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SETTLEMENT AS A FORM OF ALTERNATIVE DISPUTE RESOLUTION IN ADMINISTRATIVE MATTERS: THE CASE OF SLOVENIA

Summary

This article discusses settlement as an alternative method of resolving administrative matters in Slovenian law. Its main objective is to identify problems caused by the current regime and to propose some solutions. To achieve this aim, it relies in particular on the comparative and dogmatic research method. The author notes that – in contrast to many comparative law regimes – Slovenian law generally does not allow for settlement between an administrative authority deciding on an administrative matter and a party to an administrative procedure, but only for settlement between parties with opposing interests. Most administrative cases are thus still settled by an administrative decision. The author considers that a settlement between the administrative authority and a party to an administrative procedure should also be introduced into Slovenian law, but it should be limited only to certain administrative matters or only with respect to (part of) the content of the (later issued) administrative decision.

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I Introduction

The mechanisms for alternative resolution of administrative matters have gained more importance in Slovenian law only in the last years. However, in terms of their development and use, Slovenia still remains significantly behind other European countries. This also applies to settlement, which is the most widespread mechanism for resolving administrative matters in comparative law,[1] but its use in Slovenian law is rather limited. Most administrative matters are thus (still) settled by a decision of an administrative authority or administrative court, although the advantages of alternative solutions to administrative cases are undeniable.[2]

The article focuses on settlement as governed by the General Administrative Procedure Act[3] and the Administrative Dispute Act,[4] with a passing reference to certain sectoral laws. It discusses legal nature of settlement in administrative matters, conditions for its conclusion and the reasons for its reserved use in practice. Based on a selection of comparative law solutions and while considering all the specific features of administrative decision-making procedure, the article also provides some *de lege ferenda* proposals.

The article seeks to confirm or disprove the following hypothesis: The characteristics of administrative decision-making completely exclude the possibility of a settlement between an administrative authority and a party to an administrative procedure.

II Methodology

The first and third part of the article analyses the current legal regulation of settlement from the point of view of Slovenian law, using

1 Polonca Kovač, "Izzivi alternativnega reševanja sporov v upravnih razmerjih v sloveniji in širše", *Zbornik znanstvenih razprav*, Vol. 76, Nr. 1/2016, 70.

2 Bruna Žuber, Jonika Marflak-Trontelj, "Alternativno reševanje upravnih sporov: ali lahko redko uporabljena metoda danes postane rešitev za jutri?", *Pravna praksa*, Vol. 40, Nr. 46/2021, 9.

3 General Administrative Procedure Act (*Zakon o splošnem upravnem postopku* – GAPA, *Official Gazette RS*, Nr. 24/06 as amended).

4 Administrative Dispute Act (*Zakon o upravnem sporu* – ADA-1, *Official Gazette RS*, Nr. 105/06 as amended).

dogmatic and axiological methods. The axiological method was particularly useful in exploring and identifying the legal problems of the current regime and in formulating possible solutions or proposals for the future, while also taking into account selected comparative law solutions. The second part of the article focuses mainly on the comparative method, both in terms of legal regulation and legal literature. The research is closely linked to the question of the effectiveness of the current legal order, and the sociological method was therefore also used, as it is the basis for distinguishing between norms and their implementation in (judicial) practice. The synthesis of the arguments allowed to formulate the conclusions, confirm, or disprove the hypothesis, and possibly offer improvements for *de lege ferenda* regulation.

III Research and Discussion

1. Settlement in Administrative Procedure

a) Settlement Between Parties with Opposing Interests

Settlement in administrative procedure is generally regulated by the GAPA, which dedicates a single article to the settlement – article 137.[5] The article provides that an administrative procedure may also be ended, in whole or in part, by a settlement between two or more parties. A settlement may thus be achieved if at least two parties with opposing interests participate in the administrative procedure (a so-called contradictory administrative matter).[6] This means, on the other hand, that a settlement between the administrative authority deciding on an administrative matter and a party to the administrative procedure is not admissible under the GAPA. This is justified by the characteristics of administrative decision-making, where the administrative authority must first and foremost protect the public interest and generally has no right to dispose of the subject-matter of the administrative matter, as it is strictly bound by the law (principle of legality, GAPA, art. 6).[7] In addition, it is also bound by the principle of substantive

5 Settlement between parties with opposing interests is also regulated in certain sectoral laws. See art. 283 of the Electronic Communications Act (*Zakon o elektronskih komunikacijah, Official Gazette RS*, Nr. 130/22 as amended), art. 63 of the Postal Services Act (*Zakon o poštnih storitvah*, *Official Gazette RS*, Nr. 51/09 as amended) and art. 69 of the Denationalization Act (*Zakon o denacionalizaciji, Official Gazettte RS*, Nr. 27/91-I as amended).

