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CERTIFICATION OF FAMILY MEDIATORS – POLISH SOLUTIONS IN COMPARATIVE PERSPECTIVE

Abstract

This article is focused on the certification of family mediators. It presents Polish solutions in this matter, but refers also to foreign legal systems in order to compare various solutions in different countries. It discusses requirements (especially mediation training) set up for mediators when they apply for the certificate, and entities that grant the certificate. Finally it answers the question of whether all mediators should go through the certification process.

Keywords

certification of family mediators – requirements for mediators – professionalization of mediation services – mediation training – entities granting the certificate

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The certification of mediators is an issue very closely related to the requirements that national legislators¹ or mediators' organizations set up for mediators. From the beginning we need to acknowledge that this is a very controversial topic. Generally speaking these arguments could be a convincing reason for the acceptance of certification of mediators: improving the quality of services provided by mediators by eliminating unqualified mediators² (because one of the most common conditions of obtaining certification is going through a mediators' training course and practical exercises), strengthening the parties' confidence in mediation as a real alternative to court proceedings³, giving credibility to the services provided by mediators and standardisation of their quality⁴. From this we can assume that certification can bring advantages both for the parties of a dispute and for the mediators. These reasons were also acknowledged by the European Commission in a Green Paper on alternative dispute resolution in civil and commercial law⁵. In the above mentioned document, the Commission supported initiatives of mediator certification⁶. Summarizing, on the pro side we can state that certification is a desired

¹ There were proposals to pass common regulations for all European Union countries in that matter. At first the European Commission (EC) proposed imposing minimal standards for mediators' qualifications and certification of mediators, but during the preparation of the directive on certain aspects of mediation in civil and commercial matters the EC resigned from this initiative, encouraging mediators' organizations to regulate it on their own – see: R. Zegadło, *Mediacja w sprawach rodzinnych i opiekuńczych* [Mediation in Family and Custody Matters], *Rodzina i Prawo* [Family and Law] 2006, no. 1 (1), p. 54.

² A. Milne, J. Folberg, P. Salem, *Divorce and Family Mediation: Models, Techniques, and Applications*, New York: The Guilford Press 2004, p. 18; A. Krata, *Profesjonalizm mediatora a skuteczność mediacji (I)* [Professionalism of Mediator and the Effectiveness of Mediation (I)], *Edukacja Prawnicza* [Legal Education] 2006, no. 2, p. 17.

³ E. Gmurzyńska justifiably states that this has an especial meaning in institutionalized forms of mediation where parties have greater expectations about the quality of proceedings as well as mediators; idem, *Mediacja w sprawach cywilnych w amerykańskim systemie prawnym. Zastosowanie w Europie i w Polsce* [Mediation in Civil Matters in American Legal System. Application in Europe and in Poland], Warszawa: C.H. Beck 2007, p. 71.

⁴ Milne, Folberg, Salem, supra note 2, p. 18.

⁵ Brussels, 19.04.2002, COM (2002) 196 final. An English version of this document is available at: [http://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX: 52002DC0196&from=EN](http://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:52002DC0196&from=EN) [last accessed: 22.09.2014] and was also published by M. Bobrowicz in: *Mediacje gospodarcze – jak mediuować i przekonywać* [Commercial Mediation – How to Mediate and Convince], Warszawa: C.H. Beck 2004, pp. 103-139.

⁶ COM (2002) 196, pp. 27, 32-33.

process because the participants in mediation and their lawyers want to have a good and professional mediator they can trust.

On the other side mediation is an informal method and therefore some specialists claim that it should remain unregulated by any law. However, concerns about the establishment of certification assessment processes include:

- certification and accreditation processes contradict basic mediation philosophies, such as the principle of inclusion and respect for diversity of perspective and practice,
- premature establishment of standards and methods to measure performance would limit the innovative, creative nature of the process,
- certification requirements would create barriers to entry into the field,
- certification would encourage a monopoly on practice – an exclusive grouping and a bureaucratic structure – that would be similar to and would reproduce public complaints about the cumbersome adversarial/judicial system,
- setting standards without research identifying the best model of practice could limit excellence in an expanding field,
- increasing educational and practice requirements would limit diversity among practitioners,
- not enough is known about mediation in relation to minority groups, power imbalances, and issues of diversity, to allow the establishment of inclusive standards that are culturally and gender sensitive,
- it is not possible to measure or assess mediator performance because we do not know yet how to measure mediation success (is success satisfied clients, durability of agreement, rate of settlement, changed society?)⁷,
- different models of mediation require different evaluation tools,

⁷ Although there is always the possibility of judgment of the mediation process. S. Pieckowski in his publication posted an example of rating questionnaires about the mediation process for mediators, parties and their lawyers; idem, *Mediacja w sprawach cywilnych* [Mediation in Civil Matters], Warszawa: Difin 2006, pp. 65-73.

