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Mediation in Class Actions: Poland and Lithuania

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Mediation in Class Actions: Poland and Lithuania

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This paper analyzes mediation and its possibilities in class actions in two jurisdictions: Poland and Lithuania. The aim of this paper is to evaluate and compare the current Polish and Lithuanian legal frameworks in order to assess whether the existing regulations facilitate the resolution of class actions through mediation. In this paper, we conclude that, in Poland, mediation in class actions is regulated more comprehensively, however, at the same time, the Lithuanian civil procedure – at least at a first glance – offers broader potential opportunities for the amicable resolution of class actions than the Polish civil procedure.
Keywords: class action, mediation, civil procedure, comparative law.

Mediacija grupės ieškiniuose Lenkijoje ir Lietuvoje

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Šiame straipsnyje analizuojama mediacija ir jos galimybės sprendžiant grupės ieškinius dviejose jurisdikcijose: Lenkijoje ir Lietuvoje. Straipsnio tikslas – įvertinti ir palyginti dabartinį Lenkijos ir Lietuvos teisinį reglamentavimą, siekiant nustatyti, ar esami teisės aktai palengvina grupės ieškinių sprendimą pasitelkus mediaciją. Lenkijoje mediacija grupės ieškiniuose yra reglamentuojama gerokai išsamiau, tačiau Lietuvos civiliniame procese – bent jau iš pirmo žvilgsnio – siūloma daugiau galimybių taikiai išspręsti grupės ieškinius.
Pagrindiniai žodžiai: grupės ieškinys, mediacija, civilinis procesas, lyginamoji teisė.

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Introduction

The **aim** of this article[1] is to evaluate and compare the current legislation in Poland and Lithuania in order to determine whether the existing legislation facilitates the resolution of class actions through mediation. To achieve this goal, the article sets out the following **objectives**: (1) to examine the regulation and possibilities of mediation in class action cases in Polish civil procedure law (see **Part 1**); (2) to examine the regulation and possibilities of mediation in collective action cases in Lithuanian civil procedure law (see **Part 2**); (3) to compare and evaluate the identified legal rules and principles in these two jurisdictions as it relates to mediation in class actions (see **Part 3**). The **object** of this paper is mediation in class actions in both Poland and Lithuania.

The article's **methodology** combines doctrinal and comparative analysis. Parts 1 and 2 primarily use the doctrinal approach, enabling a systematic examination of how mediation is regulated in Poland and Lithuania, as well as its potential application in class action cases. In these parts, the following sources of positive law are of central importance – the Class Action Act of the Republic of Poland (**Polish Class Action Act**)[2], the Civil Procedure Code of the Republic of Poland (**CCP**)[3], Civil Procedure Code of the Republic of Lithuania (**CPCL**)[4] and the Law on Mediation of the Republic of Lithuania (**Law on Mediation**)[5]. Part 3 heavily relies on the comparative legal method, offering a detailed analysis of the civil procedure law sources in Lithuania and Poland that are relevant to mediation and class actions. The final part goes beyond mere description by critically comparing both jurisdictions with the objective to identify what each country can learn from the other.

To the best of the authors' knowledge, legal scholarship has not yet examined in detail the possibilities of mediation in class action proceedings in both Poland and Lithuania. While article by V. Nekrošius and K. Flaga-Gieruszyńska provides a thorough analysis of class action regulation in these jurisdictions, it does not address mediation in this context[6]. This gap in the literature underscores the **relevance** of the present paper. In practice, amicable dispute resolution is a fundamental objective of civil procedure, as it reduces procedural costs and promotes social harmony – which is an objective that applies equally to class actions.

The **originality** of this work lies in the fact that it is the first work in both jurisdictions to provide a detailed overview of the *status quo* of mediation in class actions in both Poland and Lithuania. The insights presented in the work allow for a comparative legal analysis of the regulations in both jurisdictions. Furthermore, Part 3 provides detailed comparisons of the jurisdictions, which could be used as a basis for future decisions to improve the regulations in Poland or Lithuania.

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[1] This publication was prepared as part of an international research internship carried out from 1 to 30 November 2025 at Vilnius University.

[2] Ustawa z dnia 17 grudnia 2009 r. o dochodzeniu roszczeń w postępowaniu grupowym (t.j. Dz. U. z 2024 r. poz. 1485) [Act of 17 December 2009 on Pursuing Claims in Group Proceedings (Journal of Laws 2024, item 1485, the Polish Class Action Act)].

[3] Ustawa z dnia 17 listopada 1964 r. Kodeks postępowania cywilnego (t.j. Dz. U. z 2024 r. poz. 1568 z późn. zm.) [Act of 17 November 1964 – Civil Procedure Code (consolidated text: Journal of Laws 2024, item 1568, as amended, CCP)].

[4] Lietuvos Respublikos civilinio proceso kodeksas. *Valstybės žinios*, 2002, Nr. 36-1340.

