

**Mediation and other skills improvement as the next steps  
in the Polish clinical movement development**

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In 2015 the *Sejm* (the Polish Parliament) enacted the *Ustawa z dnia 5 sierpnia 2015 r. o nieodpłatnej pomocy prawnej oraz edukacji prawnej - Dz.U. z 2015 r. poz. 1255* (The Free-of-charge Legal Help and Legal Education Act). Through the enacting of this the mentioned source of law, which concerns free-of-charge legal help and free-of-charge legal education, reform to the Polish justice system began. The lawyers who could be involved in this system were: *adwokaci* (advocates), attorneys at law (*radcy prawni*), lawyers with at least 3 years of experience (including legal clinic experience) and to a minimum extent also *doradcy podatkowi* (tax advisors). The system is based on 1, 500 free-of-charge legal help points, which employ at least 1 or 2 lawyers per point. With the beginning of the system the local governments, non-governmental organisations and self-governments of attorneys at law and advocates<sup>1</sup> started to spend the money provided by Polish government. The amount was approx. 94 mil PLN (€22,1 mil) in 2016, 96 mil PLN (€22,5 mil) in 2017, 99 mil PLN (€23,2 mil) in 2018 and will be 101 mil PLN (€23,7 mil) in 2019<sup>2</sup>. Despite the efforts of the Polish Legal Clinics Foundation, legal clinics still have not been financed by this system.

Overall since the Act came into in 2016, the number of cases run by Polish legal clinics has decreased to the lowest ever recorded level and continued to decrease in 2018 and 2019<sup>3</sup>, however there have been a number of exceptions to this trend, for example the for the AFM Krakow University Legal Clinic Tax Law Section have seen the number of its cases doubled. In addition the number of cases handled by Lazarski Legal Clinic have remained stable, while the number of prisoner referred cases has actually increased.

In 2018 the *Sejm* enacted the *Ustawa z dnia 15 czerwca 2018 r. o zmianie ustawy o nieodpłatnej pomocy prawnej oraz edukacji prawnej oraz niektórych innych ustaw – Dz.U. z 2018 r. poz. 1467* (The Change of The Free-of-charge Legal Help and Legal Education Act and Other Acts). Through the enacting of the 2nd phase this of law, which concerns free-of-charge legal help and free-of-charge legal education, reform to the Polish justice system began.

In 2019 the 1st part of the above mentioned act came into force and the lawyers who could be involved in the system were still: members of the structure of the system of free-of-charge legal help were still:

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<sup>1</sup> Which are similar institutions to American Bar Association, and traditional English and Welsh Middle Temple, Inner Temple, Lincoln's Inn and Gray's Inn.

<sup>2</sup> Article 28 of mentioned act.

<sup>3</sup> <http://www.fupp.org.pl/kliniki-prawa/publikacje/raporty>

advocates, attorneys at law, lawyers with at least 3 years of experience (including legal clinic experience) and to a minimum extent tax advisors.

However nearly 30% of the free-of-charge legal points started to be managed by *doradcy obywatelscy* (civil advisors - a new quasi-legal professionals) only.

At the moment, it has been estimated that there are there might be approx. 400 civil advisors in Poland. The authors of presentation believe that this number is insufficient and that these advisors should be also trained lawyers only.

In 2020 the 2nd part of the above mentioned act will come into force and the lawyers who will be able to work in the system will still be: advocates, attorneys at law, lawyers with at least 3 years of experience (including legal clinic experience) and to a minimal extent tax advisors.

However nearly 30% of the free-of-charge legal points will have to be managed by civil advisors, who at the same time will have to be permanent mediators authorised by the presidents of district courts.

In 2020 the number of cases run by Polish legal clinics will probably continue to decrease.

The reform of the Polish justice system is in progress and Polish legal clinics are in a crisis in terms of the number of run cases. However the level of clinical legal education is still very high.

