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Mediation and Truth – the Polish Legal Perspective (and beyond)

The article discusses the issue of tensions between the core values of traditional legal proceedings and mediation. The values under study are represented, respectively, by the principle of truth and the principle of amicable dispute resolution. To deepen the considerations regarding these tensions, crucial philosophical concepts of truth are presented. Their usefulness in the fields of law and mediation is analyzed, leading to the conclusion that the classical correspondence theory of truth is suitable for the model of traditional legal proceedings, whereas the pragmatic theory and consensual theory of truth are more easily reconciled with the axiology of mediation. Both theoretical and practical models for addressing the mentioned tension are discussed.

Key words: *mediation, truth, correspondence theory, legal proceeding, conflict of values*

1. Introduction

The classical pattern of legal reasoning consists of three elements. Firstly, we need to establish the facts. Next, it is necessary to choose an accurate legal norm. The third step involves deriving a conclusion from the two previous premises (factual and normative). The scheme can be developed by subdividing each element into more detailed components. For example, establishing a legal premise requires choosing an accurate legal norm, interpreting it, and checking if it is in force[1]. Nevertheless, the three-step pattern constitutes a universal tool for lawyers resolving legal disputes. What is essential to notice is that during a legal proceeding, both parties and the court apply this pattern. Lawyers representing conflicted parties are bonded by their interests, and the court should be unbiased. However, all these agents are interested in establishing the facts. In doing so, they appeal to the truth. Perspectives presented by lawyers representing parties differ, but what is common for them is that they attempt to portray their claims as true, compliant with real events[2]. In the case of mediation, the scheme of legal reasoning can play some role, as one of the arguments in negotiation, but it does not reflect its essence. Mediation does not concentrate on settling facts or norms governing the case. It aims at reaching an agreement between the parties and concluding a settlement. Suppose we wanted to put the essence of mediation into a three-step scheme. In that case, we should recall the established

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1 See *Lewandowski S., Malinowski A.,* Logika w procesie tworzenia i stosowania prawa, in: Lewandowski S. (ed.), Logika dla prawników, Wolters Kluwer, Warszawa 2024, 241-248; *Morawski L.,* Wstęp do prawoznawstwa, TNOiK, Toruń 2011, 127-132.

2 I follow the view that only declarative sentences concerning factual findings can be perceived as true or false, not the norms. Norms can be evaluated as right or wrong, binding or not, enforceable or not, but not as true or false.

stances of the parties (their requests), get to their deeper interests, and dig even deeper into their real needs. Reaching the deepest level: real needs can result in finding a solution acceptable for both parties.

Classical legal proceedings focus on establishing the truth. Specific regulations may differ in this field – the common law process of law strongly relies on the parties' activism. In contrast, continental solutions, in general, are less adversarial and encourage courts' activism. In contrast, mediation seems less interested in finding the truth. Nevertheless, nowadays mediation is included in the process of law, which, in my opinion, can result in some tensions, if not to say contradictions, between the principle of truth and the principle of amicable settlement of disputes[3]. In the article, I study the fields of potential tensions and discuss what results can bring about the omission of the truth in dispute resolution.

Firstly, I discuss the concept of truth. I attempt to reconcile fundamental philosophical theories of the truth with the idea of mediation. Secondly, I present the meaning of truth and its role in Polish procedural law. Thirdly, I inquire if there is a real contradiction between the demand of the process of law and mediation. Next, I ask if the regulations concerning legal proceedings provide us with tools limiting mediation's truth indifference.

The reservation that should be expressed here is that I am aware that the claim of "mediation's truth indifference" constitutes a strong thesis. Both mediation practitioners and scholars dealing with the issue usually appreciate the role of truth in the mediation process. The "principle of truth" can be considered part of *bona fide* principle; however, from my perspective, mediation is not targeted at reaching the truth, but at reaching an agreement. It can be said that in mediation, truth plays an instrumental role, whereas in the classical process of law, the role of truth is essential[4].

