

Reasons Why Lawyers Recommend or Do Not Recommend Mediation to Their Clients

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This article presents the results of a study of findings gathered by a survey of authors from Lithuania, Great Britain, Austria, and Germany. The author seeks to reveal the reasons why attorneys recommend or do not recommend mediation to their clients.

Keywords: mediation, lawyer, client, parties to the dispute, recommend, do not recommend, amicable settlement of the dispute.

Priežastys, kodėl advokatai rekomenduoja mediaciją ar jos nerekomenduoja savo klientams

Straipsnyje pristatomi tyrimo rezultatai, kurie remiasi autorės atlikta apklausa Lietuvoje, Didžiojoje Britanijoje, Austrijoje ir Vokietijoje. Autorė siekia atskleisti priežastis, kodėl advokatai rekomenduoja mediaciją ar jos nerekomenduoja savo klientams.

Pagrindiniai žodžiai: mediacija, advokatas, klientas, ginčo šalys, rekomenduoja, nerekomenduoja, taikus ginčo sprendimas.

Introduction

With the growing importance of mediation (Hehn, Sieg, 2020, p. 1) and its popularity, with the introduction of the Institute of Compulsory Mediation, the interest of lawyers in mediation is also growing (Trossen, 2019, p. 18), as are the issues related to the application of mediation in the activities of lawyers, such as: What issues do lawyers find in using mediation in their work? What are the reasons that encourage (or hinder) lawyers to use mediation in their activities? Why do lawyers recommend or not recommend mediation to their clients?

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In this context, lawyers face new challenges: 1) lawyers must decide whether or not to take part in mediation; 2) lawyers must choose the role they intend to play in mediation; 3) lawyers must be able to explain to clients their ability to resolve disputes amicably, including the mediation process; 4) lawyers acting as mediators in mediation must be able to distinguish their activities as lawyers from those of mediators and explain in a way that is understandable to the parties to the dispute what functions the lawyer intends to perform in a particular case – those of a lawyer or mediator.

Of course, in order to participate in mediation, lawyers will face not only those listed but also other challenges and problems, all of which cannot be listed in their entirety. This is because the legal system, like life itself, is a dynamic process, which means that new challenges and problems are inevitable.

The author would like to draw attention to the fact that mediation is a way of resolving disputes, where the parties to the dispute must find a solution to the dispute themselves (Trossen *et al.*, 2014, p. 148). Lawyers, meanwhile, in their traditional way of thinking, often tend, unlike representatives of other professions, to “settle a case” in defiance of all the principles of mediation and to “lead” the parties to the dispute in reaching a decision (Rüstow, 2008, p. 385–432). Lawyers sometimes simply forget that mediation does not always require specialized legal knowledge to resolve a dispute amicably, but much more often requires social skills, empathy, good communication skills, and the ability to disclose the true interests of the parties to the dispute.

The object of the research is the application of mediation in the activities of lawyers.

This article will evaluate and compare the legal regulation and practical aspects of a lawyer’s participation in mediation in four countries: the Republic of Lithuania, Republic of Austria, Federal Republic of Germany, and Great Britain. Austria and Germany were chosen because they are countries with a continental legal tradition, have one of the oldest traditions of mediation, and amend them constantly. Great Britain was chosen because, although the legislator implemented Directive 2008/52 / EC in a simplified way, it did not hinder the development of mediation. In addition, mediation in Great Britain also has extremely deep and free market-based traditions. The influence of the legislator on mediation in Great Britain is minimal. Examples of practices developed in Germany, Austria and Great Britain will be used to assess the conditions and perspectives of the application of mediation in lawyers’ activities in Lithuania – to find new ideas and formulate rational proposals for the promotion of an institute of applied mediation in Lithuania.

Nature of work. It is an analytical research – it identifies and solves the problem(s) of fundamental and / or applied science.

The aim and objectives of the research. The aim of the research is to investigate the possibilities of applying mediation in the activities of lawyers.

In order to achieve the goal of the research, the following tasks are set.

1. Analyse why lawyers in their activities recommend or do not recommend mediation to their clients.
2. Provide conclusions, recommendations, and suggestions based on the research.

Research overview. In Lithuania, there is quite a lot of scientific literature on the topic of mediation, but very few scientific works that would examine the application of mediation in the activities of lawyers practicing in Lithuania. There are two scientific papers that have touched the issue of mediation in the work of a lawyer: dissertations of Gerda Štaraitė-Barsulienė “Possibilities of application of mediation in notarial activities and directions of improvement of legal regulation in Lithuania” prepared in 2010–2017, in which the peculiarities of notarial, lawyer and judge activities as possible mediators were analyzed (Štaraitė-Barsulienė, 2018), and a scientific article of Natalija Kaminskienė, Agnė Tvaronavičienė, Gražina Čiuladienė and Inga Žalėnienė “Investigation of Lithuanian Attorneys’ Attitudes Towards Peaceful Dispute Resolution and Mediation” published in 2016, which revealed the

reasons for not applying mediation in the activities of a lawyer (Kaminskienė *et al.*, 2016, p. 8). Fragmentary insights into the activities of a lawyer in mediation can also be found in the methodological publication “Mediator’s Guide” (Kaminskienė *et al.*, 2019) published in 2019 and in the public presentations of the proponents of mediation, researcher Rimantas Simitis and lawyer Gintaras Černiauskas (Černiauskas, 2020). The selected research object in Lithuania has not been comprehensively analysed at all. Thus, it is safe to say that the doctrine of Lithuanian law is very lacking of scientific works prepared by analysing and researching the activities of lawyers in mediation.