- it is not possible to design an interactive assessment process that could produce consistent, measurable results,
- mediation practitioners come from many fields, and certification processes must respect and recognize these diverse origins⁸.

Summing up, on the one hand mediators' certification is considered as a mark of maturity in this profession⁹, confirmation of personally gained experience, social legitimation for mediators¹⁰, and a way of obtaining public acceptance for this method, but on the other hand it can be seen as an obstacle in the development of new models of mediation and a way of setting a barrier to obtaining access to the profession of mediators for new people¹¹. Whichever side we take, we all need to accept the fact that certification favors obeying ethical rules and codes of procedure by mediators. Therefore, before applying for a certificate, mediators usually need to complete special training and are required to obey the rules of proceedings.

The certification of mediators can have an obligatory or a facultative (optional) character¹². The first option leads to full professionalization of services provided by mediators as well as restriction of the mediators' profession (just as with the professions of barrister or notary) to people that have the certificate¹³. In the second option, only professional perpetual mediators¹⁴ (but not only those who provide services in court-referred mediations) will obtain the certificates. Besides certification could

⁸ These arguments were encountered in Canada in the early 1990s during the introduction of a certification system by Family Mediation Canada. They were collected and published by: P. English, L. Neilson, *Certifying Mediators*, [in:] J. Folberg, A. Milne, P. Salem (eds), *Divorce and Family Mediation: Models, Techniques, and Applications*, New York: The Guilford Press 2004, p. 487. They are the widest compilation in that matter. Other authors limit their opinion to one or few provided there reasons. For example, E. Gmurzyńska gives an argument about institutionalization of mediation; *idem*, *supra* note 3, pp. 71-72.

⁹ This element is a part of process called professionalization of mediation. More about that: N. Welsh, *Institutionalization and Professionalization*, [in:] M. Moffitt, R. Bordone (eds), *The Handbook of Dispute Resolution*, San Francisco: Jossey-Bass 2005, p. 494.

¹⁰ *Ibidem*, p. 498.

¹¹ Milne, Folberg, Salem, *supra* note 2, p. 18. More about positive aspects of the monopolization of the mediator's profession see also Welsh, *supra* note 9, p. 498.

¹² This procedure of certification is used by Family Mediation Canada and Florida Supreme Court. See English, Neilson, *supra* note 8, p. 499; Welsh, *supra* note 9, p. 496.

¹³ In this case the certificate is considered as form of licence.

¹⁴ See for example Article 183⁶ § 2 pt. 1 of the act of 17.11.1964 – Kodeks postępowania cywilnego [Polish Code of Civil Procedure]. This act will be referred further as k.p.c.

be a common requirement for all mediators or could be restricted only to court mediators¹⁵. It could also include mediators providing services without payment¹⁶, although it seems that this regulation could discourage volunteers to be mediators at all. Therefore for them the certification should be optional and considered as additional virtue.

In connection with the topic of mediators' certification we also need to discuss who should grant the certificates, whether it should be mediators' organizations, courts, or a special governmental office. So far the most common option is the granting of certificates by NGOs and mediators' associations. Usually they issue certificates if the applicant meets their requirements. This way of setting conditions to obtain the certificate allows them to take into consideration the experience of mediators themselves in what is really needed to be known by mediators¹⁷. However, there is a different way of setting these conditions in USA, wherein the certificates are additionally granted by the high courts of each state or by special state offices¹⁸. Whereas in Belgium, granting the certificates and keeping an updated list of accredited mediators lies within the competence of The Federal Mediation Commission¹⁹, which was specially created through an act. In Great Britain, the same tasks are being dealt by the College

¹⁵ In USA court mediators are required to show a certificate whether they are providing their services with salary or *pro bono*. All other mediators are not obliged to possess the certificate, R. Morek, *Jaki powinien być mediator? Przekładanie nieprzekładalnego: o wymaganiach wobec mediatorów w ustawie* [What the Mediator Should Be Like? Translating the Untranslatable: About the Requirements for Mediators in the Act], [in:] L. Mazowiecka, *Mediacja* [Mediation], Warszawa: Wolters Kluwer 2009, p. 247.

¹⁶ Check Gmurzyńska, *supra* note 3, p. 70 and further references.

¹⁷ English, Neilson, *supra* note 8, p. 485; R. Zegadło, *Mediacja w toku postępowania cywilnego – uwagi na tle projektu Komisji Kodyfikacyjnej Prawa Cywilnego* [Mediation in Civil Proceedings – Comments on the Background of the Civil Law Codification Committee's Project], [in:] W. Popiołek, L. Ogiegło, M. Szpunar (eds), *Rozprawy prawnicze. Księga pamiątkowa Profesora Maksymiliana Pazdana* [Legal Hearings. Commemorative Book of Professor Maksymilian Pazdan], Kraków: Zakamycze 2005, p. 1540; *idem*, *supra* note 1, p. 53.

