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## The welfare of the child in the mediation process

### Abstract

*The welfare of the child is a fundamental criterion for any regulation on children's rights. It is an instrument for interpreting any norms contained in national and international legislation. It is also a directive in the creation of laws and their implementation, and is a criterion of evaluation in making decisions concerning children and in resolving conflicts of interest between children and other persons, particularly parents. The article explores the use of mediation as a means of renegotiating family relationships and promoting the welfare of the child. The authors analyse the potential benefits of mediation in resolving family conflicts, taking into account the implementation of the postulate of child welfare.*

### Keywords

*Child welfare, mediation, child-centred mediation, mediator, family relationships.*

### 1. Introduction

The essence of conflict is a clash between opposing needs, views, aspirations and expectations. Conflicts can both generate goodness and destroy it. Sensibly resolved conflicts – as Maria Ryś<sup>4</sup> notes – can

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<sup>4</sup> M. Ryś, Jakość związku małżeńskiego a poziom bliskości małżonków i sposoby rozwiązywania przez nich konfliktów, *Studia Psychologica* 2004, 5, p. 58.

contribute to the development of human self-knowledge and autonomy, as well as provide the foundation for new principles of cooperation. Violent conflicts that are resolved without taking into account the rationale and subjectivity of the parties can be disintegrating and pose a threat to the survival of specific social groups, communities, and even humanity as a whole. Violent conflicts evoke deep fear, cause suffering and trigger instinctive biological 'fight or flight' responses. While animals do not seem to know otherwise and surrender to this instinct, humans have developed more sophisticated ways of dealing with conflict, including negotiation and mediation. Nevertheless, there are certainly a whole host of people whose repertoire for dealing with conflict is limited to 'give up or fight'. If any benefits arise from these reactions, they will be one-sided. More often than not, they are destructive to all parties in the relationship. The energy that arises in conflict can be used integratively, but this requires procedures that go beyond biological instincts and that include respect for the other person's dignity and worth, responsibility for one's own actions and those of one's interaction partners, and finally, the competence to express one's own needs, concerns and emotions constructively and honestly.

Mediation seem to be a relatively new form of conflict management but in fact it has a long tradition in different civilisations and cultures. For example, in ancient China, Confucius urged people to use mediation instead of going to court. He warned that litigation could lead to parties becoming bitter and unable to work together, so he recommended that people should instead choose to meet with a neutral mediator to help them reach an agreement<sup>5</sup>. What is new, however, is the institutionalisation of mediation and the extent of its use and compatibility with the legal system. Since the late 1970s, and in Poland since the late 1990s<sup>6</sup>, mediation has become an institutionalised, officially approved and expanding mode of decision-making in many areas of social life. Mediation is now also an approved pathway in the landscape of family dispute resolution processes<sup>7</sup>. Mediation is a pathway

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<sup>5</sup> K. Jaspers, *Autorytety: Sokrates, Budda, Konfucjusz, Jezus*, Warszawa 2000, Wydawnictwo KR, p. 36.

<sup>6</sup> Mediation was introduced into Polish law in 1997 in the Criminal Code and the Code of Criminal Procedure. It was initially regulated in relation to adult offenders and in relation to juveniles by decrees of the Minister of Justice in 1998 and 2001.

<sup>7</sup> Mediation in family courts has been possible in the Polish legal system since 2005, when an amendment to the Code of Civil Procedure enabled courts to refer cases to mediation. However, it was not until the 2015 amendment that the number of

with the recognised potential to benefit a wider section of society, with less acrimony than traditional court processes, and with fuller consideration of the interests of the parties, including children. There are many arguments in favour of choosing mediation over litigation in situations of conflict between family members. We will mention two that are central to the issue addressed in the article. Mediation protects the interests of individual family members by allowing them to make their own decisions. After all, parents have the right – and responsibility – to make decisions for their children. Empowering parents, and their responsibility for the upbringing and well-being of their children, are a key aspect of mediation<sup>8</sup>. Mediation also protects the interests of minors, who – considering their legal situation – do not have the instruments to assert their rights, and their situation depends on parents exercising custody and parental authority<sup>9</sup>. In mediation, on the other hand, children's voices can be heard and their interest and well-being is protected through the person of the mediator, even in situations in which the parents threaten the welfare of the child. Furthermore, family law indicates the desirable and foreseeable space for the behaviour of individual family members and the consideration of the child's welfare as a priority, but without the possibility of sanctions for breaches of parental duties it has little real influence on the attitudes of parents towards children in conflict situations. The institution of mediation, through the person of the mediator, makes it possible to focus on the children in the conflict management process and to sensitise parents to care for the welfare and situation of the children.

