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Selected Mechanisms for Shaping Mediation in the Administrative Sphere

Wybrane mechanizmy kształtowania mediacji w sferze administracyjnej

ABSTRACT

Mediation is one of the alternative forms of dispute resolution (ADR). It finds its actual application in almost all branches of law, including its presence in the functioning of public administration. Mediation is an important institution present in Polish law and fits into the contemporary concept of giving it normative structures of media institutions. It is also an increasingly used mechanism by the public administration itself. Despite the fact that the administration often uses state coercion, the proper protection of individual rights must undoubtedly also affect the use of mediation to eliminate various disputes and conflicts. The main goal of the article is to assess the legal and informal conditions for the use of mediation mechanisms in administrative activities, indicating the proposals de lege ferenda in the concept of changes in substantive administrative law in solving problems that are largely generated by the public administration itself.

Keywords: mediation; conflict; legal dispute; dispute resolution; public administration

INTRODUCTION

There is no doubt that the study of administrative law is the branch of law that, in a particularly broad way, characterises the legal relations between public administration bodies and citizens. However, the inevitable development of many areas of public life has contributed to the characteristic emergence of methods of resolving disputes other than the judicial one. When such conflicts arise, it becomes extremely important to ensure appropriate mechanisms for resolving them. Mediation, as administrative and legal doctrine has repeatedly pointed out, is becoming

an increasingly noticeable alternative form of resolving conflicts, which can be successfully implemented in many conflict areas present in the sphere of public administration.[1] It should be noted that conciliatory methods of mitigating or resolving conflicts[2] have contributed to the identification of mediation assumptions, which can be found not only in many formalised legal procedures, but can also be present in the proposed solutions preceding the proper stages of the proceedings.[3]

The aim of the study is to characterise and justify the use of mediation in relation to the broad activities of public administration and to indicate the principles and limits of its application, while at the same time establishing proposals for conclusions in the context of the effectiveness of using this instrument. To determine the research objectives, a descriptive method and a dogmatic-legal method were used, the task of which was to assess the applicable legal solutions along with a review of the doctrine.

SELECTED REMARKS ON THE CONDITIONS OF MEDIATION IN PRACTICE AND DOCTRINE

The cited institution of mediation is treated, and rightly so, as an institution of civil society. Thanks to its proper application, one can understand the philosophy of public administration functioning, its specificity together with the organisational environment and also realize that conflicts arising in this area cannot always be resolved in a typically procedural way. This position is presented by Gareth Jones, who confirmed that if we take into account the interactions between public organisations and their broadly understood environment, the effectiveness and efficiency of such contacts ultimately depend on how well public administration bodies understand their environment and how they are able to effectively respond

[1] Examples of the application of mediation in the administrative sphere: M. Tabernacka, *Mediatorzy i instytucje mediacyjne w otoczeniu administracji*, „Acta Universitatis Wratislaviensis. Przegląd Prawa i Administracji" 2017, nr 3802, pp. 183–196; K. Surmiak, *Mediacja jako nowa instytucja w procedurze administracyjne*, [in:] *Nowe instytucje procesowe w postępowaniu administracyjnym w świetle nowelizacji Kodeksu postępowania administracyjnego z dnia 7 kwietnia 2017 roku*, red. A. Gronkiewicz, A. Ziółkowska, Katowice 2017, pp. 163–177; A. Przylepa-Lewak, *Mediacja jako forma komunikacji w postępowaniu administracyjnym*, „Annales UMCS, Sectio G" 2022, vol. 69(2), pp. 61–73; W. Broński, *Efektywność mediacji w postępowaniu administracyjnym*, „Studia Prawnicze KUL" 2019, vol. 3(79), pp. 47–68.

[2] Conciliation proceedings, like mediation, use the presence of a third party who not only looks for solutions, but can also come up with specific proposals for resolving the dispute, which is often an effective proposal for a settlement accepted by the parties.

