

Between Legalism and Compromise: Mediation in Administrative Proceedings in Poland and Hungary

Między legalizmem a kompromisem. Mediacja w postępowaniu administracyjnym w Polsce i na Węgrzech

Abstract

The article compares mediation in administrative proceedings in Poland and Hungary. Both introduced it into their general codes of administrative procedure (Hungary in 2005, Poland in 2017), but with opposite trajectories: Poland retained and recently expanded the institution, Hungary de-institutionalised it as a general tool in 2018, confining it to sectoral regimes. Using the dogmatic and comparative methods, it reconstructs both models and confronts their design with the evidence of practice. The decisive constraints prove structural, not technical: the principle of legality narrows the space for genuine negotiation, procedural time limits penalise consensual methods, and the culture of unilateral decision-making discourages authorities. Formal institutionalisation, unaccompanied by informational, organisational and cultural measures, does not translate into actual use.

KEYWORDS: mediation, administrative proceedings, alternative dispute resolution, consensual administration, principle of legality, Poland, Hungary.

SŁOWA KLUCZOWE: mediacja, postępowanie administracyjne, alternatywne metody rozwiązywania sporów, administracja konsensualna, zasada legalizmu, Polska, Węgry.

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1 | Introduction

Administrative law has traditionally been built around the unilateral, authoritative act. Recent decades have supplemented this model with forms of administrative action based on dialogue and agreement[1], of which mediation, promoted by Recommendation Rec(2001)9 of the Council of Europe's Committee of Ministers[2] and by the rise of alternative dispute resolution[3], is among the most emblematic[4]. Transplanting mediation into administrative proceedings is not self-evident. One prospective participant wields public authority over the other, is bound by the principle of legality, and administers not its own rights but the public interest. Poland and Hungary, two Central European states sharing codified administrative procedure, a decisional model centred on the authoritative act and a persistent social distrust towards public authority, have answered this dilemma in statute with opposite trajectories[5].

1 See Zbigniew Kmiecik, *Mediacja i koncyliacja w prawie administracyjnym* (Kraków: Zakamycze, 2004), 173 et seq.; Magdalena Tabernacka, „Mediacje w postępowaniu administracyjnym – uwarunkowania aksjologiczne i prakseologiczne” *Kontrola Państwowa*, no. 3 (2018): 77–79.

2 Recommendation Rec(2001)9 of the Committee of Ministers to member states on alternatives to litigation between administrative authorities and private parties, adopted on 5 September 2001. On the Central European reception of the consensual model see Polonca Kovač, „Mediation and Settlement in Administrative Matters in Slovenia” *Hrvatska javna uprava* 10, no. 3 (2010): 743–769.

3 Agata Przylepa-Lewak, „Profesjonalizacja zawodu mediatora” *Studia Prawnicze i Administracyjne* 21, no. 3 (2017): 59.

4 From the extensive general literature on mediation see, e.g., Anna Kalisz, Alina Serhieieva, „The Development of Mediation in Poland and Ukraine: A Comparison and Prospects for Experience Exchange” *Studia Iuridica Lublinensia* 32, no. 3 (2023): 89–109; Aneta Jakubiak-Mironczuk, „Effectiveness of Mediation – Between Effort and Result” *Studia Iuridica Lublinensia* 27, no. 3 (2018): 13–34; Leszek Leszczyński, „Mediation and the Judicial Type of the Application of Law. Context of the ‘Opening up’ of Decision-Making Processes” *Studia Iuridica Lublinensia* 27, no. 3 (2018): 35–48; Agata Przylepa-Lewak, „Współczesne wyzwania mediacji medycznej” *Krytyka Prawa* 15, no. 3 (2023): 238–254; Agata Przylepa-Lewak, Katarzyna Hanas, „Dziecko jako uczestnik mediacji” *ADR. Arbitraż i Mediacja* 18, no. 1 (2025): 117–130; Agata Przylepa-Lewak, „Socjologiczno-prawne aspekty mediacji” *Studia Prawnicze i Administracyjne* 24, no. 4 (2018): 35–39; on the paradigmatic models of mediation, Natia Chitashvili, Irakli Burduli, „Paradigmatic Models of Mediation, Mandatory Eclectics or a Direct Decision” *Prawo i Więź*, no. 3 (2024): 25 et seq.

5 Joanna Wegner-Kowalska, „Mediacja w sprawach administracyjnych – pytania i wątpliwości” *Zeszyty Naukowe Sądownictwa Administracyjnego*, no. 6 (2017): 41.

Hungary institutionalised mediation as a general procedural tool in 2004 and de-institutionalised it in the 2016 re-codification, leaving it to sectoral legislation. Poland introduced mediation into its Code of Administrative Procedure only in 2017 and expanded the regulation in 2025. The two jurisdictions thus offer a natural experiment. One legislature abandoned, the other reinforced, the same institution, with strikingly similar practical results.

The article reconstructs and compares the two models and assesses their effectiveness. The principal research problem is whether the formal introduction of mediation into the codes of administrative procedure creates real conditions for the consensual resolution of administrative cases, or remains a largely symbolic gesture constrained by the structure of administrative law. The specific questions concern the place of mediation in each model, their similarities and differences, their effectiveness and barriers, mutual inspiration, and the influence of legality on compromise. The working hypothesis is that in both jurisdictions formal institutionalisation has not translated into actual use, because the normative provision of a mechanism does not by itself determine its establishment in practice^[6]. The article employs the dogmatic and comparative methods, together with the literature, official documents and statistical data. Since neither state monitors mediation before administrative authorities, the fragmentary data are themselves a finding. A strict distinction is maintained between mediation before an administrative authority and court-administrative mediation, the latter serving only as auxiliary material.

2 | Mediation in Administrative Proceedings in Poland

2.1. Genesis and legal basis

Mediation was introduced into the Polish general administrative procedure by the Act of 7 April 2017 amending the Ustawa z dnia 14 czerwca 1960 r. – Kodeks postępowania administracyjnego (Code of Administrative Procedure;

⁶ Cf. Agata Przylepa-Lewak, „The Patient as a Party to Mediation – the Rights, Needs and Barriers to Access” *Journal of Law* (Ivane Javakhishvili Tbilisi State University), Special Edition (2026): 49.

hereinafter: CAP)[7]. The core regulation comprises Articles 96a–96n CAP[8]. The explanatory memorandum diagnosed excessive length, formalism and a rigidly conceived imperativeness of administrative action, and conceived mediation as a “transformative” instrument bringing the administration closer to society and giving the parties influence on their own affairs[9]. Alongside foreign inspirations[10], the direct impulse was domestic. Court-administrative mediation, available since 2004 yet entrusted to a judge or court referendary and criticised as “quasi-mediation”, found almost no application[11], prompting the legislature to enable mediation earlier, before the authority[12]. The enacted text nonetheless abandoned the expert team’s administrative agreement, which would have permitted a definitive consensual closure of the case[13]. Mediation implements the general principle of amicable resolution of

⁷ Ustawa z dnia 7 kwietnia 2017 r. o zmianie ustawy – Kodeks postępowania administracyjnego oraz niektórych innych ustaw (Act of 7 April 2017 amending the Act – Code of Administrative Procedure and certain other acts, Journal of Laws 2017, item 935; hereinafter: the 2017 Amending Act), in force since 1 June 2017. Under Article 16 of the 2017 Amending Act the new provisions applied also to proceedings then pending; see judgment of the Voivodeship Administrative Court (WSA) in Poznań of 17 April 2019, IV SA/Po 760/18, LEX no. 2734108. Consolidated text of the Code: Journal of Laws 2025, item 1691. Unless indicated otherwise, the English renderings of the titles of Polish and Hungarian legal acts are the authors’ own functional translations.