6 Erik Kerševan, Vilko Androjna, *Upravno procesno pravo: upravni postopek in upravni spor*, GV Založba, Ljubljana, 2017, 239.

7 Polonca Kovač, "Mediation and Settlement in Administrative Matters in Slovenia, *Hrvatska i komparativna javna uprava: časopis za teoriju i praksu javne uprave*, Vol. 10, Nr. 3, 2010, 758.

truth (GAPA, art. 8) and the free assessment of evidence (GAPA, art. 10). Therefore, it does not have the same freedom as a private individual in the disposal of rights and obligations.[8]

The Article 137 refers to opposing "interests" and not to opposing "claims", meaning that a settlement is also possible between a party and an accessory participant who, without having its own claim, intervenes in the procedure to protect its legal position (a party in the broad sense).[9] Notwithstanding the fact that parties with opposing interests usually protect their (own) private interests,[10] it cannot be excluded that one of these parties protects public interests, for example an expropriated beneficiary who concludes an expropriation contract with the expropriator (which replaces the expropriation decision, i.e. the administrative act). Expropriation that is not in the public interest is not permissible, and the same applies to an expropriation contract.[11]

A settlement may be achieved in respect of matters which the administrative authority may decide in an administrative procedure and may not be contrary to the public interest, public morals, or the legal interests of others, otherwise the authority conducting the procedure shall not agree to achieving it.[12] The GAPA does not provide for a settlement hearing, so the settlement will normally be achieved at an oral hearing, which is mandatory if two or more parties with opposing interests are involved.[13] However, there is no obstacle to achieve it outside the hearing. In both cases it is achieved when the parties read the record on the settlement and sign it. The administrative authority shall, to the extent that the dispute has been settled by the settlement, stay the administrative procedure by a procedural decision.[14] As the settlement ends the procedure in the settled part, it is not entirely clear why the administrative authority still has to stay the procedure.[15]

In addition, the law does not specify by when a settlement can be achieved. The theory has taken the view that it can be achieved up to the

8 Alexander Balthasar, "Alternative Dispute Resolution in Administrative Law: A Major Step Forward to Enhance Citizens' Satisfaction or Rather a Trojan Horse for the Rule of Law?", *Elte Law Journal*, Nr. 1, 2018, 14.

9 Judgement of the Supreme Court of RS, Nr. III Ips 33/2004 of 6 April 2004.

10 Nika Hudej, "Komentar k 137. členu ZUP", *Komentar Zakona o splošnem upravnem postopku (ZUP), 2. knjiga* (eds. Erik Kerševan, Polonca Kovač), Uradni list RS – Pravna fakulteta Univerze v Ljubljani, Ljubljana, 2020, 66.

11 Spatial Management Act (*Zakon o urejanju prostora*, *Official Gazette RS*, Nr. 199/21 as amended), art. 207.

12 GAPA, art. 137 para. 2.

13 GAPA, art. 154 para. 1.

14 GAPA, art. 137 para. 5.

15 N. Hudej, 69.

moment of the first instance decision,[16] but there is no compelling reason why it should not be possible after the first instance procedure has been concluded, as it is a form of disposition of claims which the parties may dispose during the first instance procedure until the decision is served, during the appeal period and during the second instance procedure until the decision is served.[17]

