘the requirement to incur additional expenditure for preparing the prisons for mediation’;
- ‘the lack of justification for referring to mediation in case the unconditional imprisonment penalty has been adjudicated’.

The responses given by the public prosecutors repeat the following arguments: additional costs for the penal institutions (the State Treasury), the necessity to execute the adjudicated penalty (rather than its modification due to potential results of the mediation procedure), and the lack of justification for mediation at this stage of the criminal procedure. The arguments concerning the potentially unfavourable and stressful impact of the prison on the male/female victim/victim should be emphasized. The victim, who has never visit any total institution as the penal institution, may perceive his or her participation in the mediation procedure in the prison as a negative experience. Such a situation would require the mediation procedure to be conducted either indirectly/in a circular manner or with the use of the means of remote communication (e.g. Skype/MS TEAMS/ZOOM).

The following question referred to the criminal offences that were the reason for conviction and should be subject to mediation. The responses partly deviated from those on the preliminary proceeding and court trial.

The distribution of responses³⁸ was as follows - the criminal offences against:

- property (25% of the responses compared to 19% as for the preliminary proceeding and court trial);
- virtue and the integrity of human body (15% of the responses compared to 18% as for the preliminary proceeding and court trial);
- life and health (10% of the responses compared to 18% of the responses as for the preliminary proceeding and 16% as for the court trial);
- communication security (13% of the response compared to 18% as for the preliminary proceeding and court trial);
- family and care (10% of the responses compared to 12% of the responses as for the preliminary proceeding and 10% as for the court trial);

³⁸ A total of 60 responses were given, which means that each of the respondents basically selected 2 options.

- freedom (3% the responses compared to 9% as for the preliminary proceeding and court trial);
- the freedom of conscience and religion (8% of the responses compared to 7% of the responses as for the preliminary proceeding and 8% as for the court trial);
- public security (5% the responses compared to 2% as for the preliminary proceeding and court trial);
- sexual freedom and morality (1.5% the responses compared to 2% of the responses as for the preliminary proceeding and 0% as for the court trial);

Additionally, 8% of the responses indicated that no persons affected by any criminal offence should be referred to mediate at this stage. This opinion, hampering the development of mediation, corresponds to the responses given in the preceding part of the questionnaire.

Due to its strictly enforcement-related nature, the following block of questions was not modelled on the ones concerning the preliminary proceeding and court trial, which hinders the comparison of responses.

The respondents were asked the following question: 'In the process of deciding on conditional early release from serving the rest of the penalty, the court would consider the results of the mediation procedure at the stage of the preliminary proceeding/court trial or/and the results of the mediation procedure at the stage of the enforcement proceeding'. More than 66.5% of the respondents indicated that the court would obligatorily consider the results of both mediation procedures, while 21% of them selected opted for the results of the mediation procedure at the stage of the enforcement proceeding, with the remaining 12.5% indicating that the court would consider only the results of the mediation procedure at the stage of the preliminary proceeding/court trial. The aforementioned results lead to the conclusion that according to more than 87.5% of the responses, the court would consider the results of the mediation procedure at the stage of the enforcement proceeding (or only them or in combination with the results of the pre-judgment mediation procedure). Thus, it should be pointed out that from the perspective of the public prosecutors, mediation during the execution of the penalty would be important for deciding on the application of a probation measure.

Mediation as an effective component of the social reintegration of the convicted person

The following questions (No 15-21) allowed the respondents to select one of five options. Question No 15 was to ask the respondents 'to what extent may the mediation procedure be an effective component of the social reintegration of the convicted person'. As many as one in three respondents (34%) pointed out that it may be a component of the social reintegration only in some cases. Twenty-eight percent (28%) of the respondents admitted that it was difficult to give an explicit

answer, while it would become part of the resocialization process for 17% of the participants. What is important, one in five respondents stated that mediation during the enforcement proceeding was not part of the reintegration process at all.

Given the importance of the category of the penal institution, the respondents concluded that:

- it is of minor importance (in particular for the minor prisoners or those serving a penalty for the first time) - 32%;
- it is of no importance at all - 29%;
- it is sometimes of importance - 18%;
- it is often of importance - 14%;
- the category of the prison will always be of importance - 7%.

More than 60% of the respondent admitted that the category of the prison is of no importance for referring parties to mediation during the enforcement proceeding. Thus, the category of the penal institution is not an obstacle to referring parties to an amicable form of dispute resolution.

An analogous question was asked about the type of the prison and its impact on the participation in mediation. The distribution of responses was as follows:

- it is of minor importance (in particular for the prisons placed in the closed-end prison) - 37%;
- it is of no importance at all - 33%;
- it is sometimes of importance - 15%;
- it is often of importance (in particular for the prisons placed in the closed-end prison) - 7.5%;
- the type of the prison will always be of importance for referring parties to mediation - 7.5%.

Seventy percent (70%) of the respondents do not recognize any negative correlations between the type of the prison and referring parties to a consensual settlement of the conflict.

To complete the aforementioned questions, it would be justified to verify the significance of the system for serving the imprisonment penalty for the ADR institution. The following responses were received:

- it is of no importance at all - 29%;
- it is of minor importance (in particular for those serving their penalty under a therapeutic system) - 25%;
- It is difficult to say - 21%;
- it is often of importance (in particular for those serving their penalty under a therapeutic system) - 14%;
- the system for serving the penalty will always be of importance for referring parties to mediation - 11%.

As for answering this question, the respondents (54%) did not basically identify any adverse impacts of the system, under which the convicted person serves

his or her penalty, on referring to mediation. Only one in ten respondents indicated that the system for executing the penalty will be of importance for referring parties to mediation.

Readiness of the penal institutions to conduct criminal mediation

The two following questions referred to technical matters and the readiness of the penal institutions to conduct mediation under the conditions of penal isolation. The distribution of the responses received was as follows:

- as many as 64% of the respondents have no opinion on the readiness of prisons and detention centres;
- 18% of the respondents believe that penal institutions are not prepared for conducting direct mediation at all;
- 7% of the respondents indicated that only some institutions were ready, while the same number of respondents stated that basically all of them were prepared.

This question indicates that the public prosecutors have no knowledge of the ongoing pilot project and the changes it brings. This confirms the need to promote information among this professional group on the readiness of the penal institutions to conduct mediation meetings on their premises.

The last question in part three of the survey was aimed at understanding the responses to the question concerning the creation of dedicated rooms for mediation meetings and the amendment of the Criminal Executive Code by adding a mediator as an entity entitled to enter the premises of the penal institution. This was another case that the respondents were not able to select any of the available options, as 50% of them responded - 'It is difficult to say'. It is important that 39% of the respondents found such an action helpful, but it was not essential to refer cases for mediation, which implies that the public prosecutors do not link these proposals to directing the parties to mediation. Eleven percent (11%) of the respondents said that the specified actions would not contribute to referring cases for mediation at all.

Opinions of the public prosecutors on the knowledge of the convicted persons of mediation at the stage of the enforcement proceeding and obtaining information on the dissemination of mediation

The last five questions in the survey were aimed at learning what the public prosecutors think about the knowledge of the convicted persons of mediation at the stage of the enforcement proceeding and at obtaining information on the dissemination of mediation.

Question 21 focused on the experiences the public prosecutors may have with regard to the knowledge of the prisoners of the possibility to refer to mediation while serving the adjudicated penalty. The information obtain allows to conclude that:

- 57% of the respondents believe that up to 25% of the prisoners have knowledge of mediation;
- 29% of them stated that the prisoners had no knowledge of it;
- 7% of the respondents state that up to 25% of the prisoners have knowledge of mediation, while the same percentage believe that all the prisoners have acquired the right knowledge.

The respondents find the knowledge of the prisoners of mediation at the stage of the enforcement proceeding marginal or practically non-existent (a total of 86% of the respondents).

Question 22 was to ask the public prosecutors about the level of knowledge those serving the imprisonment penalty may have of the existence of mediation. Ninety-six percent (96%) of the respondents responded that the convicted persons had elementary knowledge, i.e. that mediation existed at this stage. There was only one person who indicated that the prisoners had basic knowledge, i.e. that they knew how they could use it. The response to this questions corresponds to those to the preceding question.

Another question was to ask the respondents to assess the readiness of the prisoners to participate in the mediation discourse. The respondents believe that:

- as many as 41% of them do not feel ready to subject themselves to criminal mediation at all;
- 37% of the respondents find that up to 20% of the prisoners feel ready;
- 15 respondents indicate that up to 50% feel ready;
- only 7% of the respondents responded that basically everyone felt ready.

The submitted responses are consistent with the responses given to the preceding questions. The public prosecutors believe that the knowledge and readiness of the prisoners to participate in the mediation procedure during the enforcement proceeding are very low. This *de lege lata* justifies the thesis that it is necessary to promote knowledge of this ADR instrument - both among the prisoners and public prosecutors.

The last-but-one question was to ask the respondents to indicate the communication channels that should be used to reach out to the greatest possible number of prisoners. The distribution of the responses received was as follows:

- by an officer of the Prison Service - 18%;
- on an information board - 18%;
- through leaflets - 18%;
- through a radio broadcasting system - 12.5%;
- by a court probation officer - 11%;
- by a lawyer/legal representative - 11%;
- by a mediator - 8%;
- otherwise - 3%.

The respondents found three means of communication to be equally effective: by an officer of the Prison Service, on an information board, and through leaflets. Therefore, it can be concluded that the actions within the penal

institution constitute the best direction according to the respondents. The remaining manners should be treated as auxiliary.

The last question in the questionnaire was to identify proposed activities that could be taken to promote criminal mediation at the stage of the enforcement proceeding. The following responses should be emphasized in the first place:

- ‘giving the victims access to the sentence being served by the convicted person and the possibility to initiate mediation’;
- ‘a broad information campaign, in particular among the convicted persons, which would indicate the advantages of mediation in an easily understandable manner’;
- ‘the professional competences of those being responsible for the convicted persons to conduct talks about the advantages derived from referring a case to mediation’;
- ‘such a solution being proposed by professional representatives of the parties to the proceeding’.

The responses enable to conclude that the respondents find the information/social campaign to be the best means to promote mediation, with different forms and recipients, including the professional representatives, which is analogous to the questions concerning the preliminary proceeding and court trial. The responses also included those which did not answer the question directly but reflected the opinion of those participating in the study. An example of such position is, among other things, the following response: ‘I hardly recognize such actions, because it should be considered that under our criminal procedure mediation is virtually ‘dead’ at the stage of both the preliminary proceeding and court trial. These two stages seem to be those at which mediation should be used rather than during the enforcement proceeding, because this stage is too late to mediate. Under the Polish criminal procedure, the preliminary proceeding and court trial unfortunately take so much time that they provide sufficient time to mediate’. Such responses indicate the necessary requirement that the public prosecutors should undergo a dedicate training, which is also clearly reported by the interested individuals.

Summary

Several interesting conclusions may be drawn from the conducted survey. This Report will emphasize three main conclusions. Firstly, the knowledge of mediation, irrespective of the stage of the court trial, should be reminded by experts in this field as a minimum, because some of the collected responses did not correspond to the current legal state. Additionally, the respondents expressed such a need by themselves. Secondly, criminal mediation, irrespective of the stage of the criminal procedure, is targeted at specific criminal offences, with the public prosecutors not recognizing its potential or usability with regard to other criminal offences. Thirdly and most importantly, the respondents are not convinced of whether mediation should be referred to due to being an important institution

in the judicial process. This particular ‘lack of confidence’ in the effectiveness of this ADR tool may be explained by several reasons that have been discussed in detail by referring to individual questions. This was particularly noticeable when the respondents were asked to specify the arguments against referring cases to mediation. It is obvious that the stage of the proceeding determines the arguments, but the disbelief about the need to ‘refer a case to another party’ was often a link between them.

The image of criminal mediation could be completed by adding potential responses of criminal judges and professional representatives: lawyers and legal advisers. If given, the responses of the aforementioned entities could shed a new light on the analysed topic, and certainly become an element to complete the studies.

III. 6. Opinions of the restorative justice and mediation coordinators and consultants on the pilot programme and post-judgment mediation

Anna Gmurowska, Agnieszka Lewicka-Zelent

The manner in which a new programme is organized and conducted is important every time. This also applies to the mediation programmes. It is true that the ongoing pilot programme is not comparable, because no evaluation of a similar project has been carried out in Poland so far. Nevertheless, the school mediation programmes authored by A. Lewicka-Zelent is supervised by a starting mediator (adult mediator being usually a teacher or school pedagogue). They are responsible for disseminating the restorative idea in a school, organizes mediation meetings and trainings for the mediators. They are a highly important figure in the process of implementing mediation in a school³⁹. In the pilot programme, their counterparts are restorative justice and mediation coordinators and consultants.

Under the pilot programme, two officers of the Prison Service acted as coordinators for restorative justice and mediation. One of them was responsible for the pilot project in the prisons and detention centres located within the territory of the Regional Court in Zamość, while the other one for the penal institutions within the territory of the Regional Court in Lublin.

The coordinators were entrusted with numerous tasks. One of the most important tasks was to establish and strengthen cooperation between the directors of the pilot penal institutions and other entities involved in the penal procedure, i.e. courts, the Police, the Prosecution Service, court probation officers, mediators, in the organization of mediation meetings and mediators' office hours in the penal institutions. The coordinators also cooperated with lawyers and legal representatives, among other things, in conducting trainings/information meetings to disseminate the idea of mediation within their communities and to provide information about the ongoing pilot programme.

The tasks of the coordinators involved meetings in all the institutions with an aim to: present the assumptions of the pilot programme, learn the teachers, analyse the current actions in the field of mediation and restorative justice, exchange experiences, build a network of 'teachers and pedagogues who could support the coordinator', and organize meetings/instructional sessions for the officers of the Prison Service. Their following tasks involved information and promotional actions on the idea of restorative justice and post-judgment mediation and the pilot programme. In the framework of the project, the coordinators were obliged

³⁹ Comp. A. Lewicka-Zelent, *Analiza zasobów osobistych uczestników szkolnego warsztatu mediacyjnego* [The analysis of personal resources of those participating in a school mediation workshop], Opole 2014, p. 47; A. Lewicka-Zelent, *Klimat szkół gimnazjalnych. Diagnoza weryfikacyjna programu „Mediacja w szkole”* [The climate of gymnasiums. The verificatin diagnosis of the programme entitled 'Mediation at school'], Opole, p. 76.

to conduct and coordinate educational and resocialization activities with the participation of the prisoners (including lectures on mediation) along with organizational activities in relation to the operation of the so-called mediation room and mediation office hours⁴⁰.

The tasks aimed at promoting the idea of restorative justice and mediation not only among the prisoners but also among the officers of the Prison Service seem to be of particular importance. It is they who are in everyday contact with the prisoners and are able to effectively motivate them to participate in post-judgment mediation, as well as to provide exhaustive information thereon (Lewicka-Zelent, Trojanowska, 2017, 2018a, 2018b).

Additionally, each prison and detention centre located within the territory of the District Inspectorate of the Prison Service in Lublin appointed an officer of the Prison Service to act as a restorative justice and mediation consultant. The person was a specific link between the coordinators for corrective justice and mediation and the officers of the Prison Service working in a penal institution. They combined all the mediation activities, which provided them with deep knowledge of post-judgment mediation and the course of the pilot programme in their work establishment.

The restorative justice and mediation coordinators and consultants play a highly important role for the effectiveness of the ongoing project. It is their involvement that largely determines the smooth flow of the activities carried out at individual stages of the programme. Considering the comprehensive nature of their tasks aimed at implementing post-judgment mediation under the conditions of penal isolation, it was decided to learn their opinions thereon.

Fundamentals of the study methodology

The aim of the study was to learn the opinions of the restorative justice and mediation coordinators and consultants on the post-judgment mediation procedure and the pilot programme conducted in the penal institutions within the territory of the District Inspectorate of the Prison Service in Lublin.

The main research question was asked as follows: What are the opinions of the restorative justice and mediation coordinators and consultants on the post-judgment mediation procedure and the pilot programme?

To answer the main research question, the following specific questions were formulated:

1. What activities did the surveyed restorative justice and mediation coordinators and consultants carry out in the framework of the project?
2. What expectations and concerns about the implementation of mediation in the penal institutions did the surveyed restorative justice and mediation coordinators and consultants express?

⁴⁰ The description is based on the job description of the coordinator for restorative justice and mediation for the purposes of the ongoing project.

3. How did the restorative justice and mediation coordinators and consultants perceive the cooperation with different entities in the framework of the project?
4. What advantages of the pilot programme were recognized by the surveyed coordinators and consultants?
5. What do the respondents believe were the difficulties in the performance of the pilot programme?
6. How do restorative justice and mediation coordinators and consultants perceive the manner in which the participants of the project - the prisoners - functioned during the project performance?
7. What did restorative justice and mediation coordinators and consultant think about the ongoing pilot programme?

