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Social Perceptions of Mediation in Brazil and Poland: Cultural Barriers and Opportunities for Sustainable Conflict Resolution

Percepções Sociais da Mediação no Brasil e na Polônia: Barreiras Culturais e Oportunidades para a Resolução Sustentável de Conflitos

Percepciones Sociales de la Mediación en Brasil y Polonia: Barreras Culturales y Oportunidades para una Resolución Sostenible de Conflictos

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Abstract

Mediation has gained increasing recognition as an alternative method of dispute resolution, yet its acceptance still depends on cultural and institutional legitimacy. This article compares the Brazilian and Polish experiences, highlighting how legal frameworks, public trust, professional attitudes, and cultural traditions influence the development of mediation. The analysis shows that resistance is not merely a legal issue, but one rooted in adversarial legal cultures and limited public awareness. At the same time, both countries display promising opportunities: in Brazil, the rise of community mediation and digital platforms; in Poland, the active role of judges and the support of European institutions. By examining these contrasts, the study suggests that the consolidation of mediation requires not only laws and policies, but also strategies capable of reshaping professional practices and strengthening social trust.

Keywords: mediation; conflict resolution; legal culture; Brazil; Poland.

Resumo

A mediação tem conquistado reconhecimento crescente como método alternativo de resolução de conflitos, mas sua aceitação ainda depende de legitimidade cultural e institucional. Este artigo compara as experiências brasileira e polonesa, destacando como os marcos legais, a confiança pública, as atitudes profissionais e as tradições culturais influenciam o desenvolvimento da mediação. A análise demonstra que a resistência não é apenas uma questão jurídica, mas está enraizada em culturas jurídicas adversariais e na limitada conscientização social. Ao mesmo tempo, ambos os países apresentam oportunidades promissoras: no Brasil, o fortalecimento da mediação comunitária e das plataformas digitais; na Polônia, o papel ativo dos juízes e o apoio de instituições europeias. Ao examinar esses contrastes, o estudo sugere que a consolidação da mediação requer não apenas leis e políticas, mas também estratégias capazes de transformar práticas profissionais e fortalecer a confiança social.

Palavras-chave: mediação; resolução de conflitos; cultura jurídica; Brasil; Polônia.

Resumen

La mediación ha adquirido un reconocimiento creciente como método alternativo de resolución de disputas, pero su aceptación aún depende de la legitimidad cultural e institucional. Este artículo compara las experiencias brasileña y polaca, destacando cómo los marcos jurídicos, la confianza pública, las actitudes profesionales y las tradiciones culturales influyen en el desarrollo de la mediación. El análisis muestra que la resistencia no es simplemente un problema legal, sino que está arraigada en culturas jurídicas de carácter adversarial y en la escasa conciencia pública. Al mismo tiempo, ambos países presentan oportunidades prometedoras: en Brasil, el crecimiento de la mediación comunitaria y de las plataformas digitales; en Polonia, el papel activo de los jueces y el respaldo de las instituciones europeas. Al examinar estos contrastes, el estudio sugiere que la consolidación de la mediación requiere no sólo leyes y políticas, sino también estrategias capaces de transformar las prácticas profesionales y reforzar la confianza social.

Palabras clave: mediación; resolución de conflictos; cultura jurídica; Brasil; Polonia.

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1 Introduction

In recent decades, mediation has gained prominence as a strategic mechanism for conflict resolution that aligns with the principles of sustainability, efficiency, and social responsibility. As an alternative to adversarial litigation, mediation offers parties the opportunity to build consensus, preserve relationships, and reduce the social and economic costs of disputes. These characteristics make mediation a valuable tool not only within judicial systems but also in broader efforts toward sustainable governance and development.

Despite its growing normative recognition, the effectiveness of mediation remains deeply influenced by cultural and social perceptions. The way individuals and legal professionals understand, trust, and engage with mediation processes significantly affects its practical implementation and legitimacy. In many countries, particularly those with a strong tradition of judicial centrality, cultural resistance and low public awareness continue to limit the widespread adoption of mediation.

This article explores the cultural dimensions of mediation in two distinct yet comparable contexts: Brazil and Poland. Both countries have institutionalized mediation through legal reforms and policy initiatives, but they continue to face significant challenges in legitimizing mediation as a socially accepted and trusted practice. Drawing on empirical studies, official reports, and academic literature, this study analyzes how historical, legal, and sociocultural factors shape the acceptance of mediation in both nations. By examining similarities and differences between these contexts, the article aims to contribute to a deeper understanding of how cultural perceptions can support or hinder the sustainable development of alternative dispute resolution systems.