Settlement, achieved in accordance with GAPA, has the force of an enforceable decision issued in an administrative procedure.[18] It thus replaces (in whole or in part) an administrative decision. It is accepted in theory that a settlement is not a concrete administrative act by which an authority decides on a disputed legal relationship, but rather a private law contract concluded between the parties and cannot therefore be equated with a decision issued in an administrative procedure concerning the rights and obligations of the parties.[19] However, if a settlement is achieved between a public-law body (other than the administrative authority deciding the case) pursuing public interests and the other party (on a matter that would otherwise be decided by an administrative act), such a settlement has all the characteristics of an administrative contract (e.g., an expropriation contract replacing an expropriation decision[20]). Slovenian law does not regulate administrative contracts as a special nominative contract, but they are accepted in theory and case law. These are contracts where at least one of the contracting parties is (as a rule) a public law body and are concluded in the public interest which prevails over other contractual interests, or (alternatively) contain provisions which constitute a supremacy of the public law person, and which would not normally be accepted by the other contracting party in a private law contract.[21] Because they are not specifically regulated (apart in certain sectoral laws), they are subject to the general rules of the law of obligations "insofar as its public law elements do not exclude it",[22] meaning that these rules apply *mutatis mutandis*. However, these rules are not adapted to the specific nature of administrative contracts, as they regulate relations among equal parties, whereas administrative contracts are characterized by the stronger position of the public law entity.

16 *Ibid.*; GAPA, art. 134 para. 1.

17 Cf. Dario Đerđa, *Opći upravni postupak u Republici Hrvatskoj*, Inženjerski biro, Zagreb, 2010, 154.

18 GAPA, art. 137 para. 4.

19 E. Kerševan, V. Androjna, 241.

20 Katja Štemberger, "Pogodba kot alternativa upravnemu aktu v slovenskem in primerjalnem pravu", *Javna uprava*, Vol. 56, Nr. 1–2/2020, 23–28.

21 Judgements of the Supreme Court of RS, Nr. III Ips 37/2020–3 of 19 January 2021 and Nr. III Ips 80/2018 of 12 February 2019.

22 Judgement of the Supreme Court of RS, Nr. III Ips 37/2020–3 of 19 January 2021.

One of the major flaws of the current regime is that GAPA does not provide for any independent (ordinary or extraordinary) remedies against the settlement. This raises the question of which (if any) remedy may be invoked against a settlement achieved in administrative procedure. Since the settlement is not a unilateral administrative act but a bilateral contractual relationship, it cannot be challenged by the legal remedies provided for against an administrative decision, nor can it be challenged in an administrative dispute. On the other hand, a settlement in an administrative procedure is not a typical contract that can be annulled by the parties but has the effect of a final administrative decision, and the settlement record is an enforceable title for administrative enforcement,[23] and thus cannot be challenged in an action before an ordinary court.[24] Nor can the provisions on an action for the annulment of a court settlement under the Civil Procedure Act,[25] be applied *mutatis mutandis*, since the purpose of such an action is to challenge a settlement achieved before a court and not before an administrative authority.[26]

b) Settlement Between the Administrative Authority and a Party to an Administrative Procedure

Although a settlement between an administrative authority and a party to an administrative procedure is not generally accepted in Slovenian law, the elements of such settlement can be identified in the Prevention of Restriction of Competition Act.[27] This Act regulates, *inter alia*, commitments by undertakings subject to restrictive practices procedures and corrective measures in merger procedures.

An undertaking subject to restrictive practices procedure may propose commitments to the Competition Protection Agency (hereinafter: CPA) to remedy the situation giving rise to the likelihood of a breach of the prohibition of restrictive practices. The CPA may accept those commitments by a decision finding that there are no longer grounds for further action and may also limit the commitments in terms of time. Commitments proposed and accepted by the CPA are binding on the undertakings.[28]

23 Cf. N. Hudej, 71.

24 Cf. E. Kerševan, V. Androjna, 241; Janez Breznik, "Komentar k 137. členu ZUP", *Zakon o splošnem upravnem postopku (ZUP): s komentarjem* (ed. Janez Breznik), GV Založba, Ljubljana, 2008, 399.

25 Civil Procedure Act (*Zakon o pravdnem postopku* – CPA, *Official Gazette RS*, Nr. 73/07 as amended).

26 N. Hudej, 71.

27 Prevention of Restriction of Competition Act (*Zakon o preprečevanju omejevanja konkurence* – PRCA-2, *Official Gazette RS*, Nr. 130/22).

