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iCare2

National Report on Poland



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1. Introduction

In an increasingly interconnected Europe, cross-border family disputes have become more frequent. In the context of separation, divorce and necessary arrangements concerning parental responsibility, the risk of international child abduction is still present. These complex situations often involve multiple legal systems, cultural differences, and, most importantly, the rights and well-being of children. International (or cross-border) family mediation slowly becomes a valuable tool to address such disputes, offering a structured yet flexible process aimed at facilitating mutual understanding and sustainable agreements between parents residing in different countries.

The potential positive effects of international family mediation have been acknowledged by the EU lawmaker: the regulation (EU) No. 2019/1111 (Brussels IIb), in its Article 25, has introduced the express obligation for the judge in child abduction proceedings to invite the parties to consider the possibility of making recourse to mediation.

This report presents the result of the national research on the Polish legal system, undertaken within the activities of the EU co-funded project “iCare2”. The research evaluates if and how the Brussels IIb regulation has been applied in Poland, identifying challenges in its enforcement, and assessing its success in improving judicial cooperation, resolving international child abduction cases, and promoting family mediation.

International family mediation is still making its way in the national legal system in Poland. While family mediation is slowly becoming a valid tool which parents and legal professionals acknowledge and activate with increasing frequency, its full potential is still not being used. The development of a ‘culture’ of mediation, together with a consistent and concrete integration of the principle of the best interests of the child in the overall process, is being identified as a key need in order for mediation to be offered as an effective tool for the resolution of family conflicts, in line with international and EU standards.

As part of the methodology applied to the present research, interviews have been conducted to gather the perspective and experience of practitioners. The authors – who remain the only responsible for the content of this report – are grateful to the above professionals for their precious cooperation.

2. International family mediation in Poland: the legal framework

2.1. The Code of Civil Procedure

In Poland, mediation in civil matters is **regulated in the Code of Civil Procedure**.¹ Provisions regulating mediation in civil matters were introduced to the Code of Civil Procedure (which dates back to 1964) by an amendment of 2005 (2005 Amendment).² These provisions do not distinguish between mediation, family mediation or international mediation, and therefore, **they apply equally to international family mediation**.³

The justification of 2005 Amendment explained that:

The proposed regulations aim to introduce mediation into our civil procedural law and thus establish an alternative to court proceedings aimed at resolving disputes in civil matters. In accordance with the assumptions underlying the proposal, mediation in civil matters should be attractive enough for the parties to a civil law relationship to use them.

Hence, it was assumed that the solutions concerning mediation should be simple and uncomplicated. Mediation is intended to facilitate the pursuit of claims in civil cases and, at the same time, to effectively provide legal protection to parties making use of this method of dispute resolution.

Based on these assumptions, it was decided that civil law disputes could be resolved through mediation by concluding a settlement before a mediator. Such

¹ Ustawa z dnia 17 listopada 1964 r. Kodeks postępowania cywilnego, Dz. U. 2024, poz. 1568. Original and consolidated version (in Polish language) is available online at: <https://isap.sejm.gov.pl/isap.nsf/DocDetails.xsp?id=wdu19640430296>.

² Ustawa z dnia 28 lipca 2005 r. o zmianie ustawy - Kodeks postępowania cywilnego oraz niektórych innych ustaw, Dz. U. 2005, nr 172, poz. 1438. Available online (in Polish language) at: <https://isap.sejm.gov.pl/isap.nsf/DocDetails.xsp?id=WDU20051721438>

³ See also: NAPIERALSKA A., *Mediacja transgraniczna – charakterystyka postępowania na przykładzie sporów rodzinnych i gospodarczych* in ROMANOWSKI M. (ed), *Mediacja – od rozmowy do porozumienia*, Instytut Wymiaru Sprawiedliwości, Warszawa 2022, p 34.

*a settlement will have the legal force of a court settlement after it has been approved by the court (...).*⁴

Pursuant to Article 10 of the Code of Civil Procedure (as modified by 2005 Amendment): *'in cases in which settlement is permissible, the court shall seek, in any state of proceedings, to settle them amicably, in particular by inviting the parties to mediation.'*

Settlement and therefore mediation is possible in all kinds of civil law cases, including family law. Examples of matters which might be mediated include child support, exercising of parental responsibility after divorce, access rights, and property matters between spouses.⁵ There are some family law cases in which settlement and consequently also mediation is not admissible, for example cases concerning determination of paternity, determination of maternity, denial of paternity, adoption, annulment of marriage, termination or restriction of parental responsibility.

Mediation in civil matters is specifically regulated in Articles 183¹-183¹⁵ of the Code of Civil Procedure (added by the 2005 Amendment). These provisions constitute a further development of a general provision of Article 10.

The very first provision devoted to mediation, namely Article 183¹ § 1 of the Code of Civil Procedure provides that mediation is voluntary. Mediation may be conducted prior to the initiation of the proceedings and also during the course of the proceeding if the parties consented to it (183¹ § 4 of the Code of Civil Procedure). If, however, parties do not consent to mediation, it will not be initiated (Article 183⁶ § 2(1) of the Code of Civil Procedure and Article 183⁸ § 2 of the Code of Civil Procedure).

In accordance with Article 183¹ § 2 of the Code of Civil Procedure mediation might be initiated on the basis of:

- **a mediation agreement** or
- **a court order directing the parties to mediation.**

Pursuant to Article 183¹ § 3 of the Code of Civil Procedure a mediation agreement should indicate the subject of mediation, the person of the mediator or the method of selection of the mediator. A mediation agreement may be

⁴ Sejm Rzeczypospolitej Polskiej, IV Kadencja, Druk nr 3213. Available at: <https://orka.sejm.gov.pl/proc4.nsf/opisy/3213.htm>

⁵ GÓJSKA A., *Mediacja w sprawach rodzinnych*, Ministerstwo Sprawiedliwości: Warszawa 2011, p. 6.

concluded also by consenting to mediation for which the other party has applied for (Article 183¹ § 2 of the Code of Civil Procedure). The law does not require a specific form of the mediation agreement.⁶

When it comes to the referral by the court to the mediation, it might be done “at any stage of the proceedings” (Article 183⁸ § 1 of the Code of Civil Procedure. Article 183⁸ § 5 of the Code of Civil Procedure provides that before the first hearing scheduled for the hearing, the presiding judge shall **assess whether to refer the parties to mediation**. For this purpose, if it is necessary to hear the parties, the presiding judge may summon them to appear in person at a closed session. The presiding judge may also summon the parties to participate in **an information meeting** on amicable dispute resolution methods, in particular mediation. The information meeting may be conducted by a judge, court clerk, court official, judge's assistant or permanent mediator (Article 183⁸ § 4 of the Code of Civil Procedure). An information meeting is additionally regulated in the regulation of the Ministry of Justice.⁷ It explains that the purpose of the information meeting is to familiarize the parties with the possibilities and benefits of amicable dispute resolution, in particular mediation. If a party fails to appear at the information meeting or closed session without justification, the court may charge them with the costs of the ordered appearance incurred by the opposing party (Article 183⁸ § 6 of the Code of Civil Procedure).

The court sets the duration of the mediation at **up to three months**. This deadline may be extended, at the request of the parties or for other important reasons, if this would serve an amicable settlement of the case (Art. 183¹⁰ § 1 of the Code of Civil Procedure). The presiding judge sets a hearing after the expiry of the above period (Art. 183¹⁰ § 2 of the Code of Civil Procedure).

As mediation is voluntary, it cannot be conducted if a party has **not consented to mediation** within one week of the date of announcement or delivery of the decision referring the parties to mediation (Article 183⁸ § 2 of the Code of Civil Procedure).

If the parties have not selected a mediator, the court while referring the parties to mediation, appoints a mediator **with appropriate knowledge and skills in**

⁶ ERECIŃSKI T. in: ERECIŃSKI T. (ed.), Kodeks postępowania cywilnego. Komentarz. Tom II. Postępowanie rozpoznawcze, Wolters Kluwer 2016, p. 30

⁷ Rozporządzenie Ministra Sprawiedliwości z dnia 18 czerwca 2019 r. Regulamin urzędowania sądów powszechnych, Dz.U. 2024 r, poz. 867. Available online (in Polish language): <https://isap.sejm.gov.pl/isap.nsf/DocDetails.xsp?id=WDU20190001141>

conducting mediation in cases of this type, giving priority to permanent mediators (Article 183⁹ § 1 of the Code of Civil Procedure).

The mediator has the right to **review the case files**, unless a party objects to it. (Article 183⁹ § 2 of the Code of Civil Procedure). After referring the parties to mediation, the court provides the mediator with the contact details of the parties and their representatives (Article 183⁹ § 3 of the Code of Civil Procedure).

The mediator immediately sets **the date and place of the mediation meeting**. It is not necessary to set a mediation meeting if the parties agree to conduct mediation without a mediation meeting. The mediator may conduct a mediation meeting using technical devices enabling it to be conducted **remotely**, if the parties agree (Article 183¹¹ of the Code of Civil Procedure).

The mediator conducts the mediation using **various methods aimed at an amicable resolution of the dispute**, including by assisting the parties in formulating their settlement proposals, or at the request of the parties may indicate ways to resolve the disputes that are not binding on the parties (Article 183^{3a} of the Code of Civil Procedure). The mediator must be **impartial** when conducting mediation (Article 183³ § 1 of the Code of Civil Procedure) and that the mediator should **immediately disclose to the parties any circumstances that could raise doubts about their impartiality** (Article 183³ § 2 of the Code of Civil Procedure). The mediation proceedings are **closed to the public** (Article 183⁴ § 1 of the Code of Civil Procedure). The mediator, the parties and other persons participating in the mediation proceedings are obliged to keep secret of the facts of which they became aware in connection with the mediation. However, the parties may exempt the mediator and other persons participating in the mediation proceedings from this obligation (Article 183⁴ § 2 of the Code of Civil Procedure). None of the provisions of the Code of Civil Procedure regulates the **presence of a lawyers** representing parties in the course of mediation proceeding. Hence, such presence is not mandatory but not excluded either.

