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Evolution of Administrative Procedure Exemplifies Informatisation of Public Administration in Poland

Rafał Biskup[1] **and Małgorzata Ganczar**[2]

Abstract

The process of informatisation of the administrative procedure in Poland has continued for over a decade. Several law amendments have provided for subsequent institutional developments in order to follow the administrative procedure by means of electronic communication. The purpose of the article is to present the amendments to the Code of Administrative Procedure contributing to the possibility of taking procedural steps with the use of electronic means. The paper is the analysis of these legal arrangements from the perspective of practical application and effectiveness.

Keywords: ICT, public administration, administrative procedure, e-government, electronic form, electronic document

I. Introduction

The end of the twentieth Century was a period of dynamic technological advancement. Along with this process, new operational opportunities in the sphere of public and private law emerged for entities. Development of information and communication technologies enabled to use numerous new tools in various areas of everyday life. Online banks, virtual shops and entities providing a variety of services in electronic form were set up.

[1] The John Paul II Catholic University of Lublin, Faculty of Law, Canon Law and Administration, Institute of Administration, biskuprafal@kul.pl, Spokojna 1, 20-074 Lublin, Poland
[2] The John Paul II Catholic University of Lublin, Faculty of Law, Canon Law and Administration, Institute of Administration, mganczar@kul.pl, Spokojna 1, 20-074 Lublin, Poland

It was obvious that public administration could not be indifferent to the ongoing processes and it had to undergo the process of informatisation as well. The main objective of the informatisation of the public administration is to create conditions for better services enjoyed by citizens, entrepreneurs and other entities and to address to their needs efficiently. Public service demands establishment of the right of citizens to communicate with the administrations by electronic means. The counterpart to this right is the public administrations' obligation to provide the electronic means and systems so that this right can be exercised (Cerrillo Martinez, 2011, p. 192).

A natural phenomenon associated with operations of the electronic administration was the creation of an appropriate legal framework for the use of technological arrangements emerging at that time. The electronic administration (the term that is often referred to as e-administration, e-Government) encompasses all the operations of the public administration using new ICT technologies. It is an operational model for state and local administration bodies, based on the use of advanced information and communication technologies.

Taking into consideration the nature of the matter we are dealing with, namely, the growth rate of information and communication technologies, it is necessary to ask oneself the question how purposeful and rational - from the point of view of the public and individual interest - it is to create the legal basis for the operations of the electronic public administration and to continually change it when innovative technological arrangements emerge. Should not one deal first with the still existing technical problems and the barrier in the form of resistance and reluctance towards the change presented by civil officers? The regulations and amendments introduced so far in the Code of Administrative Procedure (Act of 14 June 1960, the Code of Administrative Procedure, consolidated text - Journal of Laws of 2000, No 98, item 1071 with subsequent amendments) by no means resulted in a flood of applications submitted electronically to public administration bodies.

Let's recall briefly the evolution of regulations to the extent of the informatisation of the public administration. It bears noting that the arrangements that had been implemented have almost never governed the issue of the administrative procedure in a comprehensive manner and by referring to the particular institutions involved in the procedure.

Of course, this is not a starting point for the discussion whether it would be recommendable to isolate the regulations regarding electronic proceedings and to sum them up in a separate chapter of the Code of Administrative Procedure (CAP). Due to the limited formalism of the procedure, this measure does not seem necessary. However, in the subsequent amendments to the CAP, the legislator seems to be oblivious to the problem of frequent amendments and fragmentary nature of the developments of the electronic proceedings rules. For example, after the recent amendment that should have eliminated at least those basic deficiencies that had practically led to the impossibility of implementing the e-procedure, once again there are still the areas "untouched" by the legislator - for example, evidence proceedings, preparation of minutes and endorsements.

The first regulation concerning the use of electronic communication in the administrative procedure was enforced under the amendment to the Code of Administrative Procedure that effect on 1st January 1999 following the Law of 29 December 1998 on the amendment of certain acts in connection with the implementation of the reform of the state's political system (Journal of Laws of 1998, No 162, item 1126). The possibility of using e-mail was added to Article 63 Paragraph 1 of the Code of Administrative Procedure that contains a list of ways of submitting applications to the public administration bodies. This arrangement was also used in the simplified procedure for addressing complaints and applications, and it is still in force. The Regulation of the Cabinet of 8 January 2002 on the system of receiving and addressing complaints and applications (Journal of Laws No 5, item 46) enforced pursuant to the delegation contained in Article 226 of the CAP, in Paragraph 5 indicates e-mail as a way of submitting complaints and applications (Sibiga, 2011, p. 24-25). However, the new arrangement did not bring about a breakthrough because the legislator might have optimistically assumed the development of electronic tools as data carriers or wanted to make the procedure more innovative. However, it has not been reflected in a particular practice. As a matter of fact, Article 63 Paragraph 1 of the CAP enumerated e-mail as a way to file an application but generally it has been interpreted in conjunction with Article 63 Paragraph 3 of the CAP that specifies the requirement to sign the application filed in a written form. The signature is generally considered to be a sign containing the first and last name or only the last name, written by hand by the person who thereby signs the content of the document - a personal manual signature (Darmosz, 2003, p. 144).

