

# THE ELECTRONIC ADMINISTRATIVE ACT

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**ABSTRACT:** *The reconstruction of the act of justice under the auspices of the implementation of the current technologies has gradually put its mark on the public administration as well. By realizing an introspection of the administrative act, the authors will try to reconcile this electronic orientation of the moment, to which the local public administration attaches, with the force of tradition.*

*New technological trends will be put together with an "electronic judge", simplifying and translating procedures into a digital dimension. Relatively early on, the electronic administrative act will always remain open to acquiring a common status in the service of the administrative authority and the administrative contentious control.*

**KEY-WORDS:** *administrative act; technologies; reconstruction; electronic judge*

**JEL CODE:** *K14, K38*

**Motto:** *„The information society must be a society for all citizens or it won't be at all!”*

## 1. INTRODUCTION

The new digital era builds and develops an information society based on the use of information technology as a key to promoting the modernization of services, in general and public administration, in particular.

The reform of the traditional state, also seen as a necessity for the "Brownian movement" of social, economic, legislative, jurisprudential changes, has also intervened gradually in the context of the integration of the states into the European Union. Thus, in the face of all the principles, regulations and services of the European Union, the state has received the impulse to react and to modernize.

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We live in a competitive society, where "information" is the main key in all areas. Information society is a society based on information and knowledge, a concept that is still at the beginning, but that describes the today's world. (Moldovan, 2011)

The 1990's began with the development of state economies and IT infrastructures, and thus the information society became a tangible reality. (Coman, 2018)

"Information Society" implies an assembly of information and knowledge, namely electronic means that create, transmit, store data, ensuring transparency, efficiency and efficiency of a certain administrative, political, socio-economic environment, crossing the border towards a new evolution of the society."(Chiriac&Szabo)

From this definition results that the information society is based on the following characteristics: (Chiriac&Szabo)

„- the dominant weight and critical importance of information resources;  
-the priority wheel of scientific research and technological innovation activities;  
-emphasizing the informational dimension and conception of work;  
-the high dynamics of the economic sector of the production and dissemination of information goods.”

Thus, the generation of digital services will certainly contribute to creating a coherent and unitary mechanism for data identification and processing, harmonization of national registers, rapid and effective access to legislation, increasing public confidence in public services, reducing bureaucracy, reducing costs and create a more simply administrative procedure.

Undoubtedly, all these advantages are not without obstacles in the free movement of information, and there must be ensured safeguards in electronic procedures and beyond. Therefore, only time will demonstrate the efficiency of this new type of society and remove the digital barriers.

## 2. BEGINNING WITH THE FORCE OF TRADITION...

Remaining faithful to the civilian theory (Popescu, 1994), a classic definition of the legal act consists in the fact that it is a „manifestation of written or oral will of a person, made individually or collectively, with respect to public order and good morals, in order to produce certain legal effects in the future, such as the creation, modification, transmission of a legal report, their realization being ensured by the coercive force of the state.” (Chiriac, Law of Administrative Law, 2009).

Having as a reference the general aspects of the legal act, the administrative act builds its characteristics in relation to it, and over time, there have been outlined several definitions. Without making a detailed presentation of these definitions, we will mention some of them, as they have been retained in the Romanian and foreign legal literature. Thus, the doctrine (Iorgovan, 2002) defines the administrative act as "that principal legal form of the activity of the public administration organs, which consists in a unilateral manifest expression of will, in order to modify and extinguish rights and obligations, in the realization of the public power, under the main control of the legality of the courts."

In another form, André de Laubadère asserted that the notion of administrative act also designates the unilateral acts emanating from private individuals in the execution of a public service. (de Laubadère, 1973)

Last but not least, professor Tudor Draganu referred to administrative acts as "legal acts, manifestations of will in the exercise of the executive function of the state, in order to produce certain legal effects, and their realization is guaranteed by the possibility to resort to the force of coercion of the state, under the conditions provided by the legal norms in force."(Draganu)

Observing a constant in certain elements, the administrative act can also be defined as "a unilateral manifestation of will, made in order to produce legal effects, issued under a public power regime, for the implementation of the law or the provision of public services."(Podaru, 2010)

The administrative act has acquired legislative consecration with Law no. 554/2004 of the Romanian administrative contentious, which defines it in art. 2 par. 1 lit. c: "unilateral act of an individual or normative nature issued by a public authority under a regime of public power in order to organize the execution of the law, which gives birth, modifies or extinguishes legal relations; there are assimilated to the administrative acts, within the meaning of the present law, the contracts signed by public authorities which have as their object the use of public property, the execution of works of public interest, the provision of public services, public procurement; special laws may also provide for other categories of administrative contracts that are subject to the jurisdiction of administrative litigation."