We will start our analysis of the situation of the child in the mediation process when a renegotiation of the family relationship is necessary by pointing out the essential defining elements of family mediation.

## **2. Mediation**

Mediation is a way of conflict management and dispute resolution in which the position of balancing the opposing perspectives of the participants is taken by the mediator, whose task is to direct the positions of the

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cases referred by common courts to mediation increased significantly (Ministry of Justice, 2022).

<sup>8</sup> R. Emery, *Renegotiating Family Relationships Divorce, Child Custody, and Mediation*, New York 2012, The Guilford Press, p. 149.

<sup>9</sup> J. Haberko, *Sytuacja prawna dziecka jako pacjenta*, *Dziecko Krzywdzone. Teoria, badania, praktyka* 2020, 1(19), p. 13.

participants in order to create acceptable solutions. The Polish Mediation Centre<sup>10</sup> defines mediation as a form of restorative justice that focuses on repairing and rebuilding relationships between parties with the support of a mediator acceptable to the parties, guided by the principles of impartiality, neutrality and confidentiality.

The word 'mediation' comes from the Latin '*medius*', meaning 'agent' but also 'mediator'. The etymology of 'mediation' gives expression to the importance of the role played by the mediator in the process of repairing and rebuilding relationships. The affirmation of a 'person-centred perspective' that characterises mediation and distinguishes it from the 'act orientation' of litigation<sup>11</sup> challenges traditional attitudes and values in the context of dispute resolution. At the core of mediation as a practical intervention are respect for the participants in the process, respect for the power of the parties and their ability to make their own decisions, and respect for their views and values. Norms of fairness, mutual respect and equality form the basis of mediation practice. This is also because conflict and the strong emotions that accompany it often bring out the 'worst' qualities in people, who, for example in the context of family breakdown, become victims of their strong feelings, which they are unable to channel constructively due to finding themselves in a crisis situation. However, due to their circumstances and personal vulnerability to injury, the parties to the dispute cannot be considered incapable of making their own decisions. Mediation, by offering a calm, safe forum for a reasonable exchange of ideas, provides the conditions to have the conversation that the parties were unable to have on their own, but also allows them to regain control of their own affairs<sup>12</sup>. The placement of decision-making power with the parties in mediation distinguishes it both from other forms of dispute resolution (such as negotiation and court adjudication) and from other forms of intervention (such as therapy, counselling or social work). The affirmation of the decision-making power of the parties derives from the tradition of humanist ideas of equality and freedom, which accords respect to the inherent dignity and autonomy of the individual<sup>13</sup>.

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<sup>10</sup> Mediacje rodzinne. Skrypt szkoleniowy (n.d.), Warszawa, Polskie Centrum Mediacji.

<sup>11</sup> L. L. Fuller, Mediation – its forms and functions, *Southern California Law Review* 1971, 44, p. 305.

<sup>12</sup> M. Roberts, *Mediation in Family Disputes. Principles of Practice*, New York 2016, Routledge, p. 19.

<sup>13</sup> J. Michalski, *Sens życia a pedagogika. Impulsy myśli Viktora E. Frankla*, Toruń 2011, Wydawnictwo Naukowe Uniwersytetu Mikołaja Kopernika, p. 16.