This requirement practically eliminated e-mail as an effective and fully correct way to submit an application as the indication of the first and last name of the author of the document in the content of an e-mail or in a text document attached to an e-mail could not be considered as a signature in view of the above-mentioned understanding of the term. In our opinion, such interpretation of Article 63 Paragraph 1 of CAP has been incorrect, because it has divested the amendment, enlisting e-mail as a communication channel between the client and the public administration office, of its legal meaning. It is supported by two arguments. Firstly, at that time the Code of Administrative Procedure required only a signature under the application with no distinction between the signature on an application submitted in a traditional way and by e-mail. Such a differentiation was made - however not fully - a few years later. Secondly, since the legislator added e-mail as a new way of communication without any additional reservations, it was knowingly agreed to sign such a type of application in a way allowed by the then technical conditions (i.e. to affix the first and last name of an applying party to the document by means of a text editor).

Unfortunately, the spirit of an ill-conceived legal positivism prevailed in the interpretation of the legal regulations and in accordance with the interpretation in force (although this practice was not always implemented) applications submitted by means of e-mail were deemed a document with a formal defect due to the missing signature. It gave rise to an obligation to implement the course of action stipulated under Article 64 Paragraph 2 of the CAP - a request to correct formal defects which consisted in printing the e-mail or the attachment, signing it and delivering to the public administration body. The applying party gained at least an additional, high-speed channel to send applications, especially when it was necessary to meet the deadline and when it was impossible for the applying party to use other ways to guarantee the due date of submitting the application.

Another important law in the process of modernisation of the administrative procedure was the law adopted on 18th September 2001 on electronic signatures (Journal of Laws No 130, item 1450, with subsequent amendments) that provided for the secure electronic signature that can be verified with a valid qualified certificate for the purpose of legal transactions. In accordance with the provisions of Article 5 Paragraph 2 of the law on electronic signature, the use of the above mentioned electronic signature has an equivalent legal effect as the use of a handwritten signature.

However, a doubt was raised concerning the practical application of the provisions of the law on electronic signature for submitting applications via e-mail pursuant to Article 63 Paragraph 1 of the CAP (Sibiga, 2011, p. 26).

Another problem has also concerned submission of an electronic application by an attorney-in-fact, as the wording of Article 33 of the CAP does not directly stipulate whether it is possible for an attorney-in-fact to use e-mail in order to submit an application. Nevertheless, following the principle of equivalence of handwritten and electronic signatures, such a possibility cannot be excluded. An application submitted by an attorney-in-fact via e-mail without an electronic signature or with a signature but without a qualified certificate will not be effective and may result in a request for correction of the defects of a power-of-attorney (Butkiewicz, 2004, p. 74).

It is worth remembering the act of 18 July 2002 on the provision of services via electronic means (Journal of Laws No 144, item 1204, with subsequent amendments) that provided for basic definitions *inter alia* of a service provided via electronic means, an e-mail address, means of electronic communication and an ICT system.

The Act of 17 February 2005 on the informatisation of entities performing public tasks (Journal of Laws No 64, item 565, with subsequent amendments), hereinafter referred to as AIAE, contributed to acceleration and broadening of the process of changes in the law in order to popularise modern telecommunication and information technologies to the extent of operations of public authorities and related bodies (Konarski, 2004, p. 207; Konarski Sibiga, 2006, p. 65). It can be considered that the act was comprehensive as it introduced changes in as many as 17 specific acts, including but not limited to the Code of Administrative Procedure. The amendment to the Code of Administrative Procedure enforced under the said law was to allow to address the matters in the field of public administration in an interactive way, so that the office was focused on the needs of citizens and available 24 hours a day, seven days a week (Konarski Sibiga, 2006, p. 65). The regulations that had been amended were to improve operations of the office, especially in terms of submitting applications and delivery of letters by public administration bodies (Article 39^1 of the CAP). It was to be performed with regard to technical arrangements ensuring safety of electronic communication as well as transparency and confidence necessary in electronic communication (Monarcha-Matlak, 2008, p. 228).