[3] See: Z. Kmieciak, *Mediacja i koncyliacja w prawie administracyjnym*, Kraków 2004, p. 58.

to situations arising in it.[4] Also indicating the basis of emerging conflicts, they can have various causes. Narrowing down to the area of public administration, they are most often an expression of the imperfection of substantive law, which hinders the implementation of basic procedural values. Legal procedures often have flaws, especially those related to excessive formalisation, both at the stage of administrative proceedings and at the stage of court-administrative proceedings, where it is not always possible to find the appropriate flexibility and the ability to adapt specific proceedings to the needs of their participants.[5]

Mediation in an administrative environment is a special solution in which the parties in conflict are most often accompanied by a third party. This person is the mediator, who should convince the parties to the dispute to work out an acceptable agreement. However, there are situations where the discussed mediation is not always used to resolve conflicts or disputes but becomes a way of presenting a specific position or expressing one's own opinion.[6] It should be noted that the institution of mediation is a complex and not always an easy-to-use tool. Mediation, as a rule, is characterised by starting a conversation in order to work out the most appropriate solution in a given situation, although these are not always optimal solutions for each of the parties to the dispute. It is also treated as a form of non-procedural support for the parties, which is undertaken by a mediator, who has a neutral position in relation to the parties to the conflict. Mediation is therefore becoming an increasingly popular method of resolving conflicts. It includes, in particular, the voluntariness of the parties, trust in the mediator participating in the mediation, as well as simplicity, universalism, and flexibility of using this form of communication. It is therefore a tool that is classified as a consensual-conciliatory method, based on the intermediation of an acceptable mediator who does not have any authoritative powers over the parties to the conflict.[7] In mediation proceedings, the parties to the mediation, including the mediator, are obligated to maintain confidentiality. This is primarily intended to provide a safe space for all, which is essential for building clear and understandable communication based on mutual trust.[8]

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[4] Relational specificity is an important link in building understanding between the parties; see, e.g. G. Jones, *Organizational Theory, Design, and Change*, Reading 1998, [after:] R.W. Griffin, *Podstawy zarządzania organizacjami*, Warszawa 2004, pp. 97–98.

[5] W. Federczyk, *Mediacja w postępowaniu administracyjnym i sądowoadministracyjnym*, Warszawa 2013, pp. 15–16.

[6] This position is presented by: A. Budnik, *Mediacja w procesie sądowej kontroli administracji (w prawie angielskim)*, „Państwo i Prawo" 2008, z. 12, pp. 85–86.

[7] J. Żołądź, *Mediacja w sferze administracji publicznej jako przedmiot badań politologicznych*, „Wrocławski Studia Politologiczne" 2011, nr 12, p. 66.

[8] He presents this position in his extremely valuable monograph: P. Kłos, *Poufność mediacji – analiza teoretycznoprawna*, Lublin 2021, pp. 41–49.

The task of the mediation effort is to create a mutually acceptable and fully acceptable agreement on the terms of a given contract, where an amicable and consensual closure of the conflict, in the presence of a recognised mediator, is the key to resolving the dispute.[9] The mediation procedure should be conducted in such a way that the mediator, who can be one person, one entity, or even a specific institution, encourages the parties to voluntarily use this form of assistance.[10] The conditions for properly conducted mediation must also be met. At the same time, public administration bodies, like all organisations, have a specific organizational culture that shapes proper interactions with the environment. Mediation is an interactive instrument that allows public institutions to deal with many problems related to the phenomenon of ethnocentrism. Mediation often becomes a process through which public institutions can learn the real motive of the dispute and the arguments formulated by the addressee. This is important because public administration bodies, thanks to such knowledge, can influence the addressee in a non-confrontational way by explaining the findings that the body is guided by.[11] Public institutions should remember that they function for the society. It is important that mediation used in administration is not an instrument for repairing defective communication, but in some situations becomes a way of establishing it. A person who participates in mediation proceedings should have the appropriate knowledge and competences, including communication skills, which will ensure effective and efficient communication between the parties, facilitating the exit from a conflict situation.[12] Thanks to mediation, authorities can adapt to the realities and implement the mission of administering public affairs, where the primary role should be the correct implementation of public tasks addressed to individuals and communities.[13] Arbitrariness, which appears along with mediation, is not always the method that favors resolving a conflict.[14] It may not always be a state that is acceptable to the parties because its presence may, although it does not have to, impose a specific position without recognizing the objection. However, looking at this issue from a formal point of view, arbitrary resolution of a given conflict may

[9] See: M. Suchanek, *Mediacja jako metoda rozwiązywania konfliktów społecznych*, „Studia Administracyjne" 2008, nr 10, pp. 130–131.

