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Ombudsman for Small and Medium-Sized Enterprises in Mediation Proceedings

*Rzecznik Małych i Średnich Przedsiębiorców
w postępowaniu mediacyjnym*

ABSTRACT

This article considers the role of the Ombudsman for Small and Medium-Sized Enterprises in mediation proceedings and discusses the legal basis for the SME Ombudsman's operations and his tasks in the context of disputes between entrepreneurs and public administration bodies, while also highlighting the specific nature of administrative mediation and its significance for the SME sector. The author focuses on an analysis of current legal regulations, while also taking into account the proposed amendments to the Act of March 6, 2018, on the Ombudsman for Small and Medium-Sized Enterprises, which establishes new conditions for mediation between businesses and public authorities, while strengthening the role of the SME Ombudsman. The conclusions indicate that the Ombudsman's role may raise legitimate doubts of a theoretical and practical nature, bringing the Ombudsman closer to the role of a quasi-representative of the entrepreneur rather than an objective and neutral mediator.

Keywords: administrative mediation; mediator; SME Ombudsman; entrepreneur

INTRODUCTION

In recent years, there has been a rapid growth in alternative dispute resolution methods, among which mediation plays a significant role. This is also evident in the context of using mediation in disputes arising between businesses and public authorities. The application of the concept of amicable conflict resolution in this sphere raises the most theoretical and practical concerns. The same applies to the proposal to create conditions for active mediation conducted by the Ombudsman for Small and Medium-Sized Enterprises, who was appointed pursuant to the Act

of March 6, 2018, on the Ombudsman for Small and Medium-Sized Enterprises.¹ The mission of the SME Ombudsman is to support entrepreneurs in the SME sector and to work toward removing barriers to their business operations. By positioning the Ombudsman among the most important bodies for the protection of rights and freedoms in Poland, it is recognized as an extrajudicial and extra-constitutional body for the protection of entrepreneurs' rights.²

By creating new conditions for the alternative dispute resolution, the existing provisions governing mediation between businesses and public administration bodies have been called into question, where the Ombudsman's role is to "assist in organizing mediation between businesses and public administration bodies." In reality, this area appears to be stagnant and undeveloped, and this authority is unclear and practically questionable. Consequently, over the past few years, recognizing the potential in promoting mediation, the SME Ombudsman has repeatedly proposed expanding his authority to ultimately increase interest in and the use of mediation in administrative proceedings. The Ombudsman has requested the ability to "organize mediation" between entrepreneurs and public administration bodies,³ which is considered a beneficial solution also from the perspective of strengthening the role of promoting amicable methods of resolving disputes between entrepreneurs and public administration bodies. One of the proposals put forward is currently reflected in the new draft bill of June 27, 2025, amending the Act on the Ombudsman for Small and Medium-Sized Enterprises and certain other acts,⁴ which provides for the introduction of new regulations strengthening the role of the Ombudsman in administrative mediation, where the Ombudsman will be able to "conduct mediation."

When discussing administrative mediation and the role of the SME Ombudsman in mediation proceedings, it is important to consider the broader context of the legal reforms being implemented. In this regard, it is also worth mentioning the legislative changes that have been enacted in connection with the implementation of deregulation packages in the areas of commercial and administrative law.⁵ In

¹ Consolidated text: Journal of Laws of 2023, item 1668. Hereinafter referred to as: URMSP.

² L. Zacharko, A. Zacharko, *Rzecznik małych i średnich przedsiębiorców – jako pozasądowy organ ochrony praw przedsiębiorców*, "Eunomia – Rozwój Zrównoważony – Sustainable Development" 2018, no. 2, pp. 17–24.

³ See: Comments by the Ombudsman for Small and Medium-Sized Enterprises on the Government's draft bill amending certain laws to deregulate economic and administrative law and improve the principles governing the drafting of economic law. Print Sejm No. 1108; *Report on the Activities of the Ombudsman for Small and Medium-Sized Enterprises for 2023*, p. 103; *Report on the Activities of the Ombudsman for Small and Medium-Sized Enterprises for 2022*, pp. 146–147.

