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The role of a mediator in real property disputes

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Abstract

Being one of alternative forms of legal dispute resolution, mediation is an institution which is becoming more and more popular as its use increases statistically. In practice, mediation is used mainly in civil law disputes, however, the legislators have introduced normative solutions in almost every branch of law to enable the use of this solution if the parties so desire. One of the areas where mediation can be used is also real property disputes. The subject of those disputes will most often be issues related to the mutual performance of financial obligations, although they may also apply to administrative matters. A mediator will play a special role in resolving real property disputes. It is the mediation procedure, well-organized and properly conducted by the mediator, that might determine whether the parties would reach an agreement and make a settlement, or whether no agreement would be attainable. Therefore, it is of essence that mediation proceedings, particularly in real property disputes, are conducted by mediators who not only have conciliation skills, but also extensive legal knowledge, so as not to miss any chance for conflict resolution. Therefore, in the article, the authors drew attention to the essence of mediation, and in particular the role of a mediator in resolving real property disputes.

Keywords: mediator, mediation, real property, dispute, settlement

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Rola mediatora w sporach nieruchomościowych

Mediacja, będąc jedną z alternatywnych form rozstrzygania sporów prawnych, jest instytucją, która staje się coraz bardziej popularna, ponieważ statystycznie jej zastosowanie wzrasta. W praktyce mediacja jest wykorzystywana głównie w sporach cywilnoprawnych, jednakże ustawodawca wprowadził rozwiązania normatywne niemal w każdej gałęzi prawa, które umożliwiają zastosowanie tej instytucji zgodnie z wolą stron. Jednym z obszarów, w którym mediacja może znaleźć zastosowanie, są także spory nieruchomościowe. Przedmiotem takich sporów będą najczęściej kwestie związane ze wzajemnym wykonaniem zobowiązań o charakterze majątkowym, jakkolwiek mogą one dotyczyć również spraw o charakterze administracyjnym. Przy rozstrzyganiu sporów nieruchomościowych szczególną rolę będzie pełnił mediator. Od dobrze zorganizowanego i właściwie przeprowadzonego postępowania mediacyjnego przez mediatora będzie zależało, czy strony dojdą do porozumienia i zawrą ugodę, czy do takiego rozwiązania nie dojdzie. Istotne jest zatem, aby postępowanie mediacyjne zwłaszcza w sporach nieruchomościowych prowadziły osoby posiadające nie tylko umiejętności rozjemcze, ale także rozległą wiedzę prawniczą, aby nie zaprzepaścić szansy na rozstrzygnięcie konfliktu. W artykule autorzy zwrócili zatem uwagę na istotę mediacji, a w szczególności rolę, jaką w rozstrzyganiu sporów nieruchomościowych pełni mediator.

Słowa kluczowe: mediator, mediacja, nieruchomości, spór, ugoda

1. Introduction

In practice real property disputes will concern primarily settlements related to a real property sale agreement, construction work agreement (e.g. covering design works), etc. This area of disputes falls into the general formula of resolving cases of a private law nature, to which the provisions of the Polish Act of 17 November 1964 – the Code of Civil Procedure[3] apply. In the Polish Code of Civil Procedure, the legislator determined e.g. procedures that may be applied to resolve disputes of a private law nature (economic or civil law disputes). The point in this case concerns the possibility to resolve disputes not only by means of the adjudication (court) procedure, but also by means of arbitration or mediation. The institution of mediation is described in the civil procedure in Part II. *Proceedings before Courts of First Instance,* Chapter 1. *Mediation and Conciliatory Proceedings*, Chapter 1. *Mediation* and is discussed from Article 183^1 to 183^{15} of the Polish Code of Civil Procedure. Nevertheless, taking into account the whole Polish Code of Civil Procedure, also other normative areas related to mediation or mediator may be indicated[4].

Looking at real property disputes in a broader way, it is possible to notice that conflicts occurring in this type of cases will concern authority-individual relationships, and they will be of a public law nature. For example, the issue by an authority of a negative decision on the development of a given real property, which takes place within a procedure determined in the Polish Act of 14 June 1960 – the Code of Administrative Procedure, may be indicated[5].