According to the amendment to the Code of Administrative Procedure of 2005, an application submitted in an electronic form is subject to the fulfilment of two formal requirements, namely:

- it should be accompanied by a secure electronic signature verified with a valid qualified certificate, with observance of the rules stipulated in the act on electronic signatures,
- it should also include data in a specified format presented in accordance with a model template application stipulated in separate regulations, if it is required by these regulations.

At the same time, the content of Article 63 Paragraph 1 of the CAP remained the same, where e-mail is still listed next to the new method of submission of applications. Thus, one could distinguish applications submitted electronically via mail or a form (template application) and signed with a secure signature or submitted via e-mail and signed with a traditional signature. The failure to comply with the requirement to affix a secure signature to an application constituted a formal defect of an application (in such legal circumstances, this kind of interpretation has already been authorized), and the duty of a body was to call the applicant to remedy the legal defect within 7 days, otherwise the matter was not to be considered. Such amendments have not led to rising popularity of electronic forms of contacting the public administration bodies, mainly due to the fact that the only plausible form of authentication of the user of ICT systems used to transfer data is the secure electronic signature verified with a valid qualified certificate. It should be added that the use of the secure electronic signature was quite expensive, which in comparison to the technical capabilities of the bodies to receive such applications accounted for the failure of e-procedure.

The amendment of 2005 also enforced Article 39^1, according to which "the letters could be delivered by means of electronic communication if an applying party requested an administration body to deliver them or consented to the delivery of letters via those means." Such wording of the regulation resulted in the fact that taking the advantage of the opportunity to deliver letters in electronic forms depended only on the good will of a body. On the basis of the delegation of legislative power, the Regulation of the Minister of Internal Affairs and Administration of 27 November 2006 concerning the preparation and delivery of letters in the form of electronic documents (Journal of Laws of 2006 No 227, item 1664) took effect.

The scope of the regulation also covered the provisions concerning the forms of official acknowledgement of receipt (Paragraph 2, Point 5) and ways of making copies of electronic documents available (Paragraph 7). Whereas, the issues of delivering documents to the public administration bodies were governed by the Regulation of the Prime Minister of 29 September 2005, enforced pursuant to Article 16 of the law on informatisation, on the organizational and technical conditions of delivering documents to public entities (Journal of Laws of 2005 No 200, item 1651) that prescribed public bodies to accept electronic documents via electronic inbox (Paragraph 6) or on data carriers enabling to record an official acknowledgement of receipt. The provisions of the two regulations were difficult for the public bodies to implement and finally expired on 17th June 2010.

II. Most Important Institutions Involved in Electronic Administrative Procedure in Poland

Due to the low interest in contacting the public administration via electronic means, five years after the law on informatisation had been passed, an amendment to the legal regulations become necessary. Consequently, the act of 12 February 2010 on amending the act on informatisation of entities performing public tasks and on amending other certain acts was passed (Journal of Laws No 40, item 230), hereinafter referred to as AAIAE, including the Code of Administrative Procedure.

Undoubtedly, Article 14 Paragraph 1 of the Code of Administrative Procedure, introducing alternative ways of addressing administrative matters, is revolutionary in nature. In addition to the written form, an electronic form of the document is also stipulated within the meaning of the provisions of the law on informatisation and it is to be delivered by means of electronic communication. Thus, the legislator formally equated the traditional document (paper) with a document produced in electronic form.

One may draw a few important conclusions from the new amendments. Firstly, the legislator seems to be making a clear distinction between concepts of a traditional and an electronic document. This is an important change because the existing tendency aimed - as it seems - at recognising an electronic document as a *sui generis* type of a traditional document (Citko, 2010, p. 3) different only in terms of adoption. In our opinion, this is definitely a step in the right direction.

The development of communication techniques should enforce precise vocabulary. In the future, the term "in writing " or equivalent should be identified only with the obligation to produce or deliver a traditional document, whereas, the concept of an electronic document should refer to the possibility of using such form in the procedure. However, there are few rules in the Polish legal system that explicitly indicate the form of an electronic document. In order to popularise this form and at the same time to avoid a change in a number of regulations using an archaic, from this point of view, notion of "in writing", one may temporarily apply the wording of the general regulation that, until the introduction of precise changes, balances the term "in writing" against the term "electronic document", unless it is otherwise expressly provided by the legislator.

