

Katarzyna Luty-Mazur

Mediator

ORCID: 0000-0002-3361-5584

kas.luty@gmail.com

The Role and Significance of Preliminary Meetings in the Civil Mediation Process. Selected Practical Observations in Light of the Code of Civil Procedure

Rola i znaczenie spotkań wstępnych w procesie mediacji cywilnej. Wybrane uwagi w ujęciu praktycznym na tle Kodeksu postępowania cywilnego

ABSTRACT

This article provides a practical and descriptive analysis of preliminary meetings, which, from the perspective of a mediator's practice, constitute a crucial stage of the proceedings, even though Polish procedural law does not explicitly define them as mandatory. From the perspective of mediation practice, the text highlights the indispensability of this phase for legitimizing the entire process and ensuring the emotional and procedural security of its participants. The publication devotes particular attention to analytical tools used in the preliminary stage, such as BATNA and WATNA analysis and the "devil's advocate" technique, highlighting their importance in managing participants' expectations. The discussion also covers the pragmatic aspects of organizing preliminary sessions, including issues of cost, logistics, and the risks associated with skipping this preparatory phase. The article concludes that conducting preliminary meetings thoroughly is a prerequisite for the legitimacy of the entire process and is essential for reaching lasting, informed settlements.

Keywords: mediation; preliminary meetings; duty to inform; BATNA/WATNA; mediator ethics; ADR

INTRODUCTION

Mediation, as regulated by the Code of Civil Procedure (KPC),¹ is a voluntary and confidential method of resolving civil disputes. This institution has gained significance not only as a tool to relieve the burden on the judiciary (as advocated, among others, by Directive 2008/52/EC of the European Parliament and of the Council² on certain aspects of mediation in civil and commercial matters) but also as a procedure guaranteeing the autonomy of the parties' will.

Mediation is based on several fundamental pillars that guarantee its effectiveness as well as the legal and emotional security of the participants. The first and key principle is voluntariness, which means that the parties have full autonomy of will regarding their participation in the procedure and may withdraw from the discussions at any stage without giving a reason. Equally important is confidentiality, which applies to both joint sessions and individual discussions with the mediator, creating a safe space for the candid expression of concerns and protecting the confidentiality of the discussions from being used in court proceedings. The mediator ensures the integrity of the dialogue and must maintain impartiality, understood as treating all participants equally and refraining from favouring any party to the conflict.³ Inseparably linked to impartiality is the principle of neutrality, according to which the mediator remains a person uninvolved in the subject of the dispute and does not impose ready-made solutions on the parties, allowing them to work out a settlement on their own. The entire procedure is rounded out by the principle of acceptability, which requires that both the mediator and the working methods proposed by them gain the full approval of both parties, constituting an essential foundation of mutual trust.⁴

Preliminary meetings, also referred to as informational sessions or individual preparatory meetings, are currently a procedural and normative imperative in the field of alternative dispute resolution (ADR). Although Polish procedural law does not define a "preliminary meeting" as a mandatory procedural form, the disclosure obligations imposed on the mediator at the stage of concluding a mediation agreement or upon accepting a case referred by the court imply the necessity of direct

¹ Act of November 17, 1964 – Code of Civil Procedure, consolidated text: Journal of Laws 2024, item 1568, as amended.

² Directive 2008/52/EC of the European Parliament and of the Council of May 21, 2008, on certain aspects of mediation in civil and commercial matters, aimed at promoting mediation, including through education and informing the parties.

³ A. Zienkiewicz, *Standardy prowadzenia mediacji i postępowanie mediatora uchwalone przez Społeczną Radę ADR przy Ministrze Sprawiedliwości*, "Studia Prawnoustrojowe" 2012, vol. 18, pp. 185–200.

⁴ A. Rogozińska, *Mediacja w polskim systemie prawnym*, "Eunomia. Rozwój Zrównoważony jako Przedmiot Badań" 2018, vol. 1(94), pp. 91–98.

contact with each party. This is a crucial moment in which the mediator fulfils their fundamental ethical and procedural obligations.

The purpose of this article is to analyze the legal and organizational role of preliminary meetings. It is argued that their proper conduct is a prerequisite for the legitimacy of the process, prevents defects in a future settlement, and constitutes the limit of the admissibility of mediation in high-risk cases (e.g. domestic violence, gross imbalance of power).

The primary purpose of the preliminary meeting is to fulfil the mediator's duty to inform. This duty is both substantive and procedural, ensuring that entering into mediation and subsequently reaching a settlement is the result of a conscious, free, and informed decision by the parties. The regulations do not explicitly require that preliminary (individual) meetings take place in mediation proceedings.

In many mediation centres and in the practice of individual mediators, it has become common to begin the process with individual meetings with each party (so-called "preliminary meetings").⁵ Their purpose is to prepare the participants for a joint discussion. Although civil procedure does not mention them, it does not prohibit them either (they do, however, appear in the regulations concerning minors). It is important not to confuse these preliminary discussions with private consultations during mediation or with statutory informational meetings.⁶

ADVANTAGES OF PRELIMINARY MEETINGS IN MEDIATION

Among the main advantages of preliminary mediation meetings is the opportunity to learn the rules without pressure. Preliminary meetings, or introductory sessions, provide time to understand how mediation works (confidentiality, voluntariness, and the mediator's impartiality) without the need to immediately move on to difficult discussions about the conflict itself.