As family mediation has developed, as well as its use across borders when divorcing parties reside in different countries, it has become necessary to agree on a universal definition. Accordingly, the Council of the European Union issued a directive on mediation, with the objective of, inter alia, to ‘facilitate access to alternative dispute resolution and to promote the amicable settlement of disputes by encouraging the use of mediation and by ensuring a balanced relationship between mediation and judicial proceedings’ (Directive, 2008, Article 1(1)). The Directive defines mediation as: “a structured process, however named or referred to, whereby two or more parties to a dispute attempt by themselves, on a voluntary basis, to reach an agreement on the settlement of their dispute with the assistance of a mediator. This process may be initiated by the parties or suggested or ordered by a court or prescribed by the law of a Member State” (Directive, 2008, Article 3(a)).

In turn, the mediator is defined as: “any third person who is asked to conduct a mediation in an effective, impartial and competent way, regardless of the denomination or profession of that third person in the Member State concerned and of the way in which the third person has been appointed or requested to conduct the mediation” (Directive, 2008, Article 3(b)).

Family mediation in Polish conditions has emerged from an innovative, empirical basis as an autonomous professional practice, independent of other professional interventions in the field of separation and divorce, such as therapy, counselling, social assistance and legal aid. Areas of family mediation practice go beyond divorce and separation cases and include child protection in a broad sense, homeless youth, and other types of family disputes. Mediation is voluntary in Poland and although the parties are not compelled to accept it, many do. In 2012, the number of cases in which the parties were referred to mediation on the basis of a court order, connected to divorce and separation, was 1634; in 2021, there were already 3221 such cases. Thus, the number of cases referred to mediation in this category of civil cases has almost doubled in nine years<sup>14</sup>. Family mediation is also available prior to court proceedings. One limitation on the use of family mediation is the low public awareness of the needs of children in situations of divorce and other family disputes. Many parents – the situation applies mainly to those filing for divorce, most of whom are

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<sup>14</sup> Postępowanie mediacyjne w świetle danych statystycznych. Sądy okręgowe i rejonowe w latach 2006–2021, Warszawa 2022, Ministerstwo Sprawiedliwości. <https://isws.ms.gov.pl/pl/baza-statystyczna/publikacje/>.

women<sup>15</sup> – are not interested in mediation because they expect to get a better result in court, e.g. in the form of a sole custody ruling. Another important factor limiting the use of mediation is the cost, which, although incomparably lower than the court costs associated with a full court proceeding, are fully covered by the parties themselves usually in equal shares, unless the parties agree on a different method of settlement.