The study was conducted with the use of a diagnostic survey method. The 'Questionnaire for interview and survey, part D Experiences of the officers and mediation coordinators in participating in the pilot project in the penal institutions located within the territory of the District Inspectorate of the Prison Service in Lublin', developed by the following research team: dr hab. Agnieszka Lewicka-Zelent, dr Grzegorz Skrobotowicz, mgr Aleksandra Rusin-Batko, mgr Anna Gmurowska and mgr Agnieszka Markocka.

Characteristics of the restorative justice and mediation coordinators and consultants participating in the study

The study attracted 10 officers of the Prison Service, acting as restorative justice and mediation coordinators (2 persons) and consultants (8 persons) during the project performance. A half of the respondents were women. Seven of ten persons were aged 31 up to 40, two were aged 41 up to 50, and one person was over 51 years old. A half of them had been working for the Prison Service for 5 up to 10 years, and the remaining ones for 10 up to 15 years. Seven persons were graduates of post-graduate studies for the officers of the Prison Services at the Catholic University of Lublin. One respondent was during the post-graduate studies at the Academy of Justice in the framework of the pilot project, which are targeted at the officers of the Prison Service and court probation officers. Two persons had never attended any courses in mediation skills.

Project activities carried out by the restorative justice and mediation coordinators and consultants

The respondents were first asked to specify the scope of the activities carried out or coordinated in the framework of the project.

Nine respondents claimed to have carried out information and promotion activities in the field of restorative justice, in particular mediation. One person did not comment on the question. Some of them described their tasks in more detail. Three persons pointed out: organizing information meetings, transmitting

advertisements, among others, through a radio broadcasting system, and conducting talks with the prisoners. Two respondents mentioned the transmission of messages and the distribution of leaflets. The remaining persons stated: the performance of the social renewed adaptation programme on post-judgment mediation, the preparation of presentations for the purposes of internal television, the placing of posters in residential units and on the premises of the entire penal institution, the organization of information meetings with educators and officers of the Prison Service, the provision of information about mediation to individual prisoners, the encouraging of them to join the project, and the publication of project information on the Internet website of the District Inspectorate of the Prison Service in Lublin.

Four persons conducted and/or coordinated educational and resocialization activities with the prisoners in the field of mediation. Two persons mentioned: lectures for the prisoners and information meetings, while one person the coordination of meetings and lectures.

The respondents were also asked to specify what support they had expected and factually received during the project performance. Four persons gave the following responses: 'I have received a lot of support during the project performance', 'I do receive full support', 'Due to my mediation duties, I have no comments', and 'I have no comments thereon'.

One person felt that he or she had not been supported sufficiently while performing project tasks, while the remaining officers of the Prison Service did not express their opinions thereon.

Expectations and concerns of the corrective justice and mediation coordinators and consultants with regard to the implementation of mediation in the penal institutions

The respondents were asked to specify what concerns they had in relation to the implementation of post-judgment mediation, which is highly important at the stage of continuing the programme. While staying in direct contact with the prisoners, they may exercise the greatest influence on shaping positive attitudes towards the idea of restorative justice and post-judgment mediation. Their fears and doubts do not encourage the dissemination of their principles in the penal institutions. The coordinators and consultants pointed out that:

- 'the prisoners use mediation as a means of extorting favourable decisions from administrations and courts',
- there is no confidence in that necessary legislative changes will be introduced, 'laziness and love of comfort will prevail. The project will not translate into legislation', 'there are no provisions on the flow of information on the prisoners involved in mediation between the officers of the Prison Service and mediators',
- it is necessary 'to supervise the conditions laid down in the settlement agreement',
- the officers of the Prison Service are overloaded with the tasks in the implementation of post-judgment mediation, 'in spite of a high workload

imposed on the officers of the Prison Service, mediation in the penal institutions will create additional duties for which there is no time', 'an excessive and additional workload for the officers of the Prison Service if no additional jobs are created'

Two persons did not experience any fears, while the remaining ones did not answer this question.

Another matter was to learn the experiences of the respondents as to the mediation procedure in the prisons. The coordinators and consultants formulated the following expectations: 'legal norms, application in all penal institutions', 'creating additional jobs for the officers of the Prison Service to perform the project tasks', and 'improving the cooperation and exchange of information between mediators and the Prison Service'.

Three persons said they had no specific expectations. One person added: 'I believe there will be mediation in Polish prisons'. Two persons did not respond.

One important element of the programme implementation in the prisons and detention centres is to recruit the prisoners to mediate, because they and the victims determine the final effect - whether a settlement agreement is signed or not.

Three respondents considered that some prisoners should be treated as a 'preferred group' to participate in mediation at the stage of executing the penalty. They mentioned: 'juveniles and those serving a penalty for the first time', 'prisoners of the so-called group of offenders of violent crimes', 'prisoners subject to resocialization during serving the penalty', and 'those having no instrumental approach to mediating'.

The respondents also identified the criteria that should determine their eligibility to this group, i.e. 'the type of criminal offence and criminal liability', 'mainly the type of the criminal offence committed, but also the possibility of mediation for the entire group of prisoners', and 'the nature and circumstances/motives of the criminal offence committed, the manner in which the criminal offence was committed, one's subjecting to resocialization and a visible change in their existing attitudes (non-adaptive, anti-social)'.

One person stated the subject matter of the case, in which mediation is to be conducted, was important rather than the 'preferred group' of prisoners.

Cooperation of the restorative justice and mediation coordinators and consultants with different entities in the framework of the project

Another area for which the respondents were given the opportunity to express their opinions was the cooperation with different entities. It seems necessary to establish and maintain close cooperation with courts, NGOs, social assistance institutions, universities and other institutions in order to provide comprehensive support to those who decide to mediate after the judgment.

All the respondents stated that their tasks involved the cooperation with mediators by the organization of mediation meetings and mediation office hours on

the premises of the penal institutions. Eight of ten respondents said that the cooperation with the mediators involved in the project had worked very well. One person assessed this cooperation as good, and the other one as average.

Table 13. Evaluation of the respondents of the cooperation with external entities

Entity	Cooperation worked rather well	Cooperation worked very well	Good cooperation was missing
	N	N	N
Court probation officers	-	-	6
Officers of the Prison Service	2	7	-
Judges and mediation coordinators by the Regional Court	-	-	6
Penal judges	-	-	6
Members of the research team	-	1	5
Police	-	-	6
City/Municipal Social Welfare Centre	-	-	6
Project manager	-	4	4
Project administration coordinator	1	3	2

Seven respondents said that the cooperation with the officers of the Prison Service worked very well. Four persons assessed the cooperation with the project manager as very good, and three - with the project administration coordinator. Two consultants claimed that the cooperation with the officers of the Prison Service had gone rather well. One respondent defined the cooperation with the project administration coordinator in the same manner. The highest number of respondents (six persons) found that there had been no good cooperation in the framework of the project - with court probation officers, a judge and mediation coordinator by the Regional Court, a penal judge, the Police and the City Social Welfare Centre. A half of the respondents also found the cooperation with the members of the research team to be missing. Four restorative justice and mediation consultants pointed out that there had been no cooperation with the project manager, while one person - with the project administration coordinator.

Only one respondent submitted own comments on the project: 'In my opinion, there should be more joint meetings with the participation of different

entities whose activities are relevant in terms of the project effectiveness and of the project manager’.

Two persons said they had experienced negative reactions from various entities to the pilot tasks. They gave the following responses: ‘the community of judges, lawyers, the justice system’ and ‘the mediators’ unfavourable reaction to the need that the officers of the Prison Service must record the mediators’ office hours in the penal institutions’.

Advantages derived from participating in the project, as recognized by the surveyed restorative justice and mediation coordinators and consultants

The respondents could specify what advantages the prisoners had derived from the project. This is an intentional attempt to determine the perspective of the convicted persons and of the prisoners of the Prison Service. The restorative justice and mediation coordinators and consultants found that such advantages involved:

- ‘knowledge of mediation’, ‘the prisoners acquired very important and useful knowledge of mediation, which would certainly help them in the future’, ‘access to information on mediation’, ‘knowledge of mediation, that there is a possibility of mediation at any stage (before and after the judgment)’ (n=4),
- ‘the opportunity to express one’s apology, reconcile with the victim’, ‘the opportunity to improve relations with the victims and to redress for the harm suffered’ (n=2),
- ‘shaping the sense of responsibility by the prisoners for their lives, relief’,
- ‘a sense of relief and satisfaction by the victims’,
- ‘working out a bilaterally acceptable and legal agreement in cooperation with the victim’,
- ‘access to the mediator’.

The restorative justice and mediation coordinators and consultants then expressed their opinions on the advantageous function of post-judgment mediation in the prevention of reoffending.

Table 14. Mediation as a method for preventing the reoffending, as viewed by the coordinators and consultants

in no respect		to a small extent		to a moderate extent		to a rather large extent		to a very large extent	
N	%	N	%	N	%	N	%	N	%
-	-	2	20.00	6	60.00	2	20.00	-	-

Six respondents believe that mediation is understood as a form of restorative justice, and contributes to the prevention of reoffending to a moderate extent. Two persons assessed the extent to be rather large, and another two to be small.

Table 15. Mediation as a method to improve the situation of the victims, as viewed by he surveyed coordinators and consultants

in no respect		to a small extent		to a moderate extent		to a rather large extent		to a very large extent	
N	%	N	%	N	%	N	%	N	%
-	-	2	20.00	6	60.00	1	10.00	1	10.00

Six persons concluded that mediation as a form of restorative justice contributed to improving the situation of the victims to a moderate extent. Two persons were convinced that it was not a good manner to support the victims, while two others held the opposite view.

Difficulties in the performance of the pilot programme, as viewed by the surveyed restorative justice and mediation coordinators and consultants

An important component of the project evaluation involves the analysis of the difficulties occurring during its performance. Therefore, the restorative justice and mediation coordinators and consultants were invited to comment on this matter.

Two officers of the Prison Service said they had experiences difficulties with starting the project. However, they agreed that they had quickly dealt with them. One issue was related to the ‘temporary unavailability of the mediator’, while the other one was described as ‘the initial lack of knowledge of the project and the idea of mediation due to the assumption of the function - in a sense - of coordinating various project activities due to changing one’s position’. One of the consultants described the manner for resolving the difficulties (‘discussions with the project manager and with the designated mediation and restorative justice coordinators’).

Most of the respondents stated that they had not come across any difficulties in their role as a project consultant or coordinator. One person pointed out that there had been no enthusiasts for the project. Another person stressed that ‘the difficulties had been clarified immediately’. Another respondent source said: ‘I have not encountered any difficulties. It is commonly known that the pilot project is brand new thing, and there is a dilemma rather than a problem, but all issues and doubts have been clarified immediately’.

Seven persons did not report any difficulties with holding mediation office hours in the penal institutions. Two respondents found it difficult to say. There

was only one person who reported such problems. He or she confirmed that they had been removed by an officer of the Prison Service or the director of the penal institution.

Similar to the question about the problems reported by the prisoners, the majority of the respondents concluded that the prisoners had reported no comments as to the office hours, the mediation procedure or the work of project mediators. One person said that the prisoners 'had reported a broader range of matters in which they could mediate'.

Most of the respondents did not mention any legal, organizational or psychological barriers they had encountered in coordinating the project. Three persons indicated the following real difficulties: 'problems with the location of the mediator's room', 'the pilot project implemented is something new for us - the officers of the Prison Service, our initial ignorance raised many doubts, now everything is progressing smoothly', and 'the initial lack of sufficient knowledge about the project and its indicators'. In the area of legal/procedural barriers: 'the non-existence of implementing provisions on mediation at the stage of the enforcement proceeding', 'procedures on the placement of the mediator in the Code and their competences (similar to the probation officers)', and 'the non-existence of regulations on post-judgment mediation both for the personnel of the penal institutions and other entities'. With regard to the psychological barriers, the respondents pointed out: 'the initial lack of confidence in the effectiveness of the measures taken', 'the barriers related to personal attitudes and expectations', and 'frustration arising from the emerging difficulties'.

Four persons stated that the victims - family members - had not raised any doubts or fears of post-judgment mediation in the framework of the ongoing pilot project. Two respondents concluded that the victims had reported moderate concerns. One of the participants in the mediation meeting felt strong anxiety, and the other minor anxiety.

One restorative justice and mediation consultant informed that the victim had felt uncertain due to his or her lack of confidence in the responsible performance of the commitment made during the mediation meeting after the release.

Manner in which the project participants - the prisoners functioned, as viewed by the surveyed restorative justice and mediation coordinators and consultants

The restorative justice and mediation coordinators and consultants working in individual penal institutions could present their conclusions on the manner in which the prisoners participating in the project had functioned.

Four persons pointed to the positive behaviour of the prisoners they had met while coordinating the project:

- 'the increasing interest and confidence as the project progresses',
- 'the prisoners positively acted during the meetings with the mediator',

- ‘reporting problems, engagement in the resocialization process, the increasing sense of responsibility and efficiency by the prisoners as regards their further fate’,
- ‘the prisoner’s willingness to take action in order to take over the responsibility for the effects of the criminal offence committed’.

One person said: ‘I have had no personal contact with the prisoners in the framework of this project’.

Most of the officers of the Prison Service who had acted as a coordinator or consultant did not comment on the negative manner in which the prisoners had functioned during the project performance. One person said that ‘the essence of restorative justice had been questioned. For many people, the possibility of interacting with the convicted persons ends with the judgment and its enforcement’.

According to one half of the respondents, the prisoners who had attended the mediation office hours in the framework of the project had had basic information, i.e. they had been aware of how they could use mediation. Four persons deemed that the prisoners had had elementary knowledge, that mediation was approachable at the stage of the criminal enforcement proceeding. One respondent did not answer the question.

A half of the respondents agreed that the convicted persons had not reported any concerns about seeking post-judgment mediation. Three prisoners had experienced moderate anxiety. One respondent did not answer this question.

The concerns and doubts raised concerned: ‘the reaction of the other party to the mediation proposal’ (n=2), ‘obtaining measurable effects of the actions taken’, and

‘the victim giving his or her consent’.

One person said he or she had no access to such data, while another one stated that no such concerns or doubts had been raised.

Table 16. Degree of interest in mediation expressed by the prisoners, as viewed by the restorative justice and mediation coordinators and consultants

there was no interest		to a small degree		to a moderate degree		to a rather large degree		to a very large degree	
N	%	N	%	N	%	N	%	N	%
-	-	1	10.00	4	40.00	4	40.00	-	-

Four (4) persons agreed that the prisoners’ interest in mediation may be described as moderate and large. One officer of the Prison Service was convinced that the convicted persons had little interest in attending the mediation meetings.

The respondents listed the main reasons why the prisoners had participated in the mediation procedure: ‘the desire to improve one’s image and remedy the damage’, the desire to remedy the damage’ (n=2), ‘the desire to improve relations with the beloved ones’, ‘the reconciliation with one’s family and improve relations with the beloved ones’ (n=2), ‘the initial curiosity, willingness to clarify various matters already while in prison’, ‘the court considering the settlement agreement concluded’, and ‘the prisoners hoped to get their penalty mitigated or be released conditionally’. One respondent concluded: ‘I have no knowledge of that’.

The respondents were then asked to give examples of the positive behaviour of the prisoners the mediation office hours. They pointed out the following: ‘the increased interest’, ‘the prisoners’ conduct during the mediation office hours was appropriate’, ‘the gratitude for giving a chance for future, restoring self-confidence’, and ‘the appreciation of the conditions for having direct talks between the parties to the conflict. Great commitment and willingness to remedy the damage’.

One person stated that he or she could not answer the question because of no contact with the prisoners who had attended the mediation office hours. One of the consultants described the negative behaviour of the prisoners he or she had come across, namely ‘ignorance - *this is just another programme, it will not be successful... it is senseless... what for?*’. The remaining respondents had not noticed such behaviour

Opinions of the restorative justice and mediation coordinators and consultants on the ongoing pilot programme

The restorative justice and mediation coordinators and consultants shared their opinions on the ongoing pilot programme. According to seven respondents, their role had been to initiate mediation meetings with the participation of the victims, and to motivate the prisoners to actively dialogue with them.

The respondents assessed to what extent the mediation office hours had contributed to the prisoners’ increased interest in seeking mediation.

Table 17. Attendance by the prisoners of the mediation office hours and their increased interest in the mediation meetings, as viewed by the surveyed respondents

there was no interest		to a small degree		to a moderate degree		to a rather large degree		to a very large degree	
N	%	N	%	N	%	N	%	N	%
-	-	1	10.00	4	40.00	3	30.00	2	20.00

Four officers of the Prison Service assessed that the prisoners’ interest in seeking post-judgment mediation had increased moderately, after they had used the

information provided by the mediators during the mediation office hours. Three persons deemed that there was a close correlation between the participation of the prisoners in the mediation office hours and meetings, whereas two persons found this correlation to be very strong, and one assessed it to be weak.

