Alternative dispute resolution In administrative matters – Polish answers

1.
The term "alternative procedures" means a method of resolving an administrative case by way of employing other procedure than the general procedure (that is issuing a decision by a competent administrative body or court).
According to the definition above, currently there are two such procedures in use in Polish administrative cases: settlement agreement and mediation (see the answer to the next question).

2.

Under the Polish law, there are two alternative methods of dispute resolution in administrative cases. They can be applied at the stage of administrative proceedings (before an administrative body) as well as later – at the stage of proceeding before the administrative court.

As regards administrative proceedings, cases with parties having opposing interests may be resolved by way of a settlement agreement concluded before the public administrative body (art. 13 § 1 of the Act of 14 June 1960 – Code of Administrative Procedure, uniform text, Dz. U. – Polish Journal of Laws 2013, item 267, as amended, hereinafter: "CAP").

As far as proceedings before the administrative court are concerned, a mediation procedure may be carried out upon a petition of the complainant or the body submitted prior to court hearing. The goal of mediation is to investigate and consider the factual and legal circumstances of the case, and to enable the parties to agree upon the methods of resolving it under law (art. 115 § 1 of the Act of 30 August 2002 – Law on proceedings before administrative courts, uniform text Dz. U. – Journal of Law of 2012, item 270, as amended, hereinafter: "LPBAC").

I.

1.
The main objective of a settlement agreement and mediation is to facilitate and simplify the proceedings aimed at resolving an administrative case. These institutions pose an opportunity to arrive at a solution that will be acceptable for both parties to the proceedings before public authorities.

2.
The instrument of settlement agreement in administrative proceedings came into force under CAP amendment of 28 March 1980, which came into force on 31 August 1980.

Mediation is regulated in the Polish law in chapter 8. sec. III of LPBAC, which came into force on 1 January 2004. The mediation procedure was meant to be one of special procedures in proceedings before voivodship administrative courts (administrative courts of the first

instance). This is a court mediation linked, functionally and organisationally, to administrative courts.

Its basis in this type of proceedings stems from the recommendation of the Recommendation Rec(2001)9 of the Committee of Ministers to member states on alternatives to litigation between administrative authorities and private parties. According to this recommendation, private parties have the right to submit proposals concerning an amendment, repeal, or a withdrawal of an act already issued; however, the purpose of mediation is making possible for the parties to reach an agreement. The basic reason for introducing mediation into proceedings before voivodship administrative courts was the intention to avoid the congestion in administrative courts, to enable the body to correct its errors that may have occurred during the administrative procedure and to address justified objections of the complainant.

The institution of mediation proceedings is not broadly applied in administrative courts. In 2014, ten mediation proceedings were initiated before first instance courts, and only four cases were resolved in this mode. To compare, in 2014, voivodship administrative courts handled 74,728 complaints.

From the moment the mediation procedure was introduced (2004), the statistical results for this procedure were as follows: in 2004 – 679 proceedings were initiated, 170 were resolved; in 2005 – 204 proceedings were initiated, 107 were resolved; in 2006 – 172 proceedings were initiated, 66 were resolved; in 2007 – 87 proceedings were initiated, 17 were resolved; in 2008 – 36 proceedings were initiated, 16 were handled; in 2009 – 21 proceedings were initiated, 3 were resolved; in 2010 – 11 proceedings were initiated, 2 were resolved; in 2011 – 23 proceedings were initiated, 8 were resolved; in 2012 – 25 proceedings were initiated, 4 were resolved; in 2013 – 8 proceedings were initiated, 5 were resolved.

3.
Art. 114 of CAP makes reaching an settlement agreement possible on three conditions:
1) if the nature of the case is suitable (the case must be subject to the administrative procedure and involve parties of opposing interests);
2) reaching an agreement would contribute to simplification and acceleration of the proceedings;
3) the law does not preclude resolving the case by settlement agreement.

