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IS MEDIATION VIABLE IN ADMINISTRATIVE MATTERS?

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Abstract. *The first part of the paper presents the general characteristics of mediation as a form of alternative dispute resolution. After that, a detailed comparative law review is provided of those legal systems where mediation exists as a possible way of resolving administrative matters. This is followed by an overview of "neuralgic" points of administrative procedure from the aspect of applying mediation in administrative proceedings. The paper ends up with a detailed analysis of constraints pertaining to the use of mediation in resolving administrative matters and discusses whether mediation may be realistically expected to be included in the procedure for resolving administrative matters in the Serbian legal system.*

Key words: *mediation, alternative dispute resolution methods, administrative procedure, administrative matter, administrative dispute.*

1. INTRODUCTION

Starting from the 1990s, the use of mediation as an alternative form of dispute resolution has been constantly on the rise. Mediation is just one of several types of alternative dispute resolution methods which has attracted significant interest from European researchers in the last few decades (Janićijević 2003; Mojašević 2014; Petrušić 2004). This was done under the influence of the Anglo-Saxon legal system and research conducted therein. The benefits of mediation have largely been defined and specified on the basis of American research in this area. In legal theory, mediation is defined as a fast and inexpensive method for resolving various types of disputes (Mojašević, 2014:12-13). Thus, there is no wonder that there are researchers who are trying to find a way to apply this alternative dispute resolution method in the area of administrative law.

One of the reasons for encouraging the use of mediation in resolving administrative matters is the increase in the efficiency and effectiveness of the administrative procedure and administrative-judicial decision making, which ultimately leads to reducing the number

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of administrative disputes. In some of European states (such as: the Netherlands, Austria, Germany, UK and others), mediation and its techniques are used in an increased number of cases in order to avoid administrative disputes or to achieve settlement in relation to the decisions of administrative authorities in some administrative matters. This is understandable considering the huge backlog of cases that the administrative judiciary encounters across Europe (including Serbia). On the other hand, according to some authors, the possibility of using mediation in administrative procedure derives from the legal duties of administrative bodies to reach consensus, which is part of the due care principle (Dragos, Neamtu, 2014: 594). There are also opinions that the quality of the administrative decision-making process could be improved by using the mediation techniques by relevant administrative bodies.

Mediation is based on permanent and voluntary consent of all the participants in the dispute. The overall goal of mediation is to strive toward the future settlement of the dispute by allowing the parties to move forward and to continue to work together. Mediation is a form of negotiation performed by a neutral third party, called the mediator or an expert in the specific area. Unlike the arbitrator, the mediator has no authority to impose a decision or other measures to the parties in the dispute. The mediator uses a variety of techniques to open or improve the dialogue between the parties in the dispute in order to help them reach an agreement. Being a neutral third party, the mediator shall be independent and impartial. Another significant characteristic of the mediation process is confidentiality and secrecy of information (both before and after initiating mediation). Thus, the three essential elements of mediation are voluntariness, impartiality and confidentiality (Mojašević, 2014:20-22). These three elements originate from the 1980 UNCITRAL's Model rules on Conciliation, and they are essential for a large number of legislative acts on mediation in European countries (Dragos, Neamtu, 2014: 591). Today, mediation is a professional activity that mediators must be certified for as they have to possess expert knowledge and skills about the mediation techniques. In most cases, they are members of professional associations that supervise their work and guarantee the quality of mediation.

Before we try to answer the question whether it is possible to use mediation in resolving administrative matters, we will provide a comparative law review of legal solutions in this field.

2. COMPARATIVE LAW REVIEW

When reviewing the comparative law perspective of the issue, we should bear in mind the impact of the European Union and its legal system on the codification of the administrative procedure rules and the use of mediation in administrative procedure. The first thing worth noting is that there is no single General Administrative Procedure Act at the EU level (Vučetić 2014:176-178) even though Article 298 of the Treaty on the Functioning of the EU provides the basis for codification of the general administrative procedure at the level of the European institutions. Under this Article, the European Parliament and the European Council are required to adopt (in accordance with the legislative procedure) the necessary provisions whose purpose is to create the open, efficient and independent European administration. Article 41 of the Charter of Fundamental Rights of the EU (Nice, 2001), which is based on the codes of good administrative conduct developed by the European Ombudsman, the Parliament and the Commission, is *inter alia* obliged to ensure the exercise of the fundamental right to good administration, as the right of each

citizen to the impartial and fair treatment of administrative matters within a reasonable time (Davinić, 2013:110). Although there is a connection between a good administrative conduct and the use of mediation and its techniques, generally there is no direct reference to mediation in the legal documents which deal with administrative matters.