Another advantage is that the parties to the mediation get to know the mediator. Mediation is based on trust. The preliminary conversation allows the parties to determine whether they are comfortable with the mediator's style, whether they feel at ease with him or her, and whether they are confident in his or her neutrality.⁷

The mediator's role is to ensure the emotional safety of the parties to the mediation. Preliminary meetings very often take place individually (one-on-one with the mediator). This allows the parties to openly discuss their perspectives and concerns without the stress associated with the other party's presence. In the practice of

⁵ J. Świtluk, *Mediacja w sporach pracowniczych. Mediacja online*, Warszawa 2021, p. 27.

⁶ *Ibidem*.

⁷ A. Zienkiewicz, *Dylematy praktyki mediacyjnej – kilka pytań na tle zasady bezstronności i neutralności mediatora*, "Gubernaculum et Administratio" 2019, vol. 1(19), pp. 12–17.

mediation proceedings, it is not uncommon for professional representatives to be absent during the preliminary meetings. Given that the institution of mediation is based on the absolute principle of confidentiality,⁸ which also applies to individual meetings with the mediator, participants gain a safe space to articulate the actual origins of the dispute.

During the preliminary session, the mediator encourages the parties to analyze the legal and factual situation in terms of the possible existence of a gross disparity of a psychological, economic, cognitive, or institutional nature. The identification of asymmetry – determined, among other things, by an abusive relationship,⁹ structural subordination, or extreme financial dependence – constitutes a significant negative prerequisite for conducting mediation proceedings.¹⁰ Such a situation carries a direct risk of a lack of freedom to make decisions and express one's will, which prevents the proper formulation of the settlement agreement. In the case of court-ordered mediation (conducted pursuant to a court order), the authority to conduct the initial review of the dispute rests with the adjudicating body. When issuing an order to refer the parties to mediation, the court conducts a preliminary formal-legal assessment of the case.

During the preliminary mediation meetings, it is determined whether the parties to the dispute are entering the process with a genuine intention to resolve the matter amicably (acting in good faith – *bona fides*), or whether they are attempting to exploit the institution of mediation itself. The mediator's tasks include identifying potential procedural abuses, consisting in particular of intentionally delaying court proceedings or treating the institution of mediation as a tool for infiltrating the opponent's litigation strategy. Legal doctrine reveals a dichotomous division of views regarding the nature of good faith; on the one hand, it is sometimes treated as a *sine qua non* condition for conducting mediation, while on the other, there are calls for it not to be included in mediation rules. This is dictated by the primacy of reaching an agreement over the axiology of the process. An attempt to strictly formalize and subject the fulfilment of the good faith requirement to secondary evidentiary scrutiny during a consensual procedure would, in fact, undermine the intrinsic characteristics of mediation. These include, above all, the principle of confidentiality, procedural flexibility, and the voluntary participation of the parties. A significant challenge remains the role of the lawyer in mediation, which is determined by the traditional paradigm of acting in the "best interests of the client,"

⁸ For more on confidentiality in mediation: P. Kłos, *Poufność mediacji: analiza teoretyczno-prawna*, Lublin 2021; T. Cyrol, *Zasada poufności mediacji*, [in:] *Oblicza mediacji. Wybrane zagadnienia*, eds. K. Wojtanowicz, M. Pękala, Kraków 2021, pp. 39–47.

⁹ For more on mediation in domestic violence cases: G. Skrobotowicz, *Mediacja w sprawach o przemoc w rodzinie*, "Prokuratura i Prawo" 2014, no. 3, pp. 80–97.

¹⁰ H. Przybyła-Basista, *Proces mediacji rodzinnych – od teorii do praktyki*, "Mediator" 2002, no. 21, pp. 8–9.

often equated with a confrontational defence model and the pursuit of an optimal outcome. Participation in the mediation process requires the attorney to redefine existing strategies, take values into account, and, above all, recognize the need to balance the interests of both parties to the dispute. An analysis of the attorney–client relationship in the context of ADR reveals a significant cognitive dissonance. Lawyers tend to define success through the lens of winning a formalized dispute, while their clients often place a higher value on non-legal factors such as time, reputation, or interpersonal relationships. A court ruling often reinforces the division between “winners” and “losers,” and its enforcement deepens the trauma of the parties involved. Moreover, a challenge for the mediation process remains the specific expectations of the clients themselves, who define an attorney’s loyalty as a willingness to exploit any loopholes and delaying tactics for their own benefit. This perception of the attorney’s role, stemming from a strictly confrontational culture, hinders the revelation of the parties’ true interests and stands in stark contrast to the principles of mediation, which are oriented toward speed and mutual consensus. It is on this level that a fundamental distinction emerges between mediation and classical negotiations; while the latter allow for success at the opponent’s expense, in mediation proceedings such conduct stands in stark contradiction to the principle of participation in good faith.¹¹ In the absence of normative mechanisms, the burden of ensuring the proper conduct of the process rests on the mediator. Acting as an impartial navigator and equipped with the appropriate set of communication techniques, the mediator becomes the *de facto* custodian and guarantor of good faith. The mediator’s role is to safeguard the integrity of the proceedings by neutralizing any attempts to exploit mediation for ulterior motives, as well as by curbing procedural abuses on the part of the conflict participants themselves and their representatives.¹²