¹⁸ Gmurzyńska, *supra* note 3, p. 70.

¹⁹ M. Białecki, *Możliwości i ograniczenia mediacji w sprawach rodzinnych na tle prawnoporównawczym* [Possibilities and Limits of Family Mediation in Comparative Legal Perspective], [in:] M. Kosek, J. Słyk (eds), *W trosce o rodzinę. Księga pamiątkowa ku czci profesora Wandy Stojanowskiej* [Caring for Family. Commemorative Book of Professor Wanda Stojanowska], Warszawa: C.H. Beck 2008, p. 8.

for Mediators²⁰ established in 1996. A similar institution was also legally established in Austria in 2004. In that country an Advisory Board for Mediation is the body responsible for advising the Federal Minister of Justice in matters related to mediation, especially training programs and training institutions and the registration of persons in the List of Registered Mediators²¹. Members of the Advisory Board for Mediation are nominated by the Federal Minister of Justice for a period of five years²². The List of Mediators is maintained by the Federal Minister of Justice.

As was indicated earlier, the certification of mediators is closely related to the requirements they need to fulfill in order to become registered mediators. The most common requirement to be met when applying for the certificate is going through the mediation training²³. Therefore, it can be stated that the mediators' certification is connected with the possessing of professional knowledge by them and the practice

²⁰ M. Białecki, *Praktyczne aspekty mediacji jako alternatywnej formy rozstrzygnięcia sporów w sprawach rodzinnych – analiza prawnoprorównawcza* [Practical Aspects of Mediation as Alternative Dispute Resolution Form in Family Matters – Analysis of Comparative Law], *Palestra* [The Bar] 2006, no. 9-10, p. 45; idem, supra note 19, p. 11; idem, *Mediacja w sprawach rodzinnych na przykładzie rozwiązań europejskich – analiza prawnoprorównawcza* [Mediation in Family Matters on the Example of European Solutions – Analysis of Comparative Law], [in:] P. Pogonowski, P. Ciocha, E. Gapska, J. Nowińska (eds), *Współczesne przemiany postępowania cywilnego* [Contemporary Transformation of Civil Procedure], Warszawa: Wolters Kluwer 2010, p. 378.

²¹ Białecki, *Mediacja w sprawach...*, supra note 20, p. 374; idem, *Praktyczne...*, supra note 20, p. 44.

²² Białecki, *Praktyczne...*, supra note 20, p. 44; idem, *Mediacja w sprawach...*, supra note 20, p. 374; idem, supra note 19, p. 9.

²³ Directive 2008/52/WE encourages ensuring the necessary mutual trust with respect to confidentiality, effect on limitation and prescription periods, and recognition and enforcement of agreements resulting from mediation, Member States should encourage, by any means they consider appropriate, the training of mediators and the introduction of effective quality control mechanisms concerning the provision of mediation services (pt. 16 of preamble). This rule is explained in Article 4.2 of the directive which states that Member States shall encourage the initial and further training of mediators in order to ensure that mediation is conducted in an effective, impartial and competent way in relation to the parties. More about the impact of training on the quality of mediator's work see e.g. I. Warda, *Podnoszenie kwalifikacji mediatora* [Improving the Qualifications of the Mediator], *Mediator* [Mediator] 2011, no. 56 (March), p. 41. It should also be remembered that apart from finishing mediation training, candidates for work as certified mediators can face other requirements. For example, in Florida state, a mediator has to get at least bachelor's degree – see D. Berman, J. Alfini, *Lawyer Colonization of Family Mediation: Consequences and Implications*, *Marquette Law Review* 2012, vol. 95, no. 3, p. 902.

of mediation. They can gain these qualifications during training. Training can be established at different times and subject ranges (e.g. it can be general or special, initial or further training). These advantages of training are widely accepted by legal academics: the possibility of personal development, gaining knowledge about yourself, your strengths and weaknesses, helping in making the right decisions about a professional career and personal development, assurance of conducting the mediation process in the right way as well as avoiding mistakes in conducting the mediation²⁴. Moreover, going through mediators' training increases mediator's self-esteem in making the right movements and decisions which is not without impact on other parties' opinion about his professionalism²⁵.

In Poland there are no general rules about standards of civil mediators' training, which could become a basic requirement for mediators' certification. This means that one can become a certified mediator even after a short four (4) hour long training session through the e-learning method without any practical exercises²⁶ or even without any kind of training. As a consequence some experts justifiably say that chaos in that matter causes discouragement not only among justice workers, but also among potential parties towards mediation²⁷. Therefore, one needs to notice that the Pilotage Family Mediation Team (Polish *Zespół Pilotażowy*

²⁴ M. Jaks, *Mediacja cywilna z perspektywy doświadczeń mediatora. Analiza zasad mediacji w przepisach kodeksu postępowania cywilnego* [Civil Mediation from Mediator's Experience Perspective. Analysis of the Principles of Mediation in the Code of Civil Procedure], [in:] H. Duszka-Jakimko, S.L. Stadniczerko (eds), *Alternatywne formy rozwiązywania sporów w teorii i w praktyce. Wybrane zagadnienia* [Alternative Dispute Resolution in Theory and Practice. Selected Issues], Opole: Uniwersytet Opolski 2008, pp. 86, 88. I cannot agree with this author's statement that going through mediators' training gives enough warranty of properly leading the mediation. The mediator's experience and intuitive fitting the rules of mediation to the particular dispute is equally important.