[10] See: M. Tabernacka, *Negocjacje i mediacje w sferze publicznej*, Warszawa 2009, p. 29.

[11] Eadem, *Mediatorzy…*, p. 184.

[12] See: A. Cybulko, *Komunikacja interpersonalna*, [in:] *Mediacje. Teoria i praktyka*, red. E. Gmurzyńska, R. Morek, Warszawa 2018, pp. 116–117.

[13] See: M. Tabernacka, *Mediacje to komunikacja*, [in:] *Antropologia mediacji*, red. M. Tabernacka, Wrocław 2015, pp. 84–85.

[14] Andrzej Zoll draws attention to this important issue, characterizing mediation in relation to the penal system and the philosophy of punishment: A. Zoll, *Podmiotowość obywatelska a wymiar sprawiedliwości*, [in:] *Sprawiedliwość naprawcza drogą do podmiotowości obywatelskiej*, Materiały z II Jubileuszowego Seminarium pod patronatem J. E. ks. kard. H. Gulbinowicza, Wrocław 2009, pp. 10–11.

be safe for bodies that are in a dispute about jurisdiction or for people who have public funds at their disposal.

Mediation efforts should be present in the standards of law application practices. The construction of mediation includes the obligation for public authorities to recognise and respect the subjectivity and rights of the individual, which should also be reflected in the actual functioning of social participation tools. A real and easy-to-achieve partnership should be built between the parties, where public administration entities should look for alternative, often taking into account the interests of the individual, ways of solving many problems. Therefore, referring to the elementary principles of a democratic state of law, the individual is a value that, on the one hand, must, like any other entity, obey the law, and, on the other – should have an important voice in the ongoing dispute, which is also entitled to certain forms of protection.[15]

MEDIATION IN THE CONTEXT OF THE ADMINISTRATIVE ENVIRONMENT

Indicating the assumptions of mediation, it is necessary to recall very clearly what public administration itself is. Its specificity was already noticed by Jan Zimmermann, who noted that "it is exercised by the state (or by separate entities acting on behalf of the state) and realises the common good, i.e. the public interest in order to bring some benefit to the whole (community, state) or it takes care of the individual interest representing the interests of the entire society or community, or because of the universally recognised values".[16] At the same time, Hubert Izdebski and Michał Kulesza take the position that public administration is a set of actions, activities, and organisational and executive undertakings, which are implemented on the basis of the provisions set out in the applicable law.[17]

Public administration must remember that, in addition to resolving cases in a legal and procedural context, it should also strive to resolve cases on the basis of properly applied mediation proceedings. It should be emphasised that the provisions of the Act of 30 August 2002, the Law, apply their direct reference to mediation assumptions on proceedings before administrative courts, which has been repeatedly cited in the doctrine.[18] Taking into account the functions of judicial

[15] More in: M. Płatek, *Cele mediacji w ujęciu porównawczym*, [in:] *Mediacja dla każdego*, red. L. Mazowiecka, Warszawa 2010, pp. 39–41.

[16] J. Zimmermann, *Prawo administracyjne*, Kraków 2012, p. 26.

[17] More: H. Izdebski, M. Kulesza, *Administracja publiczna. Zagadnienia ogólne*, Warszawa 2004, pp. 97–98.

[18] See more: Act of 30 August 2002, Law on proceedings before administrative courts (consolidated text, Journal of Laws of 2024, item 935, as amended), hereinafter referred to as the uppsa.

control of public administration, it is necessary to indicate Article 115 § 1 uppsa., within the framework of which, before scheduling a hearing, at the request of the complainant or the body, mediation proceedings may be conducted. According to it, mediation proceedings can be conducted, the purpose of which is to clarify all the facts and legal circumstances of a specific case and the acceptance by the parties of arrangements as to the manner of its resolution within the limits of the rule of law and legality.[19]