The preliminary session essentially serves as a customized information assessment. In specific types of cases – particularly complex commercial disputes and cases involving the division of joint property – creating a platform for constructive settlement discussions is directly contingent upon grounding them in objectively verifiable data. The mediator’s role at this stage is limited to supporting the mediation participant in the identification and selection process. Gathering the appropriate documents to substantiate the information is essential for properly substantiating

¹¹ Further reading on the role of the attorney in mediation: A. Orzeł, K. Alama-Osmólska, *Rola pełnomocników procesowych w mediacji cywilnej*, [in:] *Mediacje w prawie*, eds. J. Czapska, M. Szeląg-Dylewski, Kraków 2014, pp. 97–110.

¹² M. Koźuch, *Dobra wiara w procesie mediowania. Czy udział prawnika zmienia percepcję dobrej wiary?*, [in:] *Oblicza mediacji. Wybrane zagadnienia*, eds. A. Cybulko, T. Cyrol, M. Koźuch, Kraków 2022, pp. 59–76. See also: M. Stryniak-Puza, A. Zienkiewicz, *Uczestnictwo w złej wierze w próbie dobrowolnego rozwiązania sporu gospodarczego przed wytoczeniem powództwa*, “ADR. Arbitraż i Mediacja” 2023, vol. 16(1), pp. 115–132.

the presented position and for precisely and objectively determining the value of the subject of the dispute. Collecting and organizing this material, done even before the formal opening of joint sessions, effectively neutralizes the risk of basing discussions on unsubstantiated claims. This practice serves as a fundamental preventive mechanism against information gaps, which pose a direct threat to the efficiency and timeliness of the mediation process.

The mediator's role is to develop a communication strategy that shifts the focus from positions to interests.¹³ In the initial stage of a conflict, the parties show a strong tendency to assert their demands, digging in on categorical and uncompromising positions (which often take the form of extreme demands, e.g. "I won't pay a penny," "my position as stated in the complaint is final"). During preliminary meetings, the mediator employs appropriately selected communication techniques, including in-depth conversation. This allows the party to move from the stage of rigidly formulated demands to identifying its actual interests – that is, the real needs, motivations, and fears that are often hidden beneath the layer of initial claims. This step is of immense practical importance, as it teaches participants to express their arguments constructively – using the language of objective facts and mutual benefits, rather than attacks and accusations.¹⁴ Properly conducting this stage effectively prevents outbursts of negative emotions during joint sessions with the other party. This creates a safe and substantive space for proper negotiations regarding a potential settlement.

Thorough preparation for mediation requires conducting a so-called cost-benefit analysis of the dispute. During individual meetings, the mediator helps participants assess what will actually happen if the talks fail. This involves analyzing two key scenarios: BATNA (best alternative to a negotiated agreement) and WATNA (worst alternative to a negotiated agreement). This analysis goes far beyond the mere chances of a formal victory. Developing a realistic alternative (BATNA) in the event of mediation failure primarily involves a precise calculation of litigation expenses, including court costs, expert fees, and professional representation.¹⁵ It is also essential to calculate the economic risk associated with the prolonged freezing of funds until a final, legally binding decision is reached. This assessment, which has a significant impact on the party's final decision, must be complemented by a reliable evaluation of psychological burdens, including stress and emotional costs. Such an assessment effectively influences so-called "litigation optimism"

¹³ M. Suchanek. "Mediacja jako metoda rozwiązywania konfliktów społecznych," *"Studia Administracyjne"* 2018, vol. 10, pp. 129–147.

¹⁴ For more details: H. Kądziołka-Sabanty, *Dynamika konfliktu w procesie mediacji*, [in:] *Mediacja – sztuka kompromisu*, ed. M. Romanowski, Warszawa 2023, pp. 41–49.

¹⁵ K. Flaga-Gieruszyńska, *Zastosowanie sztucznej inteligencji w pozasądowym rozwiązywaniu sporów cywilnych*, "Studia Prawnicze KUL" 2019, vol. 3, p. 104.

and grounds expectations in reality. Thanks to this, a party sits down at the mediation table with a clearly defined “red line” – they are fully aware of their limits and know which concessions are worth agreeing to in order to avoid the burden of a protracted legal battle and the associated costs.

