

СЕКЦІЯ 4  
МЕНЕДЖМЕНТ ОРГАНІЗАЦІЙ  
ORGANIZATIONAL MANAGEMENT  
SESSION 4

**Відсутність згоди  
на посередництво між  
компаніями та її причини**

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Дана стаття розглядає комерційне посередництво та описує його принципи: добровільність, нейтральність, безсторонність, конфіденційність та прийнятність, так як їх розуміє автор на основі свого посередницького досвіду. Тут описано процедуру непрямого, прямого та змішаного посередництва, що складається з: контакту між сторонами щодо організаційних питань, вступна/інформативна зустріч окремо з кожною стороною конфлікту, спільної зустрічі, на якій присутні обидві сторони. У статті наведена причина мого зацікавлення темою небажання компаній вирішувати проблеми шляхом посередництва. Аналіз 245 справ про примирення сторін, показує практичну статистику з посередництва у комерційних справах, включно з такими щодо відсутність згоди чи врегулювання. Цифри наведені на основі судової статистики. Статистичні дані із польських судів це ряд економічних питань, що були предметом для посередництва в період 2006-2010 р., включно з досягнутою згодою чи відсутністю такої. Дана робота на основі проведених 245 ситуаційних досліджень наводить можливі причини, чому компанії не погоджуються на посередництво чи, незважаючи на посередництво, не досягають домовленості. Автор наводить сімнадцять можливих причин, чому компанії не погоджуються на посередництво чи не досягають згоди. Автор також аналізує зовнішні чинники, які впливають на рішення компаній. На думку автора переважання інформацією, яку ми отримуємо від середовища у XXI столітті, видається вирішальним чинником. Дана стаття містить приклади комерційних посередництв, з якими мала справу автор. Тут описані приклади ведення переговорів щодо досягнення домовленості, конфлікт, який важко вирішити та наведені витрати на вирішення такого конфлікту. Через принцип конфіденційності, якого зобов'язана дотримуватись автор, деталі таких справ не наводились. Ці справи підтверджують думку: якщо є бажання, то легко досягнути домовленості. Деякі із цих справ демонструють, що особиста вигода та нетерпіння були перешкодою у завершенні конфлікту.

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**Lack of consent for mediation  
between companies  
and its reasons**

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*This article discusses commercial mediation, presenting its principles and procedure. It shows the reason why I became interested in the topic of companies' lack of willingness to solve problems through mediation. It presents empirical statistics from mediation in commercial cases, including those on lack of consents or settlements. The figures are shown against the background of court statistics. On the basis of research conducted in the form of case studies, it presents the possible reasons why companies do not consent to mediation or reach no agreement despite undertaking mediation. The writer analyses external factors affecting companies' decisions. This article contains examples of commercial mediations the writer dealt with. These cases support the thesis that if there is good will, agreement is easier to reach. Some show that self-interest or impatience were obstacles to ending the dispute.*

**Keywords** – conflict resolution, mediation, business mediation, disagreement to mediation

### I. General introduction

Nowadays, company owners and managers seem not to realize the consequences of unresolved conflicts within the organization and also those with external entities. In times of globalization and open frontiers the general public and business entities experience 'information hunger' and desire to have as much information as possible about the society, competitors, employees. The more dependent everyone becomes on the others, the more potential conflicts loom. Compared to natural resources, knowledge is an inexhaustible resource. Our times show that natural resources are being depleted. We already notice that they may end or cease to be available in the current form or on current terms. A combination of the need to acquire information with mutual dependencies and exhaustion of natural resources results in increased risk of potential conflicts.

The inspiration to start research on the reasons why companies refuse to resolve their conflicts through mediation was the statistics concerning commercial mediation conducted by myself. I conduct economic mediations between legal entities carrying on business in various legal forms. The results of analysis of 245

cases include commercial cases referred for mediation by commercial courts in Poland in the period 2009-2011. Participants of mediations were both well-known corporations with Polish or foreign capital and small local businesses from various regions of Poland.

Mediation is conducted according to 5 fundamental principles which apply all over the world. By informing the parties to the conflict what mediation is and what its principles are, we allow them to consciously choose this form of conflict-solving.

