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An Alternative Resolution of International Disputes: A Review of the Polish Approach

Abstract

In the age of globalisation, alternative forms of dispute resolution (ADR) are gaining new importance. In Poland, an increasing number of mediations and arbitrations in international (cross-border) cases are being observed. However, the number and importance of international ADR in Poland is much lower than in other European countries.

Polish advocates and legal advisers, experienced in conducting international arbitration and mediation, explain the Polish specificity, genesis, and perspectives of ADR in international disputes. The comparison of lawyers' experiences with the collected data thoroughly describes the state of out-of-court forms of dispute resolution in these types of situations.

The study, based on interviews with Polish jurists, statistical data analysis, and an analysis of nonreactive materials, demonstrates the far-reaching deficiencies and problems of the Polish system of alternative dispute resolution in transnational cases.

Keywords: Alternative Dispute Resolution, ADR, Arbitration, Mediation, International Law, Sociology of Law, Lawyers

Introduction

Alternative forms of dispute resolution (ADR) are increasingly used to effectively resolve conflicts. Among lawyers, these alternative forms are also growing in popularity, and more and more conflicted parties are trying to solve their problems away from the courtroom. Negotiation, mediation, and arbitration are now an integral part of dispute resolution throughout Europe. In large commercial disputes especially, ADR is used frequently and effectively. Most developed western European

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companies negotiate or participate in mediation and arbitration before entering into litigation. In some countries, such as the Netherlands, it is estimated that more than 90% of business disputes are resolved amicably (Nordic Council of Ministers, 2002, pp. 27–49; Report Regulation, 2019, pp. 20–23).

In the age of globalisation, informal ways of resolving disputes are particularly rising in value. With increasing international trade and population migration, the number of cross-border disputes, both business and consumer, is growing. In the case of consumers, the numbers and relevance of disputes in family and cross-border consumer matters are particularly increasing (Hodges, 2012, pp. 195–197; Hodges et al., 2012; Lipiec, 2022, pp. 15–31). When a case involves individuals and companies operating in different countries, living in different jurisdictions, and speaking different languages, it is extremely difficult to resolve conflicts in a traditional, judicial manner. Choosing a single body to resolve a dispute between participants from various parts of the world can be a daunting task. Furthermore, in the classic method of conflict resolution, a dispute involves lawyers, judges, and prosecutors who are attached to a particular country, legal system, and culture, and are not interested in operating in various legal spaces. Additional difficulties in the classical judicial resolution of conflicts are procedural issues such as court jurisdiction, summonses for hearings, and service of correspondence. Therefore, a judicial process that involves many international factors becomes complex and lengthy. Thus, in relatively small cases of an international (cross-border) nature, there are no court proceedings. Oftentimes, parties prefer to abandon a case rather than to undertake the expense and difficulty of conducting complicated procedures. ADR methods, however, can be particularly helpful in these types of cases (2nd Alternative Dispute Resolution (ADR) Assembly 2021; Gaultier, 2013, pp. 42–56).

The popularity of ADR in international relations varies by country, legal environment, and by type of case. In Poland, negotiation, mediation, and arbitration are widely known among advocates, legal advisers (in Poland, they are also called attorneys-at-law), and judges. They are also becoming increasingly popular among large companies. There is a broad community of mediators and arbitrators. There are also numerous specialised institutions in Poland that conduct arbitration, including international arbitration. Individuals, however, are completely unfamiliar with these forms of dispute resolution and, as a consequence, avoid using them. Despite the existence of satisfactory legal conditions for conducting ADR and a fairly common knowledge of ADR among professionals in Poland, in practice, out-of-court forms of conflict resolution are not used.

Even in family matters, where mediation is legally preferred, the number of cases referred to mediation is very low. Especially in the area of conflict resolution with international elements, mediation in Poland is a niche practice. In cross-border cases of individuals, ADR is practically unused, and, in business disputes, it remains a curiosity in Poland (Biel, Jopek-Bosiacka, 2016, pp. 149–161; Gmurzyńska, Morek, 2012; Rudolf et al., 2016, pp. 12–44).

Polish advocates and legal advisers are the professional group that has a particularly good perspective on the use of ADR in practice in Poland. Therefore, the authors asked Polish jurists to talk about the practical use of ADR in Poland in cases with foreign elements. The experts were asked whether foreigners staying in Poland, foreign companies in Poland, and Poles working abroad participate in forms of alternative conflict resolution or not. Furthermore, the authors asked Polish lawyers to indicate how mediation, arbitration, and negotiation are conducted with foreign participation. In addition, the issue of the actual functioning of Polish mediators and arbitrators in cases involving foreigners or foreign companies and the activity of non-Polish forms of mediation or arbitration involving Poles was raised.

