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Mediation in Administrative Court Cases

Postępowanie mediacyjne w sprawach sądowoadministracyjnych

ABSTRACT

Mediation is an alternative form of dispute resolution. It also applies to cases heard at administrative courts. The mediation process in administrative court cases is initiated at the request of the complaining party or the authority concerned. The request should be submitted before the hearing is scheduled. However, it is also permissible to conduct mediation if the parties submit no such request. The arrangements made in the mediation process do not replace an administrative court ruling. What they do is to allow the authority participating in the proceedings to self-revise the contested act or action.

Keywords: mediation process; mediator; administrative court proceedings

INTRODUCTION

Mediation in administrative court proceedings constitutes a special – and, at the same time, optional – stage of the proceedings. It is not a pre-trial procedure but one instituted in already pending administrative court proceedings.[1]

The essential features of mediation include the optionality and confidentiality of mediation, the impartiality and neutrality of the mediator, and the autonomy of the parties concerned. They are inherent to the nature of the process and its underlying ethical rules.[2] Mediation is an attempt to reach an amicable and mutually satisfactory

[1] A. Przylepa-Lewak, *Mediacja jako forma komunikacji w postępowaniu administracyjnym*, „Annales Universitatis Mariae Curie-Skłodowska. Sectio G (Ius)" 2022, nr 2, p. 62.

[2] E.M. Kwiatkowska, D. Sasin-Knothe, *Mediacja w postępowaniu sądowoadministracyjnym w sprawach podatkowych. Sześć lat funkcjonowania w systemie sądownictwa administracyjnego*, „Master of Business Administration" 2010, nr 5, p. 77.

settlement through negotiations conducted in the presence of a third party – the mediator. Mediators supervise the negotiation process, mitigate possible tensions, and assist the parties in reaching an agreement. They do so by creating a safe and confidential atmosphere, without forcing their point of view or solutions. Finally, they ensure the parties' equality principle is respected throughout mediation.[3]

The purpose of the mediation process is to help parties – with the involvement of the administrative court – to arrive at a solution that is both mutually beneficial and within the limits of the law. Mediation is also intended to accelerate the settlement of a disputed matter.[4]

The growing importance of alternative forms of dispute resolution means that the contemporary justice system needs to extend beyond the overburdened court system.[5] The goals of mediation are to relieve the burden on the court and to accelerate court proceedings while deformalising them. Using mediation in administrative court proceedings also builds public confidence in the institutions of the justice system.

In handling a dispute, mediation puts an individual citizen on a par with a state authority in terms of deciding on the scope of requests and seeking acceptance of the position expressed by the citizen, by other parties to the proceedings. By abandoning a formalised mediation procedure, the legislators give more leeway to the parties to the proceedings – the administrative authority whose decision is contested at the administrative court and the complaining party.[6]

MEDIATION IN ADMINISTRATIVE COURT PROCEEDINGS

Mediation may be initiated at the request of the complaining party or the authority concerned. The request should be submitted before a hearing is scheduled. Its purpose is to clarify and determine the factual and legal circumstances of the case, and to help the parties agree on its settlement within the limits of the law.[7] The goal of the mediation process consists of two elements. One involves clarifying and determining the circumstances of the case (both factual and legal), and the other entails agreeing on how to handle it (within the limits of the applicable law).

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[3] A. Tombek-Knigawka, W. Kotowski, *Dlaczego kieruję sprawy do postępowania mediacyjnego?*, „Prokuratura i Prawo" 2011, nr 3, p. 120.

[4] A. Kuleszyńska, *Szczególne tryby w postępowaniu sądowoadministracyjnym*, „Ius Novum" 2015, nr 1, p. 123.

[5] A. Przylepa-Lewak, *Socjologiczno-prawne aspekty mediacji*, „Studia Prawnicze i Administracyjne" 2018, nr 4, p. 36.

[6] A. Kot, M. Kurasz, A. Skrodzki, *Postępowanie mediacyjne w sprawach podatkowych – aspekty praktyczne*, „Przegląd Podatkowy" 2004, nr 10, p. 45.

[7] Article 115 § 1 of the Act of 30 August 2002 – Law on Administrative Court Proceedings (consolidated text, Journal of Laws of 2023, item 1634, as amended), hereinafter: "the LACP".