Review of the foreign literature shows that the application of mediation in the activities of lawyers is much more studied by foreign researchers than Lithuanian ones. However, the author misses a complex study conducted not only in Lithuania, but also abroad which is focused exclusively on lawyers’ activities in mediation and covers the possible roles of lawyers in mediation, lawyers’ behaviour in different stages of mediation, peculiarities of legal regulation and practical aspects faced by lawyers participating in mediation. Therefore, in the author’s opinion, her scientific work is very important not only for Lithuanian researchers, mediation supporters and legislators, but also for foreigners, as it will comprehensively study the activities of a lawyer in mediation and its perspectives in Lithuania and three other countries - Germany, Austria and Great Britain.

Relevance of the topic. Lawyers are the persons to whom the parties often turn to first in the event of a dispute. Therefore, the positive attitude of lawyers towards mediation, the fulfilment of the obligation to inform the parties to the dispute about mediation and the dissemination of knowledge about mediation in the society are among the main criteria that can lead to more frequent dispute resolution in mediation. However, in order to evaluate mediation positively and to recommend it to their clients, lawyers must first “find” their place in mediation and gain sufficient knowledge and experience in the field of mediation.

This part of the article describes the results of a survey of lawyers practicing in four countries (Lithuania, Great Britain, Germany and Austria). The part of the survey aims to identify the reasons that determine the application or non-application of mediation in the activities of lawyers and encourage lawyers to recommend mediation to their clients or not to recommend it. The survey methodology is used, the analysis and conclusions of the quantitative research results are performed, and the results of the research are summarized. A quantitative type of study is a mixture of research, descriptive, and explanatory elements.

The study population consisted of lawyers practicing in Lithuania, Great Britain, Germany, and Austria who were selected at random. The results of the survey reflect the views of 314 698 lawyers in these states.

The survey sample was determined based on the Paniotto formula using a sample calculator (Sample size calculator...).

Interviews were held with 267 respondents; 292 lawyers answered the survey questions, so the sample of respondents to the survey is representative. The reliability of the study is 95 percent. A sample error rate of 6 percent is permissible because this study examines lawyers’ attitudes.

Distribution of respondents in the sample by country. The majority of respondents were lawyers practicing in Germany (70.89%, N = 207). According to the author, the high interest of German lawyers in this survey can be explained by the fact that the number of lawyers there is higher than in other countries. At the beginning of 2020, there were as many as 166 375 lawyers in Germany (brak.de...), 6569 lawyers in Austria (rechtsanwaelte.at...), 2130 lawyers in Lithuania (advokatura.lt...), and 139 624 lawyers in Great Britain (Statistikauswertung...). The participation of lawyers from other countries in the survey was: 10.62%, N = 31 from the Republic of Lithuania, 9.59%, N = 28 from the Republic of Austria, and 8.90%, N = 26 from Great Britain.

The collection of research data was carried out using a survey method in order to find out the attitudes of lawyers on mediation issues. A quantitative research tool with a predesigned questionnaire consisting of 45 questions, most of which provided an option “other, please specify,” was used to gather information from the respondents. In this way, respondents were given the opportunity to express a personal opinion if it did not coincide with the options proposed by the author. In formulating the questions, an attempt was made to obtain as much information as possible about the application or non-application of mediation in the activities of lawyers.

The obtained survey data were processed using LamaPoll software (“Lamapoll“...), presenting the answers in percentages and dividing them according to the main sociodemographic characteristics of the respondents (job, gender, age, education, qualifications). Data are processed and analysed in two ways: by numerical and percentage translation illustrated by graphical representation and by statistical processing. At the end, conclusions are drawn, and recommendations are given for the practical application of the obtained results.

1. Reasons why lawyers recommend mediation to their clients

One-fifth of the respondents (19.94%, N = 201) indicated that they recommend mediation to their clients because the decision in resolving a dispute in mediation is in the hands of the parties to the dispute. Slightly less, i.e., 17.46% (N = 176) of the respondents noted that they do so due to the shorter duration of the process compared to other dispute resolution methods. Of all respondents, 15.58% (N = 157) stated that they recommend mediation to clients due to the fact that mediation is more flexible and less formal, 14.98% (N = 151) considered mediation to be cheaper, 11.41% (N = 115) recommend it for the confidentiality that mediation offers, 11.31% (N = 114) – due to the less negative emotions and psychological stress present in the process, 5.56% (N = 56) due to the higher probability of execution of the decision, while only 3.77% (N = 38) of the respondents marked the answer as “other.”