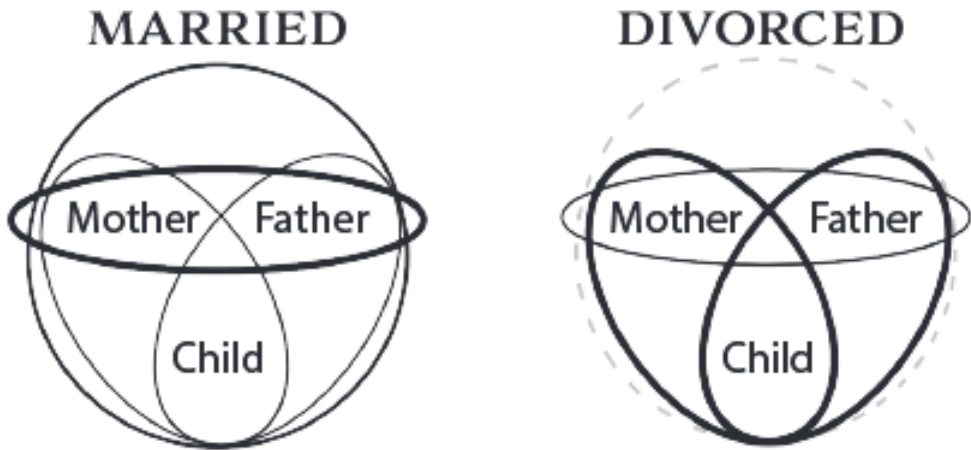
### 3. Child-oriented mediation

Parents should renegotiate their relationship during divorce and separation. Many feuding partners probably find this observation more than a little ironic, as at least one of them is trying to end the relationship definitively. However, partners who are also parents can never fully divorce. When there are children in the family, former spouses inevitably have to maintain the relationship in some intermediate form. Going forward, parents need to establish pragmatic issues: how to share custody of the children, how to share basic information about the children, and how to deal with parenting – together, independently or in opposition to each other. One of the reasons why parents should renegotiate their relationship in a divorce is that parents and children form the apex of a lasting family relationship, even when the parents themselves are no longer in a relationship. In short, a divorced or separated family is still a family, a family defined by a shared relationship rather than a shared residence. Therefore, the successful renegotiation of the parent-child-parent relationship is key to ensuring the proper care of children. A symbolic representation of the boundaries in married and divorced families is shown in Figure 1. The space around the parents' marital relationship is strongest in a married couple, while the space of the parent-child relationship becomes more important with a divorced or separated family. Nevertheless, the parental alliance is preserved in both types of families.

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<sup>15</sup>Rocznik Demograficzny (Demographic Yearbook of Poland), Warszawa 2022, GUS (Statistics Poland).

Figure 1: Family relationships in a married and divorced family



Source: Emery, 2012.

The focus on children in family mediation brings the children's needs to the fore – recognising them and working out how to meet them constructively. The question that arises in such a situation is whether parents in a situation of stress, severe agitation and poor communication between each other, especially in the immediate aftermath of separation, are able to recognise and look after the best interests of their children. Many researchers point to the 'diminished parenting capacity' of individuals in a perinatal divorce situation<sup>16</sup>, which may explain the discrepancy in perceiving the best interests of their own children. Family mediators support parents in this regard, in particular by:

- the closure of marital emotions and the opening of parental emotions,
- emphasising the motives and objectives of mediation related to children, and moving away from the blame and accusation characteristic of considering marital issues,
- highlighting positives and common positions,
- support in discussing the issues of each child separately,
- encouraging parents to mutually accept their ongoing role in their children's lives,

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<sup>16</sup> J. Wallerstein, J. B. Kelly, *Surviving the breakup: how children and parents cope with divorce*, New York 1996, Basic Books; R. Emery, *op. cit.*, p. 159.

- helping to develop solutions that free children from conflicting loyalties to their parent(s),
- helping to work out a parenting plan and the amount of child maintenance, also involvement in financial (non-alimony) support for children,
- discussing with parents what their children may be experiencing and their position on their position in a family conflict,

Considering with parents whether children should be directly involved in mediation, so that their views and feelings can be taken into account, but without putting them in charge of decisions<sup>17</sup>.

The most obvious issue to be determined in family mediation is the extent to which day-to-day parenting responsibilities will be shared between the parents or performed mainly by one parent, with support from the other parent or other family members. The commitment to continue shared parenting forms the basis of post-separation arrangements and follows directly from the Family and Guardianship Code (1964). Many parents make these arrangements without the involvement of third parties. Others may need mediation to work out detailed decisions regarding such issues as:

- health care (including during the child's illness),
- education – e.g. school choice,
- religious education,
- participation in extra-curricular activities,
- communication - passing on information about children,
- children's contact with other family members,
- educational aspects, such as rules and boundaries, daily rhythms, etc,
- responsibility for the safety and development of the child,
- how to deal with crisis situations – contacting the other parent.

The legal task of negotiating a parenting plan<sup>18</sup> is inextricably linked to the psychological task of renegotiating family relationships. Many parents find it difficult to resolve child custody disputes not so much because they disagree on child settlements, but because of their own problems. Many conflicts over children in everyday parenting, mediation or legal negotiations are exemplifications of parents' past conflicts and their ongoing emotional struggles, and are also an attempt to 'get back' at a former partner for a broken relationship. On the other hand, a parenting plan is

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<sup>17</sup> L. Parkinson, *Family Mediation. Appropriate Dispute Resolution in a new family justice system*, Bristol 2011, Jordan Publishing Limited, pp. 184–187.

<sup>18</sup> Ustawa z dnia 25 lutego 1964 r. Kodeks rodzinny i opiekuńczy; tekst jedn. Dz. U. z 2020 r., poz. 1359, z 2022 r., poz. 2140 (Family and Guardianship Code).



not only a legal settlement, but also an important step towards redefining the family relationship.

