



# Readiness to Use Mediation – Judges’ and Entrepreneurs’ Perspective

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## ARTICLE

## ABSTRACT

The aim of the research is to assess the readiness of Polish judges and entrepreneurs to use mediation. This issue has not yet been the subject of in-depth empirical analysis. Online questionnaire research was carried out on a group of  $n = 150$  judges and  $n = 178$  entrepreneurs. The obtained results indicate that the surveyed groups differ in terms of readiness for mediation and in terms of expectations regarding the need to change the applicable legal regulations. It was also shown that sociodemographic variables correlate with readiness to refer cases to mediation and the direction of expectations as regards changes to the legal regulations concerning mediation. The conducted research leads to the conclusion that there are significant differences in readiness for mediation among judges and entrepreneurs, with the level of readiness being significantly higher among judges. In the case of judges, differences in readiness for mediation are related only to gender and the size of the place of residence. In relation to entrepreneurs, readiness for mediation is statistically significantly related to education and work experience. The obtained results also confirm significant differences between judges and entrepreneurs as regards expected legislative changes. The differences between the surveyed professional groups mainly concern the legal regulations concerning the obligation to conduct mediation, the costs of mediation and the popularity of mediation among judges. Entrepreneurs, compared to judges, are in favour of more radical changes in all of the above-mentioned areas.

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Mediation is an out-of-court form of dispute resolution that aims to find a common solution acceptable to each party and to enable future cooperation of the parties.<sup>1</sup> It is used in various areas of social life, including legal practice, and its subject matter includes disputes in civil, business, family, criminal and administrative law.<sup>2</sup>

Sociological conflict theory assumes that ‘in a well-organised system of justice, conflict resolution should start at the lowest possible level of institutionalisation and formality, and the transition to a higher level should take place only when opportunities for conflict resolution at the lower level have been exhausted’.<sup>3</sup> The lower the level of formality, the more decisive the role of an individual, with their motives, needs and emotions. The human factor overrides the purely procedural dimension of dispute resolution – the latter being a key objective for judicial proceedings. The complexity of human nature and the dynamics of conflict require a space that allows for the pursuit of a settlement that takes into account and reconciles – to the greatest extent possible – the needs of all the litigants, while regulating the legal relationship between the parties in a binding manner.<sup>4</sup> This space is undoubtedly provided by the practice of mediation, which empowers human interaction in the handling of disputes. The aforementioned are an immanent quality of any field of human activity, including organisational practices.

Mediation does not easily lend itself to a definition, which needs to remain open to the nature of a particular conflict and the needs and interests of the parties.<sup>5</sup> However, mediation can generally be defined as a process in which an impartial third party acts as a catalyst to help others constructively resolve a dispute, defining the outlines of the relationship and facilitating negotiation in order to streamline communication, and develop an agreement, tailored to the needs of the parties.<sup>6</sup> It is worth emphasising that the proper regulation of mediation in formal legal terms does not depend solely on the correctness of the regulatory construction. The regulation should primarily take into account the experiences, motivations, and needs of the mediation participants, as well as an assessment of willingness to rely on it, along with an analysis of sociodemographic variables.<sup>7</sup> All of the factors mentioned above determine the decision to attempt to resolve a dispute through voluntary mediation. This decision expresses the parties’ and the court’s confidence in its use, and their belief that mediation may or may not prove to be appropriate and useful, and this, in turn, determines its course and the chance of a positive approach and a successful conclusion.<sup>8</sup>

An additional difficulty related to the study of mediation is the fact that different types of mediation are distinguished by the subject matter of the dispute. An example is business (commercial) mediation, which is generally not subject to separate legal regulation, but in practice there is a noticeable attempt to distinguish this category. In Polish law there are no separate legal regulations concerning business mediation; however, it is being distinguished in practice due to the separation of commercial departments in common courts. As a result, the statistics of the Ministry of Justice concerning court mediation separately concern civil and business mediation. In EU law, the regulation of civil and commercial mediation is also the same, but an example of a separate regulation of business (commercial) mediation is the

1 C Menkel-Meadow, ‘Mediation 3.0: Merging The Old and The New’ (2018) <<https://papers.ssrn.com/abstract=3312971>> (accessed 18 October 2024).

2 C Menkel-Meadow, ‘Mediation and Its Applications for Good Decision Making and Dispute Resolution: Public Lecture on the Occasion of the Receipt of an Honorary Doctorate in Human Sciences’ in C Menkel-Meadow (ed.) *Mediation and Its Applications for Good Decision Making and Dispute Resolution* (2016) <[https://www.cambridge.org/core/product/identifier/CBO9781780687568A006/type/book\\_part](https://www.cambridge.org/core/product/identifier/CBO9781780687568A006/type/book_part)> (accessed 18 October 2024).

3 L Morawski, *Main Problems of Contemporary Philosophy of Law. Law in the Process of Change* (LexisNexis, 2000).

4 R Baruch Bush and J Folger, ‘Mediation and Social Justice: Risks and Opportunities’ (2012) 27 *Ohio State Journal on Dispute Resolution*, no. 1, 12–13; W Broński, ‘Conflict of values subject to mediation proceedings’ (2022) 15 *Teka Komisji Prawniczej PAN Oddział w Lublinie*, no. 2 <<https://doi.org/10.32084/tkp.4699>>, 47–60> (accessed 7 November 2024).

5 K Kovach, *Mediation: Principles and Practice* (Thomson/West, 2004).

6 C Menkel-Meadow et al., *Mediation: Practice, Policy, and Ethics* (Wolters Kluwer, 2020) <<http://search.ebscohost.com/login.aspx?direct=true&scope=site&db=nlebk&db=nlabk&AN=2647585>> (accessed 18 October 2024).

7 B Jarrett, ‘The Future of Mediation: A Sociological Perspective’ (2009) *Journal of Dispute Resolution*, no. 1, 50.

8 D Hoffman and R Wolman, ‘The Psychology of Mediation’ (2013) 14 *Cardozo Journal of Conflict Resolution*.

Research on conflict dynamics clearly indicates that conflict resolution is strongly linked to trust, and also to the methods of dispute resolution and the benefits that arise from them. The higher the trust, the higher the motivation and the likelihood of reaching an agreement.<sup>10</sup> Research shows that entrepreneurs use mediation when the psychological tension caused by the dispute is extremely acute, and the conflict has escalated to the level that a party finds too high to find a straightforward resolution. A party realises that they are unable to resolve it on their own and, at the same time, they acknowledge that they have become a part of it. The party then seeks quick, cost-effective and readily available methods that can guarantee the greatest degree of influence over the proceedings.<sup>11</sup> They strive to secure a form of settlement that maximises their own interests. Reputation plays a central role among entrepreneurial behavioural patterns, and it is the way in which an organisation is perceived by the social environment, including its social and environmental responsibility practices and its problem-solving strategies.<sup>12</sup> At the same time, the free will and autonomy underlying the decision to use mediation is emphasised.<sup>13</sup> When combined with trust and mediation benefits, the parameter of autonomy can provide another argument in favour of mediation.