[5] Lietuvos Respublikos mediacijos įstatymas. *Valstybės žinios*, 2008, Nr. 87-3462; TAR, 2017-07-12, Nr. 2017-12053; 2020-06-22, Nr. 2020-13616.

[6] NEKROŠIUS, Vytautas; FLAGA-GERUSZYŃSKA, Kinga (2021). The Class Action in Lithuania and Poland: History, Experiences and Lessons. *Review of Central and East European Law*, 46(2), 234–264.

1. Mediation in Class Actions in Poland

When analysing the use of mediation in class action proceedings in Poland, two key legal sources must be considered. The first is the CCP, which governs general rules on mediation in civil proceedings. The second is the Polish Class Action Act, which sets out the principal rules applicable to class action proceedings. The analysis in this Part will proceed in two stages. First of all, we will discuss the general legal framework of mediation in class actions (see **Part 1.1.**). Secondly, we will more specifically discuss both initiation and procedure of mediation in Polish class action proceedings (see **Part 1.2.**).

1.1. General Legal Framework of Mediation in Polish Class Action

The possibility of using mediation to resolve class actions remains firmly grounded in Article 183^8 § 1 of the CCP, which is read in conjunction with Article 24 Section 1 of the Polish Class Action Act. The latter stipulates that, in matters not regulated by the Act, the provisions of the CCP shall apply accordingly, excluding certain provisions – none of which relate to mediation. Thus, mediation in class actions is generally governed by the CCP, specifically, by Articles 183^1–183^{15} of the CCP applied accordingly. On top of that, also, other provisions encourage settlements through mediation: the court is obliged to try to achieve an amicable resolution at every stage of the proceedings, especially by encouraging the parties to engage in mediation (Article 10 of the CCP); there are negative cost consequences for parties who unjustifiably refuse to engage in mediation to which they previously consented (Article 103 § 3 Point 2 of the CCP), the court repays three fourths of the court fee to the claimant if a settlement is reached through mediation during the court proceedings (Article 79 Section 2 Letter *a* of the Act on Court Costs in Civil Cases[7]) and the reduction of the court fees by two thirds if the claimant participated in mediation prior to bringing the action is provided (Article 13e of the Act on Court Costs in Civil Cases). Moreover, the confidentiality of the mediation process is enforced by the provision that all information obtained during mediation is deemed inadmissible in subsequent civil proceedings, and mediators are prohibited from testifying regarding any circumstances learned in the course of mediation (Articles 183^4 and 259^1 of the CCP). When bringing action, the claimant should also include information on whether the parties have made an attempt at mediation or another out-of-court method of dispute resolution, and, if no such attempts have been made, an explanation of the reasons for not undertaking them (Article 187 § 1 Point 3 of the CCP).

1.2. Mediation Settlement in Class Actions in Poland

Poland has adopted the opt-in model of class actions. Mediation in these cases can be initiated either on the basis of a mediation agreement between the parties or by a court decision referring the parties to mediation, as provided in Article 183^1 § 2 of the CCP. In both instances, mediation remains a voluntary process, requiring the mutual consent of the parties involved (Article 183^1 § 1 of the CCP). Mediation may be conducted before the initiation of judicial proceedings and, with the parties' consent, also during the course of the case, pursuant to Article 183^1 § 4 of the CCP.

[7] Ustawa z dnia 28 lipca 2005 r. o kosztach sądowych w sprawach cywilnych (t.j. Dz. U. z 2025 r. poz. 1228 z późn. zm.) [Act of 28 July 2005 on Court Costs in Civil Proceedings (consolidated text: Journal of Laws 2025, item 1228, as amended].

If mediation takes place prior to the commencement of court proceedings, it must be initiated on the basis of a mediation agreement[8]. This affords the parties considerable autonomy to determine the rules governing the mediation process, either within the agreement itself or in a separate document. According to Article 183[1] § 3 of the CCP, the mediation agreement should specify, in particular, the subject of the mediation, the appointed mediator, or the method for selecting one. However, other procedural matters may also be agreed upon by the parties. It is important to note that Article 19 of the Polish Class Action Act does not apply to mediation conducted prior to judicial proceedings. As a result, the consent of at least half of the group members is not required. Furthermore, the admissibility of any settlement reached through such mediation is assessed by the court under Article 183[14] § 3 of the CCP[9]. In principle, all potential plaintiffs in a class action can participate in the mediation process – provided they have joined the mediation agreement[10]. Participation may occur either directly or through a representative (such as an attorney). While representation is not legally required in this type of mediation, the use of a representative is generally more practical given the large number of claimants typically involved in class actions[11]. When all participants choose to engage directly in the mediation process without appointing a representative, the mediation settlement must be signed individually by each party. The resulting agreement is binding only on those who have signed it. The defendant or opposing party may choose whether to enter into a settlement even if not all group members have joined. If a representative has been appointed, they may sign the settlement on behalf of the group participants, unless otherwise agreed by the parties.