In accordance with Article 183¹² § 1 of the Code of Civil Procedure, **a protocol** is drawn up, in which the place and time of the mediation is marked, as well as the name, surname and addresses of the parties, the name and address of the mediator, and furthermore the result of the mediation. The protocol is signed by the mediator. If the parties have reached **a settlement** before the mediator, the settlement is included in the protocol or attached to it. The parties sign the settlement agreement (Article 183¹² § 2 of the Code of Civil Procedure). By signing the settlement agreement, **the parties agree to apply to the court for**

its approval, of which the mediator informs the parties (Article 183¹² § 2¹ of the Code of Civil Procedure). The mediator serves the parties with a copy of the protocol (Article 183¹² § 3 of the Code of Civil Procedure). (See also answer to the question on the subsequent steps when an agreement is reached – below).

Based on the Amendment of 2015, Article 187 § 1 of the Code of Civil Procedure, which lists information to be included in the claim, requires additionally “**whether the parties have attempted mediation or some other out-of-court means of dispute resolution and, where such attempts have not been made, an explanation of the reasons for not doing so**”.

2.2. Family and Guardianship Code

In 2008 the provisions on divorce of the Family and Guardianship Code were amended. Article 58 § 1 was amended by referring to the **agreement between spouses on parental responsibility**. It reads as follows:

*„In the judgment pronouncing divorce, the court shall decide on the parental authority over the joint minor child of both spouses and the parents' contact with the child and shall rule on the amount by which each spouse is obliged to bear the costs of the child's maintenance and upbringing. The court shall consider **the agreement of the spouses on how to exercise parental authority and maintain contact with the child after the divorce** if it is in the child's **best interests**. Siblings shall be brought up together, unless the best interests of the child require otherwise.”*

The **agreement between spouses on parental responsibility** may be reached through mediation.⁸

2.3. Brussels II-ter Regulation

In **Brussels II-bis**⁹ there was no specific article mandated mediation or detailed procedural standards. According to Recital 25 “amicable resolution of family disputes” in matters of parental responsibility, **was encouraged**. In practice,

⁸ See the list of issues that should be included in the agreement compiled by the Association of Family Mediators: http://smr.org.pl/doc/plan_opieki_rodzicielskiej.doc.

⁹ Council Regulation (EC) No 2201/2003 of 27 November 2003 concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and the matters of parental responsibility, repealing Regulation (EC) No 1347/2000, OJ L 338, 23.12.2003.

mediation was considered a tool to prevent or resolve parental conflicts, including abduction cases.

The Regulation entered into force when Poland already was a member of the EU. However, Polish law did not undergo specific amendments to introduce mediation in response to Brussels II-bis - rather, the practice began shifting gradually, laying the groundwork for later changes under Brussels II-ter. Back then mediation in cross-border cases was rare but became more visible in response to EU emphasis on amicable resolution. This leads to increasing awareness, especially in cooperation with the Central Authority and some pilot programs (e.g., with Reunite or International Mediation Centre for Family Conflict and Child Abduction - MIKK).

Brussels II-ter¹⁰ brings significant changes and explicitly strengthens the role of mediation, stating in Article 25 that “As early as possible and at any stage of the proceedings, the court (...) shall invite the parties to consider whether they are willing to engage in mediation or other means of alternative dispute resolution, unless this is contrary to the best interests of the child, it is not appropriate in the particular case or would unduly delay the proceedings.” Therefore, Brussels II-ter, compared to Brussels II-bis, contains a clear and binding obligation for Member States to promote mediation in cross-border cases. The Regulation also comprehensively regulates cross-border recognition and enforcement of mediation settlements and strengthens role of central authorities in promoting mediation. The Regulation also promotes the creation of cooperation networks between mediation institutions and authorities in different Member States.

When Brussels II-ter Regulation entered into force, on 1 August 2022, Poland already had a legal basis for court-referred mediation (in Articles 183¹-183¹⁵ of the Code of Civil Procedure), therefore no major legislative reform was needed. International cooperation has been conducted as well through the Ministry of Justice as the Central Authority, which can assist in referring cases to mediation under the Hague Convention and Brussels II-ter. However, there was an **indirect impact – strengthening the role of mediation in practice**. Brussels II ter, and in particular its Article 25, has had a real impact on the way Polish institutions treat mediation in an international context, which includes: increased role of

¹⁰ Regulation (EU) 2019/1111 on jurisdiction, the recognition and enforcement of decisions in matrimonial matters and the matters of parental responsibility, and on international child abduction, OJ L 178, 02/07/2019.

mediation in cross-border cases; Central Authority is increasingly proposing mediation in child abduction cases; courts are more likely to consider suspending proceedings in order to undertake mediation, especially when the case involves parents living in different EU countries. Guidelines and training materials for mediators and judges (e.g. publications by the Polish Mediation Centre or the Association of Family Judges) have begun to place greater emphasis on the cross-border aspects of mediation and compliance with Article 25 of Brussels II-ter.

Also, according to Articles 65–67 of the Brussels II-ter Regulation, settlements reached before a mediator in one Member State may be recognised and enforced in another Member State if they are enforceable in the country of origin. This legal solution has forced greater procedural awareness in Poland: mediators must inform the parties of the need for court approval of the settlement if it is to be enforceable abroad and courts have begun to analyse the cross-border effects of settlements more carefully, particularly in the context of contact with children.

The principle of the best interest of the child can be found in numerous international instruments to which Poland is party to, for instance in the European Convention on the Exercise of the Rights of the Child, UN Convention on the Rights of the Child or 1980 HCCH Child Abduction Convention. This principle is also embedded in Article 72 of the Constitution. Also, the Act on Support for the Family and Foster Care emphasizes its special importance in decision-making concerning the child and family. The provisions of the Family and Guardianship Code in relation to matters concerning the child emphasize the need to consider the best interest of the child in numerous instances, for example Article 58 § 1 of the Family and Guardianship Code provides that the court should consider *the agreement on the exercise of parental authority drafted by the parents*, if it is in the child's **best interests**. The principle plays a fundamental role in the interpretation of all substantive as well as procedural law provisions concerning the child.¹¹

There is no statutory definition of the notion of “the best interests of the child”. Fulfilling it with certain meaning should be made in the specific factual circumstances. Circumstances which might be mentioned include **entitlement**

¹¹ J. ZAJĄCZKOWSKA-BURTOWY, *Dobro dziecka jako wartość podlegająca szczególnej ochronie w sprawach dotyczących wykonywania władzy rodzicielskiej i kontaktów z dzieckiem* w J. MUCHA (red) *Realizacja zasady dobra dziecka w mediacji w sprawach dotyczących wykonywania władzy rodzicielskiej i kontaktów*, Wolters Kluwer, Warszawa 2021, pp. 141 – 151.

to the protection of life and health and to any action on the part of others, which should ensure the conditions for calm, proper, undisturbed development, respect for dignity and participation in the process of deciding his or her situation.¹² This list is not exhaustive.

As mentioned, the Code of Civil Procedure regulates mediation in general in Articles 183¹–183¹⁵ but **does not provide detailed rules on the involvement of children in mediation and does not mention the best interest of the child in that respect**. The law allows the court to refer the parties to mediation but remains silent about whether and how the child's views or interests should be actively represented or included in the process (see also the answer to question below: Is the child heard and informed in the mediation process? Is there a common practice on this?).

3. International family mediation in Poland: the practice

3.1. Practical use of (international) family mediation

In Poland, mediation in parental responsibility cases, including cases of international child abduction, is **increasingly being used** as an alternative dispute resolution (ADR) method.

Despite the introduction of mediation regulations in 2005, it did not initially enjoy much interest. In 2006, only 270 mediation proceedings in family matters were registered throughout Poland.¹³ The importance of mediation increased after the amendment of the Family and Guardianship Code in 2008, when courts began to refer parties to mediation more often in divorce and child contact cases.

¹² See, among others: Postanowienie Sądu Najwyższego z 24.11. 2016, sygnatura akt: II CA 1/16.

¹³ The Ministry of Justice provides detailed statistical data on family mediation in the Statistical Guide to the Justice System. The section 'Long-term studies' contains summaries covering the years 2006–2024, including: the number of family cases referred to mediation, the number of settlements reached, the mediation success rate. These data are available at: <https://isws.ms.gov.pl/pl/baza-statystyczna/opracowania-wieloletnie>.

Further legal changes, such as the introduction of the obligation to inform about mediation attempts in divorce proceedings under the 2015 amendment, contributed to a significant increase in the number of family mediations – 4,316 cases in 2016 and 6,575 cases in 2017.

Practitioners, including judges, lawyers and mediators, emphasise the growing role of mediation in family matters. They point to the benefits of mediation, such as faster dispute resolution, less emotional stress for the child and greater flexibility in determining the terms of the agreement. Mediation allows parents to focus on the welfare of the child, which increases the chance of reaching a lasting agreement on issues concerning the child's upbringing and contact with both parents.