The benefits that build organisational confidence in the institution of mediation and motivate the decision to choose mediation as a means of dispute resolution can be approached from many angles. Despite the varying levels of business confidence in the mediation process, an important factor in favour of mediation is the possibility of uninterrupted control over the form of the mediation discourse and the potential content of the settlement agreement, when juxtaposed against the risk and uncertainty of court resolution.<sup>14</sup> Mediation is becoming a highly desirable business tool since it provides options for flexible modifications of organisational management and operational processes in the context of a dispute, without detriment to the resolution efforts. Mediation constitutes a response to business needs and reality, which require that a dispute is resolved in the shortest time possible so as to leave a chance to maintain and strengthen relationships. At the same time, the benefits of mediation are available at a highly reduced cost of dispute resolution.<sup>15</sup> Mediation offers a chance to take a broader look at the dispute and its real roots. It helps redefine the current and build future relationships and expectations of the parties, determining the manner of their mutual communication and enabling mechanisms to prevent future disputes and manage future conflict situations effectively.

The literature also points to contraindications and concerns regarding the use of mediation. These include situations in which the parties differ markedly in their resources and ability to influence. In addition, it is a risk if the mediator fails to ensure that the basic principles of mediation are respected, or if a confidential agreement between the parties could create a threat to the vital interests of the local or state social environment. It is also a risk when one of the parties resolutely refuses to cooperate in resolving the dispute or when legal provisions

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9 <[https://uncitral.un.org/sites/uncitral.un.org/files/media-documents/uncitral/en/22-01363\\_mediation\\_guide\\_e\\_ebook\\_rev.pdf](https://uncitral.un.org/sites/uncitral.un.org/files/media-documents/uncitral/en/22-01363_mediation_guide_e_ebook_rev.pdf)> (accessed 18 October 2024).

10 R Lewicki and E Tomlinson, 'Trust, Trust Development, and Trust Repair' in PT Coleman et al. (eds.) *The handbook of conflict resolution: Theory and practice* (Jossey-Bass/Wiley, 2014), 104–136; A Stimec and J Poitras, 'Building Trust with Parties: Are Mediators Overdoing It?' (2009) 26 *Conflict Resolution Quarterly* <<https://doi.org/10.1002/crq.235>> (accessed 7 November 2024).

11 L Riskin, 'Mediation and Lawyers' (1982) <<https://papers.ssrn.com/abstract=1507248>> (accessed 18 October 2024).

12 E Filler, *Commercial Mediation in Europe: An Empirical Study of the User Experience* (Wolters Kluwer Law & Business; Kluwer Law International, 2012).

13 K Hopt and F Steffek, *Mediation: Principles and Regulation in Comparative Perspective* (Oxford University Press, 2013).

14 T Stipanowich, 'Why Businesses Need Mediation' (2004) <<https://papers.ssrn.com/abstract=2423097>> (accessed 18 October 2024).

15 'Global Data Trends and Regional Differences' (2018) <<https://imimediation.org/research/gpc/series-data-and-reports/>> (accessed 18 October 2024); J Brown and I Ayres, 'Economic Rationales for Mediation' (1994) 80 *Virginia Law Review*, no. 2, 366; G de Palo et al., 'Quantifying the Cost of Not Using Mediation – a Data Analysis' (European Parliament 2011) PE 453.180 <<https://www.europarl.europa.eu/document/activities/cont/201105/20110518ATT19592/20110518ATT19592EN.pdf>> (accessed 18 October 2024).

preclude settlement in a particular factual or legal situation. Concerns about the use of mediation include concerns about the mediation procedure, the person of the mediator or concerns about one of the parties to the mediation.<sup>16</sup>

From the perspective of the court as a state entity, dispute resolution through mediation provides benefits of, primarily, a social kind. Mediation practices influence attitudes, culture and legal awareness rooted in the principle of amicability. They optimise management practice and empower skills for autonomous, albeit mediator-assisted, dispute resolution.<sup>17</sup> These benefits need support and reinforcement along with other efforts to build confidence in alternative dispute resolution methods. The satisfaction of the parties resulting from a shared, autonomously reached settlement will always be higher than from a court judgment. The latter may undermine party relations since it constitutes an intervention by an authority in the dispute, and the resultant settlement necessarily favours only one party. From the court's perspective, the benefits of mediation include transferring the accountability for dispute resolution to the parties, relieving the burden on the judiciary, and protecting social harmony as based on social interaction rather than on an intervention by state authorities.

Filling the space between theory and practice related to the regulation and use of mediation requires analysis of factors that may influence the willingness of businesses and judges to make use of or refer parties to mediation. These factors can determine an autonomous decision to use or not to use mediation.

## 2. THE ESSENCE OF MEDIATION AS PERCEIVED BY JUDGES AND ENTREPRENEURS

Interest in alternative dispute resolution (ADR)<sup>18</sup> is not only noticeable in business practice,<sup>19</sup> but is an important aspect of the law-making practices at international organisations, including the Council of Europe and the European Union. Specific examples of attempts to harmonise the law of amicable dispute resolution within the EU area are provided by Directive 2008/52/EC of the European Parliament and of the Council of 21 May 2008 on certain aspects of mediation in civil and commercial matters, Regulation (EU) No 524/2013 of the European Parliament and of the Council of 21 May 2013 on online dispute resolution for consumer disputes and amending Regulation (EC) No 2006/2004 and Directive 2009/22/EC (Regulation on consumer ODR) and Directive 2013/11/EU of the European Parliament and of the Council of 21 May 2013 on alternative dispute resolution for consumer disputes and amending Regulation (EC) No 2006/2004 and Directive 2009/22/EC (Directive on consumer ADR). Despite all these legislative solutions, the use of mediation in EU countries has not yielded expected results.<sup>20</sup>

The current economic crisis, exacerbated by the COVID-19 pandemic and the war in Ukraine, makes organisations more attentive to economic disputes, which should be resolved quickly and inexpensively. The resolution should enable further cooperation between the conflicted partners and prevent financial problems such as payment bottlenecks resulting from unresolved legal disputes.

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<sup>16</sup> A Kalisz, 'Mediacja Cywilna (Gospodarcza) w Sporach Prawnych, w Tym Sądowych' in Zienkiewicz and Kalisz (eds.) *Mediacja w sprawach gospodarczych jako narzędzie wspierające sukces w biznesie* (Difin, 2020), 184–187.

<sup>17</sup> J Folger, 'Transformative Mediation: Preserving the Unique Potential of Mediation Across Dispute Settings' <[https://mediacjatransformatywna.pl/wp-content/uploads/2021/01/Transformative-mediation\\_unique-potential.pdf](https://mediacjatransformatywna.pl/wp-content/uploads/2021/01/Transformative-mediation_unique-potential.pdf)> (accessed 18 October 2024).

<sup>18</sup> C Menkel-Meadow, 'Mediation, Arbitration, and Alternative Dispute Resolution (ADR)' (2015) <<https://papers.ssrn.com/abstract=2608140>> (accessed 18 October 2024).

<sup>19</sup> A Zienkiewicz, 'Mediacja w sprawach gospodarczych jako narzędzie wspierające i Poza Sądem' (n 16), 84–144.

