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MEDIATION IN THE ADMINISTRATIVE AND COURT-ADMINISTRATIVE PROCEEDINGS

Abstract

The legislator placed mediation in administrative and court-administrative proceedings. The normative regulation of this institution is mainly similar to the solutions applicable in civil proceedings. Mediation is voluntary and its conduct is entrusted to the mediator. The practical use of mediation in administrative or court-administrative proceedings makes an amicable formula that makes resolving administrative cases real. Considering the fact that in 2017 the legislator amended the administrative procedure by embedding mediation in the administrative law system, the authors of the study undertook the evaluation of the mediation institution in administrative and court-administrative proceedings.

KEYWORDS

mediation, mediator, public administration, administrative procedure

SŁOWA KLUCZOWE

mediacja, mediator, administracja publiczna, procedura administracyjna

1. INTRODUCTION

Mediation, being an instance of one of the out-of-court methods of setting legal disputes, is generally applicable in every branch of national law, and also acts as one of the peaceful forms of settling international disputes (the so-called conciliation)¹. In the Polish legal system, mediation has been regulated both in the civil² and criminal³ procedures, as well as in the administrative⁴ and court-administrative procedures⁵. Such a solution in practice strengthens the model of amicable settlement of disputes, as well as creates greater trust of the participants of these proceedings in the bodies settling their cases. Therefore, the possibility for the legislator to use the institution of mediation in administrative or court-administrative proceedings is a desirable legislative step, which not only unifies national legislation in this area, but also meets international expectations in this regard. Moreover, the changes that take place in public administration in the era of innovative social and technological transformations taking place in the public sector, significantly imply modifying the administration-individual relationship. Therefore, it becomes necessary to create partnership relations between public administration and an individual⁶. Considering the fact that mediation has been

¹ See M. Jurgilewicz, *Peaceful ways of solving international disputes by the mediation method and legal security of state*, "Przegląd Prawa Konstytucyjnego" 2020, Vol. 6, issue 58, pp. 317–329.

² Art. 183¹–183⁵ of the Act of 17 November 1964 Code of Civil Procedure, Journal of Laws of 2020, item 1575, as amended.

³ Art. 23a of the Act of 6 June 1997 Code of Criminal Procedure, Journal of Laws of 2021, item 534, as amended.

⁴ Art. 96a–96n of the Act of 14 June 1960 Code of Administrative Procedure, Journal of Laws of 2021, item 735, as amended, hereinafter CAP.

⁵ Art. 115–118 of the Act of 30 August 2002 Law on proceedings before administrative courts, Journal of Laws of 2019, item 2325, as amended.

⁶ See also K. Michalski, M. Jurgilewicz, *Konflikty technologiczne. Nowa architektura zagrożeń w epoce wielkich wyzwań*, Warsaw 2021; Z. Kmiecik, *Problemy i wyzwania partycypacji w postępowaniu administracyjnym*, (in:) Z. Kmiecik (ed.), *Partycypacja w postępowaniu administracyjnym. W kierunku uspołecznienia interesu prawnego*, Warsaw 2017, pp. 17–45.

embedded in the provisions dealing with proceedings before public administration bodies and administrative courts, it is worth assessing the generally applicable regulations that regulate this legal institution.

2. THE ESSENCE OF MEDIATION IN ADMINISTRATIVE PROCEEDINGS

By amending the Code of Administrative Procedure in 2017, the legislator introduced mediation into the administrative procedure⁷ (Art. 96a–9n of the CAP). As a consequence, such a solution fully embedded this legal institution in the system of administrative law⁸. And although in practice the Code of Administrative Procedure is dedicated primarily to proceedings before public administration authorities in individual cases falling within the competence of these authorities, settled by administrative or silent decisions, proceedings before other state authorities and other entities when they are established by operation of law or on the basis of agreements to deal with individual cases, as well as proceedings in the matters of issuing certificates, or imposing administrative fines or granting reliefs in their implementation⁹, the introduction of mediation in the Administrative Procedure Code corrected the amicable settlement of the above-mentioned cases towards the principle of amicable dispute resolution¹⁰.