And although the Code of Administrative Procedure determined an appropriate appeal procedure against negative decisions, one of the last amendments to this Code introduced also the institution of mediation (Articles 96a-96n of the Code of Administrative Procedure). Such a solution is a welcome step of the legislator towards social expectations in this scope, which fully anchors mediation in the system of administrative law, and adjusts the previous wording of amicable handling of cases towards the principle of amicable resolution of disputes (Article 13 of the Code of Administrative Procedure)[6].

Taking the foregoing into account, with the area of consideration determined in this way, the article has been limited to the legal-comparative analysis of two regulations anchored in the following acts: the Code of Civil Procedure and the Code of Administrative Procedure concerning the role of a mediator in real property cases.

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3 Journal of Laws of 2019, item 1460, as amended, hereinafter the Code of Civil Procedure.

4 See e.g. Article 98^1(1)-(4) of the Code of Civil Procedure, Article 103(1)-(2) of the Code of Civil Procedure, Article 104^1 of the Code of Civil Procedure, Article 202^1 of the Code of Civil Procedure, Article 259^1 of the Code of Civil Procedure, Article 436(1), (2) and (4) of the Code of Civil Procedure, Article 445^2 of the Code of Civil Procedure and Article 570^2 of the Code of Civil Procedure. Compare K. Michalski, M. Jurgilewicz, *Technological Conflicts. New Architecture of Threats in the Epoch of Great Challenges,* Warsaw 2021, p. 214 et seq. See more in: M. Białecki, *Mediation in Civil Proceedings,* Warsaw 2012; A. Bieliński, *Mediator in Civil Cases – Selected Problems of Foreign and Polish Regulations,* 'ADR Arbitration and Mediation' (ADR Arbitraż i Mediacja) 2008, no. 3; A. Kalisz, *Mediation as a Form of Social Dialogue,* Warsaw 2016; M. Araszkiewicz, J. Czapska, M. Pękala, K. Płeszka (ed.), *Mediation. Theory, Norms, Practice,* Warsaw 2017.

5 Journal of Laws of 2017, item 1257, as amended, hereinafter the Code of Administrative Procedure.

6 P. Przybysz, *Polish Code of Administrative Procedure. Updated Commentary*, Lex/el. 2021. See more in M. Jurgilewicz. *Mediation in Public Administration,* Rzeszów 2018; A. Kalisz, *Administrative and Administrative-court Mediation,* 'State and Law' (Państwo i Prawo), 2018, no. 3, p. 19-39. Compare Kmieciak Z., *Mediation and Conciliation in the Administrative Law,* Kraków 2004.

The attempt to carry out comparative law consideration regarding the role of a mediator is also justified by statistical results. In 2014-2019 the number of cases submitted to common courts in which mediation may be applied remained at a similar level – approximately 2.5 million cases, while the indicator of mediation, i.e. the percentage of cases referred to mediation in relation to all cases submitted to courts in which mediation can be applied, in comparison to previous years was 1.3%. One of the reasons for this situation is the fact that in relation to 2013 the number of cases referred to mediation more than doubled from 13,370 in 2003 to 30,828 in 2019. The number of effective mediation cases also increased from 3,836 in 2013 to 8,204 in 2019, i.e. also more than twice. In 2019 the indicator of the mediation effectiveness, i.e. the percentage of effective mediation cases in the number of all cases referred to mediation, was 26.61%. It should be emphasised that the number of settlements made in 2006-2019 in civil cases increased almost five times. The indicator of settlements in civil cases achieved through mediation has reached the highest level in recent years and amounts to 34.57%. Also the number of cases in which an information meeting is held has been significantly increasing. In 2017 the number of cases in which a mediation meeting was organised amounted to 1,399, while in 2019 there were 3,257 such cases[7].