Secondly, editing Article 14 Paragraph 1 of the CAP may be understood that the rule of written form is balanced against the rule of recording the process in the form of electronic documents. The legislature authorizes "addressing matters" both in the written from and in the form of electronic documents. The term "address the matter " used in Article 14 Paragraph 1 of the CAP should be referred to any action that is to be recorded (if it is not covered by the exception in favour of the oral procedure stipulated in Article 14 Paragraph 2 of the CAP) and that contributes to issuing an administrative decision in accordance with the provisions of the CAP ("addressing the matter in a narrower meaning of the word - for example, the one used in Article 104 Paragraph 1 of the CAD), and that are addressed to a public administration body, an applying party or a participant in the procedure.

Thus, a body conducting a procedure may take particular procedural steps both in writing and in the form of an electronic document (as per their own choice or a request of an applying party). At the same time, the legislator stipulates that in the procedure one can use electronic documents delivered by means of electronic communication. In our opinion, therefore, that is why the current wording of Article 14 Paragraph 1 of the CAP is not properly formulated when it comes to general observance of the electronic procedure. The provision of Article 14 Paragraph 1 of the CAP indicates the obligation to address matters in writing or in the form of an electronic document. In the first case, the legislator directly refers to the unidentified procedural steps of bodies that are recorded in writing in the form of a traditional document or on other carriers (with the exception of electronic carriers). In the second one, one may observe a considerable limitation of the way of addressing a matter to the form of an electronic document.

From such perspective, an electronic document is regarded to be a way of electronic record of information that can be also saved in a different form (for example, on data carriers or virtual servers). In these circumstances, the legislator's actions are consistent and correlated with the generally accepted trend of dissemination of electronic documents. In the future, it would be recommendable to change the wording of that legal regulation, by replacing the term "electronic document" with the term "electronic form". In our opinion, this will allow to expand the opportunities for the use of electronic procedure to the fields hitherto inaccessible. If the electronic form is to be understood as all means of electronic transmission of information, it is possible to imagine conducting an administrative hearing with the use of video transmission. Even now, conference call is a method used to the extent of the management of business operations. It is also an inexpensive technology that is widely available, mainly through free instant messengers such as SKYPE.

The technical details related, for example, to the identification of participants can be solved either by means of previously agreed passwords or a simple presentation of an identity document. Even now, these arrangements can be successfully implemented with the use of the form of the so-called urgent request referred to in Article 55 of the CAP because they greatly facilitate fulfilment of the requirement of the identification of the interlocutor that is stipulated in Article 55 Paragraph 2 of the CAP. One should also share the view (Sibiga, 2011, p. 61-62) that even now it is possible to use them on a par with other devices designed for verbal transmission of information in the implementation of the rules of derogation from the principle of the written form, particularly in the case of an oral announcement of the decision or regulation (unfortunately, the protocol confirming the verbal announcement of the decision is still made using the traditional method which constitutes a fundamental obstacle to the popularisation of these transmission methods and requires a visit of the addressee of the oral decision at the seat of the body in order to sign the protocol, that pre-conditions the feasibility of the orally announced decision). The potential related to the information transmission technique is also to be used when developing legal regulations concerning preparation of protocols or endorsements. The protocol could take the form of an audio-video recording preserving all known existing standards (for example, the notification of the need to record the transmission).

The term "electronic document delivered by means of electronic communication" in Article 14 Paragraph 1 of the CAP seems to limit the range of legal steps that may be executed in such a form only to those that are subject to the obligation of delivery under the general rules or to the obligation of delivery to an administrative body. In practice, the protocols, endorsements and hearings remain so far beyond the e-procedure. Nevertheless, the doctrine rightly emphasizes that this fact does not preclude electronic recording of those steps (Sibiga, 2011, p. 63), provided, however, that it is not possible to attribute legal significance to such action. It can therefore be concluded that in administrative procedure the rule of written form is still in force but some of its elements can be replaced by the form of an electronic document balancing the traditional written form of recording the process. However, one may imagine a situation when such procedure (form the point of view of an applying party) can be executed completely without the need of a direct contact with a public officer - for example, the matters settled on the grounds of an application and related data that are at the disposal of or accessible for a body (for example, data derived from the records).

Thirdly, one should also pay attention to the constraint that refers to "settling a matter in the form of an electronic document". Such documents may be delivered only by the use of electronic means of communication - in fact, the most widespread mean is e-mail, - however, in the future one cannot to exclude the possibility of taking advantage of other technical arrangements allowing for individual distance communication with the use of data transmission between ICT systems (for example, instant messengers, social networking sites or others providing a possibility to customize the transferred data). This arrangement significantly impedes the development of a fully electronic administrative procedure using the expression "electronic form " instead of "electronic document ". Article 14 Paragraph 1 of the CAP resolves these dilemmas. Delivery of applications by the participants in the procedure with the use of electronic means should be understood differently. The rules stipulated in Article 63 of the CAP apply here.