Based on the data presented for 2018–2024 concerning mediation proceedings in family matters in Poland, the following key conclusions and trends can be identified:

1. Increase in the number of cases referred to (court) mediation – from 6,933 cases (in 2018) to 10,956 cases (in 2024).

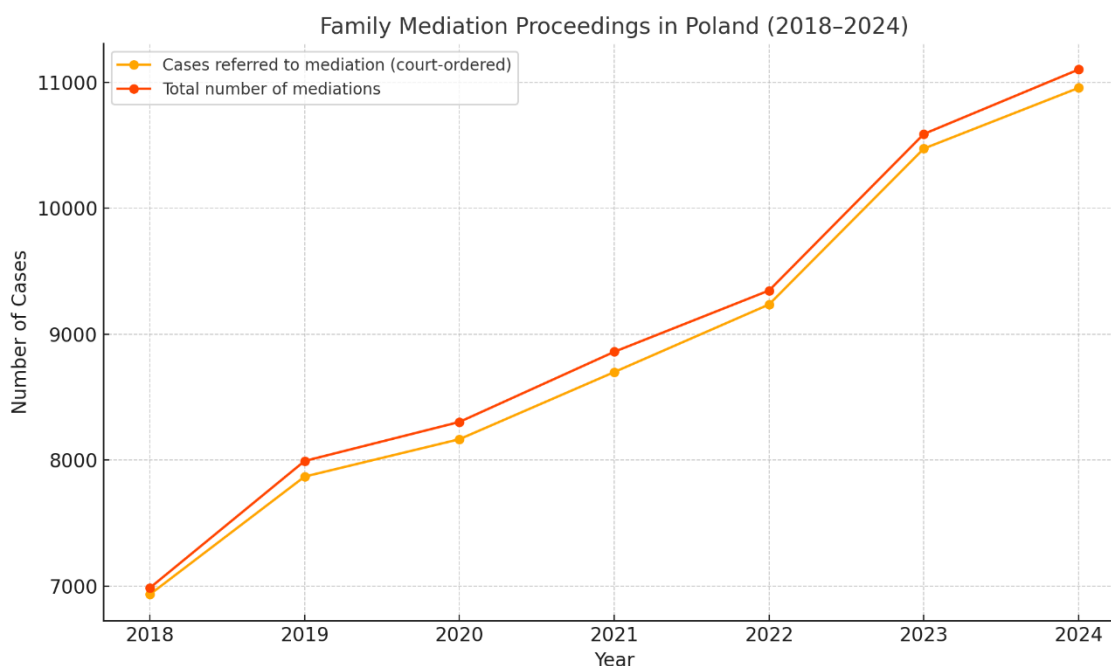


Table: prepared based on statistical data.

This is an increase of over 57% in 7 years, which demonstrates the growing confidence of courts in mediation as an effective tool for resolving family conflicts.

2. Discontinuation of proceedings rate based on settlements reached: from 2,409 (approx. 37% effectiveness in relation to protocols) in 2018 to 3,881 (approx. 47% effectiveness in relation to protocols) in 2024.

The increase in the number of discontinuations confirms the effectiveness of court mediation and the improvement in the quality of mediation – more cases concluded with a settlement result in a lasting agreement.

3. Number of applications for approval of out-of-court settlements: decrease from 4,974 (in 2018) to 2,926 (in 2024), i.e. decrease by 41% and number of approved out-of-court settlements: decrease from 4,869 (in 2018) to 2,971 (in 2024), but the approval rate remains very high (~98%).

It can be assumed that more and more family mediations are taking place within the framework of court proceedings rather than entirely out of court.

4. Marginal cases of refusals to approve settlements: in both court and out-of-court mediation, the percentage of refusals to approve settlements is less than 1%, which testifies to the high quality of the mediators' work and the formal correctness of the settlements.

To sum it up, the growing number of cases referred to court mediation indicates that **this institution is becoming increasingly widespread and effective** in the family court system. The effectiveness of mediation is steadily increasing, with mediation ending in settlement in an increasing percentage of cases. **Out-of-court mediation accounts for a smaller share**, but still plays an important role – its effectiveness remains very high. It is worth continuing to promote mediation in family matters, especially as a tool in cases with a cross-border element (e.g. child abduction), where it can shorten the duration of proceedings and reduce conflict.

In proceedings for the return of a child, mediation and voluntary return are recommended at every stage of the proceedings, especially at the beginning. In practice, mediation in such cases may be conducted by mediators specializing in international matters, often in a co-mediation model, where two mediators from different countries participate, which facilitates communication and takes cultural differences into account.

The data¹⁴ shows that in 2019-2024 there were 843 return order cases in the courts of first instance. Only 5 of them ended via mediation. In the courts of second instance there were 443 cases and none of them involved mediation.

In accordance to enforcement (compulsory taking) cases – there were 61 cases in first instance courts and 87 in second instance courts – none of them involved mediation.

Above data shows that **mediation in child abduction cases under the Hague Convention in Poland is still not the norm**, especially in the decision phase (return orders). However, there are signs of small progress, particularly in enforcement cases. This may reflect the growing influence of transformative or trauma-informed mediation models, promoted by NGOs and child welfare organizations.

1.1. The training and qualification standards for (international) family mediators

It should be explained that currently in Poland there are no separate rules or provisions applicable to international family mediators or even more generally mediators specializing in international (cross-border) cases.¹⁵ Consequently, the rules which concern mediators in general apply equally to international family mediators.

Certain aspects of the qualities of the mediators and the conduct of the mediator are regulated in the Code of Civil Procedure. Article 183² § 1 of the Code of Civil Procedure states that mediator may be **a natural person who has full legal capacity and enjoys full public rights**. A judge cannot be a mediator, except for a **retired judge** (Article 183² § 2 of the Code of Civil Procedure).

Pursuant to Article 183² § 2 of the Code of Civil Procedure **non-governmental organizations and universities may maintain lists of mediators and establish**

¹⁴ The Ministry of Justice provides detailed statistical data on the number of cases under the Hague Convention and the manner in which they were resolved in the Statistical Guide to the Justice System, covering the years 2006–2024. These data are available at: <https://isws.ms.gov.pl/pl/baza-statystyczna/opracowania-wieloletnie>.

¹⁵ NAPIERALSKA A., *Mediacja transgraniczna – charakterystyka postępowania na przykładzie sporów rodzinnych i gospodarczych* in ROMANOWSKI M. (red), *Mediacja – od rozmowy do porozumienia*, Instytut Wymiaru Sprawiedliwości: Warszawa 2022, p 34.

mediation centers. Entry on the list requires a written consent of the mediator. Information on lists of mediators and mediation centers shall be provided to the president of the district court.

Additionally, the Law on the system of common courts¹⁶ provides for the institution of a **permanent mediator**, namely a mediator, who is entered on the lists held by the court. A permanent mediator may be a natural person who meets the following conditions listed in Article 157a point 1 – 6 the Law on the system of common courts, which are as follows: 1) these set forth in Article 183² § 1 and 2 of the Code of Civil Procedure (mentioned above); 2) **has knowledge and skills in mediation**; 3) is at least 26 years old; 4) knows the Polish language; 5) has not been validly convicted of an intentional crime or an intentional fiscal crime; 6) has been entered in the list of permanent mediators kept by the President of the Regional Court.

As explained in the case law of administrative courts, which are competent to hear appeals from decisions refusing entry on the list of permanent arbitrators, *“(...) the legislator also provided for the ‘position’ of a permanent mediator. Given its place in the legal system, it should be considered that it **has a special, trusted position among mediators**. This is evidenced by the additional requirements imposed (...), including the need to be entered on a list kept by the President of the Regional Court. It also requires a decision to be issued in this regard by that authority (...).* The obligation to issue a decision also means that the authority must verify that the candidate for permanent mediator meets the conditions laid down by law, including **an assessment of whether the candidate has the knowledge and skills specified (...).**”¹⁷

The case law suggests that the *“knowledge must be at a level that distinguishes the candidate for permanent mediator from other mediators, while mediation skills should be understood as proven experience that the current mediator should have. By deciding to enter a person on the list of permanent mediators, the President of the Regional Court confirms to the parties to the proceedings that the person in question not only has the knowledge and skills necessary to reach a settlement between the parties but also enjoys the social trust necessary to resolve their disputes (...) the role of mediator requires diverse and high personal, professional and moral qualifications. A mediator must have the ability*

¹⁶ Ustawa z dnia 27 lipca 2001 r. Prawo o ustroju sądów powszechnych, Dz. U. Dz.U. 2024, poz. 334. Original and consolidated version (in Polish language) is available online at: <https://isap.sejm.gov.pl/isap.nsf/DocDetails.xsp?id=WDU20010981070>.

¹⁷ Wyrok Wojewódzkiego Sądu Administracyjnego w Poznaniu z dnia 25 stycznia 2018 r., signature: III SA/Po 634/17.

to assess the situation correctly and behave appropriately. Standing between the parties in a dispute, they should have the predisposition to become an authority figure for them.”¹⁸

A special regulation¹⁹ governs the creation of **list of permanent mediators** held by regional courts. The list of permanent arbitrators should, among others, include the information on education and trainings completed by the mediator and information on their field of specialization (for instance, family law). Please note that there is no separate list of permanent mediators specializing in international family mediation.²⁰ Some of mediators, while providing information to be included in the list of permanent mediators, do indicate that they specialize in cross-border cases, including cross-border family cases.²¹

Pursuant to Article Art. 157c § 1(5) of the Law on the system of common courts, the president of the regional court, by way of a decision, removes a permanent mediator from the list in the event of, among others, **improper performance of duties by the permanent mediator**.

