ALTERNATÍVNE SPÔSOBY RIEŠENIA SPOROV PRI MEDZINÁRODNOM POSUDZOVANÍ VPLYVOV NA ŽIVOTNÉ PROSTREDIE[1]

ALTERNATIVE DISPUTE RESOLUTION IN INTERNATIONAL ENVIRONMENTAL IMPACT ASSESSMENT

Rastislav Kráľ[2] - Martin Vernarský[3] - Viktória Adamov Kráľová[4]

https://doi.org/10.33542/SIC2025-1-09

ABSTRAKT

Príspevok zameriava pozornosť na situáciu, kedy v priebehu uskutočňovania právno-aplikačného procesu na Slovensku, môže dôjsť k ambivalentným postojom, prípadne až sporom, so zahraničným subjektom v oblasti ochrany životného prostredia. Autori prinášajú analýzu súčasného stavu de lege lata osobitného typu správneho konania, ktorým je konanie o posudzovaní vplyvov vybraných činností na životné prostredie. Predmetom skúmania sú osobitné nástroje slovenskej legislatívy umožňujúce riešenie vzniknutých konfliktov, najmä analýza ich primeranosti a dostatočnosti. V ďalšom sú skúmané možnosti využitia alternatívnych nástrojov riešenia tohto typu konfliktov vo verejnej správe. Úvahy autorov cielia na návrhy pre možnosti využitia a uplatnenia metód mediácie ako doplnkového nástroja pre elimináciu vzniku konfliktov. Zároveň mediáciu vnímajú ako šancu pre hľadanie konsenzuálneho východiska pri riešení už existujúcich sporov.

ABSTRACT

The paper focuses on the situation when within a course of the legal-application process in Slovakia, ambivalent attitudes, or even disputes, with a foreign entity in the field of environmental protection may arise. The authors present an analysis of the current state of de lege lata of a specific type of administrative procedure, which is the procedure for assessing the impact of selected activities on the environment. The subject of the examination are the specific instruments of the Slovak legislation enabling the resolution of the arising conflicts, in particular the analysis of their adequacy and sufficiency. In the following, the possibilities of using alternative instruments for resolving this type of conflict in public administration are examined. The authors' reflections aim at suggestions for the possibilities of using and applying mediation methods as a complementary tool for eliminating the emergence of conflicts. At the same time, they perceive mediation as a chance for finding a consensual solution to existing disputes.

[1] This article was written as part of the VEGA grant project No. 1/0505/23 „Possibilities of using alternative dispute resolution (ADR) in public administration".

[2] Mgr., PhDr., PhD., Univerzita Pavla Jozefa Šafárika v Košiciach, Fakulta verejnej správy, Slovenská republika
Pavol Jozef Šafárik University in Košice, Faculty of Public Administration, Slovak Republic.

[3] doc. JUDr., PhD., Univerzita Pavla Jozefa Šafárika v Košiciach, Fakulta verejnej správy, Slovenská republika
Pavol Jozef Šafárik University in Košice, Faculty of Public Administration, Slovak Republic.

[4] Mgr., PhD., Univerzita Pavla Jozefa Šafárika v Košiciach, Fakulta verejnej správy, Slovenská republika
Pavol Jozef Šafárik University in Košice, Faculty of Public Administration, Slovak Republic.

I. INTRODUCTION

The environment creates natural conditions for the existence of humanity. It is man who, through his intensive interventions in the environment, creates pressure for its negative and, above all, extremely dynamic changes. The ongoing process of satisfying the growing need to find primary raw materials and energy resources, coupled with massive landscape change, is leading to environmental degradation below a level that is safe for human health and the smooth development of future generations.[5] Natural resources can, in certain circumstances, run up against their limits.

In creating legal norms with an environmental context, political elites seek a compromise between effective environmental protection and the pursuit of further technological progress or the provision and maintenance of life's comforts and conveniences. It is evident that in today's global situation, political representatives of different countries have different perspectives on the intensity of the need to protect the environment. We can also find countries whose leaders even downplay the global issues of climate change, deforestation, deteriorating air quality, water quality and others.

