MOŽNOSTI VYUŽITIA MEDIÁCIE V SPRÁVNYCH VECIACH V SLOVENSKEJ REPUBLIKE A VO VYBRANÝCH EURÓPSKYCH ŠTÁTOCH

POSSIBILITIES OF USING MEDIATION IN ADMINISTRATIVE CASES IN THE SLOVAK REPUBLIC AND IN SELECTED EUROPEAN COUNTRIES[1]

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ABSTRACT

In the environment of the member states of the Council of Europe, in the last two decades, increased attention has also been paid to the debate on the possibility and appropriateness of implementing cooperative and consensual elements in the decision-making processes conducted by administrative authorities and administrative courts. Based on the analysis of relevant soft law documents and a study published for the CEPEJ in 2022, the authors of the paper summarise the findings concerning the use of mediation or other ADR tools in selected Council of Europe member states, applying their findings to the examination of the possibilities provided by the Slovak legal system for the use of mediation in administrative matters.

ABSTRAKT

V prostredí členských štátov Rady Európy je v posledných dvoch dekádach venovaná zvýšená pozornosť aj diskusii o možnosti a vhodnosti implementácie kooperatívnych a konsenzuálnych prvkov do rozhodovacích procesov vedených správnymi orgánmi a správnymi súdmi. Autori príspevku na základe analýzy relevantných dokumentov soft law a štúdie publikovanej pre potreby CEPEJ v roku 2022 sumarizujú zistenia týkajúce sa využívania mediácie alebo iných nástrojov ADR vo vybraných členských štátoch Rady Európy, pričom svoje zistenia aplikujú na skúmanie možností, ktoré pre využitie mediácie v správnych veciach poskytuje právny poriadok Slovenskej republiky.

I. INTRODUCTION

Alternative Dispute Resolution (ADR) methods are currently a stable part of the legal systems of most European countries, although in terms of their actual use in legal practice, non-European countries still lead, especially Australia, as well as Japan and China, where alternative dispute resolution is part of the traditional legal culture[4]. Among the presented advantages of these means is the possibility to achieve a faster, more efficient, and so-called "win-win"

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[4] STOBBE, Stephanie Phetsamay, ed. : *Conflict Resolution in Asia* : *Mediation and Other Cultural Models*. Lanham: Lexington Books, 2018, p. 4-7, ISBN 978-1-4985-6644-5; LEE, Joel, and HWEE Hwee Teh : *An Asian Perspective on Mediation*. Singapore: Academy Pub., 2009, p. 4-6, ISBN 978-981-08-2997-1; ADRAC: *Conciliation: Connecting the dots*. Australian Dispute Resolution Advisory Council. 2021 [online] [accessed 05.05.2024] available at: https://www.adrac.org.au/_files/ugd/34f2d0_6a05f25a238349a79b23b2dd64efc27e.pdf.

solution in disputes, where each party achieves partial success in advancing its interests more quickly than in the often lengthy and costly judicial process. From the perspective of the justice system, with broader use of ADR, a lower burden on courts can be expected, both at the level of first-instance decisions and in proceedings on remedies. Since these means primarily serve to resolve disputes, they are most commonly used in family law, civil law, commercial law, and labor law disputes, where they allow for out-of-court resolution coupled with cost savings for the parties involved in the often lengthy judicial process. Mediation, which is one of the most commonly used ADR methods, is also considered an effective tool for restorative justice within the framework of criminal policy.

However, the situation regarding the use of ADR and mediation in the decision-making activities of public authorities and in administrative justice is different. The effort to find a place for the effective use of ADR in these decision-making processes, which are often protracted due to conflicting positions of the participants, is not a new trend in the environment of the Council of Europe member states. Soft-law sources, such as Recommendation Rec (2001)9 of the Council of Ministers of the member states on alternatives to litigation between administrative authorities and private parties, but also Recommendation CM/Rec(2010)3 on effective remedies for excessive length of proceedings, together with which Guidelines for Good Administrative Practice were issued, are notable in this broader context. These guidelines directly refer to the aforementioned recommendations regarding mediation and other ADR dispute resolution methods, recommending the widest possible use of these procedures.

Within the Council of Europe, particular attention to the possibilities of the widest possible use of mediation was given by the European Commission for the Efficiency of Justice (CEPEJ, hereinafter "the Commission"), within which a special working group on mediation operated in 2006-2007 and 2017-2019.