The Ministry of Justice instituted an advisory body **Social Council for Alternative Dispute Resolution by the Minister of Justice** (*Spółeczna Rada do spraw Alternatywnych Metod Rozwiązywania Sporów przy Ministrze Sprawiedliwości*). This body prepares guidelines and recommendations in the form of **resolutions** (*uchwała*) on topics related to mediation. These resolutions are not legal acts, and therefore they do not have a general binding effect.

Some of the resolutions prepared by the Social Council for Alternative Dispute Resolution by the Minister of Justice concern training and qualifications standards for mediators. The **Resolution No 1/2023 of 23 March 2023 r. on Standards of Training of Mediators**²² explains in its introductory part that there

¹⁸ Wyrok Wojewódzkiego Sądu Administracyjnego w Poznaniu z dnia 25 stycznia 2018 r., signature: III SA/Po 634/17.

¹⁹ Rozporządzenie Ministra Sprawiedliwości z dnia 20 stycznia 2016 r. w sprawie prowadzenia listy stałych mediatorów, Dz.U.2016, poz. 122.

²⁰ NAPIERALSKA A., *Mediacja transgraniczna – charakterystyka postępowania na przykładzie sporów rodzinnych i gospodarczych* in ROMANOWSKI M. (red), *Mediacja – od rozmowy do porozumienia*, Instytut Wymiaru Sprawiedliwości: Warszawa 2022, p 34.

²¹ The example of such list can be consulted at the website of the Regional Court in Kraków at [https://www.krakow.so.gov.pl/container/menu-glowne/informacje-dla-interesantow/mediacje/lista-stalych-mediatorow/2025/Lista_stalych_mediatorow_%2030-05-2025%20r%20\(1\).pdf](https://www.krakow.so.gov.pl/container/menu-glowne/informacje-dla-interesantow/mediacje/lista-stalych-mediatorow/2025/Lista_stalych_mediatorow_%2030-05-2025%20r%20(1).pdf)

²² Uchwała nr 1/2023 Społecznej Rady do spraw Alternatywnych Metod Rozwiązywania Sporów przy Ministrze Sprawiedliwości z dnia 23 marca 2023. w sprawie przyjęcia standardów

is “the lack of legally defined standards for mediator training”, and therefore, the resolution is needed to “ensure a high level of education for mediators and to professionalise the profession”. The resolution foresees a **basic training** (of 40 teaching hours) providing fundamental knowledge and skills in mediation and a **specialized training**. The resolution provides that the **specialized training in mediation in family matters** (of 60 teaching hours) should include, among others, the following aspects: family psychology, the perspective of children in mediation, techniques for identifying the needs of the parties to the mediation and other persons affected by the conflict, techniques supporting the identification of needs, court proceedings in family matters, including: rights and obligations of spouses, dissolution of marriage by divorce, formal separation, rules for the division of joint property, child support, parental responsibility, types of family mediation, models of conducting mediation in family matters, mediation documents, costs of mediation. The resolution also governs who can be the trainer within the basic and specialized training, how the training should be help, the recommended form of training (for example, lectures should not exceed 10% of the time of the training) and recommended didactic methods (for example, simulations of mediations).

There are also mediation centers, which provide for their **own rules on training and qualifications standards for family mediators**, which might be more demanding than these recommended by the Social Council for Alternative Dispute Resolution by the Minister of Justice.²³ Such mediation centers also offer such trainings. Some mediators participate in **trainings organized by International Mediation Centre for Family Conflict and Child Abduction (MIKK)**.

There are **no state-imposed ethical standards for mediation providers** in Poland, however such standards exist in the form of *soft law*. The Social Council for Alternative Dispute Resolution by the Minister of Justice in its resolution of

szkolenia mediatorów. This resolution is available online (in Polish language) at <https://www.gov.pl/attachment/c16bfe07-e2c5-4f50-8467-ba16d98b06d8>

²³ See, for example, the rules of Association of Family Mediators (*Stowarzyszenie Mediatorów Rodzinnych*) at <https://smr.org.pl/standardy/standardy-szkolenia-mediatorow/>

May 2008 introduced the **Code of Ethics of Polish Mediators**.²⁴ Some mediation centers provide for their **own codes of conduct for mediators**.²⁵

3.2. The key actors in (international) family mediation and the services they provide

As mentioned above, the **Ministry of Justice** promotes mediation in Poland, among others, through its advisory body - **Social Council for Alternative Dispute Resolution by the Minister of Justice** (*Spółeczna Rada do spraw Alternatywnych Metod Rozwiązywania Sporów przy Ministrze Sprawiedliwości*). This body prepares guidelines and recommendations in the form of **resolutions** (*uchwała*) on topics related to mediation. One of the important achievements of this Council are the standards on the trainings of mediators, including these specializing in family matters. Please note however that none of the resolutions relates specifically to international family mediation.

Pursuant to Article 183² § 2 of the Code of Civil Procedure **non-governmental organizations and universities** may maintain **lists of mediators** and establish mediation centers. Hence, such **mediation centers** having their own lists of

²⁴ The Code reads as follows: I. The mediator should conduct the mediation proceedings based on the principle of independence and autonomy of the parties in conflict. II. The mediator should be guided primarily by the welfare and interests of the parties. III. The mediator should ensure the voluntary participation of the parties in the mediation proceeding. IV. The mediator should act in such a way that all parties to the dispute know and understand the nature of the mediation process, the role of the mediator and the terms of potential agreement. V. A mediator should not undertake to assist in resolving a conflict when he does not have full confidence in his competence to conduct the proceedings fairly. VI. A mediator should not conduct mediation proceedings if he is not able to remain impartial or remove doubts about his impartiality. VII. The mediator should maintain the confidentiality of the mediation proceedings, both before, during and after the mediation. VIII. The mediator should avoid conflicts of interest with the parties and remove any doubts about this without delay. IX. The mediator should not accept any benefit from the parties except the agreed remuneration. Nor should he benefit from referring the parties to other professionals. X. The mediator, in his information and marketing activities, should not mislead the parties or the general public about his qualifications, competence, experience, scope of services and fees. XI. The mediator should provide the parties with clear and unambiguous information as to his fee and any costs associated with the proceedings in which they are involved. XII. The mediator should develop his or her professional competence in order to best serve the participants in the mediation.

Available (in Polish) at: <https://www.gov.pl/attachment/24d7098a-6fd8-425b-a995-1976676edc9b>

²⁵ Code of conduct of the Polish Center of Mediation (*Polskie Centrum Mediacji*) is available at: <https://mediator.org.pl/baza-wiedzy/kodeks-etyki-mediatora/>

mediators are created. Some of these centers focus on civil and commercial law (for example, Centrum Mediacji Lewiatan²⁶), some provide for mediation in different kind of disputes, including family law (for example, Polskie Centrum Mediacji²⁷), other focus on family mediation only (for example, Stowarzyszenie Mediatorów Rodzinnych²⁸). On their websites these organizations provide more or less detailed information about mediation.

In accordance with Article 16a § 1 of the Law on the system of common courts, in each regional court (*sąd okręgowy*) in Poland a **mediation coordinator** operates performing activities aimed at developing mediation, ensuring efficient communication between judges and mediators and permanent mediators, and cooperating in the organization of information meetings.²⁹ The mediation coordinator is appointed from among the judges of the given regional court (Article 16a § 3 of the Law on the system of common courts).

Another institution active in promoting mediation in Poland is the national section of **GEMME: European Judges Group for Mediation**.³⁰ National section of GEMME takes different initiatives aimed at promoting mediation, for instance it provides trainings for judges made by judges. It offers on their website many documents which a judge may use while contemplating to refer parties to mediation (e.g. a diagnosis of a case, a letter to the parties informing about mediation, a letter to professional representatives informing about mediation, a template of a questionnaire to help parties assess if mediation is possible in their case and set of good practices for judges).³¹

Also, **International Mediation Centre for Family Conflict and Child Abduction – MIKK** should be mentioned. One of MIKK's initiatives was so called *Wrocław Declaration on Mediation of Bi-national Disputes over Parents' and Children's Issues*³², which includes 4B Mediation Model.³³ Wrocław Declaration is an outcome of cooperation between German and Polish mediators.

²⁶ Website at: <https://lewiatan.org/centrum-mediacji-lewiatan/>

²⁷ Website at: <https://mediator.org.pl>

²⁸ Website at: <https://smr.org.pl>

²⁹ On different ways coordinators perform their tasks see: BODYS T., *Funkcja koordynatora do spraw mediacji w sądach powszechnych* in ROMANOWSKI M. (ed) *Mediacja: w kierunku ugody*, Warszawa 2021, p. 83-91.

³⁰ Website at: <https://polska.gemmeeurope.org/sedziowie-sedziom-o-mediacji>

³¹ Available at: <https://polska.gemmeeurope.org/wzory-dokumentow>.

³² Available at: <https://mikk-ev.org/wp-content/uploads/2023/06/Wroclaw-Declaration-en-pol-ger.pdf>

³³ Available at: <https://mikk-ev.org/4-bs-mediation-model/>

Another initiative that should be mentioned is the activity of the **ITAKA Foundation's Missing Persons Search Centre** and its **Support and Mediation Centre for families at risk of parental abduction situations**.³⁴ One of the Centre's tasks is to “aim at an amicable settlement of the dispute that has arisen between the parents and, in particular, to refer conflicting parents to mediation”.

In Poland, there is **no single state-imposed approach to mediation**. The Ministry of Justice registers mediators but does not dictate a uniform practice model beyond legal requirements (e.g. neutrality, confidentiality, voluntariness). The **approaches** therefore may vary in practice depending on the mediator's educational background (law, psychology, sociology), professional training (certified mediation programs, family therapy etc.), and affiliation (e.g. NGO vs court-assigned mediator).