⁸ Articles 96a–96n; see also Articles 13, 35 § 5, 83 § 4, 121a, 263 § 1, 263a and 264 § 1a CAP; Kocot-Łaszczyca, Łaszczyca, *Mediacja w ogólnym postępowaniu administracyjnym*, chapter I, section 2.1, LEX.

⁹ Explanatory memorandum to the government bill, Parliament of the 8th term, paper (druk) no. 1183; see Włodzimierz Broński, „Efektywność mediacji w postępowaniu administracyjnym” *Studia Prawnicze KUL*, no. 3 (2019): 49–50; Agata Przylepa-Lewak, „Mediacja jako forma komunikacji w postępowaniu administracyjnym” *Annales Universitatis Mariae Curie-Skłodowska, sectio G (Ius)* 69, no. 2 (2022): 64–65; Agnieszka Kocot-Łaszczyca, Grzegorz Łaszczyca, *Mediacja w ogólnym postępowaniu administracyjnym* (Warszawa: Wolters Kluwer Polska, 2018), 16; Agnieszka Dauter-Kozłowska, „Stosowanie mediacji w postępowaniu administracyjnym i sądowniczym” *Przegląd Prawa Publicznego*, no. 1 (2020): 71.

¹⁰ Kocot-Łaszczyca, Łaszczyca, *Mediacja w ogólnym postępowaniu administracyjnym*, 17; Broński, „Efektywność mediacji”, 48.

¹¹ Przylepa-Lewak, „Mediacja jako forma komunikacji”, 62–64; Przylepa-Lewak, „Profesjonalizacja zawodu mediatora”, 63; Bogusława Dobkowska, „Mediacja w postępowaniu administracyjnym” *Gubernaculum et Administratio*, no. 2(30), vol. 1 (2024): 84–87.

¹² Kocot-Łaszczyca, Łaszczyca, *Mediacja w ogólnym postępowaniu administracyjnym*, 16; Dauter-Kozłowska, „Stosowanie mediacji”, 72.

¹³ Wegner-Kowalska, „Mediacja w sprawach administracyjnych”, 42–44.

disputed issues (Article 13 CAP). The party acquires a right to co-shape, not to determine, the resolution, any outcome remaining subject to the authority's review of its legality^[14]. Mediation thus serves and is limited by the general principles of the Code^[15], and several of its provisions fail the constitutional test of determinacy^[16].

2.2. Admissibility, participants and the mediator

Mediation may be conducted in pending proceedings "if the character of the case so permits" (Article 96a § 1 CAP) – a formula criticised as vague^[17]. The doctrine responded with the concept of "mediation capability". The narrower view ties it to decisional latitude (discretion, undetermined concepts, statutory brackets) so that bound decisions leave nothing to mediate^[18]. The broader view finds room even there (manner or time of performance, the factual record, withdrawal of an appeal)^[19], and the most systematic account derives it from the construction of the substantive-law norm^[20]. The case law has tended towards the restrictive pole^[21]. It is admissible at any stage

¹⁴ Kocot-Łaszczyca, Łaszczyca, *Mediacja w ogólnym postępowaniu administracyjnym*, chapter I, section 2.3, LEX; Broński, „Efektywność mediacji”, 51–52.

¹⁵ Ministerstwo Przedsiębiorczości i Technologii, Centrum Mediacji Gospodarczej przy Krajowej Izbie Radców Prawnych, *Mediacja w postępowaniu administracyjnym. Podręcznik dla pracowników administracji publicznej* (Warszawa, 2019) [the document contains no page numbering]; Broński, „Efektywność mediacji”, 47–48.

¹⁶ Kocot-Łaszczyca, Łaszczyca, *Mediacja w ogólnym postępowaniu administracyjnym*, chapter I, section 2.2, LEX; Janusz Niczyporuk, „Evolution of Forms of Deciding an Administrative Case” *Studia Iuridica Lublinensia* 30, no. 5 (2021): 475–484.

¹⁷ Przylepa-Lewak, „Mediacja jako forma komunikacji”, 71.

¹⁸ Broński, „Efektywność mediacji”, 57 (with reference to M. Sieniuc); Robert Suwaj, „Mediation as a New Form of Settling Administrative Matters in Poland” *Przegląd Ustawodawstwa Gospodarczego* 72, no. 12 (2019): 21; Mirosław Karpiuk, „Mediation in Administrative Proceedings and Its Role in Amicable Dispute Resolution” *ADR. Arbitraż i Mediacja* 16, no. 1 (2023): 51.

¹⁹ Dauter-Kozłowska, „Stosowanie mediacji”, 74–75.

²⁰ Kamil Klonowski, „Charakter administracyjnej sprawy mediacyjnej” *Przegląd Prawa Publicznego*, no. 6 (2020): 71–78.

²¹ Judgment of the Supreme Administrative Court (NSA) of 17 October 2022, II GSK 1756/21, LEX no. 3442587; judgment of the WSA in Łódź of 9 September 2020, III SA/Łd 186/20, LEX no. 3060996; judgment of the WSA in Kraków of 22 March 2018, II SA/Kr 180/18, LEX no. 2475918; judgment of the WSA in Łódź of 5 December 2018, II SA/Łd 606/18, LEX no. 2603766.

of pending proceedings, though not after the decision in the instance[22]. The 2025 deregulation amendment added an exemplary catalogue of mediable cases, a documented mediability assessment and grounds for refraining from notification[23]. Within the catalogue, mediability may no longer be denied as such[24].

Article 96a § 4 CAP provides two configurations: “vertical” mediation between the authority and the party or parties, and “horizontal” mediation between parties with conflicting interests[25]. Mediation is initiated on application or ex officio. The authority notifies the parties of the principles, benefits and costs, and consent – never presumed, refusable by any party with preclusive effect – must be given within fourteen days[26]. Any person with full legal capacity and public rights may mediate between the parties. Where the authority itself participates, the mediation may be conducted only by a listed

22 Piotr Przybysz, *Kodeks postępowania administracyjnego. Komentarz aktualizowany* (LEX/el., 2026), commentary on Article 96a; order of the WSA in Warsaw of 12 September 2019, VI SA/Wa 643/19, LEX no. 3013887; order of the WSA in Warsaw of 28 June 2019, VI SA/Wa 646/19, LEX no. 2698552.

23 Ustawa z dnia 21 maja 2025 r. o zmianie niektórych ustaw w celu deregulacji prawa gospodarczego i administracyjnego oraz doskonalenia zasad opracowywania prawa gospodarczego (Journal of Laws 2025, item 769), in force – as regards the provisions discussed here – since 13 July 2025. The new Article 96a § 1a CAP lists, in particular, cases decided within administrative discretion and cases concerning concessions and business permits, construction and architecture, spatial planning, environmental and nature protection, real estate, agriculture, forestry, fisheries and industrial property; Article 96a § 1b requires an official note assessing the mediability of the case; Article 96b § 5 permits the authority to refrain from the notification where the case must be decided without delay or where mediation would serve only to prolong the proceedings; under Article 96b § 1 and § 4 the notification may be repeated at any stage.

