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# Summary

of the article: **Administrative agreement in a democratic state under the rule of law – in search for a model of legal regulation**

The aim of this study is to prove that there are no constitutional impediments in the Polish legal system that would prevent the inclusion into the frames created by the Code of Administrative Proceedings of an administrative agreement as an alternative – to an administrative act – form of settlement of an administrative case. The author explains the reasons why the Group working on a concept of modification of an administrative proceedings made the choice presented in the *Expert Report* on the reform of the administrative procedure (link to the *Report* available at www.nsa.gov.pl) – of a form of an administrative agreement. She points out that from among two concepts thereof that exist in Europe (the French *contrat administratif* and the German *Verwaltungsvertrag*), only the latter may be treated as an adequate form of an agreement in the relations between the administration and an entity. A constitutional analysis of the principle of democratic state ruled by law in light of the constitutions of Austria, Germany and Poland, proves that only in the first of these states, the legislator does not have the freedom to establish new forms of operation of administration as a result of being bound by the legally admissible forms of operation of administration enumerated in the constitution, where an administrative agreement is not included. Contrary to Austria, both in Germany and Poland, the constitutional legislator left the scope of judicial review to be regulated by an act (Article 19(4) of the German Constitution, Article 184 of the Constitution of the Republic of Poland). Therefore, an open – under the Polish Constitution – catalogue of legal forms of operation of administration and subjecting them to judicial protection eliminates – according to the author – possible objections as regards the admissibility of administrative agreements from the point of view of requirements of the principle of the state of law in our legal regime.

Subsequently, the author goes on to discuss the assumptions made in the *Expert Report* as regards the form of an administrative agreement, pointing out that even though the German solutions were used as a template, not all of them were treated as capable of adaptation in the Polish conditions. This is why a wide-reaching selection of solutions of the German law was made that could constitute a template for the regulations of the administrative agreement in the [Polish] Code of Administrative Proceedings. This concerned, among other things, the relations between an administrative agreement and an administrative settlement, and between an agreement and administrative decision, types of agreements that could be subject to regulations stipulated in the code, consequences of the defectiveness of administrative agreements, submission of disputes arising in this context to the judicial review of administrative courts and the problem of the form of enforcement of claims arising from administrative agreements.

# Summary

of the article: **The notion of "Due Diligence" and its meaning in the context of the Act on Value Added Tax**

The notion of due diligence has been used both by the Court of Justice [of the European Union] as well as Polish administrative courts for over 10 years even though it was introduced to the Act on Value Added Tax as late as in the middle of 2015. Pursuant to this act though, the scope of application of this notion is limited to reverse charge of value added tax on certain goods. Nevertheless, the way this notion is understood in the case-law is not homogenous. According to the author, failure to act with due diligence itself cannot constitute a prerequisite for deprivation of a taxpayer of their rights (the right to deduct or the right to apply the 0% rate in the intra-Community supply of goods) in the system of value added tax.

# Summary

of the article: **Mediation in administrative cases – questions and concerns**

The article focuses on the institution of mediation in administrative and administrative court proceedings. The author drew attention to the fact that mediation – as one of the alternative dispute resolution methods – may constitute an effective method of elimination of disputes also in the public law cases. She emphasised that the ADR solutions used in foreign legal regimes are also recommended by the European *soft law* norms.

The reform of administrative proceedings, which was effected by the amendment of 7 April 2017, included the act – Law on Proceedings before Administrative Courts and Code of Administrative Proceedings. The first of these acts introduced a major modification to the regulation devoted to mediation, while in the Code of Administrative Proceedings this institution was regulated for the first time, at the same time structuring a new principle of amicable settlement of cases. Mediation constituted a major part of the project developed by the Group appointed by the President of the Supreme Administrative Court in 2012 to work on the concept of modification of administrative proceedings. Nevertheless, the final wording of provisions, which were included in the parliamentary issue and subsequently in the amendment, deviates from the initial concept prepared by the Group. On the other hand, the idea of changes to be introduced to the Law on Proceedings before Administrative Courts was developed as late as after the completion of the Group's work. Modifications of the regulations in this scope consisted, above all, in entrusting of the mediation to professional mediators. The article discusses the solutions introduced and subjects them to critical analysis, at the same time emphasising the pros and cons of the new provisions of law from the practical point of view.

# Summary

of the article: **Public interest as a prerequisite for the receipt of the processed public information**

The subject of the article constitutes an analysis of problems related to special public interest as a prerequisite for the access to the processed public information. The definition of the processed public information was created in the administrative courts case-law. The processed information is such information that has been prepared "specifically" for an applicant according to the criteria indicated by them when the entity obligated to provide the information does not – as of the date of filing the application – have the information at hand, while making available of the information requires undertaking additional activities consisting in the searching for it in, e.g., additional source documents.

The provision of Article 3(1)(1) of the Act on Access to Public Information, being the basis to receive the processed public information, in fact limits the access thereto since it obliges the applicant to prove that the provision of this information is of particular importance for the public interest. In the article the author proves that it seems to be justified to adopt a thesis, whereby a prerequisite of particularly important public interest authorising to receive the processed public information exists when the receipt of this information creates an actual possibility to use the same to improve the operation of the administrative authorities. The applicant must have an individual, real and specific possibility to use the public information for the general welfare and more to the point to use it in the way that is not available to any holder of the public information. If the applicant fails to prove or will be unable to prove the existence of particularly justified public interest that would authorise them to obtain specific information, the authority, as a representative of public power, is obliged to investigate the possible existence of such interest.

In the opinion of the author, the analysis conducted leads to a conclusion that the use by the legislator of the prerequisite of particularly important public interest as a condition authorising to use the processed public information is a type of a legal paradox. The very public interest constitutes the basis to guarantee each interested party a broad access to public information. To pursue this interest, the legislator has given up the formalisation of the procedure of making the ordinary public information available, while in the case of making the processed information available, the structure mentioned hereinabove was reversed and the need for the existence of qualified form of public interest was pointed out.

# Summary

of the article: **Judicial review of decisions rendered within administrative authorities' discretion in the United States – comparative remarks**

Further amendments to the Act of 30 August 2002 – Law on Proceedings before Administrative Courts intend to broaden the scope of review performed by courts also through granting administrative courts the possibility to consider disputes as to the merits. These changes are directly associated with the question concerning the principles of review of the actions of administrative authorities, including the principles of review of discretionary decisions.

The aim of the article was to present the principles of judicial review of discretionary actions in the American law, and thus the presentation of a legal comparative perspective. The conducted research let the author derive a conclusion whereby American courts have right to assess decisions of discretionary nature. Therefore, it is justified to grant Polish courts a similar authority, which would improve the scope of judicial protection through introduction of order to the problem of judicial review of the discretionary decisions and would materially influence the standard of protection of an entity in administrative court proceedings.