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Conciliatory methods of settling cases in administrative proceedings

One of the general principles provided for in the Act of 14 June 1960, Code of Administrative Procedure¹, is the principle of amicable settlement of cases. There is no doubt that the fact that this provision is contained in Chapter II, amidst the rules treated by the legislator as particularly important for shaping the model of administrative proceedings, is not accidental. Indeed, it is beyond dispute that general principles are of particular importance to both interpretation and application of law. Amicable settlement may also be of potential importance to implementation of the general principle of speed and simplicity. This principle is implemented through the institution of administrative settlement and mediation. The purpose of this article is to present these conciliatory case settling methods in administrative proceedings and to assess whether, given the unique characteristics of the administrative-law relationship, they “work” in public administration cases.

Amicable case settlement principle

Pursuant to the Article 13 of the CAP, in cases whose nature allows it, public administration bodies strive for amicable settlement of disputes and determination of rights and obligations that are the subject matter of proceedings in cases falling within their legal competence, in particular by taking actions that 1) induce the parties to conclude an amicable settlement, in cases involving parties with conflicting interests, and 2) are necessary to conduct mediation. Public administration bodies take all reasonable steps at a given stage of proceedings to enable mediation or settlement and, in particular,

¹ Journal of Laws of 2021, item 735, as amended; hereinafter referred to as CAP.

provide explanations concerning the possibility and benefits of amicable case settlement. In the quoted wording, amicable settlement is elevated to the status of a general principle; however, one must keep in mind that it is a public subjective right of a party, and thus the exercise of this right is at that party's discretion. Consequently, no reproach can be made to a party that is unwilling to take advantage this form of completion of proceedings².

The primary aims of the current regulation of the amicable case settlement principle are to increase the possibility of amicable or conciliatory settlement of administrative cases and to adapt the national regulation of administrative proceedings so that it would comply with European standards in this respect. This direction of change in the administrative procedure is in line with the recommendations of the Committee of Ministers of the Council of Europe expressed in its Recommendation R(2001) 9 of 5 September 2001 on alternatives to litigation between administrative authorities and private parties³. The regulation of alternative dispute resolution (ADR) in law and administrative proceedings should guarantee that a party is informed about the possibility of using this method. It follows from the explanatory memorandum for the amending bill that the principle set out in Article 13 of the CAP will be implemented in two ways. Firstly, as a method of operation of the authority: through the institution of mediation between the party to the proceedings and the public administration authority or mediation between the parties to the proceedings themselves, and secondly, as a method of working out and settling administrative cases: by concluding and approving a settlement or by issuing an administrative decision. Thus, the essence of the updated principle comes down no longer only to reaching a settlement as a form of substantive termination of a case, but to striving to resolve all disputes arising in the course of proceedings amicably.

The indicated principle is implemented in practice by two institutions: administrative settlement and mediation. Notably, administrative settlement has been in place for a long time in the CAP, since the 1980 amendment of the CAP, while mediation was introduced as a result of the amendment of 2017.

² W. Dawidowicz, *Ugoda* [Settlement], [in:] W. Dawidowicz (ed.), *Kodeks postępowania administracyjnego po nowelizacji* [Code of administrative procedure after the amendment], Warszawa 1980, pp. 20–21.

³ Recommendation Rec (2001) 9 of the Committee of Ministers to member states on alternatives to litigation between administrative authorities and private parties. The text of the Recommendation is available on the website of the Committee of Ministers of the Council of Europe at: <http://www.coe.int> (accessed: 10.10.2018).

Administrative settlement

It is assumed in the literature that settlement of a case in the form of a settlement is an alternative decision-making method of settling a case. However, there is no doubt that in practice an administrative settlement is not as common as a form of operation of administration as an administrative decision. However, it is indicated that the introduction of this form of operation of administration to the CAP was intended to manifest the strengthening of the position of the parties to administrative proceedings in terms of their procedural rights in relation to the authorities. The intention of the legislator was to introduce a mechanism that would create the possibility to influence the content of the administrative-law relationship and the possibility for the parties to proceedings to have the procedural relationship at their disposal. In other words, the changes were supposed to indicate attempts to reduce the authoritative nature of the operations of the state administration in their relations with individuals and to reduce the bureaucratization of state administration. The introduction of this institution was also justified by the need to make the parties to proceedings more active. As W. Dawidowicz assessed, the analysis of these legislative actions and their effects allows the assumption that it was not even an attempt, but an intentional deceptive action⁴.