According to the book "Alternative Dispute Resolution in European Administrative Law" (Dragos, Neamtu, 2014), the Working Group of the European Parliament for the European Administrative Law (WGAL) released in 2011 a document titled "The State of Affairs and Future Prospects for EU Administrative Law". One of the recommendations of the European Parliament was to consider internal control (audit) of the administrative decisions of the EU's institutions (objection procedures) that exist in different forms in the various European bodies, agencies and authorities. In point 13 of this document, the working group recommends that any future instrument for internal control of administrative decisions should in itself contain provisions for encouragement of alternative methods for resolving disputes without prejudice to judicial remedies (Dragos, Neamtu, 2014: 593). However, as is stated in section 16.5.1. of that book, most of the agencies of the European Union do not have provisions on mediation or other alternative methods of resolving administrative disputes. According to the stance of this working group, the key position for strengthening the role of mediation in administrative law should be given to the European Ombudsman and the Code of good administrative conduct which he created.

In 2004, the Tribunal for EU civil servants (for employees in the EU institutions) was established by the Decision of the Council of Europe. The provisions of paragraph 7 of the Decision state that in all stages of the procedure, including the time when the request is submitted, the Tribunal can examine whether there is a possibility of amicable settlement and can try to encourage that kind of settlement (Dragos, Neamtu, 2014: 593).

Another important source is the Recommendation (2001)9, adopted by the Council of Europe's Committee of Ministers on 5 September 2001, on alternatives to litigation between administrative authorities and private parties. Some scholars consider that its real impact, in regards to mediation in administrative matters, is rather small. Actually, this Recommendation points out to systemic barriers to implementation of mediation or other alternative dispute resolution methods in dealing with administrative matters (Kovach, 2010: 745).

In fact, when the EU Member States are concerned, the development of mediation is mostly influenced by the Mediation Directive[1] which was implemented in 2012 and is currently in force in the EU Member States. It primarily refers to the cross-border civil and commercial disputes (Mojašević, 2014: 20). Although this Directive is irrelevant when it comes to administrative law, in some EU States (e.g. Germany), it was implemented in such a way that its implications are relevant for both civil/commercial and administrative matters, even though administrative matters cannot be regarded as cross-border disputes (Dragos, Neamtu, 2014: 593-594). Further on in this part of the paper, we will discuss the legislative solutions of individual states that have enacted laws which are adapted to the mediation in administrative matters, i.e. disputes between public administration and citizens.

A number of States has recognized the potential of mediation and its techniques in light of the doctrine of service-oriented government (Dimitrijević, 2014:61) and found that these methods can be useful when it comes to the quality of the administrative

[1] Directive 2008/52/EC of the European Parliament and of the Council of 21 may 2008 on certain aspects of mediation in civil and commercial matters.

decision-making processes; namely, they realized that mediation can lead to settlement as a means for resolving certain types of administrative matters even when it comes to the relations between public administration and its citizens. We can certainly claim that there is no single State whose legislation explicitly prohibits the application of mediation and its techniques in administrative matters. However, a large number of authors still insist that public law substantially incompatible with the concept of negotiated agreement (mediation).

The forthcoming analysis is based on the information provided in the book "Alternative dispute resolution in European Administrative Law", as contained in chapters on individual national legal systems. The book authors tried to give answers to the following questions: Is the administrative body authorized to initiate mediation in dealing with administrative matters? Can the mediation agreement replace the administrative decision? When shall mediation take place: before or after initiating an administrative proceeding? What substantive or procedural legal effect can successful mediation have in administrative proceedings?

In the legal system of the Kingdom of the Netherlands, mediation techniques are part of internal administrative procedures or appeal procedure. The Dutch Ministry of Internal Affairs and Royal Relations actively supports and stimulates administrative authorities that are willing to use informal proactive approach (the so-called *active approach mode*l) as a model for resolving applications for internal administrative review. This model basically implies the obligation of civil servants to ensure a fast and direct personal contact with the client or citizen by phone or in person, by using communication skills (active listening, summarizing, and questioning in an open and unbiased way), and by using certain conflict management techniques that can lead to conflict resolution. The positive effects of mediation are measured through the number of canceled administrative appeals after applying this informal approach (Dragos, Neamtu, 2014: 600). So, the Dutch approach primarily includes informal mediation procedures.

