CLOSING CONFERENCE OF THE PROJECT

“THE IMPLEMENTATION OF MEDIATION IN PROBATION SERVICES"

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Implementation of Mediation in Polish Criminal Justice – the Good Practice for Lithuania

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Polish developments in the field of mediation in criminal matters are promising, however, still not enough has been done to improve its real efficiency.

If Lithuania wants to efficiently get rid of its numerous problems related to proper functioning of criminal justice system, it needs to implement and develop mediation in criminal matters (much more quickly than Poland has and avoiding main Polish mistakes).

Efficient implementation and development of mediation in criminal matters in Lithuania requires introduction of the restorative justice paradigm (a real one not just rhetorically).
Legal development of mediation in criminal matters


2003 – Regulation of the Minister of Justice on the amount and method of calculating expenses of the state budget in criminal proceedings

2003 - Regulation of the Minister of Justice on mediation proceedings in criminal matters

2003 – changes in Executive Penal Code
Legal development of mediation in juvenile criminal cases

1982 – introduction of mediation in Law on proceedings in juvenile criminal cases

2001 and 2002 – regulations of the Minister of Justice on financial matters related to proceedings in juvenile criminal cases

2001 - Regulation of the Minister of Justice on mediation proceedings in juvenile cases
Mediation in criminal matters

- In Poland, a referral to mediation can be made by the court, prosecutor, or police officers.

- If the parties work out an agreement, the court may discontinue the criminal proceedings, uphold the judgment reached in the mediation agreement, or assign a sentence without a trial if the offender submits to it voluntarily.

- Mediation is also possible in cases of private prosecution and in matters concerning the execution of prison sentences.
Mediation in criminal matters

A RESULT OF A SUCCESSFUL MEDIATION CAN BE:

- conditional discontinuance of criminal proceedings,
- unconditional discontinuance of criminal proceedings (assuming negligible social harm, withdrawal of the request for prosecution)
- repetition in the judgment of the court conditions agreed between the parties in mediation proceedings
- conviction without the court case
Number of mediation cases (criminal matters)
Information for the Victim – a special brochure
Information campaign – mediation in criminal matters
Information campaign – mediation in criminal matters

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DO MEDIACJI

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Information campaign (2011-2012) – mediation in criminal matters

• 375000 leaflets and 3000 posters (in 6 versions – two of them referring to mediation in criminal matters and juvenile criminal matters)
• Tens of TV and radio advertisements every day (11-12.2011)
• 2 million information leaflets sent to courts and mediation centres
Some interesting facts

- International Mediation Day (15th October) has been celebrated in Poland for many years already; it has been strongly supported by Ministry of Justice
- Social ADR Council at the Ministry of Justice (since 2005)
- National Chamber of Mediators and Arbitrators and other associations
- Standards of trainings for mediators
- Center for Dispute and Conflict Resolution at the Faculty of Law and Administration at the University of Warsaw
- Remuneration of a mediator in criminal cases – 120 PLN/case
Contraindications

- Recidivism
- Sexual assaults and crimes
- Violence against minors
- Mafia and organized crime cases
- Mental illness
- No victim
- Deeply demoralized offender
Requirements for mediators

Trustworthy person who:
• 1) is at least 26-years-old,
• 2) enjoys full rights as a citizen
• 3) speaks fluently Polish, spoken and written,
• 4) has a degree in psychology, pedagogy, sociology, rehabilitation or law and has experience in the field of education and rehabilitation of young people,
• 5) has skills to resolve conflicts and establish relations,
• 6) guarantees the due performance of their duties,
• 7) was held training for mediators,
• 8) was entered in the list of mediators (a list of mediators – in the regional court (sąd okręgowy))
• Possible “ad hoc” mediators
Requirements for mediators

A mediator **may not be**:

- 1) judge, prosecutor, assessor and trainee judicial or prosecutor and other persons employed in court, the prosecutor's office, police or other institutions authorized to prosecute crimes,
- 2) lawyer and trainee lawyer, legal counsel and trainee attorney, notary, assessor and trainee notary,
- 3) bailiff, bailiff trainee and an employee of bailiff’s office,
- 4) officer and employee of the Prison Service,
- 5) employee of care and educational institution, special school and educational center, correctional facility or shelter for minors,
- 6) employee of an institution or member organizations providing assistance to victims of crime or acting on their behalf

A mediator **may also not be** a juror in the court (during their term of office) or social probation officer.

A mediator **may not be** a person anyhow involved in the process of hearing witnesses, drawing opinions, interviewing persons involved in the procedure, as well as a person, as to which there is any kind of a circumstance that could give rise to reasonable doubt as to their impartiality.
The Bad Practice for Lithuania

- „Late” legal regulation of mediation
- Coincidental people on the lists of mediators
- Too strict, too formal and too complicated procedures
- Remuneration for mediators for the whole procedure (eternal question regarding best standards of remuneration for mediators)
- Too sceptical attitude of the police and prosecutors
- Insufficient trainings for mediators
- Wrongly-targeted expensive advertising campaigns
The Good Practice for Lithuania

- „Automatic” application of mediation in easier cases (e.g. car accidents)
- Mediator – a profession
- High level of trainings for mediators, set up standards for mediators
- Mediation as a means of avoiding overcrowded jails and social injustice
- Widespread mediation in juvenile criminal cases
- Strong involvement of the Ministry of Justice and public financing (good practice – social council)
- Numerous projects of developing mediation to strengthen its good reputation
Don’t forget!

- Mediation in criminal matters is mainly for the victims (victim syndrome)!
- Only then it is for the offenders and the society.
Thank you!