The clarification and determination of the factual and legal circumstances of the case should be understood as agreeing on such factual and legal arguments as to make mutually satisfactory arrangements. However, it is worth stressing that the arrangements made through mediation cannot be construed as a settlement creating a specific legal situation.[8]

The legislators do not require that the complaining party's request to institute mediation proceedings should meet specific requirements. As such, it should only contain standard elements provided for an administrative court pleading. Under Article 46 § 1 of the LACP, every pleading submitted by a party should indicate: 1) the court to which it is addressed, the full names of the parties, their statutory representatives and attorneys; 2) the pleading type; 3) the contents of the request or statement; 4) the signature of the party or its statutory representative or attorney; and 5) attachments.

Under Article 115 § 1 of the LACP, the court has no obligation to conduct mediation, even if a request is made to this end by the party concerned. The decision on whether or not to use mediation is made by the presiding or reporting judge on grounds of necessity. Usually, such grounds exit when mediation is likely to clarify or determine the facts of the case, leading the parties to determine arrangements on how to resolve the matter within the limits of the law. In essence, this applies to cases in which mediation could lead to mutually satisfactory arrangements, eliminating the need for the case to be settled before the court.[9]

As a rule, mediation is initiated at the request of the complaining party or the authority concerned. Nonetheless, Article 115 § 2 of the LACP also allows it to be conducted if the parties make no such request.[10] This provision itself constitutes a basis for conducting the mediation process. Since it does not stipulate that this process must be instituted before the scheduled hearing, it seems reasonable to infer that the court may decide to conduct mediation also at the hearing if this is justified as aiding the final settlement of the case.[11] The initiation of mediation *ex*

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[8] B. Dauter, *Postępowanie mediacyjne w sprawach podatkowych*, „Przegląd Podatkowy" 2003, nr 12, p. 48.

[9] Judgment of the Supreme Administrative Court of 20 November 2019, I OSK 4341/18, LEX No. 2758904; Judgment of the Supreme Administrative Court of 13 October 2020, I OSK 1980/19, LEX No. 3090282; Judgment of the Supreme Administrative Court of 20 December 2022, III OSK 1729/21, LEX No. 3559284. Similarly, in the case of mediation in administrative proceedings, the authority is not obliged, in every case, to force the party to the proceedings to participate in mediation in order to arrive at appropriate settlement proposals, M. Karpiuk, *Mediation in Administrative Proceedings and Its Role in Amicable Dispute Resolution*, „ADR. Arbitraż i Mediacja" 2023, No. 1.

[10] See also Z. Kmieciak, *Postępowanie mediacyjne i uproszczone przed sądem administracyjnym*, „Państwo i Prawo" 2003, nr 10, p. 24.

[11] J.P. Tarno, *Prawo o postępowaniu przed sądami administracyjnymi. Komentarz*, Warszawa 2011, LEX/el., Article 115.

officio should be preceded by a thorough analysis of the evidence. Only then it is possible to assess whether there are grounds for an effective mediation process.[12]

There is no specific provision imposing an obligation to instruct a party about the possibility of conducting mediation. Nor is the administrative court obliged to inform a party of any provisions contained in the LACP.[13]

One particularly noteworthy judicial activity performed by the reporting judge is deciding whether or not to conduct mediation in a given case.[14] Litigation authorities refer cases to mediation when they consider the existing conflict not worth engaging in complex court procedures.[15]

Although conducting mediation is optional, should the administrative court decide there is no need for such a process, the party's request should be handled by issuing a decision.[16] If deemed groundless by an administrative court, a request for mediation should be dismissed by way of a decision and may not be appealed against.[17] Under Article 160 of the LACP, the court should issue its ruling in the form of a decision, unless this Act requires a court judgement.

Article 116 of the LACP stipulates that mediation shall be conducted by a mediator chosen by the parties. If the parties are unable to agree on the mediator, the administrative court which refers the case to mediation shall appoint a mediator with the knowledge and skills required to mediate the given case. Once the case is referred to mediation, the presiding officer of the division concerned shall immediately provide the mediator with the contact details of the parties and their authorised representatives, including in particular their phone numbers and e-mail addresses, if available. The mediator shall be a natural person with full legal capacity and public rights, and in particular, a mediator entered on the list of registered mediators, or the list of institutions and persons authorised to conduct mediation proceedings maintained by the president of the district court.