The term 'mediation' means, according to one definition, intervention in negotiations or conflict by an acceptable third party which has minimal power to take decisions or no such power at all, which party accompanies the involved parties in voluntarily reaching a mutually acceptable agreement. In addition, apart from solving specific problems, mediation can establish or enhance relationships based on mutual trust and respect between the parties or terminate relationships so as to minimize emotional costs and psychological damage. After the parties are familiarized with the idea of mediation, mediators present its principles. Mediators discuss the principles during the mediator's monologue and inform that they bind not only the parties, but also mediators:

1. Voluntariness – is the overriding principle in my opinion. This means not only the possibility of withdrawing consent for mediation at any stage by any party and lack of any form of coercion, pressure or manipulation, but above all parties' good will in looking for solutions to the problem because of which they resorted to mediation.
2. Neutrality – mediators remain neutral with respect to the object of dispute, cannot have other goals or intentions than professional fulfilment of their role, i.e. persons facilitating parties' search for solutions to problem(s). Mediators cannot be related to parties or the object of dispute, both formally and informally, personally or financially.
3. Impartiality – mediators do not represent any party, are not professional attorneys, experts, consultants, advisers, regardless of their professional experience.
4. Confidentiality – all information mediators obtain from parties in the whole process of mediation remains known only to them. It is not forwarded to any institutions or third parties. A mediator cannot be a witness in a case he/she conducts or conducted, except when both parties agree to release the mediator from the obligation of confidentiality, specifying the scope of the release.
5. Acceptability – the person of mediator and co-mediator and the possibility to change any of them at any moment during the mediation. This principle also means that the parties accept the principles that apply in mediation.

Mediation starts with the mediator's conversations with each party or persons representing the parties, without the other party to the conflict being present. If both parties agree to mediation, the mediators organize a meeting with both parties present. Parties' direct meetings with the participation of mediators mean direct form of mediation. Mediation can also be indirect if the

parties do not meet and then the liaison between them is provided by mediators. It also happens that mediation combines both direct and indirect forms, being called mixed mediation.

The number of meetings is limited only by the parties' will. In special cases the mediator can also refuse to conduct mediation if the principles of impartiality and neutrality are jeopardized.

## II. Presentation of research results

An analysis of 245 cases of commercial mediation shows that in 38.78% cases consent for mediation was not expressed (lack of consent). In this figure, we can separate 8.98% of cases where one of the commercial entities did not respond to mediator's invitation (lack of contact). This can be classified as tacit lack of consent for mediation. The remaining 29.80% of the 38.78% is lack of consent of one of the parties for resolution of the conflict through mediation. The effect of lack of consent for mediation and lack of response to invitation to it does not seem very significant at first sight. But compared to lack of consent in 30.61% of cases, it already seems significant. This means that eventually, only 30.61% of cases end successfully by hammering out the terms of agreement (mediation settlement), while in 69.39% of cases no agreement could be reached (lack of settlement). The above results are presented below in the graphic form: charts (1) and (2).

CHART 1

**Commercial mediations conducted in Poland in 2009 – 2011**

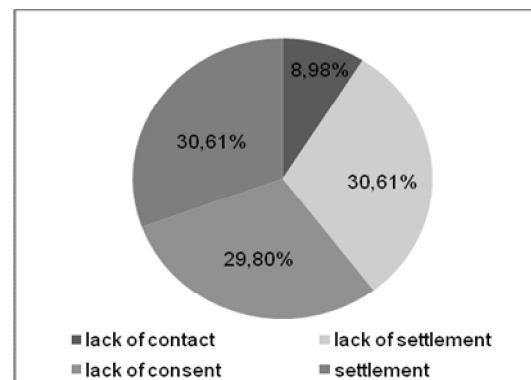
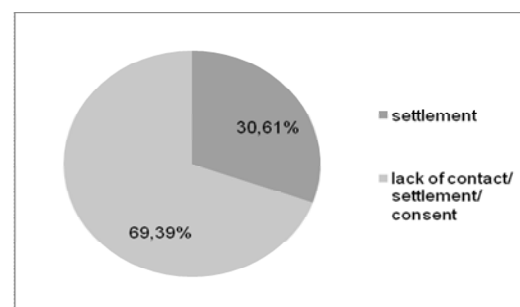