If mediation is conducted during the course of a class action, it may be initiated either on the basis of a mediation agreement or by a court decision referring the parties to mediation. In the latter case, only the representative party is required to participate in the mediation proceedings and to act on behalf of all group members, as provided in Article 4 Section 3 of the Polish Class Action Act. This rule reflects the practical necessity of streamlining proceedings due to the typically large number of participants in class actions[12]. Procedural actions of a representative party in this case are dependent on the consent of the group participants. The effects of these procedural actions apply to all group members[13]. During court proceedings, the plaintiff must be represented by an attorney or legal adviser, unless the plaintiff is one themselves, in accordance with Article 4 Section 4 of the Polish Class Action Act. This requirement does not extend to mediation proceedings, as they are not considered court proceedings[14]. Therefore, if

[8] If one of the parties subsequently initiates aggregate proceedings, the court refers the parties to mediation in response to an objection raised by the defendant prior to entering into the merits of the case (Article 202[1] of the CCP). Even in such cases, however, mediation remains voluntary, as a party may refuse to participate (see Article 183[1] § 1 and Article 183[8] § 2 of the CCP).

[9] JAWORSKI, Tomasz; RADZIMIERSKI, Patrick (2010). *Ustawa o dochodzeniu roszczeń w postępowaniu grupowym. Komentarz*. Warszawa: C.H. Beck, p. 210, 382.

[10] Naturally, parties may also initiate mediation proceedings individually; however, this approach is generally more costly and less advantageous for them – see FILIPOWSKI, Oskar (2011). Mediacja w polskim postępowaniu grupowym. *ADR. Arbitraż i Mediacja*, 1, p. 14–15.

[11] Ibidem, p. 13–14.

[12] See, e.g., SIERADZKA, Małgorzata (2018). In: *Dochodzenie roszczeń w postępowaniu grupowym. Komentarz*. 3 ed. Warszawa: Wolters Kluwer, p. 403. Differently: FILIPOWSKI, Oskar (2011). Mediacja w polskim postępowaniu grupowym. *ADR. Arbitraż i Mediacja*, 1, p. 13–15 (stating that members of the group will best represent their interests in class action proceedings and that the representative party is not allowed to represent plaintiffs in mediation).

[13] PIASECKI, Kazimierz (2010). Komentarz do ustawy o dochodzeniu roszczeń w postępowaniu grupowym. In: PIASECKI, Kazimierz *Kodeks postępowania cywilnego. T. II. Komentarz do art. 367–505[37]*. Warszawa: C.H. Beck, p. 800.

[14] Critically on that matter: FILIPOWSKI, Oskar (2011). Mediacja w polskim postępowaniu grupowym. *ADR. Arbitraż i Mediacja*, 1, p. 14. Differently: ASŁANOWICZ, Marcin (2019). *Ustawa o dochodzeniu roszczeń w postępowaniu grupowym. Komentarz* [online]. Legalis, commentary to Article 7, part I, side number 5.

group members or a representative party (provided they are authorized to do so) wish to authorize an attorney or legal adviser to represent them in mediation, a separate power of attorney must be granted (see Article 91 of the CCP). It should also be noted that attorneys may be not interested in reaching a mediation agreement when their fees are contingent upon damages awarded by the court[15]. Article 5 of the Polish Class Action Act contingency fee arrangements, stipulating that attorney fees may be calculated as a percentage of the awarded amount, but not exceeding 20%[16]. Thus, if parties wish to engage an attorney to represent them in mediation, it is essential to structure the fee arrangement in a way that encourages active and good-faith participation in the negotiation process, including willingness to reach a fair and balanced settlement.

Once mediation has been initiated, mediation serves as an additional, special, and non-mandatory stage within these proceedings and may be conducted at any stage of class action proceedings. When it comes to mediation settlements in class actions, two key requirements must be met for the court to declare the settlement admissible. First, the consent of the majority of group members to the settlement must be obtained. Second, the settlement must be approved by the court, which evaluates the settlement against several grounds for inadmissibility (Article 19 Section 1 of the Polish Class Action Act). Pursuant to Article 19 Section 1 of the Polish Class Action Act, concluding a settlement requires the consent of more than half of the group members[17]. It is widely accepted in legal scholarship that this requirement also applies to mediation settlements[18], and that consent can be expressed in various forms, as long as the representative party can demonstrate that the necessary majority approval has been obtained[19]. Typically, the representative signs an agreement with other group members reflecting this consent. Such an agreement may also set out additional conditions for concluding the settlement and regulate the liability of the representative party in case of breach. This framework applies to settlements reached within the scope of the group proceedings. However, if the settlement extends beyond the claims covered by the class action lawsuit – as permitted by Article 183^{13} § 2 of the CCP – then, the representative party must secure the consent of all parties affected by the settlement[20]. Moreover, if the settlement concerns claims covered by multiple court proceedings, including different group proceedings (as allowed under Article 183^{14} § 2^{1} of the CCP), the representative party must obtain consent from a majority of group members in each separate proceeding, and must be legally authorized to represent plaintiffs in all those proceedings.