The mediator should remain impartial when conducting mediation, immediately disclosing any circumstances which could raise impartiality doubts, as indicated in Article 116a of the LACP. The circumstances which could cast doubt on the mediator's impartiality are outlined, *inter alia*, in Article 18 of the LACP. Accordingly, the mediator should be excluded from mediation proceedings in cases: 1) where he

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[12] A. Kuleszyńska, *op. cit*., p. 124.

[13] Decision of the Supreme Administrative Court of 12 May 2011, I OZ 332/11, LEX No. 1081210

[14] § 37 (1)(3) of the Regulation of the President of the Republic of Poland of 5 August 2015 – Internal Rules of Procedure of Provincial Administrative Courts (Journal of Laws of 2015, 1177, as amended).

[15] A. Tombek-Knigawka, W. Kotowski, *op. cit*., p. 118.

[16] Judgment of the Supreme Administrative Court of 14 September 2010, II GSK 840/09, LEX No. 746267.

[17] Decision of the Supreme Administrative Court of 10 February 2009, II OZ 89/09, LEX No.545463.

or she is a party, or where there exists a legal relationship between him or her and one of the parties that results in his or her rights or obligations being influenced by the outcome of the case; 2) concerning his or her spouse, direct kinship or secondary kinship up to the fourth degree, and secondary relatives up to the second degree; 3) concerning persons related to him or her by adoption, guardianship or custody; 4) in which he or she was (or still is) an attorney for one of the parties; 5) in which he or she has provided legal services to one of the parties or any other services related to the case; 6) in which he or she has participated in the contested decision, as well as in cases concerning the validity of a legal act, drawn up with his or her participation or examined by him or her, and in cases in which he or she has acted as a public prosecutor; 7) concerning a complaint against a decision or a decision deciding a case on the merits issued in extraordinary administrative proceedings, if in the previously conducted administrative court proceedings concerning the review of the legality of a decision or a decision issued in ordinary administrative proceedings, he or she participated in issuing a judgment or a decision ending the proceedings; or 8) in which he or she participated in settling the case before public administration authorities. These reasons are based on the relationship of the person concerned with the object of or subjects to the proceedings.[18] The doubt as to the mediator's impartiality must be based on legitimate and objective reasons. At the same time, it must be real and not potential, so a mere subjective suspicion or feeling as to the lack of impartiality of the person in question may not be considered sufficient.[19]

The mediator's impartiality equally treats the parties in the mediation process. The mediator must ensure that this principle is respected. Therefore, he or she should not be associated with any of the parties in any way.[20]

The mediator neither has any powers of direction nor is bound to settle the dispute. This must be, above all, an impartial, neutral, and trusted professional who assists the parties in reaching an agreement through his or her attitude and skilful conduct of the mediation process, as well as by guiding the parties towards amicable solutions.[21] The mediator must keep an equal distance from both parties to the proceedings, remain as neutral as possible, and never force the parties to act in any specific way. The latter would constitute an unacceptable form of the mediator's engagement in the proceedings.[22]

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[18] Judgment of the Supreme Administrative Court of 30 June 2021, III FSK 64/21, LEX No. 3195856.

[19] Judgment of the Provincial Administrative Court of 22 September 2020, II SAB/Sz 53/20, LEX No. 3057771.

[20] E.M. Kwiatkowska, D. Sasin-Knothe, *op. cit*., p. 77.

[21] A. Przylepa-Lewak, *Socjologiczno-prawne*…, p. 37.

[22] B. Dauter, A. Kabat, M. Niezgódka-Medek, *Prawo o postępowaniu przed sądami administracyjnymi. Komentarz*, Warszawa 2020, p. 426.

Pursuant to 116b of the LACP, the mediator has the right to inspect the case file and to receive copies, including certified copies, or extracts from the case file, unless the party concerned, within a week from the date of announcement or service of the mediation order, expresses its disagreement with the mediator's inspecting the case file. The right to inspect the case file does not include access to classified information, unless the mediator obtains a security clearance (concerning confidential, secret, and top-secret information) and, a written authorisation in the case of classified information.