The introduction of mediation in the administrative procedure also made it possible to break a kind of unequal administrative and legal relationship occurring in the relationship between the body and the individual, despite the fact that the administrative procedure is essentially structured as an inquisitorial procedure, in which the governing body has a superior position over the party and decides on the scope of its rights and responsibilities¹¹. Embedding mediation in the administrative procedure implies a formula for an amicable settlement of the case, as well as an amicable settlement of disputes arising in the course of the proceedings. And although an amicable form of settlement of the case under the administrative procedure was also possible before the introduction of mediation to the Code of Administrative Procedure, as the parties could conclude an admin-

⁷ The concept of mediation in public administration has been defined as an out-of-court method of resolving administrative and legal disputes arising between a party or parties to administrative proceedings and a public administration body with the participation of a third party – a mediator. See also J. Itrich-Drabarek (ed.), *Encyklopedia administracji publicznej*, Warsaw 2019.

⁸ M. Jurgilewicz, *Mediacja w administracji publicznej*, Rzeszów 2018, p. 7.

⁹ See Art. 1 CAP.

¹⁰ See Art. 13 CAP.

¹¹ See also P. Przybysz, *Kodeks postępowania administracyjnego. Komentarz*, Warsaw 2017, p. 85.

istrative settlement¹² (Art. 114–122 of the Code of Administrative Procedure, hereinafter CAP), there was nevertheless a limitation in this respect, as it is not possible to conclude a settlement between the party and the authority conducting the administrative proceedings. The situation is different in the case of mediation institutions, because one of the parties to the mediation procedure may also be a public administration body¹³, which is a desirable legislative solution.

When speaking about the essence of mediation, it should first be pointed out that the application of this institution is possible in the course of the proceedings, if the nature of the case allows it, because the purpose of mediation is to clarify and consider the factual and legal circumstances of the case, as well as to make arrangements for its settlement within the limits of the applicable rights, including by issuing a decision or concluding a settlement¹⁴. In practice, mediation may therefore be an important element of the investigation, mainly in complex cases, when there is, for example, a need to issue a permit for the construction of socially controversial infrastructure investments¹⁵. Mediation may also be of great importance in the case of resolving disputes in which there are many parties or in cases in which the authority wants to issue a decision to the detriment of the addressee, expecting an appeal (then this authority will be a party to mediation), as well as in cases where an appeal has been lodged against a decision issued in the first instance (then this authority will be a party to mediation)¹⁶.

Nevertheless, procedural practice may raise some doubts as to whether mediation is admissible only in cases where a settlement is admissible. The fact that mediation is permissible whenever it is possible to conclude a settlement is determined by Art. 121a of the CAP, which states that the provisions on the administrative settlement (Art. 117–121 of the CAP) apply accordingly to the settlement concluded before the mediator. However, with regard to the indicated doubts, it seems convincing that mediation may be conducted not only in cases where it is permissible to conclude a settlement. This position is justified not only by the wider catalogue of mediation¹⁷, but also by the lack of formal restrictions in spe-

¹² R. Hauser, Z. Niewiadomski, A. Wróbel (eds.), *Prawo procesowe administracyjne*, Vol. 9, *System prawa administracyjnego*, Warsaw 2010, pp. 158–159. Originally, the settlement was used in compensation cases falling within the competence of military administration bodies, which were related to damage either inflicted to military property or caused by temporary accommodation of military units, and there are still legal grounds for its application. Currently, the settlement is of an auxiliary nature to the settlement of the matter, because it speeds up and simplifies the procedure.

¹³ P. Przybysz, *op. cit.*, pp. 86–87.

¹⁴ M. Jurgilewicz, *Mediacja...*, p. 58.

¹⁵ K. Michalski, M. Jurgilewicz, *Konflikty technologiczne. Nowa architektura zagrożeń w epoce wielkich wyzwań*, Warsaw 2021, pp. 195–199.

¹⁶ M. Jurgilewicz, *Mediacja...*, p. 59.