⁴ Draft Act of June 27, 2025, amending the Act on the Ombudsman for Small and Medium-Sized Enterprises and certain other acts. Draft number UD218. Hereinafter referred to as: the URMSP Draft.

⁵ Act of May 21, 2025, amending certain acts to deregulate economic and administrative law and improve the principles for drafting economic law (Journal of Laws, item 769), which entered into force on July 13, 2025. Hereinafter: Deregulation Package.

search of legislative solutions to support business development in Poland, on July 13, 2025, pursuant to the Act of May 21, 2025, amending certain acts to deregulate economic and administrative law and improve the principles for drafting economic law, amendments entered into force that are intended to contribute to improving the legal and institutional environment in which Polish companies operate.⁶ Mediation, as referred to in the Act of June 14, 1960 – the Code of Administrative Procedure – has also become an issue requiring further review.⁷

The purpose of this article is to analyze and evaluate current and proposed legal regulations regarding the activities of the SME Ombudsman in the area of alternative dispute resolution in the administrative context. In the research on the subject matter of this article, the formal-dogmatic method was employed as the primary research method, which made it possible to examine new conditions for mediation between businesses and public authorities.

“ASSISTANCE WITH ORGANIZING MEDIATION”

The list of tasks set forth in Article 8 URMSP included, among other things, “assistance in organizing mediation between businesses and public administration bodies.” The Act did not specify the forms of assistance nor indicate which methods of providing it were permissible. The explanatory statement emphasized that “in order to promote mediation between entrepreneurs and administrative bodies as an out-of-court form of agreement and dispute resolution, the Ombudsman’s task will also be to assist in organizing it, e.g.: by establishing a dialogue between the parties to the dispute and encouraging them to choose this method of dispute resolution.”⁸ Reading further into the explanatory statement, one might get the impression that the purpose of mediation is to resolve matters that fall outside the scope of cases adjudicated in administrative proceedings.⁹ The current draft amendment aims to dispel these doubts, as it stipulates that the concept of mediation in question refers primarily to administrative mediation.

The role of the SME Ombudsman is to determine the form and manner of providing such “assistance,” taking into account the circumstances, resources, and needs of the situation. Semantically speaking, “assistance in organizing mediation”

⁶ Justification for the Government’s draft act amending certain acts to deregulate economic and administrative law and improve the principles for drafting economic law, p. 3. Hereinafter referred to as: Justification for the Deregulation Package.

⁷ Consolidated text: Journal of Laws of 2024, item 572. Hereinafter referred to as: KPA.

⁸ Justification for the Act on the Ombudsman for Small and Medium-Sized Enterprises, Print Sejm No. 2052, p. 5.

⁹ L. Bielecki, P. Ruczkowski, *Komentarz do ustawy o Rzeczniku Małych i Średnich Przedsiębiorców*, [in:] *Konstytucja biznesu. Komentarz*, ed. M. Wierzbowski, Warszawa 2019, p. 389.

primarily involves taking action for the benefit of another person in connection with organizing something.¹⁰ The essence of “assistance in organizing mediation” may lie in the support provided to parties in conflict who wish to resolve their dispute amicably, without having to go to court. It does not involve determining who is right, but rather creating the conditions for constructive dialogue.

This “assistance” can take many forms. It could include technical aspects related to the preparation and conduct of the mediation process, such as finding a mediator, helping the parties contact the mediation center, initiating contact between the business and the authority, assisting with paperwork, explaining the nature of administrative mediation and highlighting its benefits, scheduling mediation sessions and organizing the mediation meeting itself, and facilitating the exchange of positions. It is questionable whether the term “assistance in organizing mediation” also includes the authority to provide substantive support. It seems that the answer should be negative. “Assistance in organizing” has a rather narrower scope and refers only to the manner in which a given undertaking is organized.