Supplementing the rule of written form in the procedure with a possibility of using an electronic document is a step that has long been expected. It allows to isolate the detailed rules for conducting an electronic procedure on the basis of describing simultaneously the duties of a body or powers of parties on the grounds of the construction of an "ordinary" traditional procedure.

Undoubtedly, some of them have to be redefined taking into account the specificity of electronic transmission of data as well as design of its content (for example, the definition of the term "address" in the application, the concept of formal defects of an application, principles of active participation of parties, etc.). Until now, the legislator somehow forced a random use of certain institutions (delivery, submission of applications).

In the context of amendments in the content of Article 14 of the CAP, one should also present the significant changes introduced to Article 63 of the CAP. According to its current wording, applications (claims, explanations, appeals, complaints) may be submitted in writing, by wire, by fax or orally for the record, as well as by other means of electronic communication via electronic inbox of a public administration body (Ganczar, 2009, p. 51-53) established on the grounds of the law on informatisation. This amendment is the result of unification of rules and simplification of the form of communication between an individual and a public administration body. In the light of Article 2 Point 5 of the act on the provision of services via electronic means, e-mail, even though it is not directly mentioned as a way to deliver applications, it is still one of the principal means of electronic communication. However, when comparing the current wording of the article given in 2005, one may observe that it is clarified and limited at the same time.

The limitation refers to the obligation of sending electronic documents solely to the electronic inbox (ESP). An application affixed with a traditional signature cannot be sent via e-mail. It shall be ignored, however, on the grounds of the wording of Article 9 of the CAP, an obligation could be imposed to notify of the lack of effectiveness of the applications submitted in this way. The postulate is even more justified due the fact that it is the State's fault that e-administration has been in its infancy for so many years, thus, any errors of parties in this field should be treated gently. The circumstances should be interpreted differently if an electronic document is sent to an e-mail address other than the ESP, particularly to the address of an employee responsible for issuing a given kind of decisions. Since the obligation to send an application to the address of ESP is one of the requirements stipulated in Article 63 of the CAP, it should be considered a formal requirement for efficiency of an the application and one should request to correct this formal defect under Article 64 Paragraph 2 of the CAD.

On the other hand, the introduction of other alternative ways of identifying the person submitting an electronic application can be regarded as a clarification of regulations. Identification of users of ICT systems provided by the competent entities stipulated in Article 2 of AIAE, is executed as follows:

- use of secure electronic signature verified with a valid qualified certificate along with observance of the rules stipulated in the law on electronic signature,
- identification by means of a trusted profile of Electronic Platform of Public Administration Services (ePUAP)[3] by means of a signature confirmed with the profile that is to be understood as a signature affixed by the user of an ePUAP account with an attached identifiable information contained in the trusted ePUAP profile; at the same the signature clearly indicates the trusted ePUAP profile of the person who affixed their signature including time of signature and explicitly identifies the ePUAP account of the person who affixed the signature, authorised by the ePUAP account user and confirmed and protected by an system signature of the ePUAP;
- use of other technologies.

unless separate regulations provide an obligation to perform activities at the seat of the public body (Article 20a of the law on informatisation).

In case of the first of the enumerated authentication methods, we still deal with the form of secure electronic signature in force. The second way authentication is a possibility to establish a trusted ePUAP profile. According to the legal definition, a "trusted ePUAP profile" is a set of information identifying and describing an entity or person who is a user of an ePUAP account that is reliably confirmed by a body referred to in the act on informatisation of entities performing public tasks. The Trusted Profile's function is above all to enable confirmation of the signature affixed by an entity in contact with the public administration body and to clearly identify such entity.

[3] See Article 3 Point 15 of AIAE.