2 Theoretical and Legal Framework

Mediation is defined as a structured, voluntary, and confidential process in which an impartial third party facilitates dialogue between disputing parties to help them reach a mutually satisfactory agreement. It differs from conciliation and arbitration in both process and intention: while arbitration results in a binding decision imposed by a third party, mediation emphasizes collaboration and the empowerment of parties to construct their own resolution. Within the context of sustainable development, mediation contributes to social cohesion, conflict prevention, and institutional efficiency, aligning directly with the United Nations Sustainable Development Goal (SDG) 16 - *Peace, Justice and Strong Institutions*.

In both Brazil and Poland, mediation has gained formal recognition through legislative efforts aimed at promoting access to justice, reducing court congestion, and fostering a culture of dialogue. However, the legal trajectories and policy frameworks in each country reflect different stages and approaches in their development of mediation systems.

2.1 Legal Framework in Brazil

In Brazil, mediation became formally institutionalized in the early 2010s, largely through initiatives of the National Council of Justice (Conselho Nacional de Justiça – CNJ). A decisive step was the issuance of Resolution No. 125 of 2010, which established the National Judicial Policy for the Appropriate Treatment of Conflicts.

This policy marked a turning point by recognizing that the judiciary could no longer rely exclusively on adjudication to address the ever-growing demand for justice. The creation of the Judicial Centers for Conflict Resolution and Citizenship (CEJUSCs) materialized this vision by providing structured spaces, integrated into the courts, where citizens could access mediation and conciliation services free of charge.

The normative framework was subsequently strengthened by two landmark statutes. First, the Mediation Law (Law No. 13.140/2015), which provided comprehensive regulation for both judicial and extrajudicial mediation, defining its principles, scope of application, and the role of mediators. Second, the 2015 Code of Civil Procedure (Law No. 13.105/2015), which established the conciliation or mediation hearing as a mandatory initial stage of civil proceedings. By embedding consensual practices into procedural law, the legislature signaled its intent to shift from a culture of litigation to one that prioritizes dialogue and negotiated solutions.

These reforms, however, did not automatically translate into a widespread social practice. Although mediation acquired a strong legal basis, its diffusion continues to encounter cultural and structural barriers. Many citizens remain unaware of mediation as an option, often confusing it with conciliation or arbitration, while a significant portion of legal professionals still view consensual methods with suspicion, fearing a reduction in their protagonism.

in litigation. Moreover, the persistence of a judicial culture that equates justice with adjudication makes the transition toward collaborative resolution gradual and uneven.

In this sense, Brazil presents a paradox: on the one hand, one of the most advanced normative frameworks for mediation in Latin America; on the other, a legal culture and professional practice that still resist abandoning the traditional adversarial paradigm. Bridging this gap requires not only legislation, but also educational initiatives, incentives for lawyers and judges, and public policies aimed at changing social perceptions about the legitimacy and effectiveness of mediation.

2.2 Legal Framework in Poland

Poland began to institutionalize mediation in the early 1990s, in the context of its democratic transition and broader legal reforms aimed at modernizing the justice system. The first legal provision on the subject emerged in 1991 with the Law on the Settlement of Collective Labor Disputes, which opened space for mediation as a tool to manage conflicts between employers and workers in a rapidly changing economic environment. From that initial step, mediation was progressively expanded into other branches of law, reflecting a gradual (though cautious) attempt to diversify methods of conflict resolution.

A significant milestone occurred with the 2005 amendment to the Code of Civil Procedure, which formally introduced voluntary mediation in civil and commercial cases. This reform aligned the Polish legal system with emerging European trends in ADR and represented a clear effort to provide courts and litigants with alternatives to traditional judicial proceedings. Mediation was also incorporated into criminal law, particularly in cases involving juveniles and minor offenses, where the focus was on restorative practices and the reestablishment of social harmony. These initiatives signaled an increasing openness to consensual solutions as a complement to adjudication.

The Polish Ministry of Justice played a central role in disseminating mediation practices through national campaigns, training programs for mediators, and judicial guidelines that encouraged referrals to mediation. Moreover, Poland benefited from recommendations and financial support from the European Union, which consistently promoted ADR mechanisms as part of its broader justice policies. Despite this supportive environment, however, the uptake of mediation has remained modest.