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[15] This has been the experience in the United States, and has also been identified by an American scholar as the greatest disadvantage of the Polish regulatory framework – see the interview of A. Bobowska with M. Scévole de Cazotte, 2009, p. B10. Differently: FILIPOWSKI, Oskar (2011). Mediacja w polskim postępowaniu grupowym. *ADR. Arbitraż i Mediacja*, 1, p. 17.

[16] This amount was set as a result of opinions of M. Scévole de Cazotte – FILIPOWSKI, Oskar (2011). Mediacja w polskim postępowaniu grupowym. *ADR. Arbitraż i Mediacja*, 1, p. 6. On the other hand, it has been noted in the legal doctrine that such regulations enhance access to justice in class actions – see, e.g., KULSKI, Robert (2011). Teoretyczne koncepcje postępowania grupowego, *Polski Proces Cywilny*, 1, p. 38–39, 45.

[17] It has to be half of the group member in arithmetic sense – ASŁANOWICZ, Marcin (2019). *Ustawa o dochodzeniu roszczeń w postępowaniu grupowym. Komentarz* [online]. Legalis, commentary to Article 19, part II, side number 1.

[18] See, e.g., BIAŁECKI, Marcin (2012). *Mediacja w postępowaniu cywilnym*. Warszawa: LEX by Wolters Kluwer, p. 225.

[19] See, e.g., PIETKIEWICZ, Paweł (2011). In: PIETKIEWICZ, Paweł and REJDAK, Monika. *Ustawa o dochodzeniu roszczeń w postępowaniu grupowym. Komentarz*. Warszawa: LexisNexis, p. 245.

[20] ASŁANOWICZ, Marcin (2019). *Ustawa o dochodzeniu roszczeń w postępowaniu grupowym. Komentarz* [online]. Legalis, commentary to Article 7, part I, side number 3.

There are two opposing views on whether the consent of group members must be obtained before reaching a settlement[21], or if it can also be obtained afterwards[22]. The provisions of the Polish Class Action Act do not explicitly clarify this issue. Although obtaining consent after the settlement is legally possible, this approach seems unlikely in practice – especially considering that mediation is not free of charge, and that parties are responsible for covering mediation costs (Article 183^5 of the CCP). Moreover, the strongest argument supporting post-settlement consent – that the consent relates to the settlement in general rather than a specific agreement – can be challenged. According to Article 19 Section 2 of the Polish Class Action Act, which sets out the second requirement for declaring a settlement admissible, the court may declare a settlement inadmissible if the circumstances indicate that the actions taken violate the law or good customs, are intended to circumvent the law, or grossly prejudice the interests of group members[23]. This places a clear duty on the court to ensure the protection of the group members' interests[24]. Therefore, it follows that consent should normally be obtained before mediation proceedings begin, to safeguard the rights and interests of all group members and avoid potential invalidation of the settlement[25].

If the two aforementioned requirements are met – namely, the consent of at least half of the group members and the court's approval of the settlement – all members of the group are bound by the terms of the settlement. Pursuant to the Article 183^{12} § 2 of the CCP, the parties are required to sign the mediation settlement. This raises practical questions about who should sign the settlement on behalf of the group: all group members, a majority of the group, the representative, or an attorney-at-law. Some scholars argue that, given the mandatory representation in class action proceedings, the settlement should also be signed by more than half of the group members along with the attorney[26]. However, such an interpretation would create considerable practical difficulties, especially when group members reside in different locations. Therefore, the prevailing and more pragmatic view is that if the representative has obtained consent from more than half of the group members to conclude a settlement, they should be permitted to sign the settlement on behalf of the group. This authority is deemed to be included in the consent to conclude the settlement. Furthermore, if the representative has appointed an attorney to act

[21] See PIETKIEWICZ, Paweł (2011). In: PIETKIEWICZ, Paweł; REJDAK, Monika. *Ustawa o dochodzeniu roszczeń w postępowaniu grupowym. Komentarz*. Warszawa: LexisNexis, p. 245–248.

[22] JAWORSKI, Tomasz; RADZIMIERSKI, Patrick (2010). *Ustawa o dochodzeniu roszczeń w postępowaniu grupowym. Komentarz*. Warszawa: C.H. Beck, p. 378–379; SIERADZKA, Małgorzata (2018). In: *Dochodzenie roszczeń w postępowaniu grupowym. Komentarz*. 3 ed. Warszawa: Wolters Kluwer, p. 399; ASŁANOWICZ, Marcin (2019). *Ustawa o dochodzeniu roszczeń w postępowaniu grupowym. Komentarz* [online]. Legalis, commentary to Article 19, part II, side number 5. In such cases, until a majority of the group members have expressed their consent to the action undertaken by the group representative, the representative's declaration of will should be treated as made under a condition precedent. As a result, it does not produce any legal effects until the condition – i.e., obtaining the required consent – has been fulfilled. Once this condition, along with any other prerequisites for the validity of the dispositive act, has been satisfied, the legal effect intended by the representative's action becomes effective.