The challenge in the above-mentioned context is that environmental problems often do not cut across national administrative boundaries. The impacts of negative activities in one state can imply and cause environmental harm across borders, transnationally, and in some cases, globally. International cooperation between countries can, in our view, be seen as one of the important factors for the exercise of good governance. It is seen by the professional community as a principled and integral part of the exercise of public authority in democratic countries.[6,7]

This legal-theoretical topic is also of interest to scientists and researchers who, in their scholarly work, point out, among other things, dangerous tendencies in the intolerance of international interests in environmental protection. They point, for example, to the need for the rule of law as a prerequisite for good international cooperation.[8] They discuss the need to consider more actively linking the right to a favourable environment to the catalogue of fundamental rights and freedoms. [9,10]

The historical penetration of environmental legal norms into national legal orders and their gradual strengthening also responds to the experience of transboundary problems and litigation situations. Issues of transboundary prohibitions or restrictions involving environmental components are also a related topic. They get among the sources of law by laws, sometimes even by constitution directly. In Slovakia, typical example of such prohibitions is, for example, the constitutional prohibition on the export of water across borders.[11,12]

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5 Judgment of the Supreme Court of the Slovak Republic from 14 May 2013, Case No. 1 Sžp 1/2010.

6 SKULOVÁ, S. Principy dobré správy jako součást modernizace veřejné správy. In: Právník, 2005, vol. 144, no. 6, p. 553–586. ISSN 0231-6625.

7 LACINA, K. Implementace principů „dobrého vládnutí“ (good governance) a jejich efektivnost. In: Scientific Papers of the University of Pardubice, 2010. ISSN 1211-555X.

8 DE SADELEER, N. The Rule of Law: A Core Premise for the Effectiveness of International Environmental Law. In: European Journal of Risk Regulation, 2024, vol. 15, no. 3, p. 572-587. ISSN 1867299X. DOI: 10.1017/err.2024.16.

9 WARNOCK, C. and PRESTON, J.B. Climate Change, Fundamental Rights, and Statutory Interpretation. In: Journal of Environmental Law, 2023, vol. 35, no. 1, p. 47-64. ISSN 09528873. DOI: 10.1093/jel/eqad002.

10 CIMA, E. The right to a healthy environment: Reconceptualizing human rights in the face of climate change. In: Review of European, Comparative and International Environmental Law, 2022, vol. 31, no. 1, p. 38-49. ISSN 20500386. DOI: 10.1111/reel.12430.

11 JAKAB, R. Prohibition of cross-border water transport in the conditions of the Slovak Republic and its legal consequences. In: Journal of Agricultural and Environmental Law, 2023, vol 18, no. 35, p. 49-63. ISSN 1788-6171. DOI: 10.21029/JAEL.2023.35.49.

As the ideas of legal protection of the environment expanded, the basic legal principles and tenets of this branch of law took shape in the second half of the 20th century. In addition to the basic principles of prevention, the polluter pays principle, the precautionary principle, the principle of a high level of environmental protection, the principle of integration[13] and others, we have focused our attention on the principle of environmental impact assessment. Mainly because it is one of the fundamental principles that has been transformed into a specific legal instrument. It is environmental impact assessment (hereinafter also referred to as „EIA"), an instrument which *„is an important instrument for implementing and strengthening sustainable development."*[14]

This tool in practice, in our view, delivers real results. As a matter of priority, it assists in the implementation of preventive actions and aims to eliminate potential future harmful activities in the landscape. We respect that this tool is neither ideal nor perfect. It is often criticised in society for obstructing and prolonging, for example, the legal and administrative processes of construction or planning. More vigorous criticism even attacks the EIA process, as it is commonly abbreviated, with the opinion that it hinders development activities in the territory.

However, its priority should be a professional and independent assessment of potential risks to the environment. Environmental impact assessment is one of the legal instruments that make environmental care more effective. This process, and particularly its results, help public decision-makers to make sound and sustainable decisions[15] and is one of the critical elements of this decision-making.[16] We share the view that *„consultation and public participation are integral to this evaluation. EIA is thus an anticipatory, participatory environmental management tool."*[17]

The institute of environmental impact assessment also has its place in the Slovak legal order. However, it is not a historically anchored and traditional pillar of environmental protection in our legal space. It was only the gradual penetration of international environmental impact assessments, particularly in the 1990s, that helped to establish this institute in Slovakia and to start using it actively in Slovakia as well.[18]

The object and purpose of the EIA legislation is that *„the conceptual and management activities of the public administration, as well as its decision-making activities, should take into account the interests of environmental protection."*[19] The legal basis of the EIA and its procedures are mainly regulated by Act No. 24/2006 Coll. on Environmental Impact

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[12] KRÁL, R. Ústavný zákaz vývozu vody cez hranice Slovenskej republiky. In: Justičná revue, 2016, no. 2, p. 137-147. ISSN 1335-6461.