The doctrine assumes that an administrative settlement should be understood as an agreement between the parties to administrative proceedings, concluded before the authority conducting the proceedings and approved by that authority, taking the place of an administrative decision. Its essence is mutual concessions by the parties in respect of their rights and obligations⁵.

The necessary condition for a settlement is participation of more than one party in the proceedings. It should be stressed, however, that the entity entitled to conclude a settlement is a party within the meaning of Article 28 of the CAP, while entities having the rights of parties but not having their own legal interest in the case do not have this possibility due to the substantive-law nature of this action⁶.

The necessary condition for concluding a settlement is “a conflicting nature of the parties’ interests” indicated expressly in Article 13 of the CAP. The legislator clearly indicated that amicable forms can be used when the nature of the case allows it. Consequently, each party in the case must only pursue

⁴ W. Dawidowicz, op. cit., p. 137.

⁵ H. Knysiak-Molczyk, *Uгода administracyjna* [Administrative settlement], [in:] T. Woś (ed.), *Postępowanie administracyjne* [Administrative procedure], Warszawa 2017, p. 360.

⁶ Judgment of the Provincial Administrative Court in Warsaw of 10 September 2008, VII SA/Wa 849/08, Legalis.

a right or seek determination of its duty, but the facts are such that their interests are in conflict on some points⁷.

The legislature has adopted the written form of a settlement. Article 117(1), sentence 2, of the CAP indicates the following minimum content of a settlement:

- 1) identification of the authority before which it was concluded;
- 2) the date of drafting;
- 3) designation of the parties;
- 4) the subject matter and content of the settlement;
- 5) a mention that it has been read and adopted; and
- 6) signatures of the parties and a signature of the employee of the public administration body authorized to draw up the settlement.

According to H. Knysiak-Molczyk, one can distinguish material and formal elements of a settlement. According to the author, the former include the subject matter and content of a settlement. The content of a settlement consists of a consensual declaration of will and knowledge by the parties with regard to determination of the shape of their rights and obligations towards each other and towards the public-law corporation represented by the authority before which the settlement is concluded. The subject matter of a settlement, on the other hand, is the administrative case in which jurisdictional administrative proceedings have been initiated. Thus, the content of a settlement must be within the framework of the subject matter of the relevant administrative case⁸. The formal elements of a settlement, on the other hand, are those listed above; however, as in the case of a decision, its constitutive elements include designation of the authority, designation of the parties, the content, and the signatures of the parties and an authorized employee.

The substantive and technical activity of drawing up a settlement is the responsibility of an authorized employee of the authority conducting the proceedings. However, this person is not entitled to shape the content of the settlement and impose it on the parties. In addition, the employee's role at this stage is to keep the parties informed of any relevant legal or factual issues that may be of importance to the settlement drafted. He or she should also instruct the parties that a settlement reached in breach of law, by circumventing law or infringing on the rights of the parties to the proceedings or third parties will not be approved by the authority and will be legally ineffective. On the other hand, assessment of the settlement's legality is carried out only at the stage of its approval by the public administration body. The act of recording of this fact in the case file must be distinguished from the act of drawing up of the settlement. The former is done in the form of minutes signed by the person authorized to draw up the settlement and the other participants

⁷ J. Borkowski, [in:] J. Borkowski, *Komentarz* [A commentary], Warszawa 1989, p. 76.

⁸ H. Knysiak-Molczyk, *op. cit.*, p. 365.

in this activity. The formal requirements for the minutes are set forth in Article 68 of the Code of Administrative Procedure, which provides that they shall be drawn up in such a way as to make it clear who, when, where, and what activities were performed, who was present thereat and in what capacity, what was established as a result of such activities, and what comments were made by the persons present⁹.