<sup>20</sup> G de Palo et al., "'Rebooting' the Mediation Directive: Assessing the Limited Impact of Its Implementation and Proposing Measures to Increase the Number of Mediations in the EU' (European Parliament, 2014) <[https://www.europarl.europa.eu/RegData/etudes/etudes/join/2014/493042/IPOL-JURI\\_ET\(2014\)493042\\_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/etudes/join/2014/493042/IPOL-JURI_ET(2014)493042_EN.pdf)> (accessed 18 October 2024); M Dąbrowski, 'Assessment of the Correct Implementation of Article 4 of Directive 2008/52/EC of 21 May 2008 on Some Aspects of Mediation in Civil and Commercial Matters in the Polish Legal System' (2022) 14 *Krytyka Prawa. Niezależne Studia nad Prawem*, no. 3 <<https://journals.kozminski.edu.pl/system/files/Dabrowski.pdf>, 5–19> (accessed 7 November 2024).

Surveys of in-house lawyers indicate that their role should be to safeguard the interests of entrepreneurs and to be involved in business decisions with a view to using alternative methods to resolve business disputes by preventing litigation.<sup>21</sup>

The experience of European countries confirms that the main method used to resolve legal disputes is through court proceedings. A considerable body of data confirms the inefficiency of justice institutions and the long time needed for cases to be considered and concluded. Statistics compiled by Poland's Ministry of Justice show that the percentage of cases referred to mediation, in relation to all cases coming before the courts where mediation can be used, is only 1.6 %. In 2023, only 6,954 cases were referred to mediation in business cases and, in 1,569 cases, the proceedings were discontinued as a result of a settlement, which is 22.56%.<sup>22</sup> Research on the analysis of preferences for the use of mediation in Poland shows that the perception by the courts of the fairness of mediation in business cases is at 39.1%, while among the interested parties themselves it is only 15.8%. Previous research also indicates a low perception of the effectiveness of commercial mediation by interested parties, which is 10.4% in the opinion of those surveyed, in contrast to the courts, where the rate is much higher at 53.2% in business cases, although this does not translate into a corresponding percentage of business cases being referred to mediation.<sup>23</sup>

In this context, it is noteworthy that research to date indicates that judges have the greatest responsibility for taking action to promote better access to justice in the resolution of commercial disputes.<sup>24</sup> In terms of the number of mediations in relation to the total number of cases referred to the courts, Poland ranks in the second ten of the EU countries.<sup>25</sup> Research to date indicates that one of the barriers associated with the low uptake of mediation on the part of judges is the low level of popularity of mediation on the part of judges and courts, which consists of a number of circumstances that need to be investigated.<sup>26</sup> In light of existing knowledge and the low level of use of commercial mediation, it is reasonable to examine the willingness of Polish judges and entrepreneurs to use mediation in the context of the negligible percentage of referrals to economic mediation. It is also important to identify sociodemographic variables correlated with the willingness to use mediation as a dispute resolution tool, including aspects of mediation that require modification of the law. In addition, it is important to identify the differences that exist in the perception of judges and entrepreneurs of business mediation, which may determine the need to amend the rules. These, in the area of international commercial mediation,<sup>27</sup> are particularly noticeable in the sphere of costs, time of proceedings and procedural flexibility,<sup>28</sup> which may speak in favour of the decision to resolve disputes through mediation, especially by entrepreneurs.

The popularisation of ADR among entrepreneurs is important from the perspective of resolving business disputes quickly and preventing payment bottlenecks, which can pose a particular threat to economic performance in times of economic crisis. Surveys of businesses confirm that dispute resolution, including through mediation, is an important aspect of business

21 R Naimark et al., 'Best Corporate Practices in Conflict Management from France' (FIDAL and the American Arbitration Association 2013) <[https://www.adr.org/sites/default/files/document\\_repository/Dispute-Wise%20Management%20France%20-Best%20Practices%20Report.pdf](https://www.adr.org/sites/default/files/document_repository/Dispute-Wise%20Management%20France%20-Best%20Practices%20Report.pdf)> (accessed 18 October 2024).

22 'Ministerstwo Sprawiedliwości, Postępowanie Mediacyjne w Świetle Danych Statystycznych. Sądy Rejonowe i Okręgowe w Latach 2006 – 2013' (Ministerstwo Sprawiedliwości, 2024) <<https://isws.ms.gov.pl/pl/baza-statystyczna/publikacje/>> (accessed 18 October 2024).

23 M Plucińska-Nowak, *Status i Oblicza Mediacji w Społeczeństwie Polskim* (Wydawnictwo Nauk Społecznych i Humanistycznych UAM : Wydawnictwo Fundacji Humaniora, 2021), 193–197.

24 D Hutchinson and E-M Litchfield, 'The Singapore Report, Shaping The Future of Dispute Resolution & Improving Access to Justice, International Mediation Institute' (2016) <<https://imimediation.org/research/gpc/>> (accessed 18 October 2024).

25 A Rudolf et al., 'Diagnosis of the Use of Mediation and of the Reasons for Its Lower than Expected Popularity' (Agrotec, 2015) <<https://www.gov.pl/attachment/bec32a76-eb02-4609-9655-54875c2bc94f>> (accessed 18 October 2024).

26 'Ministerstwo Sprawiedliwości (n 22); Plucińska-Nowak (n 23); Rudolf et al. (n 25).

27 J Murphy-O'Connor et al., *Managing and Resolving Commercial Disputes* (Financier Worldwide and International Centre for Dispute Resolution, 2024) <<https://www.financierworldwide.com/ebook-managing-and-resolving-commercial-disputes-2024>> (accessed 18 October 2024).

28 N Alexander et al., 'SIDRA Internation Dispute Resolution Survey' (2024) <<https://sidra.smu.edu.sg/sites/sidra.smu.edu.sg/files/survey-2024/read/index.html>> (accessed 18 October 2024).



management.<sup>29</sup> At the same time, awareness of mediation on the part of entrepreneurs is of greater import owing to the increasing role of consumer disputes, including those of a cross-border nature. Awareness of out-of-court dispute resolution methods among businesses may influence their application in business-to-business and business-to-consumer disputes.

It is also important to promote mediation among judges, who have a significant influence on how disputes are resolved. They can help eliminate a need for a court ruling on the dispute by transferring it to the amicable method, where the parties are to negotiate the final agreement. An important role of judges in this process is confirmed by research findings in the EU zone, which show that Directive 2008/52/EC obliges courts to refer parties to mediation only after they have brought their dispute to court, while it does not require Member States to provide out-of-court mediation mechanisms.<sup>30</sup>

The role of judges in the use of mediation is highlighted in the literature,<sup>31</sup> but current research ignores the issue of the willingness of businesses and judges to participate in mediation. Generally, research on judges conducted in Poland focuses on the analysis of the current legal regulation of mediation and possible demands for changes in the law.<sup>32</sup> The key impact of judges on the use of ADR, as well as amicable methods for ongoing litigation, has been subject to research,<sup>33</sup> but the issue of how the particular members of this professional group assess mediation and its application – both in resolving out-of-court disputes and referring cases to mediation – remains outside the scope of current researchers' interest. Awareness of this issue is noticeable in the curricula of the training courses for judges that are under development,<sup>34</sup> along with practical guidebooks for judges.<sup>35</sup> Available research shows that the general number of disputes resolved using ADR is increasing. The increased interest in mediation is confirmed by American<sup>36</sup> and European<sup>37</sup> researchers. The development of ADR is also linked to new areas of economy, as exemplified by digital copyright disputes.<sup>38</sup>

In this context, it seems reasonable to investigate the willingness of businesses and judges to use mediation. Undoubtedly, the use of amicable dispute resolution depends on the personal

29 B Krawczyk-Bryłka and I Flis, 'E-mediacje jako przedsiębiorcza strategia rozwiązywania konfliktów' (2015) 77 *Zeszyty Naukowe. Organizacja i Zarządzanie / Politechnika Śląska*, 113–122; Naimark et al. (n 21); E Gmurzyńska, 'Mediacja w Sporach Gospodarczych – Rzeczywistość Czy Iluzja' (2008) 1 *ADR. Arbitraż i Mediacja*, no. 1, 27–40.