Eight persons stated that the establishment of mediation rooms in the penal institutions as part of the ongoing project and their equipment, financed by the Justice Fund managed by the Minister of Justice, was necessary and appropriate to promote the idea of mediation as a form of restorative justice. Two persons found it difficult to assess.

The surveyed mediation coordinators and consultants could put forward their own proposals about how the office hours should change, or how mediation should be conducted in the framework of the project. One respondent said that ‘the office hours are now working correctly’. There was also one person who wrote that he or she had no proposals for change. On the other hand, two persons described their proposals in the following manner: ‘there are no specified norms and quantities of the mediation procedures to be conducted in a penal institution’, and ‘the number of effective mediation procedures is dependent on the category of the penal institution (its purpose), i.e. the prisoners who express their will to seek mediation and fulfil the conditions of the settlement agreement. The institutions should not be set equal limits’. The remaining officers of the Prison Service did not answer the question about the changes to be implemented under the ongoing project.

The surveyed coordinators and consultants mentioned the following positive aspects of the programme:

- ‘the increased knowledge of the prisoners of mediation’ (2 persons),
- ‘post-judgment mediation offers an opportunity to effectively resolve problems of the parties related to a criminal offence, helping the prisoner to return back to the society, family’,
- ‘the propose impacts gain real dimensions of being *concrete*’,
- ‘there is a chance to prevent the reoffending and to improve the situation of the victims’,
- ‘it is possible to implement further penal actions through the participation in mediation’,
- ‘it is possible to remedy the damage, apologize to the victim, change the attitude of the offender, prevent the reoffending, improve the integration to the society after the release’.

The last question asked the officers of the Prison Service to complete four sentences by specifying the perspective of: the prisoners, the Prison Service, the restorative justice and mediation coordinators and consultants and the mediators. The respondents wrote that during the programme the prisoners: ‘gained knowledge of mediation (3 persons), ‘have the sense of responsibility’, ‘participated’, ‘were not willing to participate’, ‘have a chance to remedy the damage they have caused’.

During the programme, the Prison Service: ‘gained experience’, ‘gains another tool to influence’, ‘has organized everything’, ‘is still unconvinced that they can manage’, ‘promotes mediation’, ‘has learnt mediation’, ‘and has gained an additional means to influence the convicted persons during the resocialization process’.

The coordinators and consultants participating in the programme stated as follows: ‘I have acquired new knowledge and skills’, ‘I have a lot of duties’, ‘I have done my best’, ‘I am doing my job’, ‘I am an assistant’, ‘I like challenges’, ‘I have acquired knowledge of mediation and the project’.

The programme mediators were commented as follows: ‘they have learnt the environment of the prisoners’, ‘they are doing a great job’, ‘they were the most important figure’, ‘they show commitment, creativity, adaptation to prison realities’, ‘they manage conflicts’, ‘they receive compensation’, and ‘they are frustrated by the emerging difficulties and the fact that they are accountable for their project tasks’.

Summary

The survey was carried out by means of the diagnostic survey method. The survey used a questionnaire and interview that had been developed by the project research team.

Two restorative justice and mediation coordinators and eight consultants participated in the study. A half of them were women. Most of the respondents were aged between 31 and 40 years. The seniority of a half of the respondents ranged from 10 to 15 years. Most of the respondents were graduates of post-graduate studies offered by the John Paul II Catholic University of Lublin for the officers of Prison Service. Thus, it should be concluded that the officers of the Prison Service were experienced specialists in their newly assigned function, having basic or higher mediation competences.

The aim of the study was to learn the opinions of the restorative justice and mediation coordinators and consultants on the post-judgment mediation procedure and the pilot programme conducted in the penal institutions within the territory of the District Inspectorate of the Prison Service in Lublin.

The empirical material collected allowed to answer specific questions.

1. What activities did the surveyed restorative justice and mediation coordinators and consultants carry out in the framework of the project?

Nearly all the respondents carried out information and promotion activities in the field of restorative justice, in particular mediation. These were usually information meetings, announcements made through, among others, a radio broadcasting system and talks with the prisoners about restorative justice and post-judgment mediation.

2. What expectations and concerns about the implementation of mediation in the penal institutions did the surveyed restorative justice and mediation coordinators and consultants express?

The concerns expressed by the coordinators and consultants with regard to the implementation of mediation in the penal institutions included: the objective nature of the activities of the convicted persons (joining the mediation procedure to satisfy their own egoistic needs, e.g. conditional release), the non-existence of legal regulations on conducting post-judgment mediation and on the cooperation of the Prison Service with mediators, the non-existence of explicit legal provisions on supervising the conditions of settlement agreements, imposing additional obligations onto the officers of the Prison Service in relation to mediation (e.g. the lack of positions for performing the function of a coordinator and consultant). These concerns were directly driven by the expectations of those surveyed. They needed specific, unambiguous legislation on post-judgment mediation, specialist trainings for selected officers of the Prison Service to deal exclusively with mediation in the penal institutions, and the standardization of the cooperation between the Prison Service and mediators.

3. How did the restorative justice and mediation coordinators and consultants perceive the cooperation with different entities in the framework of the project?

All the respondents stated that their tasks involved the cooperation with mediators by the organization of mediation meetings and mediation office hours on the premises of the penal institutions. Most of the respondents found the cooperation with these persons very positive. Nearly $\frac{3}{4}$ of them assessed the cooperation with the officers of the Prison Service to be very good. The cooperation with court probation officers, judges and mediation curators in the district courts, penal judges, the Police and employees of the City Social Welfare Centres was assessed by most respondents as insufficient. A half of the respondents also expressed the need to cooperate more closely with the members of the research team.

4. What advantages of the pilot programme were recognized by the surveyed coordinators and consultants?

The respondents specified the most important advantages of the programme to be as follows: the prisoners gaining knowledge of mediation and proposals for constructive conflict resolution methods, the opportunity to improve social relations and one's own physical and mental state, as well as the opportunity to redress to the victims.

Most of the respondents considered that mediation as a form of restorative justice contributed to preventing the reoffending and to improving the situation of the victims to a moderate or higher extent.

5. What do the respondents believe were the difficulties in the performance of the pilot programme?

The vast majority of the respondents did not report any difficulties or problems with starting the project, coordinating it or holding mediation office hours. Most of the respondents did not define any legal, organizational or psychological barriers that had occurred during the project. In addition, some of them claimed that the prisoners had not reported any comments on the manner in which the office hours had been held, the mediation procedures or the work of mediators during the project.

According to the respondents, the victims reacted very differently to mediating with the offenders. Some of them feared to meet them, others did not. Nevertheless, only one person observed strong anxiety in the victim. Another victim participating in the mediation procedure questioned the extent to which the commitments made by the offender would be kept after the release.

6. How do restorative justice and mediation coordinators and consultants perceive the manner in which the participants of the project - the prisoners - functioned during the project performance?

The respondents noticed that the prisoners had become more interested in mediation and more motivated to actively participate in the meetings with mediators. They believe that the prisoners attempted to take over the responsibility for the effects of the committed criminal offence.

The majority of the respondents did not point out any negative forms of behaviour by the prisoners during the project performance. The respondents assessed that the prisoners attending the mediation office hours had had elementary or basic knowledge of mediation.

A half of the restorative justice and mediation coordinators and consultants claimed that the prisoners had not reported their concerns about mediating. The individual concerns of the convicted persons concerned primarily the victim – his or her reaction and consent to attend the mediation meeting.

Similarly, a half of the respondents claimed that the prisoners had been interested in mediation at least moderately, and the main driver for participating therein had been the desire to improve his or her relations with the loved ones or the victims.

During the mediation office hours, the prisoners showed great interest and willingness to remedy the harm caused, and their gratitude for the opportunity to achieve a positive change in their lives. One participant of the mediation office hours showed disregard for the idea of restorative justice and mediation.

7. What did restorative justice and mediation coordinators and consultant think about the ongoing pilot programme?

Most of the respondents considered that the prisoners' attendance of the mediation office hours had contributed at least moderately to increasing their interest in mediation and initiating mediation with the victims.

Eight of ten officers of the Prison Service stated that the establishment of mediation rooms in the penal institutions and their equipment as part of the ongoing project was important and justified in the process of disseminating the ideas of mediation understood as a form of restorative justice.

The surveyed coordinators and consultants did recognize positive aspects of the ongoing programme. They paid attention to: raising the prisoners' awareness of mediation, enabling the prisoners to resolve conflicts in a constructive manner and social renewed adaptation, developing specific social skills by the prisoners, improving social relations and preventing the reoffending. The officers of the Prison Service According believe that the mediation program is an important preliminary stage to work with the convicted persons in the resocialization dimension.

According to the respondents, the programme provided the prisoners with knowledge of mediation and an opportunity to mediate. The Prison Service had the opportunity to acquire new experiences and competences that it can use in their daily work with the convicted persons. It performed a very large number of tasks during the programme performance, which hindered their statutory tasks. They had certain doubts about the implementation of post-judgment mediation. The mediators involved in the mediation meetings had the opportunity to understand and work under penal insulation conditions. They performed their duties according to the prison realities.

Chapter IV

Standardization of the mediation procedure in the penal institutions

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4.1. Standards as criteria for achieving the desired objectives

The idea of restorative justice, implemented in the penal institutions, requires to defined the rules that would standardize the mediation process with the participation of the prisoner, allowing for an effective application of the existing regulations. The fact cannot be omitted that the prisons and detention centres perform multiple tasks related, among other things, to ensuring a correct process of court procedures, isolation and resocialization of those being deprived of liberty. Participating in mediation contributes to achieving the objectives of the court trials and resocialization, and may support the convicted person to return to the society whose rules he or she has violated by his or her criminal conduct. Although staying in isolation, the prisoner continues to be part of the society: he or she is a family member, can be a creditor or debtor or come into an inheritance. Furthermore, it does function within a new group where there may also be a conflict or a dispute. Therefore, it is crucial to strengthen the prisoners' interest in seeking mediation, as they lack chance to remedy the caused damage or harm or deal with current staff after the conviction. The prisoner should have access to mediation irrespective of whether he or she seeks it upon the referral of a body, on the basis of a contract or under the so-called non-court mediation. It is of key importance that the mediation process interacts with the remaining activities of the aforementioned entities. Developing standards should facilitate the use of tools in a manner that will not interfere with the functioning of the isolation site. It should be emphasized that before the project was launched, there had been no standards for mediation under prison isolation. The course of the mediation procedure was depended on the practices applied by an institution, and these differed between each other, which did not support its development.

Setting out standards that could hopefully become part of the rules of conduct for the penal institutions will facilitate the use of mediation, will lead to the dissemination of the concept of restorative justice, and will encourage the prisoners to refer thereto more often.

The need to develop and standardize mediation in criminal matters, which is flexible and comprehensive, not only resolves problems, but also makes it possible that the offender and the victim are involved in the process, was recognized in Recommendation No. R (99) 19 of the Committee of Ministers [Council of Europe] of 15 September 1999 concerning mediation in penal matters, which highlighted the need to provide services according to specific standards, by trained mediators following ethical principles¹.

This need corresponds to the recommendations of restorative justice, as specified in the European Prison Rules and in the Annex to Recommendation CM/Rec (2018)8 of the Committee of Ministers (Council of Europe)² for the Member States. As mentioned in Recommendation No 36³ and 37⁴, the services under *restorative justice* should be provided in accordance with the standards recognized and monitored by competent bodies. International bodies also recognize the need to develop and follow standards, including in the area of restorative justice.

The need to set standards for mediation under the conditions of prison isolation is also evidenced by the current development direction of mediation in Poland. Until the launch of work on including the mediation qualifications⁵ in the Integrated Qualifications System⁶ (IQS), the norms for the activities in the field of alternative conflict resolution methods were developed in the ethical standards, prepared by experts and authorities in this field⁷, and were treated as

¹ OJ EU, Polish special edition, Chapter 19, vol. 4, p. 72

² Recommendation CM/Rec(2018)8 of the Committee of Ministers [Council of Europe to Member States concerning restorative justice in criminal matters (adopted on 03.10.2018 at the 1326th meeting)

³ Recommendation No 36, Annex to Recommendation CM/Rec(2018)8, translation by dr Anna Mateczak, p. 8

⁴ Recommendation No 37, Annex to Recommendation CM/Rec(2018)8, translation by dr Anna Mateczak, p. 9

⁵ Article 1 point 3 of the Act on the Integrated Qualifications System of 22 December 2015 (i.e. Journal of Laws of 2020, item 226) defines the standards for describing qualifications, while Article 2 point 2 of the aforementioned Act specifies the Integrated Qualifications System as a separate part of the National Qualifications System, being based on the statutory standards for describing qualifications and assigning the level of the Polish Qualification Framework to individual qualifications, the rules for including qualifications in the Integrated Qualifications System and their registering in the Integrated Qualifications Register, as well as the principles and standards for certifying qualifications and for ensuring the quality of the process of granting qualifications.

⁶ The work was launched in 2018, and is discussed in detail in section 5.3.

⁷ A. Cybulko, *Mediacja cywilna i rola mediatora w ujęciu psychologii społecznej* [Civil mediation and the role of mediator under social psychology], Warsaw 2018, p. 32.

a tool the candidates could use to gain knowledge for carrying out such activities. This field was led by the organizations that brought together mediators who also dealt with training future experts. The most renowned institutions were: Polish Mediation Centre⁸, Family Mediators Association⁹, Mediation Centre of the Polish Confederation Lewiatan¹⁰, etc. The authors of these documents underline the efforts to professionalize the mediator, the need to provide high quality services, and thus to ensure its quality, development, effectiveness and universality. Although the collections, created bottom-up in the form of standards, regulations or rules, have not been formally anticipated in the legal order, they nevertheless provide a source of knowledge about the principles of mediation in the areas concerned. It should be emphasized that the most practical documents have been developed by the Social Council for Alternative Dispute Resolution Methods¹¹, whose members have also issued opinions on the *Standards for mediation under the conditions of prison isolation*, prepared as part of *'The pilot programme to implement the idea of restorative justice within the territory of the District Inspectorate of the Prison Service in Lublin'*¹².

4.2. Activities of the Social Council for Alternative Dispute Resolution Methods by the Minister of Justice, including the standards

The fact that an advisory team for the Minister of Justice, composed of 20 persons - representatives of the mediation communities, authorities, mediation practitioners and theoreticians¹³ in a central body, has been appointed by Ordinance of the Minister of Justice of 1 August 2005¹⁴ undoubtedly marks an upgrade of the institution and indicates that it is an important component of the government policy. The establishment of the Commission for Mediation Standards and the Code of Ethics within the Council demonstrates how important the need for common rules was treated by the mediators, which gained a tangible form in the Resolution of the Council of 26 June 2006¹⁵. Adopted by the Council during its

⁸ <https://mediator.org.pl/baza-wiedzy/standardy-mediacji/> [date of access: 12.10.2022]

⁹ <https://smr.org.pl/standardy/o-standardach/> [date of access: 12.10.2022]

¹⁰ <https://lewiatan.org/centrum-mediacji-lewiatan/> [date of access: 12.10.2022]

¹¹ Comp. W. Sejbuk, *Zasady Mediacji [The principles of mediation]*, [in:] *Mediacja w praktyce mediatora i pełnomocnika [Mediation in the practice of mediator and legal representative]*, C. Rogula (ed.), A. Zemke-Górecka, Warsaw 2021, p. 78

¹² Section 5.4 *Standards for the mediation procedure under the conditions of prison isolation* describes in detail the process of creating the document.

¹³ <https://www.gov.pl/web/sprawiedliwosc/czlonkowie-rady4> - list of members of the Council of the first term of office, date of access: 13.10.2022

¹⁴ Ordinance of 1 August 2005, Journal of Laws of 2005 No 5, item 19

¹⁵ <https://www.arch.ms.gov.pl/pl/dzialalnosc/mediacje/spoleczna-rada-ds-alternatywnych-metod-rozwiazywania-konfliktow-i-sporow/dokumenty-deklaracje/> [date of access: 13.10.2022]

first term of office, the Standards for Mediation and the Conduct of the Mediator start with a preamble that defines the procedure of mediation¹⁶, the nature of the document¹⁷ along with its functions¹⁸. The Resolution contains ten standards, divided into sections, and discusses the obligations of the mediator irrespective of the category of matters in which he or she is to mediate. Thus, the mediator should protect the voluntary nature of mediation and agreement, the confidentiality of mediation, maintain neutrality over the subject matter of the dispute and impartiality towards the participants in the dispute, ensure a high level of professional qualifications, cooperate with other professionals for the sake of the mediation procedure, interrupt mediation or terminate it in the situations and in the manner set out by the standards, provide the parties with an adequate place to mediate and provide accurate information about his or her services¹⁹.