The BATNA concept is the foundation of good preparation for negotiations. It involves finding the best “Plan B” in case talks at the mediation table end in failure. When preparing for a meeting, the mediating party should develop as many different courses of action as possible that it can take if a settlement is not reached. An example of such an alternative could simply be a competitive offer from another company prepared in advance.¹⁶ Developing a BATNA is the most effective way to protect one’s own interests, while the lack of one is a major weakness – without it, a party does not know at what point the opponent’s proposals become so unprofitable that it should break off negotiations. Having a clearly defined BATNA serves as a lifeline in situations of high stress or an unexpected offensive by the opponent. The mere fact that a participant is prepared to walk away from the negotiating table sends a clear message to the opponent that they have a safe alternative. From a tactical perspective, every offer made during mediation must be constantly measured against this contingency plan, while simultaneously assessing the other party’s possible alternatives.¹⁷ Ultimately, this process boils down to one fundamental rule: a settlement should be reached only if the opponent’s proposal is more favourable than the BATNA. Any less favourable options require categorical renegotiation.¹⁸

WATNA, alongside BATNA, constitutes the second fundamental element of preparation for a consensual procedure. Preliminary meetings in mediation therefore serve to allow a party to define the lower limit of profitability, below which no concessions have a rational justification. WATNA functions as a critical decision-making threshold.¹⁹ According to this model, if any offer falls below a party’s WATNA, it is assigned a logical value of 0, meaning that such an option is worse than no agreement and must be categorically rejected. In turn, proposals falling within the range between BATNA and WATNA (value 0.5) open up a sphere of compromise in which the party retains the freedom to accept or reject the proposed terms. Determining the worst alternative during preliminary mediation meetings is therefore of significant pragmatic importance, as it establishes a firm line in the

¹⁶ M. Broszkiewicz, *Mediation as a New Solution for Solving Conflicts on Financial Markets*, “Financial Sciences. Nauki o Finansach” 2017, vol. 4(33), pp. 31–32.

¹⁷ D. Kopańska-Bródka, T. Wachowicz, *Postnegocjacyjna optymalizacja kompromisu negocjacyjnego*, “Studia Ekonomiczne” 2013, vol. 138, pp. 61–64.

¹⁸ M. Skinder, *Otoczenie, taktyki i rozwiązywanie konfliktów jako problemy technik mediacji i negocjacji w administracji*, “Studia z Zakresu Prawa, Administracji i Zarządzania UKW” 2012, vol. 2, pp. 120–121.

¹⁹ C. Rollins, *Integration of Mediation Skills as Required by the Nextgen Bar Exam*, “Saint Louis University Law Journal” 2025, vol. 69(3), pp. 473–490.

sand – any offer put forward by the opponent at the negotiating table must exceed this threshold in order to serve as a starting point for substantive settlement negotiations at all.²⁰

The “devil’s advocate” questioning technique, used in ADR, is one of the most important tools employed by mediators during initial meetings. Its essence boils down to deliberately and constructively confronting a party with the weaknesses in their own arguments and potential legal or factual risks. This is because parties involved in a dispute tend to perceive reality in a biased manner and hold an uncritical belief in their own position. The use of this technique during confidential individual meetings allows for a safe assessment of risks without exposing the party to a loss of standing in the eyes of the opponent. In practice, the mediator, by assuming the role of an objective sceptic or by simulating the other party’s line of reasoning, helps the interlocutor understand the weaknesses in their own argumentation. For example, in cases involving the division of property or in complex commercial disputes, the mediator may ask a party how it intends to defend its position if a court-appointed expert in a potential trial values the disputed real estate or the market value of the business at half the amount stated in the party’s own private appraisal. Such deliberate interventions expose gaps in the adopted strategy and rigorously verify the reliability of the party’s BATNA. Effective “reality testing” by the mediator deliberately sows seeds of doubt in the participant. This helps the party realize that its strategy may have gaps and that victory is by no means certain. This, in turn, prompts the party to make its demands more realistic and to show greater flexibility. Thanks to this preparation, when both parties sit down at the table, they are ready for constructive, fact-based negotiations.²¹ Using the “devil’s advocate” technique during joint mediation sessions carries enormous risk and is generally discouraged. Asking a party difficult, confrontational questions in the presence of their opponent completely changes how they are perceived. Instead of serving as a tool for objective risk analysis, these questions become an attack in the participant’s eyes. A party whose arguments are publicly called into question by the mediator almost immediately begins to suspect that the mediator has ceased to be objective and has begun to favour the other party in the dispute. This leads to a direct violation of the two absolutely fundamental principles of mediation, namely the principles of impartiality and neutrality. Pointing out weaknesses in an argument or highlighting gaps in evidence at the negotiating table triggers a natural

²⁰ Y. Song, K. Satoh, *A Three-Valued Semantics for Negotiated Situations in Multi-Agent Systems Based on BATNA and WATNA*, Japan 2024, pp. 333–340; K. Ziółkowska., *Skuteczna komunikacja jako realizacja zasady współżycia społecznego w miejscu pracy*, [in:] *Communication as a Factor of Transparency of Social Interaction: The Era of Digitalization*, eds. A. Krysovatty, L. Buiak, O. Koval, M. Radziłowicz, Olsztyn 2022, p. 81.