In the case of administrative proceedings, it is difficult to speak about the increase in popularity of mediation in real property cases, as legal solutions concerning mediation were introduced to the Code of Administrative Procedure only on 1 June 2017.[8]

2. Mediator in the light of the provisions of the Code of Civil Procedure

Each natural person with full legal capacity and full civil rights, except for retired judges, may be the mediator in the light of the provisions of civil procedure pursuant to Article 183^2(1)-(3) of the Code of Civil Procedure. Non-governmental organisations in the scope of their statutory tasks as well as universities may maintain lists of mediators and create mediation centres. The entry into the list requires the mediator's consent expressed in writing, and information about these lists and mediation centres is submitted to the president of the regional court. The mediator carrying out mediation is obliged to comply with several principles applicable in this scope. First of all – mediation proceedings may be held if they are voluntary, i.e. there is consent of the parties in this scope. Therefore, the mediator cannot force any of the parties to participate in these proceedings. In accordance with Article 183^1(2) of the Code of Civil Procedure in connection with Article 183^6(1) of the Code of Civil Procedure, mediation is practically realised only on the basis of the request formulated by the parties for its performance upon the other party's consent, court decision referring the parties to mediation or clause made previously in an agreement between the parties on submitting the dispute to resolution by way of mediation. Therefore, the voluntary nature of mediation is on the one hand an advantage of this institution, while on the other hand, for example

[7] *Mediation Procedure in the Light of Statistical Data. District and Regional Courts in 2006-201*9, Section of Statistical Management Information. Department of Strategy and European Funds. Ministry of Justice, https://www.gov.pl/web/sprawiedliwosc/dane-statystyczne-dotyczace-mediacji.

[8] Journal of Laws of 2017, item 935.

in the case of one of the parties' refusal to participate in the mediation proceedings or resignation during its course, the state of conflict continues and its resolution extends unnecessarily, although the dispute could be settled within a different procedure, e.g. in court proceedings[9].

The next principle with which the mediator and the parties to the mediation proceedings are obliged to comply is confidentiality. The obligation in this scope is connected with a ban on the provision to third parties of information obtained from the parties, exchanged between them or between the party and the mediator during the mediation meeting. The only exception is an express consent of the parties or one of the parties covered by the mediation proceedings. In the course of court or amicable proceedings it is ineffective to refer to settlement proposals, mutual concessions and other statements made in the mediation proceedings, therefore the confidentiality obligation rests to a significant extent with the mediator. They are obliged to keep secret facts about which they became aware in connection with conducting the mediation[10].

The mediator in real property disputes is obliged to be neutral and impartial. Article 183^3(1)-(2) of the Code of Civil Procedure indicates an explicit demand that the mediator is obliged to immediately disclose to the parties circumstances which could raise doubt as to their impartiality. A key solution applicable in the civil procedure that confers broad competences on the mediator is the provision of Article 183^{3a} of the Code of Civil Procedure, which states that the mediator conducts mediation with the use of different methods aimed at the amicable resolution of the dispute, also through supporting the parties in the formulation by them of settlement proposals or at their mutual request indicating ways of the dispute resolution which, despite not being obligatory, allow ending the dispute. The role of the mediator in cases of a civil law nature, also in real property disputes, consists primarily in supporting the parties in the formulation by them of settlement proposals. Only in the situation when the parties cannot reach an agreement, the mediator may take a more active approach and at their request propose a specific solution, and even prepare the content of the proposed settlement. This right is of special significance when the parties are not represented by professional attorneys. The mediator's possibility to explain to the parties their actual and legal situation, to present alternative solutions or to discuss different variants of the dispute resolution depends on meeting all of the following three premises: the parties' failure to develop conditions of the settlement, submission by the parties of mutual request for the application of mediation and its acceptance by the mediator. It should be added that the obligation to conduct mediation with the use of the discussed method cannot be imposed on the mediator, as it depends on the mediator's will whether they will decide to propose this formula to the parties. The mediator should adjust various existing methods of resolving conflicts to the specificity of a given case[11].