A settlement agreement is allowed if parties submit joint statements about their intention to reach settlement before the public administration body (art. 116 § 1 CAP). The public administration body defers issuing a decision and imposes a deadline for settlement. Reaching a settlement is not allowed before administrative proceedings are instigated or after the administrative proceedings has been resolved.

Settlement proceedings are not allowed in, e.g., expropriation proceedings, or in unauthorised construction cases.

On the other hand, mediation proceedings may apply to all acts or actions which can be challenged before administrative courts, including failures to act. The only limitation for mediation proceedings resulting from a petition of a party is submitting such petition before the hearing date is set by the court (art. 115 § 1 LPBAC).

4.
As indicated above, the relevant regulations can be found in generally applicable procedural laws (CAP and LPBAC).

5.
N/A

II.

1.
The provisions of CAP and LPBAC give the right to initiate alternative procedures to "parties to the proceedings" (settlement agreement) and "complainant" and "body" (mediation).
Parties to the proceedings may be natural and legal persons, and when it comes to state or local organisational units and social organisations – also entities which do not have legal personality (art. 29 CAP).
In court-administrative proceedings, the complainant is an entity indicated in art. 50 LPBAC who made use of the right to make a complaint. Under art. 50 LPBAC, a complaint may be filed by anybody who has legal interest (e.g. party to administrative proceedings) and other entity who, under the act, has the right to file a complaint (e.g. public prosecutor, Commissioner for Human Rights, Ombudsman for Children, social organisations).

2.
In the case of settlement agreement procedure, the content of the settlement is shaped only in line with mutual will of the parties. The public administration body may not formulate the settlement wording by changing the will of the parties, or shape it without the parties' participation. The provisions of the CAP do not provide for the possibility to entrust a third party with conducting settlement agreement proceedings.

Mediation proceedings may only be conducted by a judge or law clerk (art. 116 § 1 LPBAC). The obligation of the judge, or law clerk, in charge of mediation is to actively participate in mediation proceedings: the mediator should point to issues and offer acceptable solutions to the parties; the mediator should monitor compliance with the law of the solutions proposed and approved of by the parties. It is not possible to entrust a third party with conducting mediation proceedings.

3.
N/A – as indicated above, it is not possible to entrust a third party with conducting mediation proceedings or settlement agreement proceedings.

4.
Under art. 115 § 2 LPBAC, mediation proceedings may carried out even if the parties have not requested that such proceedings be instituted, namely in a situation when the court decides that mediation is recommended, while neither party filed an adequate request, so the court institutes proceedings ex officio. Instituting mediation proceedings ex officio may also take

place when one party filed a request for mediation was lodged after the expiry of prescribed time limit.

5.
As indicated above, mediation proceedings can be handled by a judge or law clerk (art. 116 § 1 LPBAC).
The aim of appointing in the act a judge or law clerk as mediators was to ensure a highly competent intermediary. This is because the judge (or law clerk) – by assumption – has extensive knowledge of law and administrative proceedings, as well as experience in practical application thereof. Moreover, with a judge or a law clerk acting as mediators, there is a natural guarantee that the parties would not make settlements in violation of the law as the mediator would react, should this be the case, and would make sure that the parties avoid potential illegal dispute resolutions.

III.

1.
In Poland there is one alternative procedure, both at the stage of administrative procedure (settlement agreement) and at the stage of court-administrative procedure (mediation).
These procedures have been described above.

2.
In the Polish legal system, before a complaint is lodged to court, it is necessary to exhaust all means of review in administrative proceedings before a body competent in the case (art. 52 LPBAC). "Exhausting the means of review" should be understood here as a situation in which neither party may challenge the administrative act.
In the proceedings before an administrative court of the first instance, it is possible for the parties to present arguments not produced during a prior administrative proceedings. In the proceedings before the Supreme Administrative Court, it is only possible to question correctness of the decision made by the court of first instance.

3.
In settlement proceedings, parties play a crucial role in agreeing on the settlement content. The role of the body comprises:
a) setting a deadline for reaching an agreement (art. 116 § 1 CAP);
a) entering into the case file the fact that an agreement has been reached (art. 117 § 2 CAP);
c) confirming the agreement (art. 118 CAP). The body shall refuse to confirm any agreement that is contrary to the law, is against the public interest, or against the proper interests of the parties.