In order to be valid, a settlement requires approval of the authority before which it was concluded. A settlement is approved or its approval is declined by way of a decision against which a complaint may be lodged. A relevant decision should be issued within seven days of the settlement. However, pursuant to Article 119(2) of the CAP, if a settlement is concluded in the course of appeal proceedings, the as of the date on which the decision approving the settlement becomes final, the decision of the body of first instance loses its force. One should also keep in mind that if a settlement is concluded in violation of law, without taking into account the position of another body obtained pursuant to Article 106 of the CAP, or in violation of the interests of the public or the legitimate interests of the parties, the public administration authority refuses to approve it.

At the time of its approval by a public administration body, a settlement replaces an administrative act and has the same legal effect. As explained in case law, a decision to approve a settlement is procedural in nature as it initiates substantive-law effects for the settlement approved by it. It is also control in nature because the settlement, as an act that substantively ends a case, becomes a legal transaction¹⁰. As a result, approval of a settlement is a necessary condition for the settlement to take effect. This also causes the decision to approve a settlement to have a special nature, because it resolves a case as to its essence and, at the same time, ends the proceedings pertaining to the case. Moreover, it has the same legal effect as a decision issued in the course of proceedings. On the other hand, in the event of failure to reach or lack of approval of a settlement, the authority should issue a decision or ruling in the case.

In practice, the institution of administrative settlement has been most frequently used for termination of the fee for perpetual usufruct under the Act of 21 August 1997 on real estate management¹¹. Pursuant to Art. 78 of that Act, in the event of an update of the annual fee for perpetual usufruct of real property, the perpetual usufructuary may file an application with the local

⁹ A. Brzuzy, *Zasada ugodowego załatwiania spraw* [The principle of conciliatory case settling], [in:] J. Niczyporuk (ed.), *Kodyfikacja postępowania administracyjnego na 50-lecie k.p.a.* [Codification of the administrative procedure for the 50th anniversary of the CAP], Lublin 2010, p. 54.

¹⁰ Judgment of the Provincial Administrative Court in Warsaw of 21 November 2006, VII SA/Wa 1289/06, Lex no. 303245.

¹¹ Journal of Laws of 2021, item 1899, as amended.

government appeals board competent for the location of the real property to establish that the update of the annual fee is unjustified or justified in another amount. In considering such an application, at a hearing, it is the statutory duty of the board to seek to resolve the issue amicably by way of a settlement. On the other hand, if persuading the parties to conclude a settlement is unsuccessful, the board issues a decision to dismiss the application or to set a new amount of the fee. Due to the entry into force of the Act of 20 July 2018 on transformation of the right of perpetual usufruct of land developed for residential purposes into the right of ownership of land¹², obviously fewer such hearings take place and settlements are concluded only sporadically.

The essence of mediation and the role of the mediator

Mediation is one of the so-called alternative dispute resolution methods. The most representative among them are mediation, but also conciliation and arbitration, as well as other hybrid forms (e.g. mediation – arbitration)¹³.

When looking for a definition of this institution, one should keep in mind that, according to the Polish language dictionary, mediation is defined as interceding in a dispute to help the parties reaching an agreement¹⁴. On this basis, mediation is defined as a procedure in which a neutral third party assists and encourages the parties to resolve their dispute. Therefore, mediation is aimed to assist the parties involved in a dispute to reach a mutually acceptable and voluntary settlement. This is because only the parties decide on a settlement and the mediator's role is to help them determine the nature of the dispute and the proper ways to resolve it. According to M. Białecki the activities undertaken by a mediator should enable the parties to gain the necessary knowledge in order to make arrangements leading to a quick end of administrative proceedings¹⁵.

W. Federczyk, on the other hand, notes that, due to the variety of solutions in the field of mediation, it is not expedient to develop its definition, and he considers it more reasonable to indicate its specific features. Therefore, he notes that mediation is a means of resolving a conflict by bringing about a joint resolution of the dispute with the assistance of an intermediary. The root of the term – *medio* – from Latin, means to stay in the middle. This aptly defines the role of a mediator. Unlike a court, a mediator does not have the

¹² Journal of Laws of 2020, item 2040, as amended.