30 F Alleweldt et al., 'Cross-Border Alternative Dispute Resolution in the European Union' (European Parliament, 2011) IP/A/IMCO/ST/2010-15 <[https://www.europarl.europa.eu/meetdocs/2009\\_2014/documents/imco/dv/adr\\_study/adr\\_study\\_en.pdf](https://www.europarl.europa.eu/meetdocs/2009_2014/documents/imco/dv/adr_study/adr_study_en.pdf)> (accessed 18 October 2024).

31 K Kovach and L Love, "'Evaluative Mediation" Is an Oxymoron' (1996) <<https://papers.ssrn.com/abstract=2349775>> (accessed 18 October 2024).

32 D Kuzelewski, 'Mediacja w Polskim Procesie Karnym w Ocenie Prokuratorów i Sędziów' in C Kulesza (ed), *Porozumienia karnoprosesowe w praktyce wymiaru sprawiedliwości* (Temida2, 2010) <[https://repozytorium.uwb.edu.pl/jspui/bitstream/11320/13165/1/D\\_Kuzelewski\\_Mediacja\\_w\\_polskim\\_procesie\\_karnym\\_w\\_ocenie\\_prokuratorow\\_i\\_sedziow.pdf](https://repozytorium.uwb.edu.pl/jspui/bitstream/11320/13165/1/D_Kuzelewski_Mediacja_w_polskim_procesie_karnym_w_ocenie_prokuratorow_i_sedziow.pdf)> (accessed 18 October 2024).

33 V Bondy et al., 'Mediation and Judicial Review: An Empirical Research Study' (The Public Law Project, 2009) <<https://www.nuffieldfoundation.org/sites/default/files/files/MediationandJudicialReview.pdf>> (accessed 18 October 2024).

34 'Mediation Development Toolkit Ensuring Implementation of the CEPEJ Guidelines on Mediation' <<https://rm.coe.int/mediation-development-toolkit-ensuring-implementation-of-the-cepej-gui/16808c3f52>> (accessed 18 October 2024); 'Mediation in the EU: Language, Law and Practice. Series of Interactive Language Training Events for Judges, Lawyers and Mediators' <<http://inm-lex.ro/wp-content/uploads/2021/07/Brosura-proiect-Mediere-EN.pdf>> (accessed 18 October 2024).

35 A Hengl and V Tilman, 'European Toolkit for Court Annexed Mediation Schemes' (EUROCHAMBRES, 2015) <[https://www.mediationmeetsjudges.eu/usr\\_files/publications/MmJ\\_EU\\_toolkit\\_V\\_1.1.pdf](https://www.mediationmeetsjudges.eu/usr_files/publications/MmJ_EU_toolkit_V_1.1.pdf)> (accessed 18 October 2024).

36 'Dispute-Wise Business Management. Improving Economic and Non-Economic Outcomes in Managing Business Conflicts' (Arbitration American Association, 2006) <[https://fundacionsignum.org/wp-content/uploads/2016/07/aaa\\_mediacion-arbitraje-resolucion-conflictos-dispute-wise\\_study\\_research\\_report\\_2011.pdf](https://fundacionsignum.org/wp-content/uploads/2016/07/aaa_mediacion-arbitraje-resolucion-conflictos-dispute-wise_study_research_report_2011.pdf)> (accessed 18 October 2024); D Lipsky and R Seeber, 'The Appropriate Resolution of Corporate Disputes: A Report on the Growing Use of ADR by U.S. Corporations' (Cornell/PERC Institute on Conflict Resolution, 1998) <<https://ecommons.cornell.edu/handle/1813/76218>> (accessed 18 October 2024).

37 S Vogenauer, 'Civil Justice Systems in Europe: Implications for Choice of Forum and Choice of Contract Law. A Business Survey. Final Results' (Institute of European and Comparative Law, 2008) <[https://www.fondation-droitcontinental.org/fr/wp-content/uploads/2013/12/oxford\\_civil\\_justice\\_survey\\_-\\_summary\\_of\\_results\\_final.pdf](https://www.fondation-droitcontinental.org/fr/wp-content/uploads/2013/12/oxford_civil_justice_survey_-_summary_of_results_final.pdf)> (accessed 18 October 2024).

38 R Berto, 'Alternative Dispute Resolution in the Digital Sector: A Dejurisdictionalization Process?' (2020) 7 *International Journal of Online Dispute Resolution*, no. 2, 103–118; D Gangjee et al., 'Alternative Dispute Resolution Mechanisms for Business-to-Business Digital Copyright- and Content-Related Disputes' (World Intellectual Property Organization, 2021) <[https://www.wipo.int/edocs/pubdocs/en/wipo\\_pub\\_969.pdf](https://www.wipo.int/edocs/pubdocs/en/wipo_pub_969.pdf)> (accessed 18 October 2024).

experience and the conviction of the entity concerned with ADR. Hence, it seems reasonable to ask the question about the readiness of the identified research groups to use mediation. The research reported here demarcates a starting point for assessing the correlation between personal willingness to use mediation in resolving disputes or willingness to recommend mediation as an effective method, and the practical use of this amicable method. The research results are to help in assessing which target group is in need of the most comprehensive promotion activities.

The selection of research groups is justified by the nature of commercial litigation, and is in keeping with the role of entrepreneurs and judges in shaping social legal culture. There is no denying that the state-operated system of justice shapes social attitudes towards compliance with the law and determines the choice of methods for resolving legal disputes.<sup>39</sup> Nowadays, one can also see an increasing role of entrepreneurs in shaping social attitudes, which is linked to issues of corporate social responsibility.

### 3. GOALS AND HYPOTHESES

The research presented here pursues three main objectives. The first is to assess the degree of willingness to use mediation among Polish judges and entrepreneurs. The second is to check the areas that need to be changed/improved in the mediation system in Poland. The third objective is to identify sociodemographic variables that may affect willingness to use mediation. Based on the available literature, it is assumed that: (H<sub>1</sub>) the respondent groups differ in their willingness to mediate, (H<sub>2</sub>) the groups differ in their expectations as regards the need for changes to existing legal regulations of mediation in Poland, (H<sub>3</sub>) sociodemographic variables correlate with the willingness to refer a case to mediation, and with the direction of expectations of the need for regulatory amendments.