Another important resolution of the Council, which has not lost its validity, is the Code of Ethics for the Polish Mediators of 19 May 2008²⁰. The preamble thereto clarifies the objective of the resolution, its relation to the Standards for the mediation procedure and the conduct of the mediator it expands and supplements, as well as encourages the practitioners to use its contents in their mediation work. The Code of Ethics for the Polish Mediators lays down twelve principles the observance of which guarantees ‘the promotion of the highest ethical standards among Polish mediators’, as claimed by its authors.

The Ordinance of 3 April 2009²¹ appointed the Council for ADR Methods for the second term of office, which worked, among other things, on preparing promotional and informational materials, opinions on laws on mediation,

¹⁶ ‘Mediation means a voluntary and confidential process in which a professionally trained, independent and impartial person, upon the consent of the parties, helps them deal with a conflict. Mediation enables its participants to specify the matters of dispute, reduce communication barriers, develop proposed solutions, and, if the parties wish so, conclude a bilaterally satisfactory agreement’.

¹⁷ ‘The standards take the form of guidelines and instructions for the mediators, but they are not a source of law and must not be referred to when raising legal claims’.

¹⁸ a) they assist in pursuing mediation;
b) ensure greater security to the parties to mediation and the very mediators;
c) strengthen the society’s confidence in mediation as a means to resolve conflicts;
d) help candidate mediators make the decision about taking up such function.

¹⁹ To learn more, comp. A. Zienkiewicz, *Standardy prowadzenia mediacji i postępowania mediatora uchwalone przez Społeczną Radę ADR przy Ministrze Sprawiedliwości* [Standards for the mediation procedure and the conduct of the mediator, as adopted by the Social Council for ADR Methods by the Minister of Justice], *Legal System Studies* 2012, No 18, pp. 185-200.

²⁰ <https://www.arch.ms.gov.pl/pl/dzialalnosc/mediacje/spoleczna-rada-ds-alternatywnych-metod-rozwiazywania-konfliktow-i-sporow/dokumenty-deklaracje/> [date of access: 13.10.2022]

²¹ Ordinance of the Minister of Justice of 3 April 2009 No 24/09/PR.

the cooperation with judges in the promotion of alternative dispute resolution methods²².

The Social Council for ADR Methods of the third term of office was appointed by Decision of the Minister of Justice of 2 March 2005, and dealt with trainings for judges, the selection criteria according to which the judges were to select a mediator, enhancing the mediators' qualifications in criminal matters²³.

The current Council for ADR Methods of the fourth term of office operates on the basis of the Ordinance of 18 June 2019, and deals, among other things, with consultations in the project implemented in the Ministry of Justice entitled 'The dissemination of alternative dispute resolution methods through strengthening the competences of mediators, the establishment of the National Register of Mediators (NRM)²⁴ and information activities'²⁵. The members of the Council also issued opinions on the pilot activities, while their opinions were an important input to the document²⁶.

As mentioned above, the need to set out standards for the mediation procedure has factually arisen upon the dissemination of ADR methods in Poland. The majority of them refer to areas where there is a dispute, but some are universal and may be accepted by the mediation participants regardless of the case being mediated, the place and method of mediation, and the basis for mediation, i.e. whether it is initiated by a court (public prosecutor, a different body) or it is non-court mediation. It should be emphasized that this is the nature of the aforementioned resolutions of the Council for ADR Methods of the first term of office, i.e. Standards for the mediation procedure and the conduct of the mediator and the Code of Ethics for the Polish Mediators. The collection of principles therein should thus apply to the mediation procedure under the conditions of prison isolation. It is important that the mediator should remember about the guidelines, which made the authors of this Chapter deem justified to refer thereto

²² Report on the activities of the Council: <https://www.arch.ms.gov.pl/pl/dzialalnosc/mediacje/spoleczna-rada-ds-alternatywnych-metod-rozwiazywania-konfliktow-i-sporow/o-radzie/> [date of access: 13.10.2022].

²³ Report on the activities of the Council of the third term of office: <https://www.arch.ms.gov.pl/pl/dzialalnosc/mediacje/spoleczna-rada-ds-alternatywnych-metod-rozwiazywania-konfliktow-i-sporow/o-radzie/> [date of access: 13.10.2022].

²⁴ Internet website of the project: <https://krm.gov.pl/> [date of access: 13.10.2022].

²⁵ To learn more about the project, comp. M. Smalcerz, „Projekt Upowszechnienie alternatywnych metod rozwiązywania sporów poprzez podniesienie kompetencji mediatorów, utworzenie Krajowego Rejestru Mediatorów (KRM) oraz działania informacyjne” jako szansa na rozwój mediacji w Polsce [The project entitled 'The dissemination of alternative dispute resolution methods through strengthening the competences of mediators, the establishment of the National Register of Mediators (NRM)' as a chance to develop mediation in Poland], [in:] *Mediacja: w kierunku ugody* [Mediation: on the path towards a settlement agreement], M. Romanowski (ed.), Warsaw 2021, pp. 23-32

²⁶ Annual Report 2020-2021 <https://www.gov.pl/web/sprawiedliwosc/dokumenty> [date of access: 13.10.2022].

in this part of the Report. They are also an important element of the curriculum for mediators, being also included in the standards for the mediation procedure, as included in the Integrated Qualifications System.

4.3. The Integrated Qualifications System as a milestone towards the standardization of mediation

The Integrated Qualifications System (IQS) is a separate part of the National Qualifications Systems, being based on the statutory standards for describing qualifications and assigning the level of the Polish Qualifications Framework to individual qualifications, the rules for including qualifications in the Integrated Qualifications System and their registering in the Integrated Qualifications Register, as well as the principles and standards for certifying qualifications and for ensuring the quality of the process of granting qualifications²⁷, as mentioned in the Act of 22 December 2015 on the Integrated Qualifications System (Journal of Laws of 2020, item 226).

The qualifications included in the IQS are entered in the Integrated Qualifications Register (IQR) that is a public register kept in an IT system. The Register contains all on the data on the qualification included: what requirements must be met to obtain a qualification, the characteristics of a qualification and the list of certifying authorities. Full and partial qualifications are entered in the Register. Full qualifications are granted only in the education and in higher education system upon the completion of a certain stage of education (e.g. primary school, first-degree studies). Partial qualifications may be granted not only in the education and higher education systems, but also by different institutions, organizations and associations. The Integrated Qualifications Register is kept by the Educational Research Institute²⁸.

Each of the qualifications included in the Integrated Qualifications System is assigned the Polish Qualifications Framework. It should be emphasized that similar to the European Qualifications Framework, the Polish Qualifications Framework has eight levels that specify the manner in which qualifications should be described. Each level defines the characteristic requirements, skills and social competences that must be fulfilled by the level holders.

A person who wishes to confirm his or her knowledge and skills in a given qualification is required to validate. The concept of validation is defined in the Act on the Integrated Qualifications System. The validation checks whether the candidate applying for a certain qualification has acquired a distinct part of or

²⁷ The Act of 22 December 2015 on the Integrated..., *op. cit.*, Art. 2 point 25.

²⁸ A review of the Integrated Qualifications Register, Educational Research Institute <https://kwalifikacje.edu.pl/wp-content/uploads/publikacje/PDF/Zintegrowany-Rejestr-Kwalifikacji-w-zarysie-1.pdf> [date of access: 13.10.2022].

all the learning outcomes required for the qualification²⁹, *regardless of his or her learning methods*.

Four market qualifications in mediation have been included in the Integrated Qualifications System. The first qualification *Conducting mediation in court and non-court civil matters* was included in the IQS on 10 December 2018³⁰. The qualification was assigned the 5th level of the Polish Qualifications Framework.

Any person qualified in '*Conducting mediation in court and non-court civil matters*' is prepared to independently plan and conduct the entire procedure of mediation in civil matters both in court and non-court proceedings. They analyse the conflict, examines the subject matter of the dispute and the positions and expectations of the parties. Upon the analysis, they assess if there are any contra-indications against using mediation. They are prepared to encourage and support the parties in seeking solutions that could contribute to resolving conflicts. Using emotional management techniques and mediation techniques, they lead the parties to reach an agreement. They draw up documents that are required for the mediation procedure (a mediation agreement, minutes of the mediation meeting). They support the parties in formulating the ultimate mediation settlement agreement. They are capable to recognize which factors could facilitate the performance of the agreement. They use a basic set of concepts in the field of civil law (e.g. legal relationship, thing, commitment, inheritance section) to understand the problem raised by the parties to mediation. They update their knowledge of mediation and the application of the laws on the mediation procedure (in particular in the context of the provisions of the Code of Civil Procedure on the procedure of mediation). As for specialist knowledge that goes beyond their own skills as a mediator, they are able to identify external experts, e.g. lawyers, tax advisers, to cooperate with. They are trained to react to and solve problems, often under variable and unpredictable conditions. Any qualified person is aware of their scope of responsibility that is determined by their professional duties³¹.

The validation of the qualification '*Conducting mediation in court and non-court civil matters*' has two stages, i.e. a theoretical examination (test of knowledge) and a practical examination. During the examination, the examinee is not allowed to use any other applications, excluding the examination system. During the practical examination, the examinee may be asked to present a mediation simulation, analyse evidence, etc.

²⁹ The Act of 22 December 2015 on the Integrated..., *op. cit.*, Art. 2 point 22.

³⁰ Announcement of the Minister of Justice of 4 December 2018 on including the market qualification '*Conducting mediation in court and non-court civil matters*' in the Integrated Qualifications System (Polish Monitor of 2018, item 1198).

³¹ Announcement of the Minister of Justice of 4 December 2018 on including the market qualification '*Conducting mediation in court and non-court civil matters*' in the Integrated Qualifications System (Polish Monitor of 2018, item 1198). Annex - Information on the included market qualification '*Conducting mediation in court and non-court civil matters*'.

The second qualification included in the Integrated Qualifications System is the qualification *'Conducting mediation in court and non-court economic matters'*³². The candidate wishing to validate their qualifications must fulfil specific requirements, i.e. they must have full knowledge at level 6 of the Polish Qualifications Framework (a university diploma: a bachelor's or engineer's degree), the documented market qualification *'Conducting mediation in court and non-court civil matters'*, and the documented experience in conducting at least 5 mediation procedures in civil matters (court or non-court) during the last 5 years preceding the validation date. It should be emphasized that the only requirement the candidate for the qualification *'Conducting mediation in court and non-court civil matters'* is to have the full qualification at level 4 of the Polish Qualifications Framework (a certificate of maturity, a professional diploma).

The qualification *'Conducting mediation in court and non-court economic matters'* is validated in the same manner as the qualification *'Conducting mediation in court and non-court civil matters'*.

Any person qualified in *'Conducting mediation in court and non-court economic matters'* is prepared to independently plan and conduct the entire procedure of mediation in economic matters both in court and non-court proceedings. They analyse the conflict, examines the subject matter of the dispute and the positions and expectations of the parties. Upon the analysis, they assess if there are any contraindications against using mediation. They are prepared to encourage and support the parties in seeking solutions that could contribute to resolving conflicts. By using emotional management techniques and mediation and negotiation techniques, it leads the parties to a final agreement. They draw up documents that are required for the mediation procedure (a mediation agreement, minutes of the mediation meeting). They support the formulation by the parties of the final mediation settlement agreement. They update their knowledge of mediation and the application of the laws on the mediation procedure (in particular in the context of the provisions of the Code of Civil Procedure on the procedure of mediation). They understand the substantive basis of the dispute. They are capable to verify the ability of the parties to participate in the mediation procedure in economic matters, and to determine the consequences of concluding a mediation settlement agreement. They have basic command of legal language, in particular for drafting a clear and unambiguous content of a settlement agreement so that they can judge whether the agreement concluded by the parties is legal and consistent with the principles of social coexistence, understandable and is not aimed at circumventing the law, and may be accepted by the court. They are trained to react to and solve problems, often under variable

³² Announcement of the Minister of Justice of 3 December 2018 on including the market qualification *'Conducting mediation in court and non-court economic matters'* in the Integrated Qualifications System (Polish Monitor of 2018, item 1201).

and unpredictable conditions. Any qualified person is aware of the responsibility arising from mediation³³.

The third qualification included in the Integrated Qualifications System is the qualification '*Conducting mediation in court and non-court family matters*'³⁴. The qualification was included in the IQS on 23 June 2020.

Anyone wishing to validate their qualifications must have the full qualification at level 6 of the PQF (a university degree: a bachelor's or engineer's degree), submit 4 protocols and 4 case studies on the family mediation procedures completed, including at least 2 case studies completed by signing a mediation settlement agreement and at least 2 case studies with a minimum of 3 joint meetings of the parties in family mediation during the last 3 years preceding the validation date. An additional requirement is to submit a report on one's self-development during the year preceding the validation date. The requirements that must be fulfilled by the candidate applying for validation clearly indicate that the validation is targeted at experienced mediators who have theoretical knowledge and at least 3 years of experience in mediation.

The holder of the qualification '*Conducting mediation in court and non-court family matters*' is trained to independently conduct the mediation procedure in family matters. They cooperate with the court and other specialists, e.g. a lawyer, a psychologist. The activities of the qualification holder support the process of mediation settlement in family conflict situations, including those concerning children. The qualification holder additionally comes across complex and unforeseeable problems that may affect the entire family system. While performing their tasks, they consider numerous potential conditions of the occurred family problem and the consequences of the agreed solutions. They use knowledge of conflict psychology, family and child. With the use of such knowledge, they include the perspective of children in the mediation procedure. They work in accordance with the mediation methodology and the principles of professional ethics of the mediator. They use advanced communication techniques, including a number of techniques for building joint understanding. They independently plan and implements their career path. They recognize the need to participate in the supervision process to maintain the highest standards when dealing with

³³ Announcement of the Minister of Justice of 3 December 2018 on including the market qualification '*Conducting mediation in court and non-court economic matters*' in the Integrated Qualifications System (Polish Monitor of 2018, item 1201). Annex - Information on the included market qualification '*Conducting mediation in court and non-court economic matters*'.

³⁴ Announcement of the Minister of Justice of 9 June 2020 on including the market qualification '*Conducting mediation in court and non-court family matters*' in the Integrated Qualifications System (Polish Monitor of 2020, item 556).

their clients. Performing the professional tasks under this qualification entails a high level of social responsibility³⁵.

The fourth qualification included in the Integrated Qualifications System is the qualification '*Conducting mediation in criminal matters and on petty offences*'. The qualification was included in the IQS on 1 September 2022 - during the performance of the Pilot programme to implement the idea of restorative justice within the territory of the District Inspectorate of the Prison Service in Lublin.

Anyone wishing to gain the qualification is required to have the full qualification at level 6 of the PQF (a university degree: a bachelor's or engineer's degree), a certificate on participating in at least 4 mediation meetings as an observer, mediator or co-mediator. Similar to the qualification of mediation in family matters, the candidate must demonstrate relevant experience in mediation. Considering the number of criminal matters that are referred to mediation, which translates into the experience of mediators in such matters, the candidate must complete at least 4 mediation meetings before the validation date.

Anyone qualified in '*Conducting mediation in criminal matters and on petty offences*' is trained to independently plan and conduct the mediation procedures in criminal matters and on petty offences, both in non-court, court proceedings, and with the convicted persons and after their release. Having analysed the matter, they assess if there are any contraindications against using mediation. Their activities are aimed at assisting the parties in formulating the content of the settlement agreement between the victim and the offender. They use their knowledge of the mediation procedure, in particular of the legal conditions of mediation in criminal matters and on petty offences. They cooperate with the body responsible for the matter. When mediating, they use their knowledge of aggression and violence and their psychological conditions. They work in accordance with the mediation methodology and the principles of professional ethics of the mediator, use communication tools and techniques, taking into account the sense of security and balance of the parties. They use emotional management techniques. They use a basic set of concepts in the field of criminal law. They continuously update their knowledge of mediation and using the legal basis for the mediation procedure. When preparing or conducting a mediation meeting, they consider the specifics of an individual matter and the multiplicity of potential conditions of the occurred problem. They enhance their professional competences with regard to the experience gathered, documented with the use of evidence and their own self-assessment. Any qualified person is aware of the high responsibility arising from mediation³⁶.

³⁵ Announcement of the Minister of Justice of 9 June 2020 on including the market qualification '*Conducting mediation in court and non-court family matters*' in the Integrated Qualifications System (Polish Monitor of 2020, item 556). Annex - Information on the included market qualification '*Conducting mediation in court and non-court family matters*'.