24 Przybysz, *Komentarz*, commentary on Article 96a; Martyna Wilbrandt-Gotowicz, commentary on Article 96a, [in:] Małgorzata Jaśkowska, Andrzej Wróbel, Martyna Wilbrandt-Gotowicz, *Kodeks postępowania administracyjnego. Komentarz*, 9th ed. (Warszawa: Wolters Kluwer, 2026).

25 Martyna Wilbrandt-Gotowicz, „Zasada dobrowolności mediacji w sprawach administracyjnych” *Zeszyty Naukowe Sądownictwa Administracyjnego*, no. 6 (2018): 35; Kocot-Łaszczyca, Łaszczyca, *Mediacja w ogólnym postępowaniu administracyjnym*, 39–40. On the statutory notion of a „participant in mediation”, distinct from that of a party, and on the position of entities enjoying the rights of a party, see Dauter-Kozłowska, „Stosowanie mediacji”, 72–73; Wilbrandt-Gotowicz, „Zasada dobrowolności”, 38–39.

26 Articles 96b–96c CAP; Kocot-Łaszczyca, Łaszczyca, *Mediacja w ogólnym postępowaniu administracyjnym*, 127–132.

“professional” mediator and never by an employee of the authority[27]. The criticisms converge on professionalisation. The statute requires mediation skills but not knowledge of the applicable law, so a “successful” mediation may yield arrangements the authority cannot lawfully implement[28]. Entry on the mediator lists is verified discretionarily[29]. No qualified education or documented experience is required – a gap the National Register of Mediators (piloted since 2024) should close[30]. The exclusion of the authority’s employees has also been contested[31].

2.3. Principles, course and outcome

The regulation rests on the classical principles of mediation – voluntariness, confidentiality, impartiality and neutrality[32] – adjusted to the public-law context[33]. Voluntariness is absolute for the parties[34]. Whether it extends to the authority is disputed, the prevailing view treating the authority’s freedom as merely “relative”, limited by Article 13 CAP[35]. The courts hold refusals of mediation non-reviewable and the failure to mediate no procedural

²⁷ Article 96f CAP; see also Agata Przylepa-Lewak, Marzena Myślińska, „Zasady wpisu na listę stałych mediatorów w Polsce – w kontekście dyskusji nad profesjonalizacją zawodu mediatora” *Krytyka Prawa* 14, no. 1 (2022): 79; Broński, „Efektywność mediacji”, 53–54; Dobkowska, „Mediacja w postępowaniu administracyjnym”, 90.

²⁸ Przylepa-Lewak, „Mediacja jako forma komunikacji”, 68; Broński, „Efektywność mediacji”, 64; Dobkowska, „Mediacja w postępowaniu administracyjnym”, 89.

²⁹ Przylepa-Lewak, Myślińska, „Zasady wpisu na listę stałych mediatorów”, 83–88.

³⁰ Przylepa-Lewak, „Profesjonalizacja zawodu mediatora”, 60–64; Przylepa-Lewak, Myślińska, „Zasady wpisu na listę stałych mediatorów”, 76–77, 89–90; on the current state of the professionalisation debate – including the National Register of Mediators, operating as a pilot central register kept by the Minister of Justice since 1 January 2024, and the pending governmental bill on court mediators, accredited mediation centres and the National Register of Mediators – see Agata Przylepa-Lewak, Marzena Myślińska, „Mediacja wobec kryzysu w wymiarze sprawiedliwości” *Archiwum Filozofii Prawa i Filozofii Społecznej*, no. 3 (2026): 41–43.

³¹ Wegner-Kowalska, „Mediacja w sprawach administracyjnych”, 45–48 (criticising both the exclusion of the co-operating authority of Article 106 § 1 CAP from the circle of participants and the statutory ban on employee-mediators).

³² Przylepa-Lewak, „Współczesne wyzwania mediacji medycznej”, 241–242.

³³ Kocot-Łaszczyca, Łaszczyca, *Mediacja w ogólnym postępowaniu administracyjnym*, 115–125, LEX.

³⁴ Wilbrandt-Gotowicz, „Zasada dobrowolności”, 35–38.

³⁵ Wilbrandt-Gotowicz, „Zasada dobrowolności”, 39–41; Kocot-Łaszczyca, Łaszczyca, *Mediacja w ogólnym postępowaniu administracyjnym*, 44–45, LEX.

defect[36], risking the conversion of relative voluntariness into unreviewable discretion[37]. Confidentiality, by contrast, is strict and accepted even by the model's sharpest critics[38]. Procedurally, the referral defers the case for up to two months (extendable by one), a period excluded from the decision time limits (Article 35 § 5 CAP). The arrangements are recorded in a protocol, and a fruitless mediation is terminated by order[39]. The costs are borne as a rule by the authority at modest statutory rates[40], removing a barrier for the party while creating a disincentive for the authority, which can simply decide at no extra cost[41].

The aim of mediation is to clarify the factual and legal circumstances and to make arrangements for the disposal of the case within the limits of the law (Article 96a § 3 CAP)[42]. The paradigmatic vertical outcome is a decision consistent with the arrangements, whose binding force under Article 96n § 1 CAP is relative, conditioned on lawfulness[43]. The party may withdraw or

36 Order of the NSA of 4 July 2018, II OSK 1798/18, LEX no. 2516777; order of the WSA in Warsaw of 16 February 2018, IV SA/Wa 3178/17, LEX no. 2457350; order of the WSA in Warsaw of 11 October 2018, VI SA/Wa 1636/18, LEX no. 2568180; judgment of the NSA of 2 December 2020, II OSK 2461/18, LEX no. 3109580; differently – treating the silent disregard of a mediation request as a material procedural defect – judgment of the WSA in Bydgoszcz of 12 September 2018, II SA/Bd 196/18, LEX no. 2566014.

37 Wilbrandt-Gotowicz, „Zasada dobrowolności”, 42–43; Dauter-Kozłowska, „Stosowanie mediacji”, 76–78.

38 Broński, „Efektywność mediacji”, 54–55; Suwaj, „Mediation as a New Form”, 23.

39 Articles 96d–96e, 96i, 96k and 96m CAP; Przybysz, *Komentarz*, commentary on Article 96m; Ministerstwo Przedsiębiorczości i Technologii, *Mediacja w postępowaniu administracyjnym. Podręcznik* [no page numbering]; Kocot-Łaszczycza, Łaszczycza, *Mediacja w ogólnym postępowaniu administracyjnym*, 127–141, LEX.

40 Rozporządzenie Ministra Spraw Wewnętrznych i Administracji z dnia 2 czerwca 2017 r. w sprawie wysokości wynagrodzenia i podlegających zwrotowi wydatków mediatora w postępowaniu administracyjnym (Regulation of the Minister of the Interior and Administration of 2 June 2017 on the remuneration and reimbursable expenses of the mediator in administrative proceedings, *Journal of Laws* 2017, item 1088).

41 Broński, „Efektywność mediacji”, 64; Suwaj, „Mediation as a New Form”, 26.

42 Przylepa-Lewak, Myślińska, „Mediacja wobec kryzysu w wymiarze sprawiedliwości”, 38 (emphasising that the clearly defined explanatory aim of mediation in administrative proceedings, oriented towards arrangements within the limits of the law, distinguishes the regime of Articles 96a–96n CAP within the Polish law of mediation).