## 4. METHOD

### 4.1 PARTICIPANTS

Two groups of respondents were involved: judges (n = 150) and entrepreneurs (n = 178). A total of 328 people were surveyed. A detailed respondent profile is presented in Table 1.

|                                             |                                                | JUDGES<br>(n = 150) | ENTREPRENEURS<br>(n = 178) |
|---------------------------------------------|------------------------------------------------|---------------------|----------------------------|
|                                             |                                                | n(%) / M(SD)        | n(%) / M(SD)               |
| Age                                         |                                                | 45.02 (7.69)        | 43.72 (10.12)              |
| Gender                                      | Female                                         | 77 (51.3%)          | 82 (46.1%)                 |
|                                             | Male                                           | 73 (48.7%)          | 96 (53.9%)                 |
| Education:                                  | Primary or vocational                          | –                   | 16 (9.0%)                  |
|                                             | Mid-level                                      | –                   | 53 (29.8%)                 |
|                                             | Higher education (including bachelor's degree) | 141 (94.0%)         | 102 (57.3%)                |
|                                             | Doctorate or other academic degree             | 9 (6.0%)            | 4 (2.2%)                   |
|                                             | Other                                          | –                   | 3 (1.7%)                   |
| Place of residence:                         | Village                                        | 20 (13.3%)          | 33 (18.5%)                 |
|                                             | City to 50,000 residents                       | 26 (17.3%)          | 25 (14.0%)                 |
|                                             | City from 50,000 to 200,000 inhabitants        | 44 (29.3%)          | 47 (26.4%)                 |
|                                             | City over 200,000 residents                    | 60 (40.0%)          | 73 (41.0%)                 |
| Number of years working at current location |                                                | 13.67 (9.23)        | 13.33 (9.77)               |

**Table 1** Sociodemographic respondent profile.

Note: n – frequency; % – percentage of subjects; M – mean; SD – standard deviation.

<sup>39</sup> J Lande, 'Real Mediation Systems to Help Parties and Mediators Achieve Their Goals' (2022) <<https://papers.ssrn.com/abstract=4306612>> (accessed 18 October 2024).

A number of variables relevant to the stated objective were controlled during the study. In addition to variables of a socio-demographic nature (age, gender, education, place of residence, number of years working in the current location), a number of variables crucial for the evaluation of the functioning of the mediation process in Poland were also measured. These latter variables included:

**Use of mediation.** This variable was measured by a question: *Have you ever used a mediator's assistance in your personal or professional life?* Respondents could answer alternatively: yes or no.

**Frequency of mediation use.** It was assessed with the question: *How many times have you used a mediator's assistance?* In this case, respondents were asked to indicate a specific numerical value.

**Willingness to use mediation.** This variable was measured using three questions, which were rated on an 11-point scale from 0 (definitely no) to 10 (definitely yes). Each of the three questions was preceded by the same instruction (Imagine you are...) followed by a description of three different situations in which a mediator could be appointed: (1) *Imagine you are involved, by virtue of your professional duties, in a dispute between two parties who wish to assert their rights before a court. Would you encourage mediation in cases like this?* (2) *Imagine you are a party to a dispute between persons/institutions who wish to assert their rights in court. Would you like to use mediation in cases like this?* (3) *Imagine someone close to you (family, friends) wants to assert their rights in court. Would you encourage mediation in cases like this?*

**Desired regulatory changes regarding mediation.** This variable category assessed six different areas related to mediation (level of public awareness of mediation, availability of mediators, regulation of mandatory mediation, cost of mediation, popularity of mediation among judges, popularity of mediation among trial lawyers). Items in these categories were preceded by an instruction: *To what extent do the following categories, relating to mediation in Poland, need to be modified? Please give your opinion on a scale from 1 (very little) to 7 (very much).*

### 4.3 RESEARCH PROCEDURE

Research was conducted remotely using the Lime Survey platform. The selection of respondents to the group was incidental. A link to the questionnaire was emailed to the subjects. The database of email contacts was obtained from the lists of permanent mediators, available from the websites of District Courts. Participation in the study was voluntary and anonymous. None of the questions dealt with intimate or socially sensitive issues. Before participating in the survey, respondents were given information on how personal data is processed and protected. They were then asked to confirm that they had read the information, and to give their voluntary consent to participation. Data was collected between 19 April 2021 and 15 June 2021. The research was conducted in accordance with the ethical standards of a responsible committee on human experimentation (institutional or regional), and with the Declaration of Helsinki, as revised in 2013. To comply with the ethical standards, the research was conducted according to the standards of good research practice recommended by the American Psychological Association. The participants were informed about the confidentiality and anonymity of the research, and that they had the right to withdraw from participation.

### 4.4 DATA ANALYSIS

Data analysis was carried out using SPSS ver. 27.0.<sup>40</sup> Analysis relied on basic descriptive statistics (frequency, percentage, mean, standard deviation), as well as comparative tests for the results in the two assessment groups. Depending on the type of measurement scale, the comparative tests were the chi2 test and the student's t test together with Cohen's d effect size assessment. The r-Person and rho-Spearman correlation coefficients were also used to test the relationship between willingness to use mediation and other variables. A value of  $p < .05$  was adopted for the threshold of statistical significance.

<sup>40</sup> IBM Corporation, 'IBM SPSS Statistics for Windows'.



## 5. RESULTS

The results were explored in several stages. The first stage examined whether the representatives of the groups being studied had ever used mediation in the course of their work, and pinpointed discrepancies between the two groups in that respect. The second stage examined discrepancies in the willingness to use mediation among judges and entrepreneurs, as well as those regarding desirable regulatory changes in different areas of mediation in Poland. The final stage was to determine the relationship between willingness to use mediation and selected variables controlled during the study.

The research showed that 68.0% of surveyed judges and 15.2% of entrepreneurs had already reached for the help of a mediator at least once in their lives ( $\chi^2 = 95.22$ ;  $p = .001$ ). Judges also used mediation significantly more often ( $M = 17.01$ ;  $SD = 19.35$ ) than entrepreneurs ( $M = 4.15$ ;  $SD = 3.90$ ) ( $t = 3.42$ ;  $p = .001$ ).

The comparative analysis of the two groups for their willingness to use mediation in different life and work situations revealed discrepancies for all the variables tested (see Table 2). The general results allow for the claim that judges declared greater readiness in this respect than entrepreneurs. As regards those aspects of the institution of mediation that require considerable regulatory amendment, statistically significant differences were found between the study groups as regards the following categories: legal regulations relating to the obligation to enter into mediation, provisions related to the costs of mediation and the popularity of mediation among judges (see Table 2). In all these three categories, the nature of the noted discrepancies was the same. A greater need for change in how mediation is regulated was reported by entrepreneurs than by judges.