MEDIATION IN ADMINISTRATIVE PROCEEDINGS

Mediation was introduced into general administrative proceedings in 2017 as part of a comprehensive reform of the Code of Administrative Procedure.¹¹ The aim of the amendment was to introduce both quantitative and qualitative changes,¹² as *ratio legis* for introducing mediation proceedings was not only to improve administrative proceedings and shorten their duration, but also to bring the administration closer to the public. The use of methods for the amicable resolution of disputes, as mediation, was intended to help reform the efficiency and effectiveness of administrative proceedings and to make the administration’s approach to citizens more collaborative.¹³

Effectiveness and efficiency, as well as the development of partnerships – the fundamental values that underpinned the reform of the Code of Administrative Procedure – have not been used as expected.¹⁴ As noted in the review of the Act’s implementation, the practice of applying the new provisions on administrative

¹⁰ *Słownik języka polskiego*, sjp.pwn.pl [access: 23.06.2026].

¹¹ Act of April 7, 2017, amending the Act – Code of Administrative Procedure and certain other acts (Journal of Laws, item 935), which entered into force on June 1, 2017.

¹² A. Szpor, *Mediacja w prawie administracyjnym*, [in:] *Mediacje. Teoria i praktyka*, eds. E. Gmurzyńska, R. Morek, Warszawa 2018, p. 431.

¹³ Justification for the Government’s draft amendment to the Administrative Procedure Code and certain other acts, Print Sejm No. 1183, p. 5.

¹⁴ Review of the Implementation of the Act of April 7, 2017, Amending the Act – Code of Administrative Procedure and Certain Other Acts (OSR ex-post). OSR ex-post, 3.3, p. 3. Available at: <https://legislacja.gov.pl/docs//6/12362152/12896440/dokument574670.pdf> [access: 23.06.2026].

mediation shows that it is neither natural nor intuitive for authorities to use mediation in practice. The reasons for this situation are attributed, among other things, to the parties' low awareness of the possibility of using mediation and their belief that disputes between them and the courts of first instance should be resolved by a higher court.¹⁵ As a result, this awareness and conviction lead to a lack of interest among the parties in alternative dispute resolution methods.¹⁶

Administrative mediation is intended to find a solution to an administrative matter that is mutually agreed upon by the authority and the party or parties involved. Pursuant to Article 96a (3) of KPA, "the purpose of mediation is to clarify and consider the factual and legal circumstances of the case and to reach an agreement on its resolution within the limits of applicable law, including by issuing a decision or concluding a settlement." The fundamental difference from the traditional understanding of the term "mediation" is that, as a rule, the resolution of an administrative matter does not depend on compromises made by the parties to the mediation. The essence of mediation in administrative proceedings does not, as a rule, concern the dispute between a public administration body and a party, but rather the balancing of the public interest and the legitimate interests of citizens.¹⁷

Administrative procedure regulations provide a basis for distinguishing between two types of mediation:

1) *vertical mediation*, in which the participants include the authority conducting the proceedings (as well as any cooperating authority and the party or parties to the proceedings), and

2) *horizontal mediation*, in which only the parties to the proceedings participate.

In both cases, the mediation is conducted by a mediator. The result of the mediation may be included either in a decision, if the mediation took place between a party and the authority conducting the proceedings, or in an administrative settlement, if the mediation was conducted between the parties to the pending proceedings.¹⁸

The area of shaping administrative and legal relations between citizens and government agencies requires a change in approach and a change in the culture of administration. For administrative mediation to serve as a tool that increases citizens' trust in government agencies, it is essential to educate and promote the institution of mediation itself, targeting both public officials and citizens. In this

¹⁵ OSR ex-post, 3.4 point 2, p. 5.

¹⁶ *Ibidem*.