Classified information may only be disclosed to a person providing a guarantee of secrecy and only to the extent necessary for performing work or service by that person in connection with the entrusted function, or for conducting assigned activities.[23]

In the case of mediation in administrative court proceedings, a decision is made to proceed *in camera* as, under Article 116c of the LACP, the mediation process is not open to the public. The mediator, the parties to the proceedings and other persons participating in the mediation process are obliged to keep secret any facts they have become aware of in connection with the mediation process, unless the parties decide otherwise. Settlement proposals disclosed facts or statements made throughout the mediation process may not be used once it has ended, except for the findings in the mediation proceedings' minutes. The decision to proceed *in camera* is intended to convince the parties to the proceedings that they can disclose their real interests and intentions without fear of these being used against their will.[24]

The mediator has the right to remuneration and reimbursement of expenses incurred in connection with the mediation process, unless he or she has agreed to conduct that process without remuneration. The parties bear the costs connected with remuneration and the reimbursement of expenses incurred by the mediator. This right arises from Article 116d of the LACP. In cases pertaining to pecuniary debt, the mediator's remuneration corresponds to 1% of the case's value but no less than PLN 150 and no more than PLN 2,000 for the entire mediation proceedings.[25]

As stipulated in Article 116e of the LACP, the mediator draws up minutes of the mediation process, including: 1) the time and place of the mediation process; 2) the full name of the complaining party, the indication of the authority, and their addresses; 3) the full name and address of the mediator; 4) the arrangements made

[23] Article 4 (1) o the Act of 5 August 2010 on the protection of classified information (consolidated text, Journal of Laws of 2023, item 756, as amended). See also Ł. Nosarzewski, B. Opaliński, P. Szustakiewicz, *Ustawa o ochronie informacji niejawnych. Komentarz*, Warszawa 2023, pp. 22–24.

[24] B. Dauter, A. Dauter-Kozłowska, *Metodyka pracy sędziego sądu administracyjnego*, Warszawa 2023, p. 289.

[25] § 2 (1) of the Regulation of the Minister of the Interior and Administration of 2 June 2017 on the amount of the mediator's remuneration and reimbursement of expenses in administrative court proceedings (Journal of Laws of 2017, item 1087).

by the parties regarding the manner of settling the case; 5) the signature of the mediator, the complaining party, and the authority concerned. The mediator is obliged to immediately serve a copy of the minutes of the mediation process upon the parties and the administrative court at which the proceedings are being conducted. It is particularly important for the proceedings that the arrangements made during mediation are accurately recorded in the minutes. Above all, they must not conflict with the law in force; they should specify precisely what the parties undertake to do, and contain those elements that will enable their subsequent enforcement.[26]

The consequences of the arrangements made in the mediation process are outlined in Article 117 of the LACP. The provision stipulates that, based on these arrangements, the authority may repeal or amend the contested act, or perform or take another action required by the case's circumstances, within its jurisdiction and competence. And if the parties fail to make any arrangements for the settlement of the case, it will be subject to judicial determination. The decision issued once the parties accept the arrangements made in the mediation process must correspond to the contents of those arrangements.[27] However, the arrangements made in the mediation process do not replace the administrative court ruling but only constitute the basis for the self-revision of the contested act or action.

The mediation process may conclude with 1) arrangements as to the manner of settling the case (the outcome of the mediation process) or 2) referring the case for trial. The latter is made through a judge's order, which may not be appealed against. The outcome of the mediation process reflects the arrangements made jointly by all the participants in the proceedings. It constitutes an independent basis for issuing a new act or taking a new action in the case.[28]

As stipulated in Article 118 of the LACP, an appeal may be lodged with the provincial administrative court against an act issued by a public administration authority based on the arrangements made (or the action taken) in the mediation process within thirty days from the date of delivering the act or performing or taking the action. The appeal is then considered by the court along with the complaint filed against the act or action to which the mediation process pertained. If no appeal is filed against the act issued or action taken based on the arrangements made in the mediation process, the appeal has been filed and dismissed, the court shall dismiss the proceedings in the case to which the mediation process pertained.[29]

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[26] B. Dauter, *op. cit*., p. 49.