From the documents resulting from its activities concerning the use of mediation in the activities of public administration, it is necessary to first point out the Guidelines for a better implementation of existing Recommendation on alternatives to litigation between administrative authorities and private parties CEPEJ (2007)15 of December 7, 2007, which, in the context of evaluating the implementation of Recommendation Rec (2001)9, states that little effort has been made in the member states since the publication of Recommendation Rec (2001)9 to make administrative authorities aware of the benefits of using means that can lead to creative, efficient, and reasonable results. The reasons, according to the Commission, besides the absence of relevant legislation, also include the lack of trust in the judiciary to use ADR, insufficient information about these possibilities, and the lack of professionals capable of conducting mediation and other ADR in the field of public administration. The Commission explicitly identifies the inadequate academic research into alternatives to judicial disputes in the administrative area as a significant factor in the insufficient use of consensual dispute resolution methods.

In the Guidelines CEPEJ (2007)15, the Commission recommended that member states take specific measures to promote the use of ADR, either by institutionalizing them or by using them on a case-by-case basis, or by adopting legislation or adapting existing legislation according to the principles set out in the recommendation, for example, in certain cases to establish mandatory mediation or other conciliation proceedings.

Significant conclusions regarding the application of mediation in public administration were also brought by the Report CEPEJ GT MED (2017)8 on the impact of CEPEJ guidelines on civil, family, criminal, and administrative mediation of May 16, 2018, in which the Commission processed data provided by 40 states from the group of 47 Council of Europe member states, followed by the Roadmap CEPEI (2018)8 of June 27, 2018. Within the report, the CEPEJ working group on mediation also evaluated the impact of Guidelines CEPEJ (2007)15 on the level of mediation and other ADR application in member states in the field of public

administration and stated that it had little or no effect in the case of most member states (including the Slovak Republic).

The Commission also noted that in most member states, there is a need to adopt new national legislation on mediation, especially in criminal and administrative matters, and within the conclusions of the CEPEJ GT MED (2017)8 report, it recommended to the Committee on Legal Co-operation (CDCJ) of the Council of Europe to draft the "Council of Europe Convention on Mediation in Civil, Family, Criminal and Administrative Matters." It also proposes to develop a European model law on mediation, which may be considered a reference point for future legislative reforms.

Some of the conclusions and recommendations of CEPEJ GT MED (2017)8 and the Roadmap CEPEI (2018)8 were transformed by the Commission into the content of the European Handbook for Mediation Lawmaking CEPEJ (2019)9 of June 14, 2019, which recommends clear legislative regulation of which proceedings mediation can be carried out and which disputes with administrative bodies can be mediated. It also proposes normative regulation of the limits of the discretionary power of the administrative authority in mediation, the status and independence of mediators, as well as the possibility of judicial control of mediation.

Authors have also recently addressed the issue of the applicability of mediation in public administration, covering either European states more broadly or specifically the area of Central and Eastern Europe (Hohmann 2018; Vashchenko 2023, Yaroshenko et al. 2022, 2021)[5].

Hohmann analyzes the usability of mediation in public administration activities in both vertical and horizontal dimensions, where horizontal mediation is between the participants of the proceedings themselves and vertical mediation is between the administrative authority and the participants. He concludes that although mediation is a process foreign to public administration and the application of law within public administration and seems incompatible with the traditional elements of administrative legal relations, from the perspective of final resolution, it can bring a strong legitimizing effect to the achieved agreement and thereby reduce administrative pressure.[6]

Based on a comparison of the legal regulations of several EU member states and Ukraine, Vaschenko concludes that the use of alternative methods for administrative disputes resolution is "characterised by specificities arisen from the peculiarities of administrative disputes where one of the parties is usually the public administration entity bounded by its competence. These peculiarities may cause difficulties in the implementation of such mechanisms in administrative procedure and administrative justice. The efficiency of alternative means in administrative disputes depends on adequate legal regulation. The possibility to use the alternative means for