³⁶ Announcement of the Minister of Justice of 1 September 2022 on including the market qualification '*Conducting mediation in criminal cases and on petty offences*' in the Integrated

TABLE Qualifications included in the Integrated Qualifications System

Name of qualification	Date the qualification was included in the IQS	Level according to the Polish Qualifications Framework	Certifying Authority
Conducting mediation in court and non-court civil matters	10.12.2018	PQF Level 5	<ol style="list-style-type: none"> 1. VCC Foundation 2. Central Institute for Political and Legal Analyses 3. Polish Mediation Centre 4. Confederation Lewiatan 5. Regional Chamber of Commerce of Pomerania 6. John Paul II Catholic University of Lublin 7. SWPS University of Social Sciences and Humanities with its registered office in Warsaw
Conducting mediation in court and non-court economic matters	10.12.2022	PQF Level 6	<ol style="list-style-type: none"> 1. VCC Foundation 2. Polish Mediation Centre 3. SWPS University of Social Sciences and Humanities with its registered office in Warsaw 4. John Paul II Catholic University of Lublin
Conducting mediation in court and non-court family matters	23.06.2022	PQF Level 6	<ol style="list-style-type: none"> 1. Family Mediators Association 2. Polish Mediation Centre 3. John Paul II Catholic University of Lublin
Conducting mediation in criminal matters and on petty offences	01.09.2022	PQF Level 6	<ol style="list-style-type: none"> 1. Lodz Chamber of Industry and Commerce

Source: Own study.

Each qualification is examined thoroughly before being included in the Integrated Qualifications System. The qualification '*Conducting mediation in criminal matters and on petty offences*' will serve as an example to demonstrate that the effects of education or the criteria for their validation are not of an incidental nature.

Qualifications System D. Annex - Information on the included market qualification '*Conducting mediation in criminal cases and on petty offences*'.

On 16 December 2020, the Ministry of Justice was submitted a request for including the market qualification '*Conducting mediation in criminal matters and on petty offences*' in the Integrated Qualifications System, initiated by the Lodz Chamber of Industry and Commerce through the Educational Research Institute being responsible for examining the request in formal terms; the Institute found the request eligible to be examined further by the competent minister - the Minister of Justice. Having analysed the request, the Mediation Unit requested the Minister of Justice to approve consultations with interested communities. Public consultations took place between 26 January 2021 and 12 February 2021. A direct request for opinion was directed to 45 entities dealing with mediation. These entities included: the Mediation Centre by the Supreme Bar Council, the Mediation Centre by the National Chamber of Legal Advisers, the National Council of Court Probation Officers, 16 Arbitration and Mediation Centres, law faculties and the Social Council for Alternative Dispute Resolution Methods by the Minister of Justice. An information on the public consultations was published on the Internet website of the Integrated Qualifications System.³⁷ During the public consultations, the Ministry of Justice received 21 opinion, including 18 approving opinions and 3 ambiguous ones. There were no negative opinions. This proved that the community is strongly for introducing the qualification '*Conducting mediation in criminal matters and on petty offences*'.

Upon the completion of the public consultations, the Minister of Justice, acting in accordance with Article 19(2) of the Act on the IQS, requested an opinion to be submitted by the specialists who:

- 1) have practical experience in the field which the market qualification relates to;
- 2) represent different groups of stakeholders whom the market qualification relates to;
- 3) have the competences to assess individual learning outcomes for the relevant market qualification³⁸.

There were three specialists appointed (as of 22.02.2021):

1. Aleksandra Rusin-Batko, judge - Deputy Director of the Department of Strategy and European Funds of the Ministry of Justice;
2. dr Agnieszka Zemke-Górecka, advocate - Dean of the Regional Bar Council in Białystok, President of the Mediation Centre by the Supreme Bar Council, member of the Council for ADR Methods,
3. warrant officer Anna Gmurowska - Senior Instructor at the Institute of Legal Sciences of the Higher School of Criminology and Prison Service in Warsaw.

³⁷ <https://kwalifikacje.gov.pl/ogloszenia/konsultacje-wnioskow?view=tabs&layout=accordion>

³⁸ The Act of 22 December 2015 on the Integrated..., *op. cit.*, Art. 19 point 2.

The experts submitted their individual comments on the qualification '*Conducting judicial mediation in criminal matters and on petty offences*'. On 19 April 2021, a summary of the comments was submitted to the requesting party - the Lodz Chamber of Industry and Commerce with a request to express its opinion on the comments, propose different provisions, etc. On 17 June 2021, the final version of the qualification was completed. The work was performed by the appointed specialists, the Lodz Chamber of Industry and Comments and the personnel of the Mediation Unit of the Ministry of Justice.

On 22 June 2021, Minister of Justice and Prosecutor General Zbigniew Ziobro approved the request for including the market qualification '*Conducting mediation in criminal matters and on petty offences*' in the Integrated Qualifications System.

In accordance with Article 21(2) of the Act on the IQS, the following step to process the request was thus that the Minister of Justice appointed an expert group to compare the required educational effects for the concerned qualification with the specifics of the first and second level of the Polish Qualifications Framework. To do that, on 27 July 2021 the Minister of Justice issued an ordinance on the appointment of an expert group to compare the required educational effects for the market qualification '*Conducting mediation in criminal matters and on petty offences*' with the specifics of the first and second level of the Polish Qualifications Framework³⁹.

On 21.09.2021, 23.09.2021 and 25.11.2021, the experts held working meetings to formulate recommendations of the expert group for the Minister of Justice on assigning the Polish Qualifications Framework to the market qualification '*Conducting mediation in criminal matters and on petty offences*'.

On 6 December 2021, the Ministry of Justice submitted to the Board of Stakeholders for the Integrated Qualifications System the recommendations of the expert group on assigning a level of the Polish Qualifications Framework to the market qualification '*Conducting mediation in criminal matters and on petty offences*'.

On 21 July 2022, the Ministry of Justice received the resolution of the Board of Stakeholders for the Integrated Qualifications System, by which it had approved the recommendation of the expert group on assigning level 6 of the Polish Qualifications Framework to the market qualification '*Conducting mediation in criminal matters and on petty offences*'.

Upon the receipt of the aforementioned resolution, the Mediation Unit *submitted* to the Criminal Law Legislation Department a draft announcement of the Minister of Justice on including the market qualification '*Conducting mediation*

³⁹ Ordinance of the Minister of Justice of 27 July 2021 on the appointment of an expert group to compare the required educational effects for the market qualification '*Conducting mediation in criminal matters and on petty offences*' with the specifics of the first and second level of the Polish Qualifications Framework (Journal of Laws of the Minister of Justice of 2021, item 178).

in criminal matters and on petty offences' in the Integrated Qualifications System, including an annex thereto, for the purposes of submitting the draft document to the Minister of Justice for signature and publishing the announcement in the Polish Monitor of the Journal of Laws of the Republic of Poland.

The aforementioned qualification was included in the Integrated Qualifications System on 1 September 2022⁴⁰.

Following the announcement, the Minister of Justice is obliged to place an invitation to submit requests for granting the authorization to certify a market qualification by publishing it on the Internet website of the Integrated Qualifications System. The Lodz Chamber of Industry and Commerce is now the Certifying Authority for the market qualification '*Conducting mediation in criminal cases and on petty offences*'. As for the remaining qualifications, the certifying authorities are the entities listed in Table No.

The qualifications included in the Integrated Qualifications System contribute to enhancing the qualifications of mediators, strengthen the quality and effectiveness of mediation procedures, and may contribute to referring a higher number of matters for mediation.

4.4 Standards for the mediation procedure under the conditions of prison isolation

The project entitled '*The pilot programme to implement the idea of restorative justice within the territory of the District Inspectorate of the Prison Service in Lublin*' assumed the performance of 6 tasks. They included '*Studies, analyses, a diagnosis and their dissemination - summary report*' (task No 6). The objective of the project was achieved through undertaking, organizing and commissioning scientific research and development activities in relation to the topic of mediation and the idea of restorative justice, etc., while one of its products was the development of the standards for the mediation procedure under the conditions of prison isolation.

Two specialists were selected to prepare the document: Aleksandra Rusin-Batko (judge, Deputy Director of the Department of Strategy and European Funds of the Ministry of Justice, supervisor of the activities of the Mediation Unit of the Ministry of Justice, expert of the IQS being involved in including the market qualification '*Conducting mediation in criminal matters and on petty offences*'), and Agnieszka Markocka (Head of the Mediation Unit of the Department of Strategy and European Funds of the Ministry of Justice, seasoned mediator entered in the list of approved mediators by the Regional Court in Opole). The specialists were supported by Karolina Włodarczyk (Chief Specialist at the

⁴⁰ Announcement of the Minister of Justice of 1 September 2022 on including the market qualification '*Conducting mediation in criminal cases and on petty offences*' in the Integrated Qualifications System (Polish Monitor of 2022, item 851).

Mediation Unit of the Department of Strategy and European Funds of the Ministry of Justice, court clerk, legal adviser, economist, cooperating by the inclusion of the qualification in the IQS on behalf of the Ministry of Justice). When formulating the standards, the team analysed the existing collections by paying attention to the necessity to adjust them to the challenges posed by the fact that at least one participant in mediation is staying under the conditions of prison isolation. The standards are universal, and should facilitate the mediation procedure in the penal institutions irrespective of the nature of the dispute. The idea of the prepared collection was to improve the mediation procedure in a manner that would not interfere with the functioning of the penal institution. The formulation of the standards was preceded by the analysis of laws on the functioning of the penal institutions⁴¹. In this context, of importance was the cooperation with the officers of the Prison Service, being involved in the project, who pointed to the challenges they had to face when organizing the mediation procedure.

The project documents were also instrumental for creating the standards, in particular *'The Regulations for the organization and conducting of non-court mediation at the stage of the enforcement proceeding, in the framework of the project entitled The pilot programme to implement the idea of restorative justice within the territory of the District Inspectorate of the Prison Service in Lublin', financed from the Justice Fund managed by the Minister of Justice*⁴², for the preparation of which the project specialists were responsible.

The contents were consulted and evaluated by the specialists hired to perform the project (dr hab. Agnieszka Lewicka-Zelent (professor at the Maria Curie-Skłodowska University), dr. Grzegorz Skrobotowicz (John Paul II Catholic University of Lublin) and Anna Gmurowska (Academy of Justice in Warsaw and Pilot Project Manager), as well as by the members of the Council for Alternative Dispute Resolution Methods of the fourth term of office by the Minister of Justice.

The performed analyses, working meetings, gathered opinions and observations and consultations resulted in the document entitled *'Standards for the mediation procedure under the conditions of prison isolation, prepared in the framework of the project entitled The pilot programme to implement the idea of restorative justice within the territory of the District Inspectorate of the Prison Service in Lublin'*.

⁴¹ In particular on the basis of the Act of 6 June 1997 - the Criminal Executive Code, the Regulation of the Minister of Justice of 21 December 2016 on the organizational and order regulations for executing the imprisonment penalty, the Regulation of the Minister of Justice of 22 December 2016 on the organizational and order regulations for executing the provisional detention, and the organizational and order rules and regulations of the penal institution.

⁴² Document available on the following Internet website: <https://mediacjaisprawiedliwosc-naprawcza.pl/dokumenty-do-pobrania/>.

The overriding objective of the document is to present the formulated instructions, recommendations and guidelines to assist in mediation, including the mediation in criminal matters under the conditions of prison isolation for all the penal institutions and detention centres across the country. We hope that the standards we have developed will support the mediation procedure - of the best possible quality, in a uniform and orderly manner - to be carried out under burdensome conditions that are certainly created by the prison isolation. As demanded, standardizing the mediation procedure as specified above should have an advantageous impact not only on the manner in which alternative dispute resolution methods, mainly mediation, but also the mediators are perceived - as those facilitating communication between the parties and supporting the participants in reaching a mutually satisfactory solution.

As mentioned in the preamble to the document, which refers to the preambles of the aforementioned documents adopted by the Council for ADR Methods of the first term of office, the standards take the form of guidelines and instructions for mediators, but they are not a source of applicable laws and must not be referred to when raising legal claims. Furthermore, they lay down the guidelines and instructions for the mediators with regard to the organization of the mediation procedure between the parties to a conflict at the stage of the enforcement proceeding, with at least one of the parties being a person placed in a penal institution.

It is important to bear in mind that the aforementioned guidelines must not change the current regulations, which made it necessary to formulate them in a manner that would not raise any doubts as to the compliance with the applicable provisions - both common laws and internal provisions. There were certain areas that could facilitate the process subject to minor changes. They will be discussed in the chapter concerning the conclusions and recommendations.

Considering the fact that there is no legal definition of mediation under Polish legislation, including the mediation under the conditions of prison isolation; the document marked an attempt to clarify this concept in a descriptive manner, while specifying that mediation under the conditions of prison isolation is a voluntary and confidential dispute resolution method, which enables the parties to reach an agreement with the assistance of an impartial mediator, with at least one of the parties to the dispute being a person placed in a penal institution.

The members of the research team being responsible for developing the standards specified the following collection of rules that are addressed mainly at the mediators:

- Standard I - Mediator shall attempt to provide the parties with appropriate conditions for mediation;
- Standard II - Mediator shall conduct the mediation procedure to the highest standards;
- Standard III - Initiation of mediation;
- Standard IV - Mediation procedure under the conditions of prison isolation;

- Standard V - Service;
- Standard VI - Finalizing the mediation procedure under the conditions of prison isolation.

Standard I lays down the principle that it is for the mediator to guarantee that the parties have appropriate conditions for mediation. The challenge in this area is that contrary to the mediation procedure in other conditions, excluding the prison isolation, the mediator cannot organize mediation meetings independently. The standard obliges the mediator that the mediation meetings (if the mediation procedure is to take place on the premises of the penal institution) are organized in cooperation and in agreement with the institution and under separate provisions, in particular the Act of 6 June 1997 - the Criminal Executive Code, the Regulation of the Minister of Justice of 21 December 2016 on the organizational and order regulations for executing the imprisonment penalty, the Regulation of the Minister of Justice of 22 December 2016 on the organizational and order regulations for executing the provisional detention, and the organizational and order rules and regulations of the penal institution. Furthermore, due to the specific personal structure of post-release mediation, the mediator is also obliged to diagnose a dispute to verify the feasibility of mediation (i.e. the possibility to resolve the dispute through mediation). The standard also envisages a possibility to conduct indirect mediation, i.e. mediation in electronic form (e-mediation). There have been no regulations on the mediation procedure under the conditions of prison isolation so far.

Standard II accepts the principle that the mediator conducts the mediation procedure to the highest standards, which means that they should respect the *Standards for the mediation procedure and the conduct of the mediator*, as adopted by the Social Council for Alternative Dispute Resolution Methods by the Minister of Justice on 26 June 2006, as well as the principles set out in the *Code of Ethics for the Polish Mediators*, as adopted by the Social Council for Alternative Dispute Resolution Methods by the Minister of Justice in May 2008. Furthermore, the mediator shall conduct the mediation procedure with his or her utmost care, in accordance with applicable laws and standards and the principles of professional ethics of the mediator, and should respect the principles of neutrality, impartiality and confidentiality. It should be emphasised that although there is no obligation to comply with the guidelines of the aforementioned documents, they are respected in social and legal realities and widely used in mediation practice, and it was therefore appropriate to transpose such good practices into the content of the standards, while simultaneously imposing an obligation to follow them.

Standard III standardizes the manner for initiating mediation, and specifies more in detail the right to file a request for initiating a mediation procedure. This standard clearly identifies a catalogue of entities to which a person seeking mediation may apply, i.e. the director of the penal institution in which the prisoner is placed, a mediator, a penal judge, a court probation officer, and

the court responsible for the case with the participation of the prisoner. This is a guideline that is directly addressed to those seeking mediation. This standard is of an innovative nature, since none of the current provisions defines such a detailed catalogue of the entities with which an request may be filed.

Standard IV contains mainly rules on the mediation procedure under the conditions of prison isolation, including the possibility to mediate with the use of the means of remote communication. The standard specifies in detail the requirements for conducting direct mediation in the institution in which the prisoner is placed, while making its organization and conducting dependent on the approval of the director of the institution, to be issued under separate provisions, in particular the Act of 6 June 1997 - the Criminal Executive Code and the organizational and order rules and regulations of the penal institution. Additionally, the mediator, who conducts the mediation procedure under the conditions of prison isolation (both upon accepting and finalizing a matter) has been imposed an additional obligation to submit a written notification to the appointed contact officer of the penal institution about the requirement to apply 'criterion 100' with regard to the prisoner identified by stating first name, surname and his or her father's name.

Standard V specifies in detail the principles on service. It lays down that any correspondence in the mediation procedure should be delivered at the address of the party and at the address of the party's legal representative, as indicated in the request for mediation, and to the prisoner placed in a penal institution through the administration department of the institution. In addition, the party and their legal representative are required to inform the mediator of any changes to their address. This standard made it necessary to specify in detail the manner in which correspondence is serviced as to the possibility to conduct the mediation procedure under the conditions of prison isolation.