²⁵ M. Jaks, R. Kaszczyszyn, *Znaczenie szkoleń w doskonaleniu umiejętności mediatorów w sprawach cywilnych i gospodarczych* [The Importance of Training in Improvement of the Mediators' Skills in Civil and Commercial Matters], [in:] A. Gretkowski, D. Karbarz (eds), *Mediacja w teorii i praktyce* [Mediation in Theory and Practice], Stalowa Wola: Oficyna Wydawnicza Fundacji Uniwersyteckiej 2009, p. 271.

²⁶ This is the right remark of M. Grudziecka and J. Książek in: idem, *Narodziny idei wprowadzenia mediacji w Polsce* [The Birth of the Idea of Introducing Mediation in Poland], [in:] Mazowiecka (ed.), supra note 15, p. 326.

²⁷ M. Grudziecka, *Zawód mediator* [Mediator's Profession], [in:] Gretkowski, Karbarz (eds), supra note 25, p. 250.

ds. Mediacji Rodzinnych), which is working on amendments to k.p.c., prepared standards of training for family mediators. The foundation of this training was a one hundred and eighty (180) hour program proposed by dr H. Przybyła-Basista²⁸. It was divided into three sections and each of them was supposed to be finished under supervision²⁹. First part consisted of fifty (50) hours of practical skills training. The second part which consisted of eighty (80) hours was concentrated on expanding the mediators' knowledge about mediation techniques. During the third part, which lasted for fifty (50) hours, mediators were supposed to prove their practical family mediation skills in cases of divorce (or separation) and to submit all the necessary documents. The topics of the training program included:

- theory of interpersonal conflict, negotiation and mediation, especially family mediations,
- families in conflict situation - especially during divorce or separation proceedings,
- influence of dispute on a child,
- psychological, economical and legal consequences of divorce or separation for adults and children,
- possibility of intervention in case of family abuse, domestic violence,
- judgment of readiness and ability of family to attend family mediation,
- elements of family law,
- ethical issues in family mediation, and
- the need for cooperation with other specialists³⁰.

Despite the successful completion of the training according to the above experimental program by twenty four (24) mediators and the issuing by the Ministry of Justice of mediators' certificates for them, and despite the recognition and accreditation of the program by the Training Standards Committee of the European Forum for Training

²⁸ H. Przybyła-Basista, *Zmiany w prawodawstwie rodzinnym na świecie a rozwój praktyki mediacyjnej* [Changes in Family Legislation in the World and Development of the Mediation Practice], *Mediator* [Mediator] 2003, no. 24 (March), p. 17.

²⁹ Ibidem.

³⁰ Ibidem.

and Research in Family Mediation³¹ Polish legislator did not impose it as obligatory training and certification program for mediators. However, the above program can be used as a basis for all trainings led by different organizations for those who want to become professional mediators³².

Both in the USA and in Poland, there is no single obligatory model of training for mediators³³. The initial training usually lasts from one (1) to five (5) days³⁴ which is the right amount of time for the candidate mediator to discern whether this person is still interested in performing this profession. At the same time this is a short period of time to gain the knowledge and practice essential for conducting a mediation. This period of time can be assumed as a global standard because the initial training of mediators (French *la formation initiale de médiateurs*) takes about forty (40) training hours³⁵. However, in some countries this standard is much higher. For instance, one of the most rigorous regulations in that matter was accepted in Austria. There the theoretical part of training in which candidates for qualification as mediators get to know the following issues: principles and models (German *Grundannahmen und Leitbilder*) of mediation, conflict analysis (German *Konfliktanalysen*), areas of application (German *Anwendungsgebiete*) and ethical issues of mediation (German *Ethische Fragen der Mediation*) takes from two hundred (200) to three hundred (300) hours and the practical part from

³¹ Ibidem, p. 17.

³² Check also a good program of training proposed for all mediators in civil cases by A. Zienkiewicz, *Mediator w sprawach cywilnych* [*Mediator in Civil Matters*], Rejent [Notary] 2005, no. 5, pp. 144-147.

³³ See: Grudziecka, supra note 27, p. 263.

³⁴ Milne, Folberg, Salem, supra note 2, p. 19.

