Jeton Shasivari (ed.)
Balázs Hohmann (ed.)

Expanding Edges of Today's Administrative Law

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Editors:

Jeton Shasivari

Activity

Jeton Shasivari, PhD, is a Full Professor in the legal field of Constitutional and Administrative Law at the Faculty of Law of South East European University-Tetovo/Skopje, Republic of North Macedonia, employed there since 2002. Prof. Shasivari has been the Vice-Dean of this Faculty in the period 2006-2014. In the period 2015-2019 he was Vice-President and Member of the Board for Accreditation and Evaluation of Higher Education in North Macedonia, elected by the Inter-University Conference. In the period 2020-2021 he was a Member of the Commission of the Ministry of Justice for passing the bar exam in the subject: Constitutional Regulation of the North Macedonia and the European Convention for the Protection of Human Rights. From 2019 and currently he is a Lecturer of Constitutional Law at the Academy for the training of judges and public prosecutors in the North Macedonia. He is the editor of the Book of Proceedings of the First International Scientific Conference on Social and Legal Sciences *"Good Governance and Rule of Law in the Perspective of EU Integration"*, SEEU, Skopje, 2020 and of the Book of Proceedings of the Second online International Scientific Conference on Social and Legal Sciences *"Rule of Law, Governance and Society in the time of Pandemic",* SEEU, Skopje, 2021.

Publications

He is the author of university textbooks: *"E drejta kushtetuese" ("Constitutional Law")* first edition, Skopje, 2015 and the second edition of 2020. *"E drejta administrative" ("Administrative law")*, Skopje, 2015. *"Fillet e së drejtës" ("Introduction to Law"),* Skopje, 2020; and coauthor of *"Fjalori juridik me shpjegime Shqip-Maqedonisht"* (*"Legal Dictionary with Albanian-Macedonian explanations"),* Skopje, 2008 and *"Vetëqeverisja lokale: Shqyrtime teorike dhe krahasimore" ("Local Self-Government: Theoretical and Comparative reviews")*, Pristina, 2021 as well as the author of over 40 scientific reference works published in international and regional scientific journals and conferences.

Study visits

During his academic career he has been in several professional study visits in: USA; Edinburgh Faculty of Law; Faculty of Law of Bologna; Faculty of Law of Ljubljana; the Belgian Senate; the Diplomatic Academy of Vienna; the Sorbonne University; the UN European Headquarters; the International Committee of the Red Cross; the World Trade Organization and the World Intellectual Property Organization; the Faculty of Law of the University of Graz; the German Bundestag and Bundesrat; the Hamburg Faculty of Law; the Max-Planck Institute for International and Comparative Law in Hamburg; Law Faculties of Madrid and Barcelona; the Spanish Parliament; the Catalan Parliament; the Supreme Court of the United Kingdom; the Oxford University School of Law; the Criminal Court in London; etc.

Balázs Hohmann

Activity

Balázs Hohmann, dr. LL.M., is an assistant lecturer at the University of Pécs (Hungary), Faculty of Law, Department of Administrative Law. His research field is administrative procedure law, and in particular, the client-centered approach to the administrative system, and the openness and transparency of administrative proceedings. In addition to his university responsibilities, he is the president of the Law Scientific Department of the Hungarian National Association of Doctoral Students, and he is a member of the Baranya County Conciliation Board and the Labour Advisory and Dispute Resolution Service. Member of several Hungarian and international scientific organisations. Member of the Scientific and Editorial Board of the European Center for Science Education and Research. He is regularly asked to act as a reviewer for the European Journal of Social Sciences, the European Journal of Multidisciplinary Studies, Acta Juridica Hungarica, the Pécs Journal of International and European Law, Publicationes Universitatis Miskolcinensis, Sectio Juridica, the Hungarian Infocommunication Law, among others. He is a member of the editorial board of the Infocommunication Law journal and editor-in-chief of the Public Administration and Infocommunication Law PhD Studies.

Publications

Author of 107 scientific publications. Of these, he is the author of 17 books and 58 book chapters. His journal articles have appeared in the European Journal of Social Sciences, the European Journal of Multidisciplinary Studies, Infocommunication Law, Public Administration and Infocommunication Law PhD Studies. His most significant book is on social control of the administrative procedures (*Possibilities for Social Control of the Administrative Procedures*. Pécs, Hungary, Consciously for our Environment Association, 2018). He has acted as lector for 6 books and editor for 2 books.