While there is no single mandated methodology, **several distinct approaches** (or "schools of thought") are present in the scholarship. The **main approaches used by mediation services in Poland**, particularly in **family and parental responsibility cases**.

The most commonly practiced form of mediation, particularly in family cases referred by the courts, is **facilitative mediation** (*mediacja facylitatywna*). This approach emphasizes the role of the mediator as a neutral facilitator who guides the dialogue between the parties without imposing any solutions. The core of this methodology lies in active listening, helping the parties to articulate their interests, and creating a space for constructive communication. The mediator does not evaluate the case or provide legal advice, instead encouraging the participants to develop their own mutually acceptable solutions. This model is widely used in matters involving parental authority, contact arrangements, and property division between family members.³⁵

A less frequently employed approach is **evaluative mediation** (*mediacja ewaluatywna* or *ocenna*). In this model, the mediator may suggest possible outcomes or offer legal opinions, especially when the dispute has a strong legal or financial dimension. This form of mediation is often chosen when the mediator has a legal background—such as being a retired judge or a practicing lawyer. Evaluative mediation is sometimes used in family cases involving property settlements or alimony, where knowledge of legal standards can be helpful.

³⁴ Available at: <https://porwaniarodzicielskie.pl>

³⁵ DANISZEWSKA-ZUJKO A., Część II. Rozdział 1. Rodzaje mediacji. Charakterystyka i zastosowanie, in ROGULA C., ZEMKE-GÓRECKA A. (eds), *Mediacja w praktyce mediatora i pełnomocnika*, Wolters Kluwer, Warszawa, 2021, pp. 114-115.

However, this approach is viewed by some practitioners as controversial, particularly by those who emphasize the importance of strict neutrality and non-directiveness in mediation.³⁶

An emerging and increasingly recognized model is **transformative mediation** (*mediacja transformatywna*). This approach focuses not merely on reaching agreement, but on transforming the relationship between the parties. The key goals are empowerment of each party and fostering mutual recognition. Transformative mediation is particularly relevant in high-conflict family situations, including international child abduction cases, where emotional dynamics are complex and long-term cooperation between parents is essential. This method is often promoted by non-governmental organizations and child protection advocates, and tends to be favored by mediators with backgrounds in psychology or therapy.³⁷

Finally, a more specialized and less widely practiced method is **narrative mediation** (*mediacja narratywna*). This approach encourages parties to reflect on and reframe the stories they tell about their conflict. The goal is to construct a new, shared narrative that allows for a different perspective and improved future interactions. Narrative mediation is typically applied in deeply entrenched family disputes—such as ongoing conflicts between former partners or intergenerational tensions—and is usually conducted by professionals with psychosocial training, such as family therapists or social workers.³⁸

The participation of the child in the mediation process, particularly in IFM cases, is **not regulated in detail** by binding national law, and **common practice varies**. However, there are important legal principles and evolving professional standards that shape how and whether children are heard or informed in mediation.

Polish law, while not specifying the child's role in mediation itself, emphasizes **the right of the child to be heard in proceedings affecting them**, which indirectly applies to mediation:

³⁶ DANISZEWSKA-ZUJKO A., *Część II. Rozdział 1. Rodzaje mediacji. Charakterystyka i zastosowanie*, cit., pp. 115-116.

³⁷ GMURZYŃSKA E., *Rozdział 9. Rodzaje mediacji*, in MOREK R., GMURZYŃSKA E. (eds) *Mediacje: Teoria i praktyka*, Warszawa 2024, pp. 184-187.

³⁸ DANISZEWSKA-ZUJKO A., *Część II. Rozdział 1. Rodzaje mediacji. Charakterystyka i zastosowanie*, cit., pp. 117-118.

- Article 72(3) of **the Polish Constitution**³⁹ guarantees the child's right to be heard in all matters concerning them:

“Art. 72. Principle of the best interests of the child

*(3) In the course of determining the rights of the child, public authorities and persons responsible for the child shall be obliged to hear and, as far as possible, take into account the views of the child.”*⁴⁰

- Articles 216¹ and 216² of **the Code of Civil Procedure** regulate the court's obligation and procedure for hearing a child in civil cases concerning the child, particularly in family matters such as custody, contact, and parental authority:

“Article 216¹ [Hearing of the child].

§ 1. The court in matters concerning the person of a minor child shall hear the child if his/her mental development, state of health and degree of maturity allow it. If before the court the child refuses to participate in the hearing, the court shall refrain from this action.

§ 2. The court shall, according to the circumstances, the child's mental development, state of health and degree of maturity, take into account the child's opinion and reasonable wishes.

§ 3. The child may be heard only once during the proceedings, unless the welfare of the child requires that this act be carried out again or the need for a new hearing is raised by the child. The re-hearing of the child shall be conducted by the same court, unless this is impossible or is prevented by the best interests of the child.

§ 4. If the court has refrained from hearing the child, it shall, at the latest before the conclusion of the proceedings, indicate in the minutes of the meeting or hearing the reasons for which this activity was not carried out.”

“Article 216² [Conduct of the hearing of the child].

³⁹ Konstytucja Rzeczypospolitej Polskiej z dnia 2 kwietnia 1997 r., Dz.U. 1997 nr 78, poz. 483. Original and consolidated version (in Polish language) is available online at <https://isap.sejm.gov.pl/isap.nsf/DocDetails.xsp?id=wdm19970780483>.

⁴⁰ Translation: EK.

§ 1. *The hearing of the child shall be held in closed session, which shall take place in suitably adapted premises at the seat of the court or, if the welfare of the child so requires, outside the seat of the court.*

§ 2. *The child's hearing may be attended, in addition to the judge, only by an expert psychologist if, due to the child's state of health, mental development or age, it is necessary to provide psychological assistance to the child during the hearing or it is necessary to assist the judge in identifying the child's needs during the hearing.*

§ 3. *An official note shall be made of the conduct of the child's hearing. The course of the hearing of the child shall not be recorded by means of a sound or image and sound recording device. (...)*⁴¹

- Under Brussels II-ter (Regulation 2019/1111, Article 21), children must be given the opportunity to express their views in cross-border custody and abduction proceedings.

However, none of these provisions impose a duty to hear the child within mediation itself – only in court proceedings.⁴²

The Polish Code of Civil Procedure (Articles 183¹–183¹⁵) regulates mediation in general but **does not provide detailed rules on the involvement of children**. The law allows the court to refer the parties to mediation but remains silent about whether and how the child's views or interests should be actively represented or included in the process.

In practice, whether and how children are involved in family mediation, especially IFM, **depends on the mediator's training and approach**. Mediators trained in international family mediation are more likely to include the child's perspective, either indirectly (through parental reflection exercises or child-focused methods), or via child-inclusive mediation models, involving a trained child consultant who speaks with the child and conveys their views.⁴³

⁴¹ Translation: EK.

⁴² See: ARKUSZEWSKA A., *Rozdział IX. Udział dziecka w mediacji w sprawach dotyczących wykonywania władzy rodzicielskiej i kontaktów oraz jego reprezentacja*, in MUCHA J. (ed) *Realizacja zasady dobra dziecka w mediacji w sprawach dotyczących wykonywania władzy rodzicielskiej i kontaktów*, Wolters Kluwer, Warszawa 2021, pp. 321-324.

⁴³ See: GRĘDZIŃSKA J., *Część V. Rozdział 5. Mediacja w sprawach rodzinnych*, in ROGULA C., ZEMKE-GÓRCEKA A. (eds), *Mediacja w praktyce mediatora i pełnomocnika*, Warszawa 2021, pp. 417-418.

The age and maturity of the child also plays a role. Children younger than 6 years should not participate in mediation. As far as school children are concerned, this should depend on the child's individual predispositions of the child, while in accordance to teenagers, it is pointed out that their need to listen should always be considered during mediation⁴⁴, with parental consent, especially in cross-border disputes, though this remains rare in Poland compared to other countries (e.g. the UK or Netherlands).

In cross-border mediation, particularly where one party resides in another EU country, **mediators often align with international guidelines**, such as: The Council of Europe's Recommendation on Family Mediation⁴⁵, which encourages considering the child's views or MiKK's Standards for Cross-border Family Mediation⁴⁶, promoting child-sensitive procedures.

There is also **no legal obligation to inform the child about the mediation or its outcome**. Mediators may, on a case-by-case basis, encourage parents to discuss the process with the child in an age-appropriate way or/and involve child psychologists or counselors if needed.

Studies and reports show that in Polish practice **mediation remains parent-centered, children's voices are usually considered indirectly, and there is limited experience and infrastructure for child-inclusive or child-directed mediation in cross-border cases**. Children are not routinely heard or informed in mediation, their participation is rather rare and informal, though international training and standards are influencing change, especially in cross-border family mediation.⁴⁷

⁴⁴ GRĘDZIŃSKA J., Część V. Rozdział 5. Mediacja w sprawach rodzinnych, cit., p. 422.

⁴⁵ Recommendation No. R (98)1 on family mediation, adopted in Strasbourg, 11 January 2006, CEPEJ-GT-MED (2006) 1.

⁴⁶ In many different documents prepared by MiKK, e.g. ALLPORT L., *The Voice of the Child in International Family Mediation*, in: PAUL C. Ch., KIESEWETTER S., KHALAF-NEWSOME I. (eds.), *Cross-border Family Mediation. International Parental Child Abduction. Custody and Access Cases*, 3rd ed., Wolfgang Metzner Publishing, Frankfurt am Main, 2023.