The issue of defining the goals of mediation proceedings has become a reason for the increasingly frequent acceptance of the use of this type of solution. There are also voices that mediation conducted in this manner may be inconsistent with the philosophy of administrative courts. The assumption that it has been included as a key area of the administrative court procedure is not always a sufficient and obvious argument. This is important for this group of authors because, when using mediation procedures, one should not assess the actions of public administration by applying the criterion of legality to its assessment.[20] There are also opinions that it may be inappropriate to conduct mediation in the scope of the legality of an act of application of law by a public administration body. This may sometimes be perceived as a practice that is inconsistent with the elements of the rule of law. However, it must be an action consistent with Article 2 of the Constitution of the Republic of Poland, in which the legislator clearly states that the Republic of Poland must be a democratic state of law, realising the principles of social justice.[21] However, looking at the mechanism of using mediation, it is only admissible after referring the case to an administrative court, by means of a formally filed complaint. The main principle is the possibility of conducting a mediation at the request of the complainant or the body. There are also situations where initiating mediation is undertaken not only at the request, but also *ex officio*. However, there are no subjective limitations or objective obstacles to initiating mediation proceedings.[22]

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[19] The mediation undertaken pursuant to Article 115 § 1 of the uppsa Act may be conducted at the request of the complainant or a public administration body.

[20] An example of such a direction of assessment and such a position: T. Woś, *Postępowanie mediacyjne w ustawie – Prawo o postępowaniu przed sądami administracyjnymi*, [in:] *Podmioty administracji publicznej i prawne formy ich działania. Studia i materiały z Konferencji Naukowej poświęconej Jubileuszowi 80-tych urodzin Profesora Eugeniusza Ochendowskiego*, Toruń 2005, p. 448; H. Knysiak-Molczyk, *Sądownictwo administracyjne pięć lat po reformie*, „Przegląd Prawa Publicznego" 2010, nr 1, p. 8.

[21] See Article 2 of the Constitution of the Republic of Poland of 2 April 1997 (Journal of Laws of 1997, No. 78, item 483, as amended).

[22] The right to file a complaint is available to, among others: anyone who has a legal interest, a prosecutor; the Commissioner for Human Rights; the Commissioner for Children's Rights and social organisations within the scope of their statutory activities, in matters concerning the legal interests of other persons, if such organisation participated in the administrative proceedings; another entity to which the laws grant the right to file a complaint.

In the context of administrative procedure, the legislator has provided for the institution of mediation as an alternative and possible method of resolving a conflict. The institution of mediation in the Code of Administrative Procedure was introduced not so long ago, as of 1 June 2017,[23] where changes were introduced by the Act of 7 April 2017 amending the Act – Code of Administrative Procedure and certain other acts.[24] Article 96a § 2 of the Code of Administrative Procedure states that mediation is voluntary and its purpose is to clarify and consider the factual and legal circumstances of the case and to arrange its settlement within the limits of applicable law, including issuing a decision or concluding a settlement.[25] Public administration bodies in the cases conducted, in accordance with Article 13 § 1 of the Code of Administrative Procedure, should strive to amicably resolve disputes and determine the rights and obligations that are the subject of the proceedings in cases falling within their competence. Therefore, they should, in particular, make an effort to, first, persuade the parties to reach an agreement in cases involving parties with conflicting interests and, second, take the necessary steps to conduct mediation.[26] It is also significant that public administration bodies take all reasonable steps at a given stage of the proceedings to enable mediation or a settlement, and in particular provide explanations about the possibilities and benefits of an amicable settlement.[27]

The indisputable condition for the admissibility of mediation is, in particular, the consent of the parties to conduct it, treated not only as acceptance of conducting this process, but should also be a consent to an amicable settlement of the matter and an effort to resolve the conflict issues.[28] When arranging the commencement of mediation, it is necessary to obtain the voluntary consent of all its participants. However, it is unacceptable to assume such consent, where the lack of a declaration of will regarding such consent to conduct mediation unequivocally excludes the possibility of its use. The right granted in this way extends naturally to all mediation proceedings. Therefore, each of the parties, at any time during its duration, may simply resign from such a tool without consequences.[29]

It should be noted that public administration bodies have powers, in particular in the scope of applying state coercion, which should be understood as "either the

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[23] The Act of 14 June 1960 – the Code of Administrative Procedure (consolidated text, Journal of Laws of 2024, item 572), hereinafter referred to as the Code of Administrative Procedure

[24] See more: Act of 7 April 2017 amending the Act – the Code of Administrative Procedure and certain other acts (Journal of Laws of 2017, item 935).