43 Klonowski, „Charakter administracyjnej sprawy mediacyjnej”, 74; Przybysz, *Komentarz*, commentary on Article 96n.

modify its application or withdraw an appeal[44]. In the horizontal variant the parties may conclude an administrative settlement requiring approval[45]. A decision issued in accordance with the arrangements remains an authoritative act. What changes is its acceptability[46]. The arrangements cannot, however, definitively end the dispute, since the party cannot waive its right of appeal – for critics, a significant inconsistency of the model[47].

2.4. Mediation, the principle of legality and administrative practice

The deepest question is the relationship between the consensual logic of mediation and the principle of legality. Mediation in administrative proceedings does not consist in mutual concessions modelled on civil-law settlement. Its object is to work out, within the space the law leaves open, a resolution the party understands and accepts[48]. As a rule, mediation does not even presuppose a dispute. Its essence lies in balancing the public and the individual interest[49]. The space for compromise is co-extensive with decisional latitude. The greater the scope of administrative discretion, the wider the field of mediation[50]. The authority may not, however, “agree” on a statutorily determined levy, deviate from consolidated practice, or barter the public interest[51]. Part of the doctrine concludes that there is no genuine object for mediation at the administrative stage at all. On this view, the natural locus of mediation is the court stage[52]. The dominant counter-position maintains that a real, if modest,

44 Przylepa-Lewak, „Mediacja jako forma komunikacji”, 67; Klonowski, „Charakter administracyjnej sprawy mediacyjnej”, 70–71.

45 Article 121a CAP. For the view that no settlement may be concluded before the mediator see Przybysz, *Komentarz*, commentary on Article 96k; for the opposite view, with further references, Wilbrandt-Gotowicz, commentary on Article 96a.

46 Przylepa-Lewak, „Mediacja jako forma komunikacji”, 66–67; Broński, „Efektywność mediacji”, 61–62.

47 Suwaj, „Mediation as a New Form”, 24, 26.

48 Przylepa-Lewak, „Mediacja jako forma komunikacji”, 66–67; Ministerstwo Przedsiębiorczości i Technologii, *Mediacja w postępowaniu administracyjnym. Podręcznik* [no page numbering].

49 Przylepa-Lewak, „Mediacja jako forma komunikacji”, 66.

50 Zbigniew Kmiecik, [in:] *Mediacja w sprawach administracyjnych*, ed. Hanna Machińska (Warszawa, 2007), 40, as cited in Wilbrandt-Gotowicz, commentary on Article 96a; Klonowski, „Charakter administracyjnej sprawy mediacyjnej”, 75–76.

51 Suwaj, „Mediation as a New Form”, 23; judgment of the WSA in Łódź of 9 September 2020, III SA/Łd 186/20, LEX no. 3060996.

52 Suwaj, „Mediation as a New Form”, 21–25.

negotiating space remains[53]. The controversy reproduces itself in the authorities' caution, fed by fear of conflict with legality and of personal liability[54].

The functions attributed to mediation reach beyond settlement. Above all, mediation is a communicative and explanatory instrument. The mediator acts as a link where expert knowledge is unequal[55]. Mediation also performs participatory, preventive, legitimising and trust-building functions[56]. Practice has lagged far behind: referrals have numbered at most a dozen or so annually[57]. The explanations converge: amicable resolution is not intuitive for authorities; much of the caseload is unsuited to mediation; the parties are unaware of the institution; officials fear liability; refusals are unreviewable; specialised mediators and data are lacking[58]. The self-diagnosis of one appellate body, according to which the mediation provisions find practically no application and only prolong proceedings, captures the prevailing attitude[59]. Beneath that attitude lies a cultural substrate of low generalised trust[60]. The regulation is thus normatively coherent but operationally failed. The postulates *de lege ferenda* include an operationalised information duty, the training and specialisation of mediators, reviewable refusals, obligatory mediation on request in defined categories, and statistical monitoring. Each of these postu-

53 Dauter-Kozłowska, „Stosowanie mediacji”, 74–75; Klonowski, „Charakter administracyjnej sprawy mediacyjnej”, 70–71; Dobkowska, „Mediacja w postępowaniu administracyjnym”, 92.

54 Suwaj, „Mediation as a New Form”, 26; Wegner-Kowalska, „Mediacja w sprawach administracyjnych”, 41.

55 Przylepa-Lewak, „Mediacja jako forma komunikacji”, 67–68.

56 Wilbrandt-Gotowicz, commentary on Article 96a (with reference to Parliament paper no. 1183, p. 37); Przylepa-Lewak, „Mediacja jako forma komunikacji”, 66–67, 69–70; Dauter-Kozłowska, „Stosowanie mediacji”, 71; Broński, „Efektywność mediacji”, 51–52.

57 Ministerstwo Rozwoju i Technologii, *Ocena funkcjonowania ustawy z dnia 7 kwietnia 2017 r. o zmianie ustawy – Kodeks postępowania administracyjnego oraz niektórych innych ustaw (OSR ex post)* (Warszawa, 24 March 2022), 4–5, 17.

58 Ministerstwo Rozwoju i Technologii, *OSR ex post*, 4, 17–18; Przylepa-Lewak, „Mediacja jako forma komunikacji”, 70; Dauter-Kozłowska, „Stosowanie mediacji”, 86–87; Suwaj, „Mediation as a New Form”, 26.

59 Ministerstwo Rozwoju i Technologii, *OSR ex post*, 12.

60 Cf. Przylepa-Lewak, „The Patient as a Party to Mediation”, 59.

lates responds to a diagnosed defect^[61]. Whether these are teething problems or symptoms of a structural mismatch is best answered comparatively – the Hungarian experience offers two decades of material.

3 | Mediation in Administrative Proceedings in Hungary: The Ebb and Flow of Mediation

3.1. Mediation in administrative procedures – a paradox or a new way? The general framework of the Hungarian regulation

The application of administrative law is related directly to the sovereignty of a given country. As an enforcement of public law regulation, its major model is based on the decision-making of the authorities. Administrative decisions are made by public authorities or by bodies which are entitled to make a decision based on public law. Even if a private body is empowered to issue a public decision, such decisions are interpreted as public decisions. These decisions have an effect on an independent legal entity – a legal entity which is not in a hierarchical position vis-à-vis the decision-maker. As has been mentioned, these decisions are therefore mainly unilateral, and they are derived from public authority; consequently, they can be traced back to sovereignty^[62]. The traditional “unilateral” model of administrative decision-making has nevertheless been transformed in recent decades, and the public management reforms have introduced a more diverse model, in which “bilateral” patterns can be observed^[63]. The role of administrative contracts has been strengthened in the modern liberal democracies, and new forms of decision-making have evolved^[64].

Alternative dispute resolution (ADR) can be interpreted as one element of the renewal of the patterns of administrative decision-making. ADR has a long

⁶¹ Kocot-Łaszczyca, Łaszczyca, *Mediacja w ogólnym postępowaniu administracyjnym*, 147 et seq.; Dauter-Kozłowska, „Stosowanie mediacji”, 78, 83–85; Wilbrandt-Gotowicz, „Zasada dobrowolności”, 42–43; on the concept of obligatory mediation cf. Adam Zienkiewicz, „Mandatory Mediation – Remarks on Determining a Dispute’s Suitability for Mediation and the Parties’ Concerns Regarding Mediation” *Studia Iuridica Lublinensia* 27, no. 3 (2018): 61–71.

