

Regulation of Mediation in Poland in Comparison to Croatian

Introduction

Mediation is an often mentioned topic nowadays. The reason, why people might find it attractive, compared to traditional legal proceedings, is the fact, that conciliatory mediation is cheaper, less time-consuming and the parties can fulfill their needs and expectations in a more desirable way.

Poland is no exception – conciliatory mediation there is getting more commonly used as well. However in Poland there are more than one act that incorporates mediation regulations. Therefore, in this article Polish regulation should be understood as a law based on Polish Civil Code (Act of 23 April 1964 Civil Code), Polish Civil Procedure Code (Act of 6 June 1997 Polish Civil Procedure Code), Polish Criminal Procedure Code (Act of 6 June 1997 Polish Criminal Procedure Code) as well as other mentioned later.

Main purpose of this article – compare Polish solutions and *Croatian Act on Mediation* (hereinafter referred to as “Croatian Mediation Act”, “Croatian regulation”) trying to reveal the disparities and similarities between these legal systems.

Scope and purpose of laws

Polish regulation comparing it to the Croatian Mediation Act, the scope of act’s application is narrower. Polish regulation specifies on civil and criminal disputes, while in the Croatian Mediation Act, the scope of application is more diverse – it is applied in “civil, commercial, labor and other disputes about rights which parties may freely dispose”. Other provisions in both acts are similar – they both set regulations regarding settlement of disputes with international element if it suitable for the legal relationship in question.

Concerning the purpose of law, in Poland none of the acts mentioned before have specific main purpose. None of Polish Acts mentioned before have outlined the purpose of the law. However, Minister of Justice of the Republic of Poland has given the main goal of the mediation in Executive Order (Act of 20 January 2016). According to this Act, Mediation is an attempt to find a peaceful solution to the problem that would satisfy both sides, with a mediator. Therefore the main purpose is to find a compromise between the parties.

In the Croatian Mediation Act the purpose of the law is more elaborated. Despite that, it also specifies the promotion and encouragement of mediation and the awareness of the society.¹ When making a comparison it is clear, that Croatian Mediation Act gives a wider definition of the act, making it more understandable for the society.

Main definitions

There is no one legal definition of mediation in Polish law. However, based on the main goal of the mediation and opinions of the Polish jurisprudence, Mediation is an attempt to bring a mutually satisfactory solution to the conflict, through the voluntary third party negotiation. In Croatia there is a legal definition of mediation. Article 3 of the Croatian Mediation Act has a broader description – “mediation is any procedure, regardless of whether it is carried out by a court, the institution of a mediation or outside of them, in which the parties try to settle the dispute with the help of one or more mediators who help the parties reach a settlement, without the authority to impose a binding decision”.² It is also mentioned that, mediation can be carried out by any appropriate institution and that the binding decisions cannot be made, making it clear that conciliar mediation is based on good faith and fair intentions.

When talking about the institutions organizing the conciliatory mediation. Polish Civil and Criminal code make no distinction between mediation and conciliatory mediation. While Article 3 of Croatian Mediation Act gives

¹ Republic of Croatia, *Act on Mediation*, Art. 2.

² Republic of Croatia, *Act on Mediation*, Art. 3.

a very narrow notion, stating that “institutions for mediation is a legal person, a legal person or an organizational unit of a legal person”³ by leaving a lot of room for interpretations.

When it comes to term mediator, Croatian Mediation Act gives a notion as „The mediator is a person on the basis of agreement between the parties carries out a mediation process“. According to the Art. 183(2) of Polish Civil Code „mediator could be every natural person with full capacity for juridical acts (...)“. Parties can decide on the matter of the person of the mediator. If they would not come to the compromise, the judge has the power to appoint the mediator.

Mediation procedure

In Civil and Criminal Polish Procedure Mediation is understand as voluntary procedure that shall apply on the basis of a consent of parties to a dispute. However, in both procedures judge could also appoint mediation procedure even without the consent of both parties. While Article 6 of Croatian Mediation Act, states that, “to start the mediation procedure is not necessary in advance to conclude an agreement by which the parties agree to resolve future disputes through mediation”.⁴

In general regulation seems very similar, having in mind the specifics of the whole mediation process (that all is based upon the good will and consent of the parties). The Polish Civil Code could also be interpreted as allowing a one-sided conciliatory mediation proposal.

Both legal systems provide the possibility to agree upon conciliatory mediation when the dispute is already taking place, without having a prior agreement. This provides parties with more control, over the proceedings, and possibly – faster and more satisfactory results.

Art. 183(10) stand that „By directing the parties to the mediation, the court sets the duration of the mediation for up to three months. The time could be extended with a request of the parties or of the mediator“. If parties would come with a compromise and reached the settlement, the contract is binding. In Article 6 of Croatian Mediation Act it is stated, that “mediation begins by accepting proposals for mediation proceedings, except for the cases in which there is obligation for initiation of the mediation procedure it is provided or agreed otherwise”⁵. Comparison of these two provisions makes it clear, that both Croatia and Polish conciliatory mediation process in some cases is obligatory, as the first step when resolving the dispute.