In mediation proceedings – see the answer to question II.2

4.
In the settlement agreement procedure, filing a joint declaration of intent regarding such an agreement obliges the body to defer issuing a decision and to set for the parties a deadline for reaching an agreement (art. 116 CAP). Such deferral in issuing a decision as well as setting

for the parties a deadline for reaching an agreement are made by way of a resolution that may not be appealed against.

Initiating mediation proceedings and accepting its arrangements may form a basis for suspending the proceedings before the administrative court if the result of the suspended case depends on the implementation of the arrangements made in the mediation procedure. The proceedings may be suspended at the mutual request of the parties that decided to have mediation performed.

5.
As indicated above, the administrative court may instigate ex officio mediation proceedings (see the answer to question II.4 above).
In the course of mediation proceedings, the role of the person in charge of the proceedings is not passive (see the answer to question II.2 above).

IV.

1.
No data available; the only available data refer to the number of cases handled through mediation proceedings and were presented in the answer to question I.2 above.

2.
See the answer to question I.2 above.

3.
Settlement in administrative proceedings requires confirmation by the public administration body before which such settlement was reached (art. 118 § 1 CAP). A confirmed agreement shall have the same effect as a decision issued during administrative proceedings (art. 121 CAP). Polish provisions of law do not provide for the procedure of confirming a settlement by administrative court.

Mediation proceedings end with compiling a record of mediation session in which the positions of the parties are included, especially the arrangements made by the parties (art. 116 § 3 LPBAC). On the bases of arrangements made during mediation proceedings, the body shall set aside or modify the challenged act, or shall made or take other action in accordance with the circumstances of the case within of its own jurisdiction and competence. If the parties have made no arrangement as to the manner of settlement of the case, it shall be subject to a hearing by the court (art. 117 LPBAC).

4.
Under art. 120 CAP, an agreement shall be enforceable from the date on which the resolution confirming it becomes final.
Enforceability of the settlement agreement means both voluntary and obligatory performance by way of administrative enforcement proceedings. The confirmed agreement forms a basis for enforcement proceedings.

The effect of mediation proceedings is the body's obligation to set aside or modify a challenged act, or to take other actions as applicable to the circumstances of the case. Every arrangement made in the course of mediation proceedings should indicate a time limit by which the body shall issue a new decision, or perform, or take other action. A failure to comply with the time limit may result in a complaint on the body's inaction, and further on, should the decision which takes such complaint into account be not performed – a demand to impose penalty on the body.

5.
First of all, one must emphasise that the primary objective of alternative procedures is to counteract lengthiness of proceedings, and to make it possible for the administration body to correct its own errors.

As indicated above, the statistics show that mediation proceedings in their current form raise little interest among the bodies and complainants.

It seems that this primarily results from efficiency of proceedings before administrative courts. As indicated in the information note from the Supreme Administrative Court about activity of administrative courts in 2014, voivodship administrative courts (courts of first instance) conducted, on average, 42.54% of complaints within three months, while within six months – 76.69%). These figures prove significant efficiency of proceedings held at these courts. This also means that an administrative court decision may be obtained within reasonable time limits. For this reason, mediation proceedings lose the advantage of being a faster dispute settlement method.

Moreover, of crucial importance is the way in which administrative-legal relationships are regulated. Administrative cases are resolved in a form of an administrative body’s decisions, so it may be hard for the parties during mediation proceedings to make arrangements in administrative cases from equal position or in a flexible way. Such limitations may also be found at the stage of administrative proceedings, so the proposals to introduce to CAP the regulation on mediation similar to the one in LPBAC, postulated at times in the doctrine, may fail to bring the expected results, namely increased interest in alternative procedures (see W. Federczyk, Mediacja w postępowaniu administracyjnym i sądowoadministracyjnym [Mediation in administrative and court-administrative proceedings], Warsaw 2013).