2. What is "Truth"? Selected Theories of Truth

The concept of truth has been a subject of study since humans began systematic studies, which gave birth to philosophy and subsequently science. Ancient Greek philosophers have paid considerable attention to truth, and Socrates paid the highest price when defending his views on truth. Everyone knows the famous saying "*amicus Plato, sed magis amica veritas*", which means "Plato is my friend, but truth is a greater friend." The saying reflects an approach to truth characteristic of many ancient thinkers (excluding, e.g., sophists, who held a pragmatic and relativist approach to the truth). Philosophy is usually divided into five branches: ontology, epistemology, logic, ethics, and aesthetics. Claiming that each branch of philosophy somehow refers to truth is risk-free. Concepts of truth developed on the ground of philosophy have been adopted by other branches of knowledge, including law.

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[3] See *Schlee G.*, Mediation and Truth, in: *Härter K.*, *Hillemanns C.*, *Schlee G.* (eds.), On Mediation: Historical, Legal, Anthropological and International Perspectives, Berghahn Books 2020, 116-117; *Dziedziak W.*, Mediation and Fairness of the Decision to Resolve the Dispute, Studia Iuridica Lublinensia vol. XXVII, 3, 2018, 53-54.

[4] See *Załuski W.*, Spór o wartość prawdy w procesie sądowym, Przegląd Filozoficzny – Nowa Seria r. 33: 2024, nr 2 (130), 123-124. Załuski calls this stance "dominant" and contrasts it with the stance presented by the Law & Economics proponents.

Lawyers usually refer to the classical concept of true, so-called correspondence theory, which originates from Aristotle. In other sciences, the theory prevailed over the ages, until the nineteenth and twentieth centuries, when American pragmatists and European logicians started questioning it[5]. In law, the correspondence theory of truth still seems to be the best suited, so that Susan Haack claims that:

> Truth is the property of being true, what it is to be true. Of the umpteen competing philosophical theories of truth, the most plausible are, in intent or in effect, generalizations of the Aristotelian Insight that "to say of what is that it is, or of what is not that it is not, is true." These theories explain truth without reference to what you or I or anyone believes, without reference to culture, paradigm, or perspective.[6]

In brief, the correspondence theory of truth states that a judgement or proposition is true when it corresponds to the facts. Medieval scholastics studying Aristotle put it in a simple maxim: "*veritas est adaequatio rei et intellectus*", which expresses that "truth is the conformity of the thing and the intellect.". Such wording avoids problems of defining concepts like "facts", "reality", "correspond-dence", and also the issue of what is a truth-bearer: belief, judgement, sentence, or proposition. These problems were widely discussed among modern philosophers, which resulted in reforms of the concept of truth.

The pragmatist theory of truth, often identified with William James, Charles Pierce, and John Dewey, claims that truth is what works, is useful, and pays off. It is clearly an oversimplified view of pragmatists' stance; however, it reflects the crucial point of their theory – utilitarian inclination. Another modern theory of truth, which still "believes" in truth, is the coherence theory. According to its proponents, truth is what stays coherent with other beliefs. Cohesion among the set of beliefs constitutes the criteria of truth. The coherence theory seems adequate for evaluating normative systems, which are expected to be consistent; however, it was also applied to claims that *prima facie* are of an empirical nature. The pragmatist stance and coherence theory can play a complementary role to correspondence theory; each theory's results can support the other one's results. Beliefs that are evaluated based on their coherence can be built upon empirical data, which passes the test of *adaequatio rei et intellectus*; correspondence and cohesion can enhance usefulness. Contemporary logic provides us with other theories that seem less fitted to the field of legal discourse. For instance, the redundancy theory refrains from investigating what the truth is, and concentrates on the question of what the meaning of the words "is true" is[7].

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5 *Dobrzeniecki K.*, "Prawo do prawdy" w perspektywie filozoficznoprawnej. Przyczynek do dyskusji, Przegląd Prawa i Administracji 122, 2020, 78.

6 *Haack S.*, Truth, Truths, "Truth", and "Truths" in the Law, Harvard Journal of Law & Public Policy vol. 26, no. 1, 2003, 17.