[5] HOHMANN, Balázs: *Possibilities for the Application of Alternative Dispute Resolution Methods in the Administrative Procedure* (November 1, 2018). European Journal of Multidisciplinary Studies, September-December 2018, Volume 3. Issue 4, available at SSRN: https://ssrn.com/abstract=3398619; VASHCHENKO, Yuliia: *Alternative Means for Resolving Administrative Disputes in Ukraine in the Light of European Integration*. Bratislava Law Review, 2023, 7(2), 163-184. ISSN (online):2644-6359 https://doi.org/10.46282/blr.2023.7.2.323, available at https://blr.flaw.uniba.sk/index.php/BLR/article/view/323; YAROSHENKO, Oleg et al.: *Alternative resolution of public law disputes in administrative proceedings of european union member states.* PA PERSONA E AMMINISTRAZIONE, 2022, Volume 10, Issue 1. ISSN 2610-9050, available at https://journals.uniurb.it/index.php/pea/article/view/3578; YAROSHENKO, Oleg et. al.: The use of Mediation in Administrative Proceedings: The Experience of European Union Member States. In.: Revista Relacoes Internacionais do Mundo Atual Unicuritiba. 2021. Volume 3. Num. 32. pag. 64-88, ISSN 2316-2880, available at https://portaldeperiodicos.animaeducacao.com.br/index.php/RIMA/issue/view/1392.

[6] HOHMANN, Balázs: *Possibilities for the Application of Alternative Dispute Resolution Methods in the Administrative Procedure* (November 1, 2018). European Journal of Multidisciplinary Studies, September-December 2018, Volume 3. Issue 4, pag. 97, available at SSRN: https://ssrn.com/abstract=3398619.

administrative dispute resolution, the types of alternative mechanism and their clear regulation shall be provided by national legislation."[7]

Yaroschenko and col., based on an extensive comparative study, concluded that "mediation is one of the most common alternative ways of resolving disputes in foreign countries, which helps to relieve the judiciary from a significant number of cases that can be successfully considered by civilized methods, without recourse to the judiciary," and sees its more intensive introduction into the public administration environment as "not just possible, but a necessary measure."[8]

In contrast to the relatively optimistic expectations presented in the cited conclusions of selected authors, it is possible to point to the rather skeptical view of Balthasar, according to whom the effort to introduce proven private law institutions (ADR) into the public administration environment may only be an indicator of the inability to address shortcomings of a completely different nature, such as the low quality of legal protection provided by administrative courts.[9] His view is somewhat supported by the existing experience with administrative mediation in Poland, which we will discuss in more detail in the following chapter. According to Przylepa-Lewak, a broader acceptance of mediation in administrative matters also requires a change in people's mentality[10], which is difficult to achieve solely through legal and legislative tools.

Since, with the exception of Vashchenko's study, none of the mentioned and cited articles included the situation in the Slovak Republic in their comparative research, we will attempt to partially supplement this with this contribution. Based on the current state of knowledge in the area under study, we have formulated two scientific questions, the answer to which is the aim of this paper: 1. Is it possible to identify administrative proceedings in the legal order of the Slovak Republic in which it would be possible and expedient to use mediation? 2. Does the current legislation on administrative proceedings and the rules governing mediation allow its use in selected types of administrative proceedings? We have formulated two initial hypotheses on the scientific questions raised: H1. The legal regulations of the Slovak Republic regulate several types of administrative proceedings within which it would be possible and expedient to use mediation, especially in its horizontal form. H2. The valid legal regulation of administrative proceedings and mediation does not regulate the scope for the use of mediation in individual decision-making processes of public administration in a sufficiently definite and unambiguous manner, which results in its minimal use in practice. In our work we have used standard social science scientific methods, in particular the descriptive method, the analytical-synthetic method and also the method of comparison of legal regulations of selected European countries.

II. STATE OF PLAY OF THE ISSUE IN SELECTED MEMBER STATES OF THE COUNCIL OF EUROPE

As part of monitoring the impacts of the conclusions and recommendations of CEPEJ GT MED (2017)8 and the Roadmap CEPEI (2018)8, a new survey was conducted in 2022 in the member states of the Council of Europe. Its aim was to map the current state of the use of

[7] VASHCHENKO, Yuliia: *Alternative Means for Resolving Administrative Disputes in Ukraine in the Light of European Integration*. Bratislava Law Review, 2023, 7(2), p. 180. ISSN (online):2644-6359 https://doi.org/10.46282/ blr.2023.7.2. 323, available at https://blr.flaw.uniba.sk/index.php/BLR/article/view/323.