Standard VI lays down the compulsory and facultative reasons for finalizing the mediation procedure. The compulsory conditions conclude: concluding or the refusal to conclude an agreement between the parties; the repeated, unjustified failure of a party to appear at the agreed mediation meeting; the written declaration of a party about his or her withdrawal from the mediation procedure; the written declaration of the mediator about that mediation is senseless or unfeasible. On the other hand, the facultative conditions mean any situation in which the mediator should finalize the mediation procedure, still before concluding an agreement, provided that he or she deems that: he or she has ceased to be impartial or neutral to a matter; a party is permanently unable to participate in the mediation procedure; a party is not willing to participate in the mediation procedure; a party participates in order to gain unfair benefits; reaching an agreement on a matter is impossible; a party seeks an agreement without being aware of its consequences, or attempts to use the agreement to circumvent the law. The standard additionally mentions a situation in which the mediation agreement contains the prisoner's commitment to start a therapy. The mediator is then obliged

to draw up an extract from the agreement by indicating a concrete section and the description of the therapy with its starting date, and to submit the extract to the administration of the competent penal institution. The mediator inform the parties of the requirement to prepare the extract. While signing the settlement agreement, the parties express their consent for applying to the competent court for approving or considering it in its judgment. The mediator is obliged to inform the parties accordingly, in particular about the contents of Article 162 § 1 of the Act of 6 June 1997 - the Criminal Executive Code, i.e. the requirement that the penal court consider the mediation settlement agreement when deciding on conditional early release, which is equivalent to its automatic issuing of a favourable decision thereon. Furthermore, the mediator instructs the parties about the provisions of Article 22, Article 19 § 1 and § 3 and Article 163 § 2 of the Act of 6 June 1997 - the Criminal Executive Code.

It is desirable that the document developed should be widely applied in mediation practice and provide guidance to maintain sound and required mediation standards, mainly under the conditions of prison isolation. Additionally, the document should be used to disseminate innovative solutions and to implement good mediation practices and the idea of restorative justice among the prisoners staying in the prisons and detention centres across Poland. An additional effect of the proposed standards will also be to support the functioning of the prison system, measured by reducing the reoffending.

The full text of the document is presented below:

STANDARDS FOR THE MEDIATION PROCEDURE UNDER THE CONDITIONS OF PRISON ISOLATION

developed in the framework of the project entitled ‘The pilot programme to implement the idea of restorative justice within the territory of the District Inspectorate of the Prison Service in Lublin’

This document sets out the guidelines and instructions for the mediators on how to organize the mediation procedure between the parties to a conflict at the stage of the enforcement proceeding, with at least one of the parties being a person placed in a penal institution.

The mediation procedure under the conditions of prison isolation is a voluntary and confidential dispute resolution method, which enables the parties to reach an agreement with the assistance of an impartial mediator, with at least one of the parties to the dispute being a person placed in a penal institution

The standards take the form of guidelines and instructions for the mediators, but they are not a source of law and must not be referred to when raising legal claims.

Standard I

Mediator shall attempt to provide the parties with appropriate conditions for mediation

- A. The mediator who has been approached by the person seeking mediation with a request for assistance in resolving a dispute shall promptly diagnose in terms of the feasibility of mediation.
- B. The mediator shall organize mediation meetings, while considering the following matters, in particular:
 - 1) the date, place and potential manners for conducting the mediation meetings, provided that if mediation is to take place in a penal institution, it shall be approved by the director of the penal institution and conducted under separate provisions, in particular the Act of 6 June 1997 - the Criminal Executive Code, the Regulation of the Minister of Justice of 21 December 2016 on the organizational and order regulations for executing the imprisonment penalty, the Regulation of the Minister of Justice of 22 December 2016 on the organizational and order regulations for executing the provisional detention, and the organizational and order rules and regulations of the penal institution;
 - 2) the immediate contact with the parties to a conflict, to agree on the date, manner and place to meet each of them.
- C. The mediator shall hold individual preliminary meetings or a joint preliminary meeting with the parties to the conflict in a place and at a time that is convenient to them, and shall explain them the objectives and principles of the mediation procedure, inform them of their rights, and instruct them of their right to withdraw their consent for mediation until the mediation procedure is finalized, and collects the consents of the parties for mediation.
- D. Shall it be impossible to hold a direct joint meeting with the parties to the conflict or dispute (direct mediation), the mediator may conduct the mediation procedure in an indirect manner, while providing each of the parties with information, proposals and a position on concluding a settlement agreement and its content, as expressed by the other party (indirect/circular mediation). The parties to the conflict or dispute may also participate in an electronic mediation procedure (e-mediation), under which the mediator conducts the mediation meeting with the use of the means of remote communication, i.e. through an Internet communicator, a teleconference, a videoconference (provided that the competent penal institution provides for technical conditions that are required for electronic mediation, while the participants and the mediator have the equipment and Internet connection and skills that are required to participate in the mediation procedure with the use of the means of electronic communication).
- E. The mediator shall assist in formulating the content of the agreement to be concluded by the parties, and shall instruct them about the provisions of Article 22, Article 19 § 1 and § 3, Article 162 § 1 and Article 163 § 2 of the Act of 6 June 1997 - the Criminal Executive Code in particular.
- F. Immediately upon conducting the mediation procedure, the mediator shall draw up a written report on mediation.

Standard II

Mediator shall conduct the mediation procedure to the highest standards

- A. The mediator shall conduct the mediation procedure with his or her utmost care, in accordance with applicable laws and standards and the principles of professional ethics of the mediator.

- B. The mediator shall conduct the mediation procedure in accordance with the Standards for the mediation procedure and the conduct of the mediator, as adopted by the Social Council for Alternative Dispute Resolution Methods by the Minister of Justice on 26 June 2006.
- C. The mediator shall conduct the mediation procedure in accordance with the principles of the Code of Ethics for the Polish Mediators, as adopted by the Social Council for Alternative Dispute Resolution Methods by the Minister of Justice in May 2008.
- D. When conducting the mediation procedure, the mediator shall follow the principles of neutrality, impartiality and confidentiality.
- E. Before starting the first mediation meeting, the mediator shall open a file for each mediation procedure and file a written declaration that he or she undertakes to keep the mediation procedure confidential, and a declaration on being impartial and neutral and on any circumstances that may raise justified doubts as to his or her impartiality or neutrality to a matter.
- F. The mediator shall not resolve the dispute between the parties and give any legal advice.
- G. During the mediation procedure, the mediator may only take notes exclusively for his or her own use. Upon finalizing the mediation procedure, the mediator shall destroy any notes.
- H. The mediator may refuse to conduct the mediation procedure exclusively for valid reasons. In particular, the valid reasons shall mean the existence or occurrence of circumstances that may affect the mediator's neutrality or impartiality to a matter.

Standard III Initiation of mediation

Mediation may be initiated at the request of the person seeking mediation, which shall be submitted to:

- 1) the director of the penal institution in which the prisoner is placed;
- 2) the mediator;
- 3) the penal judge;
- 4) the professional court probation officer;
- 5) the court competent for the proceeding with the participation of the prisoner

The entities mentioned in points 2-5 shall notify the request for the initiation of mediation with the participation of the prisoners to the director of the penal institution in which the prisoner is placed.

Standard IV Mediation procedure under the conditions of prison isolation

- A. The mediation procedure may be conducted at a joint meeting that is attended by all the parties (direct mediation, i.e. in the penal institution in which the accused person is placed. The mediator must obtain the approval of the director of the competent institution, to be given under separate provisions, in particular the Act of 6 June 1997 - the Criminal Executive Code, and the organizational and order rules and regulations of the penal institution), or at individual meetings with each of the parties (indirect/circular mediation).
- B. To conduct the mediation meetings, the mediator may use the means of electronic communication (e-mediation), in particular a telephone, Internet communicators,

a teleconference, a videoconference (provided that the competent penal institution provides for technical conditions that are required for electronic mediation, while the participants and the mediator have the equipment and Internet connection and skills that are required to participate in the mediation procedure with the use of the means of electronic communication).

- C. The mediator shall keep his or her individual contacts with the parties equal, and, in particular, shall ensure an equal volume of contact with the parties, and keep them informed of the mediation procedure.
- D. Shall one of the parties to the mediation procedure temporarily be unable to participate therein, in particular due to his or her health condition, the mediator shall suspend the mediation procedure. The period of suspension shall not be included in the duration of the mediation procedure.
- E. In the situation mentioned in letter D, the mediator resumes the mediation procedure provided that he or she deems that the obstacles causing its suspension have ceased to exist, and the parties uphold their consents for mediation.
- F. Immediately upon the diagnosis of the dispute and deciding to accept a matter for mediation, the mediation submits a written notification to the appointed contact officer of the penal institution about the requirement to apply 'criterion 100' with regard to the prisoner identified by stating first name, surname and his or her father's name.
- G. Upon the completed mediation procedure, the mediator shall immediately submit a written notification to the appointed contact officer of the penal institution about the requirement to withdraw 'criterion 100' with regard to the prisoner identified by stating first name, surname and his or her father's name.

Standard V Service

- A. In the mediation procedure, pleadings shall be sent at the address of the party and at the address of the party's legal representative, as specified in the request for mediation, and to the prisoner through the administration of the competent penal institution.
- B. The party and its legal representative shall inform the mediator of any changes to the address.

Standard VI Finalizing the mediation procedure under the conditions of prison isolation

- A. The mediation procedure shall terminate:
 - 1) upon the conclusion or refusal by the parties to conclude a settlement agreement;
 - 2) upon the repeated, unjustified non-appearance of the concerned at the specified date of the mediation meeting;
 - 3) upon the written waiver of mediation by either party to the mediation procedure;
 - 4) upon the written declaration by the mediator on the fruitless nature of the mediation or the impossibility to conduct mediation.
- B. The mediator should terminate the mediation procedure before concluding an agreement, if he or she finds that:
 - 1) he or she has ceased to be impartial or neutral to the case;
 - 2) a party is permanently prevented from participating in the mediation procedure;
 - 3) a party does not wish to participate in the mediation procedure;
 - 4) a party participates in the mediation procedure with a view to obtaining unfair benefits;

- 5) it is not possible to reach an agreement in the case;
 - 6) a party wishes to conclude an agreement without being aware of its consequences, or the aim of a party is to circumvent the law.
- C. Irrespective of how the mediation procedure is finalized, the mediator shall draw up a report on mediation immediately upon finalizing the mediation procedure.
- D. The mediator's report on mediation shall specify:
- 1) the full name and address of the mediator responsible for the mediation procedure;
 - 2) the parties to the mediation procedure (their full name, Personal Identification Number (PESEL));
 - 3) the duration of the mediation procedure, including the number of mediation meetings and the form of the mediation procedure (direct, indirect, electronic);
 - 4) the results of the mediation procedure (whether a settlement agreement has been concluded or not), whereas in case the mediation procedure has been completed by signing a settlement agreement, the agreement shall be attached to the report;
 - 5) the signature of the mediator.
- E. A copy of the report on mediation shall be issued to each party to the mediation procedure.
- F. The mediator shall put one copy of the report on file.
- G. Shall the settlement agreement contain a declaration of the convicted person about his or her starting a therapy, the mediator is then obliged to draw up an extract from the agreement by indicating a concrete section and the description of the therapy with its starting date, and to submit the extract to the administration of the competent penal institution. The mediator inform the parties of the requirement to prepare the extract.
- H. The parties shall sign the settlement agreement. The fact that a party has not signed the agreement shall be confirmed by the mediator by placing and signing an annotation in the space for the party's signature to explain the reasons for the party's failure to sign the agreement. The mediator shall also explain the reasons for the party's failure to sign the agreement and the annotation by including a relevant information in the protocol.
- I. The mediation settlement agreement may be approved by the court competent for the matter, or considered by the court competent to decide thereon, about which the mediator shall instruct the parties.

By signing the settlement agreement, the parties express their consent for requesting the competent court to approve or consider it when deciding on the matter, about which the mediator informs the parties, while instructing them in particular about the provisions of Article 162 § 1 of the Act of 6 June 1997 - the Criminal Executive Code, i.e. the requirement that the penal court consider the mediation settlement agreement when deciding on conditional early release, which is equivalent to its automatic issuing of a favourable decision thereon. Furthermore, the mediator instructs the parties about the provisions of Article 22, Article 19 § 1 and § 3 and Article 163 § 2 of the Act of 6 June 1997 - the Criminal Executive Code.

Chapter V

Practical implications, guidelines and recommendations for the development of post- judgment mediation

5.1. Guidelines and recommendations for post-judgment mediation practice

*Anna Gmurowska,
Agnieszka Lewicka-Zelent,
Grzegorz Skrobotowicz*

The study results make it possible to formulate certain practical guidelines that have been put forward following the analysis of the data received from different groups of respondents.

Practical recommendations proposed on the basis of the opinions of the victims participating in post-judgment mediation

To develop and disseminate post-judgment mediation under the paradigm of restorative justice, which is relevant to the victim, it would be useful to consider the following practical recommendations:

1. To enable the victims of a criminal offence to mediate with the offender at the stage of the enforcement proceeding, also when the convicted person is serving his or her penalty under the conditions of prison isolation, and to conduct the mediation procedure in a form that is preferred by the victim (indirect mediation, mediation with the use of the means of electronic communication, direct mediation).
2. To create a secure environment and atmosphere conducive to discussions between the victim and the convicted person serving the imprisonment penalty, with the participation of a competent, experienced mediator. It would be advisable for the mediator to know the specificities of mediation with the victim, and to know the specificities of working with the convicted persons, and the rules of conduct in the penal institution.

3. To promote mediation with the participation of the convicted persons and the victims in the light of numerous advantages for both parties.
4. To implement the solutions and outcomes of the pilot programme on post-judgment mediation in all the penal institutions across Poland due to the fact that the victims recognize numerous advantages of the mediation procedure under the paradigm of restorative justice, as well as to include 'post-judgment' mediation in the system for assisting the victims.
5. To carry out in-depth scientific research to examine the attitude of the victims to post-judgment mediation as one form of restorative justice, while considering the success factors and potential threats of 'post-judgment' mediation.

Practical recommendations proposed on the basis of the opinions of the convicted persons participating in post-judgment mediation

1. To ensure that information on mediation is accessible to all the accused and suspected persons at the stage of the preliminary proceeding and court trial, e.g. through the establishment of mediation rooms in all the courts across Poland. The mediators holding office hours would gain an opportunity to disseminate knowledge of criminal mediation, as well as to clarify doubts, reduce anxiety by those seeking mediation.
2. To promote direct mediation with the convicted persons and victims due to its numerous psychological (e.g. raising empathy) and social (e.g. enhancing verbal and non-verbal communication skills) advantages.
3. To care for a positive atmosphere during the mediation meetings and a high level of competences of the mediators who attend the meetings between the convicted persons and the victims. To do that, it would be advisable to consider the recruitment of mediators for post-judgment mediation by considering their mediation competences and knowledge of criminology and victimology.
4. To pre-select matters for post-judgment mediation in a penal institution, to be performed by a team (a teacher, a psychologist, a mediation consultant, a mediator).
5. To adapt the penal institutions to the requirements of conducting e-mediation, in particular by providing appropriate housing conditions and equipment with access to a high-quality Internet connection.
6. To organize meetings for the prisoners with the participants to mediation in the penal institutions, with an aim to encourage them to join the mediation meetings (direct meetings or online meetings for large distances).
7. To continue the pilot programme, upon the implementation of modifications, by engaging all the penal institutions in Poland due to the fact that the prisoners recognize numerous resocialization and re-adaptation

advantages, and to build a system for assisting the victims in the process of preparing them for post-judgment mediation.

8. To carry out scientific research aimed at identifying the effectiveness predictors of post-judgment mediation and at determining its results and effectiveness, including at determining the risk of secondary victimisation of the victims, family members of the convicted persons (in the meaning of Article 207 of the Criminal Code).
9. Plan and carry out a separate social re-adaptation programme on family mediation with the participation of those deprived of liberty.

Practical recommendations proposed on the basis of the opinions of the mediators participating in post-judgment mediation

1. It is clearly recognized that the idea of restorative justice, including mediation, should be disseminated at the stage of executing the adjudicated isolation penalties. Irrespective of the Prison Service, such activities should be carried out by the mediators being independent experts, e.g. in the form of mediation office hours.
2. To introduce implementing provisions that would enable to conduct criminal mediation at the stage of the enforcement proceeding.
3. It is clearly recognized that the law enforcement bodies (penal judges, professional court probation officers and directors of the prisons and detention centres) should cooperate with the mediators, since the development of 'post-judgment' mediation is dependent on these entities learning each other.
4. Due to the innovative nature of the project, it is advisable to prepare teaching materials for the mediators working at the stage of the enforcement proceeding.
5. If fully implemented under the national legal system, criminal mediation at the stage of the enforcement proceeding will require a minimum/necessary documentation to be drawn up, since the excessive volume of documents hampers the indirect mediation procedure.
6. Considering the place where mediation (penal institutions) is conducted, e-mediation should be disseminated as an effective alternative to direct mediation.
7. Each prison or detention centre should have the so-called mediation room.