Preliminary discussions with Polish jurists allowed for the formulation of the main hypothesis: The use of alternative dispute resolution methods in international relations is rare in Poland, and its number and relevance are practically not increasing. It was also noted that ADR with international elements other than commercial does not occur in Poland. Furthermore, the methods of out-of-court dispute resolution in cross-border relations indicated in Polish and EU legal acts concerning family and consumer cases do not really function in Poland. Finally, disputants do not have the knowledge nor willingness to participate in arbitration-mediation procedures in cross-border cases despite their attorneys or judges' knowledge of ADR procedures.

The main objective of the study is to explain the mechanisms, reasons, and effects of ADR methods in cross-border, international relations, and with international elements (explication objective). The implementation objective of making proposals to remedy the lack of use of ADR to resolve cross-border disputes also remains important. The descriptive objectives concerning mediation or arbitration remain less relevant here.

Research Methods

The survey results are part of a larger study of the Polish justice system and the provision of legal services by Polish lawyers (Lipiec, 2020). The

survey was conducted between 7th October 2017 and 22nd January 2019, and then completed between November 2020 and March 2021.

The entire study was based on a variety of quantitative and qualitative research methods. The methodological core was based on in-depth, structured interviews with representatives of bar associations from all over Poland. In addition, the results obtained were checked, supplemented, and verified by means of non-reactive material research, the primary method of which was website-content analysis and other statistical materials. The legal application and acts of the law were analysed within the functional method of analysis (Babbie, 2008, pp. 342–360; Frankfort-Nachmias, Nachmias, 2001; Kędzierski, 2018, pp. 34–46).

The presented results of the study on alternative dispute resolution in international and transnational matters were obtained mainly through the method of structured, in-depth interviews (SSI). Interviews were conducted with 43 members of the bar associations' councils of advocates and legal advisers' bar associations from all over Poland (*okręgowa rada adwokacka*, ORA; *okręgowa izba radców prawnych*, OIRP). The distribution of the interviewees also covered the entire country. A council was represented by an interviewee. The interviews were conducted in person, usually at the headquarters of the bar councils; they were recorded, and subsequently transcribed, coded, categorised, and translated into English. Due to the uniformity of the legal adviser profession and the interview advocate profession, the analysis was done jointly, since both professions are treated identically in the report. The Atlas.ti programme was used to work with the research material. The analysis of the interviews focused on relevance. The conducted research has a strictly qualitative character (ATLAS.ti, 2021; Horton et al., 2004; Nicpoń, Marzęcki, 2010, pp. 246–251; Przybyłowska, 1978, pp. 62–64).

Lawyers are a professional group of people who enforce the law in practice. They are, so to speak, “immersed” in the law, and their task is to apply it. Simultaneously, they operate in a self-contained, autonomous socio-legal system. Lawyers, legal norms, legal regulations, and the judiciary, as a self-contained and independent system, however, constantly interact with other social systems. In this way, the independent, autopoietic legal system continuously integrates with other systems. Lawyers, meanwhile, are the ideal link between the legal system and the outside world and are an ideal example of Eugen Ehrlich's relationship between living law and Roscoe Pound's law in action along with continuous interaction between systems. They exemplify the autopoietic system and the application in Niklas Luhmann terms. Specifically, they are a combination of the law in action and the autopoieticity of the system. Therefore, they are a link

from the idea of the independence, and even the separation, of the legal system from other social subsystems. This idea formed the theoretical background of this paper's theoretical hypothesis (Głazewski, 2009, pp. 39–55; Hertogh, 2009).

The study belongs to the paradigm of the sociology of law and legal anthropology. The general and detailed assumptions of the study were based on the achievements of grounded theory as interpreted by Kathy Charmaz. What is important here is the conclusion that the content of the investigation should be grounded in its course, and the researcher must listen to the testimony of the interviewees in its entirety and not impose his or her opinions and findings. The main guide for conducting the interviews was Steiner Kvale's methodological recommendations, especially with regard to the conducting of qualitative interviews (Abel, 1985; Charmaz, 2013; Kvale, 2012; Podgórecki, Kurczewski, 1971).