[8] YAROSHENKO, Oleg et. al.: The use of Mediation in Administrative Proceedings: The Experience of European Union Member States. In.: Revista Relacoes Internacionais do Mundo Atual Unicuritiba. 2021. Volume 3. Num. 32. p. 858, ISSN 2316-2880, available at https://portaldeperiodicos.animaeducacao.com.br/index.php/RIMA/issue/view/1392.

[9] BALTHASAR, Alexander.: *Alternativní řešení sporů ve správním právu – významný krok vpřed pro větší spokojenost občanů, nebo trojský kůň pro právní stát?* in.: SKULOVÁ, Soňa., POTĚŠIL, Lukáš. a kol.: Prostředky ochrany subjektívních práv ve veřejné správě – jejich systém a efektivnost. 1. vydání. Praha: C. H. Beck, 2017, p. 426, ISBN 978-80-7400-647-0.

[10] PRZYLEPA-LEWAK, A.: *Mediation as a Form of Communication in Administrative Proceedings*. in Annales universitatis Mariae Curie – Skłodowska, Lublin, VOL. LXIX, 2 2022. p. 71, DOI:10.17951/g.2022.69.2.61-73.

mediation in administrative matters and to identify what measures and tools could be introduced to assist member states in developing and improving the use of mediation in the decision-making activities of public administration. The result of the survey was the publication of the study "State of play of the practice of mediation in administrative disputes in the Member States of the Council of Europe"[11] (hereinafter referred to as the "Study"), from which the essential factual findings of this contribution are derived, supplemented by findings related to the Slovak Republic.

A total of 33 member states of the Council of Europe participated in data collection for the Study, excluding the Slovak Republic. The authors of the Study divided the states from which they received responses to the survey questions into several groups.

The first group consisted of states where mediation in administrative matters (also referred to as "administrative mediation") does not exist in the legal system. These include states such as Andorra, Armenia, the Czech Republic, North Macedonia, Cyprus, Turkey, Montenegro, Sweden, Austria, Hungary, San Marino, and Greece. In these states, the institution of mediation is usually not unknown, but it is applied only in civil or criminal matters, not in the decision-making activities of public administration.[12]

The second group of examined states includes those whose legal systems also include the possibility of mediation in administrative matters (either in the decision-making activities of administrative authorities themselves or in administrative justice), but this legal provision is almost not applied in practice. This group includes states like Bulgaria, Greece, Poland, Portugal, Azerbaijan, Croatia, and Ukraine. In some states, there is legal regulation at the level of general mediation regulations applicable to all types of mediation, including administrative matters (Croatia, Azerbaijan), and in some, there is a separate legal regulation of mediation in administrative matters (e.g., Portugal, Bulgaria, Ukraine). The authors of the Study classified Poland among the countries where there is legal regulation of administrative mediation only within the framework of general regulations relating to all other types of mediation. According to the authors, the legal regulation of mediation in Poland implies the existence of both judicial and extrajudicial mediation, but there is no separate regulation of administrative mediation, nor are there any statistics on its use. Here, we dare to dispute the conclusions of the Study, both regarding the existence of separate regulation concerning judicial and extrajudicial mediation and regarding the availability of statistics.

Extrajudicial mediation in administrative matters is specifically regulated in Polish administrative law (Kodeks postępowania administracyjnego i innych ustaw) based on its amendment from 2017, in section 5a. Similarly, there is a separate legal regulation of mediation in proceedings before administrative courts, namely in the law Dz.U. 2002 Nr 153 pos. 1270 on proceedings before administrative courts (Ustawa z dnia 30 sierpnia 2002 r. Prawo o postępowaniu przed sądami administracyjnymi) within the regulation of so-called judicial mediation in articles 115 to 118 (Postępowanie mediacyjne i uproszczone). The law allows for the initiation of mediation at the request of the participants or without it (article 115, § 2), with the mediation being conducted by a judge or appointed referee. This procedure is applicable in all matters adjudicated by administrative courts, including proceedings against inactivity. The proposal for mediation must be submitted by any of the participants before the court sets a hearing date. The initiation of judicial mediation ex officio according to article 115, § 2 of the Polish law on proceedings before administrative courts is considered in cases where the parties to the proceedings do not request it, but it follows from the nature of the matter that mediation is appropriate, or in case a participant has requested mediation but not within the statutory

[11] BOUSSARD, Sabine, SALEM, Karim*: State of play of the practice of mediation in administrative disputes in the Member States of the Council of Europe.* [online][accessed 20.10.2023]. available at https://rm.coe.int/cepej-gt-qual-2022-1rev-en-state-of-play-of-the-practice-of-mediation-/1680ab3db7.