⁶² See Hartmut Maurer, Christian Waldhoff, *Allgemeines Verwaltungsrecht* (München: C.H. Beck, 2020), 202 et seq.

⁶³ See Christopher Pollitt, Geert Bouckaert, *Public Management Reform. A Comparative Analysis – into the Age of Austerity* (Oxford: Oxford University Press, 2017), 27 et seq.

⁶⁴ See Maurer, Waldhoff, *Allgemeines Verwaltungsrecht*, 409 et seq.

tradition in civil and criminal cases, but its significance developed during the late twentieth century^[65]. The rise of ADR can be attributed to various reasons. In civil litigation, the increasing costs and the length of time taken to deal with a case required reforms and new ways. Even trust in justice and in decisions needed to be strengthened. Mediation could be an answer to this challenge. It could be applied to civil cases because of the bilateral structure and the equality of arms characteristic of that procedure^[66]. Therefore, mediation has become one of the major issues in the field of the reform of civil litigation. Similarly, the role of mediation has been strengthened in the field of criminal justice. Mediation has strong ties to restorative justice. Restorative justice has “four arenas” according to Boyes-Watson: firstly, it is part of the reforms of the justice systems, as a tool for the solution of the above-mentioned litigation crises. The rising costs and the overcrowded courts could be observed in criminal cases as well, and mediation and restorative justice could be an answer to this crisis. Secondly, marginalised families and youth could be cared for better by this method. Thirdly, peacebuilding can be more effective if the decision is made by a mediator and not by a state judge. Similarly, in several Western countries even the rights of indigenous peoples could be enforced more effectively^[67]. In criminal cases, mediation faces another challenge: the structure of the procedure can be interpreted as at least a tripartite one – there is an accused person, the person (body) entitled to the state criminal claim (the prosecutor), and the victim. The interests of all three must be taken into account by the mediator. The role of the prosecutor can be interpreted as a special one: the state criminal claim has a public nature, and it is related to the public order which should be maintained by a sovereign state. This resulted in a slightly different structure of criminal mediation compared to the civil one^[68]. Although the idea of the application of mediation in administrative procedures could be observed – and it has been emphasised especially by the New Public Management and partly by the Good Governance-based administrative reforms – it faces several chal-

⁶⁵ See Penny Brooker, *Mediation Law* (Abingdon–New York: Routledge, 2013), 27 et seq.

⁶⁶ See Marian Liebmann, „Introduction”, [in:] *Mediation in Context*, ed. Marian Liebmann (London–Philadelphia: Jessica Kingsley Publishers, 2000), 13 et seq.

⁶⁷ See Carolyn Boyes-Watson, „Looking at the Past of Restorative Justice. Normative Reflections on Its Future”, [in:] *Routledge International Handbook of Restorative Justice*, ed. Theo Gavrielides (Abingdon–New York: Routledge, 2019), 9 et seq.

⁶⁸ See Declan Roche, „Dimensions of Restorative Justice” *Journal of Social Issues* 62, no. 2 (2006): 220 et seq., <https://doi.org/10.1111/j.1540-4560.2006.00448.x>.

lenges according to the literature. As we have mentioned above, administrative decisions have a mainly unilateral nature: the majority of these decisions are made by public (central or local government) authorities or by bodies vested with the power of a public authority. Mediation is based on negotiations and the mutual consent of the parties. Similarly, the equality of arms is an important part of that method; it can be improved by the rules on administrative procedures, but the presence of the public authority can be interpreted as a limitation of this equality of arms. Therefore, mediation can be applied most easily in civil cases and encounters several difficulties in administrative procedures; consequently, it can be applied only to a limited extent in this field^[69]. These major challenges can be interpreted as the general framework of the Hungarian regulation.

3.2. Mediation in Hungarian administrative law

The Hungarian regulation on administrative procedures is defined by the above-mentioned general framework. Although the public authority character of administrative decisions is emphasised by legal dogmatics, the Hungarian system has long had several bilateral tools. Thus, the settlement (*egyezség*) was established as a legal institution in Hungarian administrative procedures at an early stage. Public administration has a wide range of activities. It should be mentioned that – as in other countries – the Hungarian administrative system has so-called quasi-judicial activities: in these cases, a legal dispute between parties is decided. The difference between judicial and quasi-judicial activities lies in the decision-making body: in quasi-judicial activities, these bodies are administrative ones. It is related partly to the regulatory authorities and partly to the simplification of legal disputes, including the decriminalisation of certain cases^[70]. The regulation on settlement follows a similar pattern in administrative cases as in civil litigation: the settlement is made by the parties, but it must be approved by the public authorities. This approval is interpreted as a decision. Formerly, the settlement in administrative cases had a paternalistic approach: it could be approved by the administrative bodies if it was a lawful agreement, if the execution of the decision (including the deadline) and the costs of the proceedings were settled by it, and – last but not least – if the

⁶⁹ See Kovač, „Mediation and Settlement in Administrative Matters in Slovenia”, 745 et seq.

⁷⁰ See András Gy. Kovács, „Mitől szabályozó egy hatóság?”, [in:] *Verseny és szabályozás* 2008, ed. Pál Valentiny, Ferenc L. Kiss (Budapest: MTA KTI, 2009), 29 et seq.

legitimate interests of neither party were prejudiced by the settlement. Thus, these interests had to be examined by the administrative bodies. We would like to remark that this paternalistic approach was transformed by the new administrative procedural regulation: since 2018, the legal interests of the parties are no longer examined by the administrative bodies^[71].

Although mediation had several precedents in Hungarian legislation, it was institutionalised by the Act LV of 2002 on Mediation. Mediation was defined as a special, non-litigation procedure. As an alternative dispute resolution mechanism, the main aim of mediation was to avoid litigation, primarily in civil and criminal cases. Mediators must be qualified persons: not only legal knowledge is required, but they must also participate in and complete specialised training. The qualifications and the activities of the mediators have been supervised by the Ministry of Justice (MoJ): only mediators registered by the MoJ may practise these activities^[72].

During the administrative procedure reforms of the turn of the millennium, the new approach to mediation was applied by the reform Act. In Hungary, administrative procedure had been regulated by the Act IV of 1957 (modernised in 1981) on the General Rules of Administrative Procedures. This regulation was partially transformed during the Democratic Transition, but the challenges of the late twentieth century and of the millennium – the ICT revolution, accession to the European Union and alternative dispute resolution – required new legislation. The reform Act – the Act CXL of 2004 on the General Rules of Administrative Procedures and Services (hereinafter: GRAP) – was passed in 2004, and it entered into force on 1 November 2005. During the legislative process, two different approaches to mediation emerged: the first focused on the “traditional” form of mediation, that is, mediation in the quasi-judicial procedures in which a legal dispute between parties (in administrative cases: clients) is to be decided by the administrative bodies. The other approach can be interpreted as a wide one, because it emphasised that mediation could help to handle those procedures in which a great number of clients are involved. Mediation could help to reconcile multiple interests. The GRAP followed the wide approach: it focused not only on the quasi-judicial issues, but mediation

⁷¹ See Krisztina F. Rozsnyai, „A közigazgatási perjog néhány alapvető aspektusa” *Acta Humana*, no. 1 (2019): 115.