[13] CEPEK, B. et al. Environmentálne právo. Všeobecná a osobitná časť. Plzeň: Vydavatelství a nakladatelství Aleš Čeněk, s.r.o., 2015, p. 442. ISBN 978-80-7380-560-9.

[14] PETTS, J. et al. Handbook of Environmental Impact Assessment, Volume 2. Environmental Impact Assessment in Practice: Impact and Limitations. Birmingham: Centre for Environmental Research and Training, The University of Birmingham, 1999, p. 450. ISBN 0-632-04771-2.

[15] ALABI, M. Environmental Impact Assessment: A Critical Analysis of Tools, Techniques, and Best Practices. [online]. 2024. [Accessed 24. January 2025]. Available from https://www.researchgate.net/publication/385242747_Environmental Impact_Assessment_A_Critical_Analysis_of_Tools_Techniques_and_Best_Practices.

[16] PINHEIRO, M. D. Environmental Impact Assessment—Exploring New Frontiers. In: Environments, 2025, vol. 12, no. 1. ISSN 2076-3298. DOI: 10.3390/environments12010008.

[17] JAY, S. et al. Environmental impact assessment: Retrospect and prospect. In: Environmental Impact Assessment Review, 2007, vol. 27, no. 4, p. 287- 300. ISSN 0195-9255. DOI: 10.1016/j.eiar.2006.12.001.

[18] KATRLÍK, R. Zákon o posudzovaní vplyvov na životné prostredie. Komentár. Bratislava: Wolters Kluwer, s.r.o. 2016, p. 393. ISBN: 978-80-8168-340-4.

[19] KOŠIČIAROVÁ, S. et al. Právo životného prostredia. 2. vydanie, Plzeň: Vydavatelství a nakladatelství Aleš Čeněk, s.r.o., 2009, p. 680. ISBN: 978-80-7380-143-4.

Assessment and on Amendments and Additions to Certain Acts, as amended (hereinafter also referred to as the „EIA Act").

In this paper, we will focus on the assessment of transboundary impacts under Sections 40-52 of the EIA Act. This is a procedure with a special element of potential involvement of a foreign state in the legal-application process taking place in the Slovak Republic. In the given situation we distinguish two types of possible assessments.

The first type is the assessment of strategic documents. The second is the assessment of proposed activities. The present paper analyses only the procedure for assessing the impacts of proposed activities that cross national borders. The reason for narrowing our research is mainly our interest in examining the assessment of proposed activities, where we believe that environmental transboundary conflict can potentially occur more frequently than in the assessment of strategic documents.

In the administrative procedure for assessing the environmental impacts of proposed activities crossing national borders, there is a cross-border interaction of actors. At the same time, their conflicting positions and interests are not excluded. Several actors are involved in the procedure under analysis. The first actor is the party of origin. According to Section 3 (v) of the EIA Act, *„a Party of origin is the State in whose territory it is proposed to adopt a strategic document and to carry out a proposed activity or a change thereto which may have a significant adverse effect transcending national boundaries."* The second entity is the affected party. An affected party is, according to Section 3 (w) of the EIA Act, *„a State which may be affected by a significant adverse impact of the strategic document and the proposed activity or change thereof extending beyond national borders."* A third party may be, for example, the affected public, whether on the party of origin or the affected party. The proponent of the proposed activity or change may also be a party to the conflict. The clash of conflicting interests and conflicts or disputes is therefore not exceptional in this administrative procedure.

According to Molitoris, *„the term legal dispute refers to a conflict or disagreement concerning the existence of a legally regulated obligation or right or concerning claims arising out of a breach of such an obligation or right."*[20] In the present case, one can obviously speak of an extensional view of the notion of dispute in law.

We believe that in administrative proceedings (which may include EIA proceedings), it should be in the interest of every administrative authority to seek to minimize any existing contradictions between the parties to the proceedings and other subjects of the proceedings. The Slovak legal order knows several of the instruments of administrative proceedings that can lead to the resolution of disputes, even with limited authoritative influence of the administrative authority (e.g. the institute of conciliation pursuant to Section 48 of Act No. 71/1967 Coll. Administrative Procedure Code).