¹³ E. Gmurzyńska, *Mediacja w sprawach cywilnych w amerykańskim systemie prawnym – zastosowanie w Europie i w Polsce* [Mediation in civil cases in the American legal system – application in Europe and Poland], Warszawa 2011.

¹⁴ W. Doroszewski (ed.), *Słownik języka polskiego* [Dictionary of the Polish language], vol. 1, Warszawa 2018, p. 133.

¹⁵ M. Białecki, *Postępowanie mediacyjne* [Mediation proceedings], Warszawa 2012, p. 178.

power to make authoritative decisions and does not have a superior position over the participants in a dispute. His or her purpose is to facilitate communication between the parties to a dispute, so that they can work out a satisfactory compromise. This procedure is aimed at an exchange of views, with the mediator assisting the parties in an attempt to ease tensions and ensure that the conflict does not escalate. The parties themselves must decide whether there is a way to resolve their conflict amicably. The mediator may present the points of view of the parties, clarify any doubts that arise, and, if he or she has legal knowledge, also those related to the provisions of law that apply in the case. It is not without significance that mediation cannot be reduced only to negotiations between the conflicting parties, since the latter are in dispute and are usually not able to communicate in a meaningful way on their own. It is only through the mediator's efforts that a mutually acceptable solution to the problem can be found. One of the characteristic features of mediation is that it is a deformalized process and that confidentiality of all agreements and statements made by the parties is also binding on the mediator¹⁶.

Mediation in the CAP

The mediation introduced into the CAP was based on the principle of voluntariness, which results from the essence of this institution. It assumes that the persons participating in it are not forced to do so, and that it is at their discretion to decide both to participate in the mediation itself and to work out and adopt a specific solution¹⁷.

The purpose of mediation is indicated in the explanatory memorandum to the amending bill, which states that mediation is intended to contribute to a more partnership-based approach of the administration to citizens and to ensure public participation in administrative power¹⁸. The literature draws attention to the fact that the goal of mediation provided for in the CAP is worded in a manner similar to the formula used in administrative court proceedings (Article 115 (1) of the Law on Proceedings before Administrative Courts). Thus, in the course of mediation, both the factual and legal circumstances of a case are to be analyzed, and these activities are to make it possible to adopt a case settlement method that fits within the limits set by law. In particular, mediation may lead to a settlement between the parties or to the issue of a decision.

¹⁶ W. Federczyk, *Mediacja w postępowaniu administracyjnym i sądownoadministracyjnym* [Mediation in administrative and administrative-court proceedings], Warszawa 2013, p. 32

¹⁷ A. Mól, *Pojęcie i znaczenie alternatywnych metod rozstrzygania sporów* [The concept and significance of alternative dispute resolution methods], "Przegląd Prawa Handlowego" 2001, No. 12, p. 31.

¹⁸ Explanatory Memorandum, Sejm of the 8th Term, print no. 1183, pp. 5 and 36.

The subjective scope of mediation is defined in Article 96a(4) of the CAP, which provides that participants in mediation can be 1) the authority conducting the proceedings or a party or parties to those proceedings, or 2) the parties to the proceedings. As indicated in the literature, the wording of Article 96(a) (4) of the CAP leads to the conclusion that mediation may be carried out in various configurations of subjects: 1) with the participation of the authority and all parties, 2) with the participation of the authority and some parties, or 3) between all or some parties – without participation of the authority. A body giving an opinion or consent, or expressing its views in another form may also participate in mediation if that body has not yet expressed its views and the subject matter of the dispute relates to matters relevant for those views¹⁹. In the absence of developed practice in this respect, at this stage, such an indication of participants in mediation is considered to be rather imprecise. Nonetheless, it is rightly noted that when outlining both options, the legislator had in mind, in the former case, situations in which the purpose of mediation is to make arrangements as to how a case should be settled in the form of an administrative decision, and in the second case, the prospect of concluding a settlement²⁰. There is also no doubt that a new category of subjects of administrative proceedings, i.e. mediation participants, has been introduced into the classification of subjects of proceedings²¹.