Practical recommendations proposed on the basis of the opinions of the restorative justice and mediation coordinators and consultants

1. The Prison Service should continue its activities to promote the idea of restorative justice and mediation, including the post-judgment mediation, in the prisons and detention centres.

2. To regulate the mediation procedure at the stage of executing the penalty, including the imprisonment penalty, in legislation (including to specify the manner in which the prisons and detention centres should hold mediation office hours).
3. To train the officers of the Prison Service, appointed by each penal institution to be responsible for the post-judgment mediation programme.
4. To train at least persons appointed by each penal institution to act as consultants for the post-judgment mediation programme. Their duties should primarily concern the promotion of the idea of restorative justice and post-judgment mediation, the coordination of the organization of mediation office hours, information meetings for the prisoners, and the process of preparing the prisoners for mediation.
5. To regulate the cooperation between the Prison Service and the mediators, e.g. through developing detailed rules for mediation in the prisons and detention centres and procedures for the mediators to cooperate with the penal institutions to establish, among other things, who may become a mediator, how mediators should be recruited, etc.
6. To prepare the prisoners for mediation appropriately, with an aim to prevent an instrumental approach thereto, etc. An example of such actions are the resocialization programmes that are aimed at increasing the readiness of the prisoners to redress for the criminal offence committed, being implemented by Agnieszka Lewicka-Zelent and Ewa Trojanowska in the penal institutions within the territory of the District Inspectorate in Lublin since 2015 (2017, 2019).
7. To prepare the victims to participate in mediation at the stage of the enforcement proceeding. One of the crucial objectives of such actions should be to reduce their fear of mediating with the offender. Such tasks could be performed by court probation officers, social workers and those providing free legal assistance, subject to adequate training.
8. To continue the pilot project to implement mediation in all the prisons and detention centres across Poland due to the fact that it brings numerous advantages, i.e. the programme activities correspond not only to the idea of resocialization or social re-adaptation, but may also contribute to reducing the future reoffending.
9. To establish a mediation room in each penal institution across Poland, and to facilitate the mediators to conduct information meeting during their office hours.

5.2. Opportunities and challenges for mediation under the conditions of prison isolation on the basis of the information received from the officers of the Prison Service, mediators and professional court probation officers

Aleksandra Rusin-Batko, Karolina Włodarczyk, Agnieszka Markocka

During the performance of the project entitled *'The pilot programme to implement the idea of restorative justice within the territory of the District Inspectorate of the Prison Service in Lublin'*, the persons being directly involved in its performance were asked to describe their current experiences in mediation under the conditions of prison isolation. Opinions were collected during the 4th quarter of 2021, i.e. in the middle of the pilot project.

The officers of the Prison Services, mediators and court probation officers could express their comments on five questions.

1. Project strengths.
2. Project weaknesses.
3. Opportunities to perform and continue the project.
4. Threats to the project performance and continuation.
5. Other comments on the draft or the mediation rules and regulations/ requests/regulatory loopholes, etc.

The study attracted a total of 16 persons, including 2 professional court probation officers, 2 mediators, 12 officers of the Prison Service. The respondents were free to comment on individual questions, had no prepared proposals to choose from.

The officers of the Prison Service (the Prison in Zamość, the Detention Centre in Krasnystaw, the Prison in Chełm, the Detention Centre in Lublin, the District Inspectorate of the Prison Service in Lublin, the Prison in Hrubieszów, the Prison in Opole Lubelskie) were those who completed the highest number of questionnaires, while demonstrating their engagement in the development of the mediation procedure in the penal institutions and their care for its effective use.

They noted the following strengths of the project:

- shaping the sense of responsibility and criticism by the prisoners in relation to the criminal offences committed,
- the possibility of using mediation in resocialization activities,
- the well-educated/professional staff carrying out the project-related tasks,
- unpaid mediation office hours for the prisoners,
- the possibility to use unpaid mediation,
- the establishment of mediation rooms - their equipment,
- the prisoners seeking to remedy the damages caused by the criminal offence,
- enhancing the mediation competences of the officers of the Prison Service.

The officers of the Prison Service deemed that the threats to the project performance were posed in particular by:

- the impossibility of providing mediation education for those being subject to a provisional arrest,
- the non-existence of legal provisions on the mediator's conduct in a penal institution,
- the non-existence of positions for restorative justice coordinators in all the institutions participating in the pilot project,
- the limits on the number of mediation procedure that may be conducted in a penal institution,
- the non-existence of legal regulations and clear guidelines in the regulations for the coordinators.

The respondents expressed an opinion that the high number of completed mediation procedures and initiated teaching initiatives within the territory of the District Inspectorate of the Prison Service in Lublin contributed to increasing the interest in mediation among the remaining prisoners, i.e. those who had not directly participated in the mediation meetings. They learnt about mediation by talking to their fellow prisoners who actively used the forms of education being available in the penal institution during the project performance. They believe that eliminating threats, at least partly, and in particular the creation of the position of a coordinator in a larger number of institutions will decisively strengthen the effectiveness of the promotion of the idea of restorative justice, encourage the prisoners to deepen their knowledge and to participate in the mediation procedure.

The professional court probation officers deemed the project strengths to involve: the dissemination of knowledge of alternative dispute resolution methods through information activities among the prisoners, the development of the idea of restorative justice in the penal institutions and across the country, and the strengthening of the resocialization process for the prisoners. As for the project weaknesses, they point out that the courts are using mediation during the enforcement proceeding to a small extent, and there are no actions to embed the post-judgment mediation in the Criminal Executive Code.

According to the surveyed coordinators, the project may play a crucial role in disseminating the knowledge of ADR methods not only among the fellow prisoners, but among the entire society. They additionally stressed the significance of the implementation of the idea of restorative justice in the resocialization process, which would facilitate their functioning after being released, and would prevent their return to the penal institution at least partly.

The mediators carried out a number of activities in the project, i.e. they held office hours with the prisoners, conducted mediation procedures, so they had knowledge of what fears, expectations the prisoners had, of how they perceived the project.

As for the project strengths, they pointed out, among other things, the effective cooperation with the directors of the penal institutions and the mediation coordinators within the territory of the District Inspectorate of the Prison Service in Lublin and the subordinated prisons, the creation of good conditions for holding the office hours and conducting the mediation procedures (office and computer equipment). They recognized more threats to the objectives of the pilot project, including:

- the non-existence of clear provisions on the principles and procedures of mediation at the stage of the criminal enforcement proceedings;
- the excessively formalized manner for keeping documentation on mediation, including the obligation to instruct the participants about the extensive rules of the pilot programme, the recurring provisions of the GDPR accompanying each new document under the mediation procedure;
- the limited accessibility of the pilot programme to those being subject to a provisional arrest;
- the hampered verification of the victims' personal data in the procedure of indirect, correspondence-based mediation;
- the non-existence of a procedure for putting the settlement agreement on the prisoners' personal files.

In parallel to the opinions collected on the basis of the aforementioned questionnaires, there were also voices raised during the project performance, in particular its working meetings, claiming that educational activities should be carried out to enhance the knowledge and competences that may be required for the activities related to restorative justice and mediation in the penal institutions. The training needs reported by the mediators should be satisfied through trainings, webinars, meetings with experts in the framework of the project of the Ministry of Justice entitled *'The dissemination of alternative dispute resolution methods through strengthening the competences of mediators, the establishment of the National Register of Mediators (NRM) and information activities'*. These activities are targeted both at the mediators being active on the market and in the judiciary, and at the candidate mediators. The project is implemented in partnership with four entities operating the Arbitration and Mediation Centres that bring together active mediators. It is co-financed from the European funds, while its main objective is to professionalize the profession of mediator through the establishment of the National Register of Mediators (NRM) and conducting a series of mediation trainings under the Integrated Qualifications System, and through enhancing the knowledge of e-mediation and its usability¹. Part of the mediators involved in the pilot project cooperated with the Arbitration and Mediation Centre in Lublin that was one of the project partners².

¹ <https://krm.gov.pl/o-projekcie> [date of access: 13.10.2022].

² The project was partnered by: the John Paul II Catholic University of Lublin (AMC Lublin), the Confederation Lewiatan (AMC Coordinator), the Regional Chamber of Commerce of

The analysis of the respondents' responses leads to a conclusion that the project along with the project activities and their implementation method are assessed favourably in general. It favours the cross-institutional cooperation, strengthens the resocialization process of the prisoners, deepens the knowledge of restorative justice, and promotes alternative dispute resolution methods. There was no opinion that would question the legitimacy or purpose of the activities within the territory of the District Inspectorate of the Prison Service in Lublin. The respondents deemed the system- and procedure-based obstacles, the need to increase the number of participants to pose threats to the objectives of the pilot project.

The results of the studies carried out among the aforementioned project participants were analysed and used, among other things, as a basis for preparing the document entitled '*Standards for the mediation procedure under the conditions of prison isolation*'³. The results have also triggered further actions that are aimed at eliminating the loopholes mentioned in the questionnaires, i.e. at establishing a work group that has already started its work upon the completion of the project, which is discussed more in detail in the following part of this Chapter.

Pomerania (AMC Pomerania), and the Central Institute for Political and Legal Analyses (AMC Olsztyn, AMC Bydgoszcz).

³ Further details in Chapter 4.

5.3. On the path towards the development of mediation - several remarks upon the project summary and prospects of new solutions

Aleksandra Rusin-Batko, Karolina Włodarczyk, Agnieszka Markocka

The period during which the project entitled *'The pilot programme to implement the idea of restorative justice within the territory of the District Inspectorate of the Prison Service in Lublin'* was implemented marked a time of cooperation and sharing experiences among the communities of the officers of the Prison Service, the personnel of the penal institutions, professional court probation officers, mediators, judges, the scientific community, and the officials of the Ministry of Justice. This was the first project on restorative justice and the first project to engage mediation specialists to deal with such a great variety of its aspects. The working meetings, the meetings of the project team with the management of the Ministry of Justice, the review of documents, current practices and solutions, and in particular the reported difficulties in performing concrete actions, have resulted in the formulation of recommendations that may be used for the continued promotion of innovative and useful solutions and good practices for the implementation and development of restorative justice in criminal matters and with regard to alternative dispute resolution methods, among the community of prisoners staying in the prisons across Poland. The reports of the officers of the Prison Service, including the restorative justice and mediation coordinators, served as a basis to propose changes and solutions that could facilitate the mediation procedure under the conditions of prison isolation. They were collected and then consulted with the project team members, experts and mediators. About the identified opportunities for improving the activities during and after the project.

On the basis of the above analyses and work, the following changes and development solutions are recommended:

- 1/ to create conditions in the penal institutions to establish the so-called 'dialogue rooms' (by changing the purpose or adapt the existing rooms), which could be used by the mediators to conduct consultation and information meetings on mediation or/and mediation with the participation of the prisoners, or enabling contacts between the prisoners and the mediator and victim (with the pilot solutions implemented in the penal institutions in Lublin or the friendly blue court rooms being used as an example);
- 2/ to develop a model order/guidelines of the director of a prison/detention centre on the mediation office hours and the mediation procedure under the conditions of prison isolation. Furthermore, the internal rules of a prison/detention centre should specify the manner for organizing the office hours of the mediator;
- 3/ to include the principles and conditions for the cooperation between the mediator and Prison Service in the 'Mediation Rules and Regulations or

in a different internal document of the prisons and detention centres on the mediation procedure under the conditions of prison isolation. In particular, the document should discuss:

- the requirement that the mediators should be trained by the Prison Service about the threats related to performing professional duties in direct contact with those deprived of liberty, health and safety and fire regulations;
 - the duties related to the suicidal preventive measures in the prisons/detention centres;
 - the scope and rules for the flow of information between the mediator and the Prison Service;
 - keeping records for the Prison Service, including a register of ongoing meetings and mediation procedures in a penal institution, starting and closing dates of the mediation procedure, mediation request (requests) submitted to the director of the penal institution;
 - the submission of a monthly report on the activities to the director (a register of mediation meetings and initiated and completed mediation procedures);
 - the obligation to inform the administration body of the Prison Service about the mediation participants attempting to communicate illegally;
- 4/ to develop a model request form, to be submitted by the mediator to the director of a penal institution to request direct mediation with the convicted person, which would be reviewed by the registry unit (as to the information about the adjudicated prohibitions to approach or contact a person/persons specified in the request) and by the security unit (security recommendations/conditions for mediation);
- 5/ to elaborate ‘guides’ on the mediation office hours and post-judgment mediation under the conditions of prison isolation for the educators and psychologists serving in a prison/detention centre, those deprived of liberty and victims;
- 6/ to amend Ordinance No 19/16 of the Director General of the Prison Service of 14 April 2016 on the detailed rules for conducting and organizing work in the penal institutions and the duties of the officers and employees of the penal and therapeutic units and penal units, with regard to granting the right of priority in accepting the prisoners referred to a therapy as a result of the mediation settlement agreement, however exclusively under the conditions of OT (i.e. as mentioned in Article 62 of the Act of 6 June 1997 - the Criminal Law), and to work out a procedure for the prisoners to sign up for the mediator’s office hours.

The aforementioned recommendations respond to the needs expressed by the community of mediators, victims, prisoners and officers of the Prison Service, as identified during the pilot programme. Their implementation will contribute to standardizing and harmonizing the organization of the mediation procedures in the prisons and detention centres across Poland.

Furthermore, in view of the involvement of court probation officers in the project performance, it is desirable to make recommendations on how to introduce restorative justice and mediation at the stage of the enforcement proceeding with the participation of probation officers. It is beyond any doubt that the knowledge the court probation officers gain at post-graduate studies (in the framework of the project) should effectively be used in their daily work with the prisoners, victims and those being released. Therefore, to strengthen the efficiency of the court probation officers' involved in the promotional activities for mediation and the idea of restorative justice, it is demanded:

- 1/ to disseminate the use of post-judgment mediation as a tool for performing the programme mentioned in Article 164 of the Act of 6 June 1997 - the Criminal Executive Code;
- 2/ to provide a review on the fulfilment of the conditions of the settlement agreement - for the person who concluded it at the stage of executing the imprisonment penalty (and to put it on file);
- 3/ to contact the associations providing assistance to the victims to support them and their family members (for those who will participate in post-judgment mediation);
- 4/ to provide the convicted persons with reliable information on mediation and the idea of restorative justice in order to encourage them to seek mediation and to remedy the damage caused by the criminal offence in accordance with the spirit of restorative justice;
- 5/ to attempt to recognize the readiness and willingness of the parties to use mediation as a form of restorative justice;
- 6/ to become involved in the enforcement of the mediation arrangements if there are part of the conditional release order;
- 7/ to promote the conflict resolution through mediation in one's own environment.

To achieve these objectives, it will be necessary:

- 1/ to involve the court probation officers in additional tasks more deeply;
- 2/ to organize trainings on the use of the concept of restorative justice in the practice of the court probation officer, including the continuous enhancement of their competence to work with the victims and offenders. The court probation officers must be well prepared and trained so that their actions produce measurable results;
- 3/ to consider setting up a working group for restorative justice. The team would be composed of those interested in bringing this method into justice, passionate and experienced in piloting solutions, analysing the potential of resources and monitoring their implementation;
- 4/ to expand the service of court probation officers by creating a function or a full-time position of a restorative justice and mediation coordinator, similar the pilot coordinators having been appointed by the Prison Service in the District of Lublin;

5/ to elaborate a strategy for the development of the service of court probation officers in Poland, including the strategic programming in this thematic area.

It is simultaneously proposed that the quarterly and annual static reports drawn up by the Central Management Board of the Prison Service should be supplemented by data that would include information on the number of mediation procedures conducted with the participation of prisoners (e.g. in the form of a new table indicating such information such as: the number of mediation procedures conducted with the participation of prisoners, which have been completed by concluding a mediation settlement agreement or not, including: with the participation of those being subject to provision arrest, the prisoners by classification groups and sub-groups; eventual information on the requesting party), and the data that would include information and answer the following question: was the mediation settlement agreement considered by the penal court when deciding on conditional early release, as mentioned in Article 162 § 1 of the Act of 6 June 1997 - the Criminal Executive Code (e.g. through supplementing or modifying table No 25 of the aforementioned report *'The persons released conditionally by court before the end of their penalty'*, which would allow to gather information thereon).