CHART 2

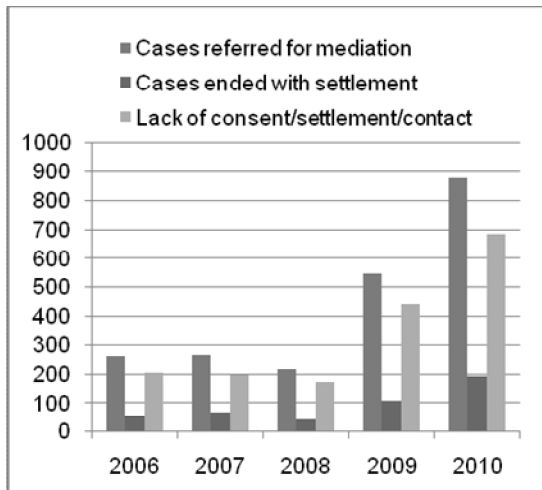
**Commercial mediations conducted in Poland in 2009-2011, globally**



An analysis of Polish court statistics concerning mediation in commercial matters, which are currently the only available measure of registered conflicts between businesses, shows trends similar to those provided by myself and resulting from an analysis of my observations.

CHART 3

**Mediation proceedings in commercial matters in Poland in 2006 - 2010**



In 2009, Polish commercial courts referred 547 cases, in 2010 the number grew by 60.14%. Since 2006, when Polish courts started to refer commercial matters for mediation, a growing trend is noticeable, except for 2008, when their number dropped by 18.25% on 2007. As for both the number of settlements made and cases ended without settlement, in the whole analysed period no trends can be spotted, except for increase in both forms of ending mediation in 2010 compared to 2009.

It follows from an analysis of commercial cases where no consent was expressed for mediation and no terms of agreement were determined that the reasons may include:

- lack of good will of the parties to conflict to solve it,
- evading responsibility,
- attempts to gain the highest possible benefits at the other party's expense,
- putting the decision off as long as possible,
- lack of faith in success of mediation,
- certainty that case would be won before court,
- inflexible approach to problem-solving – either we reach agreement on my terms, or not at all,
- playing the conflict down,
- legal precedent,
- provisions of law,
- lawyers,
- legal form of business entity, degree of formality in the entity and its decision-making style,
- multiple participants on one side of the conflict, some of whom do not want to participate,
- high social position and fear of losing one's face,
- procedures and principles binding a party to the conflict,

- inability to hammer out mutually satisfactory terms of ending the conflict,
- fear of bad will of the other party who might use information obtained during mediation from the first party with the intention of using it against that party,
- mediator's professionalism and commitment.

**III. Conclusions and summary**

Knowledge, although it is an inexhaustible resource, because the information-hungry society will always discover, create something new as the civilization and development advance, but there is a threat, referred to as 'information smog' in psychology. According to research, in early 1980s statistically some 50,000 words per day reached us, while today the figure is 100,000. Our brains have to cope – receive, process and somehow respond to all information and stimuli. The more stimuli, the more a human being needs isolation and the more difficult it is to think rationally. The brain can store all that, but it is difficult for the operating memory, that is, our mind, to process it. As a consequence, reflexive thinking is impaired, the capacity for long-term thinking and using previous experiences is reduced. We cease to be aware of the past and future, it is only here and now that matters, and we also become less and less patient. In my work, I notice more and more often that parties to a conflict want to solve it here and now, during one mediation meeting. They lack the patience to go through the stages of mediation with the right speed. An example: a big insurance firm with western capital sued a former collaborator for infringement of competition and acting to the firm's detriment. The firm believed the collaborator behaved unethically and exposed it to serious financial loss. The collaborator felt deceived and abused. The firm's management also felt abused and deceived. The degree of escalation of parties' emotions and the conflict was so high that mediators' experience and knowledge did not help to calm them down and attempt a constructive talk with the participation of mediators. The conflict's intensity was so high that both parties only thought about doing each other harm. At this level of escalation, there is a hidden feeling of great fear of the other party. Fear combined with the tendency to exclude the enemy from one's own moral universe and with a strong desire to seek revenge and misunderstood redress for the losses one suffered arouses in both parties to the conflict a reciprocal wish to inflict as much damage as possible. This conflict could be described as difficult to solve. The parties identified it with their own needs or values which they felt to be decisive for their survival. But these fears are not, however, linked to the contentious issues that caused the conflict. The parties resisted any attempts to change. All the time, we were in stalemate in the talks and attempts to open up communication between the parties and there was no way to end it. As counterbalance, another example of mediation I conducted. The case referred for mediation concerned a small company specializing in installing air-conditioning devices and security systems and a big developer. After the initial talks with each party to the

