

*International Conference "Towards Protection of Posted
Workers," Gdańsk 10/20/2017*

The Role of Mediation in Cross-Boarder Labor Disputes

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Potrzebujesz porady mediatora?

Nie wiesz, czym jest mediacja?

Sąd Okręgowy w Gdańsku
zaprasza do skorzystania z **bezpłatnych porad**
udzielanych przez **doświadczonych mediatorów!**

Tydzień Mediacji 2017

16-20 X 2017

ul. Nowe Ogrody 30/34
pokój 20 (parter)

16 X (poniedziałek)

9:00-12:00 - mediator PCM o/Trójmiasto

12:00-15:30 - Bartosz Poćwiardowski (Centrum Zgody -
Mediacje, Porady Prawne)

17 X (wtorek)

9:00-11:30 - Urszula Badetek-Szabelka

18 X (środa)

8:30-13:00 - Joanna Radko-Mozoluk (PRO PACTUM Mediacje)

19 X (czwartek)

8:00-13:00 - Adam Zbrzeski

20 X (piątek)

8:30-10:30 - Dorota Majewicz

Aktualny harmonogram dyżurów oraz informacje
nt. innych wydarzeń **Tygodnia Mediacji 2017**
w Sądzie Okręgowym w Gdańsku oraz innych sądach
okręgu gdańskiego znajdą Państwo na stronie:

<http://www.gdansk.so.gov.pl/tydzien-mediacji-2017>

ul. 3 Maja 9A

bud. 'E', pokój E.0.10 (parter)

16 X (poniedziałek)

10:00-12:00 - Elżbieta Gończ (Planowanie Rozwoju)

17 X (wtorek)

10:00-11:30 - Magda Bellwon (Conseo)

11:30-14:00 - Magdalena Grabarczyk-Bródka (Gdańskie Centrum
Mediacji przy Fundacji Inicjatyw Społecznie Odpowiedzianych)

18 X (środa)

9:00-12:00 - Aneta Politowska (Gdańskie Centrum Mediacji
przy Fundacji Inicjatyw Społecznie Odpowiedzianych)

12:00-14:00 - Małgorzata Laskowska

20 X (piątek)

9:00-12:00 - mediator PCM o/Trójmiasto

12:00-14:00 - Teresa Jarkiewicz

UWAGA:

Terminy oraz godziny dyżurów mogą ulegać zmianie.



SUUM CUIQUE

Mediation

- ❖ Mediation does not produce a judgment but seeks a voluntary solution which is acceptable to all the parties involved in a dispute
- ❖ Recent reviews in the law (The Civil Proceedings Code, January 1, 2016) have given space to more autonomous mechanism for conflict resolution (informative meetings with mediators in regional courts before the procedure of hearings starts)

Mediation

- ❖ The introduction of ADR program may encourage more employees to complain; however, we can consider that to be one of the benefits, provided it allows for the resolution of complaints at an early stage, i.e., in the process of mediation
- ❖ Submitting the dispute to the judiciary does not necessarily mean that the mediation has ended (Vilches Such et al., 2016)—court-ordered mediation process

- ❖ However workplace mediation is known and used in unionized workplaces, it does not undermine its contribution a more justice system or user satisfaction. Its usefulness for conflicts in individual employment setting has been emphasized (Vilches Such 2016)
- ❖ The tendency toward internationalization of communal strife (Midlarsky 1992) has become an issue while discriminating between internal and external conflict
- ❖ As a result, it is increasingly difficult to differentiate between domestic and international mediation (Rupesinghe 1992)

The need for qualified mediators in (international) workplace disputes

- ❖ a number of mediations related to workplace disputes has risen from 33 in year 2006 to 1409 in 2016 (court-induced mediations only), with 2 vs. 23 mediations in extrajudicial procedures respectively

<https://isws.ms.gov.pl/pl/baza-statystyczna/opracowania-wieloletnie/>

Types of workplace mediation systems

- ❖ A comparative report for EC (Valdés, 2003):
- ❖ courts
- ❖ administrative authorities related to labor ministries (i.e. labor inspectors)
- ❖ autonomous mechanisms that involve the participation and/or management by social partners

Factors that contribute to successful mediation results

Key variables:

- ❖ 1) the dispute itself;
- ❖ 2) the contending parties and their relationships;
- ❖ 3) **the mediator;**
- ❖ 4) the international context (Frei 1976, Raymond & Kegley 1985, Bercovitch 1992, Kleiboer 2006)

Mediation preparation

- ❖ communication skills,
- ❖ awareness of psychological impediments to settlement
- ❖ avoiding chaos,
- ❖ knowledge of various languages in cross-border mediation and / or international disputes,
- ❖ understanding labor legislation
- ❖ familiarity with European directives

Current issues to address

- ❖ contact person at the Ministry of Justice (similarly to a relevant contact with regard to cross-border mediation in family law disputes (<https://bip.ms.gov.pl/pl/ministerstwo/struktura-organizacyjna/departament-wspolpracy-miedzynarodowej-i-praw-czlowieka/>))
- ❖ Polish cross-boarder mediation system pertains to family law issues exclusively: <https://ms.gov.pl/pl/dzialalnosc/mediacje/mediacja-transgraniczna/>
- ❖ a list of qualified mediators at Contact Points for posted workers (similarly to the list of court-appointed mediators)

Current issues to address

- ❖ a chance for Faculty of Languages, Faculty of Law and Administration, and its students—an opportunity for expansion of knowledge and experience by establishing a cooperation within a university:
 - mediation centers involving students of languages and law students (student research groups, student legal clinic:
<http://www.supp.ug.edu.pl>)

Thank you

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