The idea and aim of this paper are to analyse the already existing legal instruments of the EIA Act, which „open the door" to consensual resolution of potential disputes with a transboundary element. At the same time, the ambition is to put forward ideas that could be the basis for further expert discussion in the effort to expand the possibilities of using consensual means in resolving disputes in this area of public administration.

In order to fulfil our objective, we set two research questions: I.) What tools does the current version of the EIA Act offer for eliminating transboundary disputes in EIA assessment

[20] MOLITORIS, P. Konsenzuálne prostriedky alternatívneho riešenia sporov v správnom konaní. Košice: Univerzita P.J. Šafárika v Košiciach, Fakulta verejnej správy, 2016, p. 158. ISBN 978-80-8152-467-7.

and are these tools effective and sufficient? II.) To what extent is mediation potentially usable as an alternative dispute resolution tool in EIA processes with a transboundary element?

In the research of the presented topic and the preparation of the paper, scientific methods corresponding to the solution of research tasks in the field of social science disciplines, especially legal sciences and sciences devoted to the study of the functioning of public administration, were used. The basis and starting point were the application of an appropriate level of scientific abstraction, subsidiary supported by the method of scientific analysis. In particular, the legal sources of the de lege lata status were analysed. These cross-cutting methods of research were systematically supplemented using the methods of legal logic and interpretation of the legal norms under examination. Priority was given to the use of methods of linguistic, logical or systematic interpretation. The search method with the use of the method of comparison were characteristic for the work with the sources of the existing literature, scientific articles and other sources related to the treated topic. The methods described above were supported by methods of working with information and communication technologies for searching, evaluating and processing electronic sources of information. The use of the described methods and the critical analysis of the data led us to consider solutions and improvements to the current legal situation.

II. EIA CROSS-BORDER ASSESSMENT AND DISPUTE RESOLUTION

The EIA process in Slovakia has legally established procedures and rules. A special situation arises if the activities to be assessed through EIA in Slovakia are of a special nature. Particularly in terms of the scale of their implementation, or the intensity of their action in the territory, or they may operate in an area with a different increased level of risk.[21] The EIA Act defines the conditions under which the activities under consideration become subject to transboundary impact assessment.

This is a situation where the subject of the assessment is an activity listed exhaustively in Annex 13 of the EIA Act. This Annex contains 19 activities. For illustrative purposes, these include, for example, activities related to oil refineries, facilities dedicated exclusively to the production or enrichment of nuclear fuel, activities related to complex chemical installations, large-scale deforestation and others.

The second possibility is that it is an activity as defined in Annex 8 of the EIA Act or a change to such an activity. However, the condition is that there is a presumption that these activities could have a significant impact on the environment beyond national boundaries. There are dozens of such activities defined in Annex 8 of the Act. They are clearly and precisely defined. The Act uses the conceptual definition of „significant impact on the environment" repeatedly, but leaves it as a legally vague concept, leaving it to the administrative authority to define its meaning in specific situations.

The assessment of whether an activity may have a significant effect on the environment will in this case be a matter for the competent administrative authority. In this situation, the competent authority is the district office or the district office at the seat of a region. In assessing the significance of the impact, the administrative authorities must be guided by and assess the proposed activity according to the criteria set out in Annex 14 of the EIA Act. The criteria are the scale of the activity, the location of the activity and the third criterion is the impacts of the activity.

[21] We note that the EIA Act also regulates situations where the Slovak Republic will act as an affected party (Sections 51-52 of the EIA Act). This specific process is not the subject of the analysis of our paper.

If the administrative authority finds that a transboundary assessment is justified in a particular case, there is an automatic ex lege transfer of competence to the Ministry of the Environment of the Slovak Republic. This is the authority competent to act in environmental impact assessment proceedings transcending national borders (Section 40 (2) of the EIA Act).

It should be noted that other (additional) activities not listed in the annexes of the EIA Act may also be subject to transboundary assessment, if agreed between the party of origin and the affected party concerned.