The research group consisted of 43 people, comprising 22 legal advisers, and 21 advocates. In most cases (28 people), they were heads of bar councils (deans). The reasons for choosing this particular research group included the particular experience levels of the council members, a broad view of the legal environment in each region, high levels of trust from other lawyers generally speaking, and the above-average professional experience of the usually older council members.

The population of Polish advocates and legal advisers is male dominated, which is reflected in the survey sample (59% men). 52% of the survey participants were between 30 and 50 years old, while 40% were more than 51 years old. The research sample is over-represented by senior legal professionals with well-established careers because they have a broad overview of the substantive situation. It is also interesting that 29% of the survey participants speak Russian at an advanced level, and 62% speak English. The research group is dominated by graduates of the University of Warsaw, Jagiellonian University, and the University of Silesia (79% in total). Graduates of non-Polish universities are not observed.

Research Results

In general, the development of ADR has long been prominent. As the phenomenon of globalisation increases, the number of international (cross-border) cases resolved by negotiation, mediation, and arbitration increases similarly. Indeed, we are witnesses to the institutional development of ADR. According to *International Arbitration Information* by Aceris Law LLC, globally, we currently have more than 200 permanent mediation or arbitration panels working internationally (International Arbitration

Resources, 2020). The number of smaller, permanent arbitration and mediation forums is more than ten times larger, while the number of ad hoc initiatives is vast and somewhat difficult to determine. However, despite the existence of many permanent and temporary out-of-court dispute resolution initiatives, most of them provide a commercial service. In spite of this, mediation and arbitration for individuals are not very popular (De Boisseson, 1999, pp. 349–355; Stürner et al., 2015).

Parallel to the development of organisations, a legal structure of international and cross-border ADR is developing. The expansion of legal institutions for mediation and arbitration has an intrastate, international, and corporate character. All three of these regimes complement and interpenetrate each other. Particularly noteworthy here are the EU regulations that facilitate the conduct of cross-border mediation and arbitration in EU countries in civil and commercial matters (especially the 2008 Directive and the 2013 Directive) (Towards a European Horizontal Framework for Collective Redress, 2013; Directive 2008/52/EC, 2008; Regulation (EU) No 524/2013, 2013). The recommendations of the Council of Europe on family mediation also play an important role in the conduct of cross-border family mediation (Mediation, 2021). Furthermore, national Polish regulations in each field of law are progressively facilitating the conduct of international mediation and the recognition of arbitration court judgements (Ministerstwo Sprawiedliwości, 2021; Mediacja w państwach UE, 2021; Van Dyck et al., 2011, pp. 52–85; Zemke-Górecka et al., 2021, pp. 27–51).

Meanwhile, the number of active mediators is growing every year. This phenomenon concerns all European countries, although it is particularly visible in Poland. There are currently 26 mediator associations in Poland, but the number of all active mediators is unknown. According to the Ministry of Justice, the number of mediations conducted on the order of the courts, or mediation agreements approved by the Polish courts increases annually by 10% (Mediacja w państwach UE, 2021). The number of out-of-court mediations is unknown, but there is a belief that it is increasing mainly in the area of family mediations. A similar situation exists in the case of arbitration conducted in Poland. Here, it is estimated that the number of procedures is growing year-over-year by 20%. However, this form of dispute resolution is almost entirely related to the resolution of business and commercial problems. No mediation or arbitration statistics indicate the exact number of cases involving international elements, although the numbers of such cases are reported to be increasing (Gójska, 2013, pp. 100–126; Nowaczyk, 2009, pp. 145–149; Money.pl, 2020).

Polish advocates and legal advisers are, potentially, well prepared to participate in ADR. Currently, academic education and legal applications include content on arbitration mediation (Naczelna Rada Adwokacka, 2019; Krajowa Izba Radców Prawnych, 2018). Therefore, some jurists also act as mediators and arbitrators. The mediation centres of the Polish Bar Council [Naczelna Rada Adwokacka, (NRA)] and the National Chamber of Legal Advisers [Krajowa Izba Radców Prawnych, (KIRP)] are among the most numerous in the country (CM KIRP, 2021; CM NRA, 2021). Most Polish jurists are familiar with ADR procedures and are basically familiar with information on mediation, negotiation, and arbitration. However, it is a fact that for most Polish legal professionals, information on out-of-court settlement methods is purely theoretical and rather basic. Relatively few of those professionals are active mediators and arbitrators. Only 31 out of 750 advocates and legal advisers operating in the mediation centres of the NRA and the KIRP declare themselves mediators or arbitrators capable of handling international cases, and only 165 speak at least one foreign language. For most Polish legal professionals, ADR is still a curiosity. Only a minority actively participate in these procedures as party representatives, arbitrators, or mediators (Gotshal, 2014).