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9 M. Manowska (ed.), *Code of Civil Procedure*. *Commentary,* volume 1, Lex/el. 2021. Compare A. Zienkiewicz. *Mediator in Civil Cases,* 'Rejent' 2005, no. 5, p. 138. Compare Ł. Błaszczak, *Legal Character of a Mediation Agreement,* 'ADR Arbitration and Mediation' (ADR Arbitraż i Mediacja) 2008, no. 1.

10 Compare M. Jurgilewicz, A. Dana, *Mediation as a Manner of Resolving Legal Disputes,* Warsaw 2015, p. 58.

11 *Ibidem,* p. 59.

In turn, taking into account the fact that the legislator has not introduced too strict requirements regarding candidates for mediators, mediation becomes a service provided by less or more formally qualified persons from different sectors and professional groups, with various levels of education. In view of minimum formal requirements set for mediators by the legislator, there is a risk that conducting mediation proceedings in an unprofessional manner by inexperienced or unprepared persons will waste the chance to reach the settlement in part of the cases[12]. Risks resulting from failure of the mediation due to the mediator's fault are intensified by the fact that the effects of lack of the mediator's professionalism are irreversible, as in the case of failure of the mediation the court in the course of the proceedings cannot refer the parties to mediation again[13].

Lack of clearly determined statutory competence requirements set for mediators in the scope of legal knowledge is especially controversial. Although in legal acts and official recommendations reference is made to the importance of professionalism and substantial preparation of mediators[14], which due to the complexity of the object of real property disputes seem to be particularly necessary for full success, but in the absence of clear determination of at least minimum requirements in the scope of education and specialist training such expressions should be treated only as postulates. During the mediation proceedings concerning real property disputes, it may become especially necessary to provide the parties with binding information about legal regulations applicable to the object of the settlement or to issue at the parties' mutual request a legal opinion regarding the compliance of the settlement provisions with the provisions of generally applicable law, their legal enforceability or legal consequences resulting for the parties from their acceptance. As an example, it should be indicated that in cases for the division of property comprising residential premises encumbered with contractual mortgage securing claims of the bank that granted a loan for the purchase of the real property subject to the division, the mediator should know current case law of the Supreme Court in the scope of determining the value of such a real property to present former spouses the financial effects of the adopted variant of the real property division for each of them[15]. The knowledge of the provisions of law as well as the position of the doctrine and case law allows the mediator to refer in a comprehensive and professional manner to positions presented by parties to the conflict, and primarily – to propose solutions which can fulfil both parties' interests at least partially by means of compromise. Finally – the better the preparation in terms of knowledge of the dispute object and its legal environment, the greater the chances to reach the settlement, which later will be approved by a court.

In view of the above, it should be stated that persons undertaking mediation in real property disputes may be reasonably expected to have legal knowledge mainly from the scope of civil law, but also administrative law at least at the basic level. In cases of mediation in real property disputes, the role of a mediator that does not have legal education is inevitably very limited and comes down only to

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12 A.Z. Zienkiewicz, *Mediator...,* op.cit., p. 143.

13 See Article 183^8(2) of the Code of Civil Procedure.

14 R. Cebula, *Mediation in the Polish Civil Law ,* Warsaw 2011, p. 7.

15 More K. Spalińska, T. Niewiadomski, *Real Property Encumbered with a Mortgage as the Object of Proceedings for the Division of Joint Property in the Light of the Case Law of the Supreme Court,* 'Nieruchomości©' 2020, no. 2.