¹⁷ A party and a public administration body may participate in mediation, and in the case of an administrative settlement the party will not be a public administration body.

cific provisions regarding the application of this legal institution. The latter argument actually justifies the popularization of the idea of amicable settlement of administrative matters in practice, as is the case with the resolution of civil law disputes¹⁸, in which mediation, as confirmed by statistical data, is used relatively frequently¹⁹. Furthermore, taking into account the nature of the case, mediation in administrative proceedings may be used not only in disputes in the field of substantive law, but also in certain cases arising from the provisions of procedural law. For example, mediation may be used in cases for the imposition of an administrative fine, as well as in the case of resolving only the disputed issues of a given case, because the legislator did not introduce an explicit reservation that the arrangements adopted as part of mediation in administrative proceedings are to refer only to the entire case²⁰.

Mediation is voluntary. In practice, this means that its application is determined by the consent of the parties expressed independently, i.e. free from pressure from third parties or coercion from a public administration body. On the other hand, the group of mediation participants consists of the body conducting the proceedings and the party or parties to the proceedings, who are vertically related, or the parties to the proceedings themselves, which then appear horizontally. The result of this solution is the introduction of a new category to the classification of entities in administrative proceedings, namely mediation participants²¹. Mediation may be initiated *ex officio*. Then, the initiative to carry it out comes from a public administrative body or the party initiating the commencement of such proceedings. In the notice on the possibility of mediation, the public administration body asks the parties to give their consent to mediation, as well as to select a mediator. The legislator set a fourteen-day period for these activities, the beginning of which is counted from the date of delivery of the notification. Nevertheless, the lack of consent of at least one participant in the dispute makes it impossible to conduct mediation proceedings. The notification in question contains instructions on the principles of mediation and its costs²².

The consent of the parties to participate in mediation implies the issuance of a decision by a public administration authority to refer the case to mediation, in which a mediator is indicated. It may be a person chosen by the mediation participants, and if the parties did not make such a choice, then the mediator is a person

¹⁸ See also M. Jurgilewicz, K. Kmiolek, R. Dankiewicz, A. Misiuk, *Mediation in civil matters as an example of the method used in legal security management and optimization of costs of proceedings*, "Journal of Security and Sustainability Issues" 2019, Vol. 9, issue 2, pp. 595–602.

¹⁹ *Mediacje cywilne w latach 2006–2020* – data available on the website of the Ministry of Justice: <https://isws.ms.gov.pl/pl/baza-statystyczna/opracowania-wieloletnie/> (accessed 30.07.2021).

²⁰ P. Przybysz, *op. cit.*, pp. 342–343.

²¹ M. Jurgilewicz, *Mediacja...*, p. 60.

²² According to the Art. 264 § 1a i 2 of the CAP, if mediation was carried out in the case, the public administration body, immediately after the delivery of the mediation protocol, issues a decision on the determination of the amount of mediation costs.

appointed by a public administration body who has appropriate knowledge and skills in mediation in cases of a given type. Referral to mediation also causes the consideration of a given case to be postponed for up to two months, however, at the joint request of the participants in the mediation procedure or for other important reasons, the indicated time limit may be extended, but no longer than by one month. The period of mediation is not included in the duration of the proceedings, however, if the goals of mediation are not achieved within the indicated time limits, the public administration authority will issue a decision on the termination of mediation and will settle the matter by issuing an administrative decision. In practice, it seems that the time limits set by the legislator for mediation are sufficient for the effective conduct of this procedure²³.

Pursuant to Art. 96n § 1–2 of the CAP, settlement of an administrative case in accordance with mediation takes place when, as a result of this procedure, arrangements are made to settle a given administrative case within the limits of applicable law. Then the public administration body handles the matter in accordance with the arrangements made, which were included in the mediation protocol. On the other hand, documents and other materials that were not included in the files or were not disclosed during meditation by its participants, if they were not the basis for settling the case in accordance with the arrangements contained in the protocol of the mediation, are not included in the files of the proceedings.

When assessing mediation solutions, it should be emphasized that this institution embedded in administrative proceedings becomes an important element of the investigation, and above all, it facilitates the determination of the facts of the case, which does not contradict the obligations of the authorities in the area of exhaustive collection and consideration of all evidence and taking all actions necessary to thoroughly explain the facts. The real cooperation of the public administration body and the parties in clarifying the facts is conducive to the active participation of the party in the explanatory proceedings with the simultaneous implementation of the principle of amicable settlement of cases. Indeed, mediation, if carried out effectively, allows for a settlement, however, an important role in this respect will be played by the mediator.