This set of definitions also outlines the specificity of the administrative act as a legal act but also of the administrative procedure, derogating from the common law, since "it should not be forgotten that this is a dispute between the citizen and the Mayor, between the citizen and the Prefect, between Citizen and Head of State, that is to say, between a "pygmy" and a "colossus", and the procedure must be considered in such way that the man on the street can reach the judge as quickly as possible so that the process is as simple and operative as possible."(Dacian, 2001)

Starting from the idea of ensuring a real efficiency of the administration activity and adapting this process to the use of new technologies, we will guide our scientific approach towards the final destination, namely the electronic administrative act (digital), from the "administration on paper" to "e-government."

### **3. EVOLVING TOWARDS MODERNISM...**

The modernization of society through the implementation of new technologies has led to digital cooperation between the citizen and the public administration. The emergence of computers and the Internet has allowed for a new type of relationship between central and local public authorities as well as between administrations and users, so that a computer network and administration have gradually developed. It has, thus, evolved from the traditional administration based on excessive bureaucracy to the computer administration, the digital era making its debut, which has since become history. "The Internet is a large-scale information infrastructure, a mechanism for disseminating information, an interaction environment between individuals, a market for different products and services, becoming a source of economic potential for many individuals, businesses and countries." (Pellerino&Mancarella, 2011)

In this context, digital transformation has begun and the notion of "e-government" has emerged, associated to an efficient and modern administration, including electronic administrative act, electronic signature, e-mail, electronic public procurement, etc. The

public administration has earlier shown its aspiration for flexibility and better collaboration in its relations with citizens, but also by opening access to data and services, in order to ensure free movement of businesses and citizens. (eur-lex.europa.eu)

However, it is unanimously acknowledged that progress and technological revolution manifest and develop differently from one state to another and from one culture to another. Not only nowadays, but there will always be states at a more advanced stage of economic, social, informational skills, creating discrepancies and perhaps deepening the superiority of some of them against the others. We are talking today about the difference between states that is called the "digital abyss". In the legal system of the national states, a number of normative acts have been implemented in order to stimulate the penetration and development of electronic means among the member countries, as exemplified by: Council Recommendation on Digital Governance Strategies, OECD, 2014; Malmö Ministerial Statement on Electronic Governance, 2009; Regulation (EU) No. 910/2014 on electronic identification and trust services for electronic transactions in the internal market; Directive 2007/2 / EC of the European Parliament and of the Council establishing an Infrastructure for Spatial Information in the European Community; Commission Decision 2009/767 / EC of 16 October 2009 laying down measures to facilitate the use of electronic procedures by means of points of single contact under Directive 2006/123 / EC of the European Parliament and of the Council on services in the internal market; Commission Decision 2011/130 / EU of 25 February 2011 laying down minimum requirements for the cross-border treatment of documents signed electronically by the competent authorities; Directive 2014/24 / EU of the European Parliament and of the Council of 26 February 2014 on public procurement, etc. It should also be mentioned that an EU e-Government Action Plan 2016-2020 was developed to accelerate the digital transformation of governance.

At national level, the first step towards a digital evolution was made by the adoption of Law no. 161/2003<sup>1</sup> on certain measures for ensuring transparency in the exercise of public dignities, public functions and business environment, preventing and sanctioning corruption, through which the National Electronic System was established.