[23] This regulation is regarded by scholars as a *lex specialis* in relation to the provisions of the Article 183^{14} of the CCP – see, e.g., JAWORSKI, Tomasz; RADZIMIERSKI, Patrick (2010). *Ustawa o dochodzeniu roszczeń w postępowaniu grupowym. Komentarz*. Warszawa: C.H. Beck, p. 203–204.

[24] This also applies to group members who did not give their consent to reach the settlement – see ASŁANOWICZ, Marcin (2019). *Ustawa o dochodzeniu roszczeń w postępowaniu grupowym. Komentarz* [online]. Legalis, commentary to Article 19, part III, side number 3.

[25] If not, the court is allowed to state the settlement inadmissible – see ASŁANOWICZ, Marcin (2019). *Ustawa o dochodzeniu roszczeń w postępowaniu grupowym. Komentarz* [online]. Legalis, commentary to Article 19, part III, side number 6.

[26] BIAŁECKI, Marcin (2012). *Mediacja w postępowaniu cywilnym*. Warszawa: LEX by Wolters Kluwer, p. 226.

on behalf of the group in the proceedings, and the power of attorney expressly includes the authority to sign a settlement, the attorney may sign the agreement on behalf of the group.

Once a settlement has been reached, the mediator files a mediation report with the district court (Article 183^{12} § 1 and 2 of the CCP). The court then approves the settlement concluded before the mediator either by issuing an enforcement clause – if the settlement is enforceable – or by issuing a formal decision (Article 183^{14} § 1 and 2 of the CCP). A decision approving the settlement is subject to appeal (Article 394^{1a} § 1 Point 11 of the CCP). A settlement approved by the court that was concluded before a mediator has the same legal force as a court settlement (Article 183^{15} § 1 of the Code of Civil Procedure). It serves as grounds for discontinuing the group proceedings (Article 355 of the CCP). Furthermore, if the settlement is enforceable, it constitutes an enforcement title under Article 777 § 1 Point 3 of the CCP.

2. Mediation in Class Actions in Lithuania

When analysing the use of mediation in class action proceedings in Lithuania, two key legal sources must be considered. The first is the CPCL, which governs both the procedure for examining class actions and certain mediation-related aspects. The second is the Law on Mediation, which sets out the principal rules applicable to mediation in civil cases. This analysis will proceed in two stages. As in Part 1, first, we will examine the general legal framework of mediation in civil proceedings in Lithuania (see **Part 2.1.**). Second, we will provide a brief overview of the specific features of class action adjudication and the resulting opportunities for mediation in such cases (see **Part 2.2.**).

2.1. General Legal Framework of Mediation in Civil Cases in Lithuania

From a broader perspective, reconciliation between the parties constitutes one of the fundamental objectives of civil proceedings. Article 2 of the CPCL states that a core purpose of civil procedure is to restore legal peace between the disputing parties as swiftly as possible. Legal scholarship similarly emphasizes that the promotion of reconciliation is among the most significant aims of civil proceedings in Lithuania[27]. It is therefore unsurprising that the CPCL incorporates various incentives encouraging parties to conclude a settlement agreement. For instance, where the parties have resolved their dispute through mediation prior to initiating court proceedings, they are required to pay only 75 percent of the standard stamp duty (Article 80(8) CPCL). In addition, both the statement of claim and the statement of defence must indicate the parties' views on the possibility of reaching a settlement, and, where applicable, their intention and ability to resolve the dispute through judicial mediation (Articles 135(1)(7) and 142(2)(6) CPCL). The CPCL also strengthens the confidentiality of the mediation process. Information obtained during mediation is deemed inadmissible in subsequent civil proceedings, and mediators are prohibited from testifying regarding any circumstances learned in the course of mediation (Articles 177(5) and 189(5) CPCL).

In addition, the CPCL imposes certain duties not only on the parties but also on the court itself. After identifying the substance of the dispute during the preparatory hearing, the court must encourage the parties to reach a mutually acceptable agreement and to conclude a settlement. It must also inform them of the possibility of resolving the dispute through judicial mediation and recommend that they

[27] NEKROŠIUS, Vytautas (2005). Civilinio proceso tikslai: nustatyti tiesą ar sutaikyti šalis? Tarptautinės konferencijos medžiaga „Civilinio proceso pirmosios instancijos teisme 28 reforma Baltijos jūros regiono valstybėse ir centrinėje Europoje". Vilnius: *Vilniaus universiteto leidykla*, p. 13.

consider this option (Article 231(1) CPCL). A referral to judicial mediation may be initiated either by the judge hearing the case or by any party to the proceedings. Moreover, where the court determines that an amicable settlement is highly likely, it may refer the dispute to court mediation on a mandatory basis (Article 231¹(1) CPCL).