Thus, a natural person with full legal capacity and full public rights may be a mediator in administrative proceedings. In particular, a mediator is desirable when he/she is entered on the list of permanent mediators or on the list of institutions and persons authorized to conduct mediation proceedings conducted by the president of the regional court, or on the list kept by a non-governmental organization or university about which information was communicated to the president of the regional court. When the authority conducting the proceedings is a mediation participant, then it can only be a person: entered on the list of permanent mediators or on the list of institutions and persons authorized to conduct

²³ M. Jurgilewicz, *Mediacja...*, pp. 60–61.

mediation proceedings conducted by the president of the regional court or a mediator entered on the list kept by a non-governmental organization or university, about which the information was provided to the president of the regional court.

As evidenced by the procedural practice, the leading role of the mediator in administrative proceedings is to facilitate communication of the parties to the mediation, enable them to reach the source of the conflict and help in formulating the content of the settlement. Therefore, the mediator's personality is important, because his/her task is to guide the mediation process, to alleviate the tensions arising between the parties, and above all, to assess the feasibility of the settlement positions. The mediator is also responsible for the proper organization of the mediation process and contact with the parties, so it is important that such a person, although he/she may be selected from the mediator's lists, i.e. from among people with the desired amount of knowledge and skills regarding the conduct of conciliation proceedings, has systematically improved their qualifications²⁴.

Moreover, pursuant to Art. 96g § 1 of the CAP, the mediator is obliged to remain impartial while conducting mediation, as well as immediately disclose circumstances that could raise doubts as to his impartiality, including, respectively, circumstances that justify his exclusion from participation in the proceedings in a given case, which are analogous for the exclusion of an employee of a public administration body from participation in the proceedings in the case. The catalogue of grounds for excluding from participation in the procedure has been specified in Art. 24 § 1 and 2 of the CAP. Additionally, the mediator's impartiality has been guaranteed in Art. 96f § 3 of the CAP, as it cannot be an employee of a public administration body for whom the proceedings are pending. The mediator is also obliged to refuse to conduct mediation in the event of doubts as to its impartiality, and immediately notify its participants and the public administration body of this fact, if it is not a mediation participant.

In turn, obtaining the status of a mediator in a given case entitles one to access the contact details of mediation participants and their representatives, in particular telephone numbers, e-mail addresses, as well as to read the case files, make notes, copies or excerpts from them, unless a given mediation participant will not consent to the mediator reviewing the files within seven days from the date of announcement or delivery of the decision to refer the case to mediation. The mediator, as well as the participants of the mediation and other persons taking part in it, are obliged to keep secret all facts which they learned in connection with the mediation, unless its participants decide otherwise. On the other hand, settlement proposals, disclosed facts or statements that were submitted in the course of mediation may not be used after its completion, except for the provisions contained in the mediation protocol. The mediator draws up a protocol from the course of mediation proceedings, which specifies: the time and place of

²⁴ *Ibidem*, pp. 62–63.

mediation, names and surnames (name) and addresses (seat) of mediation participants, name and surname and address of the mediator, arrangements made as to how to settle the case, such as also the signature of the mediator and mediation participants, and if any if its participants cannot sign it, a note of the reason of its absence. Mediation participants do not have to sign the protocol at the same time, because they can do it by circulation. Then, the mediator immediately submits the protocol from the course of mediation to the public administration body in order to include it in the case file and deliver its copy to the mediation participants²⁵.