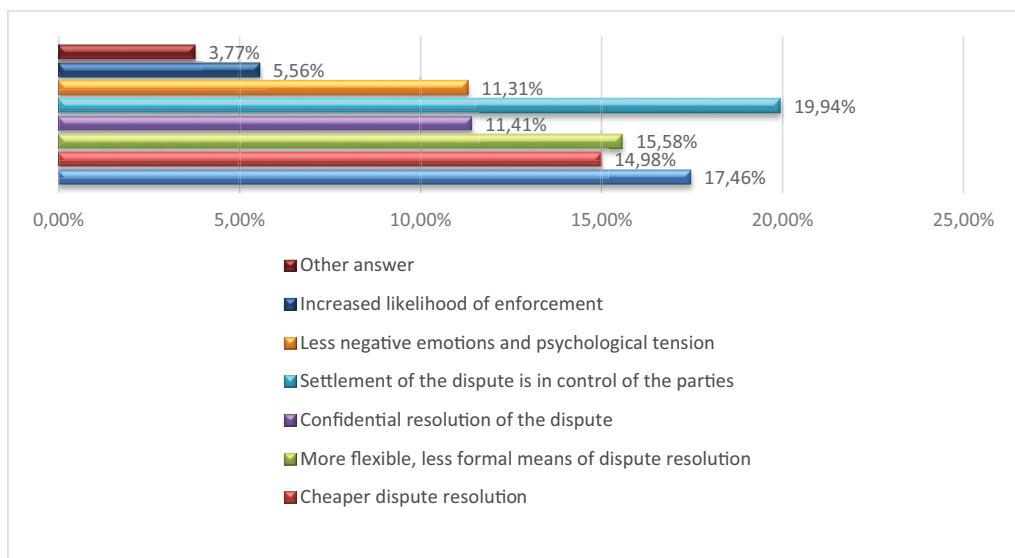


Fig. 1. Reasons why lawyers recommend mediation to their clients (percent)

Many of the respondents who marked the answer “other, specify” indicated essentially the same thing that the author provided in the specific answers that needed to be marked, only in their own words.

There were also respondents who recommend mediation to their clients as a possibility to delay the process, or some who do not recommend mediation at all, as they win 80–85 percent of their court cases.

German respondents gave priority to resolution in the hands of the parties to the dispute (20.75%, N = 149), the shorter duration of the proceedings (17.55%, N = 126), flexibility and less formality (15.04%, N = 108); British respondents – shorter length of proceedings (18.07%, N = 15), cheaper dispute resolution (18.07%, N = 15) and more flexible and less formal proceedings (18.07%, N = 15); Austrian – settlement in the hands of the parties to the dispute (24.18%, N = 22), shorter duration of the proceedings (16.48%, N = 15) and a cheaper way of resolving the dispute (15.38%, N = 14); Lithuanian respondents indicated criteria of cheapness (19.83%, N = 23), flexibility, less formality (18.97%, N = 22) and speed (17.24%, N = 20).