In environmental impact assessment, the quality of the environment is a legitimate interest and at the same time every effort should be made to at least maintain its current level. A potential source of conflict in EIA processes with a transboundary element will be precisely the different view of the impacts that the proposed activity or its modification may bring to the landscape of the so-called affected party. Or simply put, it will be dissatisfaction with the fact that a particular activity will be carried out in a "foreign" territory where it is highly likely to fulfil its chosen purpose (in particular, to achieve economic or social benefits), but where the negative environmental impacts of the activity will also operate across borders. This is on the territory of a country that is likely to benefit significantly less from the activity than the country of origin, or not at all.

The current wording of the EIA Act introduces instruments that aim to clarify and explain potential conflicts or inconsistent perceptions of the proponent, the affected public or the affected party. A particular specificity is the possibility for stakeholders to agree on the basic rules of the whole administrative EIA process.

The first instrument that allows for modification of the whole EIA process is the possibility for states to modify the EIA process by bilateral agreement between themselves. This possibility for the assessment of the impacts of domestic activities on foreign countries stems from the provisions of Section 41 (1) of the EIA Act, which brings the primacy of an international treaty (if concluded) over the procedures defined in the EIA Act. For example, the Slovak Republic has concluded an international agreement with Austria.[22]

A significant multilateral international document in this issue is the Convention on Environmental Impact Assessment in a Transboundary Context, adopted in Espoo (Finland) on 25. February 1991 (hereinafter also referred to as the "Espoo Convention"), to which the Slovak Republic also acceded, and which entered into force on 17. February 2000.[23] The Espoo Convention itself foresees the emergence and possible existence of conflicts between its parties in transboundary assessments arising from an incorrect (inconsistent) interpretation of the Convention.

In Article 15 of the Espoo Convention, which is entitled "Settlement of disputes", the Convention offers very variable options for finding solutions to disputes. According to paragraph 1, *„when a dispute arises between two or more Parties concerning the interpretation or application of this Convention, the Parties shall seek a solution by negotiation or by any other method of dispute settlement acceptable to those Parties.“* If the joint search for ways to resolve the problem is not successful, the Espoo Convention offers other options, namely arbitration (the terms of which it itself regulates in Appendix VII) or submission to an International Court of Justice.

[22] Agreement between the Government of the Slovak Republic and the Government of the Republic of Austria on the implementation of the Convention on Environmental Impact Assessment Transboundary.

[23] SLOVENSKÁ AGENTÚRA ŽIVOTNÉHO PROSTREDIA. Dohovor o hodnotení vplyvov na životné prostredie presahujúcich štátne hranice. [online]. [Accessed 25. January 2025]. Available from https://www.enviroportal.sk/dokument/dohovor-z-espoo#posudzovanie-vplyvov-na-zp.

In case of a dispute where the details of the EIA procedure are not regulated by an international agreement or a bilateral treaty to which the Slovak Republic is bound, the provisions of the second and third parts of the EIA Act shall apply mutatis mutandis, with the derogations set out in Sections 42 to 52. The general provisions of the Administrative Procedure Code shall not apply to this procedure[24] (Section 64 (a)).

The admissibility of international regulation of the EIA process provides ample scope for negotiating the specifics of the procedure, where dispute resolution is based on balanced communication, discussion and an effort to seek compromise in a manner acceptable to both parties. These are elements that are particularly characteristic of the international law sector.

The second instrument that deserves attention from the perspective of examining the topic of alternative dispute resolution in administrative proceedings is the institution of so-called consultation. This institute is not typical for many types of administrative proceedings in Slovakia. The institute of consultation is generally characteristic of the whole EIA process[25] and contributes to increasing the transparency and openness of the whole assessment process, while ensuring public access to decision-making and permitting processes in public administration. In this way, the Slovak Republic fulfils its international obligations, which are based on the Aarhus Convention.[26] Consultations create a space for immediate discussion and debate to clarify attitudes, views, ideas and knowledge on the activity under consideration or its change. This undoubtedly makes consultations a tool suitable for defusing tensions, explaining contentious issues, perhaps presenting arguments leading to the suppression of conflict. It should be recalled that consultation is a proper part of the whole administrative process/proceedings in environmental impact assessment under the EIA Act.

The Ministry of the Environment of the Slovak Republic, as the assessing authority within the meaning of Section 47 (1) of the EIA Act, shall promptly deliver the report on the assessment of the proposed activity or its modification to the affected party. At the same time, it shall ask the latter to state whether it is interested in carrying out consultations. It is therefore an optional possibility or right of the affected party to consult on selected issues of the activity under assessment.