Polish lawyers highlight the fact that, despite the increasing participation of legal professionals in ADR and the effective changes in the ADR market and legal developments, mediation, arbitration, and negotiation remain niche topics. Especially in a cross-border (international cases) sense, these methods are vaguely used in the practice of most Polish jurists. In fact, except for a small group of international legal specialists, Poles do not use supranational ADR. This applies both to private mediation and negotiation, as well as to mediation commissioned by the courts. The theoretical knowledge of lawyers, and an accessible legal and institutional environment do not translate into an actual increase in the number of mediations and arbitrations in international cases. Only in disputes between large multinational corporations do occasional opportunities for negotiation or arbitration arise. In some types of disputes or companies, they are the standard. However, in the case of smaller Polish companies and individuals, lawyers do not really see much need or inclination for mediation or negotiation in international relations. If such cases do appear, they are not particularly noticeable (Bogucki, 2018, pp. 20–25).

However, despite the relative increase in the number of mediation, arbitration, and negotiation cases in international relations, it is still less popular in Poland than in western countries, and this is especially true with regard to the United States. Furthermore, the high level of competence of lawyers and the more numerous mediation and arbitration initiatives

do not translate into the number and importance of out-of-court forms of dispute resolution. However, Polish jurists and their clients do not trust conciliatory forms of agreement. In Poland, a brutal court decision is more important than a mutually beneficial agreement, hence the still low popularity of ADR and the increasing burden of courts with often trivial problems. This situation is characteristic of Poland and Eastern European countries. In other regions of the world, the popularity of mediation and arbitration is growing rapidly and this fact is reflected in the number and importance of such cases (Alexander et al., 2017; Townsley, 2016). An experienced legal adviser and arbitrator from Gdansk, Poland, notes the following.

“I remember even 10 or 15 years ago when I was interested in matters of out-of-court dispute resolution. In fact, I teach trainee legal advisers about these matters. When we look at other countries, we can really notice that we are at the tail end of the world. If you look at the statistics, it turns out that there are countries where only 10% (or even less) of cases end up in court. For example, in the Netherlands, and also in the United States, it is only 4% of cases. Everything is resolved out of court. This sometimes occurs through lengthy negotiations, but there are also agreements in huge cases. Here’s an example from a Twinning Meeting, where we had a seminar on mediation. The English came to us, they played the mediation meeting very beautifully and showed us how to solve the case. But the problem in Poland is that everyone, including judges, thinks that lawyers are reluctant to mediate, that they are bothered by mediation. This is the general perception of the role of attorneys in mediation. And then you, as a result, are a little reluctant. You do not want to encourage the parties to mediate or participate in arbitration procedures. Mediation and arbitration can also be a bit complicated, because you need to have a lot of soft skills, and in the courtroom, as we know, there is usually not much going on. I also agree that mediation is very valuable and important. Unfortunately, ADR does not work in Poland”.

Polish jurists also note that at the turn of the twentieth century, there was great enthusiasm in Poland for international arbitration, negotiation, and mediation. Perhaps this was the result of a lack of confidence in the Polish judiciary along with the intensive penetration of the then-fledgling Polish economy by American companies. At that time, the first mayoral arbitration initiatives, such as the Arbitration Court at the Polish Chamber of Commerce [Sąd Arbitrażowy przy Krajowej Izbie Gospodarczej (KIG)] were developed. However, the first decades of the 21st century witnessed a regression of international ADR in Poland, similarly related to the lack of a legal environment. Only recently have out-of-court forms of dispute

resolution gained importance. A highly experienced legal adviser from Katowice describes this situation thusly:

“In the second half of the 1990s, it seemed that arbitration was a panacea for everything, but it turned out (especially for those foreign entities that were dissatisfied) that it took a very long time, and then you still had to have the arbitral award approved by the court, which made the proceedings even longer. Therefore, there was a period of boom, when we had a lot of these arbitration cases involving domestic and foreign entities. The lengthening of the proceedings meant that there were fewer and fewer of them”.