Prizes

His scientific work has been recognised with 35 different awards and prizes, including the Pro Scientia Gold Medal Honours (OTDT, Hungary), the AVR Senior 2018 Award (Central Bank of Hungary, Hungarian Financial Arbitration Board) for his achievements in the field of the applicability of alternative dispute resolution methods in administrative proceedings. István Harsányi Fellowship (Hungarian Association for Innovation) and Junior Templeton Fellowship. The editor is a Talent Ambassador of the University of Pécs (UP) and a Great Doctoral Talent Fellow in UP.

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Expanding Edges of Today's Administrative Law

Contributions to the 4th International Conference
Contemporary Challenges in Administrative Law from an Interdisciplinary Perspective
May 21, 2021, Bucharest

ADJURIS
International Academic Publisher

Bucharest, Paris, Calgary 2021

The impact of the Government's restrictive measures on the transparency of the administrative proceeding in the context of the COVID-19 Pandemic

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Abstract

   Social distancing has become a distinctive feature of the recent global outbreak of the COVID-19 coronavirus and the government's response to it. This is also reflected in the way public administration systems perform their tasks and is a comprehensive feature of the way in which national and European public administrations are performing their tasks at the time of the lecture. In this context, the handling of cases in person has been suspended in several countries, and some public administration staff have switched to working from home. This situation has perhaps highlighted even more sharply the phenomenon that had already emerged in national regulations in the context of the electronisation and digitalisation of processes and electronic communication. And in this context, the question rightly arises, which has become even more striking in the current period: will the transparency of public administration, and within it the transparency of the process of public administration in individual cases, towards the client, remain sustainable in the long term if the client and society do not meet the public administration in person, but only through electronic platforms? The study will seek answers to these questions that can be scientifically substantiated.

   Keywords: transparency, administrative procedure, personalness, COVID-19, pandemic.

   JEL Classification: K23, K32

1. Introduction

   Nowadays, e-government solutions and platforms have become widespread and are having a significant impact on the public administration systems and the administrative implementation activities[2]. In assessing the transparency of the public administration process, it is important to take into account the new aspects of the relationship between the client and the public administration, the impact of the digital age on transparency aspects.

   Not lost in the international attempts to define and delimit e-government,

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[2] Drigas, A., Koukianakis, L., *Government online: an e-government platform to improve public administration operations and services delivery to the citizen*. In: Lytras, M. D., et. al. (Eds.), *Visioning and Engineering the Knowledge Society. A Web Science Perspective*. Springer, Berlin, Heidelberg, 2009. pp. 523-525.

governance and e-administration[3], and taking into account the scale of the study, this article attempts to take stock of the effects of the lack of physical contact, the transfer of public administration processes to an electronic environment, in particular with regard to the transparency-related problems and possible solutions that the COVID-19 pandemic, which is one of the major problems of our time, brings to our attention.

One of the distinctive features of the recent COVID-19 epidemic[4] in Europe and worldwide and the government measures taken to combat it has been social distancing, which can effectively contribute to preventing and slowing down the further spread of the epidemic[5]. The related package of measures - in order to ensure the processes - has naturally also been introduced in the provision of public administration activities[6] and, at the time of writing this article, comprehensively characterises the provision of tasks in the domestic and European public administration systems. In this context, the suspension of cases involving the deferral of personal administration in several countries[7] and the partial shift of public administration staff - where this was at all sensible - to working from home[8], perhaps highlighted even more sharply the phenomenon of a process of change that has been under way for years in the process of public administration and, within it, in the application of administrative law.

The electronisation and digitisation of processes, the electronic interaction between public administrations and their clients, the emergence and generalisation of e-government and the national regulations that have reflected this have all, individually and collectively, prepared or paved the way for this change. The objectives have of course focused on achieving the most convenient, rapid and remote electronic delivery of public administration services in the front office[9], while - to simplify the issue considerably and to continue the reflection - a certain efficiency gain can be expected from the use of electronic means in back office activities, as the relevant literature suggests[10].

