SUMMARY

Settlement concluded before a mediator. Selected issues

Mediation is undoubtedly a multifaceted phenomenon. In non-legal scientific and popular science literature, incomparably more often than in the statements of representatives of legal sciences, axiological, psychological or social determinants of mediation are noticed and strongly emphasized, pointing to the significant role of this method of conflict resolution in the sphere of psychological experiences and emotions that cannot be included in the legal framework. Undoubtedly, according to this approach, the goal of mediation is to reconcile the parties. But apart from the fact that it is a phenomenon serving to regulate the relations between the conflicting parties, mediation is also a legal institution which is seen as a tool to relieve the courts and thus improve the administration of justice. The agreement of the parties is based on reconciliation, transformed into the legal form of a settlement which, having been approved by the court, is a guarantee of legality and enforceability for the parties.

This study focuses on the legal result of mediation, which is a settlement concluded before a mediator. Importantly, despite the fact that the provisions on mediation have been in force for several years in the Polish legal order, this institution has not been comprehensively developed, neither under the provisions of the Code of Civil Procedure or criminal proceedings, nor in detailed analyses of a mediation settlement in administrative and court-administrative proceedings. Meanwhile, practice shows that there is still a need to organize many detailed issues related to it.

In international relations, settlement agreements have traditionally been enforced as binding contracts under national rules, which is a situation considered less than ideal for the promotion of mediation. Drawing on the experience of the 1958 New York Convention on international arbitration, the Singapore Convention on Mediation provides for the enforcement of settlement agreements in international commercial disputes. The aim of this chapter is to analyze the applicability of the Singapore Convention on Mediation as an appropriate instrument for the resolution of business disputes around the world. It also discusses the impact of the Singapore Convention on Mediation on the promotion of mediation and its acceptance by the international community.

Current problems with mediation settlements in Lithuania and Ukraine are also discussed. Many of them remain active also in relation to Polish practice. Settlement agreement

as a preferable result of mediation process has gained significance in the development of mediation in Lithuania. Settlement agreements not only serve as a form of the expression of the parties' will to settle. This document also guarantees the enforceability of the mutually agreed decisions. Usually, the parties to a dispute tend to implement a settlement agreement on a voluntary basis, yet the necessity for state enforcement of settlement agreements cannot be denied. This leads to the research question which is raised in the paper: whether the existing settlement agreement legal regulation and practice in Lithuania satisfy the newly emerging needs of mediation? General provisions of civil and administrative law regulating settlement agreements in the light of the rapid and broad development of mediation require additional specific rules aimed at tackling the temporary challenges. The paper aims to provide an analysis of existing legal regulation and practice of mediated settlement agreements, identify the major problems and suggest ways to overcome it.

Discussions relating to the subjective scope of a mediation settlement on the basis of the Polish doctrine of civil procedure led to the formulation of two universal statements, namely that the decisive factor in defining this scope is the substantive nature of the mediation settlement and that a mediation settlement may be concluded by an entity possessing the power to dispose of rights and obligations affected by the dispute. This means that the parties to the mediation agreement may be entities related to the material-legal relationship from which the dispute arose, but this relationship is often characterized by multiple entities. As a consequence, in the case of ordinary material co-arching in the dispute and formal co-arching in the dispute, a mediation agreement may be concluded by all or some of the participants at their discretion, the essence and nature of uniform (joint – law) co-arching requires the consent of all participants to perform this action, with the result that a settlement is not reached in the absence of consent of any of the participants.

Similarly, consent to a settlement by a party is necessary in the case of spontaneous side intervention, because the provisions on uniform participation apply accordingly to the position of an intervener in the process. The paper also indicates that formal legitimation is not sufficient to conclude a settlement. Therefore, the prosecutor and other entities acting as formal parties cannot conclude a settlement before a mediator at all, as they do not have the competence to act on the subject of the proceedings at the substantive level. The only entity authorized to conclude such a settlement is the party whose subjective rights are affected by the action.

The situation is different in the case of entities referred to as process alternates (subrogation), to which legal regulations give the competence to perform legal actions in relation to the subjective rights of the replaced entities, as well as the right to sue and be sued. Hence, they have the right to conclude a settlement before the mediator to the extent that results from the provisions governing his substantive law, sometimes with the consent or permission of other bodies or entities. The analysis confirms the thesis that the representation of entrepreneurs at the conclusion of a mediation settlement is subject to general rules provided for in substantive civil law, including the principles adopted under commercial law as an integral part of civil law.

In the study, a position was adopted and agreed which allowed for the conclusion and approval of a settlement exceeding the content of the claim. In this regard, a solution was indicated, according to which, in terms of referring the parties to mediation by the court

(i.e. with regard to the claims covered by the suit), judicial mediation is carried out, while contractual mediation is carried out in the remaining scope, although both of these are conducted before the same mediator.

The monograph also discusses the subject and meaning of a settlement contained in criminal proceedings. Based on the Lithuanian experience, it was proposed to resolve the issue of whether the mediator is required to draw up a settlement, based on the CEPEJ Guidelines, which indicate the scope of involvement of the parties' lawyers in the mediation process.

The study also indicates the role of the Singapore Convention in ensuring stability and security in relation to the settlement of disputes in international trade relations through mediation.

Translated
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