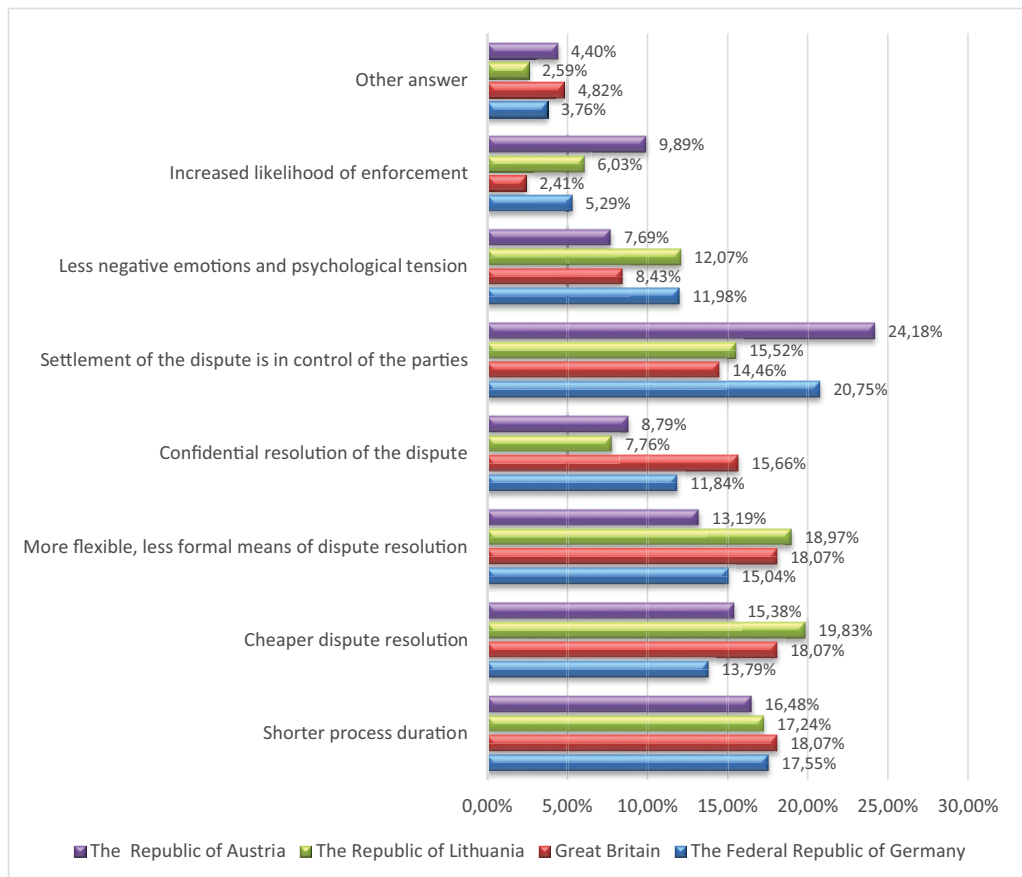


Fig. 2. Reasons why lawyers recommend mediation to their clients in four states (percent)

As can be seen from Fig. 2, in only one type of answers (settlement of the dispute is in control of the parties), the number of respondents who marked it exceeded 20% (although for each answer, the

number could reach 100%, as respondents could mark all answers or several of them, rather than, for example, only one).

This suggests that respondents recommend mediation to their clients for very different reasons, meaning that they all are very important in helping the client to decide on dispute resolution using mediation. Therefore, the author believes that lawyers should more often recommend mediation to their clients. This, of course, requires greater education of lawyers on the subject of mediation, which, as it turned out when respondents answered the question about lawyers' knowledge of mediation and their ability to explain mediation to clients, still needs to receive significantly more attention than it does today, because only 41.92% of the respondents rated their knowledge of mediation very well, and only slightly more, i.e., 48.97% of respondents, indicated that they are very well able to explain mediation to their clients.

The vast majority of lawyers surveyed rated their knowledge of mediation as very good (41.92%, N = 122) or good (41.24%, N = 120), and only a small proportion answered that their knowledge of mediation was satisfactory (15.12%, N = 44), low (1.03%, N = 3) or absent (0.69%, N = 2).

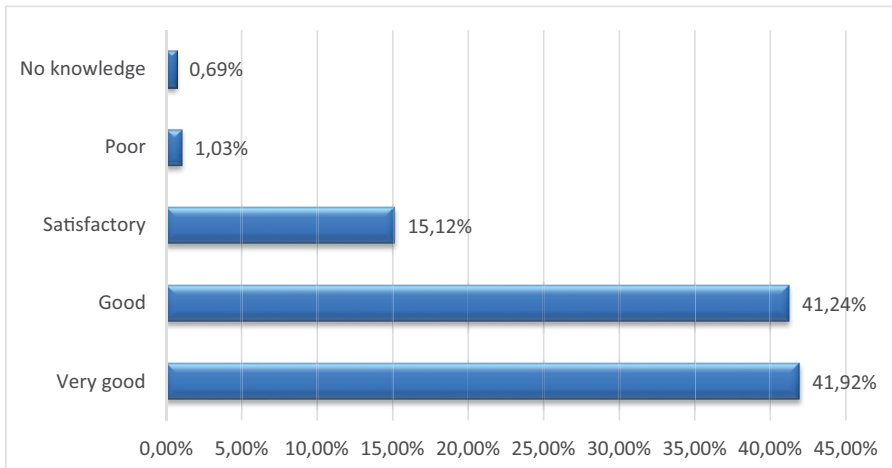


Fig. 3. Respondents' knowledge of mediation (percent)

2. Reasons why lawyers do not recommend mediation to their clients

When asked to answer the question of the reasons why respondents do not recommend mediation to their clients, the majority of them marked the answer "other" (27.98%, N = 22), slightly less (24.09%, N = 93) took the position that they do not think that mediation can be beneficial for their clients, while even less (15.80%, N = 61) indicated that only a court can resolve the dispute correctly. The rest of the respondents (10.62%, N = 41) were afraid of losing the income they could earn by resolving the dispute through other dispute resolution methods; some (8.29%, N = 32) do not know the mediators that they could recommend to their clients without hesitation, while yet some others (7.77%, N = 30) do not believe in mediation at all, or have had bad experiences with it (5.44%, N = 21).