|                                                                                                                                                             | JUDGES AND ASSESSORS |           | ENTREPRENEURS |           | <i>t</i> | <i>p</i> | EFFECT SIZE |
|-------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------|-----------|---------------|-----------|----------|----------|-------------|
|                                                                                                                                                             | <i>M</i>             | <i>SD</i> | <i>M</i>      | <i>SD</i> |          |          |             |
| Dimensions of willingness to use mediation                                                                                                                  |                      |           |               |           |          |          |             |
| Willingness to use mediation when involved by virtue of their professional duties in a dispute between two parties who wish to assert their rights in court | 8.05                 | 2.35      | 6.42          | 2.41      | 6.16     | .001     | 0.68        |
| Willingness to use mediation when a party to a dispute between persons/ institutions who wish to assert their rights in court                               | 7.51                 | 2.50      | 6.52          | 2.35      | 3.67     | .001     | 0.41        |
| Willingness to use mediation when someone close to you (family, friends) is asserting their rights in court                                                 | 7.71                 | 2.40      | 6.57          | 2.36      | 4.29     | .001     | 0.48        |
| Areas of mediation that need regulatory change                                                                                                              |                      |           |               |           |          |          |             |
| Level of public awareness of mediation                                                                                                                      | 6.06                 | 1.58      | 5.82          | 1.90      | 1.17     | .242     | 0.13        |
| Availability of mediation and mediators                                                                                                                     | 4.92                 | 1.64      | 5.24          | 1.67      | 1.67     | .096     | 0.19        |
| Legal provisions concerning the obligation to enter into mediation                                                                                          | 4.19                 | 1.89      | 4.87          | 1.69      | 3.20     | .002     | 0.38        |
| Cost of mediation                                                                                                                                           | 3.82                 | 1.90      | 4.78          | 1.64      | 4.48     | .001     | 0.54        |
| Popularity of mediation among judges                                                                                                                        | 5.37                 | 1.75      | 6.11          | 1.49      | 4.02     | .001     | 0.46        |
| Popularity of mediation among trial attorneys                                                                                                               | 5.63                 | 1.89      | 6.01          | 1.65      | 1.88     | .062     | 0.22        |

**Table 2** Comparison of entrepreneurs and judges in terms of the variables analysed (results of the t-student test).

Willingness to use mediation in the study groups correlated in a statistically significant way with various sociodemographic variables (see Table 3). In the case of entrepreneurs, a significant correlation was detected between age and willingness to use mediation, as to when a person would be a party to a dispute between institutions or other persons. This correlation is of a negative kind, that is, the older the entrepreneur, the less likely they were to opt for this solution. In entrepreneurs, a significant correlation obtained between all the dimensions of willingness

to use mediation and the variable of education. The more educated the entrepreneur, the more willing they were to resort to mediation in disputes of a professional nature, when they were a party to a dispute, as well as more willing to recommend this solution to their family members. The final variable linked to willingness to engage in mediation was the years of working experience at the current position. Here, the correlation turned out to be negative. It emerged that the longer the entrepreneur had been in business, the significantly lower their willingness to submit to mediation, or to recommend this dispute resolution method.

However, in judges, correlations were detected between selected aspects of willingness to participate in mediation and gender. Female and male judges returned statistically significant differences in all three dimensions at hand: willingness to use mediation in the context of professional duties ( $M_{\text{females}} = 8.45$  vs.  $M_{\text{males}} = 7.62$ ;  $t = 2.22$ ;  $p = .028$ ;  $d = 0.36$ ), when being a party to a dispute between individuals/institutions ( $M_{\text{females}} = 8.05$  vs.  $M_{\text{males}} = 6.93$ ;  $t = 2.81$ ;  $p = .030$ ;  $d = 0.46$ ) and to encourage the use of mediation when someone close to them (family, friends) is asserting their rights in court ( $M_{\text{females}} = 8.16$  vs.  $M_{\text{males}} = 7.23$ ;  $t = 2.81$ ;  $p = .006$ ;  $d = 0.39$ ). Female judges scored higher in all three aspects of mediation.

| NO. | VARIABLES                                                                                                                                                   | (1)    | (2)    | (3)    | (4)    | (5)  | (6)   | (7)   |
|-----|-------------------------------------------------------------------------------------------------------------------------------------------------------------|--------|--------|--------|--------|------|-------|-------|
| 1   | Willingness to use mediation when involved by virtue of their professional duties in a dispute between two parties who wish to assert their rights in court | —      | .73**  | .80**  | .03    | .06  | -.16* | .03   |
| 2   | Willingness to use mediation when a party to a dispute between persons/institutions who wish to assert their rights in court                                | .91**  | —      | .78**  | .02    | .01  | -.20* | -.03  |
| 3   | Willingness to use mediation when someone close to you (family, friends) is asserting their rights in court                                                 | .86**  | .94**  | —      | -.11   | -.02 | -.15  | -.15  |
| 4   | Age                                                                                                                                                         | -.15   | -.16*  | -.13   | —      | -.10 | -.13  | .70** |
| 5   | Education                                                                                                                                                   | .22**  | .31**  | .25**  | -.25** | —    | .18*  | -.07  |
| 6   | Size of the place of residence                                                                                                                              | .14    | .12    | .13    | -.02   | .07  | —     | -.15  |
| 7   | Years of working experience at the current position                                                                                                         | -.22** | -.23** | -.23** | .74**  | -.14 | -.09  | —     |

**Table 3** Correlations between willingness to use mediation and selected sociodemographic variables (results for entrepreneurs below the diagonal; results for judges above the diagonal).  
 Note. \*\* $p < .01$ , \* $p < .05$ .

Explorations regarding the link between the sociodemographic variables and perceptions concerning those aspects of mediation that require regulatory amendment also exposed significant correlations across the groups under study (see Table 4). In judges, a positive correlation was detected between age and a need to promote mediation among judges; and between the size of the place of residence and the level of public awareness of mediation. In the latter case, judges from smaller towns suggested a more significant effort to increase the level of knowledge in these areas. In entrepreneurs, conversely, only age was significantly correlated with selected areas of desired regulatory modifications in mediation. A positive and statistically significant correlation was confirmed between age and a need to increase the availability of mediators, and promoting mediation among judges and among trial lawyers.

| NO.                                                     | VARIABLES                                           | (1)    | (2)  | (3)   | (4)   | (5)    | (6)  | (7)  | (8) | (9)   | (10)  |
|---------------------------------------------------------|-----------------------------------------------------|--------|------|-------|-------|--------|------|------|-----|-------|-------|
| 1                                                       | Age                                                 | —      | -.13 | -.10  | .70** | .09    | .05  | -.04 | .16 | .17*  | .01   |
| 2                                                       | Education                                           | -.02   | —    | .18*  | -.19* | -.04   | -.12 | .01  | .01 | -.08  | -.07  |
| 3                                                       | Size of the place of residence                      | -.25** | .07  | —     | -.05  | -.24** | -.12 | .04  | .10 | -.09  | -.07  |
| 4                                                       | Years of working experience at the current position | .74**  | -.10 | -.15* | —     | .11    | .10  | -.04 | .15 | .14   | -.03  |
| <b>Aspects of mediation that need regulatory change</b> |                                                     |        |      |       |       |        |      |      |     |       |       |
| 5                                                       | Level of public awareness of mediation              | .14    | -.05 | -.05  | .04   | —      | .12  | .10  | .09 | .28** | .52** |

(Contd.)

| NO. | VARIABLES                                                          | (1)   | (2)  | (3)  | (4)  | (5)   | (6)   | (7)   | (8)   | (9)   | (10)  |
|-----|--------------------------------------------------------------------|-------|------|------|------|-------|-------|-------|-------|-------|-------|
| 6   | Availability of mediation and mediators                            | .18*  | -.07 | -.03 | .11  | .57** | —     | -.11  | .12   | .15   | .10   |
| 7   | Legal provisions concerning the obligation to enter into mediation | .02   | .00  | -.04 | -.06 | .40** | .49** | —     | .46** | -.10  | .03   |
| 8   | Cost of mediation                                                  | .14   | .07  | .00  | .00  | .21*  | .34** | .43** | —     | .05   | .03   |
| 9   | Popularity of mediation among judges                               | .16*  | -.06 | -.13 | .02  | .71** | .59** | .45** | .45** | —     | .62** |
| 10  | Popularity of mediation among trial lawyers                        | .24** | -.04 | -.15 | .10  | .75** | .59** | .41** | .35** | .89** | —     |

**Table 4** Correlations between selected sociodemographic variables and aspects of mediation that require changes (results for entrepreneurs are presented below the diagonal; results for judges are presented above the diagonal).