If the party concerned expresses an interest, consultations will take place. As a rule, the applicant and the authorising authority shall be invited to the consultation exercise. The statutory wording expressed by the term „normally" does not preclude the possibility for the Ministry to invite other relevant bodies to the consultation if necessary. For example, the subject of the consultation may be, according to the EIA Act, the possible transboundary impacts of the activity or project under consideration. Furthermore, the subject of the consultation may also be envisaged measures to reduce or eliminate transboundary impacts or the agreement of the consulting parties on a sufficient timeframe for the duration of the consultation.

The legislation leaves the format, process and conduct of consultations unregulated. As these will be international meetings at State level, the use of the basic rules of international protocol is an option. For acts with a cross-border element, it is usually necessary to consider

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24 Act No. 71/1967 Coll. on Administrative Proceedings (Administrative Procedure Code), as amended.

25 See e.g. provisions of Section 63, Section 47, Section 42 (5) and (6) of the EIA Act.

26 ***"The Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters (Aarhus Convention)*** *was signed on 25 June 1998 at the 4th Ministerial Conference of the United Nations Economic Commission for Europe "Environment for Europe" in Aarhus, Denmark. In the international context, this Convention is considered one of the most important documents of its time - it is described as a qualitative breakthrough in communication between public administrations and citizens, as a tool to deepen democracy and to promote human rights and freedoms".* Ministerstvo životného prostredia Slovenskej republiky. Aarhuský dohovor. [online]. [Accessed 29 January 2025]. Available from https://www.minzp.sk/aarhus/?wa=W11ENEK.

other aspects (cultural, historical, economic or social) in addition to the potential language barrier.

Undoubtedly, staff with expertise in the implementation of the EIA process, or other staff of the departmental bodies with expertise related to the activity under consideration, participate in the meetings on behalf of the Ministry of the Environment in the framework of the consultations. From our academic point of view, the question of whether these employees also got a certain degree of knowledge, expertise or experience in dealing with conflicts or disputes and in conducting meetings where the parties may have conflicting interests comes to the fore.

The expectation of the legislator in drafting this legislation was that the consultation would produce results in the form of certain conclusions. This can be deduced directly from the wording of the law (Section 48), where the evaluation of the conclusions of the consultation is mentioned as a mandatory part of the final opinion of the assessment process (according to Section 37 of the EIA Act). This opinion also includes an evaluation of the comments, for example in cases where consultation was not carried out at all or in situations where the affected party insisted on submitting comments on the activity under assessment even after the consultation had been carried out.

In the context of the first research question posed, which was: „What tools does the current version of the EIA Act offer for eliminating transboundary disputes in EIA assessment and are these tools effective and sufficient?" it can be stated that the current legislation provides several legal ways to approach the arising dispute situations and to offer a basis for their consensual resolution. We have pointed out the relative freedom for states to regulate environmental impact assessments with transboundary impacts by bilateral agreement, i.e. quite differently from the EIA Act.

This does not preclude the use of individual appropriate dispute resolution tools. At the same time, the international obligations of the Slovak Republic for the conduct of the EIA process stemming from the Espoo Convention, which directly regulates the issues of disputes and offers tools for their resolution, have been identified. The last option analysed is to open consultations of stakeholders, preferably the party of origin and the affected party, in the process of assessing activities on the territory of Slovakia, according to the EIA Act.

We are of the opinion that the current concept of instruments in the EIA is sufficient and appropriate. It provides several alternatives for the creation of platforms for the mutual clarification of conflicting interests, which is an elementary prerequisite for the search for consensus.

III. ALTERNATIVE WAYS OF CONFLICT RESOLUTION

The instruments described above are known and used by our legal system. If we were to consider other potential options and institutes, which should aim at an even more sensitive search for ways to eliminate and prevent cross-border conflicts, we could consider alternative dispute resolution in public administration.