There is a small group of advocates and legal advisers in Poland and a few professional Warsaw-based mediators who are engaged almost exclusively in conducting international (cross-border) business negotiations or arbitrations. These professionals are almost solely involved with large, multinational corporations based in Warsaw. For lawyers, in general, this is still an exotic topic; very few have actually participated in such initiatives. According to the survey’s participants outside Warsaw, non-corporate lawyers may very rarely encounter only the subcontracting elements of arbitration cases or negotiations. This is usually in connection with analysing contractual provisions regarding arbitration clauses. However, these are isolated situations that do not require the participation of a lawyer in actual arbitration or negotiation. It can be assumed that in Poland there are several lawyers who have personally participated in international arbitration as a party representative or arbitrator.

Representatives of this small group of experienced professionals emphasise that they are generally not enthusiastic about participating in arbitration or mediation. ADR has not been completely adopted in Poland. Despite great interest, knowledge, and the legal environment, clients and their attorneys are still distrustful of mediation or arbitration. They complain about the Polish justice system, especially with regard to the lengthiness of proceedings and the complexity of procedures, and they prefer to participate in clearly codified and proprietary procedures rather than fancy mediation or arbitration. Therefore, few Polish jurists recommend that their clients participate in such procedures. The exceptions here are English, Japanese, or American companies, which, as a rule, demand negotiations and other forms of dispute resolution. This is due to their legal tradition.

However, if a client wishes that a lawyer pursues an out-of-court dispute resolution, Polish professionals generally do not recommend mediation or arbitration in Poland. Jurists believe that in Poland there is still a strong temptation to settle unfair and biased disputes. Therefore, they usually suggest settling disputes in foreign arbitrations in Vienna, Stockholm,

Paris or Switzerland and, even in some cases, Moscow. In Poland, only the Arbitration Court of the Polish Chamber of Commerce (KIG) is regarded to be up to the highest global standards. Two legal advisers based in Szczecin and Gdansk, who participate in mediations and arbitrations as attorneys for parties, mediators, and arbitrators, indicate that:

“These are provisions for large contracts. In the case of smaller matters, no one thinks about arbitration. If I give my opinion on a contract and there is a clause in it for international arbitration, I immediately give a negative opinion on such a provision because it consents to something uncertain, and we do not know what rules of procedure it is based on. As a matter of principle, I do not agree with arbitration courts at all, even in the Polish legal system, because if there is mediation or arbitration, I do not really believe in it. But this is my conviction as an attorney. I prefer the worst judgement but in a common court, because the rules of procedure are well established there, whereas with arbitration, many different situations occur”.

Polish lawyers involved in mediation and arbitration in international matters highly value the Polish Arbitration Court at the Polish Chamber of Commerce. Many of the interviewees are or have previously been arbitrators there. According to most of them, it is the only highly specialised arbitration court in Poland that is competent to handle any dispute, including those of a cross-border, international nature. Polish jurists trust the tribunal and its arbitrators. They point to the organisation as one which meets all national and international arbitration standards, as do similar institutions in Paris, Stockholm, and Lausanne (International Arbitration Resources, 2020). The specialists who make up the arbitrator team are the best in Poland and are also experts in international matters. As indicated by the court, the team includes 200 arbitrators. Significantly, of the 192 arbitrators registered with the court, as many as 45 have a nationality other than Polish, while all Polish arbitrators speak at least one foreign language. Ninety-six arbitrators indicate international arbitration as their specialisation. Of 160 arbitration cases conducted by the Court of Arbitration, 30 per year are international or cross-border in nature. The mediators on the court show a similar level of professionalism and international orientation (Prawo.pl, 2017; Lista arbitrów, 2021; Money.pl, 2021; Kurier365, 2019). However, a significant problem with this court and mediation platform is the concentration on large commercial arbitration and Internet-domain-related cases. Other cases, mainly consumer cases, are generally not conducted there.

Polish legal experts report that there are many international and cross-border mediation initiatives and several arbitration forums in Poland.