Law no. 161/2003 laid the foundation for the development of an electronic framework, setting out in its content certain objectives, as they are found in art. 7: "- reducing public spending, fighting bureaucracy and corruption at the level of public institutions; - increasing the transparency of the use and administration of public funds; - improving access to public information and services in accordance with the legislation on personal data protection and free access to public information; - elimination of the direct contact between the officer at the counter and the citizen or the economic agent; -providing information and quality public services by means of electronic means; - enhancing the administrative capacity of public institutions to fulfill their role and objectives and to ensure the provision of public information and services in a transparent manner; - promoting collaboration between public institutions for the provision of public services by electronic means; -redefining the relationship between the citizen and the public administration, respectively between business and public administration

It is generally appreciated that the European countries have tried to keep up with the new digital administration and to implement laws and measures in order to a better

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management and improvement of public services. Integrating the use of digital technologies in modernization strategies of the administration as well as the opening of a third-party data and services in the public sector in full compliance with the legal framework on personal data protection will lead to economic and social benefits for the entire society.

In order to transform the current administration, it needs to make further efforts to accelerate the adoption of electronic identification and to create trustful services for electronic transactions in the internal market<sup>2</sup> In order to do this, the European Commission proposes to apply the so-called "no-legacy" principle in public administrations, which is the principle of renewing computer systems and technologies at different time intervals to keep pace with a continuous environment change and technology development. (eur-lex.europa.eu)

#### **4. THROUGH THE IMPLEMENTATION OF THE ELECTRONIC ADMINISTRATIVE ACT...**

The urgent need for a European regulation of the electronic administrative procedure and of the electronic administrative act, followed by its adoption and adaptation in the national legislation of the states, is now being felt, as the new horizons of knowledge and access to information are being opened up. Furthermore, users have access to other Member States' legislations and case law systems. The classical notions of "public administration" and "administrative act" will acquire new valences, tending to be replaced over time, motivated both by the development of IT systems and by the need to streamline administration while reducing bureaucracy. This reduction will have a great impact especially from the point of view of the citizen, who also feels the procedural problems that lie behind him. (Sarmasanu & Cranga, 2014)

A definition of the electronic document is contained in the Code of Digital Administration adopted in Italy (Law No. 82/2005 as amended by Law No. 217 from 13 December 2017): "Any content preserved and stored in electronic form by the registration of a text or sound, visual or audiovisual." In trying to define the electronic administrative act, both in terms of its essential and traditional elements and its adaptation to a technological society, it can be remembered that it is the management of the manifestation of will to give birth, modify or extinguish rights and obligations, by the use of electronic means used or obtained for the performance of the duties of the public administration authorities under minimum electronic control of legality. With the redefinition of the notion of administrative act, inevitably there are questions about the electronic procedure that could be adopted to facilitate the relations between the administration and the citizen, and why not, the access to justice. How will be made the control over the electronic administrative act and by whom? Could the prior procedure be transformed into an electronic procedure? A first legality check could be carried out by an "electronic judge"?

It is a fact that, at present, the transmission of procedural documents can also be done by electronic means. Therefore, art. 199 par. (1) of the new Code of Civil Procedure (common law applicable in the matter of administrative litigation) provides that "The request for a summons, filed in person or through a representative, arrived by post,

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<sup>2</sup>Regulation(UE) no. 910/2014.

courier, fax or scanned and transmitted by e-mail in electronic form, shall be recorded and given a clear date by the application of the entry stamp." Similarly, art. 47 paragraph (3) of the Fiscal Procedure Code provides for the possibility of electronic communication of the fiscal administrative act: "The fiscal administrative act issued in electronic form shall be communicated by electronic means whenever the taxpayer / payer opted for this method of issuance and of communication."

In the following we will try to analyze the electronic administrative act in terms of the conditions of validity, legality and opportunity, the way of electronic storage and transmission, as well as the means of control over it. The first steps in this new digital approach have been achieved, although sometimes small and uncertain, by throwing the procedure into the avalanche of technology. This is not without consequences, sometimes even bad, and it is necessary to implement restrictions on data protection and to control these electronic activities. Certainly, the benefits will not cease to occur by creating an electronic administrative body to collect information and provide it to the citizens, ensuring the possibility of eliminating errors and omissions, efficiently and accurately respecting the deadlines, having a confirmation receipt just at the time of registering a request, etc.