managing the communication process, reducing tensions between contending parties, making it easier for the parties to discover the source of the conflict, and creating a friendly atmosphere for mutual understanding, building trust and creativity in searching for compromise solutions. Apart from an appropriate legal preparation, it would be very beneficial if mediators specialising in the resolution of real property conflicts also had cross-sectional knowledge from the scope of land management, construction engineering, economy and finances, as well as were familiar with the situation on the local market of real properties and design, construction and repair, installation and other services. The mediator's content-related knowledge should be also underpinned by good understanding of issues from the scope of the psychology of communication, skills to build trust and authority and to convince, as well as appropriate practical logic and communication competences. The mediator should clearly formulate their thoughts, define problems and ask questions as well as listen to the parties actively. To be an effective mediator it is essential to create comfortable atmosphere for dialogue and skilfully encourage the parties to exchange important information due to which it will be possible to assess chances to reach the settlement and to determine the direction of the mediation proceedings. Therefore, the mediator should have negotiating skills as well as intuition and ability to distinguish what the parties wanted to achieve from what can be achieved in reality. Persons with legal education are equipped with such competences in a basic scope. The improvement of these skills in practice guarantees the achievement by the mediator of full professionalism. Hence, in this aspect it is of particular importance that the mediator should improve their qualifications and expand knowledge from the scope of law (mainly construction and civil law), psychology and negotiation methods. It is all the more important that in practice the parties relatively frequently expect e.g. specific proposal for the resolution of their dispute. Therefore, not only the personality of the mediator, but also their professional and content-related knowledge will have basic importance[16].

The mediator's task is also to explain to the parties the effects of settlement concerning the transfer of the ownership title to the real property. The provision of Article 183^{15}(1) and (2) of the Code of Civil Procedure indicates that a settlement reached before a mediator, after its approval by a court, has the legal validity of a settlement reached before a court. A settlement reached before a mediator which has been approved by an enforcement clause constitutes the writ of execution. This regulation is without prejudice to the provisions on a specific form of a legal action, which means that a settlement reached before a mediator must have a special form if such a special form is required by law to carry out a given legal action. The difference between the settlement reached before a court and the settlement reached before a mediator and approved by a court is that only the settlement reached before a court has validity equal to notarial deeds[17]. The court settlement replaces the form of a notarial deed[18]. It means that the compromise reached before a mediator, containing the provision concerning the transfer of the

16 M. Jurgilewicz, A. Dana, *Mediation...,* op.cit., p. 61. Compare A. Kalisz, A. Zienkiewicz, *Court and Out-of-court Mediation. Outline of Lecture,* Warsaw 2014, p. 48-58.

17 Judgement of the Court of Appeal in Katowice of 23 September 2016, I ACa 404/16.

18 Decision of the Supreme Court of 8 January 2002, I CKN 753/99.

ownership title to the real property, must – for the legal validity – be included in a court settlement or in a court decision on the merits of the case issued at the parties' mutual request, filed as a result of conducting mediation proceedings and the concept of compromise developed therein.

3. Mediator in the light of the provisions of the Code of Administrative Procedure

The role of the mediator in the light of the provisions of administration procedure, similarly as in the case of the civil procedure, can be preformed by a natural person with full legal capacity and full civil rights. In particular, it should be a person entered into the list of permanent mediators or into the list of institutions and persons entitled to conduct mediation proceedings, kept by the president of the regional court, or into the list kept by a non-governmental organisation or university, the information about which has been submitted to the president of the regional court. If the authority conducting the proceedings is the participant of the mediation, the role of the mediator may be performed only by a person entered into the list of permanent mediators or into the list of institutions and persons entitled to conduct mediation proceedings, kept by the president of the regional court, or by the mediator entered into the list kept by a non-governmental organisation or university, the information about which has been submitted to the president of the regional court[19].

In fact, the role of a mediator in the administrative procedure, analogically to an intermediary participating in the civil procedure, is aimed at facilitating communication between the parties to these procedures or between the parties and the authority. Therefore, the legislator has introduced a solution regarding such intermediary's qualifications similar to solutions constituting the person of mediator in civil mediation, which significantly facilitates the choice of such a person. Nevertheless, on the grounds of the resolution of real properties disputes within administrative procedures the mediator's personality should be particularly important as their role in these procedures is not simple. In practice, the correct formulation of questions as well as the appropriate diagnosis of the source of the dispute, especially the assessment of the viability of proposals submitted, allow reaching the settlement between the parties to these proceedings. The mediator is also liable for the proper organisation of the mediation process and contact with the parties. In this aspect, therefore, it is important that such an intermediary, despite being chosen from lists of mediators (persons possessing by assumption the required resources of knowledge and skills to conduct proceedings of a conciliation nature), should systematically improve their qualifications, in particular in the scope of knowledge regarding the real property sector[20].