⁷² See Krisztina F. Rozsnyai, „41. § A hatósági közvetítő”, [in:] *Nagykommentár a közigazgatási eljárási törvényhez*, ed. Gergely Barabás, Bertold Baranyi, András Kovács (Budapest: Complex, 2013), 362 et seq.

was institutionalised for handling multi-client cases as well.

3.3. The “ebb” of mediation in administrative cases

Two years after the general institutionalisation of mediation by the Act LV of 2002, the GRAP attempted to adapt the new approach to ADR to administrative procedures. Although the Act LV of 2002 on Mediation can be interpreted as a framework regulation, it is mainly modelled on judicial cases. Based on the new approach to mediation, the special rules on mediation in administrative jurisdiction were regulated by Article 41 of the GRAP. Because of the specific nature of the decision-making of the public authorities, special rules and specific conflict-of-interest requirements for mediators were defined: the mediators had to be independent both from the clients and from the authority^[73]. Although mediation was institutionalised generally by the GRAP, the above-mentioned general characteristics required a different approach. Therefore, the GRAP provided that mediation could be applied in those cases in which its application was permitted by a special legal norm (an Act of Parliament, a Government Decree, a Decree of a Minister, or a municipal decree in municipal cases). The GRAP followed the wide approach to mediation: it could be applied not only in quasi-judicial cases but even in “multi-client cases”, to handle the diverse interests of the clients and authorities. The application of mediation was emphasised by the legislation, and several procedural privileges were institutionalised. The most important was that the procedure could be suspended during the mediation. It was an important privilege, because Hungarian administrative procedure has strict deadlines. At the time of the codification of the GRAP, the deadline – as a general rule – was 30 days. Thus, without the possibility of suspension, the deadline would have been too short for an effective mediation^[74].

As we have mentioned, the GRAP was the code on the general rules of administrative proceedings. Because of the diversity of administrative activities, the main regulation of the given procedures is institutionalised by the sectoral legislation. The GRAP provided that mediation could be introduced by sectoral rules. Mediation was applied primarily in the traditional “quasi-judicial” cases – especially, as has been mentioned in the literature, in child protection cases, to defend children as a vulnerable group of persons. It has been similar in Hungary: special mediation procedures were institutionalised, for example,

⁷³ Ibidem, 365 et seq.

⁷⁴ Ibidem, 367 et seq.

by paragraph 6 of Article 132 of the Act XXXI of 1997 on the Protection of Children and on Childcare Administration^[75]. Based on the wide approach to mediation, the application of the mediation procedure was permitted in the above-mentioned multi-client cases.

Although the use of mediation was emphasised by the legislation, its application remained limited; the new regulation influenced especially those sectors in which mediation had traditions, particularly the field of child protection. The application of mediation – especially in the multi-client cases – caused criticism and controversies. The administrative privilege of suspension could have caused delays in procedures^[76].

The wide approach to mediation was maintained for four years; because of the criticism, the regulation was partially transformed by the amendment act of the GRAP in 2008. A paradigm shift could be observed. Mediation could be applied if there was a dispute between clients or between the authority and a client; thus, the narrow interpretation of mediation was applied, which focused on the quasi-judicial cases of the administrative bodies. As we have mentioned earlier, quasi-judicial cases could even have a criminal nature; therefore, the amendment act permitted asking the authorities for mediation, especially in – mainly ex officio – cases concerning the imposition of administrative penalties. Similarly, the regulation on (administrative) mediation influenced those sectors in which the judicial nature is significant and the proceeding can be interpreted as a dispute-centred one.

3.4. The “flow” of mediation in administrative cases in Hungary

Mediation in administrative cases was determined by the reforms introduced by the GRAP amendment act until 2015/2016. In 2015, the policy of the Hungarian central government on administrative activities focused on the so-called “de-bureaucratisation”. The main aim of these reforms has been to accelerate and simplify administrative procedures^[77]. As we have mentioned earlier, mediation can enhance trust in administrative activities, but it can be interpreted as a time-consuming method in administrative cases. The main

⁷⁵ See István Hoffman, Krisztina F. Rozsnyai, „A gyermekvédelmi és gyámügyi igazgatás főbb szabályai”, [in:] *Kommentár a gyermekvédelmi törvényhez*, ed. Gréta Matthenheim (Budapest: Wolters Kluwer Hungary, 2017), 705 et seq.

⁷⁶ See Balázs Hohmann, *A hatósági eljárás társadalmi ellenőrzésének lehetőségei* (Pécs: Tudatosan a Környezetünkért Egyesület, 2018), 86 et seq.

⁷⁷ See Krisztina F. Rozsnyai, „Az eljárási kötelezettség aktuális kérdései” *KözigazgatásTudomány*, no. 1 (2022): 129.

criticism of administrative mediation concerned the delay of the proceedings; therefore, this legal institution was targeted by the de-bureaucratisation. The first wave of the reforms came in 2015. The amendment act of the GRAP in 2015 did not terminate mediation as a general tool in administrative cases, but the procedural privileges were abolished. Thus, the mediation procedure could no longer be a cause for the suspension of the administrative procedure. As part of the de-bureaucratisation process, the regulation of the deadlines became stricter. Although the general deadline became 60 days, the number of periods not counted towards the deadline was radically reduced. New legal institutions – for example, the conditional decision – were established[78]. The application of mediation was strongly reduced by these reforms: without procedural privileges, and with strict regulation of the deadlines of administrative proceedings, mediation could not work effectively, because this method requires time, and without time for the proceeding its application has more disadvantages for the authorities than advantages. Thus, these reforms can be interpreted as a de facto termination of administrative mediation as a general tool.

A similar approach was applied during the re-codification of the regulation on administrative proceedings. The main aim of the new code – the Act CL of 2016 on the Code on General Administrative Procedure (hereinafter: CGAP) – has been to establish a short, flexible regulation. “De-bureaucratisation” remained the major principle of the legislation. As we have mentioned earlier, mediation has been interpreted as a bureaucratic and slow decision-making procedure, and the reforms of 2015 reduced the possibility of applying this tool. Because of this regulation, mediation in administrative cases was rarely applied; even the settlement as a tool has been applied to a limited extent: in the second half of 2021, only 0.48% of the decisions of the general first-instance authorities, the district offices, were settlements (see Table 1).

Table 1. Settlements and decisions of the Hungarian general first-instance authorities (district offices) in 2021

Period	All decisions of the district offices	Settlements approved by the district offices	Share of settlements
2021, first half	7,595,603	2,977	0.04%
2021, second half	8,013,434	38,767	0.48%

Source: OSAP statistics, <https://kormany.hu/miniszterelnokseg/orszagos-statisztikai-adatfelveteli-program> [accessed: 1.08.2026]; share calculated by the editors.

⁷⁸ See Krisztina F. Rozsnyai, „The Procedural Autonomy of Hungarian Administrative Justice as a Precondition of Effective Judicial Protection” *Studia Iuridica Lublinensia* 30, no. 4 (2021): 500.

Therefore, mediation was de-institutionalised by the CGAP as a general tool of administrative procedure in 2018. The settlement, as a bilateral tool, has remained, but mediation is not required to reach a settlement^[79]. Thus, the new regulation has returned to the original approach of the law on administrative proceedings – the approach preceding the 2002 legislation: the only tool which can be interpreted as a form of ADR is the settlement, a bilateral agreement approved by the authorities.