Pursuant to Art. 96l of the CAP, the mediator obtained the right to remuneration and reimbursement of expenses related to mediation, unless he agreed to conduct mediation without remuneration. And so the costs of remuneration and reimbursement of expenses related to mediation are covered by the public administration body, and in cases where a settlement may be concluded – the parties in equal parts, unless they decide otherwise. Mediation costs are covered immediately after its completion. On the other hand, according to the regulation of the Minister of the Interior and Administration of 2 June 2017 on the amount of remuneration and reimbursable expenses of a mediator in administrative proceedings²⁶ in cases of cash receivables, the mediator's remuneration is 1% of their value, but not less than PLN 150 and no more than PLN 2,000 for the entire mediation procedure. In matters relating to: concessions, permits or permissions for business activity; construction and architecture; spatial development; environmental and nature protection; water management; real estate; agriculture and forestry; industrial property – the mediator's remuneration for the first meeting is PLN 150, and for each subsequent meeting – PLN 100, not more than PLN 2,000 in total. In cases other than those mentioned above, the mediator's remuneration for conducting the mediation procedure is PLN 150 for the first meeting, and PLN 100 for each subsequent meeting, not more than PLN 450 in total. In addition, the documented and necessary expenses of the mediator incurred in connection with the mediation to cover the costs of: travel – in the amount and under the conditions set out in the provisions on the amount and conditions for determining the amounts due to an employee employed in a state or local government budgetary unit for a business trip – are also reimbursed; renting a room necessary to conduct a mediation meeting, in the amount not exceeding PLN 70 for one meeting; correspondence, in the amount not exceeding PLN 30. However, in the event of the participants failing to mediate, the mediator is entitled to reimbursement of incurred expenses in the amount not exceeding PLN 70. In the case of a mediator who is a taxpayer obliged to settle the tax on goods and services, the mediator's remuneration is increased by the amount of tax on goods and services calculated in accordance with the provisions on tax on goods and services, and the amount of

²⁵ *Ibidem*, pp. 64–65.

²⁶ Journal of Laws of 2017, item 1088, as amended.

expenses not including the amount of tax on goods and services, in relation to which the mediator was entitled to reduce the amount of tax due by the amount of input tax on account of incurring these expenses, shall be increased by the amount of tax on goods and services calculated in accordance with the provisions on tax on goods and services.

Summing up, embedding mediation in administrative proceedings makes it possible to make the principle of amicable settlement of administrative matters more realistic. By defining the rules of mediation and the status of a mediator – similar to the solutions in force in the civil procedure, the legislator maintained the formula of the parties' voluntary participation in the mediation procedure, as well as independence in shaping the content of the settlement. Such a solution not only enables the parties to engage in self-resolution of the conflict, but also increases the success of mediation in resolving the dispute that has arisen between them, which should be assessed positively. Nevertheless, the lack of formal and legal requirements regarding the qualification of a mediator in administrative proceedings may constitute a weakness in the practical conduct of mediation proceedings, especially when it comes to complex cases.

3. THE ESSENCE OF MEDIATION IN COURT-ADMINISTRATIVE PROCEEDINGS

Mediation in the court-administrative proceedings is an example of mediation conducted before administrative courts. The regulation of this legal institution was embedded in the aforementioned Act of 30 August 2002, the Law on proceedings before administrative courts. And so, at the request of the complaint or the authority, which is submitted before the hearing is scheduled, mediation proceedings may be conducted, the purpose of which is to clarify and consider the factual and legal circumstances of the case and to adopt arrangements by the parties as to how to settle it within the limits of the applicable law. It may also be conducted despite the parties failing to request such proceedings. Court-administrative mediation may cover matters relating to complaints against: administrative decisions, acts or activities in the field of public administration regarding rights or obligations arising from legal provisions, acts of local government units and their associations, other than acts of local law in matters related to public administration, inaction or excessive length of proceedings, or other decisions in cases where the provisions of specific laws provide for judicial review, and apply the measures specified in these provisions. Mediation may be conducted in most categories of complaints, the resolution of which is within the competence of the

administrative court, with the exception of complaints against acts of supervision over the activities of local government bodies²⁷.