Such signature was described as a "signature confirmed with a trusted ePUAP profile" and means a signature affixed by the user of an ePUAP account with an attached identifiable information contained in the trusted ePUAP profile; at the same the signature clearly indicates the trusted ePUAP profile of the person who affixed their signature including time of signature and explicitly identifies the ePUAP account of the person who affixed the signature, authorised by ePUAP account user and confirmed and protected by en ePUAP system signature; The concept of a system signature of the ePUAP should be understood as a digital signature created in a secure environment of the ePUAP system, that ensures the integrity and authenticity of the operations performed by the ePUAP system. A signature confirmed with a trusted ePUAP profile has legal effect if it was created or affixed during the profile validity period. The data in electronic form affixed with a signature confirmed with a trusted ePUAP profile is equivalent in terms of legal effect to a document affixed with a handwritten signature, unless otherwise provided in separate provisions. One cannot deny the validity and effectiveness of a signature confirmed with a trusted ePUAP profile only on the grounds that it has taken an electronic form or that the data other than those necessary to confirm a trusted profile have changed. This arrangement has introduced an alternative to the use only of a secure electronic signature in contacts with public administration. In order to create a trusted profile, one must create an account on the ePUAP portal and then go to one of the offices in order to confirm the conformity of one's personal data with the data entered into the system. If data validation is successful, an authentication shall be certified. In practice it means that after authentication, the account created on the ePUAP site (www.epuap.gov.pl), shall become a trusted profile.

The electronic application should be in the form of an electronic document (application based on the new wording of Article 14 Paragraph 1 of the CAP) and should be submitted by means of electronic communication. Thus, it is inadmissible to send to a body or to deliver in person a carrier containing an electronic document. The doubts are risen by the word "other" preceding the term "means of electronic communication." It should be compared to other ways to submit an application stipulated in this provision, if the arrangements adapted in the provision may at the same time meet the requirements of the technology used for distance communication with the use of data transmission. Practically, it may concern the fax machines that may serve as computer programs (also stated by Sibiga, 2011).

Another formal condition for an effective submission of an application is the obligation to enter the data presented in the model application stipulated by the provisions of law. In case of an electronic document, it consists in filling an interactive form at the website of a body. The adopted technical arrangements should allow to save a copy of an application on one's own data carrier or to print it. However, this requirement is not explicitly stipulated in the provisions of law but results from the principle of notification.

The electronic mode of submitting an application reflects a different understanding of some of the traditional institutions. For example, a specific application is required by Article 64 of the CAP, according to which, in some cases, the lack of an e-mail address (e.g. if a website requested an electronic delivery) is considered a formal defect. The technical arrangements may also significantly limit the possibility of occurrence of a formal defect, particularly if the application is submitted by the use of the official form, by not allowing to send a wrongly-filled forms (although these mechanisms can be easily fooled).

The change of the wording of Article 39^1 of the CAP is also important, as it imposes on the public administration bodies the obligation of electronic delivery when an applying party or any other participant in the procedure requests an administration body to deliver them or consents to the delivery of letters via means of electronic communication. In order to deliver an electronic document, a public administration body is also required to send a relevant information to the electronic address of the addressee (Ganczar, 2010, p. 220). Therefore, the delivery of letters via electronic means entirely depends on the will of a participant in the procedure, and not - as so far - on the discretion of the administrative body conducting the procedure (Bishop, Ganczar, 2008, p. 67-68). The provision is precisely worded and does not provide any exceptions. Therefore, it should be assumed that the delivery of a letter by traditional methods at the place of residence indicated in the application is a legally ineffective delivery, unless the participant acknowledges the receipt of the letter (in an appropriate traditional delivery). In this case, it is considered that the participant has changed his opinion in terms of the delivery of letters. This does not prevent the participant from re-requesting the delivery of letters via electronic means. In these circumstances, the recognition of the effectiveness of substitutive or concludent service. There are various reasons for which the participant might want an electronic delivery (for example, they may have a job that requires frequent travels across the country).

It should also be stressed that the participant is not required to provide reasons for why they want to receive letters electronically. What is more, if the participant expresses their willingness to receive letters electronically, they are obliged only to update their e-mail address, in case of a change, and not their address of residence.