Molitoris and Žofčinová state *that „alternative dispute resolution (also abbreviated as "ADR" from the English Alternative Dispute Resolution) is now a stable part of the legal systems of most European countries..."*[27] There is not much Slovak literature fully devoted to the topic of alternative tools for dispute resolution in public administration. One can mention the already cited work by Molitoris. Thematically, the study of the topic can use expert works

[27] MOLITORIS, P. and ŽOFČINOVÁ, V. Mediácia v správnych veciach v podmienkach členských štátov Rady Európy. In: Správne právo bez hraníc. Zborník vedeckých prác. Košice: ŠafárikPress, 2024. s. 95-104. ISBN ISBN 978-80-574-0294-7. DOI: 10.33542/SPH2024-0294-7.

devoted, for example, generally to the topic of mediation (Tragalová, Tužinská, Labáth 2023), (Gábrišová 2014), diversions in criminal proceedings and other content-related fields. Several foreign sources of literature can be found in the field, offering different perspectives and experiences with the use of these tools.[28,29]

Although international experience speaks of the potential of the use of alternative tools in the judiciary and in public administration, the results of the international evaluation at the level of the Council of Europe nevertheless point to significant quantitative and qualitative differences in the use of ADR in the different countries surveyed.[30]

The question is therefore to what extent ADR can be used in public administration in Slovakia, specifically when examining the topic of environmental impact assessment. From the palette of ADR tools, it would probably be possible to consider processes close to mediation or mediation directly. It should be recalled in the same breath that the Slovak Mediation Act No. 420/2004 Coll. as amended, defines mediation as a tool for resolving disputes arising from civil law relations, family law relations, commercial obligation relations and employment law relations. Similarly, the law applies to mediation to cross-border disputes arising from similar conflicts, with the following statutory exceptions.[31] Disputes in public administration arising from administrative law relations are omitted from the current law.

Therefore, this is an area that is nowadays primarily theoretical, but this should not diminish the ambition to consider such legal instruments that could bring into the legal order elements that would lighten the authoritative decision-making of administrative authorities.

The above-mentioned consultation and commenting possibilities in transboundary environmental impact assessments could be supported by optional mediation between the parties. This is where the parties recognise a common interest in resolving conflicting positions in the presence of a qualified mediator.

We share the view that *„mediation methods are based on negotiation in line with cooperation and mutual respect for the interests of the parties. Mediation is possible only when both parties want to resolve the conflict."*[32] In relation to international mediation, Tragalová points out that *„cross-border disputes are usually associated with even longer proceedings and higher costs than domestic disputes."*[33]

The EIA Act does not in any of its provisions provide for additional possibilities for correcting conflicting interests of the parties in the process of environmental impact assessment across national borders. Proposals and considerations on the extension of the existing legislation on transboundary EIA should be preceded by discussions on the issues of optional mediation between the party of origin and the affected party. Other issues concern

[28] DRAGOS, D.C. and NEAMTU, B. Alternative Dispute Resolution in European Administrative Law. Heidelberg: Springer- Verlag, 2014, p. 605. ISBN 978-3-642-34945-4. DOI: 10.1007/978-3-642-34946-1.

[29] MOLITORIS, P. Alternatívne riešenia sporov pri výkone verejnej správy orgánmi územnej samosprávy. In: Metamorfózy práva ve střední Evropě V. Překrásný nový svět nebo ostrov? Plzeň : Vydavatelství a nakladatelství Aleš Čeněk, 2017, p. 244-260. ISBN 9788073806361.

[30] MOLITORIS, P. and ŽOFČINOVÁ, V. Possibilities of using mediation in administrative cases in the Slovak Republic and in selected european countries. In: Studia Iuridica Cassoviensia, 2024, vol. 12, no. 2, p. 154-164. ISSN 1339-3995. DOI: 10.33542/SIC2024-2-10.

[31] Section 1 (2) of Act No. 420/2004 Coll. on mediation as amended.

[32] KOKOEVA, L.T. et al. Mediation as a Way to Resolve Conflicts. In: Business 4.0 as a Subject of the Digital Economy. Cham: Springer Nature Switzerland AG, 2022, p. 877-882. ISBN 978-3-030-90323-7. DOI: 10.1007/978-3-030-90324-4143.

[33] TRAGALOVÁ, D. Obec ako účastník mediácie. In: Obec – škola – mediácia. Bratislava: Asociácia mediátorov Slovenska, 2014, s. 229-239. ISBN 978-80-971616-3-7.

the bearing of the costs of mediation as well as an analysis of the optimisation of the time-consuming nature of mediation.