A mediator acting in administration proceedings is obliged to comply with certain rules. Hence, they should be impartial while conducting mediation proceedings, and in the first place immediately disclose circumstances which could raise doubt as to their impartiality, including circumstances which justify their

19 Article 96f(1)-(2) of the Code of Administrative Procedure.

20 Cf. M. Jurgilewicz, *Mediation in Administration...,* op.cit., p. 63.

exclusion from the participation in these proceedings. Detailed premises in this scope are presented in Article 24(1) and (2) of the Code of Administrative Procedure and, although they concern an employee, they should be applied analogously to the mediator. Therefore, in accordance with the above-mentioned norm an employee of a public administration authority is subject to the exclusion from the participation in proceedings concerning the case: to which they are the party or one of the parties in such a legal relationship that the result of the case may affect their rights or obligations; of their spouse, relatives and affinities up to the second degree; of a person related to them by adoption, custody or guardianship; in which they were a witness, or expert or they were or are a representative of one of the parties, or in which one of persons listed in Article 24(1)(2)-(3) of the Code of Administrative Procedure is the representative of the party; in which they took part in the issue of the contested decision; due to which an official investigation or disciplinary or criminal proceedings were initiated against them; in which a person supervising them is one of the parties. Additionally, the above-mentioned reasons for excluding the employee from the participation in the proceedings remain in force also after the cessation of marriage, adoption, custody or guardianship[21]. Furthermore, as far as the mediator's impartiality in the civil procedure is concerned, certain type of guarantees in this scope is determined also in the content of Article 96f(3) of the Code of Administrative Procedure. Pursuant to this provision, an employee of a public administration authority before which the proceedings are pending cannot be the mediator[22].

The mediator designated to conduct mediation in administrative proceedings has the right to receive contact details of the mediation participants and their representatives. They receive mainly phone numbers and e-mail addresses, as well as acquires the right to become familiar with the case file and to make notes, copies or excerpts from them, unless a given participant of the mediation within seven days from the date of the announcement or delivery of the decision on referring the case to mediation refuses to grant consent to it. Pursuant to the content of Article 96j(2)-(3) of the Code of Administrative Procedure, the mediator, participants of the mediation and other persons taking part in these proceedings are obliged to keep secret all facts of which they have become aware in connection with the participation in these proceedings. The exception is their explicit consent expressed in this scope. As far as settlement proposals, facts disclosed or statements made in the course of the mediation are concerned, they cannot be used after the completion of these proceedings, unless the contrary results from arrangements included in the minutes of the mediation.

While conducting the mediation, the mediator should strive to amicably resolve the dispute; it is desirable that they should support the participants of the mediation in formulating the settlement proposals. The mediator draws up the minutes of the mediation proceedings, in which they include information about: time and place of conducting the mediation; first and last names (names) and addresses (registered offices) of the mediation participants; first and last name and address of the mediator; arrangements concerning the manner of handling the case as well as signatures of the mediator and the mediation participants, and if any of the participants cannot place their signature, information about the reason for its

21 See Article 96g(1) of the Code of Administrative Procedure.

22 M. Jurgilewicz, *Mediation in administration...,* op.cit., p. 63- 64.

absence. A helpful solution is lack of the obligation of the mediation participants to place signatures on the minutes at the same time, they may place their signatures in the circulation mode. The mediator is obliged to immediately submit the minutes of the mediation proceedings to the public administration authority so that it could be included in the case file and to deliver their copy to the mediation participants[23].

4. Mediator's remuneration in the light of the provisions of the Code of Civil and Administrative Procedure

In accordance with the civil and administrative procedure, the mediator is entitled to remuneration on account of conducting mediation proceedings, unless they have given their consent to conducting the mediation free of charge. Nevertheless, due to the fact that the organisation of the mediation meeting is a kind of work, the mediator's right to remuneration and reimbursement of expenses related to conducting these proceedings is justified[24].