28 PRCA-2, art. 63 para. 3.

The corrective measures in merger procedures aims to achieve a similar objective. The notifying party may propose to the CPA corrective measures to remove serious doubts as to the merger's compliance with the competition rules.[29] If the CPA accepts the corrective measures, it decides by decision not to oppose the concentration and declares that it is compatible with the competition rules, and in the operative part of the decision it also defines the corrective measures, the obligations to ensure their compliance and control and the time limit for their compliance.[30]

Decisions issued by the CPA in the case of commitments or corrective measures – regardless of whether they are referred to as a "decision" – correspond to a settlement between the administrative authority and a party to the administrative procedure. A decision to accept commitments or corrective measures is issued to resolve factual or legal ambiguities in the case by way of mutual indulgence between the authority and the party, if the CPA decides, in its discretion, that accepting commitments or corrective measures is the appropriate way to resolve those ambiguities.[31] It therefore replaces the issuance of a (unilateral) decision by which the CPA finds an infringement, orders appropriate measures, and imposes an administrative sanction (under the conditions laid down by law).[32]

However, such a decision cannot be challenged in an administrative dispute, which is otherwise provided for against CPA decisions,[33] as it is not (in substance) an "administrative act" within the meaning of art. 2 of the ADA-1, which can be challenged in an administrative dispute. Namely, the criteria of "unilateralism" and "authoritativeness" are not met.

c) Comparative Law Review

Almost identical rules on settlement in administrative procedure as in the GAPA, can be found in the Serbian and Croatian General Administrative Procedure Acts.[34] Both acts provide that a settlement may be concluded between parties with opposing interests, thereby excluding a settlement between an administrative authority and a party to an administrative

29 PRCA-2, art. 75 para. 1.

30 PRCA-2, art. 75 para. 3 in conjunction with PRCA-2, art. 70 para. 3.

31 Cf. Špela Lovšin, "Možnost poravnave med organom in stranko po ZUP in ZPOmK-2", *Podjetje in delo,* Nr. 1/2023, 70.

32 Cf. PRCA-2, art. 61.

33 *Ibid.*

34 General Administrative Procedure Act (*Zakon o općem upravnom postopku* – Croatian GAPA, *Official Gazette RC*, Nr. 47/09 as amended); and General Administrative Procedure Law (*Zakon o opštem upravnom postupku* – Serbian GAPA, *Official Gazette RS*, Nr. 18/2016 as amended).

procedure.[35] However, a settlement between an authority and a party to a procedure is possible under Croatian law in tax matters. The General Tax Act[36] provides that a tax authority and a taxpayer may conclude a tax settlement on newly established obligations in a tax control procedure. The tax settlement is concluded by signature of both parties and has the force of an enforceable administrative decision.[37]

On the other hand, a settlement between an administrative authority and a party to an administrative procedure is accepted in German law.[38] A settlement is a form of (subordinate) administrative contract ("public-law contract"), which is defined as "a contract establishing, modifying or terminating a legal relationship in the field of public law". The law provides that, instead of issuing an administrative act, an authority may conclude an administrative contract with a person who would otherwise be subject to an administrative act.[39] The administrative procedure may therefore be concluded either by issuing an administrative act or by concluding a contract.[40] In the absence of any contrary legal provision, the administrative authority decides whether to resolve the administrative matter by an administrative act or by concluding a contract (discretionary decision-making). A settlement shall be concluded to remove the factual or legal uncertainties in the case by mutual indulgences of the parties, if the administrative authority, in the exercise of its discretion, decides that the conclusion of a settlement is the appropriate way to remove those uncertainties.[41] Such a contract may also constitute a settlement of only part of the administrative matter, the remainder being decided by administrative act.[42]

In Czech law,[43] subordinate contracts shall be concluded upon specific power in a sectoral regulation[44] and shall not be left to the discretion of the

35 Serbian GAPA, art. 99; Croatian GAPA, art. 57.

36 General Tax Act (*Opći porezni zakon* – GTA, *Official Gazette RC*, Nr. 115/16 as amended).

37 GTA, art. 104 *et seq.* More on this: Tereza Rogić Lugarić, Nevia Čičin-Šain, "Alternativno rješavanje sporova u poreznom pravu: utopija ili rješenje?", *Zbornik Pravnog fakulteta u Zagrebu*, Vol. 64, Nr. 3/2014, 371.

38 Part IV of the German Administrative Procedure Act (*Verwaltungsverfahrensgesetz* – VwVfG) of 25 May 1978, in the version published on 23 January 2003 (BGBl. I, p. 102), as last amended by art. 24, para. 3 of the Law of 25 June 2021 (BGBl. I, p. 2154).