7 See *Walker R. S.*, Theories of Truth, in: *Hale B.*, *Wright C.*, *Miller A.* (eds.), A Companion to the Philosophy of Language, Second Edition, John Wiley & Sons Ltd, 2017; *Raatikainen P.*, Truth and Theories of Truth, in: *Stalmaszczyk P.*(ed.), The Cambridge Handbook of the Philosophy of Language, Cambridge University Press, 2021.

Beyond the five main theories of truth (the correspondence theory, the coherence theory, and the pragmatic, redundancy, and semantic theories), the so-called consensual theory of truth exists. Proponents of it (e.g., Jürgen Habermas) argue that what is true is what could potentially be agreed upon by the participants of an ideal, free communication, guided by principles of reason and argumentation. The truth does not rely upon an individual's conviction or correspondence between the facts and claims about them. It results from a hypothetical discussion conducted in specific conditions designed by proponents of this theory. The consensual theory of truth seems better suited to normative, social controversies than theoretical, descriptive discourse. It is easy to imagine applying this deliberative mechanism when social disputes appear. However, it does not fit into scientific queries, in which correspondence theory has a significant advantage.

At first glance, the consensual theory of truth appears coherent with mediation's value hierarchy, as agreement is prioritized above other issues. Nevertheless, it should be stressed that real-world mediation does not resemble the artificial communicative situation described by Habermas. An ideal communicative situation is a hypothetical model with a normative character – it shows how communication should look, not how it actually occurs. Principles of *bona fide* negotiation, possession of complete and adequate information, rationality of agents, and other positive factors are desired in mediation; however, this desire has only a normative foundation and does not necessarily reflect real-world circumstances. Furthermore, mediation typically involves the discussion between two individuals, sometimes represented by professional proxies, under the guidance of a mediator, rather than a discourse with an unlimited number of participants. These differences should make us cautious when identifying mediation with the consensual theory of truth. An agreement-oriented inclination in mediation draws our attention to the pragmatic theory of truth. If the agreement is effective, why should anyone care about the correspondence between claims and reality?

Before an attempt to answer this question, it is worth mentioning the so-called post-truth problem and looking closer at the concept of truth represented in the legal sphere.

The classical liberal view of truth as a value of social life claimed that truth can defend itself. The free market of ideas was considered a better mechanism for truth's protection than the state's involvement, so censorship was condemned by classical liberals like John S. Mill. Criminalization of hate speech and propaganda of totalitarian or authoritarian views, as significant exemptions from the free speech principle, was perceived as a necessary instrument for maintaining the liberal order. Technological development, particularly in the field of new internet media, challenges the abovementioned stance, and provokes the question of whether truth deserves greater concern than before. Law is considered a tool supporting stricter protection of the truth in public discourse, especially in the face of the fact that new media can spread fake news at a speed never seen before[8]. Considering how easily an agreement or claim about usefulness can be built upon a false basis, the

[8] See Rosemary Overell, Brett Nicholls, *Introduction: Post-truth and the Mediation of Reality*, in: Rosemary Overell, Brett Nicholls (eds.), *Post-Truth and the Mediation of Reality. New Conjunctures*, Palgrave Macmillan 2019; *Dobrzeniecki K.*, "Prawo do prawdy" w perspektywie filozoficznoprawnej. Przyczynek do dyskusji, Przegląd Prawa i Administracji 122, 2020, 79-84. Fake news can significantly affect public discourse and private life matters, e.g., an individual's approach to vaccination.

question of correspondence between things and judgements has growing importance. In consequence, the classical theory of truth deserves its revival.

3. Truth (and other values) in Polish Legal Proceedings

Even the brief discussion on the significance of truth in modern social life indicates that procedural law, despite its clear connection to truth, is not the sole branch of law that addresses and ought to address this value. In its preamble, the Polish Constitution of 1997[9] mentions truth as the first item in the catalogue that also includes justice, good, and beauty. These four values are the first mentioned in the Polish Constitution. The truth also plays an essential role in branches of law dealing with the past, e.g., cases of war crimes, but the right to true information is also guaranteed in many other contexts[10].

Still, procedural law is the branch where truth plays the most significant role, stemming from the fundamental assumption that decisions regarding the parties in the proceedings should be based on accurate factual findings.