However, the CGAP is a flexible regulation, and it can be interpreted only as the framework rules of the diverse administrative procedures. The CGAP does not exclude the institutionalisation of ADR in sectoral regulations. Thus, administrative mediation still exists: it has been institutionalised by several pieces of sectoral legislation. As we have mentioned earlier, child protection and equal treatment cases have been influenced by the approach of mediation. Therefore, it should be emphasised that these traditional sectors have rules on the application of mediation. Even an *ex officio* form of mediation has been established, by Article 62/E of the Act XXXI of 1997. It should be emphasised that the administrative privileges – especially the ground for the suspension of the procedure – are allowed by this sectoral regulation^[80].

3.5. A short summary of the Hungarian regulation on administrative mediation

In Hungary, administrative mediation has several roots; in particular, the settlement can be interpreted as the antecedent of this institution. At the turn of the millennium, as part of the ADR reforms of the Hungarian procedural regulations, mediation was institutionalised by a general act. The reforms of administrative procedure of that period followed this approach, and mediation was institutionalised as a general procedural tool. In 2004 a wide approach was applied: mediation was a tool for procedures based on a legal dispute between clients, and it was interpreted as a tool for handling the diverse interests of multi-client cases. In 2008/2009 the role of mediation was strengthened in the quasi-judicial administrative cases. Since 2015, mediation has been marginalised: it has been de-institutionalised as a general tool, but the sectoral

⁷⁹ See Anna Forgács, „44. Az egyezség megkötése”, [in:] *Kommentár az általános közigazgatási rendtartásról szóló törvényhez*, ed. Gergely Barabás, Bertold Baranyi, Marianna Fazekas (Budapest: Wolters Kluwer Hungary, 2018), 553.

⁸⁰ See Erzsébet Gulyásné-Kovács, „A törvényes képviselői feladatok ellátásának segítése és más szolgáltatási, szervezési feladatok”, [in:] *Kommentár a gyermekvédelmi törvényhez*, ed. Gréta Mattenheim (Budapest: Wolters Kluwer Hungary, 2017), 391.

regulations have been allowed to establish mediation procedures. Currently, mediation is applied in the field of quasi-judicial administrative activities, especially in child protection cases.

4 | Comparative Analysis of the Polish and Hungarian Models

Hungary institutionalised mediation as a general procedural tool in 2004–2005, narrowed it in 2008, stripped its procedural privileges in 2015 and de-institutionalised it in 2016. Poland institutionalised mediation in 2017 and has since reinforced it. On the statute books the two systems have been moving apart. In practice, they have converged on marginal use.

The first difference is constructional. The Polish regulation is general and directly operative. Mediation is available in any pending case whose character permits it, the burden of selection falling on the individual authority. The Hungarian regulation, even at its peak, was framework-based. Mediation required activation by a special legal norm, and the sectoral legislature activated it almost exclusively in fields with pre-existing traditions, above all child protection – precisely the enclaves that survived 2018^[81].

The second difference concerns the temporal economy of mediation, and it proved decisive. Poland resolved the tension between mediation and speed in favour of mediation, excluding the mediation period from the decision deadlines. Hungary adopted the same solution and then withdrew it in the 2015 de-bureaucratisation reforms while tightening the deadline regime – a de facto termination of administrative mediation, as section 3 shows. A mediation without a time privilege is a contradiction in a deadline-driven procedure whose silence is itself increasingly sanctioned^[82]. Hence a general proposition: the survival of administrative mediation depends less on its own regulation than on its interface with the rules on the duration of proceedings.

Thirdly, both systems professionalised the mediator through public registers – court-linked lists in Poland, ministerial registration with independence requirements in Hungary – with the same weakness in both: no guarantee

⁸¹ See section 3.3 above and, in particular, Hoffman, Rozsnyai, „A gyermekvédelmi és gyermekjóléti igazgatás főbb szabályai”, 705 et seq.

⁸² Krisztina F. Rozsnyai, István Hoffman, „New Hungarian Institutions against Administrative Silence: Friends or Foes of the Parties?” *Studia Iuridica Lublinensia* 29, no. 1 (2020): 109–127; Rozsnyai, „Az eljárási kötelezettség aktuális kérdései”, 129.

that the mediator understands the substantive law within whose limits the arrangements must remain^[83].

Fourthly, the relationship between mediation and the settlement runs in opposite directions in the two systems. In Hungary the settlement (*egyezség*) is the older, more resilient institution, which survived de-institutionalisation as the sole general consensual form. The Polish reform coupled the two institutions and – in the vertical configuration, without a Hungarian counterpart – seated the authority itself at the mediation table^[84].

Fifthly, legality control is substantively identical. The consensual outcome is subordinated to the law, the space for compromise is co-extensive with discretion, the public interest remains with the authority, and neither system permits definitive consensual closure at the mediation stage.

The similarities are at least as significant, because they are similarities of failure. Mediation was introduced from above into procedural cultures organised around the unilateral act. The authorities perceived it as time-consuming and risky, the parties were unaware of it, no data were collected, and practice settled close to zero. The legislative responses differed – abolition in Hungary, reinforcement in Poland – but the causes of the failure are structural and cultural rather than technical, since two markedly different regulatory techniques produced the same practical result^[85].

5 | Practical Use, Statistical Data and the Effectiveness of Administrative Mediation

The law in the books must be confronted with the law in action. Neither state officially records mediation conducted before administrative authorities. For Poland, no audit, statistical publication or ombudsman study concerning CAP

⁸³ For Poland: Przylepa-Lewak, „Mediacja jako forma komunikacji”, 68; Kocot-Łaszczyca, Łaszczyca, *Mediacja w ogólnym postępowaniu administracyjnym*, 147 et seq., LEX; for Hungary: Rozsnyai, „41. § A hatósági közvetítő”, 362 et seq.

⁸⁴ For Hungary: Forgács, „44. Az egyezség megkötése”, 553; for Poland: Article 121a CAP and section 2.3 above.

⁸⁵ For Poland: Ministerstwo Rozwoju i Technologii, *OSR ex post*, 17–18; for Hungary: section 3.4 above and Hohmann, *A hatósági eljárás társadalmi ellenőrzésének lehetőségei*, 86 et seq.

mediation could be identified^[86]. The only official source is the government's one-off ex-post evaluation of the 2017 reform, a survey of authorities whose figures are minima from an incomplete sample^[87]. Within these limits, the picture for 2017–2020 is as follows. The surveyed authorities notified parties of the possibility of mediation in 1,294, 2,637, 2,764 and 1,669 cases respectively, and 99.65% of these notifications came from just four authorities. In the same years, the authorities referred 7, 7, 13 and 11 cases to mediation and disposed of 2, 3, 7 and 2 cases in line with a mediation protocol^[88]. The evaluation's conclusion is unequivocal: the institution “did not gain adequate significance”, its only recommendation being informational^[89]. These figures must be strictly separated from the statistics of court-administrative mediation, which measure a different institution before a different organ and document its collapse from 679 initiations and 170 resolutions in 2004 to single digits after 2017^[90]. The court statistics matter here because their very existence contrasts with the absence of any register for the administrative stage, and because their trajectory anticipated its fate^[91]. For Hungary no mediation statistics were ever

⁸⁶ The mediation statistics published by the Polish Ministry of Justice (isws.ms.gov.pl) cover proceedings before the common courts only. No dedicated audit by the Supreme Audit Office (NIK), and no statistical publication of Statistics Poland (GUS) or of the Commissioner for Human Rights concerning mediation under the CAP, could be identified (as at August 2026).