Pursuant to Articles 2-4 of the Regulation of the Minister of Justice of 20 June 2016 on the amount of remuneration and mediator's reimbursable expenses in civil proceedings[25], the mediator in connection with the mediation conducted in real property disputes with the application of civil procedure as a rule has the right to remuneration in the amount of 1% of the value of the dispute object, however no less than PLN 150 and no more than PLN 2,000 for the whole mediation proceedings. Additionally, the mediator has the right to request the reimbursement of documented and necessary expenses incurred in connection with conducting the mediation, for covering the costs of: travel – in the value and under the conditions determined in the provisions concerning the value and conditions of determining amounts due to an employee of a state or local governmental budgetary unit for official travel; renting a room necessary for conducting the mediation meeting, in the amount not exceeding PLN 70 for one meeting, as well as correspondence, in the amount not exceeding PLN 30. If the parties do not take part in the mediation, the mediator is entitled to the reimbursement of expenses incurred up to the amount not exceeding PLN 70.

At the resolution of real property disputes with the application of the provisions of civil procedure, the mediator, in accordance with Articles 2-3 of the Regulation of the Minister of Internal Affairs and Administration of 2 June 2017 on the amount of remuneration and mediator's reimbursable expenses in administrative proceedings[26], has in general the right to remuneration of 1% of the value of these amounts due, however no less than PLN 150 and no more than PLN 2,000 for the whole mediation proceedings. In cases concerning strictly real properties, the mediator's remuneration is PLN 150 for the first meeting, and PLN 100 for each next meeting, in total no more than PLN 2,000.

The mediator in real property disputes conducted within the administrative

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23 See Article 96k of the Code of Administrative Procedure in connection with Article 96m(1)-(3) of the Code of Administrative Procedure.

24 See Article 183^5(1) of the Code of Civil Procedure and Article 961(1) of the Code of Administrative Procedure.

25 Journal of Laws of 2016, item 921, as amended.

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

procedure, analogically as in the case of the mediation conducted within the civil procedure, has the right to the reimbursement of documented and necessary expenses incurred in connection with conducting the mediation, for covering the costs of: travel – in the value and under the conditions determined in the provisions concerning the value and conditions of determining amount due to an employee of a state or local governmental budgetary unit for official travel; renting a room necessary for conducting the mediation meeting, in the amount not exceeding PLN 70 for one meeting, as well as correspondence, in the amount not exceeding PLN 30. Moreover, it should be added that costs of remuneration and reimbursement of expenses related to conducting the mediation are covered by a public administration authority, while in cases in which a settlement can be reached – these costs are covered equally by the parties, unless they decide otherwise. Also the fact that the mediation costs are covered immediately after its completion is important[27].

5. Summary

As it results from the above consideration, the success of the mediation proceedings, conducted both on the basis of the Code of Civil Procedure and on the basis of the Code of Administrative Procedure, depends not only on the parties to the conflict and its character, but also on the active participation of the mediator. An important and sometimes decisive role is played by the preparation of the mediator as the moderator of the mediation proceedings and their negotiating skills directed to reaching a consensus between the parties, as well as ensuring the professional handling of the mediation proceedings in legal terms. In this way, the parties to the conflict have the possibility not only to use an alternative method of the dispute resolution, which allows reaching the settlement, but also to obtain the writ of execution by granting it by a court the enforcement clause.

The unquestionable advantages of the mediation proceedings – both in civil law cases, as well as in administrative proceedings – include the possibility not only to resolve a dispute, but to resolve it in a constructive and independent manner, significant reduction in the duration of the proceedings and their (financial and emotional) costs, stability in terms of meeting the housing needs of the participants. The preventive aspect reducing the number of cases brought to the court is also important.

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[27] See Article 961(1)-(3) of the Code of Administrative Procedure.

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Case law

1. Decision of the Supreme Court of 8 January 2002, I CKN 753/99.

2. Judgement of the Court of Appeal in Katowice of 23 September 2016, I ACa 404/16.