All three basic branches of Polish procedural law, civil, criminal, and administrative, incorporate mediation into their processes. Additionally, all three branches uphold the principle of truth. Significantly, none of the legal acts dealing with procedural law directly mentions the principle of truth. The Polish Code of Criminal Procedure[11] appears to be the closest to naming the principle and indicating it directly; its article 2 section 2 states: "The basis of all decisions should be accurate factual findings." The Polish Code of Civil Procedure[12] states in article 3 that: "The parties and participants in the proceedings are required to perform procedural acts in accordance with good practice, to provide explanations regarding the circumstances of the case truthfully and without concealing anything, and to present evidence." Paper editions of the Code, as well as publishers of electronic legal systems, mistakenly refer to this provision as "the principle of material truth." However, it is clear that the provision is addressed only to the parties of the proceedings, not to the court. Therefore, it can only be a part of the mentioned principle. The Code of Administrative Procedure[13] does not even use the words "truth" or "true". Article 7 of this act, which is perceived as wording the principle of truth states "In the course of proceedings, public administration authorities shall uphold the rule of law and, ex officio or at the request of the parties, undertake all actions necessary to thoroughly clarify the facts of the case and to resolve the matter, taking into account the public interest and the legitimate interests of citizens." The principle of truth is regarded as essential for all legal procedures in Poland. However, it

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9 Konstytucja Rzeczypospolitej Polskiej z dnia 2 kwietnia 1997 r., Dz.U.1997.78.483 z dnia 1997.07.16.

10 *Dobrzeniecki K., "Prawo do prawdy" w perspektywie filozoficznoprawnej. Przyczynek do dyskusji, Przegląd Prawa i Administracji 122, 2020, 74-77; Synoradzki M.*, Cztery rozumienia prawdy w polskich tekstach prawnych, Journal of Modern Science 4/19/2013, 457-464.

11 Ustawa z dnia 6 czerwca 1997 r. Kodeks postępowania karnego, Dz.U.2025.46 t.j. z dnia 2025.01.15.

12 Ustawa z dnia 17 listopada 1964 r. Kodeks postępowania cywilnego, Dz.U.2024.1568 t.j. z dnia 2024.10.23.

13 Ustawa z dnia 14 czerwca 1960 r. Kodeks postępowania administracyjnego, Dz.U.2024.572 t.j. z dnia 2024.04.15.

arises from the entire body of regulations governing these areas, not from a single specific provision. It is decoded from the shape of many different clauses[14].

Polish legal doctrine differentiates between three concepts of truth: objective, formal, and material truth[15]. The concept of objective truth characterizes Polish administrative procedure; both civil and criminal procedures nowadays recall material truth as the desired ideal[16]. The principle of material truth places a burden on the court to investigate the truth. In contrast, the formal truth principle coexists with the legal process's adversarial model. It assumes that the court should rely on the evidence provided by the parties, accepting what stems from that evidence as true[17]. Despite the legal reforms aimed at making both civil and criminal procedures more adversarial, the principle of material truth remains recognized as prevailing in Poland.

It should be emphasized that the principle of truth, however understood, is not the only principle underpinning Polish law procedures and is not an absolute principle. Provisions of civil and administrative procedures require the court to encourage parties to reach an amicable settlement (article 10 and article 13, respectively). Many trade-offs outline the shape of procedural laws[18]. The tension between the principle of truth and the principle of amicable dispute resolution is one of them.

4. How to Resolve the Controversy? Theoretical Stances

Assuming there is tension between the principle of truth governing legal proceedings and the principle of amicable dispute resolution that reflects the nature of mediation, we should analyze possible solutions to this problem. We can imagine the following solutions: 1) introducing truth into the mediation process and admitting that facts should not be negotiated (facts inclusive stance), 2) abandoning any claims about facts (past events) and focusing on the pragmatic solution to the problem (facts excluding stance).

In their book on negotiation, Polish scholars Jerzy Stelmach and Bartosz Brożek argue that parties in negotiations should respect factual findings. This suggestion is founded on the distinction

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14 See Tadeusz Zembrzuski, *Prawda jako wartość sprawiedliwego procesu*, Przegląd Sądowy 7–8/2023, 7-9.