The mediation process itself is regulated in greater detail by the Law on Mediation. Article 2(3) of the Law defines mediation as a procedure for resolving civil or administrative disputes in which one or more mediators assist the parties in reaching an amicable resolution. The Law distinguishes between two forms of mediation: judicial mediation, which is conducted in cases already pending before a court, and non-judicial mediation, which is carried out in relation to disputes that have not been brought before a court.

The Law on Mediation further regulates several aspects of the mediation framework. First, it establishes the system of mediator self-governance and sets requirements for the provision of mediation services. For instance, Article 4(2) stipulates that mediators must remain impartial toward the parties to a civil or administrative dispute. Second, it regulates mediation agreements: mediation in civil disputes may be initiated only on the basis of a written agreement between the parties. Such an agreement may be concluded either after a dispute has arisen or in advance, before any dispute exists (Article 12(1)). The Law also provides that a court may propose that the parties attempt to resolve their dispute through judicial mediation; if the parties agree, the court must adjourn the proceedings (Article 12(3)). In addition, the Law contains provisions governing the appointment of mediators, and it affirms the binding nature of settlement agreements reached during mediation – Article 16(2) specifies that a settlement concluded in the course of civil mediation is binding on the parties. Finally, it sets out the circumstances in which mediation is mandatory (Article 20), among other regulatory elements.

However, the Law on Mediation does not include any provisions that specifically address the particularities of mediation in class action proceedings. Consequently, it may be concluded that the Law's provisions apply in their entirety to both ordinary civil cases and class action cases.

2.2. Mediation Settlement in Class Actions in Lithuania

The specific features of class action cases are regulated by Chapter XXIV-1 of the CPCL. Consistent with the practice in most European countries, Lithuania has adopted the opt-in model. Unlike the opt-out model, in which group members are automatically included as plaintiffs unless they expressly withdraw, the opt-in model requires that potential group members actively indicate their consent to participate in the action[28]. Accordingly, Article 441³(2)(1) of the CPCL requires that group members express their intention to join the action in writing and submit a claim to the court.

Conditions for bringing a class action are set out in Article 441³, which specifies that (1) the pre-trial dispute resolution procedure must be followed. Specifically, the group representative must notify the defendant of the group's intention to initiate a class action by sending a written claim by registered mail. This claim must describe the group, set out its demands, and warn that if the demands are not met within the specified period, the group may file a class action in court (Article 441²). This mechanism serves as an additional incentive for the parties to seek an amicable resolution, potentially through mediation, prior to the commencement of collective litigation; (2) the group must have a representative who is a member of the group, has an interest in the outcome, signs the claim on behalf

[28] NEKROŠIUS, Vytautas; SIMAITIS, Rimantas; VĖBRAITĖ, Vigita; BRAZDEIKIS, Aurimas (2016). Grupės ieškinys kaip civilinio proceso spartinimo priemonė. *Teisė*, t. 98, p. 16–26.

of the group members, and, together with the group's lawyer, conducts the claim and represents the interests of all group members (Article 441[4]); (3) the claim must be brought by at least twenty natural or legal persons who have expressed their written consent to join the group and pursue the action in court; (4) the group generally must be represented by a lawyer, except in cases where representation is not mandatory (Article 441[1](3), points 1 and 2).

All members of the group are considered plaintiffs. They exercise their procedural rights and fulfill their obligations through the group representative (Article 441[5](1) CPCL). Once the group representative has filed the class action, the court must determine, by ruling on the admissibility of the action, whether it can be heard in accordance with the rules governing class action proceedings. Following the issuance of the admissibility ruling, the court is required to publish a court-approved notice regarding the formation of the group on a designated website (Article 441[7](1) and (4) CPCL).

The only provision in Chapter XXIV-1 of the CPCL that explicitly addresses amicable dispute resolution is Article 441[6](3), which provides that a group may conclude a settlement agreement with the defendant. The group representative must inform the members of the group of this intention, attach a copy of the proposed settlement agreement to the notice, and indicate that group members may exercise their right to withdraw from the group, as provided in Article 441[5](3), within two weeks of the notification date. The notice must also specify that if a member does not exercise this right and the court approves the settlement agreement, the case will be discontinued, and the member will no longer be able to pursue a claim on the same grounds or regarding the same subject matter. The settlement agreement, once concluded, is binding on all class action members who have not exercised their right to withdraw.

3. Mediation in Class Actions in Poland and Lithuania: Comparative Analysis

An analysis of civil procedure law in Poland and Lithuania allows for the following comparative observations.