³⁵ Morek, supra note 15, p. 248. The author shows that this standard takes effect e.g. in USA, Slovenia, Malaysia and Poland in mediation in juvenile cases; ibidem, p. 248. E. Gmurzyńska states that in Florida state the time of mediator's training program depends on the nature of the dispute. In family disputes a mediator has to complete special training of minimum 40 hours. In other civil cases the training is 20 hours long for cases heard by the district court and 40 hours long for cases heard by the circuit courts; idem, supra note 3, pp. 77-78. In Texas state basic training also takes 40 hours, but additional training for family mediators lasts 24 hours; Berman, Alfani, supra note 23, p. 896. The same amount of time is mentioned by Welsh, supra note 9, p. 496; M. Bialecki, *Mediacja w postępowaniu cywilnym* [*Mediation in Civil Proceedings*], Warszawa: Wolters Kluwer 2012, p. 82. A little bit longer period for basic training is accepted by M. Jaksa and R. Kaszczyszyn. They set it as 50-60 teaching hours; idem, supra note 25, p. 273.

one hundred (100) to two hundred (200) hours (§29 ZivMediatG)³⁶. Beside that every mediator in that country has to go through additional training of fifty (50) hours at least every five (5) years³⁷.

In Germany family mediators who are members of the Federal Association for Family Mediation (German *Bundes-Arbeitsgemeinschaft für Familien-Mediation*, BAFM)³⁸ also have to fulfill rigorous requirements. Beside legal or psychological education they have to finish postgraduate studies in the field of mediation. Additional education of mediators consists of:

- seminars,
- supervision,
- developing case studies and preparing records/documentation,
- independent work in groups.

The teaching of mediators consists of:

- sharing of possessed knowledge,
- developing mediation abilities through role-play,
- becoming aware of existing professional and life experiences (in the context of using them in the mediation process),
- keeping of documentation and solving case studies,
- reflection on the professionalism of the activity performed,
- reflection on the practice in context of given advices (supervision)³⁹.

The issues of the studies are divided into three groups:

- 1) associated with mediation in resolving the dispute, which are essential for mediation process (Latin *essentialia*, German *Essentials*), i.e. knowledge, skills and abilities in this field:

³⁶ The act is available online: <https://www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=+Bundesnormen&Gesetzesnummer=20002753> [last accessed: 22.9.2014].

³⁷ Bialecki, *supra* note 19, p. 9. The author suggests that this obligation is rare even in these countries in which there are training and certification rules, *idem*, *supra* note 35, p. 82.

³⁸ N. Alexander rightly states that BAFM guidelines are *de facto* standards respected by all family mediators in Germany; *idem*, *What's Law Got To Do With It? Mapping Modern Mediation Movements in Civil and Common Law Jurisdictions*, *Bond Law Review* 2001, vol. 13, no. 2, p. 16.

³⁹ BAFM guidelines, G. Mähler, H.-G. Mähler, *Mediation bei Familien konflikt*, [in:] S. Breidenbach, M. Hanssler (eds), *Mediation für Juristen. Konfliktbehandlung ohne gerichtliche Entscheidung*, Köln: Schmidt 1997, p. 131.

- knowledge about initiating, structure and performing of mediation and about varied roles and tasks of the mediator, depending on the current phase of the proceedings,
 - knowledge about the essence and the basic concepts of mediation, namely supporting the self-responsibility of conflicted parties in their dialogue, cooperation and possibilities of independent creation by them of adequate solution of the dispute,
 - methods and techniques of mediation in their communicative structure,
 - special predispositions of mediator, e.g.:
 - neutrality,
 - conducting negotiations, e.g. reaching a compromise between the parties' interests instead of legal positions,
 - acceptance of different ways of conflict perception by each party and their various interests,
 - structuring a variety of content and interests claimed in the course of the mediation,
 - dealing with various primacy relations (appearing during dispute resolution) on the level of their connections and sources,
 - expansion of possible decision subjects,
 - positions and roles of children and young people in mediation,
 - pointing the parties techniques of searching adequate dispute solution,
 - knowledge about special features of co-mediation,
 - a sense of justice,
 - awareness of the role of law,
 - awareness of psychological processes and ability to interpret them and correctly use them,
- 2) associated with social, legal and ethical frames of mediation. This includes, e.g.:
- mediation as a dispute resolution as opposed to traditional forms of legal procedures and counseling and therapy; special procedural competences of mediation and their frames,