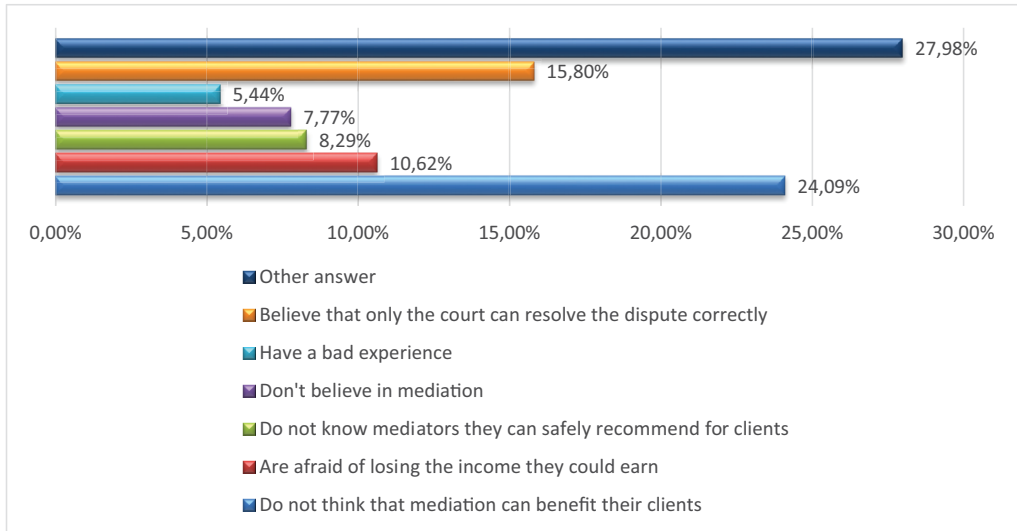


Fig. 4. Reasons why lawyers do not recommend mediation to their clients (percent)

Respondents who had marked “other, specify” indicated that they do not recommend mediation to their clients in the following situations:

- a) if the escalation is excessive or the involvement of the parties is not voluntary;
- b) highly conflicting relations between the parties to the dispute;
- c) when it is clear that there is no possibility of agreement, i.e., the positions and arguments of the parties are completely clear and contradictory;
- d) if a party seeks to delay the process, abuses it;
- e) when participation in the mediation process with a representative means additional costs;
- f) when the participation without a representative may lead to a high risk of incorrect assessment of the circumstances and one’s own possibilities;
- g) case-related circumstances;
- h) there are conflicts that are not suitable for mediation;
- i) due to regulations;
- j) due to misconduct of the other party’s representative (lawyer);
- k) if the client is immature, intellectually incapable, or mentally or psychologically vulnerable;
- l) if there is an imbalance of forces;
- m) high costs or reluctance of the other party;
- n) if clients do not want to take personal responsibility and want the third party to decide;
- o) if another procedure (judicial or other ADR procedure) seems more appropriate;
- p) when there is no desire to speak; when there are simpler, less time-consuming ways to reconcile parties at lower cost;
- r) unpreparedness of the parties for mediation, etc.

Nevertheless – and rightly so – many respondents indicated that there were no reasons that could limit mediation entirely, and that even in cases where mediation seemed pointless at first, there were often ways to resolve the issue, and that they always recommend mediation.

In Germany and Austria, respondents most often do not recommend mediation to their clients for other reasons; 34.29%, N = 12, Austrian respondents and 32.58%, N = 87, German respondents marked “other, answer” and explained not recommending mediation as due to the fear of losing income (39.02%, N = 16), while in Lithuania, lawyers listed a reason of not believing mediation to being useful for clients (32.56%, N = 14). A detailed distribution of the reasons why lawyers do not recommend mediation to their clients in the four states (percent) is given in Figure 5.

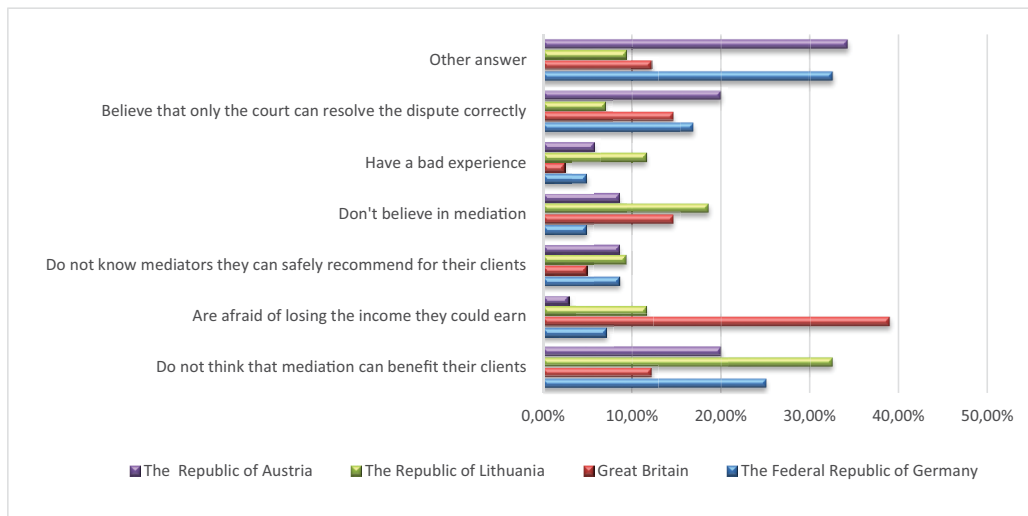


Fig. 5. Reasons why lawyers do not recommend mediation to their clients in four states (percent)