Firstly, both Polish and Lithuanian civil procedure law provides for the possibility of resolving disputes through class actions. Although a detailed analysis of class action regulation in these jurisdictions falls outside the scope of this paper, the analysis conducted in Parts 1 and 2 demonstrates that the class action mechanisms established in Poland and Lithuania are largely comparable. In particular, both jurisdictions have adopted an opt-in model, requiring potential group members to actively express their consent to participate in collective proceedings. Moreover, among other similarities, both legal systems establish the participation of a group representative who acts on behalf of the group during the proceedings.

However, at least at present, mediation in class actions remains a particularly rare phenomenon. Class actions themselves are not a commonly used method of dispute resolution in either jurisdiction[29]. Several elements seem to contribute to this outcome, including the adoption of the opt-in model of class actions in both jurisdictions[30], the absence of punitive damages, the relatively low costs of litigation

[29] In Poland, only two collective actions were referred by the court to mediation, and none of them were resolved through settlement – see TRZASKA-ŚMIESZEK, Agnieszka; TULIBACKA, Magdalena (2025). Poland. In: Bartkus, Mary E. et al. (eds.). *Collective Litigation in Europe: Law and Practice*. New York: Juris, p. 521. Meanwhile, there is no publicly available information regarding mediation in class actions.

[30] See Article 6 Section 2 and Article 12 of the Polish Class Action Act; TRZASKA-ŚMIESZEK, Agnieszka and TULIBACKA, Magdalena (2025). Poland. In: BARTKUS, Mary E. et al. (eds.). *Collective Litigation in Europe: Law and Practice*. New York: Juris, p. 510. This solution has been both accepted and criticized in the Polish doctrine. See,

compared to, for example, the United States, and the lack of insurance mechanisms that encourage settlements under American law[31]. As a result of the limited practical use of class actions, it is not possible to draw empirical conclusions regarding the effectiveness of mediation in such proceedings. Consequently, the comparative analysis between the two jurisdictions is necessarily confined primarily to the examination and comparison of their legislative frameworks, as presented in Parts 1 and 2.

Secondly, both Poland and Lithuania recognize the peaceful resolution of disputes – whether in ordinary civil proceedings or in class actions – as one of the fundamental objectives of civil procedure. As noted above, Lithuanian legal scholarship consistently identifies amicable dispute resolution as one of the most important aims of civil proceedings. Similarly, Polish legislation, like its Lithuanian counterpart, establishes a range of incentives designed to encourage parties to resolve disputes consensually.

In particular, both Lithuanian and Polish civil procedure law provides for: (1) various mechanisms aimed at motivating parties to reach a settlement, including the obligation for parties, during the proceedings, to state their position on the possibility of settlement and, where appropriate, their willingness and ability to resolve the dispute through court-annexed mediation; (2) an obligation on the court to encourage the parties to reach a mutually acceptable agreement, to inform them of the possibility of resolving the dispute through mediation, and to recommend that they consider this option; and (3) rules ensuring the confidentiality of mediation, whereby information disclosed during mediation is inadmissible in subsequent civil proceedings and mediators are prohibited from testifying about circumstances that came to their knowledge during the mediation process. All of the latter three incentives for mediation and amicable resolution of the dispute apply both to traditional civil cases and class actions in Poland and Lithuania.

Thirdly, both Polish and Lithuanian civil procedure law allows for the resolution of class actions through mediation, albeit with notable differences in regulatory detail. Polish Class Action Law provides for more detailed rules that need to be explicitly applied to mediation in class action disputes. For example, an analysis of Polish Class Action Law leads to the conclusions that: (1) only the group representative is required to participate in mediation proceedings and act on behalf of all group members if mediation is conducted during the course of a class action; (2) a settlement agreement must be approved by at least half of the group members, with such approval rendering the settlement binding on all members of the group if mediation is conducted during the course of a class action, etc.

By contrast, Lithuanian law – namely, the Law on Mediation and the Code of Civil Procedure of Lithuania (CPCL) – does not regulate mediation in class actions in comparable detail. The Lithuanian civil procedure does, however, provide for a pre-trial dispute resolution mechanism, under which, the group representative is required to notify the defendant of the intention to initiate collective proceedings by sending a written statement by registered mail. This statement must describe the group, specify its demands, and warn that a failure to satisfy those demands within a prescribed period may result in the initiation of collective court proceedings (Article 441² CPCL). This mechanism serves as an additional

e.g., KULSKI, Robert (2010). Modele określenia członkostwa w grupie w postępowaniu wszczętym na podstawie class action. In: POGONOWSKI, Piotr et al. (eds.). *Współczesne przemiany postępowania cywilnego*. Warszawa: Oficyna a Wolters Kluwer, p. 162, 166 et seq.; GRZEGORCZYK, Paweł (2011). *Ustawa o dochodzeniu roszczeń w postępowaniu grupowym*. Warszawa: LexisNexis, p. 173. Nowadays, it is generally accepted that the opposite model could also have been introduced – see KULSKI, Robert (2025). Postępowanie grupowe. In: CIEŚLAK, Sławomir (ed.). *System Prawa Procesowego Cywilnego. Vol. II. 5. Postępowanie procesowe przed sądem pierwszej instancji. Ugoda sądowa. Zawieszenie i umorzenie postępowania. Ochrona interesu zbiorowego i grupowego*. Warszawa: Wolters Kluwer, p. 905 et seq. See Part 2.2. for Lithuanian legislation.