¹⁷ A. Przylepa-Lewak, *Mediacja jako forma komunikacji w postępowaniu administracyjnym*, "Annales UMCS, Sectio G" 2022, vol. 69(2), p. 66. See also: *Mediacja w postępowaniu administracyjnym. Podręcznik dla pracowników administracji publicznej*, Ministry of Entrepreneurship and Technology and the Center for Commercial Mediation at the National Chamber of Legal Advisers, September 2019, p. 2.

¹⁸ A. Krawczyk, [in:] *Kodeks postępowania administracyjnego. Komentarz*, ed. W. Chróścielewski, Warszawa 2025, pp. 484–485.

process, it is important to understand that mediation can serve as a valuable tool for understanding the motives and reasons behind the actions of both parties involved – that is, the addressee and the recipient of the decision.¹⁹

The SME Ombudsman has repeatedly called for increased use of mediation in administrative proceedings. Hence the proposals to expand the SME Ombudsman's authority to include the ability to "facilitate mediation between businesses and public administration bodies."²⁰

A PROPOSAL TO STRENGTHEN THE OMBUDSMAN'S ROLE IN MEDIATION EFFORTS

Administrative mediation, as an expression of modern forms of cooperation between citizens and the administrative apparatus, is certainly not being utilized as expected, even in cases involving the legally defined powers of the SME Ombudsman.

The amendment proposed in Article 1(4)(a) of the URMSP Draft concerns strengthening the Ombudsman's role in mediation between businesses and public administration bodies. The current wording "assistance in organizing mediation," due to its narrow scope of meaning, raised numerous interpretive doubts, which in practice negatively affected the ability to effectively carry out this task. The draft proposes an amendment aimed at increasing the effectiveness of mediation in relations between entrepreneurs and public administration bodies. To this end, the Ombudsman is to be granted specific powers to "conduct mediation," which will be carried out upon request and will be subject to confidentiality, unless the participants decide otherwise. This change will not only clarify the Ombudsman's powers but also substantially strengthen them in this area, granting the Ombudsman a significant role within the alternative dispute resolution system between businesses and public administration bodies.

The uniqueness of this procedure also relates to the confrontation with the authority attributed to public authorities. The specific nature of this relationship, characterized by its multi-level structure,²¹ means that the administrative body acts both as a participant in the mediation and as the organizer of the administrative proceedings. This illustrates the difficulties confronted by the participants in the process and the mediator himself, particularly given the need to ensure equality between the parties and the unspoken reality that the success of mediation depends

¹⁹ P. Romaniuk, *Wybrane mechanizmy kształtowania mediacji w sferze administracyjnej*, "ADR. Arbitraż i Mediacja" 2024, vol. 17(2), p. 48.

²⁰ OSR ex-post, 8 point 25, pp. 46–47.

²¹ A. Dauter-Kozłowska, *Stosowanie mediacji w postępowaniu administracyjnym i sądowoadministracyjnym*, "Przegląd Prawa Publicznego" 2020, no. 1, p. 73.

primarily on the goodwill of the body itself. However, the vertical structure of the parties in administrative mediation – in the context of so-called vertical mediation – does not conflict with the principle of equality among the participants. The literature emphasizes that both the administrative body and the party involved become entities with equal status upon the initiation of the mediation procedure and throughout the entire process. The mitigation of the disparity in the parties' status during the mediation stage is the result of the so-called democratization of administrative proceedings.²² Increasing the party's involvement in the case resolution process is consistent with the transformative nature of administrative mediation.²³ Considering mediation as a process that transforms administrative practices, where dialogue is based on the parties' participation in reaching a resolution, shows that seeking a solution with the help of a mediator, or perhaps even the SME Ombudsman, can increase interest in mediation as a means of resolving disputes.