However, none of them have achieved such a position in international cases as the KIG (Polskie Stowarzyszenie Sądownictwa Polubownego, 2021; Instytucje arbitrażowe na świecie, 2021; Ultima Ratio, 2019). In other arbitration courts, cases with international elements appear very rarely. If they do, they are for medium-sized companies with a regional scope. The researchers emphasise that they have encountered single arbitration cases with international elements in the arbitration court of the Lewiatan Confederation (Konfederacja Lewiatan) (Sąd arbitrażowy Lewiatan, 2021). Here, the cases also relate exclusively to commercial matters. The Lewiatan Confederation does not have as much experience nor a reputation as the court at KIG, but, year by year, its importance in Polish international commercial arbitration is increasing. This is certainly influenced by the relatively large number of foreign arbitrators among the Confederation's 209 arbitrators; 30 are foreigners, and all of them speak at least one foreign language. In addition, the selected arbitrators specialise in different aspects of international commercial matters (Arbitrzy, 2021). It seems that this arbitration forum will be a kind of competition for the KIG. It is only a pity that here, arbitration is conducted solely in economic matters. A Toruń-based legal adviser describes the most important Polish arbitration courts thusly:

“Clients often ask about arbitration in Paris. In Polish courts, Lewiatan often appears, as does the National Chamber of Commerce, and the arbitration court in the Chamber. But there is no preference for this or that, and different proposals are made in this field”.

Furthermore, legal professionals emphasise that mediation-arbitration cases in the international context in other arbitral tribunals do arise. However, these cases are very rare. During the period of their long career, they have noticed single cases of a transnational nature in the Arbitration Court of Chambers and Economic Organisations of Greater Poland (Sąd Arbitrażowy Izb i Organizacji Gospodarczych Wielkopolski) and in the Arbitration Court for Domains of the Polish Chamber of Information Technology and Telecommunications. These two organisations also deal almost exclusively with commercial cases. Pomeranian lawyers emphasise that in Gdynia there is the International Arbitration Court at the Polish Chamber of Shipping (Międzynarodowy Sąd Arbitrażowy przy Krajowej Izbie Morskiej) for the maritime economy (Międzynarodowy Sąd Arbitrażowy, 2021). Its arbitrators specialise in international disputes. However, probably due to its high level of specialisation, its location in Gdynia, and its small size, it is not well known and completely unrecognised outside of Pomerania. Moreover, the scope of international

cases is limited to maritime matters. However, this arbitration court should be noted as possibly the most international in Poland. One of the arbitrators describes the functioning of the court thusly:

“There is also the International Arbitration Court of the Polish Chamber of Shipping in Gdynia. It has strictly international arbitration cases, but there are not many cases there. For example, we recently had a case between a Russian entrepreneur and a Polish entrepreneur. Russian lawyers represented the Russians. There was suspicion that the Polish arbitration court was not objective because of bias against the Russians. This is not true, but that is how it works. However, there are sometimes maritime cases from countries of the European Union. They are rare, but they do occur. The Polish, European, and non-European cases are similar. International cases are most often ad hoc arbitrations”.

However, the number and relevance of cases with international elements is unknown here. The number of mediations with international elements is also unknown. Certainly, international commercial arbitration cases arouse more interest among Polish lawyers than similar mediations.

Poles still have very limited confidence in mediation and arbitration. Even Anglo-Saxon companies that traditionally negotiate, mediate, and arbitrate extensively are wary of Polish arbitration initiatives. When contracts are drawn up between Polish and foreign companies, in which arbitration clauses are expected, provisions for Polish arbitration are rare (Gmurzyńska, 2008, pp. 30–38; Sobczak, 2017, pp. 171–174). This equally applies to the most prestigious Arbitration Court of the Polish Chamber of Commerce. Foreign entrepreneurs are much more likely to submit their disputes to arbitrators of the ICC International Court of Arbitration in Paris, the LCIA International Court of Arbitration in London, the Arbitration Institute of the Stockholm Chamber of Commerce, the Zurich Chamber of Commerce, the Vienna International Arbitral Centre, and even the ICAC International Court of Arbitration in Moscow (ICC International Chamber of Commerce, 2021; The Arbitration Institute of the Stockholm Chamber of Commerce, 2020; The International Commercial Arbitration Court, 2021; The London Court of International Arbitration (LCIA), 2021; Vienna International Arbitral Centre, 2021; Zurich Chamber of Commerce, 2020). These arbitration courts also have Polish arbitrators, albeit in very limited numbers. However, these platforms enjoy greater recognition, trust, and impartiality than Polish arbitration courts. In practice, the use of these arbitrations by contractual parties is extremely rare. Clauses for these courts usually remain dead and apply only to the most serious contracts.