Family mediation creates a space to listen to the voice of children. The participation of children in mediation is a controversial issue because it requires consideration of the position of the child in mediation, what weight should be given to the child's voice in mediation; at what age and in what circumstances a child can be interviewed; who should decide whether a child can participate in mediation; how professionals (particularly mediators) should be prepared for the task of listening to children; how to address issues of confidentiality, consent and safety; what it means for a child to participate in mediation – whether children's views are taken seriously or through an adult lens; what is in their best interests. These and similar questions create a space to discuss the validity and extent of children's participation in family mediation. There is also a widespread view that mediation may offer the best space for the child's voice to be heard<sup>19</sup>. This is also linked to legal norms, e.g. the UN Convention on the Rights of the Child (1989), which Poland ratified in 2005, details a number of children's rights that indicate the need for and importance of the child's voice in mediation and a certain presumption that greater awareness of children's views and feelings and greater attention to them constitutes recognition of their value and importance, thus influencing the implementation of the principle of caring for their welfare, also during separation and divorce. The Convention (1989)<sup>20</sup> specifically states the following rights for children:

- freedom of thought, conscience and religion, and expression of opinion, including in administrative and judicial proceedings,
- the protection of private, family and domestic life, the confidentiality of correspondence, the right to be brought up in a family and to have contact with parents in the event of separation from them,
- the right meet parents, if possible,
- the right to age- and developmentally-appropriate treatment within the framework of criminal proceedings,
- the right to an adequate standard of living, care in institutions and establishments, social protection, health care, and social and health rehabilitation.

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<sup>19</sup> B. Simpson, Giving children a voice in divorce: The role of family conciliation, *Children and Society* 1989, 3, p. 274.

<sup>20</sup> Konwencja o prawach dziecka, przyjęta przez Zgromadzenie Ogólne Narodów Zjednoczonych dnia 20 listopada 1989 r.; Dz. U. z 1991 r., Nr 120, poz. 526.

The provisions of the Convention (1989) point to the legitimacy of children's participation in mediation and the inclusion of their voice in family matters of vital interest. Although the question of direct participation of children in the mediation process is still troublesome, good practices have already been developed in the aforementioned area. It is worth mentioning in this context the 'child inclusive' model piloted in Australia, which is a practice that includes children in mediation by supporting both the parental role and the needs of children throughout the mediation process<sup>21</sup>. This pilot scheme has helped to highlight important implications of including children in mediation. In particular, it has identified the importance of: encouraging parents in mediation to talk to and listen to their children; placing an emphasis on understanding and incorporating children's perspectives so that decisions made by parents are supported by children's views; and making parents the decision makers<sup>22</sup>.

The focus of family mediation on the child and his or her issues leads to an acceptance that the separation of the roles of spouses and parents involves a recognition that the bond of kinship between the parties as parents, created by the very existence of their children, can never be separated. While the relationship of kinship does not change, the way in which it is exercised does. This requires working out arrangements for the children, both through negotiation between the parties and through their cooperation, but always with the basic premise of all such arrangements, which should be the welfare of the child.

#### **4. The welfare of the child**

The welfare of the child is the central concept of all legislation concerning children's rights. It is an instrument for the interpretation of legal norms, a directive in the case of the creation and application of laws, a criterion of evaluation in all decisions on children's matters and in the resolution of clashes between the interests of the child and oth-

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<sup>21</sup> J. McIntosh, *Child inclusive mediation: Report on a qualitative research study*, *Mediation Quarterly* 2000, 18(1), pp. 55–69.

<sup>22</sup> M. Mackay, *Through a Child's Eyes. Child Inclusive Practice in Family Relationship Services. A Report from the Child Inclusive Practice Forums*, held in Melbourne, Brisbane, Newcastle, Adelaide and Sydney, Canberra 2001, Department of Family and Community Services and the Attorney-General's Department.

er persons<sup>23</sup>. Since there is no agreed definition of what child welfare is, the main value of the child welfare principle lies in the moral and social ideal it represents, namely that children must be protected from harm and have every opportunity to develop, maintain their well-being and become happy adults. Wanda Stojanowska, after analysing legal, sociological and psychological definitions of child well-being, put forward the position that child welfare means “a complex of values of a material and immaterial nature, necessary to ensure the proper physical and spiritual development of the child and the proper preparation of the child for work (independence in life) in accordance with his or her talents, these values being determined by a wide variety of factors, the structure of which depends on the content of the applicable legal norm and the specific, currently existing situation of the child, assuming the convergence of the 'good of the child' so understood with the social interest”<sup>24</sup>.