Note. \*\* $p < .01$ , \* $p < .05$ .

## 6. CONCLUSION

The research presented here aimed to find out whether there are differences between Polish judges and entrepreneurs in how they perceive selected aspects of the institution of mediation. In addition, an examination was made as to whether differences also emerged as regards those aspects of mediation that are believed to be in need of regulatory amendment. An attempt was made as well to find out which sociodemographic variables are correlated to the willingness to use the instrument of mediation as a dispute resolution tool and the aspects of mediation that need regulatory modification. The research results reveal discrepancies in the willingness to engage in mediation among Polish judges and entrepreneurs, confirming hypothesis one (H1). Interestingly enough, judges show a much greater willingness to use mediation than entrepreneurs. This result is probably due to the fact that the two groups under analysis consist of representatives of distinct professions who possess different knowledge of dispute resolution strategies. In the case of judges, this knowledge may be significantly more advanced, due to their frequent involvement in interpersonal dispute cases in court. It may well be that since judges are confronted with different types of disputes, they can show greater readiness to spot a chance for quick and effective resolution via the tool of mediation, in contrast to lengthy and costly court proceedings. In the literature on the subject, the role of the judge in court mediation is most often referred to as that of a mediator.<sup>41</sup> However, it should be noted that a judge may also offer to the parties a possibility to undertake mediation outside the court, despite the pending court proceedings. Amicable dispute resolution allows for a quicker conclusion of cases, without hearings, which take up a lot of judges' time and engage court administrative staff in preparations for the proceedings. Finally, ending a dispute with a settlement excludes a need for a substantive adjudication by the court. In this way, the voluntary enforcement of the settlement provisions is safeguarded, and there is no need for enforcement actions. The use of mediation is also associated with a lower financial burden in comparison with court litigation, allowing judges to avoid costly evidentiary proceedings.<sup>42</sup> Consequently, mediation can be a win-win solution for both judicial and entrepreneurial stakeholders. For the former, the key advantage consists in speeding up dispute resolution.<sup>43</sup>

<sup>41</sup> E Brunet, 'Judicial Mediation and Signaling' (2003) 3 *Nevada Law Journal*, 232–258; P Robinson, 'Adding Judicial Mediation to the Debate about Judges Attempting to Settle Cases Assigned to Them for Trial' (2006) *Journal of Dispute Resolution*, no. 2, 336–381.

<sup>42</sup> S Ali, *Court Mediation Reform: Efficiency, Confidence and Perceptions of Justice* (Edward Elgar Publishing, 2018); Bondy et al. (n 33); G Clarke and I Davies, 'ADR — Argument for and Against Use of the Mediation Process Particularly in Family and Neighbourhood Disputes' (1991) 7 *QUT Law Review*, 84–85 <<https://doi.org/10.5204/utlr.v7i0.343>> (accessed 7 November 2024); CJ King, 'Burdens Access to Justice: The Cost of Divorce Mediation on the Cheap' (1999) 73 *St. John's Law Review*, no. 2, 390–397.

<sup>43</sup> In 2019, common courts in Poland received 17,728,993 cases, of which mediation was possible in 2,459,950 cases. In 30,828 cases, the parties were referred to mediation. The percentage of cases referred to mediation as a proportion of all cases coming before the courts where mediation could be used was 1.25% in 2019. This is still a negligible figure, especially as the rate of civil settlements in mediations reached 34.57% in 2019. The figures compiled by the Ministry of Justice show that in 2019, the number of commercial cases in district courts where parties were referred to mediation was higher in large court districts, covering large cities and urbanised areas, than in small districts, covering mainly small towns and villages 'Postępowanie Mediacyjne w Świetle Danych Statystycznych. Sady Rejonowe i Okręgowe w Latkach 2006–2019 [Mediation Proceedings in Statistical Data. District and Regional Courts in 2006–2019]' (Polish Ministry of Justice, 2020), 13–14 <<https://www.gov.pl/attachment/903b7222-87d1-46ab-89ed-55a21e5f469d>> (accessed 18 October 2023). In the case of large court districts, the number of cases referred to mediation in 2019 was in hundreds (e.g. Poznan district 637), while in

For business people, disputes can be something abstract, much less frequently experienced than by judges by virtue of their judicial profession. Nonetheless, entrepreneurs may also be keen to resolve disputes more quickly and hence gain financially. It is also possible that, due to little contact with the mediation procedure, entrepreneurs are not fully convinced that this way of resolving disputes is likely to be the most secure and optimal for them. The research results also indicate that there are significant differences between judges and entrepreneurs regarding the aspects of mediation in Poland that need to be modified, which confirms hypothesis two (H2). The differences between judges and entrepreneurs basically concern three aspects, namely the legal regulation of the obligation to enter into mediation, the costs of mediation and the popularity of mediation among judges. Entrepreneurs, on the other hand, see a greater need for change in all the aspects mentioned in the questionnaire. Arguably, all three aspects are important for entrepreneurs as they significantly contribute to reducing litigation costs and losses not only in terms of money or assets, but also in terms of business image and reputation which could be undermined when entering into a dispute with another person or entity. Particularly at the moment of crisis, cost reduction is key to ensuring optimal market functioning, while doing business in a post-pandemic era requires a stable legal system offering to resolve disputes involving entrepreneurs.<sup>44</sup> Another element that could explain the result distribution is the possibility that mediation offers for preserving the good image of the entrepreneur who, by resolving the dispute through mediation, does not expose themselves to negative opinions from their environment (customers, employees or business partners). The study also confirmed the correlation between selected sociodemographic variables and willingness to participate in mediation and the need for change in how mediation is regulated (H3). In judges, discrepancies in willingness to engage in mediation are only linked to gender and size of the place of residence. Female judges were more likely to use mediation than males, which may indicate a greater tendency for females to seek conciliatory solutions in court. This is borne out by research confirming the impact of gender on perspectives on dispute resolution.<sup>45</sup> In the case of place of residence, the correlation detected indicates that judges working in smaller towns are more likely to use mediation. This state of affairs may be a corollary of their more individual approach to litigation resulting from operating in smaller communities. In the case of entrepreneurs, the willingness to mediate is most clearly linked to education and years of working experience at a particular position. At the same time, the correlation patterns differ. More likely to resort to mediation are more educated entrepreneurs.<sup>46</sup> It is likely that those with higher education are more aware of mediation as a dispute resolution tool. They also have greater skills in estimating the benefits that may accrue from better dispute resolution, with less antagonistic strategies involved.<sup>47</sup> In contrast, entrepreneurs with less professional experience report a reduced willingness to use mediation. This distribution of results may be conditioned by several factors. Firstly, lack of experience in participating in disputes between people or third parties. Secondly, less experienced business persons may be overly confident in their ability to win a dispute in court. Thirdly, they may be reluctant to yield in a contentious situation, which is particularly typical of the early stages of business operation. Both study groups revealed correlations of sociodemographic variables with aspects of mediation in need of regulatory modification. Senior judges see a need to increase awareness of mediation among judges, which may be