According to the survey, the largest share of respondents who do not believe in mediation was in Lithuania (18.60%, N = 8), less in Great Britain (14.63%, N = 6), just 4.87% (N = 13) in Germany, and 5.71% (N = 3) in Austria. However, it is interesting to note that mediation was positively assessed by 100% of British, 85.71% of Austrian, 83.33% of Lithuanian, and 77.07% of German respondents.

Therefore, a reasonable question arises as to why do 14.63% of British respondents not believe in mediation but value it positively? Or why do only 3.57% of Austrian respondents have a negative view of mediation, but 5.71% do not believe in mediation? The same can be said about Lithuania: why only 3.33% of the respondents evaluate mediation negatively, but as many as 18.60% do not believe in mediation? In order to answer these and similar questions, the author believes that additional research is needed by asking respondents more questions compared to this research.

Lithuanian respondents had the highest rate of bad experience in mediation (11.63%, N = 5), while the surveyed British respondents had only 2.44% (N = 1) of such cases.

The author also notes that as many as 39.02% of respondents from Great Britain indicated that they do not recommend mediation to their clients for fear of losing the income they could earn by resolving the dispute in other ways. This factor speaks for the growing competition between lawyers and mediators in Great Britain; on the other hand, there is a reason to believe that non-mediation lawyers in Great Britain are not fully integrated into the mediation process. The British government should pay significantly more attention to the involvement of lawyers in mediation in roles other than mediator. The fact that British lawyers rarely take part in mediation in a role other than that of mediator is also

confirmed by the fact that only 11.79% of British respondents take part in mediation as representatives of the party and much less, i.e., 8.82% – as neutral advisors.

Conclusions

According to the study, Germans and Austrians should be most concerned about their lawyers' belief that mediation could not benefit their clients and the belief that only a court can resolve a dispute fairly. These two reasons were mostly cited by Austrian and German respondents when answering the question of why lawyers do not recommend mediation to their clients. This shows that Austrian and German lawyers, although many of them declare that they value mediation positively (85.71% of Austrians, 77.07% of Germans, see Figure 20), seem to hesitate over how acceptable this alternative truly is.

According to the survey, the main reasons why lawyers recommend mediation to their clients are:

- 1) in resolving a dispute in mediation, the decision is in the hands of the parties to the dispute;
- 2) the duration of mediation is shorter compared to other dispute resolution methods.

According to the survey, the main reasons why lawyers do not recommend mediation to their clients are:

- 1) lawyers do not believe that mediation can be beneficial to their clients;
- 2) only a court can resolve the dispute correctly.

The reasons for the application or non-application of mediation in the activities of lawyers are determined by many factors.

Based on her experience, the author notices a issue faced by lawyers who want to use mediation in their activities – the negative attitude of the parties to the dispute towards the possibility of resolving the dispute out of court. With a high level of dispute escalation, the parties to a dispute often no longer believe that an agreement with the other party is possible. In such cases, the parties to the dispute often no longer want to try to resolve the dispute amicably, no longer want direct communication between them, and demand a judicial settlement of the dispute. The lawyer then finds themselves between their desire to settle the dispute through mediation and the client's claim to take the dispute to court. Therefore, public education on the topic of mediation is necessary.

Nevertheless, despite the challenges and problems that lawyers wishing to use mediation in their practice face currently and will face in the future, the author is convinced that the participation of lawyers in mediation is beneficial both for the parties to the dispute and for the lawyers themselves. In the majority of cases, the parties to the dispute in mediation resolve their disagreements faster, cheaper and experience fewer negative emotions than in court proceedings. By participating in mediation, lawyers improve their qualifications and remain competitive in the dispute resolution market, as they are able to offer the parties to the dispute the dispute resolution methods that best suit their interests and needs. However, for lawyers to be able to deal properly with the problems and challenges they face in applying mediation in their activities, more attention needs to be paid to lawyers' education and practical skills in mediation, especially to the psychological, negotiation, and managerial aspects.

The results of the research showed that the reasons for the application of mediation in the activities of lawyers depend on different but interrelated factors. The decision of lawyers to participate in mediation largely depends on the clients' wishes and preferences and the lawyer's own abilities and perception of mediation. Therefore, in order for lawyers to decide to participate in mediation more often, it is necessary to educate not only the lawyers themselves but also the public.