- ethics of mediation; image of a man in mediation; mediation as a form of a new culture of managing disputes,
 - applying mediation in court procedures (specifically divorce mediation) in legally set boundaries (under the provisions of ZPO⁴⁰, FGG⁴¹ and KJHG⁴²),
 - interdisciplinary cooperation with lawyers advising during the mediation and judges; cooperation with pedagogues, counselors, and therapists and representatives of youth welfare services,
 - institutional usage of mediation; BAFM guidelines about family mediation; building and attending regional and transregional mediation institutions network,
 - taking into account the institutional and criminal limits of the mediation, namely obligations of silence, data protection, and professional secrecy,
- 3) associated with interdisciplinary knowledge needed to conduct mediation. This includes knowledge of:
- about legal matters:
 - basics of family law, especially child custody and visitation, child support, division of property, social insurance,
 - basics of procedural law,
 - basic knowledge about creating marital and divorce agreements,
 - typical legal standards guaranteeing financial help from the state – funding for rent (German *Wohngeld*), child benefit (German *Kindergeld*), funding for students (German *BAFÖG*) and other means of social assistance (German *Sozialhilfeleistungen*),
 - importance of the legal matters in the context of tax law,
 - about psychology and sociology:

⁴⁰ Act of 30.01.1877 *Zivilprozessordnung* [German Code of Civil Procedure], RGBl. S. 83.

⁴¹ Act of 20.05.1898 *Gesetz über die Angelegenheiten der freiwilligen Gerichtsbarkeit* [German equivalent of Polish non-litigious proceedings], RGBl. I S. 777.

⁴² Act of 26.06.1990 *Kinder- und Jugendhilfegesetz* [Child and Youth Services Act], BGBl. I S. 1163.

- knowledge of psychological family processes which take place during divorce and separation,
- psychological aspects of the development of children and young people,
- psychological concepts such as crisis, conflict, emotional abuse, loss, blame, relationship, violence, and power,
- self-reflection and the ability to refer to the certain situation (putting yourself in the role of one of the parties)⁴³.

Education can be held as a group work (so-called group model, German *gruppenprozessorientiertes Modell*) or individual work (so-called modular model, German *Modulsystem*). These are the conditions of admission to postgraduate studies in the field of mediation:

- completed social or psychological studies, legal education (completed application giving full professional qualifications, German *Staatsexamen*) or other comparable qualifications,
- two years of appropriate professional experience (which should be completed after studies),
- the possibility of mediation practice at the time of postgraduate studies in this field.

An admission to the described postgraduate studies and possible exceptions to these rules are determined by each trainee institute, which is subject to liability to BAFM. The education of mediator takes at least two hundred (200) training hours. They are split between:

- seminars lasting in total at least one hundred and forty (140) hours, of which one hundred and twenty (120) hours are devoted to basic mediation information (the basic principles of this process which are set, taking into account the current guidelines of authorized entity in this regard),
- participation in conducted supervision (career counseling activities), at least thirty (30) hours of training,
- a further thirty (30) hours of choice between seminar, supervision⁴⁴ or covision⁴⁵, wherein the last two forms should not exceed twenty (20) hours⁴⁶.

⁴³ BAFM guidelines: Mähler, Mähler, supra note 39, pp. 132-134.

An admission to the final examination after completing postgraduate studies of mediation is conditioned by the knowledge and recognition of BAFM guidelines on mediation in family matters⁴⁷. After the completion of studies in the trainee institute acknowledged by BAFM⁴⁸ their participants can apply for inclusion on the list of BAFM members, which will give them the right to be classified as qualified family mediators⁴⁹.

Equally high requirements are set for the candidates for family mediators in Canada. They are required to go through one hundred and eighty (180) hours of training, practice, passing four (4) hour exam and successfully leading mediation with the participation of two members of Family Mediation Canada⁵⁰. What characterizes this training for mediators is that the training for family mediators is the most extensive and comprehensive. France is another example of extended requirements for accredited mediators. The training for family mediators takes four hundred and ninety (490) hours of theory (including 315 hours of mediation techniques, 63 hours of law, 63 hours of psychology, 35 hours of sociology, 14 hours of preparation of mediation agreements' drafts), and seventy (70) hours of mediation practice⁵¹. After concluding the course and practice, a candidate becomes a certified state mediator in family matters (French *Diplome d'Etat de Mediateur Familial*)⁵². In other countries we can also find the possibility of choosing between basic or extended training. For example, in the Netherlands the basic training lasts from six (6) to ten (10) days and costs from two thousand five hundred to four thousand six hundred (2500-4600) euros, whereas the extended training lasts from fourteen (14) to twenty one (21) days and the estimated cost

⁴⁴ The supervision (career counseling) can take the group or individual form. Work in groups is mainly based on exchange of experience and study of literature; *ibidem*, p. 134.

⁴⁵ The covision is based on models which were earlier presented during seminars; *ibidem*, p. 134.

⁴⁶ *Ibidem*, pp. 134-135.

⁴⁷ More about conducting the exams and their form see: *ibidem*, pp. 135-136.

⁴⁸ The list of these institutes is presented in: *ibidem*, pp. 137-138.

⁴⁹ *Ibidem*, p. 132.

⁵⁰ Welsh, *supra* note 9, p. 497.

⁵¹ Bialecki, *supra* note 35, p. 82 and further references.