⁸⁷ Ministerstwo Rozwoju i Technologii, *OSR ex post*, 3.

⁸⁸ Ministerstwo Rozwoju i Technologii, *OSR ex post*, 4–5, 17.

⁸⁹ Ministerstwo Rozwoju i Technologii, *OSR ex post*, 17–18, 33.

⁹⁰ Mediation proceedings initiated / cases resolved in that mode before the voivodeship (regional) administrative courts: 2004 – 679/170; 2005 – 204/117; 2008 – 36/16; 2015 – 8/1; 2016 – 8/0; 2017 – 1/0; 2018 – 6/1; 2019 – 1/1; 2020 – 3/2; 2021 – 8/1; 2022 – 1/1; 2023 – 1/1. Sources: Naczelny Sąd Administracyjny, *Informacja o działalności sądów administracyjnych w 2021 roku* (Warszawa: Naczelny Sąd Administracyjny, 2022), 15; for 2004–2009: Wegner-Kowalska, „Mediacja w sprawach administracyjnych”, 49–50; for 2022 and 2023: Naczelny Sąd Administracyjny, *Informacja o działalności sądów administracyjnych w 2022 roku* (Warszawa, 2023), 15–16, and *Informacja o działalności sądów administracyjnych w 2023 roku* (Warszawa, 2024), 19–20, <https://nsa.gov.pl/dokumenty/sprawozdania-roczne/> [accessed: 1.08.2026].

⁹¹ On the causes of the decline of court-administrative mediation see Bartłomiej Chludziński, Bartosz Pilitowski, „Przyczyny spadku liczby spraw kierowanych do mediacji w postępowaniu sądowoadministracyjnym w opinii sędziów i referendarzy sądowych” *Ruch Prawniczy, Ekonomiczny i Socjologiczny* 85, no. 3 (2023): 203 et seq.; Wegner-Kowalska, „Mediacja w sprawach administracyjnych”, 49–51; Przylepa-Lewak, „Mediacja jako forma komunikacji”, 64; Dauter-Kozłowska, „Stosowanie mediacji”, 80–81, 86.

published, and since 2018 the object of measurement has disappeared from the general law. The OSAP programme captures only the settlement, whose 0.48% share in district-office decisions indicates the marginality of consensual forms as such^[92]. The absence of data is not neutral: what is not measured cannot be managed – and, as the Hungarian sequence shows, is more easily abolished.

Effectiveness, finally, is not a single property^[93]. Normative effectiveness is moderate in both systems – the marginal practice cannot be blamed on regulatory defectiveness alone – institutional effectiveness is low (no specialised mediators, training or monitoring), and practical effectiveness minimal; yet 14 of the 38 Polish referrals of 2017–2020 ended in arrangements implemented in the decision, so where mediation is attempted, it is not futile^[94]. The low numbers do not prove the institution useless. They show above all that the parties do not perceive mediation as an available first-choice path – a problem of legal culture and information rather than of the instrument^[95]. The causes are cumulative: the parties' ignorance and a formulaic information practice; the authorities' caution; the unsuitability of bound-decision cases; the shortage of suitable mediators; cost and time-limit disincentives^[96]. Even civil mediation covers well under 2% of eligible Polish cases, which puts these figures in proportion^[97]. The communicative and social effectiveness of mediation – the very benefits for which it was created – escapes measurement altogether. The assessment of each regulation's quality must therefore be kept distinct from the assessment of its use.

⁹² Országos Statisztikai Adatfelvételi Program (OSAP), <https://kormany.hu/mini-szterelnokseg/orzagos-statisztikai-adatfelveteli-program> [accessed: 1.08.2026]; see section 3.4 above.

⁹³ Cf. Jakubiak-Mirończuk, „Effectiveness of Mediation – Between Effort and Result”, 13–34; Broński, „Efektywność mediacji”, 47–48.

⁹⁴ Calculated from Ministerstwo Rozwoju i Technologii, *OSR ex post*, 4–5, 17.

⁹⁵ Przylepa-Lewak, „The Patient as a Party to Mediation”, 49, 59, 63–64.

⁹⁶ Ministerstwo Rozwoju i Technologii, *OSR ex post*, 4, 17–18; Przylepa-Lewak, „Mediacja jako forma komunikacji”, 70–71; Broński, „Efektywność mediacji”, 64; Wegner-Kowalska, „Mediacja w sprawach administracyjnych”, 52; Suwaj, „Mediation as a New Form”, 26.

⁹⁷ Sławomir Pilipiec, Patryk Patoleta, „Perception of Mediation and Online Mediation by Trainee Attorney-at-Law at the Lublin Bar Association of Attorneys-at-Law” *Studia Iuridica Lublinensia* 32, no. 4 (2023): 117–132.

6 | Conclusion

In Poland mediation is a general, facultative, auxiliary instrument of administrative proceedings, available in vertical and horizontal configurations; in Hungary it survives only as a sectoral instrument, principally in child protection, the general code retaining only the settlement. The Polish regulation creates real conditions for its use only imperfectly – a vague admissibility premise, no guarantee of the mediator's legal competence, unreviewable refusals – yet the decisive obstacles lie outside the text; the Hungarian regulation after 2015 did not create such conditions even textually, since mediation compressed inside undiminished deadlines is set up to fail. Both models subordinate the consensual outcome to legality and the public interest, rest on voluntariness and professionalised mediators, and have remained marginal in practice. They differ constructionally (general availability versus sectoral activation), procedurally (preservation versus abolition of the time privilege) and in the position of the authority, which in Poland may itself participate in the mediation.

Mediation has not become an effective instrument for resolving disputed issues in either state, and the working hypothesis is confirmed: formal institutionalisation has not translated into actual use – for primarily procedural reasons in Hungary, primarily informational and cultural ones in Poland, in both aggravated by the absence of monitoring. The principle of legality does not preclude compromise, but defines its ceiling: compromise is possible within administrative discretion, undetermined concepts and the flexible elements of the resolution, never as derogation from mandatory norms – a subordination that distinguishes administrative mediation from its civil archetype.

The question of which model is the more functional admits of only a differentiated answer. The Polish model is normatively the more complete and faithful to the idea of mediation, but purchased generality at the price of vagueness, and its practical yield has been negligible. The Hungarian model is the more modest and the more honest about its own limits. Inspiration runs in both directions. Hungary demonstrates to Poland, negatively, that depriving mediation of its time privilege amounts to abolition by procedural asphyxiation, and, positively, that sectoral targeting of case types with a genuine dispute structure produces a more durable institution than general availability. Poland offers Hungary a tested package of the professional-mediator requirement, the confidentiality regime, the time privilege and the documented mediability assessment of 2025. The research gaps are themselves findings: no empirical

study of referral practice, no survey of the parties' awareness, no evaluation of the durability of mediated outcomes. Until reporting duties produce such data, every legislative intervention is undertaken in the dark. Whether administrative mediation in Central Europe proves a paradox or a new way will be decided not by further codification but by whether the administrative cultures of the two states develop the capacity, and the incentive, to speak with the citizen before deciding about the citizen.

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