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[3] Cresniov, A., Vynohradova, D., Malinda, P., *Modern E-Government Definition and the Main Types of Services*. „Collection of scientific works "Logos"", 44/2020., pp. 44-48.

[4] Horton, R., *The COVID-19 Catastrophe: What's Gone Wrong and How to Stop It Happening Again*. Cambridge, Polity Press, 2020. pp. 5-10.

[5] Lunn, Peter D., et al, *Motivating social distancing during the Covid-19 pandemic: An online experiment*. „Social Science & Medicine", 2020/265, 113478.

[6] Barrot, J., Grassi, B., Sauvagnat, J., *Sectoral effects of social distancing*. 2020. pp. 5-7. The document is available online at http://acdc2007.free.fr/barrot420.pdf, last accessed: 30.04.2021.

[7] Ansell, C., Sørensen, E., Torfing, J., *The COVID-19 pandemic as a game changer for public administration and leadership? The need for robust governance responses to turbulent problems*, „Public Management Review", 2020, pp. 1-12.

[8] Fadinger, H., Schymik, J., *The costs and benefits of home office during the covid-19 pandemic: Evidence from infections and an input-output model for Germany. „COVID Economics: Vetted and Real-Time Papers"*, 2020/9, pp. 110-118.

[9] Gabryelczyk, R., *Has COVID-19 Accelerated Digital Transformation? Initial Lessons Learned for Public Administrations*, „Information Systems Management", 37(4), 2020, pp. 303-305.

[10] Archmann, S., Iglesias, C., *EGovernment: A driving force for innovation and efficiency in public*

And in this context, the question rightly arises, which has become even more prominent in the current period of pandemic social impact: will the transparency of public administration, and within it the transparency of administrative procedure in individual cases, towards the clients, remain sustainable in the long term, if the clients and society do not meet the public administration - its staff and processes - in person, but only through electronic platforms? Should we see personalisation as a value[11], as a new and emerging expectation of public administration, or can we see it as a barrier to modernisation? Can the resulting benefits outweigh the potential disadvantages, or at least can measures be put in place to mitigate or eliminate their occurrence or severity?

In order to answer these questions, it is worthwhile to look at the interpretation of transparency in this specific area, and to compare the reasons for and the aims of physical distancing and the resulting endowments.

2. The lack of personal contacts - advances in e-government

As explained in the introduction to this article, public administration has in recent years been increasingly characterised by a decline in the personal relationship between the client and the public authority carrying out the administrative activity. This is, of course, due to the legitimate expectation that certain well-defined processes or types of cases should be able to be initiated in the absence of the physical presence of the client or that it should be possible to deal with them remotely[12]. The roots of this phenomenon go back a long way, since the rules on representation in administrative matters and the legal instrument of the power of authorised representative have been one of the possible answers to this need and problem for centuries[13].

This could not, however, solve the problem where the administrative case required the personal presence of the clients - i.e. the written procedure was not a viable solution - and the client was not in a position, or could not realistically be expected, for some external or internal reason, to appear in person before the administrative body to deal with the case, make a statement or perform some other act. This problem has been partly addressed by the development of electronic means, which has been expanding rapidly over the last decades and has affected almost all administrative processes. Today, in most European countries,

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administration. „EIPAScope", 2010/1, pp. 29-31.

[11] Rixer, Á., *A New Direction for Public Administration: Personalness*, „Journal of Humanities and Social Science", 25(5), 2020, pp. 37-49.

[12] Jaeger, P. T., Thompson, K. M., *E-government around the world: Lessons, challenges, and future directions*. „Government information quarterly", 20(4), 2003, p. 389; Norris, P., *Digital divide: Civic engagement, information poverty, and the Internet worldwide*. Cambridge, Cambridge University Press, 2001, p. 232.

[13] Trowbridge Vom Baur, F., *Representation Before Administrative Agencies*, „New York University Law Review", 30(1), 1955, p. 1297.

electronic communication is becoming the norm for both legal and natural persons, and traditional forms of communication are slowly but predictably being pushed into the background[14].