⁴⁷ See: CYBULKO A., MUCHA J., *Rozdział XII. Badania ankietowe*, in Joanna Mucha (ed) *Realizacja zasady dobra dziecka w mediacji w sprawach dotyczących wykonywania władzy rodzicielskiej i kontaktów*, Wolters Kluwer, Warszawa 2021, pp. 431-438.

3.3. Access to information about international family mediation

In Poland, parents can become aware of the availability of international family mediation (IFM) services and enter into contact with them **through several legal, institutional, and practical channels**, although **there is no single, centralized mechanism for this purpose**.

Firstly, they can be informed **by Central Authority and courts**. Under Article 25 of the Brussels II-ter Regulation (Regulation (EU) 2019/1111), Member States are obliged to encourage the use of mediation and alternative dispute resolution in family matters. In Poland, this obligation is operationalized primarily through:

The Central Authority under the 1980 Hague Convention and Brussels II-ter (i.e., the Ministry of Justice – Department of International Cooperation and Human Rights), which provides information to parents involved in cross-border child abduction or custody disputes, as well as may suggest mediation and offer contact with mediation institutions or mediators, especially in cooperation with NGOs such as *Polskie Centrum Mediacji* (the Polish Mediation Centre) or *Stowarzyszenie Mediatorów Rodzinnych* (the Association of Family Mediators).

Family courts, which under Polish procedural law (Article 183⁸ of the Code of Civil Procedure) may inform or refer parties to mediation, especially where parental conflict is high and a consensual solution may be in the child's best interest.

Art. 183⁸. [Referral to mediation]

§ 1. The court may refer the parties to mediation at any stage of the proceedings.

§ 2. Mediation shall not be conducted if a party has not consented to mediation within one week of the date of announcement or delivery of the decision referring the parties to mediation. (...)

§ 4. The presiding judge may summon the parties to participate in an information meeting on amicable dispute resolution methods, in particular mediation. The information meeting may be conducted by a judge, court clerk, court official, judge's assistant or permanent mediator.

§ 5. Before the first hearing scheduled for the trial, the presiding judge shall assess whether to refer the parties to mediation. To this end, if it is necessary to hear the parties, the presiding judge may summon them to appear in person at a closed hearing.

§ 6. If a party fails to appear at the information meeting or closed session without justification, the court may charge them with the costs of the ordered appearance incurred by the opposing party.⁴⁸

In cases involving international child abduction (under the 1980 Hague Convention), the competent Polish court (typically regional courts) may suspend proceedings to allow for mediation if this could serve the best interests of the child (based on the jurisprudence aligned with Brussels II-ter Article 25).

Secondly, the access to mediation is possible through **NGOs and mediation networks**. Several NGOs and networks provide IFM-related information, especially in cross-border contexts. The Polish Mediation Centre, and other organizations maintain websites with guidance, contact forms, and often multilingual (with knowledge of Polish, English and German) mediators for international cases. These organizations often provide free or low-cost initial consultations, lists of trained mediators specialized in international family conflicts and access to online mediation platforms and support for communication between parents abroad.

Thirdly, it is possible to be informed about IMF via **legal professionals**. Lawyers, notaries, and legal aid centers often inform clients about mediation as a possible alternative, especially when litigation is costly, cross-border, or emotionally charged. Bar associations and legal aid offices sometimes maintain directories of certified mediators, including those trained in international family law and intercultural communication.⁴⁹

There is also a possibility to use **EU networks and on-line platforms**. The European e-Justice Portal offers a “Find a mediator” function and national pages with information about how and where to access IFM in Poland.⁵⁰ EU-funded training networks and online directories (e.g., Cross-border Family Mediators Network⁵¹) list professionals working across EU countries, including Polish mediators.

⁴⁸ Translation: EK.

⁴⁹ ZAGÓRSKA K., *Rozdział szósty. Mediacje transgraniczne w sprawach rodzinnych*, in TABERNACKA M. (ed) *Mediacje ponad podziałami*, Wrocław 2013, p. 114.

⁵⁰ See: https://e-justice.europa.eu/topics/find-legal-professional/mediators_en.

⁵¹ See: <https://crossbordermediator.eu/>.

Research confirms that while the Polish legal framework allows and encourages mediation, practical access to international mediation often depends on the initiative of judges, central authorities, or NGOs, and is not always systematic.⁵²

In conclusion, Polish parents may access IFM services through courts, central authorities, NGOs, legal professionals, and online platforms. Although Brussels II-ter strengthened the obligation to promote mediation, a centralized referral system does not yet exist, and contact often depends on the knowledge and willingness of involved institutions or individuals.

In Poland, the Central Authority for the purpose of 1980 HCCH Child Abduction Convention, 1996 HCCH Child Protection Convention and Brussels II ter Regulation is **Minister of Justice**. In 2018, new Law on the Functions of the Central Authority was enacted.⁵³ It does not however mention specifically the role of the Central Authority in the context of mediation.

When contacted by iCARE2 team in Poland, the Central Authority underlined that it does not conduct international family mediation. At the same time, the Central Authority underlined its interest in international family mediation stating that in February 2025 it acceded to the Working Party on Mediation in the Context of the Malta Process. Please note however that there is still no information on the website of the Hague Conference on Private International Law on the creation of the potential **Central Contact Points for international family mediation in Poland**⁵⁴ envisaged in the Principles for the establishment of mediation structures in the context of the Malta Process.⁵⁵

The **Country Profile**⁵⁶ available at the website of the Hague Conference on Private International Law might serve as the first, introductory source on

⁵² CYBULKO A., *Rozdział 18. Mediacja w sprawach rodzinnych*, in MOREK R., GMURZYŃSKA E. (eds.) *Mediacje: Teoria i praktyka*, Wolters Kluwer, Warszawa 2024, pp. 361-364.

⁵³ Ustawa z dnia 26 stycznia 2018 r. o wykonywaniu niektórych czynności organu centralnego w sprawach rodzinnych z zakresu obrotu prawnego na podstawie prawa Unii Europejskiej i umów międzynarodowych, Dz. U. 2023 r. poz. 1236. Original and consolidated version available at: <https://isap.sejm.gov.pl/isap.nsf/DocDetails.xsp?id=WDU20180000416>

⁵⁴ See the list of Central Contact Points for international family mediation at <https://www.hcch.net/en/publications-and-studies/details4/?pid=5360&dtid=52>

⁵⁵ See: *Working Party on Mediation - Principles for the establishment of mediation structures in the context of the Malta Process* available at the website of the Hague Conference on Private International Law at

<https://www.hcch.net/en/publications-and-studies/details4/?pid=5317&dtid=52>.

⁵⁶ 1980 Child Abduction Convention. *Country Profile: Poland* (13 February 2023) available at: <https://assets.hcch.net/docs/92c816f6-8a1c-409f-bd9c-10be23ae48bc.pdf> ('Country Profile').

information on mediation in Poland. It also gives some insight on the **duties of the Central Authority in informing parties about the availability of mediation.**

The Country Profile explains that matters of custody, access rights, as well as return of a child following an alleged wrongful removal can be dealt with by mediation in Poland.⁵⁷ In case of an incoming application has been received for the return of a child or for access / contact with a child, the recourse to mediation is possible. The Country Profile informs that there are 'numerous bodies who provide mediation services across Poland. Lists of mediators are available at each regional court.'⁵⁸ The answer 'No' is given to the question whether the co-mediation (i.e. mediation involving two mediators – one from each State) is available for the mediation of international family disputes which are within the scope of the 1980 Hague Child Abduction Convention.⁵⁹

Further, in response to the question whether the mediation in family matters is regulated in Poland, the general information on the Code of Civil Procedure with respect to mediation is provided and indicated that it covers the following aspects: formal accreditation of mediators, the necessary qualifications / experience of mediators, the process of mediation, confidentiality of mediation and the status and enforceability of mediated agreements.⁶⁰ In response to the question on how individuals can obtain information identifying suitable mediators, it is explained that lists of mediators are available through the Central Authority or through other sources, namely from the website of each of Regional Courts.⁶¹

As concerns the questions on what role, if any, does the Central Authority play in facilitating mediation where an incoming application for the return of a child or access / contact with a child has been received, the Country Profile explains that the Central Authority **provides information about mediation to the parties.**⁶² Further information is provided in the answer the question on measures taken by the Central Authority (directly, or through an intermediary) to attempt to secure the voluntary return of a child allegedly wrongfully removed or retained. As explained that in "the vast majority of cases, legal proceedings are initiated, although the alleged abduction party may agree to a voluntary return at any stage of the legal proceedings". The Central Authority

⁵⁷ Country Profile, Question 19.1.a

⁵⁸ Country Profile, Question 19.1.b and Question 19.1.c.

⁵⁹ Country Profile, Question 19.1.d.

⁶⁰ Country Profile, Question 19.2.a. and Question 19.2.b.

⁶¹ Country Profile, Question 19.3.a.

⁶² Country Profile, Question 19.3.b. and Question 19.3.c.