In the Republic of Austria and the Federal Republic of Germany, objection procedures in administrative matters are decreasing in number as well. In Austria, there is a possibility of reviewing the final administrative decisions through petitions (Article 68 *Allgemeines Verwaltungsverfahrensgesetz*). Although the formal objection procedure is almost completely removed from the Austrian legal system of legal remedies, there is the possibility for administrative authorities to voluntarily change or retract the challenged decision in objection proceedings (Article 14 paragraph 1 *Verwaltungsgerichtsverfahrensgesetz*).

On the other hand, the German legal system has developed various informal procedures conducted by administrative bodies in order to avoid unnecessary proceedings before administrative courts. Thus, administrative authorities may invite affected parties to use the right of petition to open the process of informal communication in respect of the disputed decision. In many cases, the administrative authorities have been able to explain the case to the parties and to avoid confusion and administrative dispute proceedings (Dragos, Neamtu 2014: 601). In July 2012, the German legislator implemented the European Mediation Directive and passed the Act for Promotion of Mediation and other Methods of Out-of court Dispute Resolution (*Gesetz zur Förderung der Mediation und anderer Verfahren der außergerichtlichen Konfliktbeilegung*). Unlike the European Directive, the German legislator makes no distinction between cross-border commercial and civil disputes (on the one side) and public law disputes (on the other side).

Paragraf 173 of the Administrative Court Order *(Verwaltungsgerichtsordnung* - VwGO) has been modified in such a way that the administrative courts have the possibility to

propose to the parties to turn to mediation and to halt proceedings until mediation finishes (Article 278a of VwGO). Also, the administrative court may refer the parties to the so-called *Güterichter* (conciliatory judge), who is not authorized to decide on the legal dispute by issuing a judgment but can use mediation and other dispute resolution methods (Article 278.5 VwGO).

The question whether to use the concept of so-called court-appointed mediation in parallel with an out-of-court mediation was the focal point of dispute among German legal scholars in this field of research. A successful mediation process will start and finish with the agreement between the disputing parties. The agreement by which the dispute is settled can be classified as an administrative agreement or a public law agreement (as it is possible to use any of these two approaches) but not all legislators will allow the administrative authorities to change the legal position of persons or goods by such agreements. This brings us to the issue of the effects of the settlement agreement in the administrative procedure. It is especially important to note that the German legal system has explicit provisions on such agreements.

Although one can think that it is significant (for the development of mediation in administrative law) that this kind of agreement has a direct binding effect on the legal position of private parties engaged in mediation, it is not the case in practice. In German legal system, a formal contract is more likely only when a dispute resolution has legal effects on third parties (Dragos, Neamtu 2014: 603). In all other cases, the willingness of administrative authorities to settle or to resolve the dispute will most likely lead to an informal agreement stipulating that the administrative authorities will withdraw or modify the contested decision. Thus, the administrative authority may issue a new administrative decision and, if the party agrees with the decision, such an agreement has the legal effect of successful mediation in administrative matters. Such an informal agreement could lead to an administrative decision or a decision on applying internal review that will be accepted by all parties involved; alternatively, the disputed decision may remain in effect whereas the initiative for the internal control of administrative decisions will be withdrawn. If the court-appointed mediation is successful during the court proceedings, the lawsuit can also be withdrawn. The German VwGO also allows to formally end the appeal process by entering a court settlement, the so-called *Prozessvergleich* (paragraph 106 VwGO), which ends the judicial proceedings before the court. In effect, this settlement is a kind of agreement of dual nature because it regulates substantive law issues and has procedural effects as well, i.e. it terminates the dispute. Currently, there is no other legal system that contains provisions regulating this particular type of contract (Dragos, Neamtu 2014: 603).