²¹ M. Skinder, *op. cit.*, pp. 120–121.

defensive posture in the party. Instead of encouraging self-reflection and the rationalization of claims (which is the goal of reality testing), it forces the party to “save face” in front of the opponent. As a result, the party begins to defend itself aggressively, digs in on its original position, and loses trust in the mediator. Confidential, preliminary mediation meetings (or, alternatively, private meetings without the other party present) are the only safe environment for asking probing questions. Only in a one-on-one setting can the mediator assume the role of a critical analyst. In such a safe space, the client can admit to the weaknesses of their strategy and adjust their expectations without fear that this will be exploited by the opponent or that the mediator has lost their impartiality.²² By way of example, the following questions can be cited: “Assuming optimistically that you will win in court – are you prepared to wait three or four years for that ruling?” To ensure these questions do not sound like an attack, the mediator always frames them with an appropriate communication buffer, for example: “I understand your point of view, but please let me play devil’s advocate for a moment so that we are fully prepared for what we might face from the opposing party or the court...” The mediator deliberately challenges the assumptions the party brings to the table. By asking participants to anticipate the consequences of their proposed ideas, the mediator compels them to thoroughly consider and justify their own demands. Additionally, the mediator continuously verifies (tests) the feasibility of agreements already reached, checking whether the declared commitments can actually be implemented. To help the parties understand and resolve the dispute, the mediator also employs analytical techniques – including logically breaking down complex problems into smaller parts or combining related threads into a coherent whole.²³

DRAWBACKS OF PRELIMINARY MEDIATION MEETINGS

The introduction of preliminary mediation meetings entails certain pragmatic and procedural inconveniences, among which the objective prolongation of the entire proceedings may come to the fore. Although these sessions are an extremely valuable analytical tool, they require additional logistical coordination, involving the alignment of the mediator’s schedule, the parties’ schedules, and often those of their professional representatives as well. In the realities of business transactions or amid the rush of daily responsibilities, the need to organize one or two additional, confidential private sessions inevitably pushes back the start of joint meetings by several days, and sometimes even weeks. This circumstance can cause justified

²² For more on impartiality: A. Zienkiewicz, *Dylematy...*, pp. 9–22.

²³ A. Leksowska, M. Piegza, *Mediacja rozwodowa – aspekty psychiatryczne, psychologiczne i prawne*, Katowice 2018, p. 53.

frustration in time-sensitive matters, such as sudden corporate disputes threatening a company's financial liquidity or urgent family matters, where the parties are eager for a swift and task-oriented resolution of the problem. Moreover, this additional stage of the proceedings carries the risk of being exploited by the opposing party. It happens that preliminary meetings are cynically used as a tool to drag out proceedings by unscrupulous parties – for example, debtors attempting to buy time to hide or transfer their assets from creditors. Nevertheless, although thorough preparation at this stage does indeed delay the start of the main negotiations, practice shows that it is a highly worthwhile investment. By reducing emotional tensions in advance, thoroughly verifying information, and establishing a preliminary scope for concessions, the actual talks proceed much more smoothly. Such process optimization minimizes the risk of negotiations breaking down (deadlock) and allows for the much faster development of a solid, implementation-ready agreement.

Pursuant to Article 183⁽⁵⁾²⁴ of the Code of Civil Procedure, a mediator is entitled to compensation and reimbursement of expenses related to the conduct of mediation, unless the mediator has agreed to conduct mediation without compensation. Remuneration and reimbursement of expenses are borne by the parties.²⁵ The rules for determining a mediator's fee in civil cases are set forth in the Regulation of the Minister of Justice of February 12, 2026, on the amount of remuneration and reimbursable expenses of a mediator.²⁶ The aforementioned implementing regulation differentiates rates depending on the nature of the case. In the case of non-pecuniary claims and pecuniary claims where the value of the subject matter of the dispute is undetermined, the legislature has abandoned the proportional (percentage-based) model in favour of fixed-amount rates. In this regard, remuneration of PLN 300 is provided for the first mediation session and PLN 200 for each subsequent session. In drafting this provision, the legislature adopted the simplified assumption that a "mediation session" immediately takes place with the participation of both parties. In reality, mediation may begin with preliminary meetings.

Strictly following the letter of the law, an individual meeting with participant "A" is formally the first session (valued at PLN 300), while an identical individual meeting with participant "B," lasting the same amount of time, is treated as the second session (valued at PLN 200). For the parties entering mediation – often already burdened by mutual distrust – such a difference in costs is completely incomprehensible. The participant whom the mediator met with first may feel financially disadvantaged and punished simply for arriving earlier for the talks. Conversely, the

²⁴ Article 183⁽⁵⁾ of the Code of Civil Procedure (Journal of Laws 2026, item 468, 473).

²⁵ A. Fruk, *Wynagrodzenie i zwrot wydatków przysługujące mediatorowi – uwagi na tle zmian do Kodeksu postępowania cywilnego wprowadzonych nowelizacją z 2023 roku*, "ADR. Arbitraż i Mediacja" 2023, vol. 16(2), pp. 37–38.