An indisputably important question would be to what extent the assessing authority should consider and accept bindingly in its decision-making in the EIA process the conclusions of the mediation agreement. These conclusions could, in our view, ultimately result, for example, in the affected party being able to reconsider comments it had considered making in the procedure, which had negative connotations for the activity under consideration, and to moderate or soften its comments due to mediation activities, or not to make comments at all. Mediation could result in concessions by the proponent in the EIA procedure, which could result, in the extreme case, in the withdrawal of the proposal and thus the termination of the procedure. However, from a theoretical point of view, this is an idea.

In answering the second research question, „to what extent is mediation potentially usable as an alternative dispute resolution tool in an EIA process with a transboundary element?", we conclude that a mediation agreement, as an output of mediation, is not admissible in a de lege lata as a relevant treasure for a decision in an administrative law environmental impact assessment procedure.

IV. CONCLUSION

In the sphere of international politics, in recent years there has been an increasingly noticeable trend towards the weakening of the importance of international law, hand in hand with tendencies towards the strengthening of the sovereignty of states as subjects of international law. In the environmental sphere, especially in its part reflecting global challenges, the moods in question have resulted in a substantial increase in the demands in the process of identifying and then implementing solutions improving the state of the environment. It is from this perspective that we consider the present article as our contribution to thinking about the sustainability of a system of small but continuous steps towards improving the overall state of ecosystems.

The environmental impact assessment process, despite some of its negative side effects, is a very useful tool for environmental protection as it concentrates on the element of prevention. At the same time, the subject of alternative dispute resolution in public administration also has a place in the evolving concepts of modern governance. According to Gábrišová, *„the use of the institute of civil mediation in all state or non-state sectors, its importance, practical application, the problems encountered in its activities and the proposed appropriate options for their resolution can serve as conflict prevention."*[34] Linking the two thematic layers offers a search for an effective model of the impact assessment process. Strengthening the initial space for forming compromises in the process of resolving disputes between states as strong sovereigns in internal environmental politics could contribute to not lowering the level of environmental protection at the transnational or global level. Ultimately, the appropriate combination between EIA and ADR is also capable of contributing positively to the „eternal" balancing of democracy and expertise in a modern rule of law facing new challenges from global politics. We therefore consider it important that the use of ADR resources in the sphere of environmental administration becomes an increasingly debated topic. However unattractive and overly academic the use of these means in environmental protection may seem at first glance, we see it as a very urgent requirement that society will be well prepared for the various variants of global policy developments. Effective protection of

[34] GÁBRIŠOVÁ, A. Hodená rukavica obciam a mestám. In: Obec – škola – mediácia. Bratislava: Asociácia mediátorov Slovenska, 2014, s. 50-55. ISBN 978-80-971616-3-7.

global environmental values will be crucial in near future. At the same time, it is also a matter of fulfilling the Slovak Republic's international legal obligations to protect the environment not only by creating the most effective legal but also non-legal means.[35]

KĽÚČOVÉ SLOVÁ
spor, životné prostredie, posudzovanie vplyvov, EIA

KEY WORDS
dispute, environment, impact assessment, EIA

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CONTACT DETAILS OF THE AUTHORS

Mgr. PhDr. Rastislav Král, PhD.
ORCID: https://orcid.org/0009-0008-5584-0329
Assistant Professor
Pavol Jozef Šafárik University in Košice
Faculty of Public Administration
Department of Public Law Disciplines
Popradská 66, 040 11 Košice
Phone number: +421 55 234 5124
E-mail: rastislav.kral@upjs.sk

doc. JUDr. Martin Vernarský, PhD.
ORCID: https://orcid.org/0000-0003-1004-0025
Associate Professor
Pavol Jozef Šafárik University in Košice
Faculty of Public Administration
Department of Public Law Disciplines
Popradská 66, 040 11 Košice
Phone number: +421 55 234 5122
E-mail:martin.vernarsky@upjs.sk

Mgr. Viktória Adamov Kráľová, PhD.
ORCID: https://orcid.org/0000-0002-4815-3132
Assistant Professor
Pavol Jozef Šafárik University in Košice
Faculty of Public Administration
Department of Public Law Disciplines
Popradská 66, 040 11 Košice
Phone number: +421 55 234 5124
E-mail: viktoria.kralova@upjs.sk