Considering the subjective scope of mediation, attention is rightly drawn to the dual role of the public administration body as its participant. On the one hand, the administrative body can act as a participant of mediation, while being the “host” of administrative proceedings. It is therefore possible to agree that the similarity between and the competing nature of the mediator’s duties and the duties of the authority as a participant in the mediation makes administrative mediation unique (compared with its judicial models) and determines its shape. Indeed, while the role of the mediator comes down to fostering dialogue between the participants in the mediation, participation of the authority is by definition a guarantee for protection of the rule of law. The public administration body thus shares responsibility for the proper course of the mediation proceedings and the fact that it has entered mediation does not limit its procedural obligations. A further consequence of this is the limited scope of implementation of the basic principles of mediation in relation to the authority as a participant in mediation proceedings²².

¹⁹ P. Przybysz, *Komentarz do art. 96(a) Kodeksu postępowania administracyjnego* [A commentary to Article 96(a) of the Code of Administrative Procedure], L0065 44/2017.

²⁰ J.G. Firlus, K. Klonowski, *Mediacja w ogólnym postępowaniu administracyjnym* [Mediation in general administrative proceedings], “Casus” 2017, No. 86, p. 17.

²¹ R. Hauser, M. Wierzbowski, *Kodeks postępowania administracyjnego. Komentarz* [Code of administrative procedure. A commentary], Warszawa 2017, p. 663.

²² J.G. Firlus, K. Klonowski, op. cit., p. 17.

The admissibility of mediation depends on the fulfillment of certain prerequisites, one of which is the consent of the mediation participants. It appears that since conduct of mediation is based on a consensus of the parties to proceedings, lack of unequivocal consent by either party should render it impossible. In this regard, the authority cannot presume a party's willingness to participate in mediation, and any ambiguous statements by a party should be subject to clarification²³.

According to the legislator's assumption, mediation may be conducted in the course of proceedings, in principle at each of its stages. Therefore, it can be assumed that it can be conducted after initiation of proceedings but before their conclusion at the given instance. It may also be carried out in appeal proceedings and in extraordinary proceedings. The criterion for using the institution of mediation in administrative proceedings is the nature of the case. The explanatory memorandum for the amending bill provides examples of such situations referred to as conflict situations, which include, for example, a situation where a first-instance authority has issued a decision that has been appealed against. In such a case, mediation should be carried out at the appeal stage²⁴. On the other hand, the literature assumes that mediation is certainly permissible whenever settlement is permissible. Nevertheless, taking into account the fact that arrangements adopted as a result of mediation can be the basis for settling a case also by way of a decision, it should be assumed that admissibility of mediation also exists when a particular case cannot be resolved by way of a settlement.

A special role in mediation proceedings is played by the mediator. This can be a natural person who has full legal capacity and enjoys full public rights, in particular a mediator entered in a list of permanent mediators or a list of institutions and persons authorized to conduct mediation proceedings kept by the president of a circuit court, or a list kept by a non-governmental organization or a university, the information about which has been provided to the president of a circuit court (Article 96(f)(1) of the CAP). Moreover, the intent of the legislator was for the mediator to be an external person and not an employee of the public administration body before which the proceedings are conducted (Article 96(f)(3) of the CAP). Thus, a mediator does not need to have legal knowledge; however, knowledge (including knowledge of negotiation and mediation techniques) and experience of the mediator are certainly important for effective conduct of mediation. The personality of the mediator, who is expected to use his or her neutral position to help the participants achieve the goal of the mediation²⁵, is also important. On the other hand, lack of legal

²³ R. Hauser, M. Wierzbowski (eds.), *op. cit.*, p. 665.

²⁴ Explanatory memorandum, p. 36.