The United Kingdom of Great Britain and Northern Ireland applies the public policy called "Transformation of public services", which aims to develop a wide range of methods to help the parties avoid legal disputes and to provide appropriate solutions where disputes cannot be avoided.[2] The provision on ADR (paragraph 9) of the Pre-action Protocol for Judicial Review points out that the claimant should consider whether some kinds of alternative dispute resolution would be more suitable than the administrative dispute procedure and, if so, the parties shall agree on the specific ADR method which will be adopted by both parties. The parties can be required to consider using alternative means of resolving their dispute before starting court proceedings (which is viewed as the last resort),

[2] Transforming public services complaints, redress and tribunal - www.dca.gov.uk.

and the lawsuit will not be filed if the settlement is actively pursued (Dragos, Neamtu 2014:602). Although this incentive for parties to use alternative methods of resolving disputes is strong, the Pre-action Protocol underlines that any claim for judicial review must be filed promptly, but not later than three months after the grounds to initiate the judicial control have been fulfilled; the Protocol also points out that no one can be forced to use alternative methods of dispute resolution. As a kind of indirect sanctions, Pre-action Protocol contains a provision that the parties shall be warned that the competent court will consider the non-compliance with these Protocol provisions when determining the costs of the dispute. The most significant judgments relevant for implementing mediation in public law are *R(C) v Nottingham City Council* [2010] EWCA Civ 790 and *Cowl v Plymouth City Council* [2001] EWCA Civ 1935 (Dragos, Neamtu 2014: 601).

The analysis of the legal systems in the Netherlands, Austria, Germany and the UK indicates that informal communication, negotiation and mediation can have a significant impact on reducing the number of administrative law proceedings. For this reason, several European States adopted the so-called soft laws, adapted to mediation. In most legal systems, procedural provisions will allow the extension of the time limit for appeal/complaint in order to include a new decision. In that case, the appeal or complaint against the new decision that all parties accept as a result of mediation will be declared inadmissible because there is no interest to bring the case to court, given the fact that the appellant had previously agreed to accept the decision in the mediation procedure. If the agreement covers all aspects of the dispute, including the costs/expenses, the administrative body will fulfill all the obligations that were agreed upon and the complaint/appeal will be withdrawn by the applicants.

In the Kingdom of Belgium, the provision of Article 1724 of *Gerechtelijk Wetboek* (Judicial Code) regulates the possibility of settlement during court proceedings: "any dispute which is assumed to be resolved by means of settlement can be subject to mediation". Further on, the same Article provides that public law legal entities may be parties to mediation only in certain cases. This is an explicit reference to the fact that all national systems allow settlement only in those cases where the law allows the parties to regulate their rights or obligations by disposition. When it comes to administrative law, parties generally do not have this option at their disposal. Bearing in mind that the essential, governing principle of all decisions of administrative authorities is to provide for a specific public interest or benefit, we may conclude that there is not much space for compromise in administrative procedure. This argument has been pointed out by many scholars dealing with their national legal systems. Now, we may examine the objective obstacles that stand in the way of using mediation in resolving administrative matters.

3. Barriers to the Use of Mediation in Resolving Administrative Matters

The possibility of using mediation in resolving administrative matters is a complex issue for a number of reasons. In this part of the paper, we will present the most important barriers for introducing mediation as a means for resolving administrative matters, with particular reference to the Serbian administrative law system.

The first barrier is the fact that legal relations established under administrative law rules are characterized by inequality of parties that participate in these relations (Dimitrijević 2014:314; Milkov 2012: 58; Tomić 2002:95). From the traditional point of

view, the relationship between citizens and the administration is regarded as being *de jure* asymmetrical, hierarchical and authoritarian, which is inconsistent with the idea of encouraging negotiations and mediation as a means for dispute resolution. However, in the legal systems of most Western European countries, there has been an emerging tendency towards entering cooperative agreements between the administrative authorities and the affected parties. There are several reasons why this is the case. The first is the overwhelming number of complex regulations that have to be applied; the second is that the public administration must be managed in accordance with the principle of good governance, which is service-oriented and allows substantial participation of citizens in the decision-making processes. Although this relationship is largely the relationship of inequality, where the citizens' position may be changed by a unilateral decision of administrative bodies, we have shown that several European states have implemented specific legal solutions which envisage that administrative authorities may serve the general interest by entering certain types of agreements with citizens that lead to changes in their legal position.

Further, administrative law regulates the exercise of competencies of public nature which are entrusted to various authorities within the public administration, and which are essential for the exercise of public interests and duties entrusted to these authorities. Negotiation and settlement (after the administrative decision is being made by the administrative body) can be legitimate only if the administrative body is authorized by law to amend its earlier decision. Otherwise, it is contrary to the principle of substantive finality of administrative decisions (Dimitrijević 2014: 284).