⁵² *Ibidem*, p. 82.

is between four thousand five hundred (4500) and six thousand five hundred (6500) euros⁵³.

The final decision about the temporal and material boundaries of training, unless it was imposed by the legislator, should belong to the entity organizing training, i.e. the organization issuing the certificate. It seems that the obligatory elements of training should include didactic classes as well as practical classes which will allow the verification of the skills of candidates for the mediators. Among them the stimulation of mediation proceedings plays the biggest role⁵⁴. Organizing the training sometimes can be entrusted to external entities (e.g. universities for postgraduate studies) with the possibility of obtaining a certificate in a related mediation center for all participants⁵⁵. For example, participants in the postgraduate mediation studies at the John Paul II Catholic University in Lublin in Poland are guaranteed a certificate from the project partner – The Polish Centre of Mediation (Polish *Polskie Centrum Mediacji*, PCM) in Warsaw⁵⁶. On the other hand, the temporal boundaries of the further training of mediators (French *la formation continue de médiateurs*) are not so unified. The training can take e.g. more or less than 40 hours. The purpose of the additional training is: expanding the skills and knowledge acquired during basic training or specialization in the resolution of particular types of disputes. In some countries, there are also authorities appointed to supervise mediation training. For example, in Belgium, mediation trainings are supervised by the Federal Mediation Commission⁵⁷. It is also worth remembering that beyond basic training, there is also the opportunity to participate in specialized training, e.g. in family matters or on transformative mediation⁵⁸.

⁵³ Ibidem, pp. 81-82.

⁵⁴ The issue of stimulation is widely discussed by Jaksa and Kaszczyszyn, *supra* note 25, p. 273.

⁵⁵ More about this studies is available online: http://www.kul.pl/studia-podyplomowe-w-zakresie-mediacji-i-negocjacji-prawniczych,art_26440.html [last accessed: 22.09.2014].

⁵⁶ The PCM set also substantive requirements for attending training-coaching group and receiving the PCM coach title. See the PCM resolution ZG PCM 1/10/2008; Grudziecka, *supra* note 27, p. 260.

⁵⁷ See Morek, *supra* note 15, p. 251 and further references.

⁵⁸ Welsh, *supra* note 9, p. 496.

Certification procedure during which the authority verifies the skills and knowledge of a candidate for the position of mediator also can proceed in various ways. For example, the verification procedure for family mediators in Canada⁵⁹ run by Family Mediation Canada (FMC) begins with filling out the Certification Application Form⁶⁰ and presenting a Letter of Reference, including submitting a self-assessment of personal profile, a supervisor's report and certificate of attendance at training (a minimum of 80 hours of basic conflict resolution and mediation training, and at least an additional 100 hours of further education and training in specific areas of family issues)⁶¹. Later, after the acceptance of the application and the payment by the candidate of the fees for certification, the candidate is sent the Certification Candidate's Manual, in which further steps in the procedure are detailed. At this point, the candidate can take part in voluntary workshops held by FMC. Thereafter, the mediator is obliged to provide a videotape. This videotape is approximately an hour long role-play assessment along with a skills-assessment⁶². Furthermore, the role-play video and personal skills assessment of the video are evaluated by two independent members of the verification committee for compliance with the criteria laid down by the organization. To gain certification, a candidate needs to receive at least 60% of points in total from both members of the committee including at least 60% in these categories: dealing with power imbalances and the effectiveness of the mediation conducted. Afterwards, the verifiers meet together to consult and compare given ratings. The final mark is sent to candidates on paper. At the end candidates have to pass a written examination covering knowledge of: conflict resolution and mediation theory, culture, ethical dilemmas, effects of separation and divorce on family dynamics, spousal violence and abuse, child support guidelines, documenting the agreement, law, family assets and debts, income tax, business

⁵⁹ This procedure is widely described by English, Neilson, *supra* note 8, pp. 499-508.

⁶⁰ An Application Form is posted and can be downloaded from webpage: <http://www.fmc.ca/pdf/CertificationApplicationForm.pdf> [last accessed: 10.08.2014].

⁶¹ Detailed requirements can be found on the FMC webpage: <http://www.fmc.ca/index.php?page=18> [last accessed: 10.08.2014].

⁶² This role-plays deal with very emotional and complicated family mediations. Most of the submitted videos are simulations but it is also possible to provide a video from a real mediation process; English, Neilson, *supra* note 8, p. 500.

and partnership property, trusts and estates⁶³. Passing all these stages positively results in receiving the FMC certificate. It should also be noted that mediators are required to attend continuing hours of training in order to maintain certification status⁶⁴. Canadian experience shows that the certification practice for family mediators is beneficial and is positively rated⁶⁵.