39 VwVfG, § 54.

40 Natasa Athanasiadou, *Der Verwaltungsvertrag im EU-Recht*, *Beiträge zum Verwaltungsrecht*, Mohr Siebeck, Tübingen, 2017, 98.

41 VwVfG, § 55.

42 Heiko Faber, *Verwaltungsrecht*, 2. Aufl., J. C. B. Mohr (Paul Siebeck), Tübingen, 1989, 271–272.

43 Art. 161 of the 500/2004 Coll. ACT of 24 June 2004 Code of Administrative Procedure as amended (*Zákon správní řád* – Czech GAPA).

44 Czech GAPA, art. 161 para. 1.

administrative authority. An administrative contract may also be concluded after an administrative procedure has already been initiated; in such a case, the administrative authority shall, by decision, stay the administrative procedure.[45] An initiative to conclude a contract may be proposed by any of the potential contracting parties and may be withdrawn until or at the same time as it is received by a party.[46] In Estonian law,[47] on the other hand, a proposal for concluding a contract may be made by a party when the procedure for deciding on an administrative matter is conducted at the request of a party, and by the administrative authority, when it is conducted *ex officio*.[48] A contract may not be concluded if a regulation provides that the legal relationship may be governed only by administrative acts.[49] Since a contract fully replaces an administrative act, its legality is examined in accordance with the rules applicable to administrative acts.[50]

Art. 22 of the Serbian GAPA defines administrative contracts similarly to the VwVfG. It provides that an administrative contract is "a bilaterally binding written act concluded, where provided for by a specific law, by an authority and a party, which creates, modifies or terminates a legal relationship in an administrative matter." However, the Serbian GAPA does not specifically mention the possibility of regulating an administrative relationship by an administrative contract instead of an administrative act, which leads to the conclusion that the legislator did not adopt subordinate administrative contracts but only coordinate administrative contracts.[51]

2. Settlement in Administrative Dispute

The administrative authority (as the defendant's representative) and the person who was a party or an accessory participant in the procedure for issuing the administrative act (the claimant) may achieve a court settlement at any time until the administrative court's decision is issued. The court settlement replaces (in part or in full) the contested administrative act[52]

45 Czech GAPA, art. 161 para. 2.

46 Czech GAPA, art. 163.

47 RT I 2001, 58, 354 of 6 June 2001 as amended (*Haldusmenetluse seadus* – Estonian GAPA).

48 Estonian GAPA, art. 11.

49 Estonian GAPA, art. 98.

50 Estonian GAPA, art. 100.

51 Dragan Milkov, "Neke novine u Zakonu o opštem upravnom postupku, Upravno postupanje", *Zbornik radova Pravnog fakulteta u Novom Sadu*, Nr. 3/2016, 74; Dražen S. Miljić, "Upravni ugovori prema Zakonu o opštem upravnom postupku", *Zbornik radova Pravnog fakulteta u Novom Sadu*, Nr. 2/2017, 521.

52 ADA-1, art. 57 para. 3.

and not the judgment of the administrative court since the court does not generally have the power to decide on the administrative matter itself,[53] but to annul the unlawful decision of the administrative authority and refer it back to it for (re)decision. It is therefore an alternative to the administrative authority's decision-making in the administrative procedure,[54] although it is (in terms of its procedural effects) equivalent to a judgment by which a court modifies an administrative act, i.e., it has the effect of an enforceable court decision.[55] In this respect, a settlement in an administrative dispute is fundamentally different from a court settlement before the civil courts.

Even though the parties to an administrative dispute are in a position of procedural equality, the administrative authority is still acting as an authority when concluding a court settlement, as it must ensure that it is in accordance with the public interest. In addition, it must also consider the costs and the duration of the procedure if no settlement is achieved.[56] It can therefore negotiate only within the limits of the law, meaning that it cannot reach a settlement with a content that could not have determined in the operative part of a lawful administrative act.[57] However, the administrative authority is not bound by the contested administrative act. The protection of the public interest is therefore still the responsibility of the administrative authority, not the courts (principle of separation of powers).[58] This means, on the other hand, that the administrative court does not have the power to assess whether a proposed settlement is in accordance with the public interest, but only whether it is in accordance with the law.[59] However, this article must be interpreted more broadly, meaning that an administrative court may not authorize a settlement that would be contrary to "mandatory rules". Since the administrative authority is also bound by the implementing regulations when deciding in administrative procedures, the court settlement must therefore also comply with them.