[25] See: Article 96a § 2–3 of the Code of Administrative Procedure.

[26] The issues of the authorities' efforts to amicably resolve disputes are set out in Article 13 § 1 of the Code of Administrative Procedure.

[27] Article 13 § 2 of the Code of Administrative Procedure.

[28] See more, e.g.: P. Przybysz, [in:] *Kodeks postępowania administracyjnego. Komentarz*, red. P. Przybysz, Warszawa 2017, pp. 341–343.

[29] The voluntary nature of mediation is presented in: R. Morek, *Dobrowolność mediacji i jej ograniczenia (prawo i praktyka)*, „Studia Iuridica" 2008, vol. 49, pp. 156–157.

power of the state administration to implement its own management of its own funds, and therefore without the participation of bodies of a system other than the administrative one, or the complete legal provisions regulating the activities of bodies in the state (including, of course, local government bodies) in this scope".[30] However, there are situations in which the administrative coercion in question is not always necessary to be applied. Given current, often complex social relations, there is an obligation to use solutions that do not directly concern the application of coercion. The multithreaded nature of social relations, as well as the real need to protect individual rights, contribute to creating conditions that limit the use of coercion by the public administration in the event of emerging disputes or conflicts. This is a correct assumption, especially since it is necessary to look for solutions that will strengthen trust in the administrative sector and at the same time contribute to an effective and acceptable solution to a given problem. This is also due to the fact that increasingly often, with the growing number of cases and thus the possibility of conflicts arising in the public administration, mediation activities are increasingly used. In the literature, as Zbigniew Kmieciak proves, performing public functions causes the need for the public administration and its representatives to use *ad hoc* mediation solutions, the mode and form of which have not been legally distinguished, where, however, the source of such authorisation to act are primarily general norms defining the tasks of public administration bodies.[31]

Without a doubt, public administration entities, due to their formation of legal and competence in the structure of the state, like other public organisations, have a characteristic and developed organisational culture. It is through this culture that active interaction with the environment occurs to a large extent. Mediation activities become such an interaction tool that allows public institutions to overcome various difficulties, often caused by an inappropriate and prejudiced attitude toward such entities. Of course, it would be wrong to say that this is the case everywhere and always. However, there are conditions where the quality and manner of administrative services provided may raise doubts and conflict situations may arise. In such circumstances, mediation becomes an important process, thanks to which it is possible to learn the motives and reasons for the actions of the addressee of the decision. It is also the ability to understand the environment and activities of public administration, where mediation allows, in a non-confrontational and truly effective way, to influence the addressee, e.g. of a given administrative act by explaining the motives taken, which are guided by the public body.[32]

The entire extensive public administration plays its role for the entire society and the individuals who strengthen such a society. The mediation referred to is often an

[30] More information: J. Jendrośka, *Polskie postępowanie administracyjne*, Wrocław 2001, p. 133.
[31] See: Z. Kmieciak, *op. cit*., p. 61.
[32] See: E. Gmurzyńska, *Etapy mediacji*, [in:] *Mediacje…*, pp. 51–54.

important link in repairing malfunctioning communication, and in some cases it is also a way to establish it. Communication between the parties is possible precisely by using mediation elements, which can take a multilevel form. It should be noted that the mediation actions taken together must be clearly directed toward realizing the public interest. By universally fulfilling the above conditions, thanks to the solutions provided by mediation, public administration bodies can in a specific situation carry out the mission of administration and fulfil public tasks, the addressees of which are the recipients of such services.[33] Mediation situated in the administrative environment also becomes one of the ways of resolving cases that cannot be positively resolved in an official mode for various reasons or concern, for example, legal disputes between entities providing public utility facilities and devices.[34]

CONCLUSIONS

The legal framework of substantive administrative law is often perceived as a tool for properly functioning public administration and is closely related to its daily activities. This philosophy of approach is to guarantee the proper implementation of public tasks. It is also to help solve problems that are largely caused by the public administration itself, not always effectively coping with the tasks imposed on it. The emergence of such doubts as to the method of resolving many cases naturally forces the use of mediation solutions, the direction of which should be focused on improving better procedures for the administration, taking into account social conditions and the goals of a democratic state of law, looking for the most optimal way to resolve unnecessary conflicts and disputes.