In Poland even in order to lead the court-appointed mediations it is not compulsory to have a mediator's certificate⁶⁶, although in an explanation to the Decree of the Ministry of Justice no. 55/08/DNWO from 1 August 2005 regarding the appointment of the Social Council for the Alternative Conflict and Dispute Resolution (Polish *Zarządzenie Ministra Sprawiedliwości nr 55/08/DNWO z dnia 1.08.2005 r. w sprawie powołania Społecznej Rady ds. Alternatywnych Metod Rozwiązywania Konfliktów i Sporów przy Ministrze Sprawiedliwości*) it was argued that „persons entrusted with the conduct of court-appointed Alternative Dispute Resolution have to present each time proof of qualifications, training, or relevant experience to the court, or present accreditation accepted by authority”. This means that initially it was assumed that court mediations will be conducted only by certified or accredited mediators⁶⁷. At the same time, it does not mean that in our country there are no private organizations issuing certificates for mediators. A certification process is, for example, organized by the Polish Centre for Mediation. According to its Code of Mediator's Ethics (Polish *Kodeks Etyki Mediatora*) all mediators before conducting mediation should go through initial training and continue additional training in later practice (Article 8 of Code). The Centre applies also clear rules about the requirements for institutions organizing mediation training⁶⁸.

⁶³ For details see Certification Study Guide available online:

<http://www.fmc.ca/pdf/CertificationStudyGuide.pdf> [last accessed: 10.08.2014].

⁶⁴ See: <http://www.fmc.ca/index.php?page=18> [last accessed: 10.08.2014].

⁶⁵ Milne, Folberg, Salem, *supra* note 2, p. 18.

⁶⁶ Some authors consider this as a weakness of Polish regulation, see e.g. Pieckowski, *supra* note 7, p. 51.

⁶⁷ The council even passed on 29.10.2007 the Standards of mediators' training. The content of standards was published in: Mazowiecka (ed.), *supra* note 15, pp. 502-506.

⁶⁸ The conditions are specifically presented by Grudziecka and Książek, *supra* note 26, pp. 325-326.

Some authors also present the idea of revising mediators' certification procedures⁶⁹. It is pointed out that certification procedures should include not only persons who were educated in that subject but also persons who, without this education (mostly mediators' course or training), have competence to mediate resulting from their previous work experience. In other words, it is postulated that it is possible to become a certified mediator without meeting the training requirements. It seems that this solution has its advantages and disadvantages. On the one hand, it extends the number of people involved in conducting mediation. On the other hand, it causes the absence of any control over the skills of individual mediators which can lead to many misuses, which are specifically pointed out e.g. by M. Grudziecka⁷⁰.

Summarizing, mediators *ad hoc* should have the opportunity, but not the obligation, to apply for a certificate. It seems that the arbitrarily imposed requirement of gaining a certificate by all mediators would lead to the total professionalization of the profession and would lead to the withdrawal of many volunteers, who can in their free time effectively assist the parties in resolving disputes. At the same time all mediators, including mediators *ad hoc*, who often provide their services free of charge, should be able to obtain a certificate if that is their wish⁷¹. However, the introduction of the obligation to obtain a certificate by permanent mediators is needed⁷². Along with setting a minimal level of education and training of mediators⁷³, this could help to increase confidence in this form of settlement of disputes. It is incomprehensible why the legislator decided to apply high requirements to mediators

⁶⁹ E.g. J. Podgórecki indicating that it is supported by the actions of the European Commission introducing personal evidence of competence, *Psychologiczne atrybucje komunikacji społecznej w negocjacjach i mediacjach* [Psychological Attributions of Social Communication in Negotiations and Mediations], [in:] S.L. Stadniczeńko (ed.), *Prawno-psychologiczne uwarunkowania mediacji negocjacji* [Legal and Psychological Determinants of Mediation and Negotiation], Opole: Uniwersytet Opolski 2006, p. 53.

⁷⁰ Grudziecka, supra note 27, p. 250.

⁷¹ This position is also accepted by Gmurzyńska, supra note 3, p. 71.

⁷² It should be also remembered that even in the case of court-appointed mediation, the parties can choose another mediator.

⁷³ It seems that at the beginning at least the general requirements for mediators could be introduced. Ultimately, however, it is impossible to avoid specialization of mediators, especially when it comes to family mediation.

in other than civil matters⁷⁴, whereas in civil cases, where the development of mediation is the greatest, it was left unregulated. It should be finally noted that the possession of a certificate by the mediator is sometimes the only information about the mediator known to courts appointing parties to mediation and therefore the only way they are able to choose a properly prepared mediator⁷⁵. It also should be appreciated that organizations keeping the list of perpetual mediators before including mediators on their lists require the presentation of a mediator's certificate. It seems that if this practice is slowly adopted in our country, the certification of mediators could be left to such entities.

⁷⁴ Grudziecka claims that this criteria were set too generally; *idem*, *supra* note 27, p. 251.

⁷⁵ The issue of appointment by court mediators after mediator's training is noted by Jaksa, Kaszczyszyn, *supra* note 25, pp. 271-272.