A court settlement concluded between an administrative authority and a party to an administrative procedure corresponds to the characteristics of a subordinate administrative contract since the administrative authority is still acting as a public authority when achieving it (despite the contractual

53 The administrative court can decide in disputes of full jurisdiction only in cases provided for by law (GAPA, art. 65).

54 E. Kerševan, V. Androjna, 585.

55 Nataša Smrekar, "Komentar k 57. členu ZUS-1", *Zakon o upravnem sporu: s komentarjem* (ed. Erik Kerševan), GV Založba, Ljubljana, 2019, 326.

56 ADA-1, art. 57 para. 3.

57 E. Kerševan, V. Androjna, 585.

58 *Ibid.*

59 ADA-1, art. 57 para. 2.

form). It is therefore substantially similar to a settlement reached in an administrative procedure between the administrative authority deciding on an administrative matter and a party to the administrative procedure, although it is formally concluded before a judge.

IV Results

Given all the deficiencies of the current regime and the fact that the current legislation already recognizes the possibility of settlement between public and private interests (in certain sectoral laws and in the administrative dispute procedure), the settlement between an administrative authority deciding on an administrative matter and a party to an administrative procedure should be adopted at a general level – in the GAPA, while the specifics should be regulated in sectoral laws. However, it should be limited to those areas of administrative functioning where the administration has a certain margin of discretion in determining the content of the decision on the administrative matter.[60] This means, on the other hand, that the possibility of a settlement is usually excluded in the case of a legally binding decision-making, since the content of such a decision is predetermined and the administrative authority is bound by it (principle of legality). Settlement between an administrative authority and a party to an administrative procedure would thus be possible especially in areas where cooperation is to the benefit of both, such as concessions, spatial planning, taxation, inspection matters,[61] obtaining public funds, and would lead to a more substantively correct and better accepted solution to a specific administrative matter, as the party had the opportunity to participate in its formulation.

In addition to a settlement replacing the issuance of an administrative act (subordinate administrative contract), the possibility of introducing a compromise administrative contract should also be considered. A compromise administrative contract would allow the administrative authority and the party to resolve (factual[62] or legal) uncertainties in the case before the administrative act is issued. After the conclusion of the contract, the administrative authority would then issue the administrative act referring to the compromise administrative contract. Such contract would therefore not replace the issuance of an administrative act but would only partially

60 Cf. E. Kerševan, V. Androjna, 585 and decision of the Higher Court of Ljubljana I Cpg 51/2018 of 7 May 2018.

61 Javna uprava 2020: Strategija razvoja javne uprave 2015–2020, available at: *https://www.gov.si/assets/ministrstva/MJU/Kakovost-in-inovativnost-v-javni-upravi/Strategija/Strategija-razvoja-javne-uprave-2015–2020.pdf*, 18. 8. 2023, 123.

62 Cf. B. Žuber, J. Marflak-Trontelj, 9.

determine its content, resulting in less legal remedies and administrative disputes against such a decision (due to mistakes in determining the factual situation or incorrect application of substantive law).

However, the administrative authority would still be bound by the fundamental principles of administrative procedure and would be obliged to reject the settlement if it found that it was not in accordance with law or public interest, or that it sought to distort the material truth. The position of the administrative authority would therefore be the same as in a (typical) administrative procedure, as it would be obliged to protect both private and public interests.[63]

Due to the public law nature of the settlement, certain substantive issues should also be addressed. In comparative law, this includes the consequences of errors in achieving the settlement, the impact of changed circumstances or changed public interest on the settlement and the consequences of its breach.[64] Moreover, supervision over the legality of a settlement should be ensured in a special procedure before the administrative court, which usually has jurisdiction over administrative contracts in comparative law.[65]

The initial hypothesis must therefore be rejected, since the characteristics of administrative decision-making do not preclude the possibility of a settlement between an administrative authority and a party to an administrative procedure, but merely limit it to certain administrative matters.