[31] See JAWORSKI, Tomasz and RADZIMIERSKI, Patrick (2010). *Ustawa o dochodzeniu roszczeń w postępowaniu grupowym. Komentarz*. Warszawa: C.H. Beck, p. 201.

incentive for the parties to seek an amicable resolution, potentially through mediation, prior to the commencement of collective litigation.

Additionally, Article 441⁶(3) of the CPCL explicitly provides a group's possibility to conclude a settlement with the defendant. In such cases, the group representative must inform the group members of the proposed settlement, attach a copy thereof, and indicate that members may exercise their right to withdraw from the group, pursuant to Article 441⁵(3), within two weeks of receiving the notice. The notice must further explain that if a member does not withdraw and the court approves the settlement, the proceedings will be terminated, and the member will be precluded from pursuing claims based on the same grounds in the future.

Taking above-mentioned CPCL provisions into account, the main difference between the two jurisdictions is that the Lithuanian civil procedure, in contrast to Polish Law, permits the conclusion of an amicable agreement during the course of class action even in the absence of majority approval. Article 441⁶(3) of the CPCL merely requires that group members be notified and given the opportunity to withdraw from the settlement. Even if a majority of members exercise this right, the conclusion of an amicable agreement is not legally precluded. By comparison, the Polish civil procedure imposes a mandatory requirement that at least half of the group members approve the settlement for it to be valid.

On the basis of these considerations, it may be concluded that the Lithuanian civil procedure – at least, at first glance – offers broader potential opportunities for the amicable resolution of class actions than the Polish civil procedure. The existence of an earlier dispute resolution mechanism and less stringent requirements for group member approval may, at least in theory, foster a greater inclination among the parties to resort to mediation or other forms of consensual dispute resolution.

As a result, legislative reform appears to be necessary in Poland. Additional regulation – such as allowing group members to opt out before a settlement has been finalized, or excluding from its binding effect those who did not sign the agreement – could enhance the use of mediation in such cases. In this regard, the Polish legislator could follow Article 441⁵(3) of the Lithuanian Code of Civil Procedure.

Conclusions

1. Neither the Code of Civil Procedure nor the Polish Class Action Act regulates mediation in class action proceedings in detail. Consequently, the provisions of both acts must be applied jointly in order to reconstruct the applicable legal framework. An analysis of Polish civil procedure law leads to the following conclusions: (1) the legislator encourages parties to resolve disputes out of court equally in all civil cases; (2) both pre-trial mediation and mediation conducted during the course of class action proceedings are permitted, however, the group representative is not required to notify the defendant of the intention to initiate collective proceedings by sending a written statement by registered mail; (3) a settlement agreement reached through mediation during the course of a class action must be approved by at least half of the group members. Once approved, the settlement is binding on all members of the group.
2. Neither the CPCL nor the Law on Mediation regulates mediation issues in class actions in detail. An analysis of Lithuanian civil procedure law has led to the following conclusions: (1) The CPCL provides various incentives for parties to settle disputes amicably. These incentives apply to both traditional civil cases and class action proceedings; (2) the CPCL provides for a pre-trial dispute resolution mechanism, under which, the group representative is required to notify the defendant of the intention to initiate collective proceedings by sending a written statement by registered mail. This mechanism serves as an additional incentive for the parties to seek an amicable resolution,

potentially through mediation, prior to the commencement of collective litigation; (3) Article 441[6](3) of the CPCL provides that the group may enter into a settlement agreement with the defendant. The group representative is required to inform the members of the group of this intention, and to indicate that members may withdraw from the group within two weeks.

3. Comparative analysis of the Polish and Lithuanian civil procedures allows to make the following observations: (1) class actions and, accordingly, mediation in class actions remains a particularly rare phenomenon in both Poland and Lithuania; (2) both Poland and Lithuania recognize the peaceful resolution of disputes – whether in ordinary civil proceedings or in class actions – as one of the fundamental objectives of the civil procedure; (3) the Lithuanian civil procedure – at least at a first glance – offers broader potential opportunities for the amicable resolution, including mediation, of class actions than the Polish civil procedure. The existence of an earlier dispute resolution mechanism and less stringent requirements for group member approval for the settlement may, at least in theory, foster a greater inclination among the parties to resort to mediation or other forms of amicable dispute resolution.

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