Many students are interested in legal clinics because of the minimum of at least 3 years of experience, which they can gain during their legal studies. This can give them the opportunity to gain valuable practical legal experience and employment in free-of-charge legal points, which is a good solution for not wealthy graduates, who cannot afford opening their own legal business immediately after graduation. What is more, many students are interested in playing a part in legal clinics activities, such as AFM Krakow University Legal Clinic Tax Law Section, because of the possibility of future employment with the firm KPMG, which was provided to at least 20% of students of this section. This was possible thanks to the 7-year tradition of taking part in the national finals of the Tax'n'You Competition, while taking a part in the national final of the Tax'n'You Competition guarantees employment in the firm KPMG. Many students are also interested in AFM Krakow University Legal Clinic Tax Law Section, because it gives more and more opportunity in the field of international cooperation. While Lazarski Legal Clinic was recently rated as the second best Legal Clinic in Poland by the Polish Legal Clinic Foundation in cooperation with the newspaper Rzeczpospolita. The judges were particularly impressed with the size of their Street Law activities, with over 4000 participants. So AFM Krakow University Legal Clinic and Lazarski Legal Clinic are open to external cooperation.

On the other hand, most of the Polish legal clinics are not able to provide civil advise and mediation courses for their students, and what is more they do not develop client consultation skills and pleadings preparation skills. However the last ones are more and more often improved by students during workshop classes, which are often conducted by clinical teachers.

Therefore, there are many reasons why the next steps in the Polish clinical movement development should may be:

1. organising competitions which develop client consultation, mediation and preparation of pleadings skills and provide international cooperation programs,
2. the development of cooperation with teachers and NGOs, which are able to provide civil advise and mediation courses.

One of the most recent achievements of the Polish clinical movement, was participating in 2017 in organising the Brown Mosten International Client Consultation Competition, which was a fantastic

opportunity for client consultation skills development, practicing mediation as well as for international cooperation, especially for tutors and students from Poland and Ukraine<sup>4</sup>.

What is more it should be noticed, that mediation as a form of conflict resolution is becoming more and more popular not only with free-of-charge legal points (because of the *Sejm* regulations) but also within the legal business. Modern Polish lawyers have begun to understand that conflict does not only have to be resolved in a court. That is why more and more conflicts are being resolved by a mixture of methods used in mediation, negotiation and arbitration.

The use of these methods requires spoken and written language skills as well as soft skills. That is why the authors of this presentation will try to define these skills on the basis of the Brown Mosten International Client Consultation Competition criteria and they would like to try answer a question, what kind of other competitions and courses should be based on these criteria and implemented by the Polish clinical movement?

Interest in the concept of mediation from the linguistic perspective has also increased due the recent updating of the Common European Framework of Reference for Languages: Learning, Teaching, Assessment (CEFR) (Council of Europe, 2018). The criteria related to mediation has been significantly expanded to the wider concept of the development of soft skills in language communication (Chovancová, 2018). For these reasons, examining the concept of mediation from twin perspectives of legal practitioners training and language learning, and analysing how this could inform a training course for student lawyers would seem most app.

To accomplish this, authors of this presentation adopted the framework proposed by North and Piccardo (2016), who argue that the concept of mediation should be divided into four distinct, yet closely interrelated types: linguistic, cultural, social and pedagogic. Linguistic mediation, which focuses on how words can have a general and specific meaning, which a lawyer may need to apprise their clients of i.e. great speech (good) great gross (12x12). As soon as the communication goes beyond simply paraphrasing the language to the legal concepts and practices that underlie them the user is applying the processes associated with cultural mediation. "It is a question of working at a level of sophistication enough to preserve the integrity of the source and to get across the essence of the meaning involved" (North and Piccardo, 2016:8).

The third type of mediation identified by North and Piccardo (2016) is social mediation. This, "concerns the facilitation of the communication itself and/or the (re)formation of a text, the (re)construction of the meaning of a message" (North and Piccardo, 2016:9). This can apply to both the use of everyday language to facilitate lawyer-client communication, and the lawyer helping the client to develop an informed choice about the choice of legal action that they decide upon (Chovancová, 2018). This is related to the pedagogical mediation which is concerned with strategies to scaffold and facilitate access to knowledge and to think critically about a situation. While Chovancová (2018) argues that is not relevant to English language program courses, we will argue that it in order for a client to decide on the appropriate course, they must be awareness of the relevant legal statutes and procedures. This may require a certain level of "teaching" by the lawyer during the consultation. From these four concepts of mediation North and Piccardo (2016) devised a list of descriptors. The presentation will discuss how these general CEFR descriptors can be adapted to formulate the syllabus, course objective and course assessment of the proposed client mediation training course.

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