Regarding the conditions of validity of the electronic administrative act, we consider that it, like any legal act, must generally have the same conditions as the traditional one for recognizing a legal existence with certain particularities. Thus, the act must fulfill, among other things, the condition of valid consent expressed by the competent body and within the limits of its competence to comply with the content of the law. By bringing these conditions into the sphere of the new technology, we can see that an adaptation of the electronic administrative act is needed in order to guarantee its quality, safety and integrity. Referring to the Italian Digital Code, we consider that, in the case of the Romanian electronic administrative act, the electronic signature should also mention the special qualification of the holder (eg. the status of public officer, his skills), the limits of use, and the categories of documents or contracts for which it may be used. Moreover, the electronic signature generation must be based on respect for confidentiality, protection against forgery, and protection against abuse by third parties.

Another problem faced by the electronic administrative act is the appeal that can be exercised. In the electronic procedure there can be a confirmation right at the time of the registration. Therefore, in the case of a refusal to issue an act, for example, the time-limit for appeal may run from the registration of the application, as the refusal may be immediate. Moreover, it should be noted that the introduction of an electronic procedure is most often a prerogative of the administrative authority, but it must nevertheless comply with the general principles of law, in particular the principle of equality. By using an electronic procedure, the tendency is to simplify and reduce the rigor of certain requirements. This can only be an apparent one, as the development of electronic procedures leads to strengthening and increasing controls rather than eliminating them. The procedure is only a set of rules designed to highlight the legality of issuing an electronic administrative act.

At the same time, in order to make the entire electronic procedure more efficient, certain measures have to be adopted at the level of the entire administration in order to ensure the transparency, security and integrity of the electronic administrative act. Thus, the first step must be to ensure the identification of persons using an electronic procedure,

the clarification of competence or other qualifications related to the professional activity, effective information regarding the limitation of using the electronic signature and keeping the management only by the authorized persons.

The implementation of such a new procedure has a direct and immediate consequence, determining with precision the date and time of the application, simplifying the act of justice in general by eliminating procedural errors but also by making the procedure more efficient.

Let's take an example to present the mechanism of an electronic administrative procedure. In our country, Sibiu City Hall has simplified the procedure for obtaining urbanism certificates, creating in this sense a virtual "E-administration" platform. Thus, the documents necessary for obtaining the urbanism certificate, as well as its subsequent issuance, can be done electronically, following some simple steps ([www.sibiu.ro](http://www.sibiu.ro)): - accessing the portal; -creating your account with personal data; - submission of documents, with the purpose of obtaining a confirmation notification; -passing the documents by the special program created and receiving a registration number; - communicating tax and registration number to the citizen; - and finally obtaining the urban certificate, which may be downloaded by the interested person on his account.

So the whole traditional and bureaucratic procedure has been replaced by a digital, virtual, much faster and more efficient procedure. Despite the obvious benefits of this procedure, the provision of qualified services and the existence of digital management is not shelter from criticism, which can harm lawful subjects through the measures that are taken. Therefore, the regulation of means of control, both of the electronic administrative act and of those involved in the entire electronic administrative procedure, is imperative.

The control exercised may be internal, such as by the manager of the public authority over the compartments in its structure (by way of an appeal) or an external one, made through the administrative contentious. Referring to the example mentioned above, we believe that the control over the electronic urban certificate can be exercised, and this can be done through the administrative litigation. We consider that an electronic control could gradually be adopted through an "electronic judge" to carry out a first review of the legality and authenticity of the administrative act in question and the rest of documents attached to it, rejecting the request in the case of non-fulfillment of minimum requirements stipulated by the law. At that time, the citizen already has the opportunity to get acquainted with the irregularities of his request and to remedy it. But regarding the main control of the act, we appreciate that the "mind behind the technology, behind the computer" must still be a qualified person or the court.

## **5. CONCLUSIONS**

The development of e-Government, although beneficial, should be guided towards taking into account the private interest of citizens, and an adequate regulation is needed to guarantee a balance between the general interest and the protection of the rights of individuals. Therefore, e-government is firm in the face of electronic challenges. Most procedures have in the center an administrative document, regardless of whether it is a decision, a building authorization, etc. The dematerialisation of these acts must be sufficiently rigorous to convince the judge of the reliability of the electronic procedures used.