²⁵ T. Ereciński, [in:] T. Ereciński (ed.), *Kodeks postępowania cywilnego* [Code of civil procedure], vol. 2, Warszawa 2016, pp. 36–37.

education cannot be considered a benefit, as it may result in a limited effectiveness of mediation. This risk may arise in particular with regard to the possibility of drafting a settlement agreement before a mediator. There is no doubt that inadequate knowledge of the basic institutions of administrative law inevitably leads to a refusal by the authority to approve a settlement agreement and, consequently, to a failure to achieve the goal of mediation²⁶. In essence, it can be concluded that involvement of a mediator as an independent expert in matters that are the subject matter of administrative proceedings is limited by the legislator to those mediation proceedings in which the parties are participants and the goal of mediation is to conclude an administrative settlement²⁷. Such an assumption results in a limited role of a mediator in proceedings where a settlement agreement cannot be concluded and the case can only be resolved by way of a decision. It seems that the basic condition for a reliable mediation between mediation participants is impartiality of the mediator. Impartiality is defined as lack of engagement for the benefit of any of the parties to a mediation (in particular, lack of favoritism)²⁸. In this context, there is no doubt as to why the legislator provided for premises to exclude an employee from being a mediator in Article 24(1 and 2) of the CAP. A mediator's impartiality, therefore, means that the mediator is not associated with one of the participants in the mediation and does not otherwise have an interest in the case being settled through mediation in a particular way. Consequently, a mediator's impartiality is also guaranteed by the prohibition on an employee of the public administration body before which the proceedings are being conducted serving as a mediator. Thus, it can be concluded that the role of a mediator is to conduct mediation in such a way as to bring about an amicable settlement of a case. Thus, a mediator must not anticipate the potential outcome of the case, but must create conditions for finding a solution before the mediation participants and must support them in formulating settlement proposals.

The propositions of Z. Kmiecik concerning the shape of the institution of mediation included the assumption of the so-called "clean sheet"²⁹. He pointed out that it presupposes the exclusion of the possibility of effective reliance in other proceedings conducted in a given case on information and materials

²⁶ Z. Zgud, *Mediacja sądowa – z dużej chmury mały deszcz* [Court mediation – a mountain gave birth to a mouse], "Kwartalnik Krajowej Rady Sądownictwa" 2011, No. 3, p. 11.

²⁷ J. Wegner-Kowalska, *Koncepcja włączenia instytucji mediacji do kodeksu postępowania administracyjnego* [The concept of inclusion of the institution of mediation in the code of administrative procedure], "Przegląd Prawa Publicznego" 2016, No. 11, p. 61.

²⁸ K. Antolak-Szymanski, [in:] K. Antolak-Szymanski, O.M. Piaskowska, *Mediacja w postępowaniu cywilnym. Komentarz* [Mediation in civil proceedings. A commentary], Warszawa 2017, p. 121.

²⁹ Z. Kmiecik, *Mediacja i koncyliacja w prawie administracyjnym* [Mediation and conciliation in administrative law], Kraków 2004.

obtained during mediation. It seems that the indicated principle has been preserved by the introduction of the principle of confidentiality of mediation in the amending act. Pursuant to Article 96(n)(2) of the CAP, documents and other materials that are not included in the proceedings file and that were disclosed in the course of mediation by its participants, may not be included in the proceedings file if such documents and materials do not provide the basis for settling the case in accordance with the findings contained in the mediation report.

It is clear that the introduction of conciliatory methods of resolving administrative cases to the CAP deserves a positive assessment. As W. Dawidowicz rightly pointed out, this is a public subjective right of an individual, which he or she may but does not have to exercise. The important thing is that the right may be exercised. It seems, however, that there are grounds for the concern expressed in the doctrine³⁰ that the lack of simultaneous changes in other provisions of the CAP on the principles and subject matter of proceedings, as well as the final failure to implement administrative settlement as a new form of operation of administration, may result in administrative settlement and mediation in the LPAC and mediation in the CAP not being accepted on a wider scale. Institutions of amicable settlement can be used in cases where there is a difference between the interests of the parties (e.g. between an investor and the residents on the location of an investment project), but also in cases where there is a conflict between the public interest and the interest of an individual (e.g. an obligation is to be imposed on a party, or a party's rights are to be limited)³¹. Therefore, one should agree with the view that it would be sufficient and safer to consider mediation as a special solution provided for particular types of administrative cases.