The mediation process begins with the lodging of the complaint, although the mediation procedure may be conducted despite the lack of the parties' request for mediation. The right to lodge a complaint is granted to: anyone with a legal interest, a prosecutor, the Ombudsman, the Ombudsman for Children and a social organization in the field of its statutory activity, in matters relating to the legal interests of other persons, if it participated in administrative proceedings, as well as another entity, to whom the laws grant the right to lodge a complaint. Depending on whose initiative the mediation procedure is carried out, a given party should propose arrangements. On the other hand, due to the fact that the legislator did not introduce any restrictions as to the form of initiating mediation, a request for mediation may be included: as one of the elements in the complaint, as a response to the complaint in the case of the authority, as well as in a separate procedural letter, while it should meet the formal requirements applicable to a pleading²⁸. The scientific literature indicates that a request for mediation should indicate the area of mediation, i.e. issues that should be clarified and discussed, but it is not absolutely binding for the court²⁹.

The parties to mediation proceedings before administrative courts are the complainant and the authority, and a protocol is drawn up on its course. This document includes: time and place of mediation; name and surname (name) of the complainant, indication of the authority and their addresses; name and surname and address of the mediator; arrangements made by the parties as to the manner of settling the matter; signature of the mediator, the complainant and the authority. On the basis of the findings made as part of the mediation procedure, the authority repeals or changes the challenged act or performs or undertakes another action according to the circumstances of the case within its jurisdiction and competence. On the other hand, if the parties fail to make arrangements as to the manner of settling the case, it is subject to court examination. A complaint may be lodged against an act issued on the basis of findings made in mediation proceedings to the voivodeship administrative court within thirty days from the date of its delivery or performance or action. The court examines such a complaint together with the complaint brought in the case against the act or activity in which the mediation proceedings were conducted. However, if the said complaint is not brought or if it is dismissed, the court discontinues the proceedings in the case in which the mediation proceedings were conducted³⁰.

²⁷ M. Jurgilewicz, *Mediacja...*, p. 69.

²⁸ *Ibidem*, p. 70.

²⁹ See also A. Harla, *Sprawy podlegające mediacji przed sądem administracyjnym*, „Palestra” 2005, No. 1–2, p. 25; M. Jurgilewicz, A. Dana, *Mediacja jako sposób rozwiązywania sporów prawnych*, Warsaw 2015, pp. 162–163.

³⁰ M. Jurgilewicz, *Mediacja...*, pp. 70–71.

Although mediation in administrative court proceedings seems desirable, in practice this institution has not been used in administrative judiciary for many years, as evidenced by the following statistical data³¹, as shown in Table 1.

Table 1. Number of initiated and resolved cases in mediation proceedings conducted in administrative courts in 2010–2020

Years	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020
Number of initiated proceedings in cases	11	23	25	8	10	8	8	1	6	1	3
Number of settled cases	2	8	4	5	4	1	0	0	1	1	2

Source: Information on the activities of the administrative courts in 2020, Office of Jurisprudence of the Supreme Administrative Court, Warsaw 2021, p. 18.

The above data, including the number of initiated mediation proceedings in cases and the number of cases settled by mediation in a ten year perspective, prove that despite the amendment to the mediation procedure, this institution is not used before administrative courts as desired. The reason for such a situation may be the efficiency of hearing cases in the ordinary course of proceedings before administrative courts, which makes mediation unnecessary. As it follows from court statistics, the time of considering a given case in ordinary proceedings before an administrative court is from 6 to 12 months, and it is believed that mediation proceedings would not contribute to accelerating the proceedings³². Nevertheless, the dissemination of the idea of amicable settlement of cases, despite the negligible use of mediation in administrative court proceedings, seems to be desirable.

On the other hand, when it comes to a mediator in court and administrative proceedings, it may be a natural person who has full legal capacity and enjoys full public rights, in particular if he is entered on the list of permanent mediators or on the list of institutions and persons authorized to conduct mediation proceedings, conducted by the president of the regional court. In the case of mediation proceedings that are conducted despite the lack of the parties' request in this regard, if the parties have not selected a mediator unanimously, then the court, when referring the case to mediation, appoints a mediator with appropriate knowledge and skills in conducting mediation in cases of a given type. Then, the head of the department shall immediately provide the mediator with the contact details of the parties and their attorneys, in particular telephone numbers and e-mail addresses, if available. The mediator's duties include, in particular, maintaining impartiality

³¹ Information on the activities of the administrative courts in 2020. Office of Jurisprudence of the Supreme Administrative Court, Warsaw 2021, p. 15.