The main explanation lies in cultural and institutional factors. Polish society continues to associate justice with formal court procedures, which are perceived as more legitimate and authoritative than negotiated solutions. Many citizens have limited knowledge of mediation, and professionals (especially lawyers) often prefer adversarial proceedings, which ensure clearer roles and predictable remuneration. Although judges tend to be more receptive to mediation, their efforts are not always sufficient to overcome the inertia of a legal culture deeply rooted in formalism and litigation.

Therefore, the Polish case illustrates both progress and paradox. On the one hand, there is a relatively advanced legal framework, aligned with European standards and enriched by specific provisions in civil, commercial, and criminal law. On the other hand, the practical impact remains limited, with mediation struggling to become a routine mechanism of justice. Moving forward, the challenge lies in strengthening public awareness, embedding mediation into legal education, and creating incentives that make consensual practices not only legally possible but also socially credible and professionally valued.

2.3 Mediation and Sustainable Governance

In both countries, mediation has been positioned not only as a legal tool but also as a mechanism for fostering sustainable governance. By reducing the burden on judicial systems, encouraging social participation, and promoting peaceful resolution of disputes, mediation contributes to institutional resilience and societal well-being. It is also increasingly relevant in the context of corporate governance and ESG (Environmental, Social, and Governance) metrics, where companies are evaluated based on their conflict management practices and stakeholder engagement.

Nonetheless, for mediation to fulfill its transformative and sustainable potential, legal frameworks must be accompanied by cultural legitimacy. This includes fostering trust among citizens, creating incentives for legal professionals, and embedding mediation into educational, institutional, and community practices. The following section explores how social and cultural perceptions shape the effectiveness and legitimacy of mediation in both Brazil and Poland.

3 Cultural and Social Perceptions of Mediation: Brazil vs. Poland

While legal frameworks in Brazil and Poland have formally established mediation as a viable method for dispute resolution, the social legitimacy and cultural acceptance of mediation remain uneven. In both contexts, factors such as public awareness, trust in mediators, traditions of judicial authority, and the role of legal professionals significantly shape the adoption and effectiveness of mediation processes.

3.1 Public Awareness and Trust

In Brazil, public knowledge of mediation remains limited. Although the creation of CEJUSCs and national campaigns such as the *Semana Nacional da Conciliação* have sought to promote awareness, a significant portion of the population remains unaware of mediation as a right and as a legal alternative to litigation. Many individuals confuse mediation with conciliation or perceive it as an informal, less serious process, often associated with “giving up” rather than reaching a fair outcome. This perception weakens public trust in mediated agreements, particularly when legal enforceability is not clearly communicated.

Nonetheless, when citizens do participate in mediation (especially in family or community settings) their experiences are generally positive. Studies indicate that parties who have undergone mediation tend to express satisfaction and are more likely to comply with agreements, suggesting that personal exposure builds trust, even in a context where social legitimacy is still developing.

Similarly, in Poland, surveys indicate that most citizens have never experienced mediation and are unaware of its procedures or benefits. The *Ministry of Justice* has acknowledged the low level of social awareness (*niska świadomość społeczna*) as a central obstacle to the broader implementation of mediation. Historical factors play a role: during the communist era, dispute resolution was heavily centralized, reinforcing a cultural reliance on state authority rather than on interpersonal negotiation. Even today, the idea of mediation may be viewed with indifference or skepticism (seen as potentially ineffective or as prolonging disputes rather than resolving them).

Interestingly, when Polish citizens are asked hypothetically about mediation, many express a neutral or positive opinion. For example, in surveys conducted in Warsaw and Białystok, the majority of respondents agreed that mediation “seems like a good idea,” even though they had never used it. This suggests that resistance may stem more from unfamiliarity than from outright rejection, leaving room for increased adoption through education and exposure.

3.2 Attitudes of Legal Professionals

The acceptance of mediation among legal professionals is a critical factor in shaping its use and legitimacy. In Brazil, although many judges and lawyers recognize the theoretical value of mediation, practical resistance persists. Traditional legal education has long emphasized litigation and adversarial reasoning, and only recently has mediation been incorporated into law school curricula. As a result, many practicing lawyers still see mediation as peripheral, or even as a threat to their role, particularly if they fear losing income or control over the dispute process.

Nevertheless, change is underway. Younger professionals trained in ADR (Alternative Dispute Resolution) methods and members of bar associations (*OAB*) increasingly engage in mediation practice and advocacy. Judges, too, are divided: some actively promote mediation by referring cases and collaborating with CEJUSCs, while others bypass the process despite legal requirements. This inconsistency reflects the ongoing cultural shift within Brazil’s legal community, one that favors dialogue, but still coexists with strong litigation norms.