conflict individually it turned out that both companies had exhausted all legal methods to destroy the other one. At the stage when the case was referred for mediation, the parties had some 10 different court cases pending: at the prosecutor's office, criminal court, civil and commercial courts, as well as court of appeal. The first words we heard at the meetings were: we consent for mediation, but we will not reach any agreement, things have gone too far. During the first meeting with both parties to the conflict and mediators (mediator and co-mediator) 6 persons were present. The next joint meeting was attended by 8 persons. The parties made a settlement whose scope covered all disputes between them. After the end of the meeting when the settlement was made, the owner of the development company said to his 'adversary', addressing us as well, 'now we can start cooperating again ... I didn't know one could solve conflicts this way'. We watched through the window the two 'implacable' adversaries return together to their duties, agreeing the future orders.

When presenting the results of analysis, I mentioned the lack of parties' good will to solve the conflict. This lack of will may be conscious or not. It is conscious when their interest takes precedence over solving the problem, and non-conscious when it results from lack of knowledge or information. Ducking responsibility is usually the case in big corporations. A case of a company from the automotive industry and its customer shows that managers hired by a corporation need not take the risk of making decisions, because all costs of the conflict are borne by the corporations, not themselves. In this case, despite the mediation and the good will of one of the parties, settlement was not made precisely for this reason. The reasons for lack of consent to mediation can also include yearning for revenge, deep egoism and lack of altruism. People's own notions of mediation and ability to reach agreement make them afraid that they may have to confess an error, apologize or that it will become apparent how hurt they feel, that no redress will be sufficient. Parties to mediation also lack the deep awareness that an unsolved conflict destroys the organization in its business and human aspect, damages its culture and causes financial losses. A case from the B2B sector, when the owners' conflict related to acquisition of a company cost over two million zlotys. Apart from the financial dimension, there was also the loss of time, which is difficult to estimate. It lasted two years, valuable managers were lost along with the company's ability to grow. An example from the US, where the war in the Middle East in 1973 caused indirect losses. A strike organized in June 1998 by workers of one metal parts manufacturing plant of General Motors in Flint, Michigan, forced factories throughout the US to dismiss 146,000 workers and caused the whole

country's economic growth to go down by nearly one percent for a period of six months.

Summarizing, taking into account the results of analysis of mediation cases, the possible reasons for lack of consent to mediation and inability to determine any terms of agreements, as well as the threats related to barrage of stimuli, it seems important to educate the general public, businesses about methods of solving conflicts. During the negotiations aimed at ending the war in Chechnya, general Lebed said: 'I know for sure that all wars, including the hundred years wars, end with negotiations and establishing peace. So is it worthwhile to fight for a hundred years only to get the negotiated settlement? Maybe we should start with it!'

It seems important in this aspect that the conflict cannot be left to itself: in conflict-solving we need first of all good will, reflection on what happened and patience to find, with mediator's help, the reasons why this happened and then look for a solution.

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- [8] Chart (1) Commercial mediations conducted in Poland in 2009-2011. Source: own representation on the basis of database of mediations conducted by myself.
- [9] Chart (2) Commercial mediations conducted in Poland in 2009-2011, globally. Source: own representation on the basis of database of mediations conducted by myself.
- [10] Chart (3) Mediation proceedings in commercial matters in Poland in 2006-2010, own graphical representation on the basis of statistical figures published on the website of the Polish Ministry of Justice, [www.ms.gov.pl](http://www.ms.gov.pl), access time Sep. 2011