³² *Ibidem*, p. 15.

and promptly disclosing circumstances that could raise doubts as to impartiality, including the circumstances specified in art. 18 of the act. In addition, due to the fact that the mediation procedure is secret, the mediator and the parties and other persons participating in it are obliged to keep secret the facts that they learned in connection with the mediation, unless the parties agree otherwise. On the other hand, settlement proposals, disclosed facts or statements made in the course of mediation proceedings may not be used after its completion, except for the findings contained in the protocol of its course³³.

In addition, the mediator in court-administrative proceedings has the right to review the case files and receive copies or excerpts from these files, unless the party does not consent to the mediator's review of the case files within one week from the date of publication or delivery of the decision referring the parties to mediation. The mediator is also entitled to remuneration and reimbursement of expenses related to mediation, unless he has consented to mediation without remuneration. The costs of remuneration and reimbursement of expenses related to the mediation are covered by the parties. And so, according to the ordinance of the Minister of the Interior and Administration of June 2, 2017 on the amount of remuneration and reimbursable expenses of a mediator in proceedings before an administrative court³⁴: in cases where the subject of the appeal are pecuniary receivables, the mediator's remuneration is 1% of the value of the subject of the appeal, but not less than PLN 150 and no more than PLN 2,000 for the entire mediation procedure. In matters relating to: concessions, permits or permissions for business activity; construction and architecture; spatial development; environmental and nature protection; water management; real estate; agriculture and forestry; industrial property; tax liabilities; customs law – the mediator's remuneration for the first meeting is PLN 150, and for each subsequent meeting – PLN 100, not more than PLN 2,000 in total. In cases not mentioned above, the mediator's remuneration for conducting the mediation procedure is PLN 150 for the first meeting, and PLN 100 for each subsequent meeting, in total not more than PLN 450. On the other hand, the documented and necessary expenses of the mediator incurred in connection with the mediation to cover the costs of: travel – in the amount and under the conditions specified in the provisions on the amount and conditions for determining receivables due to an employee employed in a state or local government budgetary unit for a business trip are reimbursed; renting a room necessary to conduct a mediation meeting, in the amount not exceeding PLN 70 for one meeting and correspondence, in the amount not exceeding PLN 30. If the parties do not participate in mediation, the mediator is entitled to reimbursement of the incurred expenses in the amount not exceeding PLN 70. In addition, the remuneration of the mediator, who is a taxpayer liable to settle

³³ M. Jurgilewicz, *Mediacja...*, pp. 72–73.

³⁴ Journal of Laws of 2017, item 1087, as amended.

the tax on goods and services, is increased by the amount of tax on goods and services calculated in accordance with the provisions on tax on goods and services, and the amount of expenses not including the amount of tax on goods and services, compared to which the mediator was entitled to reduce the amount of tax due by the amount on input tax on account of incurring these expenses, shall be increased by the amount of tax on goods and services calculated in accordance with the provisions on tax on goods and services. After the mediation procedure is completed, the mediator draws up a report on its course and immediately delivers a copy of the report to the parties and the court before which the proceedings are pending³⁵.

4. CONCLUSION

The introduction by the legislator of a regulation enabling the use of the institution of mediation both in administrative and court-administrative proceedings should, as a rule, be assessed positively. Such a solution makes it possible to actually make the idea of amicable settlement of matters more realistic, although success in this area requires constant awareness of the society as to the advantages and essence of mediation. When assessing the applicable regulations regarding mediation in administrative and court-administrative proceedings, it should be stated that the structure of the parties' voluntary participation in this type of procedure, as well as its low-formalization, are the advantages of this legal institution. However, the excessively liberal definition of requirements for mediators conducting this type of procedure may be a certain weakness of the existing mediation solutions. It seems that the mediator should be expected to meet certain qualifications both in administrative and court-administrative proceedings. Regardless of the applicable legal conditions in the discussed scope, which in fact have been defined in an optimal way, the success of mediation in administrative and court-administrative proceedings may be achieved by promoting this institution and disseminating its ideas, and at the same time building appropriate communication channels between the public administration and the society.

³⁵ M. Jurgilewicz, *Mediacja...*, pp. 74–75.

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