However, the objectives of this article are not such that it can undertake a detailed analysis of the development and take-up of e-government. Instead, three main features are highlighted here, which will also determine the conclusions to be drawn. On the one hand, it should be noted that e-government and its manifestations may show significant variations in comparison between countries, and even at lower levels, bringing it closer to our narrow scope of study: in certain administrative areas, activities and types of cases[15]. Accordingly, the client and the public administration may have different relationships and connections, and this has an obvious impact on how communication and information is transmitted in this context. This will in turn have a legitimate impact on the transparency of the related administrative procedures, since the degree of transparency depends, as explained above, on the extent and quality of the information transfer between the authority and the client, and transparency of the procedure is unthinkable without effective communication.

The different levels of e-government may result in different communication processes. However, in my view, it may be wrong to assume that higher levels, the expansion of eGovernment, a fully electronic or even personalised process, would create a greater sense of transparency for the clients concerned, regardless of all other factors[16]. After all, even the electronic publication of specific and relevant information can improve the transparency of a given administrative procedure to a very good level for the clients, even though the procedure will in this case be conducted through traditional contact. Rather, I consider it to be a valid and justifiable position - in line with the above-mentioned literature and the results of the empirical study to be presented below - that transparency must be created (in parallel[17]) in both traditional and electronic administration, and that today's modern administrative systems have a wide and relatively free range of tools at their disposal for this purpose.

On the other hand, it should also be taken into account that electronic communication and administration may lose the personality that characterises the interaction of traditional public administration processes[18]. This can be seen as an advantage, since it requires less human intervention (e.g. an administrative act in

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[14] Margetts, H., *Electronic government: A Revolution in Public Administration*. In: Peters, B. G., Pierre, J. (Eds.), *Handbook of Public Administration*. London, SAGE, 2003, p. 366.

[15] Czékmann, Zs., Kiss, L. N., *The Concept of E-Administration in the Hungarian Regulation*, „Juridical Current", 18(1), 2015, pp. 75-81.

[16] Michel, H., *E-Administration, e-Government, e-Governance and the Learning City: A typology of Citizenship management using ICTs*. „The Electronic Journal of e-Government", 3(4), 2005, pp. 214-215.

[17] Pina, V., Torres, L., *Online transparency and corporate governance in Spanish governmental agencies*. „Online Information Review", 43(4), 2019, pp. 654-660.

[18] Rixer, Á., 2020, *op. cit.*, pp. 37-42.

the context of automated decision-making) and can effectively reduce the possibility of bias or errors that are often difficult to eliminate due to human decision-making. Nevertheless, we must recognise that even the most advanced electronic public administration electronic systems and software solutions are limited[19], at least in the sense that - apart from the use of artificial intelligence in this specific context[20] - they execute a defined process, are able to produce predefined outputs for given inputs, but only with complementary solutions and the possibility of human intervention are they really able to provide an adequate response to all the questions, comments and actions of a client. From this perspective, e-government solutions can increase transparency by eliminating human bias and error, enforcing requirements and fully standardising processes, but can also greatly reduce transparency by the relative rigidity of the process that is inherent in IT systems. The optimal interaction of these two factors can be the result of a delicate balance, which can be addressed by an electronic process based on objective decision-making yet tailored to the client's interaction needs.

Finally, it should also be taken into account that, with regard to e-government services, it is expected that there will always be persons and social groups who may be marginalised in terms of the use of these systems: those who are more reserved, lacking IT skills or even literacy skills, may be disadvantaged by the marginalisation of physical contact, a phenomenon that needs to be addressed with appropriate social sensitivity, otherwise for these individuals and groups the process of public administration, e-government and even the whole delivery of public activities may become a tangle of opaque responsibilities, obligations and procedures, which may prove to undermine, for example, their voluntary compliance with the law, ultimately[21].