Conclusions

There is no doubt that the introduction of mediation into the administrative procedure constitutes an implementation of the trend of implementation of ADR methods³², which certainly deserves to be approved of. It appears that the institution of mediation in administrative proceedings has the chance to work out to a greater extent than the administrative settlement. Mediation can be used by the authority and the parties to proceedings in cases where

³⁰ J.G. Firlus, K. Klonowski, op. cit., p. 24.

³¹ D. Calkiewicz, *Mediacja w postępowaniu administracyjnym ogólnym* [Mediation in general administrative proceedings], "Studia Prawnoustrojowe" 2018, No. 42, p. 445.

³² See: Justification for the Sejm print no. 1183, pp. 34–35, which indicates that in the period prior to the adoption of the April amendment, the Alternative Dispute Resolution (ADR) concept was implemented to a limited extent.

there are differences in the interests of the parties (e.g. between construction project owners and local residents concerning the location of a project). Consequently, mediation should be used in proceedings concerning the issuance of a zoning decision or a decision on the location of a public-purpose project³³, in proceedings concerning the issuance of a building permit³⁴, and in proceedings concerning the issuance of an environmental constraints decision³⁵. Moreover, mediation can lead to a reduction of the duration of proceedings, which is of significant importance to project owners. This is also the case where there is a conflict between the public interest and the interest of an individual (e.g. an obligation is to be imposed on a party or a party's rights are to be limited)³⁶. Consequently, one should agree with the opinion that in practice, mediation can be used more frequently than administrative settlement.

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³³ Based on the Act of 27 March 2003 on spatial planning and management (Journal of Laws of 2021, item 741, as amended).

³⁴ Act of 7 July 1994 – Building Law (Journal of Laws of 2020, item 1333, as amended).

³⁵ Act of 3 October 2008 on providing information about the environment and its protection, participation of the public in environmental protection, and environmental impact assessments (Journal of Laws of 2021, item 247).

³⁶ D. Całkiewicz, op. cit., p. 445.

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Summary

Conciliatory methods of settling cases in administrative proceedings

Keywords: administrative law, amicable case settlement principle, administrative settlement, administrative mediation, mediator in administrative proceedings.

The article presents conciliatory case settling methods in administrative proceedings. These methods are administrative settlement and mediation. The institution of administrative settlement has existed in the CAP since 1980. The institution of mediation, on the other hand, was introduced into the CAP because of the 2017 amendment. The purpose of the article is to present these institutions and to verify them in practice. There is no doubt that the introduction of mediation into the administrative procedure constitutes an implementation of the trend of implementation of ADR methods³⁷, which certainly

³⁷ See: Justification for the Sejm print no. 1183, pp. 34–35, which indicates that in the period prior to the adoption of the April amendment, the Alternative Dispute Resolution (ADR) concept was implemented to a limited extent.

deserves to be approved of. It appears that the institution of mediation in administrative proceedings has the chance to work out to a greater extent than the administrative settlement.

Streszczenie

Koncyliacyjne metody załatwiania spraw w postępowaniu administracyjnym

Słowa kluczowe: prawo administracyjne, zasada polubownego załatwiania spraw, ugoda administracyjna, mediator w postępowaniu administracyjnym, mediacja administracyjna.

W artykule przedstawione zostały koncyliacyjne metody załatwiania spraw w postępowaniu administracyjnym – ugoda administracyjna i mediacja. Instytucja ugody administracyjnej funkcjonuje w Kodeksie postępowania administracyjnego od 1980 r. Natomiast instytucja mediacji została wprowadzona do k.p.a. w wyniku nowelizacji z 2017 r. Celem artykułu było przedstawienie tych instytucji i ich weryfikacja w praktyce. Niewątpliwie wprowadzenie mediacji do procedury administracyjnej stanowi realizację trendu wdrażania metod ADR³⁸, co zasługuje na wysoce pozytywną ocenę. Wydaje się też, że instytucja mediacji w postępowaniu administracyjnym ma szansę sprawdzić się w większym stopniu niż ugoda administracyjna.

³⁸ Zob. uzasadnienie druku sejmowego nr 1183, s. 34–35, z którego wynika, że w okresie poprzedzającym uchwalenie noweli kwietniowej idea ADR (Alternative Dispute Resolution) była realizowana w ograniczonym zakresie.