An analysis of the SME Ombudsman's activities inspired changes, including an expansion of the range of entities covered by his protection. These changes would also result in a name change to the Ombudsman for Entrepreneurs. Underlining strongly that the Ombudsman, in his activities, takes particular account of the interests of micro-entrepreneurs and small and medium-sized enterprises within the meaning of Article 7(1)(1)–(3) of the Act of March 6, 2018 – Entrepreneurs Law,²⁴ it is proposed that the term “entrepreneur” be understood to mean:

- 1) entrepreneurs as defined in Article 4(1) and (2) of the Act of March 6, 2018 – Entrepreneurs Law;
- 2) persons engaged in non-agricultural activities referred to in Article 8(6) (3)–(4b) of the Act of October 13, 1998, on the Social Insurance System;²⁵
- 3) farmers as defined in Article 6(1) of the Act of December 20, 1990, on Social Insurance for Farmers.²⁶

Under the new regulations, the Ombudsman for Entrepreneurs – who is tasked with safeguarding the rights of entrepreneurs, particularly the principle of freedom of economic activity, fostering entrepreneurs' trust in public authorities, impartiality, and equal treatment, sustainable development, and the principles of fair competition and respect for good practices and the legitimate interests of entrepreneurs – will be authorized to conduct mediation “in matters concerning entrepreneurs within

²² B. Chłodziński, P. Rączka, *Mediacja jako instytucja transformująca stosunek administracyjnoprawny*, [in:] *Prawo administracyjne jako miejsce spotkań: księga jubileuszowa dedykowana Profesorowi Jerzemu Supernatowi*, eds. B. Kowalczyk, K. Kulińska-Jachowska, Ł. Prus, M. Tabernacka, Wrocław 2024, pp. 145–146.

²³ Justification for the Government's draft amendment to the Administrative Procedure Code and certain other acts, p. 35.

²⁴ Consolidated text: Journal of Laws of 2025, item 1480 as amended.

²⁵ Consolidated text: Journal of Laws of 2026, item 199 as amended.

²⁶ Consolidated text: Journal of Laws of 2025, item 1770.

the meaning of Article 1(2) of the Act of March 6, 2018, on the Ombudsman for Entrepreneurs” (proposed Article 96b(2a) KPA).

For administrative mediation to be initiated, three conditions of admissibility must be met: 1) the temporal condition, 2) the substantive condition, and 3) the volitional condition.²⁷

The essence of mediation conducted before the Ombudsman is that it is initiated upon request. The participants in such mediation, initiated upon request, will therefore be the authority conducting the proceedings and the party or parties to those proceedings, who are business entities. If mediation is to be conducted upon request (Article 9b(1) of the URMSP Draft), it can be assumed that the initiative to initiate mediation may come from either the authority or a party to the proceedings. It is therefore reasonable for the initiative to initiate mediation to arise in every case where the nature of the matter permits it, and mediation may contribute to improving the proceedings.

Under Article 96a KPA, mediation may be conducted during the proceedings if the nature of the case permits it. Mediation may therefore be conducted after the proceedings have been initiated, but before the proceedings are concluded at the relevant level.²⁸ This means that it cannot be conducted before proceedings are initiated or after a decision has been issued or a settlement has been reached.²⁹

In legal doctrine, the qualifying criterion for the mediability of an administrative case is the “nature of the case.” Given the division of administrative cases into two general categories – those involving the determination of specific rights or obligations and those involving the review of such determinations – cases in the second category are deemed not to be suitable for mediation.³⁰ The literature indicates that the mediability of an administrative case should be associated primarily with situations where substantive law leaves it to the authority to choose the method of resolution, as well as in cases involving undefined concepts.³¹

The latest amendment to the Code of Administrative Procedure, aimed at clarifying which administrative cases may be subject to mediation, introduced a list of examples, thereby defining the scope of mediation. A matter that is suitable for mediation is, in particular, a matter that is resolved:

²⁷ A. Krawczyk, *op. cit.*, pp. 481–484.