²⁶ Journal of Laws 2026, item 170.

party paying less may be perceived as being favoured. One of the main principles of mediation is impartiality and equal treatment. The necessity of issuing different invoices right at the start of the process casts a shadow on the mediator's neutrality. In practice, to avoid conflicts over costs right from the first stage, mediators may propose that the parties agree, for example, to add up the costs of both individual meetings (PLN 300 + PLN 200 = PLN 500) and split them equally in half (PLN 250 per party). However, this demonstrates that the provision of the implementing act is out of step with the realities and phased nature of modern dispute resolution processes. In a situation where one of the parties expresses scepticism or outright reluctance toward the conciliation procedure, the mediator's initiative to schedule individual preliminary sessions may be misinterpreted as an action motivated solely by a particular economic interest. Such a perception of the mediator's role imposes a special duty of information and education upon them. The task of an impartial mediator is then to clearly articulate the substantive benefits of preliminary meetings and to explain their crucial diagnostic function. The mediator should make the participant aware that these meetings serve not only to better understand the personalities of the parties involved, but above all to create a safe environment for risk analysis, which in turn helps avoid manipulation resulting from a lack of preparation for the discussions. From a pragmatic standpoint, in order to prevent potential fiscal misunderstandings, it is strongly recommended that the parties carefully review the internal regulations and fee schedules of the relevant centre or the aforementioned regulation and clearly agree with the selected mediator on the terms of payment before formally commencing the discussions. It is crucial to precisely establish the rules governing the mediator's compensation as early as the preliminary organizational stage. Proper preparation for mediation not only reduces institutional costs but, above all, builds trust in the mediator's competence and reinforces the professional image of the entire process.²⁷

An integral part of preliminary mediation meetings is the need to establish the organizational framework for cooperation, which many dispute participants often perceive as an overly formalized and bureaucratic process. Before the parties can proceed to a substantive discussion of the core of the conflict, a mediator acting in accordance with professional ethics²⁸ is obligated to thoroughly discuss the rules of procedure and complete the necessary formalities, such as obtaining consent for mediation or signing a mediation agreement. For individuals under the influence of strong emotions, focused on an immediate resolution of the problem, or eager to

²⁷ M. Bellwon, *Źródła zaufania stron konfliktu wobec mediatora i mediacji – czy wymogi formalne mają znaczenie?*, [in:] *Mediacja – sztuka kompromisu*, ed. M. Romanowski, Warszawa 2023, pp. 145–153.

²⁸ M. Duda, *Wybrane aspekty z etyki mediatora*, [in:] *Oblicza mediacji. Wybrane zagadnienia*, eds. K. Wojtanowicz, M. Pękala, Kraków 2021, pp. 81–89.

articulate their demands as quickly as possible, this initial procedural stage can be a source of significant frustration and impatience. Participants often perceive the need to review the rules and sign documents as artificial, institutional “red tape” that unnecessarily stifles the flow of conversation and delays getting to the heart of the matter. This situation presents the mediator with a significant communication challenge – it requires empathetically yet firmly making the parties aware that this seemingly burdensome formal rigor is not an end in itself, but rather the absolute foundation of the procedure. It is precisely this minimum of formality at the very beginning of the process that guarantees legal security for the participants, protecting the confidentiality of their discussions and ensuring that the subsequent substantive settlement discourse will proceed on fair and predictable terms for all.²⁹

Omitting preliminary mediation meetings and proceeding directly to joint meetings may result in a rapid escalation of the conflict right at the start of the process. In cases characterized by high emotional intensity and strongly polarized positions, premature confrontation between participants often results in an open and destructive verbal clash. This occurs at a critical moment – before the mediator has had a chance to formally establish the procedural framework or implement the rules for safe and constructive communication. The lack of prior preparation and “cooling down” of the parties in private means that, under conditions of stress and in the direct presence of the opponent, participants immediately revert to accusatory rhetoric. From a systemic perspective, such uncontrolled dynamics of the dispute deprive the mediator of the ability to effectively manage the discourse and may lead to a permanent breakdown of talks, and thus to the failure of the entire settlement initiative, before the proceedings even enter their substantive phase.

CONCLUSIONS

Although the Polish Code of Civil Procedure does not explicitly define the preliminary meeting in mediation as a mandatory step, the disclosure obligations imposed on the mediator and the principle of party autonomy make it an indispensable element of a professionally conducted process.

The individual nature of these meetings provides participants with the necessary preparation for participating in mediation, including emotional preparation, allowing them to open up without the stress associated with the presence of an opponent. The key communicative goal is to move from rigidly formulated demands and claims (positions) to identifying actual needs, motivations, and concerns

²⁹ A. Przylepa-Lewak, M. Myślińska, *Rola mediatora w procesie informacyjnego działania prawa*, [in:] *Teoria prawa. Między nowoczesnością a ponowoczesnością*, ed. A. Samonek, Kraków 2013, pp. 131–140.

(interests). As a result, participants learn to communicate in the language of facts and mutual benefits, which effectively mitigates the risk of destructive emotional outbursts during subsequent joint sessions.

Full preparation for mediation requires the parties to conduct a cool-headed calculation of the cost-benefit of the dispute by analyzing BATNA and WATNA scenarios.

