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The future of consensual forms in administrative proceedings

Summary

The article presents the institution of an administrative agreement from the perspective of legal solutions in force in selected European countries. The increase in the number and diversity of tasks performed by the administration and the multitude of conducted proceedings encourage the search for alternative forms of settling a case in relation to an administrative decision. The administrative agreement is one of them. The analysis of foreign regulations confirms that the institution in question belongs to the modern procedural laws. The scope of regulation varies, as do the individual solutions concerning the admissibility and mode of concluding the contract, its subject matter, the mechanisms for removing defects, the grounds for contestability of the contract and its enforceability. It turns out that in individual European orders two patterns of regulation dominate: French and German, although they are subject to significant modifications. The performance of certain public tasks by private parties on the basis of an administrative agreement provides for certain guarantees not only for the parties to the agreement but also for the beneficiaries of those tasks. This particular type of contract allows adequate protection of the public interest. The prevalence of the administrative agreement in Europe prompts the author to formulate a conclusion on the need to include this institution in the home system. The attempt made in the 2017 reform of the Administrative Procedure Code to include in it an administrative agreement was unsuccessful. The provisions on an administrative agreement that were then drafted were intended to give a deeper meaning to mediation, a new institution in administrative proceedings, which is currently not popular. Mediation was to precede the conclusion of an administrative agreement. However, there are no significant obstacles to returning to work on the regulation of this institution, which is so widely used in other European countries, and which is clearly lacking in its home Code.

Keywords: administrative contract – administrative proceedings – comparative administrative proceedings