After all, the involvement of lawyers in mediation, in the author's opinion, is a necessary condition for the development of mediation.

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Reasons Why Lawyers Recommend or Do Not Recommend Mediation to Their Clients

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S u m m a r y

The influence of lawyers on the development of mediation is one of the greatest, since in the event of a dispute the lawyers are the first to contact the parties to the dispute. Nevertheless, the practice of legal mediation belongs to a field that has not yet been empirically researched (Wambach-Schulz, 2018, p. 82).

Today, both clients and customers of legal services place high demands on the lawyer; therefore it is necessary for the lawyer to strive for new competencies that would help to optimally examine each legal dispute and thus help them remain competitive in the legal market. In recent years, mediation has become increasingly important in Lithuania, but its application in the practice of lawyers is still insufficient. For this reason, and to research the experiences of the lawyers, the author conducted a survey in Lithuania, Austria, Germany and Great Britain (England and Wales).

The results of the research showed that the reasons for the application of mediation in the activities of lawyers depends on different but interrelated factors. Complex research focused exclusively on the activities of a lawyer in mediation and covering the possible roles of a lawyer in mediation, as well as their behavior in different stages of mediation, the peculiarities of legal regulation, and practical aspects faced by a lawyer participating in mediation has not been conducted in Lithuania so far.

Priežastys, kodėl advokatai rekomenduoja mediaciją ar jos nerekomenduoja savo klientams

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S a n t r a u k a

Didėjant mediacijos svarbai (Hehn, Sieg, 2020, p. 1), jos populiarumui, įvedant privalomosios mediacijos institutą, didėja ir advokatų domėjimasis mediacija (Trossen, 2019, p. 18), bet kartu kyla ir daugiau klausimų, susijusių su mediacijos taikymu advokato veikloje, pavyzdžiui: kokias paslaugas advokatas gali teikti mediacijoje? Kokios priežastys skatina (trukdo) advokatus taikyti savo veikloje mediaciją? Kodėl advokatai rekomenduoja mediaciją ar jos nerekomenduoja savo klientams?

Šiame kontekste advokatai susiduria su naujais iššūkiais: 1) jie turi nuspręsti, ar dalyvaus mediacijoje; 2) turi pasirinkti vaidmenį, kurį ketina atlikti mediacijoje; 3) turi gebėti klientams išaiškinti jų galimybę spręsti kilusius ginčus taikiai, įskaitant mediacijos procesą; 4) advokatai, mediacijoje veikiantys kaip mediatoriai, turi gebėti atskirti savo kaip advokato veiklą nuo mediatoriaus veiklos ir paaiškinti ginčo šalims suprantamai, kokias funkcijas advokatas konkrečiu atveju ketina atlikti – advokato ar mediatoriaus.

Be abejo, advokatai, norėdami dalyvauti mediacijoje, susidurs ne tik su išvardytais, bet ir su kitais iššūkiais ir problemomis, kurių baigtinio sąrašo nėra ir negali būti. Taip yra todėl, kad ginčų sprendimo rinka, kurioje dirba advokatai, kaip ir pats gyvenimas, yra dinamiška. Tad ir nauji iššūkiai, įskaitant tuos, kurie susiję su mediacija advokato veikloje, – neišvengiami.

Autorė atkreipia dėmesį ir į tai, kad mediacija – toks ginčų sprendimo būdas, kur ginčo šalys privalo pačios rasti ginčo sprendimą (Trossen *et al.*, 2014, p. 148). Tuo tarpu advokatai, vadovaudamiesi savo tradiciniu mąstymu, dažnai linkę patarti ginčo šalims, kokią sprendimą reikėtų priimti (Rüstow, 2008, p. 385–432). Advokatai kartais pamišta, kad mediacijoje, siekiant taikaus ginčo sprendimo, ne visada būtinos specialios teisinės žinios, o kur kas labiau reikia socialinių įgūdžių, empatijos, gerų bendravimo įgūdžių ir gebėjimo atskleisti ginčo šalių tikruosius interesus.

Šiame straipsnyje vertinami ir lyginami praktiniai advokato dalyvavimo mediacijoje aspektai Lietuvoje, Didžiojoje Britanijoje, Vokietijoje ir Austrijoje. Vokietiją ir Austriją autorė pasirinko dėl to, kad tai kontinentinės teisės valstybės, turinčios vienas iš seniausių mediacijos tradicijų Europoje. Didžioji Britanija pasirinkta, nes įstatymų leidėjas Mediacijos direktyvą (Europos Parlamento ir Tarybos direktyva 2008/52/EB dėl tam tikrų mediacijos civilinėse ir komercinėse bylose aspektų) joje įgyvendino lakoniškai (mediacijos procesas detalai nereglamentuojamas), tačiau mediacijos plėtrai šitai nesutrukdė. Be to, mediacija Didžiojoje Britanijoje turi itin gilią ir laisvosios rinkos pagrindu susiformavusias tradicijas. Įstatymų leidėjo įtaka mediacijai Didžiojoje Britanijoje yra minimali. Didžiojoje Britanijoje, Vokietijoje ir Austrijoje susiformavusios praktikos pavyzdžiais gali būti naudojamosi siekiant įvertinti mediacijos taikymo advokato veikloje sąlygas ir perspektyvas Lietuvoje, rasti naujų idėjų, suformuluoti racionalių pasiūlymų advokato veiklai, siekiant skatinti mediacijos instituto taikymą Lietuvoje.