To support this process, the mediator often employs the “devil’s advocate” technique. This involves deliberately confronting a party with the weaknesses in their arguments and the potential costs and risks of a protracted court battle, with the aim of overcoming harmful litigation optimism.

It should be emphasized that preliminary meetings conducted thoroughly optimize and shorten the duration of the actual negotiations. Proceeding directly to joint meetings in highly emotionally charged cases risks a sudden escalation of the conflict, which may lead to a permanent breakdown of talks before the mediator has a chance to establish rules for safe communication. Exceptions are situations where the parties come forward with a pre-negotiated settlement solely for the purpose of formalizing it – in such cases, holding multiple preliminary meetings may be deemed unnecessary and could give rise to unwarranted mistrust. Ultimately, however, proper preparation builds trust in the mediator’s competence and fosters a professional image of the entire process.

The mediator should exercise great caution when considering the possibility of omitting preliminary meetings to avoid turning the process into a sham mediation, which is a negative phenomenon involving the conduct of proceedings under the name of mediation that, in reality, lack the essential characteristics of this procedure. Its essence is not determined by the name of the activity itself, but by the content and actual nature of the actions taken by the mediator. This phenomenon occurs in situations where the mediator does not fulfil the role assigned to them in accordance with the rules, which manifests itself in a lack of due diligence, the use of powers for their own benefit, or the undertaking of arbitrary actions. In practice, sham mediation can take two main forms. The first is the mediator’s inaction or insufficient involvement, whereby they become merely a witness to the discussions, and the process effectively becomes a form of negotiation devoid of professional support. The second variant involves quasi-arbitrary actions, where the mediator, either openly or covertly, seeks to impose the terms of an agreement on the participants, thereby violating the principles of voluntariness, acceptability, and party autonomy.³⁰

Despite their undeniable diagnostic value, the implementation of preliminary mediation meetings entails certain inconveniences, which primarily boil down to

³⁰ A. Jakubiak-Mirończuk, *Mediacja pozorna – pojęcie i charakterystyka*, “ADR. Arbitraż i Mediacja” 2024, vol. 17(2), pp. 9–25.

an objective prolongation of the entire proceedings and the generation of additional logistical burdens. The need to coordinate schedules and fulfil formal requirements at this stage often stifles the momentum of discussions, causing justified frustration among the parties – particularly in urgent or highly emotionally charged cases. From a tactical perspective, this phase carries the risk of being exploited by a disloyal participant, who may use it as a method of procedural obstruction and legal stalling. Furthermore, a mediator's initiative to arrange individual meetings is often misinterpreted as an action driven by a particular economic interest and an artificial inflation of costs, which, in situations where the parties have a settlement agreement ready, leads to an atmosphere of mistrust. Ultimately, however, weighing these shortcomings, it must be concluded that properly conducted preliminary meetings compensate for these losses, significantly optimizing and shortening the duration of mediation discussions at the negotiating table.

REFERENCES

Literature

- Bellwon M., *Źródła zaufania stron konfliktu wobec mediatora i mediacji – czy wymogi formalne mają znaczenie?*, [in:] *Mediacja – sztuka kompromisu*, ed. M. Romanowski, Warszawa 2023.
- Broszkiewicz, M., *Mediation as a New Solution for Solving Conflicts on Financial Markets*, "Financial Sciences. Nauki o Finansach" 2017, vol. 4(33). <https://doi.org/10.15611/nof.2017.4.02>.
- Cyrol T., *Zasada poufności mediacji*, [in:] *Oblicza mediacji. Wybrane zagadnienia*, eds. K. Wojtanowicz, M. Pękala, Kraków 2021.
- Duda M., *Wybrane aspekty z etyki mediatora*, [in:] *Oblicza mediacji. Wybrane zagadnienia*, eds. K. Wojtanowicz, M. Pękala, Kraków 2021. <https://doi.org/10.15633/9788374386753.04>
- Flaga-Gieruszyńska K., *Zastosowanie sztucznej inteligencji w pozasądowym rozwiązywaniu sporów cywilnych*, "Studia Prawnicze KUL" 2019, vol. 3. <https://doi.org/10.31743/sp.8896>.
- Fruk A., *Wynagrodzenie i zwrot wydatków przysługujące mediatorowi – uwagi na tle zmian do Kodeksu postępowania cywilnego wprowadzonych nowelizacją z 2023 roku*, "ADR. Arbitraż i Mediacja" 2023, vol. 16(2).
- Jakubiak-Mirończuk A., *Mediacja pozorna – pojęcie i charakterystyka*, "ADR. Arbitraż i Mediacja" 2024, vol. 17(2).
- Kądziołka-Sabanty H., *Dynamika konfliktu w procesie mediacji*, [in:] *Mediacja – sztuka kompromisu*, ed. M. Romanowski, Warszawa 2023.
- Kłós P., *Poufność mediacji: analiza teoretycznoprawna*, Lublin 2021.
- Kopańska-Bródka, D., Wachowicz, T., *Postnegocjacyjna optymalizacja kompromisu negocjacyjnego*, "Studia Ekonomiczne" 2013, vol. 138.
- Kożuch M., *Dobra wiara w procesie mediowania. Czy udział prawnika zmienia percepcję dobrej wiary?*, [in:] *Oblicza mediacji. Wybrane zagadnienia*, eds. A. Cybulko, T. Cyrol, M. Kożuch, Kraków 2022.
- Leksowska A., Piegza M., *Mediacja rozwodowa – aspekty psychiatryczne, psychologiczne i prawne*, Katowice 2018.