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small towns it was often in single digits, and in areas with a low degree of urbanisation it could even be 0 (e.g. in the Suwałki district) (Polish Ministry of Justice, 2020, 13–14). This may indicate a low awareness and knowledge of mediation among entrepreneurs who live in smaller towns. This, in turn, may translate into a lower willingness of judges to refer parties to mediation in smaller towns than in larger, more urbanised court districts. Statistical data show a higher percentage of cases referred to mediation by judges in court districts covering Poland's largest cities (Polish Ministry of Justice, 2020, 13).

<sup>44</sup> V Storr et al., 'Entrepreneurship during a Pandemic' (2022) 54 *European Journal of Law and Economics*, 86–92.

<sup>45</sup> K Klein, 'A Judicial Mediator's Perspective: The Impact of Gender on Dispute Resolution: Mediation as a Different Voice' (2005) 81 *North Dakota Law Review*, no. 4, 771–793; C Turner, "'Soft Ways of Doing Hard Things': Women Mediators and the Question of Gender in Mediation' (2020) 8 *Peacebuilding*, no. 4, 383–401, <<https://doi.org/10.1080/21647259.2019.1664369>> (accessed 7 November 2024).

<sup>46</sup> R Bush, 'Reclaiming Mediation's Future: Re-Focusing on Party Self-Determination' (2015) 16 *Cardozo Journal of Conflict Resolution*, 741–753.

<sup>47</sup> This may be linked to the fact that higher education promotes levels of trust in public institutions. In 2016, 42% of Poles had no trust in courts, while 26% admitted very low trust levels. Analysis of socio-demographic differences shows that trust in public institutions is fostered by higher education 'Zaufanie Społeczne [Social Trust]' (CBOS, 2016) 18/2016 14 <[https://www.cbos.pl/SPISKOM.POL/2016/K\\_018\\_16.PDF](https://www.cbos.pl/SPISKOM.POL/2016/K_018_16.PDF)> (accessed 18 October 2024).

linked to the fact that such forms of dispute resolution have been promoted in Poland for a relatively short time. It may be that senior judges do not yet have sufficient knowledge in this area, as it was not an issue they dealt with during their professional education and development. For judges, a need to promote mediation correlates with the size of their place of residence, too. If we assume that judges from smaller courts, operating in smaller urban centres, live in close proximity to them, it may be that court petitioners living in small towns have too little information about mediation and, consequently, they are not likely to rely on it. In contrast, in the group of entrepreneurs, the older the representatives, the greater the reported need to promote mediation among judges and trial attorneys, and the greater the need for mediators to be available to them. These responses are most possibly related to the fact that older entrepreneurs experiencing disputes in the past could not resort to mediation, as they were not granted such opportunities by the justice system. Previous research highlights the link between mediation and the risk of bullying.<sup>48</sup> It seems reasonable to continue the research discussed here by taking into account the perspective of older people's willingness to resolve disputes amicably. The present research confirms the need to further promote amicable methods, in particular mediation, among judges and lawyers. Expectations in this regard clearly indicate that the level of willingness of lawyers to avoid the court route in favour of mediation remains low. This may be surprising given the general trust of Poles in the value of cooperation – 79% of Poles believe that by acting together one can achieve more than alone.<sup>49</sup> The discrepancies in this respect – from the perspective of both professional groups – are related to the expectations of a given professional group formulated against other stakeholders in legal turnover. Hence, there is an apparent correlation between judges' expectation that the popularity of mediation be increased among lawyers, and parallel expectations of entrepreneurs for both judges and lawyers. It can be inferred that judges expect greater activity in the use of mediation among lawyers whose task is to help parties to a legal dispute, including entrepreneurs. The lawyers' key task is to choose the most favourable – from the point of view of their clients – path to the conclusion of the case in dispute. Entrepreneurs, on the other hand, expect that it is both their lawyers and judges who will propose solutions that contribute to a quick and fair settlement. It seems that a need to promote mediation applies not only to legal transactions in Poland, but also in Europe. This is confirmed by a number of normative and training initiatives in Europe.<sup>50</sup> The research reported above fills in a significant gap in explorations on the willingness to use mediation among Polish judges and entrepreneurs. It also highlights important aspects that – as perceived by the judiciary and the business community – require modification if the dispute resolution system in Poland is to improve. Despite the fact that this research is groundbreaking in involving these two particular professional study groups, it also faces severe limitations including the lack of representativeness of the groups surveyed. Also noticeable is the lack of detailed data on how mediation per se is perceived, with its general advantages and disadvantages. Only a simple indicator of willingness to engage in mediation was researched. Another significant limitation of the study is the limited amount of information on the respondents: only basic sociodemographic variables were controlled. A final limitation is the way in which research was carried out, that is with the use of an online questionnaire. Despite these drawbacks, this study makes a valuable contribution to the discourse in the field, and can give impetus to further related research. This is why it is necessary to continue analytical efforts engaging a larger research pool, covering judges and entrepreneurs from other European countries. This is because mediation is a subject matter handled in a number of European initiatives, and it manifests itself through the normative activity of the Council of Europe and the European Union. A more detailed consideration of the differentiating characteristics of entrepreneurs, such as the industry in which they operate, their income, the national or international scope of their operations, or the number of employees, could also present a valuable research trajectory. In the longer term, it is reasonable to examine more specific psychosocial variables (e.g. trust in the state and its institutions, and generally in other people).

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<sup>48</sup> J Martin and S Roberts, 'The Effectiveness of Mediation for Older People at Risk of or Experiencing Abuse' (2021) 38 *Conflict Resolution Quarterly*, no. 3, 175–185.

<sup>49</sup> 'Gotowość Polaków Do Współpracy [Poles' Openness to Cooperation]' (CBOS, 2010) BS/32/2010 <[https://www.cbos.pl/SPISKOM.POL/2010/K\\_032\\_10.PDF](https://www.cbos.pl/SPISKOM.POL/2010/K_032_10.PDF)> (accessed 18 October 2024).

<sup>50</sup> Alleweldt et al. (n 30); Hengl and Tilman (n 35); 'Mediation Development Toolkit Ensuring Implementation of the CEPEJ Guidelines on Mediation' (n 34); 'Mediation in the EU: Language, Law and Practice. Series of Interactive Language Training Events for Judges, Lawyers and Mediators' (n 34).

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## COMPETING INTERESTS

The authors have no competing interests to declare.

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