[12] Czech republic, Greece, Turkey, Hungary, Montenegro, Andorra, and San Marino.

deadline. The outcome of mediation may result in the annulment of the contested administrative act by the administrative authority or withdrawal of the lawsuit by the plaintiff.

The development of the use of judicial mediation in Poland in administrative matters, as indicated by statistics published by the Polish Supreme Administrative Court (Naczelny Sąd Administracyjny), shows that this institution did not become well-established in the legal environment after initial optimism, and the number of administrative disputes resolved and resolved by judicial mediation has been steadily declining. In 2016 and 2017, no disputes were resolved in this way, in 2018, 2019, 2021, and 2022, one dispute each, and in 2020, two disputes[13]. The reason for the declining interest in judicial mediation in administrative matters in Poland can be seen in a significant acceleration of the decision-making activity of first-instance administrative courts, as the average duration of proceedings in administrative courts is 6-12 months.

Mediation procedures have thus lost the stamp of quicker dispute resolution. Similarly negative trends persist in relation to extrajudicial administrative mediation, where according to published information on the prawo.pl internet platform, in 2017, two cases were resolved through mediation according to the administrative procedure, in 2018 three, in 2019 seven, and in 2020 two cases[14]. Among the reasons for the low interest in mediation in administrative matters, Przylepa-Lewak mainly attributes the ambiguity of legal regulations and deeply ingrained social stereotypes that associate the activities of public administration with formalized decision-making.[15] It is therefore possible to identify with Poland's classification among those states where, although separate regulation of administrative mediation exists, it is used in practice only to a minimal extent.

Other reasons cited by member states in this group to justify the insufficient use of administrative mediation in practice include the necessity for approval of the mediation agreement in the form of a decision by the administrative authority (with possible appeal), a narrow scope of mediatable public law relationships, additional costs, the risk of holding the employee responsible for the costs of the administrative authority involved in mediation, or for concluding an agreement that does not meet the legal framework and limits of protection of the public interest according to supervisory authorities[16].

The third group of states, according to the authors of the Study, consists of those whose legal system does not regulate mediation in administrative matters, but nevertheless, it is practiced. Authors included Luxembourg in this group, where mediation is conducted in administrative courts and has an informal nature, organized by a statutory judge. This approach is based on the premise that the task of the administrative court is not only to apply and interpret the law but also to resolve disputes. If possible, this is achieved by reconciling the parties, thereby achieving social reconciliation.

The fourth group includes states where administrative mediation is carried out based on a separate legal regulation explicitly regulating mediation in administrative matters. This includes mainly Belgium, France, Germany, Italy, Lithuania, Latvia, Monaco, the Netherlands, Norway, Spain, Switzerland, and the United Kingdom. In these states, both institutional (extrajudicial) mediation and judicial mediation conducted within proceedings before administrative courts

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[13] *Informacja o działalności sądów administracyjnych w 2022 roku.* [online] Warszawa : Naczelny Sąd Administracyjny. 2023. s. 15 [accessed 05.05.2024] available at: https://orka.sejm.gov.pl/Druki9ka.nsf/ 0/7A2CEC5EECB72597C12589 AA003 DECEE/%24File/3214.pdf.

[14] *Klapa mediacji, ale uproszczenia działają - resort rozwoju ocenia wprowadzone procedury.* [online]. [accessed 08.05.2024] available at://www.prawo.pl/samorzad/uproszczenia-procedur-administracyjnych-nie-zawsze-dzialaja, 516368.html.

[15] PRZYLEPA-LEWAK, A.: *Mediation as a Form of Communication in Administrative Proceedings*. in Annales universitatis Mariae Curie – Skłodowska, Lublin, VOL. LXIX, 2 2022. p. 61-73, DOI:10.17951/g.2022.69.2.61-73.

[16] In relation to Poland, such findings were already predicted in 2019, for example SUWAJ, Robert: *Mediation as a new form of settling administrative matters in Poland*. Przegląd Ustawodawstwa Gospodarczego. 2019. p. 18–26. DOI 10.33226/0137-5490.2019.12.4.

exist. There is also a third subcategory, in which mediation in administrative matters can be carried out by an institutional, conventional, or court-appointed third party in the context of a dispute brought before it.