- Orzeł A., Alama-Osmólska K., *Rola pełnomocników procesowych w mediacji cywilnej*, [in:] *Mediacje w prawie*, eds. J. Czapka, M. Szeląg-Dylewski, Kraków 2014.
- Przybyła-Basista H., *Proces mediacji rodzinnych – od teorii do praktyki*, "Mediator" 2002, no. 21.
- Przylepa-Lewak A., Myślińska M., *Rola mediatora w procesie informacyjnego działania prawa*, [in:] *Teoria prawa. Między nowoczesnością a ponowoczesnością*, ed. A. Samonek, Kraków 2013.
- Rogozińska A., *Mediacja w polskim systemie prawnym*, "Eunomia. Rozwój Zrównoważony jako Przedmiot Badań" 2018, vol. 1(94).
- Rollins C., *Integration of Mediation Skills as Required by the Nextgen Bar Exam*, "Saint Louis University Law Journal" 2025, vol. 69(3).
- Skinder M., *Otoczenie, taktyki i rozwiązywanie konfliktów jako problemy technik mediacji i negocjacji w administracji*, "Studia z Zakresu Prawa, Administracji i Zarządzania UKW" 2012, vol. 2.
- Skrobotowicz G., *Mediacja w sprawach o przemoc w rodzinie*, "Prokuratura i Prawo" 2014, no. 3.
- Suchanek M., *Mediacja jako metoda rozwiązywania konfliktów społecznych*, "Studia Administracyjne" 2018, vol. 10.
- Stryniak-Puza M., Zienkiewicz A., *Uczestnictwo w złej wierze w próbie dobrowolnego rozwiązania sporu gospodarczego przed wytoczeniem powództwa*, "ADR. Arbitraż i Mediacja" 2023, vol. 16(1).
- Świtluk J., *Mediacja w sporach pracowniczych. Mediacja online*, Warszawa 2021.
- Zienkiewicz A., *Dylematy praktyki mediacyjnej – kilka pytań na tle zasady bezstronności i neutralności mediatora*, "Gubernaculum et Administratio" 2019, vol. 1(19).
- Zienkiewicz A., *Standardy prowadzenia mediacji i postępowanie mediatora uchwalone przez Społeczną Radę ADR przy Ministrze Sprawiedliwości*, "Studia Prawnoustrojowe" 2012, vol. 18.
- Ziółkowska K., *Skuteczna komunikacja jako realizacja zasady współzycia społecznego w miejscu pracy*, [in:] *Communication as a Factor of Transparency of Social Interaction: The Era of Digitalization*, eds. A. Krysovaty, L. Buiak, O. Koval, M. Radziłowicz, Olsztyn 2022.
- Song Y., Satoh K., *A Three-Valued Semantics for Negotiated Situations in Multi-Agent Systems Based on BATNA and WATNA*, Japan 2024, <https://www.scitepress.org/Papers/2024/123942/123942.pdf> [access: 28.03.2026].

Legal acts

- Act of November 17, 1964 – Code of Civil Procedure, consolidated text: Journal of Laws 2024, item 1568, as amended.
- Code of Civil Procedure (Journal of Laws 2026, item 468, 473).
- Regulation of the Minister of Justice of February 12, 2026, on the amount of remuneration and reimbursable expenses of a mediator in civil proceedings, Journal of Laws 2026, item 170.

ABSTRAKT

Artykuł stanowi praktyczno-opisową analizę spotkań wstępnych, które z perspektywy warsztatu mediatora są kluczowym etapem postępowania, mimo że polskie prawo procesowe nie definiuje ich wprost jako formy obowiązkowej. Z punktu widzenia praktyki mediacyjnej, tekst ukazuje niezbędność tej fazy dla legitymizacji całego procesu oraz zapewnienia bezpieczeństwa emocjonalnego i proceduralnego jego uczestnikom. W publikacji szczególną uwagę poświęcono narzędziom analitycznym stosowanym na etapie wstępnym, takim jak analiza alternatyw BATNA i WATNA oraz technika „adwokata diabła”, wskazując na ich znaczenie dla racjonalizacji oczekiwań uczestników. Rozważania obejmują również pragmatyczne aspekty organizacji sesji wstępnych, w tym kwestie

kosztów, logistyki oraz ryzyka, związane z pominięciem tej fazy przygotowawczej. Konkluzja artykułu wskazuje, że rzetelne przeprowadzenie spotkań wstępnych stanowi warunek legitymizacji całego postępowania i jest niezbędne dla wypracowania trwałych, świadomych ugód.

Słowa kluczowe: mediacja; spotkania wstępne; obowiązek informacyjny; BATNA/WATNA; etyka mediatora; ADR