It should be emphasized that upon the completion of the activities within the territory of the District Inspectorate of the Prison Service in Lublin, there were further actions taken up to promote the idea of restorative justice and criminal mediation among the community of prisoners.

Considering the possibility to intensive the re-adaptation activities towards those deprived of liberty and searching for effective forms of resocialization, the Central Management Board of the Prison Service, in cooperation with the specialists of the Mediation Unit of the Department of Strategy and European Funds of the Ministry of Justice, launched further actions to implement the idea of restorative justice and mediation in the penal institutions.

To achieve that, a work group was appointed to elaborate a model resocialization programme on restorative justice - the programme that will prepare for mediation (including the programme eligibility criteria), and will be performed by a non-governmental organization (under a cooperation agreement with the director of a prison/detention centre in accordance with Article 38 of the Act of 6 June 1997 - the Criminal Executive Code), or by the trained officers of the Prison Service (educators or psychologists of the penal department).

The programme was divided into several stages:

- 1/ training the officers in mediation and restorative justice (the proper implementation of the programme requires staff that have knowledge and mediation skills);
- 2/ conducting classes with the prisoners on the aforementioned topic;
- 3/ classifying the prisoners by their ability to participate in mediation;
- 4/ conducting the mediation procedure.

The objective of the group will be to implement the programme within the territories of all the District Inspectorates of the Prison Service.

Conclusion

Agnieszka Lewicka-Zelent

The tradition of all the cultures says that the court is an institution that ultimately adjudicates on who has committed a criminal offence, who is an offender and who is a victim. It would therefore seem that there is no problem. The court decides on a legal conflict, while the parties accept its final decision. In practice, those participating in court proceedings are often unfortunately dissatisfied with the functioning of the justice system.⁴ W. Zalewski (2006, pp. 170-171) argues that the justice system is not an ally to the victims in terms of mitigating their mental suffering. It comes down to the state reacting to a criminal offence. Social balance may be achieved only by preserving positive human relations and shaping pro-social attitudes through control. If replacing remorse, force and pressure cause the offender to feel resistance and aggression. For the aforementioned psychological reasons and the lack of confidence in the justice system, the court may concentrate only in the interests of the parties rather than their rights and needs. This does not contribute to minimizing the sense of guilt by the offenders, or to the victims regaining their full social skills⁵.

Lewicka-Zelent⁶ points out that justice may be interpreted in terms of its objectivity and subjectivity. The judiciary should be judged by objective indicators (its accessibility, independence, duration of legal proceedings, etc.). Nevertheless, the stakeholders judge it through the prism of their personal experiences, which become subjective. Both the offenders and victims are often dissatisfied with the sentence, considering it unfair. It therefore seems that they should decide on their own what action they must take to bring the case to an end, to stop the escalation of the conflict between them. This is made possible through seeking post-judgment mediation. Accepting such a convention, A. Baładynowicz⁷ proposes not to retaliate in the manner one thinks

⁴ B. Kociołowicz-Wiśniewska, B. Pilitowski, *Ocena polskiego sądownictwa w świetle badań. Bilans efektów reform wymiaru sprawiedliwości w latach 2017-2019* [The assessment of the Polish judiciary in the light of studies. The results of the reform of the judiciary in the years 2017-2019], Toruń 2019; CBOS, *Społeczne oceny wymiaru sprawiedliwości* [The social assessments of the judiciary], Warsaw 2022, No 95.

⁵ W. Zalewski, *op. cit.*, pp. 179, 321 and following.

⁶ A. Lewicka-Zelent, *Gotowość osób pozbawionych wolności do zadośćuczynienia osobom pokrzywdzonym* [The readiness of the persons deprived of liberty to redress to the victims], Lublin 2017, p. 33.

⁷ Baładynowicz A., *System probacji rewolucyjną zmianą polityki karno-penitencjarnej* [The system of probation as a revolutionary change to the criminal and penal policy],

about punishment. The author finds it important that it expresses public disapproval of criminality, which is a crucial factor in shaping positive social attitudes. 'Using sanctions to condemn or accuse is not a matter of a rational criminal policy, but refers to the assessment of the nature of the society and the manner in which it defines its expected conduct and borders for unacceptable conduct'. A penalty should constitute an internal driver for the offenders to start transforming their attitudes and to take over responsibility for their actions⁸. Unfortunately, the penalty imposed by the court is a coercive measure which ensures that the offender remedies the harm/damage⁹. It would therefore be advisable to replace it with 'self-punishment' in the form of a commitment to a specific remedial action. This is possible thanks through mediation, which E. Marynowicz-Hetka¹⁰ defines as 'a set of elements that direct one's action, containing a specific axiological dimension'. She proposes to consider it under the paradigm of interaction, which exposes the process of people influencing each other. The commitments of the parties are of a social nature. The parties become more resilient to threats, develop their decision-making skills and develop an appropriate hierarchy of values. The mediation procedure causes a kind of integration of the parties in the process of seeking the desired objectives. The mediation meeting becomes a shared experience that strengthens their identity and builds up their resources.

A specific type of mediation is the one involving the offender and the victim. In Poland, it is still considered to be an untapped space for exploring. It raises multiple questions that have not been answered yet. One of them concerns the interest of the parties themselves. On the basis of their studies, O. Sitarz, A. Jaworska-Wieloch, D. Lorek, A. Sołtysiak-Błachnik and P. Zawiejski¹¹ claim that some victims are ready

[in:] Polska resocjalizacja i więziennictwo. *Konteksty - praktyki - studia. Studia i rozprawy z pedagogiki resocjalizacyjnej [Resocialization and prisons in Poland. Contexts - practices-studies. Studies and dissertations in resocialization pedagogy]*, Z. Jasiński, D. Widelak (ed.), vol. 2, Opole 2009, pp. 45-46.

⁸ J. Śliwowski, *Kara pozbawienia wolności we współczesnym świecie – rozważania penitencjarne i peneologiczne [The imprisonment penalty in the modern world - penal and peneological considerations]*, Warsaw 1981, p. 216; K. Linowski, *Warunkowe zwolnienie w teorii i praktyce penitencjarnej [Conditional release in the penal theory and practice]*, Ostrowiec Świętokrzyski 2005, p. 93.

⁹ W. Zalewski, *op. cit.*, p. 134.

¹⁰ E. Marynowicz-Hetka, *Podejścia mediacyjne w działaniu społecznym – ramy paradygmatu zintegrowanego relacyjnie [Mediation approaches in social action - the framework of the integrated relations paradigm]*, [in:] *Mediacja i pedagogika jako próba zaistnienia wspólnoty. Przyczynek do profesjonalności i etyczności działania w świetle teorii i doświadczenia [Mediation and pedagogy as the community's attempt to emerge. A contribution to the professional and ethical nature of the actions in the light of theory and experience]*, Z. Domżał, L. Witkowski, (ed.), Łódź 2011, pp. 8-9, 12.

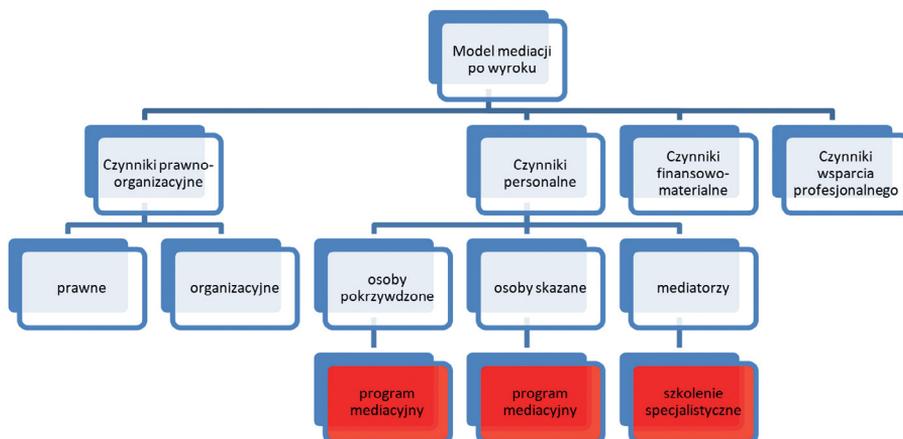
¹¹ O. Sitarz, A. Jaworska-Wieloch, D. Lorek, A. Sołtysiak-Błachnik, P. Zawiejski, *Mediacja karna w opiniach stron postępowania oraz sędziów i prokuratorów – wyniki badań ankietowych [Criminal mediation in the opinion of the parties to the proceeding and of judges and public prosecutors - results of the survey studies, [in:] Mediacja karna jako instytucja*

to start mediation. More than a half of 700 persons declared their willingness to enter into dialogue with the offender. Unfortunately, nearly 10% of them were asked about their willingness to participate therein, whereas only 7% took part in mediation during the preliminary proceeding. Of the group of 765 offenders, 8% attended a mediation meeting with the victim, More than a half of them were convinced that the person whose rights and goods they have violated would seek/would consider mediation. Additionally, less than 1% of the respondents (the society) believe there is no point in mediating in criminal matters. The results reveal an untapped personal potential in the restoration process.

Post-judgment mediation seems to be at its preliminary stage of development in our country. Nevertheless, other countries have implemented it in the penal system at least to a minimum extent¹². The performed project certainly constitutes an innovative venture compared to the remaining mediation programmes carried out in Poland (e.g. family, peer mediation).

Finally, it is worth pointing out the important components of the post-judgment mediation model.

Model of post-judgment mediation



ważna dla pokrzywdzonego [Criminal mediation as an institution of importance for the victim], L. Mazowiecka (ed.), Warsaw 2013, p. 82 and following.

¹² J. Coylewright, *New Strategies for Prisoner Rehabilitation in the American Criminal Justice System: Prisoner Facilitated Mediation*. Journal of Health Care Law and Policy 2004, 2, pp. 395-422; M. Dhimi, G. Mantle, D. Fox, *Restorative Justice in Prisons*. Contemporary Justice Review 2009, 4, pp. 433-448; T. Barr, *Putting Victims in Prison*. Restorative Justice: an International Journal 2013, 3, pp. 389-413; G. Johnstone, *Restorative Justice in Prisons: Methods, Approaches and Effectiveness*, Strasbourg 2014, <https://rm.coe.int/16806f9905> [date of access: 10.11.2022]; L. Millana, J. C. Fernández-Rodríguez, F.M. Muñoz, *Conflict Resolution in Prisons. Education, Restorative Justice and Prisoner Facilitated Mediation*, https://www.researchgate.net/publication/340927225_Conflict_Resolution_in_Prison_Education_Restorative_Justice_and_Prisoner_Facilitated_Mediation [date of access: 10.11.2022].

Figure. Components of the post-judgment mediation model

There are four main groups of factors in the post-judgment mediation model being implemented. As for the legal factors, the most important thing is to identify the need for legislative changes to the Criminal Executive Code, and to introduce them. The project proposes certain modifications to the currently applicable legal provisions, but they must be adjusted to the constantly changing needs of the parties to post-judgment mediation. The internal rules and regulations of the prisons for post-judgment mediation must also be specified more in detail.

During the project performance, mainly the Prison Service was responsible for the organization of post-judgment mediation, while being obliged to manage it within the penal institutions. It is beyond any doubt that the function of restorative justice and mediation coordinators and consultants has proved invaluable. Nevertheless, more attention should be paid to specifying more in detail their future tasks compared to the activities carried out on a certain position. The officers should constantly be supported in their new functions - both in professional (e.g. through trainings, workshops) and psychological terms (e.g. through mentoring).

All the activities and interactions undertaken should always focus on people in the first place. Therefore, the personal factors are the core of the model. In principle, the paradigm of restorative justice and mediation assumes that the effects of mediation meetings are decided by the victims and offenders - the parties to the mediation meetings. It is however not irrelevant that competent mediators organize, manage and guide the mediation meetings. Recognizing the fact that the ultimate result of the dialogue between the parties is largely determined by people, it is indispensable to care for their adequate preparation for post-judgment mediation. Since the proposed model was of an information and promotion nature, its limitations and resources can only be identified to a limited extent. To achieve even better results in the form of the offenders accepting commitments due to being convinced about their correct nature and the intentional acceptance of the responsibility for their behaviour, a recommended psychological and educational mediation programme should be carried out with the participation of both the convicted persons and the victims. Such a programme should precede an information campaign on post-judgment mediation. On the other hand, mediators should be recruited in a process that highly values their professional and methodological preparation for mediation and their psychological and social competences, including the mediation ones, as well as the knowledge and skills in criminology, victimology, judicial and penal psychology, resocialization and criminal executive law.

Another important factor of the effectiveness of the model under implementation is that the Prison Service gains specialist support in the performance of mediation programmes and any related tasks. This makes it necessary to treat the model in a system-based manner, while engaging a large number of specialist. Their recruitment should be adjusted to the needs of a penal institutions;

nevertheless, the following persons should not be omitted: representatives of the Ministry of Justice, the Central Board of the Prison Service, court probation officers, judges, social workers, representatives of NGOs and universities or lawyers.

The last but not least important factors are the financial and material resources that are instrumental to the full performance of the tasks envisaged in the framework of the implementation of post-judgment mediation in the penal institutions. The equipment of mediation rooms and the organization of trainings, workshops for the convicted persons, victims and officers of the Prison Service and the salaries of mediators generate the highest costs.

The presented model of post-judgment mediation is one-dimensional, which means that all its actions focus on the convicted persons. In future, it should be expanded by adding the elements that are highlighted in red in the figure. The model will then become two-dimensional, with parallel activities that engage the victims, in addition to those deprived of liberty. It will have to be implemented and evaluated to verify the assumption stating that both parties participating in the mediation meetings are able to reach a satisfactory agreement, which is the first step on the path to starting a new and better chapter in their lives.

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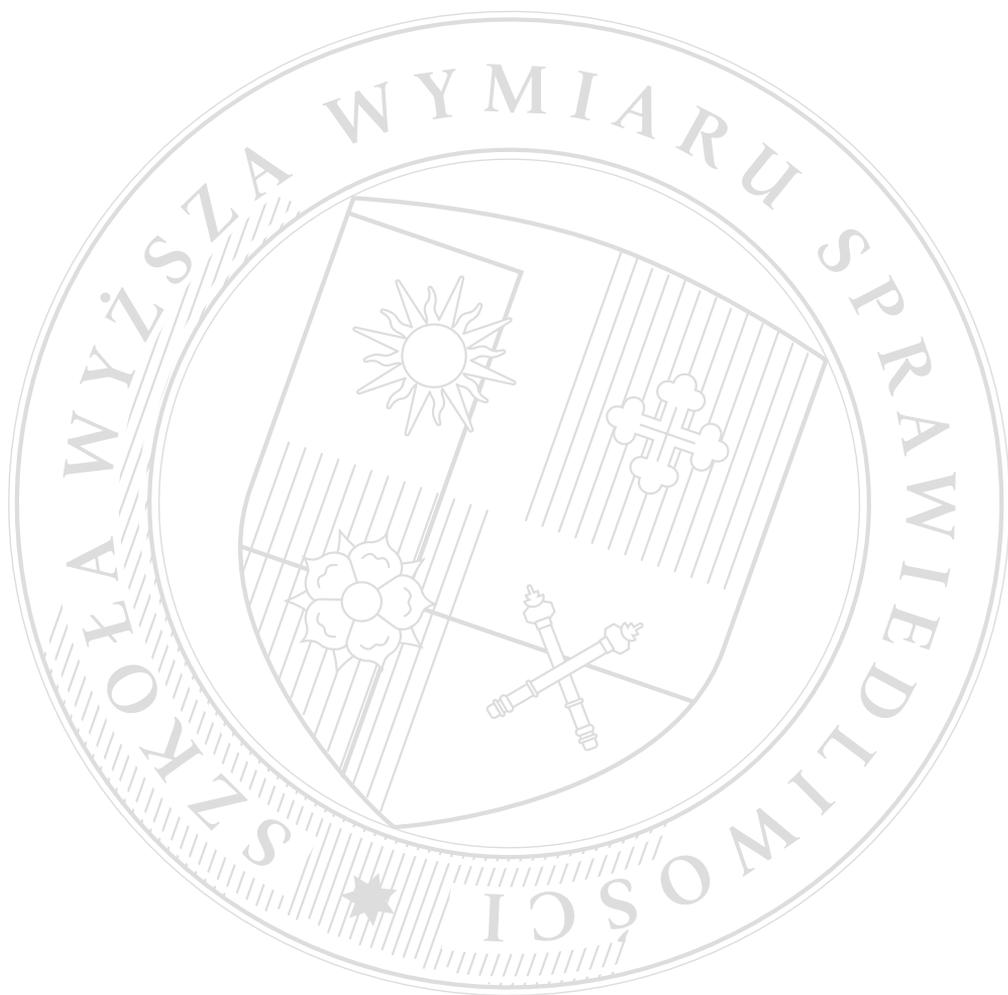
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9