When considering the welfare of children from the perspective of their functioning within the family, it should be emphasised that it is a common concern for all parents, including separated or divorced parents. Parental authority should be exercised in such a way as to satisfy the best interests of the child while also considering the interests of society, including those of the parents. In mediation, the well-being of the child and the well-being of each parent are closely intertwined and form the central theme of the entire mediation. However, as Maria Łopatkowa has pointed out, the good of the child is such a capacious term that almost any harm can also fit within it<sup>25</sup>. Therefore, the professional duty of family mediators is properly focused on concern for the welfare of the child and its protection, even when this concern involves undermining parental competence in this respect. The parties to mediation – and their children – are not seen as helpless objects of influence, ‘clients’ or ‘patients’, but are self-determining subjects with full rights, including full responsibilities.

The view expressed above that the stress and strong emotions associated with a divorce can result in a ‘diminished capacity to be a parent’ obliges the mediator to be sensitive to the welfare of the child in the pro-

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<sup>23</sup> W. Stojanowska, *Dobro dziecka w aspekcie sprawowanej nad nim władzy rodzicielskiej*, *Studia nad Rodziną* 2000, 4/1 (6), p. 56.

<sup>24</sup> W. Stojanowska, *Rozwód a dobro dziecka*, Warszawa 1979, Wydawnictwo Prawnicze, p. 27.

<sup>25</sup> M. Łopatkowa, *Dziecko a polityka czyli walka o miłość*, Warszawa 2001, Wydawnictwo APS, p. 119.

cess of supporting the family in resolving the dispute. However, it does not disqualify parents from having the competence to look after the interests of the children and the interests of the family, nor is it a reason to remove the responsibility for decision-making from the parents. The aims of mediation would be distorted if this intervention were used as a means of extending supervision of separating or divorcing couples and their families under the guise of protecting children. Furthermore, there is no evidence that parents, no matter how angry and argumentative, are less committed to the welfare of their children than the mediator, and that without the mediator's intervention they would act with disregard for their children's interests and needs.

Parents – as a rule – know their children better than anyone else and can be the real experts on the best solutions for children and looking after their welfare<sup>26</sup>. Parents' rights to determine their own decisions regarding their children should therefore be considered as a principle in line with a child welfare perspective. However, the mediator has an ethical and practical responsibility to ensure that the needs of the children – and all those who are not directly involved in the mediation but who are affected by the decisions made during the mediation process (e.g. grandparents) – are taken into account in the parents' exploration of different options for resolving contentious situations and their consequences. The mediator should therefore be sensitive to bringing out and communicating the child's perspective in the mediation process, while keeping the burden of decision-making on the parents<sup>27</sup>.

The mediator's task is to focus the parties' conversation about the children's issues. This can be done through a statement such as: “The main reason for attempting mediation is the welfare of your children. We would like to know a little more about what your children are like before we talk about your agreements or disagreements with them”. This opening of the conversation allows the parents to step out of their role as spouses, taking away the narrative of grievance and complaint about the relationship, inviting a lively conversation about the children, their strengths, interests, educational plans, also the children's antics

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<sup>26</sup> M. Ryś, *Poczucie własnej wartości w relacjach interpersonalnych i odporność psychiczna u osób wzrastających w różnych systemach rodzinnych*, Warszawa 2020, Wydawnictwo UKSW, s. 40.

<sup>27</sup> J. McIntosh, B. Smyth, M. Kelaheer, Y. Wells, C. Long, *Post-separation parenting arrangements: Patterns and developmental outcomes. Studies of two risk groups*, *Family Matters*, Australian Institute of Family Studies Journal 2011, 86, pp. 40–48.

or funny parenting stories. Such a conversation allows the parents to focus on the well-being of the children, and creates a space for looking in retrospect at shared interests and successes in raising the children. A well-conducted mediation conversation (transformative function) will also help to turn the sense of being a failure who cannot look after the best interests of one's own children into a sense of educational success, of being a competent parent, and therefore allows parents to retain or regain agency in looking after the family and its legitimate interests. It is the parents' objective insecurity of agency in family matters that may itself have contributed to communication problems between adults and their children in the post-separation period, as well as to confusion and insecurity in the children.