Unfortunately, all proposals to submit problems to the arbitration process still concern the largest business transactions. Participation in arbitration, or particularly mediation of an international nature by individuals in non-business matters, tends to be completely absent. Attorneys from Gdańsk and Poznan note the following international arbitration issues:

“Sometimes, I am involved in the development of contracts with foreign contractors. When we negotiate a dispute-resolution clause, everyone would prefer to submit to the jurisdiction of either a Polish court, as far as Poles are concerned, or Polish arbitration. That is why a neutral one is chosen, such as in Stockholm, Vienna or Switzerland, specifically, Zurich, Bern, or Lausanne. These are the most common locations. Actually, Vienna, Stockholm, and London are the most common. It is customary that these are chambers with extensive experience, and cases are most willingly submitted to arbitration there. And besides, they seem more neutral to the parties, especially Austria and Sweden”.

“Foreign elements do appear in international arbitration. There is a certain group of arbitrators who deal with such things. For example, they are members of the Court of Arbitration at the International Chamber of Commerce in Paris. These are people who know the language very well; they are excellent lawyers. In Poland, there are also foreign elements, such as the need to conduct an arbitration case in a foreign language, as agreed by the parties. Of course, the arbitrator must know the language in which the case is being conducted. Arbitration is a court of law, so if someone wants to resolve a case amicably, they usually settle it through negotiations without arbitration. Only in the case of really big, serious cases, mainly international ones, is arbitration organised, but only when it is absolutely impossible to reach an agreement”.

All forms of negotiation, mediation, and arbitration in international matters relate to commercial matters. The interviewees had never met any individuals who had postulated or participated in ADR in the context of international affairs. Besides, for individuals, mediation or negotiation in ordinary, everyday matters is also an abstraction. Lawyers emphasise that they would rather not recommend consumers participate in mediation or proceedings before conciliation courts, although appropriate procedures and organisations do exist in Poland. According to experts, a judgement by a common court is always better than an uncertain mediation settlement or arbitration court judgement for a consumer. However, this view is slowly being devalued thanks to younger lawyers becoming more involved in out-of-court forms of dispute resolution.

Despite reservations toward ADR, those younger lawyers note that, especially in cross-border family matters, international mediation should

gain importance. Such solutions are strongly supported by the European Union (EU) and the Organization for Security and Co-operation in Europe (OSCE). There are also relevant legal regulations. Jurists emphasise that in situations where parents and children are located in different countries, it is difficult to conduct cross-border litigation. The ideal solution in such a case is international mediation in family matters which can now be conducted online or by correspondence. Attorneys specialising in family matters point out that cross-border family mediation conducted remotely may also soon develop rapidly in Poland. Examples of EU and western European solutions demonstrate great potential and need in this area (Mania, 2015, pp. 76–86; Miranda, 2014, pp. 97–125, 165–261; Zagórska, 2013, pp. 104–115).

In addition, the lawyers participating in the survey noted an increase in problems related to population migrations, cross-border shopping, and other consumer contracts in cross-border relations such as travel services. Consequently, the number of civil and cross-border disputes before the European courts is increasing. However, the problem of this classical form of conflict resolution is the far-reaching procedural difficulties linked to the cross-border nature of the process (e.g., service, summonses, and translations) and cultural differences in legal and language knowledge. Therefore, consumers are very reluctant to enter cross-border litigation. Lawyers therefore see the prospect of solving civil cross-border consumer disputes precisely in the form of ADR. A large field for the development of these forms of conflict resolution is small consumer disputes in the field of tourist services and cross-border trade. Lawyers predict that within the next five years, the market for cross-border consumer mediation and arbitration in Europe will develop so that 75% of mail order and tourism-based issues will be resolved outside of ordinary courts (Hodges et al., 2012; Van Dyck et al., 2011).

Legal professionals have noted interesting initiatives of the European Commission to resolve cross-border consumer disputes. The online dispute resolution (ODR) and SOLVIT initiatives are highly appreciated by said professionals, but are considered only the first proposals in this area. Lawyers regard them as a step in the right direction, but not an entirely sufficient one. They emphasise that they are very little-known and are not trusted by consumers in Poland. Poles still choose to refer cases to common courts or accept defeat rather than use these EU dispute resolution initiatives. Although they appreciate these solutions, the survey participants do not identify these ADR platforms as important media for their clients to resolve their conflicts with traders (Ciechomska, 2006, pp. 18–22; European Commission, 2021a, 2021b, 2021c, Functioning of the

European ODR Platform. Statistical report, 2020, pp. 1–4; Handley, 2018; Mania, 2010, pp. 15–21).