²⁸ P.M. Przybysz, [in:] *Kodeks postępowania administracyjnego. Komentarz aktualizowany*, LEX/el. 2026.

²⁹ A. Krawczyk, *op. cit.*, p. 481.

³⁰ K. Klonowski, *Charakter administracyjnej sprawy mediacyjnej*, “Przegląd Prawa Publicznego” 2020, no. 6, pp. 68–82.

³¹ A. Krawczyk, *op. cit.*

1) through administrative recognition, or
2) concerning: a) concession or permission to conduct business activities, or entry in the register of regulated activities; b) construction and architecture; c) land use planning; d) environmental and nature protection; e) real estate; f) agriculture; g) forestry; h) fisheries; i) industrial property. Nevertheless, the scope of mediation remains very broad and may apply to any “disputed matter” between the parties involved (Article 13 KPA). Whether the nature of the case permits mediation must still be assessed by taking into account the entirety of the provisions on mediation as well as the substantive law.

Mediation proceedings should be conducted in accordance with the principle of voluntariness, understood as the mutual willingness of the parties to participate in mediation, as well as confidentiality. The proposed provisions, based on the fundamental principles of mediation, stipulate that mediation is not public unless the participants decide otherwise, and that mediation is conducted only with the consent of all participants. The consent of all participants in mediation is an indisputable *sine qua non* of mediation. Consent must be mutual, clearly expressed, and leave no doubt as to the willingness to mediate.

In accordance with standard administrative procedure, the principle of having the participants in the mediation select the mediator has been adopted.³² It appears that, under the proposed new regulations, the authority will be able to appoint the Ombudsman for Entrepreneurs or an authorized representative of the Ombudsman as a mediator. There is nothing to prevent a party from exercising this right on its own behalf. The Ombudsman for Entrepreneurs or an “authorized representative of the Ombudsman” will therefore be able to conduct mediation between entrepreneurs and the authority.

From the perspective of vertical mediation, the selection of a mediator depends primarily on the mediator’s competence and experience, provided that the mediator fulfils the conditions set forth in Article 96f KPA: “if the authority conducting the proceedings is a party to the mediation, the mediator may only be a person entered on the list of permanent mediators or on the register of institutions and persons authorized to conduct mediation proceedings, maintained by the president of the district court, or a mediator entered on a list maintained by a non-governmental organization or a university, information regarding which has been provided to the president of the district court.”

The selection of the Ombudsman as a mediator constitutes, in a sense, a departure from the general rule set forth in Article 96f KPA. In the case of appointing an “authorized person,” the authority behind the office requires that this person be competent in conducting mediation, have experience in handling conflicts within the

³² M. Wilbrandt-Gotowicz, [in:] *Kodeks postępowania administracyjnego. Komentarz*, eds. M. Jaśkowska, A. Wróbel, M. Wilbrandt-Gotowicz, Warszawa 2026, p. 485.

public administration, and understand the interests of businesses. Therefore, with reference to administrative procedure, it should be recognized that such a person could primarily be a mediator who meets the criteria set forth in Article 96f KPA. On the other hand, it cannot be ruled out that, in the interest of the proceedings or the very idea of mediation, such a person could be someone without mediation experience as defined by the regulations, but who possesses authority, enjoys trust, and has experience and knowledge in the field of entrepreneurship and the problems faced by entrepreneurs. Mediation involving business entities, conducted by mediators who possess specialized knowledge of commercial and administrative law, can have a positive impact on the mediation process and its outcome.