[27] Judgment of the Provincial Administrative Court of 12 April 2006, I SA/Wa 1242/04, LEX No. 222047.

[28] J.P. Tarno, *op. cit*., Article 117.

[29] Both the act issued and the action taken based on the arrangements made in the mediation process may be appealed against to the provincial administrative court, T. Woś, [in:] *Prawo o postępowaniu przed sądami administracyjnymi. Komentarz*, red. T. Woś, Warszawa 2016, LEX/el., Article 118.

The settlement of the case based on the arrangements made in the mediation process does not deprive the complaining party of the constitutional right to a fair trial and judicial verification of the act issued by the public administration authority.[30] The decision issued by the authority following the mediation process conducted by a provincial administrative court may still be appealed against even if it is consistent with the arrangements made in the process. If an appeal is lodged, it means that the party is dissatisfied with the decision issued, even though it was consistent with the arrangements made in the mediation process. When handling such an appeal, the provincial administrative court should treat it like any other appeal, examining all the relevant circumstances beyond the determination of whether the decision corresponds to the arrangements made in the mediation process.[31]

CONCLUSION

The introduction of mediation into administrative court proceedings has made it possible to entrust the resolution of a dispute in which one of the parties is a public administration authority to a third party – the mediator. However, the mediator's task is not to resolve the conflict autonomously but to enable both parties to reach an agreement. The purpose of the mediator's action, contrary to judicial action in typical judicial proceedings, is not to impose his or her assessment of the facts or legal situation on the participants in the mediation process. The mediator should merely act as an independent and neutral entity that does not interfere with the resolution of the dispute.[32]

By definition, mediation is intended to foster an amicable settlement of a court dispute. It may, therefore, significantly impact the public perception of administrative courts as institutions providing the parties to the court proceedings with an opportunity to actively participate in the dispute resolution process, with the court guaranteeing the compliance of these actions with the law in force.[33]

Mediation in administrative court proceedings is not a universal remedy to conflicts and problems related to accepting decisions issued by public administration authorities. Under certain conditions, mediation can be seen as an opportunity to reach an agreement more easily and to accept administrative court rulings.[34]

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[30] Judgment of the Supreme Administrative Court of 14 December 2007, I FSK 269/06, LEX No. 420725.

[31] Judgment of the Supreme Administrative Court of 16 January 2008, I OSK 1813/06, LEX No. 453437.

[32] E.M. Kwiatkowska, D. Sasin-Knothe, *op. cit*., p. 76.

[33] A. Kot, M. Kurasz, A. Skrodzki, *op. cit*., p. 45.

[34] A. Skóra, *Nowe sposoby rozstrzygania sporów (litigation) między organami administracji publicznej a osobami prywatnymi w świetle rekomendacji Komitetu Ministrów Rady Europy Nr R(2001)9 z dnia 5 września 2001 r.*, „Gdańskie Studia Prawnicze" 2005, nr 1, p. 305.

The goal of the mediation process in administrative court cases is to clarify and determine the factual and legal circumstances of the case, and to help the parties agree on the manner of settling the case within the limits of the law. Throughout mediation, the parties become familiar with the case which is the subject of the administrative court proceedings, thus expanding their knowledge in this area and making it easier for the parties to arrive at mutually satisfactory arrangements. These arrangements allow the public administration authority to self-revise the contested act or action under the guidelines set out in the mediation process.

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ABSTRAKT

Mediacja jest alternatywną formą rozstrzygania sporów. Ma ona również zastosowanie w przypadku rozpatrywania spraw przed sądami administracyjnymi. Postępowanie mediacyjne w sprawach sądowoadministracyjnych jest wszczynane na wniosek skarżącego lub organu, który powinien być złożony przed wyznaczeniem rozprawy. Dopuszcza się jednak prowadzenie postępowania mediacyjnego przy braku wniosku stron o przeprowadzenie takiego postępowania. Ustalenia powzięte w wyniku mediacji nie zastępują orzeczenia sądu administracyjnego, a pozwalają na dokonanie przez organ będący jej stroną na autokontrolę zaskarżonych aktu lub czynności.

Słowa kluczowe: postępowanie mediacyjne; mediator; postępowanie sądowoadministracyjne