In Poland, a similar dynamic emerges. While the judiciary tends to view mediation as a potentially useful tool to reduce caseloads and promote efficiency, lawyers remain more resistant. Studies indicate that Polish lawyers often fail to inform their clients about mediation options or discourage its use due to concerns over effectiveness and professional control. There is also a lack of practical training: many law schools and legal associations in Poland do not emphasize ADR methods, contributing to low professional engagement.

Additionally, the lack of experienced mediators in smaller jurisdictions can reduce judges’ willingness to refer cases to mediation, creating a cycle where the mechanism remains underused due to perceived or real limitations in infrastructure and trust.

3.3 Cultural and Religious Influences

Cultural attitudes toward conflict and compromise significantly influence the adoption of mediation. In Brazil, the 1988 Constitution guarantees broad access to the judiciary, reinforcing the idea that justice must come from a

judge. This has contributed to what scholars describe as a “culture of litigation,” where court rulings are seen as more legitimate than negotiated outcomes. Despite Brazil’s history of community-based conflict resolution (such as the role of *Juizes de Paz* (Peace Judges) or church-led mediation) these practices are often marginalized in the public imagination.

Nevertheless, Brazilian culture is also marked by strong communal values and religious traditions that emphasize forgiveness, empathy, and social harmony. These values can serve as bridges to greater acceptance of mediation, especially when reinforced by community programs and church-supported initiatives.

In Poland, cultural attitudes toward compromise are more complex. While Catholic teachings emphasize reconciliation, the concept of *kompromis* (compromise) has historically carried ambivalent meanings. In the post-communist period, compromise was sometimes viewed with suspicion (as a sign of weakness or as yielding to opposing forces). This historical baggage may contribute to the relatively slow embrace of mediation, especially in adversarial settings such as labor disputes or family conflicts.

At the same time, Poland has a growing community of mediators and civil society actors working to reshape this narrative. Initiatives supported by the European Union and NGOs are promoting a culture of dialogue and restorative justice, especially among youth and educators. These efforts, though still emerging, highlight the potential for cultural transformation when mediation is linked to broader values of peacebuilding and social responsibility.

3.4 Shared Challenges and Opportunities

Both Brazil and Poland share several challenges in legitimizing mediation culturally:

- Low public awareness and media visibility;
- Professional resistance among lawyers and inconsistent judicial practices;
- A historical preference for state-centered dispute resolution.

At the same time, they share opportunities for cultural transformation:

- Growing investments in legal education that include mediation;
- Increasing evidence of satisfaction among participants;
- Public campaigns and international cooperation promoting ADR as a pillar of sustainable justice.

By acknowledging these similarities and learning from each other’s experiences, both countries can advance the social legitimacy of mediation and promote it not merely as a legal tool, but as a cultural practice of sustainable conflict resolution.

4 Conclusions

The comparative analysis between Brazil and Poland reveals that the consolidation of mediation is not merely a legal challenge, but primarily a cultural and institutional one. Both countries already have broad and consistent legal frameworks capable of supporting the practice. However, effectiveness remains limited because the prevailing legal culture continues to value litigation and reinforces the centrality of lawyers and courts in conflict resolution. This scenario highlights the gap between written law and social reality.

The study demonstrates that overcoming this barrier requires more than legislative reform. It calls for cultural transformation processes involving multiple stakeholders. Public institutions, universities, professional associations, and civil society organizations must work together to promote a positive vision of mediation, one that is not only grounded in cost and time efficiency, but also in the construction of more stable and collaborative social relations.

In the Brazilian context, the strengthening of community-based initiatives and the inclusion of mediation in legal education stand out as promising drivers of medium-term change. In Poland, a more favorable institutional environment emerges, characterized by the proactive role of judges and the support of European policies, which contribute to the gradual legitimization of mediation as a consensual justice mechanism. Although the paths differ, both cases converge on the need for continuous mediator training, public awareness campaigns, and incentive mechanisms to encourage judges and lawyers to rely on and promote mediation.

In sum, mediation will only become an integral part of the social fabric when it is recognized as more than a technical instrument: it must be understood as a democratic imperative. Encouraging dialogue, shared

responsibility, and collective problem-solving broadens access to justice, reduces judicial overload, and, above all, strengthens values of trust, solidarity, and cooperation. It is within this horizon that mediation may establish itself as a transformative practice, capable of reshaping how Brazilian and Polish societies address conflicts and reinforce their democratic institutions.

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