Defining the role of a mediator also requires reference to the principles of objectivity and neutrality. The mediator's duty to remain impartial stems from Article 96g KPA. The mediator should remain impartial while conducting mediation and immediately disclose any circumstances that could raise doubts as to his or her impartiality, including, as appropriate, the circumstances referred to in Article 24, § 1 and § 2 KPA. If there are doubts regarding the mediator's impartiality, the mediator shall decline to conduct the mediation and shall immediately notify the parties to the mediation and the public administration body, if the latter is not a party to the mediation. The mediator's independence means, therefore, that the mediator has no ties to any of the parties involved in the mediation and has no interest in resolving the matter through mediation in a particular way.³³

One of the fundamental principles of mediation is the mediator's neutrality. This neutrality is reflected, among other things, in the established principle that the mediator must be independent of the authority conducting the proceedings; specifically, a mediator may not be an employee of the public administration body before which the case is pending (Article 96f § 3 KPA).

In accordance with Article 96k KPA, the mediator conducts mediation with the aim of reaching an amicable resolution of the dispute, including by assisting the parties in formulating settlement proposals. The manner and extent of the mediator's involvement may vary depending on the type of mediation. It is said that mediation in administrative matters is based on the classic facilitative model of mediation, in which the mediator's primary role is to oversee the course of the discussion, assist in communication between the parties, and support the search for constructive solutions to the conflict, without the authority to make any determinations.³⁴ On the other hand, an evaluative model is also acceptable, in which the mediator may offer non-binding proposals for a resolution intended to settle the dispute.³⁵

³³ P.M. Przybysz, *op. cit.*

³⁴ K. Klonowski, [in:] *Kodeks postępowania administracyjnego. Komentarz*, ed. H. Knysiak-Sudyka, Warszawa 2023, p. 644.

³⁵ M. Wilbrandt-Gotowicz, *op. cit.*, p. 491.

According to the proposal, the formal conclusion of the mediation shall be a record of the mediation proceedings, which shall include:

- 1) the time and place of the mediation;
- 2) the first and last names (or names) of all participants;
- 3) the first and last name of the Ombudsman or the Ombudsman's authorized representative;
- 4) the agreements reached regarding the resolution of the dispute;
- 5) the signature of the Ombudsman or the Ombudsman's authorized representative and the participants in the mediation, and if any of the participants in the mediation is unable to sign the minutes, a note stating the reason for the absence of a signature.

The authority is bound by the terms of the mediation agreement set forth in the mediation minutes, provided that resolving the matter in accordance with those terms is possible within the limits of applicable law.

CONCLUSIONS

Promoting amicable dispute resolution methods is a matter of great relevance today. The current discourse on this topic should be regarded as extremely important, especially since public awareness of the availability and appeal of ADR procedures, including in administrative proceedings, remains significantly deficient. The continuing work on creating new conditions for administrative mediation involving the SME Ombudsman is intended to be a remedy for the current impasse in this area.

The SME Ombudsman is undoubtedly regarded as the most important body for the protection of entrepreneurs' rights and freedoms. The current regulations effectively and legally limit the Ombudsman's role in providing meaningful assistance in organizing mediation. The current arrangements must therefore be considered insufficient. However, a lively discussion on amending the regulations to increase interest in mediation by promoting it as an effective tool for resolving disputes is undoubtedly necessary.

Strengthening the Ombudsman's powers therefore seems justified and necessary, especially since, as a *speaker*, he is meant to be the voice of entrepreneurs, and his primary task is to safe their rights, particularly the principle of freedom of economic activity. Nevertheless, the Ombudsman's special status, before whom mediation proceedings would take place, becomes problematic from a practical standpoint. As for the raised issue of the Ombudsman's functions and role, this may constitute an obstacle to the objective resolution of disputes between entrepreneurs and state administrative bodies. One could argue that the Ombudsman's statutory functions, by their very nature, deprive him of impartiality and neutrality. Furthermore, the actual fulfillment of the duty of independence and impartiality, even in

the case of an authorized representative of the Ombudsman, appears difficult insofar as such individuals may simultaneously be employees of the SME Ombudsman.