When talking about the time frames to apply mediation process (when parties have already concluded that conciliatory mediation agreement), Polish regulation sets a period six times longest as the Croatian – three months. While Croatian Mediation Law sets the timeframe of 15 days. But at this point it is important to mention, that time limit, set in Polish Civil Procedure Code is applied when the court decide to send parties to the mediation– three mounts is the time that could be even extended. Time frame, provided in Croatian Mediation Act, is set for another party to accept the proposal for usage of conciliatory mediation, when parties do not have a prior agreement for alternative dispute resolution.

Appointment of mediator

In Polish Civil Procedure Code is to judge to decide about the mediator. In Croatian Mediation Act, the main role of setting the rules of the procedure of mediation is left up to the parties.⁶ In Croatia parties set the rules of the procedure, appoint the mediator, decide on the number of mediators performing in the process. The parties can also appoint third parties to make decisions needed. In Poland, the court rules lead the parties to the mediation. As a rule, the court may refer the case to mediation. It would happen either until the close of the first scheduled hearing or after the close of the meeting only on a consistent request of the parties.

³ Republic of Croatia, *Act on Mediation*, Art. 3.

⁴ Republic of Croatia, *Act on Mediation*, Art. 6.

⁵ Republic of Croatia, *Act on Mediation*, Art. 6.

⁶ Republic of Croatia, *Act on Mediation*, Art. 7.

Duties of the mediator

Both Poland and Croatian regulations require the mediator to act impartially and professionally. Art. 259(1) of Polish Civil Procedure Code give mediator professional secrecy. While in Article 8 of the Croatian Mediation Act the main emphasis is on the statement, that such information about mediator's partiality has to be provided by the party that offered the appointment of that specific mediator.⁷

The procedure of mediation

In both Acts the process of conciliatory mediation is not detailed and give parties and mediator freedom to conduct the mediation. According to the Art. 183(3a) Polish Civil Code „The Mediator mediates, using various approaches to an amicable resolution of the dispute. For example, by supporting the parties in formulating their settlement submissions, or by a consistent request of the parties. Mediator, can indicate ways to resolve a dispute that is not binding on the parties“.

Croatian Mediation Act regulates just the couple of issues, regarding the procedure of mediation, like mediator meetings with the parties and the right of the mediator to propose the settlement. The participation of the third parties, the ability to withdraw from the process or mediator's obligation to inform the parties about an unenforceable agreement is not discussed.

Conciliation Agreement

In the Article 183 (14) Polish Civil Procedure Code “If a settlement has been reached before the mediator (...) at the request of the party, court has to proceed immediately with the procedure for approval of the settlement concluded before the mediator”. The Art. 183 (15) of The Polish Civil Procedure Code held that: “The settlement concluded before the mediator, after its approval by the court, has the legal force of the settlement concluded within the court. Settlement before the mediator, which was approved by giving her a clause. Feasibility is an executive title”.

Confidentiality

Both Polish and Croatian mediation acts include the same provisions regarding confidentiality. Both acts establish the duty for mediator to keep confidential all information and data obtained during the mediation proceedings. Moreover, both acts also say that mediators shall be held liable under the law in the event of nonfeasance or misfeasance of the obligations of confidentiality.

Cross-border disputes

It is emphasized that Polish Law does not include any provisions regarding cross-border disputes (opposite to Croatian Mediation Act, which includes four articles regarding this⁸). In the Polish Civil Code generally regulates the cross-border issues (stipulates regulation of private international law) and this regulation is also applicable to conciliatory mediation.

Conclusion

It is really difficult to compare Mediation law in Poland and in Croatia, due to lack of specific Act in Polish law. In general, it can be concluded that some differences of regulation exist. The main difference. First, the level of the regulation. There are several Acts that regulates mediation and as well as in Croatian legal system conciliatory mediation sometimes is an obligatory procedure prior to legal proceedings.

Despite these few differences, it can be declared that Polish and Croatian conciliatory mediation law provides pretty much the same regulation regarding mediation. Probably, this similar regulation is determined by the

⁷ Republic of Croatia, *Act on Mediation*, Art. 8.

⁸ Republic of Croatia, *Act on Mediation*, Art. 21-24.

European Union - the European Mediation Directive⁹ was established on 21st of May, 2008. Both Poland and Croatia as a members of European Union shall follow instructions and implement the regulation. It is also expected that the effort of the European Union to promote the conciliatory mediation will positively affect both Poland and Croatia even more in the future.

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⁹ European Parliament and of the Council, *Directive on certain aspects of mediation in civil and commercial matters*, No. 2008/52/EC, 21 May 2008.