On the other hand, the administrative authorities have the capacity to use discretionary powers. In case of discretionary powers (margin of appreciation), in addition to making a decision that largely achieves the aim of the law, the authority has to make a decision that is more in line with the interests of the parties. However, the choice of an alternative that is more in accordance with the law (i.e. with the aim of the legislative act which prescribes that alternative) is a kind of constraint in terms of mediation in these situations, which is contrary to the principle of legitimate expectations. The principle of legitimate expectations is part of the principle of good governance. It assumes that all factually the same cases must be treated equally. In other words, this means that when an administrative authority is negotiating about ways of exercising its discretionary powers it should take into consideration many things, not only the individual use of competences in the present case. All administrative authorities are obliged to act and make decisions systematically and consistently, and to equally treat the same cases. This principle will necessarily limit the possibility of the administrative authorities to negotiate on how to use their discretionary powers, because once used discretionary power becomes a principle for every future application of discretionary powers in the same situations.

Many administrative matters include or affect the legal position of third parties that are not involved in the administrative procedure, which also limits the possibility of using mediation. For example, a dispute between the applicant who has filed a request for issuance of a building permits and the corresponding administrative authority which refused the request cannot be resolved by agreement, as this would imply that the competent authority has retroactively accepted the request. As a result, each neighbor, as the third party, initially satisfied by the refusal of the request, would probably initiate administrative proceedings after finding out about the change in attitude and the decision of the administrative authority.

One of the key features of mediation as an important form of alternative dispute resolution is that the concluded agreements are confidential (Mojašević 2014: 22-23). Mediation is generally a confidential process, and the parties involved have to agree on it beforehand. In this regard, there is a question of using the information obtained during mediation in a possible future judicial proceeding. The EU Mediation Directive states that Member States must guarantee that, unless the parties agree otherwise, neither mediators nor other participants involved in the mediation process shall be forced to give evidence in civil or commercial judicial proceedings or arbitration regarding the information obtained during the mediation process, except when it is necessary due to the prevailing public interest, or when publishing the content of agreement resulting from mediation is necessary in order to perform the agreement. Therefore, confidentiality (as a key aspect of the mediation process) is also in conflict with one of the basic principles of contemporary public administration: the principles of transparency and openness. As stated in the Council of Europe Convention on Access to Official Documents (2009), access to information of public importance is one of the most important features of modern public administration that contributes to its increased legitimacy and responsibility. Thus, the confidentiality of the mediation process in administrative matters may actually violate the citizens' right to pursue open and transparent public administration.

The prescribed time frames for decision-making processes in the administrative procedure are the last formal barrier. Namely, both judicial and appeal proceedings must be initiated and finished within the prescribed time limits. The use of alternative dispute resolution methods probably will not lead to suspension of the deadlines for submission of an appeal or complaint, so that all parties involved in the negotiation process must bear in mind that the appeal period or the period for filing a complaint will expire. In order to make the process of mediation successful, there must be a possibility to stay the prescribed period for appeal or complaint during mediation. As we have seen, it is permitted in many of the analyzed comparative legal systems. There are other measures of "customizing" administrative procedure features to lengthy negotiations or mediation between the disputing parties. The provision of Article 8 of the European Mediation Directive may be significant in this situation because it contains the principle which can be used for solving this problem (although it is not directly applicable to administrative matters); under this principle, the Member States must guarantee that the parties who have chosen mediation as a means of resolving their dispute shall not be prevented from initiating judicial proceedings or arbitration in relation to the dispute, and that the expiry of the prescribed deadlines shall not be detrimental to the parties' interests in the course of the mediation process.

4. CONCLUSION

Unlike court proceedings, the essence of the administrative procedure is not in resolving a dispute between the parties but in the recognition of rights or imposing the obligations to the parties, while protecting the public interest. Further, the crucial and highly disputable issue in the field of administrative law is whether mediation is viable between the private and public interest in administrative matters. The analysis shows that it would be difficult to introduce mediation in the traditional general administrative procedure in the way it is done in the civil procedure.

The arguments provided in this paper show why mediation is not a suitable method for resolving administrative matters in Serbian administrative law. First, the administrative law relationship is characterized by inequality of parties which participate in it. Secondly, the use of mediation would be in contradiction with the principle of material finality of administrative decisions because administrative law involves the exercise of public law powers. Third, a possible use of mediation, which would be instituted in respect of administrative acts issued on the basis of discretionary powers, when the deciding authority has to opt for one of a number of legally equal alternatives, is inconsistent with the principle of legitimate expectations, which is an integral part of good governance doctrine. The principle of legitimate expectations means that all factually equal cases must be treated equally. In other words, this means that once the authority takes the opportunity to use discretionary powers, once selected alternative will become a rule that will have to be applied in all future, factually similar, cases. Fourth, the confidentiality, as an essential characteristic of the mediation process, is in contradiction with the principle of transparency of public administration activities!