ADR initiatives in the international context do not address administrative, criminal, or labour law issues. These potential fields of out-of-court dispute resolution remain beyond the mental outlook of Polish lawyers and their clients. The fact is that even cases from these branches of law can be solved by ADR as they can in international (cross-border) cases. So far, however, such activities have not been observed in Poland. Despite the growth and deepening of mediation and arbitration initiatives, a preferential view of the primacy of court judgements over always victorious and cheaper ADR solutions still prevails in Poland. In everyday and local matters, Poles and their lawyers rarely resort to mediation or arbitration. Hence, in more complicated and less understandable international matters, these forms of conflict resolution are not gaining in popularity. It is apparent, though, that this situation is slowly changing, but it will take some time before international arbitration or mediation becomes as popular in Poland as it is in western Europe (Kocur et al., 2016, pp. 4–31; Rudolf et al., 2016, pp. 12–72).

Conclusions

Alternative ways of solving conflicts are growing in popularity each year. In some western European countries, along with Japan and the United States, mediation, arbitration, and negotiation are the main forms of communication between parties with different views. ADR is particularly developing in international business cases involving large companies. The huge number of mediators and arbitrators and mediation-arbitration institutions means that the development of this form of conflict resolution in the western world is slowly beginning to replace litigation. In areas such as family and consumer matters, these forms of procedure are developing intensively. Thanks to mediation and international arbitration, borders can blur, and cease to be barriers to conciliatory problem solving (De Boisseson, 1999, pp. 350–256; Townsley, 2016, pp. 242–249; Van Dyck et al., 2011, pp. 84–91).

In Poland, we can also observe the intensive development of out-of-court forms of conflict resolution. Commercial mediation especially is gaining importance. However, mediations in cross-border and international cases are still very rare in Poland and, in fact, for all intents and purposes, do not occur. There are several important arbitration forums in Poland, especially the Arbitration Court of the Polish Chamber of Commerce. They handle cases mainly in the field of commercial arbitration. This field of work is

developing year by year, but much more slowly than in other western-European countries. International cases appear in Polish arbitration courts, but only rarely, and usually involve very large contracts and disputes between large companies. Unfortunately, Polish entrepreneurs still have little confidence in Polish arbitrators and mediators. Therefore, they choose to refer their disputes to arbitration in Paris, Stockholm, or Switzerland rather than Warsaw. However, arbitration clauses or actual arbitrations in cross-border or international cases remain sporadic in Poland.

The research hypotheses as presented in the Introduction are fully confirmed. In Poland, the functioning of ADR in cross-border and international matters is practically non-existent. At most, they are of a marginal character. Any such mediation or arbitration concerns only business-related cases. Although Polish and EU law create the legal environment and promote the functioning of cross-border consumer or family mediation, it practically does not function in Poland. Attorneys, courts, and parties do not even know that in cross-border family or consumer disputes, they can use cross-border mediation or arbitration. The problem here is the high level of mistrust among legal professionals, the various gaps in their knowledge, and a lack of confidence in the non-state dispute resolution system. Not without significance is, additionally, the lack of proper education in Poland that promotes peaceful problem solving instead of confrontation. Furthermore, Poland's limited legal trade with foreign countries means that there is less need to resolve cross-border disputes than in highly interconnected countries.

Alternative forms of conflict resolution are much more valuable than judicial forms. Therefore, their development in Poland from both cross-border and international perspectives should be considered an important objective for the entire justice system. The change in the current situation must begin in schools; students must be taught peaceful and consensual conflict resolution. The school curriculum should be supplemented with elements of mediation and school negotiation. In the course of legal education, more emphasis should be placed on the practical training of future lawyers in ADR. Moreover, it is vital to promote mediation or arbitration among ordinary citizens and legal professionals. It is possible that, in cross-border disputes, parties in conflict should be obliged to use mediation and arbitration before going to court. This would relieve the courts of the burden of handling difficult and bureaucratic disputes with international elements (Barabas, 2018, pp. 11–29; Czyżowska, 2018, pp. 197–203; Żaczkiewicz-Zborska, 2021).

Changes to the law on international ADR are less important here, as the current law in this area is satisfactory. What is most important now

is the practical promotion and use of ADR forms in consumer, family, and other civil international matters. The legal compulsion of parties to alternative proceedings should be considered as a kind of prejudgement prior to cases being referred to ordinary proceedings. The solution to the lack of ADR in international cases is very simple. At the same time, it is extremely difficult.

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