Mediation, along with other consensual mediational forms from the currently wide catalogue of alternative methods of resolving disputes, is appropriate for resolving various types of conflict that often arise in the sphere of public administration activities. There are situations where public administration entities can play the role of a mediator, taking the necessary steps to conclude an agreement between the parties. It should also be remembered that there are no formal obstacles to the public administration, using bilateral and non-authoritative actions, making an effort related to the use of informal methods of resolving disputes, using mediation for this purpose. It also seems necessary for public administration to be more open, creative, and aware of the implemented mediation procedure, where increasing the

[33] See more: M. Tabernacka, *Mediacje…*, p. 84.

[34] See: Eadem, *Prawne zasady korzystania z obiektów i urządzeń użyteczności publicznej*, Warszawa 2013, pp. 278–279.

number of trained mediators becomes extremely important.[35] The more so because the number of cases that could be conducted, in addition to administrative and court proceedings, by people appropriately prepared for this purpose increases every year. In addition to the above proposal, it becomes *de lege ferenda* justified to introduce normative modifications in the scope of a stronger and legally formalised position of the institution of mediation, which is increasingly common in the administrative environment. It would be reasonable to propose the establishment of an association of mediators in order to strengthen their position, facilitate the functioning of the mediator profession and support all forms of activity aimed at building the prestige of the mediator profession.

The attempt undertaken in this article to assess the use of mediation in the public administration system indicates that the mediation in question is an interdisciplinary concept, involving many scientific fields and, despite everything, should be used more often in situations where the parties have different opinions and are unable to reach an acceptable agreement.

REFERENCES

Literature

Broński W., *Efektywność mediacji w postępowaniu administracyjnym*, „Studia Prawnicze KUL" 2019, vol. 3(79).

Budnik A, *Mediacja w procesie sądowej kontroli administracji (w prawie angielskim)*, „Państwo i Prawo" 2008, z. 12.

Cybulko A., *Komunikacja interpersonalna*, [in:] *Mediacje. Teoria i praktyka*, red, E. Gmurzyńska, R. Morek, Warszawa 2018.

Federczyk W., *Mediacja w postępowaniu administracyjnym i sądowoadministracyjnym*, Warszawa 2013.

Gmurzyńska E., *Etapy mediacji*, [in:] *Mediacje. Teoria i praktyka*, red. E. Gmurzyńska, R. Morek, Warszawa 2018.

Izdebski H., Kulesza M., *Administracja publiczna. Zagadnienia ogólne*, Warszawa 2004.

Jendrośka J., *Polskie postępowanie administracyjne*, Wrocław 2001.

Jones G., *Organizational Theory, Design, and Change*, Reading 1998, [after:] R.W. Griffin, *Podstawy zarządzania organizacjami*, Warszawa 2004.

Kłos P., *Poufność mediacji – analiza teoretycznoprawna*, Lublin, 2021.

Kmieciak Z., *Mediacja i koncyliacja w prawie administracyjnym*, Kraków 2004.

Knysiak-Molczyk H., *Sądownictwo administracyjne pięć lat po reformie*, „Przegląd Prawa Publicznego" 2010, nr 1.

Morek R., *Dobrowolność mediacji i jej ograniczenia (prawo i praktyka)*, „Studia Iuridica", 2008, vol. 49.

[35] The need for properly prepared mediators is presented: M. Myślińska, *Mediator w polskim porządku prawnym*, Warszawa 2018, pp. 90–109.