15 The concept of "material truth" is also present in German legal doctrine, see *Schlee G.*, Mediation and Truth, in: *Härter K.*, *Hillemanns C.*, *Schlee G.* (eds.), On Mediation: Historical, Legal, Anthropological and International Perspectives, Berghahn Books 2020, 116.

16 See *Synoradzki M.*, Cztery rozumienia prawdy w polskich tekstach prawnych, Journal of Modern Science 4/19/2013, 454-456; Tadeusz Zembrzuski, *Prawda jako wartość sprawiedliwego procesu*, Przegląd Sądowy 7–8/2023, 9-10.

17 *Andrzej Marciniak,* referring clearly to Aristotelian definition of truth elucidates, that: "In proceedings based on the principle of substantive truth, *the court's findings regarding the factual and legal state of the case should correspond to reality*. In proceedings based on the principle of formal truth (also referred to as judicial truth), the court's findings regarding the factual and legal state of the case should correspond only to the factual and evidentiary material presented by the participants in the proceedings.", *Marciniak A.*, Zasady postępowania cywilnego, in: *Broniewicz W.*, *Marciniak A.*, *Kunicki I.*, Postępowanie cywilne w zarysie, Wolters Kluwer, Warszawa 2023, 72.

18 See *Załuski W.*, Spór o wartość prawdy w procesie sądowym, Przegląd Filozoficzny – Nowa Seria r. 33: 2024, nr 2 (130), 124-125.

between theoretical (descriptive) discourse, which can be assessed with criteria of truth, and practical (normative) discourse, which can be evaluated using other criteria such as rightfulness, usefulness, or economic effectiveness. The boundary between the two discourses should remain distinct; negotiations should be confined to practical discourse; facts are not to be negotiated but settled[19]. The view presented by Stelmach and Brożek has a normative nature itself; it does not reflect the picture of real-world negotiations, but expresses how they understand negotiations and distinguish them from other forms of communication. Günther Schlee claims that:

> Mediation takes place in the context of negotiation. Two or more parties who are involved in a conflict ask a mediator to help them reach an agreement. The mediator then has to reconcile their perceptions of what is at stake, to assess the interests of the parties and to find a compromise. Truth, on the other hand, has a definite ring of non-negotiability and hostility to compromise. The 'truth' that is negotiated is not credible; the truth that is based on a compromise is compromised.[20]

Both Stelmach, Brożek, and Schlee appear to share the stance indicated above as the primary solution to the discussed tension issue. They advocate for incorporating truth into the mediation process and acknowledge that facts should not be subject to negotiation.

The second stance assumes that the facts are merely another factor that can disrupt the process of reaching consensus. Mediation parties can quarrel over facts, values, norms, and solutions. Eliminating one area of disagreement should facilitate reaching a solution. Furthermore, establishing the facts is the most costly part of legal proceedings, so forgoing factual findings equates to fulfilling one of mediation's most significant promises – its cost-effectiveness. The "facts excluding stance" focuses on the future, forgetting the past, while the "facts inclusive stance" tends to build the future on the past, where the past must be settled according to truth.

The second stance appears tempting: it eliminates areas of dispute, it is cheaper, and is future-oriented. What are its weaknesses, then? Why are facts and truth so crucial?

Literature offers numerous examples that demonstrate the importance of taking truth seriously in the process of mediation. These examples include individual disputes as well as extensive political conflicts.

Blake Quinney, Michael Wenzel, and Lydia Woodyatt examined the role of truth in victim-offender mediation. Their study included an empirical investigation concerning the issue. They conducted three independent studies, one of which relied on actual victim of crime surveys, while in the other two, participants were asked to imagine that they were victims of a crime. They concluded that a comprehensive understanding of the facts surrounding a crime had a significant influence on victims:

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19 *Stelmach J.*, *Brożek B.*, Negocjacje, Copernicus Center Press, Kraków 2022, 30.

20 *Schlee G.*, Mediation and Truth, in: *Härter K.*, *Hillemanns C.*, *Schlee G.* (eds.), On Mediation: Historical, Legal, Anthropological and International Perspectives, Berghahn Books 2020, 116.