In the conclusion of the subject matter, one must make one more observation. As it results from the analysis of the judicial decisions (e.g. the judgement of the Voivodeship Administrative Court, V SA/Wa 1092/2009, or the ruling of the VAC I SA/Gl 482/10), in administrative court procedure, e-mail and fax are two examples of equal ways to deliver court letters and they are often used in judicial practice. The date of data transmission is regarded as the acknowledgement of the receipt. A condition for an effective delivery by electronic means or by fax, consist in giving one's consent to this method of delivery, however, it is assumed that the consent may be given implicitly - i.e., by the fact of including in the letter an e-mail address or fax number (Tarno, 2009; Knysiak-Molczyk, Woś, 2011). There are no obstacles to use a similar interpretation in conducting the procedure of the delivery of letters in the administrative procedure. Certainly, it is less formal than the court administrative procedure. Article 39^1 of the CAP clarifies that the obligation to deliver the letters by electronic means is imposed either as a result of a request by the procedure participant or the expression of their consent to such service. The Code does not specify the time limit for performing activities that require electronic delivery (thus, it should be assumed that it is possible up to the moment of issuing the decision) or its form. With view to a limited formalism of the administrative procedure and the rule of speed and economy of the procedure, it should be assumed that the request for the delivery of documents with the use of means of electronic communication can be explicit (a statement of intent) or implicit. If the legislator decided that only the will of the participant in the procedure decides about the mode of delivering letters, the very fact of submitting an application to a body via electronic means or indicating an e-mail address in the application should be interpreted in accordance with the principles of logical interpretation, as the intention of using this method of communication, unless otherwise stated in the application. The request for consent to electronic delivery of documents may be delivered in accordance with general rules or by means of electronic communication, insofar the body has relevant information at its disposal.

Moreover, thanks to the amendment of Article 109 and 125 of the CAP, an opportunity to deliver decisions and rulings to the parties of the procedure by electronic means was clearly stated. In view of the changes in the wording of Article 14 Paragraph 1 of the CAP, the provision with this wording seems to be redundant. Especially given the fact that for absolutely incomprehensible reasons, the legislator rather than to refer to the form of a decision to be delivered specifies the mode of its delivery. It is clear, however, that the object of delivery is a decision or ruling made in the form of an electronic document affixed with a secure electronic signature verified with a valid qualified certificate. Principles of the proper mode of delivery of letters, including decisions and rulings, are stipulated in Article 46 PAragraoh 3-6 of the CAP.

However, the new wording of Article 54 Paragraph 2 of the CAP introduces an alternative possibility to issue a summons with the use of an electronic document, that should be affixed with a secure electronic signature verified with a valid qualified certificate.

The innovations introduced by the amendment of the act on informatisation is the informatisation of other activities covered by the Code of Administrative Procedure. This applies to the fact of adding to Article 73 Paragraph 3 of the CAP an optional possibility to provide an applying party with an access to letters in the ICT system in the form of electronic documents that are submitted to a public administration body or delivered by it, after the identification of the party in the manner specified in the act on informatisation (Ganczar, 2010, p. 225). A separate regulation refers to issuing electronic certificates which is included in Article 217 Paragraph 4 of the CAP.

Finally, the amendment added a new type of a cassation decision of the second instance authority. Taking into account an appeal against template form decisions including those serviced via electronic means, the authority revokes them and puts forward for reconsideration by a first instance authority. The need for implementation of these solutions is understandable; template decisions can be issued only by the indicated authorities that have relevant documents at their disposal. Content of a form can be changed only by issuing a new template document. Second instance authorities do not enjoy such rights, therefore, in case of noting defects of a decision, the only option is to issue a cassation decision.

Accordingly to the wording of Article 14 Paragraph 1 and Article 109 of the CAP, the reservation added to Article 138 Paragraph 4 of the CAP that state that the article refers also to template decisions served by means of electronic communication is superfluous and devoid of legal meaning. No *ratio legis* would object the idea of including such decisions in the notion of "template decision", especially that the CAP does not define it separately.

III. Summary

When taking an attempt to evaluate the implemented arrangements, at the very beginning one must mention that the amendment to the administrative procedure introduced in 2010 is definitely incomplete since it utterly ignores the issues of informatisation of the majority of procedural steps that constitute the second stage of the procedure, i.e. the initiative investigation. It can be explained by a specific nature and purpose of this part of the procedure that should be conducted on the basis of the principle of immediacy and that seeks to establish the factual circumstances of a case. However, this does not mean that it is not possible, at least partly, to introduce e-government principles. The most difficult problem to solve is to take some evidence. The initial investigation is conducted either in the form of proceedings in chambers or in the form of a hearing.

From a technical point of view they can be arranged in a way that ensures an active participation of a party to this stage of the procedure, even by means of the aforementioned methods of video transmission. Similarly, one may imagine taking evidence from witnesses, experts or even from visual inspection. The problem to solve is to provide evidence from documents. As it is not covered by the disposition of Article 63 of the CAP. If it previously had the form of an electronic document, it might be transferred to the authorities in this form. In this way, one may transfer an electronic document as its definition does not distinguish between public and private documents. Nevertheless, one needs to develop an effective arrangement for other documents. It seems that the simplest and safest arrangement is to send scans of documents to an authority. Scanning a document with the use of a software that prevents changing its content, provides a sufficient protection of the procedure correctness.