Tyrimo objektas – mediacijos taikymas advokato veikloje. Tyrimo tikslas – ištirti ir įvertinti mediacijos taikymo advokatų veikloje galimybes. Norint pasiekti tyrimo tikslą, keliami šie uždaviniai:

1. Ištirti, kodėl advokatai rekomenduoja mediaciją ar jos nerekomenduoja savo klientams.
2. Pateikti išvadas, rekomendacijas ir pasiūlymus.

Mokslinės literatūros mediacijos tema gana daug, bet mokslinių darbų, nagrinėjančių mediacijos taikymą Lietuvoje praktikuojančių advokatų veikloje, dar labai mažai. Kompleksinio tyrimo, orientuoto išimtinai į advokato veiklą mediacijoje ir apimančio advokato galimus vaidmenis mediacijoje, jo elgesį skirtinguose mediacijos etapuose, teisinio reglamentavimo ypatumus, praktinius aspektus, su kuriais susiduria advokatas, dalyvaujantis mediacijoje, autorė pasigenda ne tik Lietuvoje, bet ir užsienyje.

Šiame straipsnyje autorė analizuoja ir vertina atlikto tyrimo rezultatus, dėl kurių (ne)atsisakoma teisinėje veikloje mediacijos arba ji klientams (ne)rekomenduojama. Remiantis darbe nustatytais aplinkybėmis daromos išvados ir teikiama pasiūlymų, kurie skatins advokatus dalyvauti mediacijoje, taip pat ir atitinkamas institucijas imtis reikiamų veiksmų, kad mediacija dažniau būtų taikoma advokato veikloje.

Apklauso populiacija – 314 698 Lietuvoje, Didžiojoje Britanijoje, Vokietijoje ir Austrijoje praktikuojantys atsitiktinai atrinkti advokatai. Apklausos imtis nustatyta taikant Paniotto formulę ir imties skaičiuoklę.

Reikėjo apklausti 267 respondentus. Kadangi į apklausos klausimus atsakė 292 advokatai, apklausoje dalyvavusių respondentų imtis yra reprezentatyvi. Apklausos patikimumas – 95 procentai. 6 procentų imties paklaidos dydis yra leistinas, nes ši apklausa skirta advokatų požiūriui į mediaciją išsiaiškinti.

Imtyje dalyvavusių respondentų pasiskirstymas pagal šalis.

Daugiausia apklausoje dalyvavusių respondentų buvo Vokietijoje praktikuojantys advokatai (70,89 proc., N = 207). Vokietijos advokatų susidomėjimą šia apklausa, autorės manymu, galima paaiškinti tuo, kad Vokietijoje jų yra kur kas daugiau nei kitose šalyse (2020 m. pradžioje Vokietijoje buvo net 166 375 advokatai (brak.de...), Austrijoje – 6 569 (rechtsanwalte.at...), Lietuvoje – 2 130 (advokatura.lt...), o Didžiojoje Britanijoje – 139 624 (Statistikauswertung...)). Kitų šalių advokatų dalyvavimas apklausoje mažesnis, t. y. iš Lietuvos (10,62 proc., N = 31), Austrijos (9,59 proc., N = 28) ir Didžiosios Britanijos (8,90 proc., N = 26).

Informacija iš respondentų buvo rinkta taikant kiekybinio tyrimo instrumentą, iš anksto parengtą klausimyną, kurį sudarė 45 klausimai, prie daugumos jų buvo numatytas atsakymo variantas – „kita, nurodykite“. Taip respondentams buvo suteikta galimybė pareikšti asmeninę nuomonę, jeigu ji nesutapo su autorės pasiūlytais variantais. Formuluojuojant klausimus buvo stengtasi gauti kuo daugiau informacijos apie mediacijos taikymą ar netaikymą advokato veikloje.

Gauti duomenys buvo apdorojami programine įranga „LamaPoll“, atsakymai vertinti procentais ir skirstyti pagal respondentų socialines-demografines charakteristikas (darbo vietą, lytį, amžių, išsilavinimą, kvalifikaciją). Duomenys analizuoti dviem būdais: verčiant skaičiais ir procentais, kurie dar pavaizduoti grafiškai ir apdoroti statistiškai.

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