This raises the legitimate question of whether the SME Ombudsman can act as an active mediator in specific cases involving businesses and public administrative bodies. A positive conclusion would be difficult to accept, given the fundamental function and mission of the Ombudsman. Thus, the Ombudsman's participation in mediation proceedings as a mediator could result in a situation where he represents conflicting interests. This could hinder the objective resolution of the dispute. Involving the Ombudsman in proceedings as a mediator could *de facto* result in a situation where, on the one hand, he would represent the interests of the entrepreneur whose rights he would "defend," and on the other hand, he would also have to defend, in accordance with the regulations, the principles of strengthening entrepreneurs' trust in public authorities. It appears that the conflict of interest created in this way is irresolvable.

The proposed amendment reflects an evolving change in the Ombudsman's functioning model. From an active role at the systemic level to increasingly active participation in an interventionist capacity. Providing the Ombudsman with tools for procedural intervention is intended to make the Ombudsman a strong, efficient, and effective body tasked with serving entrepreneurs. Nevertheless, given the nature of the Ombudsman's role and the trust associated with it, the Ombudsman's conduct and actions during the mediation process could realistically influence the formation of specific attitudes toward the protection of entrepreneurs' rights and interests, thereby undermining the very idea of mediation.

In attempting to define the Ombudsman's role in the proposed mediation model, it is worth addressing here the issue of "the mediator's pursuit of an amicable resolution of the dispute" in the context of administrative mediation. Mediation in administrative proceedings, in the vertical model, essentially serves as a tool through which an authority can ultimately make an authoritative decision in a specific case, while taking into account the findings recorded in the protocol. Consequently, legal doctrine suggests that, given the mediator's limited role as a participant, the mediator should focus more on explaining to the other participants in the proceedings the consequences of the possible versions of the administrative act. Consequently, in this context, one might consider whether the mediator should not act as a quasi-representative of the parties – the participants in the mediation.³⁶ Under the current regulations, one could reasonably conclude that the Ombudsman's participation in mediation proceedings brings him closer to the role not so much of a mediator as of a *quasi-representative* of a party, the entrepreneur.

The primary issue in establishing an effective ADR system under the SME Ombudsman is undoubtedly raising public awareness and educating the public about

³⁶ K. Klonowski, [in:] *Kodeks postępowania...*

the benefits of administrative mediation. The findings indicate that while the SME Ombudsman's role in mediation may be legally permissible in theory, in practice it raises numerous legal concerns. Although the Ombudsman's involvement might seem beneficial to the mediation process, helping to level the playing field between the parties, this initial impression and the raised concerns may be misleading. The considerations presented lead to the conclusion that it is necessary to re-examine what conditions should be established for the out-of-court resolution of disputes between businesses and public authorities so that this mechanism can be considered effective and functional in practice.

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ABSTRAKT

Artykuł podejmuje problematykę roli Rzecznika Małych i Średnich Przedsiębiorców w postępowaniu mediacyjnym. W artykule omówiono podstawy prawne funkcjonowania Rzecznika MSP oraz jego zadania w kontekście sporów między przedsiębiorcami a organami administracji publicznej, zwracając jednocześnie uwagę na specyfikę mediacji administracyjnej oraz jej znaczenie dla sektora MŚP. Autorka skupia uwagę na analizie obecnych regulacji prawnych, z jednoczesnym uwzględnieniem propozycji nowelizacji ustawy z dnia 6 marca 2018 r. o Rzeczniku Małych i Średnich

Przedsiębiorców, która określa nowe uwarunkowania dla mediacji między przedsiębiorcami a organami władzy publicznej, wzmacniając jednocześnie rolę Rzecznika MSP. Wnioski wskazują, że rola Rzecznika może wzbudzać uzasadnione wątpliwości natury teoretycznej oraz praktycznej, zbliżając Rzecznika bardziej do roli quasipełnomocnika przedsiębiorcy niż bezstronnego oraz neutralnego mediatora.

Słowa kluczowe: mediacja administracyjna; mediator; Rzecznik MSP; przedsiębiorca