If any doubt is risen, the body conducting the procedure might require an original private or public document to be submitted or made available for inspection (under general terms) or require information on its existence and content to be provided by the entity that has issued it. Being aware, however, of the objections concerning sending documents by fax, it is hard to imagine a rapid adoption of such an arrangement.

As far as the works on the principles of electronic preparation of protocols and endorsements, it is especially necessary to pay attention to the procedure of approval of protocols.

It is worth mentioning that electronic administrative procedure is not intended to replace the hitherto form of the procedure, but to facilitate and accelerate issuing resolutions. Especially that combining elements of principle of writing and e-government in one procedure is not only acceptable but even desirable.

Will the subsequent amendments to the law to the extent of the use of electronic communication by public administration *inter alia* in contacting the citizens and other entities allow the popularisation of electronic services provided by the public administration? A positive response to that question may be provided only if the amendments are to be properly introduced. If the progress of creation of e-government continues at the current pace, before the new regulations come into effect, new technology solutions will appear and it will be impossible to apply the law in force to those arrangements. The expectations of public administration partners using the web and computers are significant but is public administration ready to become electronic public administration?

This question seems even more legitimate when one analyses the negligence that seems to accompany the process of building e-government, in particular (Sibiga, 2012):

- a fairly time-consuming and complicated mode of identification (creation of a trusted profile that identifies a citizen in contacts with public administration authorities requires a visit at a traditional office - it discourages potential applicants),
- delays in the issuance of executive acts necessary for implementation of the amendment provisions of 2010,

- not discharging the obligations of informatisation by the public administration authorities (many offices "settled" only for making ESP available but they do not actually provide any services in the system of electronic communication),
- the lack of logistic preparation of offices (lack of information resources such as databases, lack of hardware or software supporting the process of informatisation),
- a lack of electronic circulation of information between public administration authorities,
- a virtual lack of informatisation of the court administrative procedure.

E-Government is not only to be understood as law, however, law is one of its important elements. The main tasks imposed on electronic administration include:

- increasing of public awareness of the usefulness and benefits of ICT tools,
- improving the quality of services provided to citizens and entrepreneurs,
- providing a greater accessibility to public information, information and communication technologies, information society services and developing skills to use them,
- adapting the legal system to ongoing changes,
- co-operation between different levels of government,
- increasing the responsibility of public administration authorities for actions they undertake by means of construction of procedures ensuring safety and confidence in public services provided electronically (The e-Government Handbook, 2002).

One of the important aspects that have been highlighted during the works on the amendment of the act on informatisation of entities performing public tasks of 2010, is the interoperability of information systems that should be developed in order to enable provision of electronic services of public administration. The goal is to be achieved by creation of Electronic Platform of Public Administration Services (ePUAP) and making it available for the exchange of information and documents between citizens, entrepreneurs and public offices, as well as for improving the information management in the public sector. EPUAP is a consistent and systematic programme of actions intended to achieve a full functionality of electronic public administration in Poland.

According to the definition presented in act on informatisation, ePUAP is an ICT system in which public authorities provide services through a single access point on the Internet. The main objective of ePUAP is to create a uniform, safe and fully compliant with all applicable laws electronic channel of making public services available by public administration to citizens, entrepreneurs and public administration.

Another ePUAP's task is to achieve an interoperable use of ICT systems designed and currently operating in public administration, so that the systems are useful in the process of providing public services for all administrative units. The interoperability of entire software used to provide public services in electronic form is a prerequisite for a proper provision of those services, i.e. exercising a right or an obligation under the provisions of law (Siewicz, 2010, p. 204).

The platform makes a technology infrastructure for providing services to citizens and entities, i.e. service receivers, available for public entities, i.e.service providers (central administration units, local governments). From an organizational and technical perspective, it is a joint infrastructure of making public services available by any public administration units through electronic channels of their contacts with citizens, entrepreneurs and other public administration units (all mechanisms for coordination of public services provided by several public entities).

Today, electronic administration must be a software that in the near future will allow citizens, entrepreneurs and other entities to interact with public administration via electronic means of communication. It is difficult to argue about this fact if we want to be a country that aspires to build a knowledge-based economy. Without creating an electronic public administration, it is difficult to accomplish this aim. Therefore, in order to ensure a proper mode of attaining the goals, the process of informatisation of public administration should be implemented on the basis of a well-designed programme (strategy, action plan). All the strategic documents in the above mentioned scope that are created by various public administration authorities must be consistent and compatible with the higher-order documents, especially with the region and country informatisation strategies (Information Society Development Strategy, 2008).

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