Institutional mediation, i.e., mediation before an independent body, is applied in Switzerland (cantonal ombudsman), the Principality of Monaco, and Italy (Difensore civico).

Mediation initiated or directly conducted by a judge is carried out in administrative matters in Germany, Spain, and Latvia.

The Study also found significant differences in the scope of mediated cases. Differences can also be seen in whether the outcome directly mediates an agreement binding on the mediated parties or whether the agreement is only the basis for subsequent issuance of a decision confirming the agreement.

III. REFLECTION OF FINDINGS IN THE CEPEJ HANDBOOK (2022)11 „PROMOTING MEDIATION TO RESOLVE ADMINISTRATIVE DISPUTES IN COUNCIL OF EUROPE MEMBER STATES“

CEPEJ states in the document that mediation in administrative matters can take three forms: institutional mediation, conventional mediation, and jurisdictional or para-jurisdictional mediation. Institutional mediation refers to a process led by an institutional mediator, usually from the administrative environment or in the position of an ombudsman. It notes that this form of mediation allows for resolving a wide range of disputes, including those arising from improper official procedures. The so-called conventional mediation is carried out through a mediator as a third party assisting the parties to find a solution to the dispute. Jurisdictional or para-jurisdictional mediation is conducted within ongoing judicial proceedings, but where the parties themselves or at the judge's request decide to attempt mediation. The court provides them with the opportunity to do so by suspending the proceedings.

CEPEJ also outlined the expected benefits of wider application of mediation in administrative disputes. These include promoting dialogue between administration and governed entities, increasing the efficiency and quality of administrative justice (shorter time and lower costs), as well as preventing the emergence of judicial disputes. The process of administrative mediation leads to improving the quality of relations between citizens and the administration and is more accessible to citizens. This has the most impact on disadvantaged individuals, for whom mediation can provide better explanations and understanding of decision content, thus allowing them to avoid judicial disputes.

CEPEJ sees room for the use of mediation in all types of administrative disputes, expressly mentioning contractual disputes, disputes arising from administrative liability, as well as disputes concerning legality.

Regarding areas of public law regulation suitable for mediation, CEPEJ mentions disputes arising from decisions or documents on spatial planning, disputes in the field of social assistance and social security, disputes from contracts concluded by public authorities, disputes between citizens and local authorities regarding the provision of local public services (water, electricity, internet access, etc.), as well as disputes and conflicts between administration and state employees. Finally, CEPEJ perceives mediation as a tool to improve the efficiency and quality of administrative justice.

In the conclusions of its handbook, CEPEJ recommends that member states adopt several measures aimed at enabling a wider use of administrative mediation within the Council of Europe. It proposes that member states adopt a broad definition of administrative mediation in legislation to avoid ambiguities, encompassing all forms of mediation (institutional, jurisdictional or para-jurisdictional, and conventional). It is also necessary to develop precise legal frameworks of rules and the scope of mediation in administrative matters, taking into account the specific nature of legal disputes in administration. It is also necessary to ensure that

mediation is introduced at the earliest stage of the dispute, ideally before the start of judicial proceedings. For this purpose, it will be necessary to specialize mediators for disputes in public administration, for which states should also provide financial support. This applies to the training of judges and administrative staff in the field of administrative mediation as well. To enable the implementation of administrative mediation, it will be necessary to adapt procedural rules governing administrative proceedings or administrative judicial proceedings (suspension of proceedings, preclusive deadlines). To increase interest in mediation, it will also be necessary to conduct information and communication campaigns and monitor data on the number of implemented administrative mediations, which will also allow identifying and removing obstacles and difficulties encountered in the implementation of administrative mediation.

IV. CONCLUSIONS (WITH EMPHASIS ON THE CONDITIONS OF ADMINISTRATIVE MEDIATION IN THE SLOVAK REPUBLIC)

Slovakia can be classified among the states without specific legal regulation of mediation in administrative matters. The basic legal regulation governing mediation in non-criminal matters in the Slovak Republic is Act No. 420/2004 Coll. on Mediation and on Amendments to Some Laws, as amended (hereinafter referred to as the "Mediation Act"). This defines mediation as an extrajudicial activity in which persons participating in mediation, with the assistance of a mediator, resolve a dispute arising from their contractual or other legal relationship (§ 2 para. 1). The scope of the Mediation Act is defined in § 1 para. 2, stating that the law applies to disputes arising from civil law relationships, family law relationships, commercial contractual relationships, and labor law relationships.