> The offer and acceptance of an apology are among the most important outcomes of victim–offender mediation. The present research found that focusing on the completeness (vs. incomepleteness) of knowledge caused participants who imagined crime to report greater apology readiness, apology completeness, and apology satisfaction. When participants were actual crime victims, focusing on the completeness (vs. incompleteness) of knowledge caused them to report significantly greater apology completeness (but not apology readiness or apology satisfaction). These findings point to the importance of bringing the full truth to light in victim–offender mediation for achieving effective justice restoration after wrongdoing.[21]

Günther Schlee analyzes instructive examples of non-truth-based mediation in African countries, concluding that: "Different as the cases we have examined may be, the logic of mediation plays a role in all of them, and is detrimental to truth. The pacifying effect of mediation, which sacrifices truth, is often short lived."[22] His concern is based on the observation that abandoning the truth can lead only to a *modus vivendi*, but not to a lasting solution to the problem. Many cases concerning transitional justice reveal similar conclusions about the importance of truth in mediation and the dangers of creating temporary solutions[23].

5. How to Resolve the Controversy? The Approach of Polish Law

As already mentioned, the principle of truth is not the only one in Polish proceedings and has no absolute character. It is sometimes portrayed as an ingredient of other principles, e.g., in its deep connections with justice[24]. Polish lawmaker applies many different methods of balancing principles in tension. There are two main instruments of their conciliation when it comes to the principle of truth and the principle of amicable dispute resolution.

Firstly, the mediation process is voluntary. Article 183(1) section 1 of the Code of Civil Procedure states explicitly: "Mediation is voluntary." The court can refer the parties to mediation at any stage of the proceedings; however, under article 183(8): "Mediation is not conducted if a party does not consent to mediation within one week from the date the decision referring the parties to mediation is announced or delivered to them." The mediation participant is also entitled to resign from the mediation at any stage. Similar regulation is placed in the Code of Criminal Procedure; its article

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21 *Quinney B.*, *Wenzel M.*, *Woodyatt L.*, The Role of Truth in Victim-Offender Mediation: Victims of Crime Who Feel They Know the "Whole" Truth Are More Receptive to Apologies, Law and Human Behavior, Vol. 48, No. 3, 2024, 243.

22 *Schlee G.*, Mediation and Truth, in: *Härter K.*, *Hillemanns C.*, *Schlee G.* (eds.), On Mediation: Historical, Legal, Anthropological and International Perspectives, Berghahn Books 2020, 129.

23 See *Dobrzeniecki K., "*Prawo do prawdy" w perspektywie filozoficznoprawnej. Przyczynek do dyskusji, Przegląd Prawa i Administracji 122, 2020, 74; *Quinney B.*, *Wenzel M.*, *Woodyatt L.*, The Role of Truth in Victim-Offender Mediation: Victims of Crime Who Feel They Know the "Whole" Truth Are More Receptive to Apologies, Law and Human Behavior, Vol. 48, No. 3, 2024, 230-231.

24 See *Dziedziak W.*, Mediation and Fairness of the Decision to Resolve the Dispute, Studia Iuridica Lublinensia vol. XXVII, 3, 2018, 50-53.

23a section 4 states: "The participation of the accused and the victim in mediation proceedings is voluntary. Consent to participate in the mediation process is obtained by the authority referring the case to mediation or by the mediator, after explaining to the accused and the victim the objectives and principles of the mediation process and informing them of their right to withdraw consent at any time until the mediation proceedings are concluded." Voluntary character of mediation is also emphasized by the Code of Administrative Procedure (article 96a section 2).

There are provisions in Polish law that aim to encourage parties in proceedings to utilize mediation; however, it remains voluntary. This means that everyone has the ability to decide whether to participate in mediation or not. *Volenti non fit iniuria* is the principle upon which mediation's participation is based. If someone values truth more than agreement, or for other reasons expects that a truth-based proceeding better suits his needs, he is entitled to go through traditional court proceedings. This method of resolving the truth–agreement controversy does not resemble a genuine trade-off; rather, it depends on the free choice of the parties involved. At this point, there is no situation where truth benefits at the expense of amicable dispute resolution, or *vice versa*.