Focusing on children's issues in the family mediation process also means encouraging parents to adopt a child's perspective. This can take the form of a question such as: "What is best for the child?". The answer remains a matter of negotiation between the parents in terms of their differences in assessing the children's interests. The mediator can offer expertise and communication support in this situation. However, he or she remains impartial and non-directive: parents are encouraged to cooperate and considering the children's needs, making their own decisions and agreements. If the mediator allies himself with anyone, it is the children<sup>28</sup>.

The mediators' concern for the welfare of the child and the child's right to express his or her own opinion and be heard does not mean that the mediator acts as the child's advocate or takes responsibility for ensuring the child's welfare. The mediator's role is to support the parents in addressing the situation, needs and feelings of each child, in working out arrangements that will work best for the whole family, without imposing a 'child welfare discourse' on the parents or ignoring the fact that the views of some children may differ from those of one or both parents.

## **5. Conclusions**

The considerations outlined above warrant a few conclusions of a general nature. Firstly, the value of family mediation remains that it bases its arrangements on mutual trust and a family relationship that is also preserved in situations of divorce and separation. This has its

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<sup>28</sup> D. T. Saposnek, *Mediating child custody disputes*, San Francisco 1983, Jossey-Bass, s. 42.

basis in the permanence of the family relationship and the commitment to the well-being of its individual members. Secondly, mediation pursues a certain model of behaviour that implements the postulates indicated above, without imposing specific ways of achieving the objectives set, such as the welfare of the child, in connection with the interests of the whole family and society. This allows the parents to realise the child's well-being according to their own life experience and views. Thirdly, the mediator's intervention in the dispute concerns only those situations in which the welfare of the child, or alternatively the welfare or interest of other family members not represented in the mediation, is clearly at stake. It should be stressed, however, that in this respect the premise for the application of interference does not necessarily have to be that the welfare of the child is at risk because of the proposed method of agreeing on situations that are important from the perspective of the child, but also a situation of disagreement between the parents that could jeopardise the welfare of the child (e.g. the absence of an agreement leaves the children without proper care and home).

Summarising the considerations covering the mediation process with regard to the implementation of the idea of child welfare, it should be pointed out that the management of family conflicts should take into account the interests of all actors involved, in particular the welfare of the child. Parents have responsibilities towards their children and not rights over them, hence it should be postulated that the voice of the children should be heard in the mediation process without entrusting them with the responsibility of making decisions. Moreover, parental responsibility does not end with divorce or separation – it continues. One of the most important pragmatic indicators of this is parental agreement on a position concerning the children regarding the extent and form of custody. At the same time, mediation services should not be expected to be a remedy for all family problems. In situations of divorce and separation, other support services for parents and their children, such as family counselling, therapy or legal advice, may be helpful and sometimes even necessary.

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## Dobro dziecka w procesie mediacji

### Streszczenie

*Dobro dziecka stanowi podstawowe kryterium wszelkich regulacji dotyczących praw dziecka. Jest instrumentem interpretacji wszelkich norm zawartych w przepisach krajowych i międzynarodowych. Jest także dy-*



*rektywą w tworzeniu prawa i jego realizacji, kryterium oceny przy podejmowaniu decyzji dotyczących dziecka oraz rozstrzygania kolizji interesów dziecka i innych osób, w szczególności jego rodziców. Artykuł bada wykorzystanie mediacji jako środka renegotjacji relacji rodzinnych i promowania dobra dziecka. Autorzy analizują potencjalne korzyści płynące z mediacji w rozwiązywaniu konfliktów rodzinnych, z uwzględnieniem realizacji postulatu dobra dziecka.*

## **Słowa kluczowe**

*Dobro dziecka, mediacja, mediacja skoncentrowana na dziecku, mediator, relacje rodzinne.*