Myślińska M., *Mediator w polskim porządku prawnym*, Warszawa 2018.
Płatek M., *Cele mediacji w ujęciu porównawczym*, [in:] *Mediacja dla każdego*, red. L. Mazowiecka, Warszawa 2010.
Przybysz P., [in:] *Kodeks postępowania administracyjnego. Komentarz*, red. P. Przybysz, Warszawa 2017.
Przylepa-Lewak A., *Mediacja jako forma komunikacji w postępowaniu administracyjnym*, „Annales UMCS, Sectio G" 2022, vol. 69(2).
Suchanek M., *Mediacja jako metoda rozwiązywania konfliktów społecznych*, „Studia Administracyjne" 2008, nr 10.
Surmiak K., *Mediacja jako nowa instytucja w procedurze administracyjne*, [in:] *Nowe instytucje procesowe w postępowaniu administracyjnym w świetle nowelizacji Kodeksu postępowania administracyjnego z dnia 7 kwietnia 2017 roku*, red. A. Gronkiewicz, A. Ziółkowska, Katowice 2017.
Tabernacka M., *Negocjacje i mediacje w sferze publicznej*, Warszawa 2009.
Tabernacka M., *Prawne zasady korzystania z obiektów i urządzeń użyteczności publicznej*, Warszawa 2013.
Tabernacka M., *Mediacje to komunikacja*, [in:] *Antropologia mediacji*, red. M. Tabernacka, Wrocław 2015.
Tabernacka M., *Mediatorzy i instytucje mediacyjne w otoczeniu administracji*, „Acta Universitatis Wratislaviensis. Przegląd Prawa i Administracji" 2017, nr 3802.
Woś T., *Postępowanie mediacyjne w ustawie - Prawo o postępowaniu przed sądami administracyjnymi*, [in:] *Podmioty administracji publicznej i prawne formy ich działania. Studia i materiały z Konferencji Naukowej poświęconej Jubileuszowi 80-tych urodzin Profesora Eugeniusza Ochendowskiego*, Toruń 2005.
Zimmermann J., *Prawo administracyjne*, Kraków 2012.
Zoll A., *Podmiotowość obywatelska a wymiar sprawiedliwości*, [in:] *Sprawiedliwość naprawcza drogą do podmiotowości obywatelskiej*, Materiały z II Jubileuszowego Seminarium pod patronatem J. E. ks. kard. H. Gulbinowicza, Wrocław 2009.
Żołądź J., *Mediacja w sferze administracji publicznej jako przedmiot badań politologicznych*, „Wrocławski Studia Politologiczne" 2011, nr 12.

Legal acts

Act of 14 June 1960 – the Code of Administrative Procedure (consolidated text, Journal of Laws of 2024, item 572).
Act of 30 August 2002 – Law on proceedings before administrative courts (consolidated text, Journal of Laws of 2024, item 935, as amended).
Act of 7 April 2017 amending the Code of Administrative Procedure and certain other acts (Journal of Laws of 2017, item 935).
Constitution of the Republic of Poland of 2 April 1997 (Journal of Laws of 1997, No. 78, item 483, as amended).

STRESZCZENIE

Mediacja jest jedną z alternatywnych form rozstrzygania sporów (ang. *alternative dispute resolution*, ADR). Znajduje ona swoje rzeczywiste zastosowanie niemal we wszystkich gałęziach prawa, jej obecność można dostrzec również na gruncie funkcjonowania administracji publicznej. Mediacja jest ważną instytucją obecną na płaszczyźnie polskiego prawa i wkomponowuje się we współczesną koncepcję nadawania jej normatywnych konstrukcji instytucji medialnych. Jest także

coraz częściej wykorzystywanym mechanizmem przez samą administrację publiczną. Pomimo faktu, że administracja korzysta niejednokrotnie z przymusu państwowego, to jednak należyta ochrona praw jednostki bezspornie wpływać musi także na stosowanie mediacji w celu eliminacji różnych sporów i konfliktów. Głównym celem artykułu jest ocena prawnych i formalnych warunków zastosowania mechanizmów mediacyjnych w działalności administracyjnej, ze wskazaniem również propozycji *de lege ferenda* w koncepcji zmian materialnego prawa administracyjnego w rozwiązywaniu problemów, jakie w dużej mierze generuje sama administracja publiczna.

Słowa kluczowe: mediacja; konflikt; spór; rozstrzygnięcie sporu; administracja publiczna