“takes steps to make both parties aware of the possibility of voluntary return by including information about voluntary return in the referral letter to the alleged abduction party. In addition, a leaflet containing information about mediation is attached to the referral letter.”⁶³

It is explained that mediation is available at all stages of proceedings. Cases are assessed to determine their suitability for mediation by the judge.⁶⁴ In response to the question on how, if at all, are the views of the subject child(ren) considered in mediation, it is provided that is within the discretion of the particular mediator.⁶⁵ Where allegations of domestic violence and / or other forms of abuse exist, the mediator should notify the court in order to assess the eligibility of the mediation and to decide on further measures.⁶⁶ It is also explained that the court shall refuse to make the settlement agreement enforceable or to approve all or part of the settlement agreement concluded before the mediator if the agreement is contrary to the law or principles of community life, or if it seeks to circumvent the law, or if it is incomprehensible or contradictory.⁶⁷ In order to make mediated agreements in a family dispute involving children enforceable court approval of the mediated agreement is need.⁶⁸

In response to question concerning costs of mediation, it is underlined that these costs “must be borne by the parties”.⁶⁹ Agreement mediated in another State in a family dispute involving children cannot be approved by a court or otherwise formalized in Poland in the same manner as an agreement mediated in Poland.⁷⁰

If court proceedings have been initiated in a family matter, the parties may be referred to mediation by the court. The court may issue a decision to refer the case to mediation on its own initiative or at the joint request of the parties. The judge may also summon the parties to attend a mandatory **information meeting** on amicable dispute resolution methods. Hence, neither organization of information meeting nor referral to mediation is mandatory.

The team of iCARE2 was informed about attempts to make the information meeting and referral to mediation more frequent. For example, in one of the courts in Kraków a **pilot project of referring certain types of family matters to**

⁶³ Country Profile, Question 6.2.h.

⁶⁴ Country Profile, Question 19.4.d.

⁶⁵ Country Profile, Question 19.4.f

⁶⁶ Country Profile, Question 19.4.d.

⁶⁷ Country Profile, Question 19.5.a.

⁶⁸ Country Profile, Question 19.5.a.

⁶⁹ Country Profile, Question 19.3.d. and Question 19.3.e.

⁷⁰ Country Profile, Question 19.6.a.

mediation was introduced.⁷¹ In accordance with the order of the president of this court, all cases concerning maintenance payments, their reduction and modification, as well as matters concerning the satisfaction of family needs and cases concerning the determination of the place of residence of a minor, visiting rights, changes to visiting right, and permission to issue a passport for a minor will be first referred to mediation. The programme aims to promote alternative dispute resolution methods in family matters. The programme will be implemented for a period of two years, with evaluations conducted every six months.

As mentioned above, in accordance with Article 183¹² § 1 of the Code of Civil Procedure, **a protocol** is drawn up, in which, among others, the outcome of the mediation is described. The protocol is signed by the mediator. If the parties have reached **a settlement** before the mediator, the settlement is included in the protocol or attached to it. The parties sign the settlement agreement (Article 183¹² § 2 of the Code of Civil Procedure). By signing the settlement agreement, **the parties agree to apply to the court for its approval** (Article 183¹² § 2¹ of the Code of Civil Procedure).

If a party applies to the court for approval of the settlement reached within a mediation carried based on mediation agreement, the mediator files the protocol with the court (Article 183¹³ § 1 Code of Civil Procedure). If the court referred the case to mediation, the mediator files the protocol with the competent court (Article 183¹³ § 2 Code of Civil Procedure). The parties may also include in the settlement agreement claims not covered by the statement of claim (Article 183¹³ § 2).

Pursuant to Article 183¹⁴ § 1 Code of Civil Procedure if a settlement has been reached before a mediator, at the request of a party, **the competent court approves such settlement**. If the settlement agreement is enforceable by way of execution, **the court approves it by giving it an enforceability clause** (Article 183¹⁴ § 2 Code of Civil Procedure). The court refuses to grant an enforceability clause if the settlement agreement is contrary to the law or the principles of social co-existence or is aimed at circumventing the law, as well as if it is incomprehensible or contains contradictions (Article 183¹⁴ § 3 Code of Civil

⁷¹ See: Zarządzenie nr 2/25 Prezesa Sądu Rejonowego dla Krakowa – Krowodrzy w Krakowie z dnia 30 maja 2025r. w sprawie wprowadzenia w Sądzie Rejonowym dla Krakowa – Krowodrzy w Krakowie pilotażowego programu kierowania spraw do mediacji. Available at: <https://krakow-krowodrza.sr.gov.pl/zarzadzenie-nr-225-z-dnia-30-maja-2025-prezesa-sadu-rejonowego-dla-krakowa-krowodrzy-w-krakowie-w-sprawie-wprowadzenia-pilotazowego-programu-kierowania-spraw-do-mediacji,new,m1,356.html,2246>

Procedure). A copy of the order granting an enforceability clause to the settlement is the basis for discontinuing the proceedings insofar as it concerns the claims covered by the settlement. (Article 183¹⁴ § 2¹ Code of Civil Procedure). A settlement concluded before a mediator, once approved by the court, **has the legal force of a settlement concluded before a court**. A settlement concluded before a mediator, which has been approved by granting of an enforceability clause, is **an enforceable title** (Article 183¹⁵ § 1 Code of Civil Procedure). Hence, the party may proceed with enforcement by execution based on such enforceable title (Article 776 Code of Civil Procedure).

In Poland, the institutional framework for family mediation is still developing, and while **there is no comprehensive national system of standardized tools or protocols**, some methods and good practices are gradually emerging—particularly in cases concerning the best interests of the child (BIC), risk assessment, and suitability for mediation.

In accordance with the best interests of the child (BIC) determination, Polish law, including the Constitution (art. 72), the Family and Guardianship Code, and procedural norms in the Code of Civil Procedure (art. 216¹–216²), places the best interests of the child at the center of judicial and mediation procedures. However, there are no nationally adopted guidelines or structured tools specifically for determining BIC in mediation.

In practice mediators often rely on general legal principles and their professional judgment. Some mediators may refer to UN General Comment No. 14 to the Convention on the Rights of the Child⁷² as a soft-law interpretive aid. Courts increasingly expect mediators to consider BIC, especially when validating mediated agreements involving minors (e.g. parental plans), but do not impose a uniform standard for assessing it.

Then it comes to risk assessment tools (e.g. for domestic violence or power imbalance), Polish legislation **does not mandate formal risk assessment tools** to screen for domestic violence or coercive control prior to mediation. However certain courts and mediation centers implement **informal screening practices**, often based on checklists or structured interviews developed by NGOs or international partners (e.g. the Polish Mediation Centre has developed pilot practices). In **cases involving suspected violence**, Polish mediators are instructed by law (see art. 183¹ and 183² of the Code of Civil Procedure) to

⁷² General comment to the Convention on the Rights of the Child No. 14 (2013) on the right of the child to have his or her best interests taken as a primary consideration (art. 3, para. 1), adopted by UN Committee on the Rights of the Children on 29 May 2013, CRC/C/GC/14.

terminate mediation if parties are unable to participate voluntarily and equally. “The Blue Card” (“*Niebieska karta*”) procedure under Polish administrative and police law provides a separate route for detecting domestic violence, but it is not automatically integrated with the mediation system.

There is **no unified national screening protocol** to determine the suitability of family cases for mediation. Mediation is generally encouraged, but the decision to mediate is voluntary. Judges may suggest mediation but do not conduct formal assessments of its appropriateness and mediators are expected to assess suitability on a case-by-case basis, particularly regarding the ability of the parties to negotiate freely and safely.⁷³

In cross-border abduction or relocation cases under the 1980 Hague Convention, Polish courts occasionally appoint mediators, but the assessment of mediation's suitability depends entirely on judicial discretion and the mediators' own ethical evaluation.

The **Polish Code of Ethics for Mediators** (*Kodeks Etyczny Mediatora*)⁷⁴ provides general standards, including impartiality, confidentiality, and attention to the well-being of children. Some court mediation centers and family mediation associations (e.g. Polskie Centrum Mediacji – *Polish Center of Mediation*) have developed **internal training programs** touching on BIC, conflict dynamics, and family systems, but there is no official accreditation scheme that mandates specialized training in child or trauma-informed mediation. Tools such as **parental plans** are sometimes used to structure agreements, especially in custody and contact matters, and these increasingly incorporate child-focused language.⁷⁵ Other important source is the Standards for the Conduct of Mediation and Mediator's Conduct (*Standardy prowadzenia mediacji i postępowania mediatora*) adopted by the Social Council for Alternative Dispute and Conflict Resolution (*Spółeczna Rada do spraw Alternatywnych Metod Rozwiązywania Konfliktów i Sporów*).⁷⁶ The document describes the mediator's duties, such as: providing the parties with reliable information on the nature and conduct of the mediation; ensuring a high level of professional qualification; cooperating with other professionals for the benefit of the ongoing mediation;

⁷³ CYBULKO A., *Rozdział 18. Mediacja w sprawach rodzinnych*, cit., pp. 368-369.

⁷⁴ The text, in Polish, available on the site of Polish Center of Mediation: <https://mediator.org.pl/baza-wiedzy/kodeks-etyki-mediatora/>.

⁷⁵ CYBULKO A., *Rozdział 18. Mediacja w sprawach rodzinnych*, cit., pp. 375-379.

⁷⁶ The text, in Polish, available on the site of Spółeczna Rada do spraw Alternatywnych Metod Rozwiązywania Konfliktów i Sporów przy Ministrze Sprawiedliwości: <http://ms.gov.pl/pl/dzialalnosc/mediacje/spoleczna-rada-ds-alternatywnych-metod-rozwiazywania-konfliktow-i-sporow/dokumenty-deklaracje/>

providing the parties with a suitable place to conduct the mediation; providing reliable information about their services; discontinuing mediation early in certain situations.

In conclusion, Poland lacks a unified, institutionalized framework for structured tools in family mediation regarding BIC determination, risk screening, and suitability assessment. While **principles of child protection and voluntariness are embedded in legislation**, much depends on the individual mediator's training and the culture of the local mediation center or court.