The analysis provided in this paper shows that a number of states have put the mediation potentials into good use, in line with the doctrine of service-oriented administration. This approach has certain benefits when it comes to the quality of decision-making processes, especially where there is room for resolution of administrative law relations through negotiation. Analysis of the comparative law solutions in the Netherlands, Austria, Germany, United Kingdom and some other countries shows that informal communication, i.e. negotiation and mediation, may have a significant impact on reducing the number of legal proceedings with the administrative authorities in disputes on the contested legality of administrative decisions.

So, in the end, we can conclude that there is no place for mediation in the traditional administrative procedure, i.e. in all administrative matters; however, there is an opportunity to use mediation in some special/specific administrative matters, where the public administration authorities and private parties can conclude mutual agreements. The use of mediation in such cases would increase the efficiency and effectiveness of administrative decision-making processes, and ultimately reduce the number of administrative disputes arising from administrative procedures.

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DA LI JE MEDIJACIJA MOGUĆA U UPRAVNIM STVARIMA?

Za razliku od sudskih postupaka, suština upravnog postupka nije rešavanje spora među stranama u postupku, već priznavanje prava ili nametanje obaveza stranci uz istovremenu zaštitu javnog interesa. Dalje, ključno a problematično pitanje u oblasti upravnog prava jeste da li je moguća medijacija između privatnog i javnog interesa u upravnim stvarima. Uvođenje medijacije u klasičan, opšti upravni postupak na onaj način kako je to učinjeno u građanskom postupku bilo bi teško ostvarivo.

U radu je argumentovano pokazano zašto medijacija nije pogodan metod za rešavanje upravnih stvari u srpskom upravnom pravu. Prvo, upravnopravni odnos karakteriše nejednakost volja strana koje u njemu učestvuju. Drugo, upotreba medijacije bila bi u suprotnosti sa principom materijalne pravnosnažnosti upravnih akata, jer se upravno pravo bavi vršenjem ovlašćenja javno-pravne prirode. Treće, eventualna mogućnost korišćenja medijacije koja bi se otvorila kod upravnih akata donetih na osnovu diskrecione ocene, kada organ bira jednu od dve ili više zakonom izjednačenih alternativa, je u suprotnosti sa principom legitimnih očekivanja koji je sastavni deo doktrine dobrog upravljanja. Princip legitimnih očekivanja podrazumeva da se svi činjenično jednaki slučajevi moraju tretirati jednako. To, drugim rečima, znači da kada jednom organ uprave iskoristi mogućnost primene diskrecionog ovlašćenja, jednom izabrana alternativa će postati pravilo koje će morati da primenjuje u svim budućim, činjenično istim slučajevima. Četvrto, poverljivost kao ključna karakteristika medijacije je u suprotnosti sa principom transparentnosti u radu javne uprave!

Analiza koja je sprovedena u radu pokazuje da je određeni broj država iskoristio potencijale koje poseduje medijacija, što je posledica doktrine o uslužno orijentisanoj upravi. To je dalo određene koristi kada je u pitanju kvalitet upravnog odlučivanja, naročito tamo gde postoji prostor za sporazumno rešavanje upravno-pravnog odnosa. Analiza rešenja u Holandiji, Austriji, Nemačkoj, Velikoj Britaniji i nekim drugim državama pokazuje neformalna komunikacija, odnosno pregovaranje i medijacija mogu imati značajan uticaj na smanjenje broja sudskih postupaka sa upravnom koji su nastali kao posledica sporenja zakonitosti donetih upravnih akata.

Dakle, na kraju možemo da zaključimo da medijaciji nema mesta u klasičnom upravnom postupku, odnosno u svim upravnim stvarima, ali da se prostor za njenu upotrebu otvara tamo gde su mogući sporazumi između organa javne uprave i privatnih stranaka odnsno u posebnim upravnim stvarima. Njeno korišćenje povećalo bi efikasnost i efektivnost upravnog odlučivanja, i smanjilo broj upravnih sporova koji proističu iz upravnih postupaka.

Ključne reči: *medijacija, alternativni metodi rešavanja sporova, upravna stvar, upravni postupak, upravni spor.*