V Conclusions

With the modernization of public administration, the functioning of administration is increasingly shifting towards the consensual regulation of administrative matters, which were traditionally regulated by authoritative acts. One of the mechanisms of the alternative dispute resolution is settlement, which can be concluded from a comparative law perspective between an authority deciding on an administrative matter and a party of an administrative procedure (as a form of administrative contract) and is an effective way of resolving administrative matters. In Slovenian law, however, a settlement can generally only be achieved between parties with opposing interests and is therefore rarely used in practice, as disputes between parties with opposing interests are normally not decided by administrative authorities in administrative procedures, but by courts of general jurisdiction. Given all

63 GAPA, art. 7.

64 Cf. VwVfG, § 59–60.

65 Paul Hüther, Johannes Blänsdorf, André Lepej, "Der öffentlich-rechtliche Vertrag gem. §§ 54ff. VwVfG – Teil 2", *Juristische Ausbildung*, Nr. 5/2022, 564.

the advantages of alternative dispute resolution, Slovenian law should also – while respecting all the specific features of administrative decision-making – adopt settlement between an administrative authority and a party to an administrative procedure as a special form of administrative contract (which is already a generally accepted legal institution in Slovenian law), at least for certain administrative matters.

References

Balthasar Alexander, "Alternative Dispute Resolution in Administrative Law: A Major Step Forward to Enhance Citizens' Satisfaction or Rather a Trojan Horse for the Rule of Law?", *Elte Law Journal*, Nr. 1, 2018.

Breznik Janez, "Komentar k 137. členu ZUP", *Zakon o splošnem upravnem postopku (ZUP): s komentarjem* (ed. Janez Breznik), GV Založba, Ljubljana, 2008.

Đerđa Dario, *Opći upravni postupak u Republici Hrvatskoj*, Inženjerski biro, Zagreb, 2010.

Faber Heiko, *Verwaltungsrecht*, 2. Aufl., J. C. B. Mohr (Paul Siebeck), Tübingen, 1989.

Hudej Nika, "Komentar k 137. členu ZUP", *Komentar Zakona o splošnem upravnem postopku (ZUP), 2. knjiga* (eds. Erik Kerševan, Polonca Kovač), Uradni list RS – Pravna fakulteta Univerze v Ljubljani, Ljubljana, 2020.

Hüther Paul, Blänsdorf Johannes, Lepej André, "Der öffentlich-rechtliche Vertrag gem. §§ 54ff. VwVfG – Teil 2", *Juristische Ausbildung*, Nr. 5/2022.

Kerševan Erik, Androjna Vilko, *Upravno procesno pravo: upravni postopek in upravni spor*, GV Založba, Ljubljana, 2017.

Kovač Polonca, "Izzivi alternativnega reševanja sporov v upravnih razmerjih v sloveniji in širše", *Zbornik znanstvenih razprav*, Vol. 76, Nr. 1/2016.

Kovač Polonca, "Mediation and Settlement in Administrative Matters in Slovenia, *Hrvatska i komparativna javna uprava: časopis za teoriju i praksu javne uprave*, Vol. 10, Nr. 3, 2010.

Lovšin Špela, "Možnost poravnave med organom in stranko po ZUP in ZPOmK-2", *Podjetje in delo,* Nr. 1/2023.

Milkov Dragan, "Neke novine u Zakonu o opštem upravnom postupku, Upravno postupanje", *Zbornik radova Pravnog fakulteta u Novom Sadu*, Nr. 3/2016, 74; Dražen S. Miljić, "Upravni ugovori prema Zakonu o opštem upravnom postupku", *Zbornik radova Pravnog fakulteta u Novom Sadu*, Nr. 2/2017.

Rogić Lugarić Tereza, Čičin-Šain Nevia, "Alternativno rješavanje sporova u poreznom pravu: utopija ili rješenje?", *Zbornik Pravnog fakulteta u Zagrebu*, Vol. 64, Nr. 3/2014.

Smrekar Nataša, "Komentar k 57. členu ZUS-1", *Zakon o upravnem sporu: s komentarjem* (ed. Erik Kerševan), GV Založba, Ljubljana, 2019.

Štemberger Katja, "Pogodba kot alternativa upravnemu aktu v slovenskem in primerjalnem pravu", *Javna uprava*, Vol. 56, Nr. 1–2/2020.

Žuber Bruna, Marflak-Trontelj Jonika, "Alternativno reševanje upravnih sporov: ali lahko redko uporabljena metoda danes postane rešitev za jutri?", *Pravna praksa*, Vol. 40, Nr. 46/2021.

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