The second solution works in a more "trade-off manner." Under article 183(14) of the Code of Civil Procedure, the enforceability of the settlement agreed upon before the mediator depends on its confirmation by the court. By virtue of section 3 "The court refuses to grant an enforcement clause or to approve a settlement concluded before a mediator, in whole or in part, if the settlement is contrary to the law or to principles of community life, or if it aims to circumvent the law, as well as when it is unclear or contains contradictions." There are four premises allowing the court to refuse its approval: 1) contrary to the law, 2) contrary to principles of community life, 3) the law's circumvention aim, and 4) technical aspects of the settlement that make it impossible to enforce.

The premise of "contrary to the law" should not be interpreted in such a way that the proceeding concerning settlement approval is equivalent to deciding the case. As one of the Polish courts asserted: "The review of the admissibility of a settlement concluded before a mediator may not consist of a substantive examination of the case."[25] The proceeding conducted under article 183(14) of the Code of Civil Procedure should not be regarded as replacing a substantive proceeding. However, it is easy to imagine a situation in which the court, based on substantial facts of the case, refuses to confirm the settlement. Such a decision could be based on obviously false factual findings agreed upon by the participants of the mediation.

What should be emphasized is that the court may act as a guardian of truth and public interest when refusing to approve the settlement. A settlement agreed upon before mediation is the most cost-effective and quickest way to obtain an executive title in the Polish legal context. For instance, it serves as an easy tool for incurring false debts to initiate execution proceedings merely to evade the claims of actual creditors. In such a situation, if discovered, the court is permitted to deny its confirmation of the settlement. The court upholds truth and public interest. The risk of detecting fraudulent intentions is higher in court-ordered mediations because the court has access to the case documents; it is much lower in private mediations, where the settlement and motion to approve it may be the only documents reviewed by the court.

[25] Decision of the Court of Appeal in Poznań dated 14 January 2014, I ACz 2163/13, LEX nr 1416238.

6. Conclusions

Traditional legal proceedings are truth-oriented enterprises. This claim should not be understood as equating truth with the only absolute value of the process. Procedural regulations balance various values, including truth. In contrast, mediation appears to be an agreement-oriented activity, where truth can play a role, but it is predominantly instrumental. Contemporary legal proceedings incorporate mediation into their framework, which may create tensions between the principle of truth and the principle of amicable dispute resolution.

Polish procedural regulations seldom refer directly to truth. However, it is uncontroversial to claim that the principle of truth is one of the fundamental principles in legal processes. When seeking a philosophical basis for the principle of truth, we should consider the classical correspondence theory of truth, according to which a claim is true when it corresponds to the facts. Legal doctrine distinguishes between objective, material, and formal truth, but these distinctions are based on the methods leading to truth and the competencies of subjects involved in legal proceedings, rather than the ontological status of truth. A closer look at the theories of truth reveals that there are some philosophical stances on the concept of truth that seem to comply with the axiology of mediation. Pragmatic and consensual theories of truth are the best candidates for definitions of truth that are compatible with mediation. These theories are, however, not particularly useful in the area of traditional legal proceedings.

From a theoretical standpoint, there are two polar solutions to the problem of tension between the contradictory demands of the processes of law and mediation. The first, which I call the truth-including stance, states that we should take facts and truth into account when mediating. According to this stance, facts cannot be negotiated; factual findings must be settled, not agreed upon. The second, the truth-excluding stance, treats facts as another area of dispute that should be marginalized and omitted during negotiations of pragmatic solutions. Facts and truth are not necessary in the process of reaching an agreement.

The Polish law legislator addresses the issue of the aforementioned tension in a different manner. Firstly, Polish regulations do not mandate mediation. This means that parties involved in the proceedings can choose whether or not to participate in mediation, during which the truth may not be considered a primary value. Secondly, Polish courts have the authority to examine whether a settlement proposed by a mediator is not contrary to the law, aims at circumventing the law, or violates the principles of community life. This means that the outcome of mediation must at least pass a basic test of truth.

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