In Poland, international family mediation (IFM) in cases involving domestic violence is **legally permissible**, yet in practice it is approached with significant caution. Although there are **no explicit statutory prohibitions** against mediation in situations where domestic abuse is alleged or established, the general legal and ethical framework governing mediation in Poland imposes **safeguards** that are intended to **protect vulnerable parties** and **uphold the principles of voluntariness and equality**.

The Polish Code of Civil Procedure (Articles 183¹–183¹⁵) provides the overarching legal basis for mediation in civil matters, including family disputes of both domestic and cross-border character. According to these provisions, **mediation must be voluntary at every stage of the process**. Parties **may withdraw from mediation at any time**, and the **mediator is obliged to terminate proceedings if the conditions of fairness and free participation are not met**. This includes situations where power imbalances or coercion – very often existing in domestic violence cases – are present. In such situation mediation, as a way of resolving the conflict, is not recommended.⁷⁷ While this offers a basic safeguard, the Code does not contain specific procedures for screening domestic violence before mediation begins.

In practice, the approach to mediation in cases involving violence varies considerably across jurisdictions in Poland, largely because **there is no nationally standardized protocol for identifying and assessing risk**. It is also worth to mention that many of the domestic violence cases are dealt with by the criminal courts, which use mediation to this end. Formally these are criminal proceedings, but because of the type of relationship between the parties, they also resemble family mediation.⁷⁸

⁷⁷ GÓJSKA A., *Mediacja w sprawach rodzinnych*, Ministerstwo Sprawiedliwości, Warszawa 2011, p. 8.

⁷⁸ TROJANOWSKA E., *Gotowość do zadośćuczynienia sprawców przemocy w rodzinie jako podstawa do udziału w mediacjach po wyroku*, PROBACJA, nr 1/2020, pp. 124-128.

Some mediators conduct informal intake interviews or use internal checklists to assess whether violence or coercive control might compromise the fairness of the mediation process.⁷⁹ However, these practices are not uniformly adopted, and courts often refer cases to mediation without verifying the presence or history of abuse.

International obligations, particularly those arising from European and human rights law, also influence the handling of domestic violence in IFM. Poland is a party to the Council of Europe Convention on Preventing and Combating Violence Against Women and Domestic Violence (the Istanbul Convention)⁸⁰, which **requires that alternative dispute resolution methods, such as mediation, not be mandated in cases of domestic violence**.⁸¹ Article 48 of the Convention warns against subjecting victims to mandatory reconciliation procedures.⁸² Additionally, **the Brussels II-ter Regulation** emphasizes that such proceeding must respect fundamental rights, including the safety and equality of the parties. Mediation under Brussels II-ter is encouraged, but only where appropriate and safe – particularly in high-conflict or violent contexts.

In the Polish IFM landscape, cross-border cases are occasionally managed through cooperation with **international mediation networks and NGOs**, such as MiKK in Germany, which specialize in safe, bilingual, and culturally sensitive mediation processes.⁸³ These organizations tend to apply stricter ethical standards and protocols, including initial risk assessments and, when needed, separate mediation (sometimes called “shuttle mediation”) where parties do not meet directly. While some Polish mediators adopt these best practices,

⁷⁹ See: recommendations on the site of “Blue Line” - Polish National Referral Service for Victims of Family Violence (“Niebieska Linia” - *Ogólnopolskie Pogotowie dla Ofiar Przemocy w Rodzinie*): <https://www.niebieskalinia.pl/aktualnosci/aktualnosci/mediacja-dla-rodziny-w-kryzysie>; or on the site of the Centre for Judicial Mediation (*Centrum Mediacji Sądowych*): <https://www.centrummediacjisadowych.pl/wpis/54,przemoc-i-uzaleznienia-w-rodzinie-a-mediacje>

⁸⁰ Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence, adopted in Istanbul on 11 May 2011, CETS No. 210. Poland ratified the Convention on 27 April 2015; the Convention entered into force on 1 August 2015. Published in the Polish Journal of Laws: Dz.U. 2015, poz. 961.

⁸¹ See: SITARZ O., BEK D., *Zasadność zakazu obowiązkowej mediacji w sprawach przemocy domowej: krytyczna analiza przepisu art. 48 ust. 1 tzw. konwencji stambulskiej*, *Studia Prawnicze* (PAN) 2018, p. 105-129.

⁸² See: Explanatory Report to the Council of Europe Convention on preventing and combating violence against women and domestic violence, Council of Europe Treaty Series - No. 210, p. 42.

⁸³ E.g. German-Polish AMICABLE Project (EC co-financed), Development of Best Practice Tools, Enforceability and Recognition of Mediated Family Agreements (2018-2021), see: <https://mikk-ev.org/projects/project-poland/>.

especially those trained in international settings or working with foreign institutions, the absence of national regulation or guidance means such practices are far from universal.

Despite the safeguards offered by ethical codes and the general legal framework, **mediation in domestic violence cases in Poland remains controversial**.⁸⁴ The lack of a coordinated inter-institutional response – particularly between family courts, mediation centers, and social support services – limits the system’s ability to identify and adequately respond to abusive dynamics before and during the mediation process. There are also concerns that victims may feel pressured to participate in mediation, either by the courts or by social expectations to “settle” disputes out of court, particularly in cross-border child abduction cases where rapid resolution is often prioritized.⁸⁵

In conclusion, while **Polish law formally allows for international family mediation even in cases involving violence**, it imposes important ethical conditions that presume voluntariness, safety, and informed participation. Some scholars and practitioners **exclude the possibility of using mediation in cases of domestic violence**, stressing that mediation cannot be carried out when one of the parties approaching the mediator is a person experiencing violence from the other person involved in the dispute. In the case of a person who has experienced any form of violence for a longer or shorter period of time, the principles of mediation cannot be upheld.⁸⁶ Others stress that an analysis of the literature on the use of mediation in this type of case and the experience of mediators and those working with victims of domestic violence indicate that mediation should be carried out here only in exceptional cases and under specific rules.⁸⁷

Nevertheless, **the lack of specific, enforceable standards or systematic screening practices** leads to **inconsistent application of these protections in**

⁸⁴ See: ZIELIŃSKA E., *Mediacja w sprawach karnych o przemoc w rodzinie – skala i efektywność w praktyce polskiego wymiaru sprawiedliwości*, Instytut Wymiaru Sprawiedliwości, Warszawa 2017, pp. 10-15.

⁸⁵ WASZKIEWICZ P., *Rozdział 8. Zasady mediacji*, in MOREK R., GMURZYŃSKA E. (eds) *Mediacje: Teoria i praktyka*, Wolters Kluwer, Warszawa 2024, pp. 165-166.

⁸⁶ ZAGÓRSKA K., *Rozdział szósty. Mediacje transgraniczne w sprawach rodzinnych*, cit., pp. 109-110; MAZUREK A., *Podejrzanie stosowania przemocy a mediacja*, Infor.pl, 29 sierpnia 2022, <https://www.infor.pl/prawo/rozwoy/mediacja/5566094,Przemoc-a-mediacja.html>

⁸⁷ SIEDLECKA-ANDRYCHOWICZ A., *Rozdział 19. Mediacja w sprawach karnych i w sprawach o wykroczenia*, in MOREK R., GMURZYŃSKA E. (eds.), *Mediacje: Teoria i praktyka*, Warszawa 2024, p. 405.

practice. Ensuring genuine safety and equality in IFM requires more structured screening tools, specialized training for mediators, and a stronger institutional framework to align national practices with international human rights and child protection standards.

4. Pre-mediation services in Poland

Within the iCare2 Project pre-mediation is conceived as:

*‘a service, accessible through phone and/or email and/or mail, which is at disposal of family members (but also to lawyers, and central authorities’ staff), with the following functions: a) **give reliable information on international family mediation**; b) make a first, preliminary **assessment on whether the family’s situation is suitable for a mediation**, c) **orient families suitable for mediation to mediators – using the already established contacts** that partners have with the professional category in each Member State involved; d) **find temporary agreements while waiting for mediation to start focusing on the need and the rights of children**; e) **give guidance in organizing the mediation on the basis of the services at disposal at the national level** [emphasis added].’*

An institution of “pre-mediation” within iCARE2 understanding neither regulated in the Code of Civil Procedure nor another statute.

As mentioned, the notion of “pre-mediation” is not included in the Code of Civil Procedure and therefore not specifically regulated. This notion is used in the legal literature, however not necessarily in the same way as in iCARE2. For example, the notion of pre-mediation is used to describe the following stage of the mediation:

*“Even before the mediation session begins, once the case has been referred to mediation, the mediator and the mediation center have many responsibilities. Preparing for mediation is a very important stage of the mediation process for many reasons. This stage is sometimes referred to as **pre-mediation**. It is often **the moment of first contact between the center and the mediator and the parties**. This contact usually takes the **form of a telephone conversation** [emphasis added].”⁸⁸*

The above description reveals that “pre-mediation” might have different meanings and might be perceived as a stage of mediation, which takes place

⁸⁸ GMURZYŃSKA E., *Rozdział 11. Etapy mediacji* in MOREK R., GMURZYŃSKA E. (eds) *Mediacje: Teoria i praktyka*, Wolters Kluwer, Warszawa 2024, p. 216.

once the case was already referred by the judge to mediation, and not a service at the disposal of families and their lawyers aimed at, among others, providing the very first information on mediation and an assessment of suitability of mediation in a given case, before the case is referred to mediation.

(Regarding the services offered by the various institutions promoting and offering mediation in Poland, see the answer to the question on key players in international family mediation)