Despite this, practice in the Slovak Republic shows that mediation sporadically occurs even in the area of those legal relationships primarily addressed by public administration bodies in the exercise of their powers. This conclusion can be drawn based on findings from research conducted by the Association of Towns and Communities of Slovakia as part of the project "Modernization of Local Self-Government."[17]

However, the survey also revealed that citizens address mayors and mayors with problems that fall within the mayor's competence and are suitable for mediation in terms of content. This primarily concerns neighborhood disputes caused by nuisances (shading, overgrowth of trees, noise, penetration of domestic animals, odors, etc.), which the municipality addresses in case of obvious interference with peaceful coexistence through administrative proceedings according to the administrative order pursuant to § 5 of the Civil Code. The municipality may preliminarily prohibit intervention or order the restoration of the previous state. The involvement of a professional mediator could undoubtedly contribute to resolving these disputes without the need for authoritative decision-making by the municipality or the need for subsequent civil court proceedings, even based on the currently valid and effective legal regulation. In essence, this is not a dispute with a public law element, but a dispute of a civil law nature, and only the process in which this "dispute" is primarily addressed at the municipal level is, according to current legal regulations, the administrative procedure.

Based on the findings and comparisons mentioned above, a positive answer can be given to the first research question. In the legal system of the Slovak Republic (similar to the legal systems of other countries), there are administrative proceedings suitable for the use of mediation, particularly in cases where mediation is between participants in the proceedings with conflicting or opposing interests. This would primarily involve proceedings with a private law element, such as building permits, zoning procedures, water law proceedings, or expropriation proceedings, where the outcome affects the property rights of the participants. The positive answer also allows us to confirm the first scientific hypothesis.

[17] *ZMOS skúmal mediáciu a najčastejšie problémy.* [online]. [accessed 05.05.2024] available at: https:// npmodmus. zmos.sk/zmos-skumal-mediaciu-a-najcastejsie-problemy-clanok/mid/364693/.html.

We must, however, answer the second research question negatively. The Mediation Act, nor the Administrative Procedure Code or the Administrative Court Procedure Code, explicitly consider mediation in administrative matters. In relation to proceedings conducted by administrative authorities, mediation could be considered as a path to procedural settlement, which is recognized by procedural rules, but this would require a deeper intervention in both the Mediation Act and the procedural rules governing administrative proceedings. First and foremost, it would be appropriate, in line with CEPEJ recommendations, to define mediation in administrative matters within the Mediation Act. Considering the limits arising from the obligation of public authorities to primarily protect the public interest and their strict legal obligations, it would first be necessary to create legislative conditions for horizontal mediation (mediation between participants in proceedings with conflicting interests). Given mediation's primary association with private law, its use in this phase could be limited exclusively to proceedings with a private law element. To relieve administrative authorities, in proceedings initiated by the participants (e.g., zoning, building, or expropriation proceedings), resolving disputes between the participants (such as the amount of compensation, neighbor objections) could be a prerequisite for further administrative procedure. Such a procedure should be defined not only in the general provisions of the Mediation Act but also in specific regulations governing individual administrative proceedings, with clear legal effects and consequences of a mediation agreement. This agreement could be explicitly included among the documents that the administrative authority is required to consider when making a decision. In the Administrative Procedure Code, as a general procedural regulation, the legal status of the mediator in relation to administrative proceedings should be defined. The initiation of mediation in an administrative matter should also be a reason for suspending the administrative proceedings. There could also be potential for the use of mediation in reaching reconciliation between the applicant and the accused in cases of insult to honor under § 78 of the Act on misdemeanors[18]. Based on the above, it can be concluded that the second scientific hypothesis has also been confirmed, and the Slovak Republic in no way fulfills the CEPEJ recommendations summarized in this article.

KEY WORDS
mediation, alternative dispute resolution, public administration, administrative procedure, administrative justice

KĽÚČOVÉ SLOVÁ
mediácia, alternatívne riešenie sporov, verejná správa, správne konanie, správne súdnictvo

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