3. Enforcing transparency in the light of social distancing measures related to the COVID-19 epidemic

In the previous chapter, I looked more closely at the effects of the absence of physical contact and the rise of electronic contact on the transparency of the public authority process. A phenomenon very similar to this context and situation, but with a different history, has been observed in modern administrative systems with regard to the protective government measures related to the coronavirus epidemic. In Europe and worldwide, a number of governments, anticipating the possible consequences of the spread of the coronavirus epidemic, have taken

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[19] Abrahams, L., *E-Governance policy 1999-2009: Paths and limitations to progress*. „Journal of public administration", 44(1), 2009, pp. 1015-1026.
[20] Reis, J., Santo, P. E., Melão, N., *Impacts of artificial intelligence on public administration: a systematic literature review*. In: Rocha, Á. (Eds.): *2019 14th Iberian conference on information systems and technologies (CISTI)*. Coimbra, IEEE, 2019. pp. 1-7.
[21] Wolniak, R., Skotnicka-Zasadzień, B., Zasadzień, M., *Problems of the Functioning of E-Administration in the Silesian Region of Poland from the Perspective of a Person with Disabilities*. „Transylvanian Review of Administrative Sciences", 15(57), 2019, pp. 137-145.

measures to achieve social distancing in their social relations[22].

These measures have of course affected the organisation of the public administration and the front office activities with its clients[23]. For most public administration systems, this has meant minimising physical contact, postponing cases that could be delayed and require personal presence[24], and at least partial home working for public administration staff. Even at the time of writing this article, this has already had an analysable impact on the transparency of the administrative procedures initiated or in progress during the pandemic, which I will summarise in the following aspects.

On the one hand, while the transition to e-government services, electronic public administration processes and communication was implemented in a planned manner for the public administration systems, the emerging pandemic situation required a rapid response from the legislator and the public administration systems. Naturally, rapid, turbulent change can undermine the transparency of public administrations and administrative procedures for clients[25], because it is more difficult for citizens and organisations that become clients to adapt to rapidly changing requirements.

On the other hand, it has also become apparent that, while in many respects the personalness has been lost compared to the traditional way of conducting proceedings under normal circumstances, the administrative systems was not necessarily prepared to compensate for the disadvantages of the lack of personalness by other forms of contact[26]. As the public administration in all analysed countries have huge organisational systems, adapting them to the changed requirements resulting from the above measures required very considerable resources and, above all, time. In many respects, this could have had a *shock effect* on the bodies involved, which could have had the effect of severely limiting and reducing the transparency of certain procedures in the time it took for the processes to normalise[27].

Finally, it is also important to note that the challenges related to protection have in many respects already tied up, and are still tying up, the existing capacities of public administration systems, since the situation that has arisen has

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[22] Farboodi, M., Jarosch, G., Shimer, R., *Internal and external effects of social distancing in a pandemic*. Chicago, Becker Friedman Institute, 2020, pp. 1-5.

[23] Barrot, J., Grassi, B., Sauvagnat, J., 2020, *op. cit.*, pp. 5-7.

[24] For example, the postponement of procedures for the replacement of identity cards or driving licences due to expiry, since their validity has been extended in many countries by means of legal provisions. These are atypical activities of public authorities, but they also play an important role for the average citizen in terms of trust in public administration and transparency.

[25] Ansell, C., Sørensen, E., Torfing, J., 2020, *op. cit.*, pp. 2-5.

[26] Schomaker, R. M., Bauer, M. W.: *What Drives Successful Administrative Performance during Crises? Lessons from Refugee Migration and the Covid-19 Pandemic*, „Public Administration Review", 80(8), 2020, pp. 845-850.

[27] See e.g. for Italic cases: Mascio, F. D., Natalini, A., Cacciatore, F., *Public Administration and Creeping Crises: Insights From COVID-19 Pandemic in Italy*. „The American Review of Public Administration", 50(6-7), 2020, pp. 621-627.

not necessarily allowed it, as it has created a state of emergency or a special legal order for many states[28], that, in addition to the real administrative actions and measures taken and the reallocation of resources, the organisational system of the public administration should also be able to provide adequate information on the changing requirements of each type of case and to fully implement the communication aspects set out above.

4. Conclusion

Administrative procedures and the public authorities that carry them out have to perform the functions associated with the administrative law in a constantly changing social, economic and political environment, which repeatedly confronts them with new challenges and expectations. These changes can only be followed by a continuous process of change-oriented development, whereby ICT tools and infrastructure become a tool to achieve the ultimate goal of ensuring the legality and transparency of administrative procedures.

The measures resulting from the development and maintenance of transparency can be viewed from an approach that evaluates new requirements and conditions as a negative trend, focusing on the need for additional resources in the operation of public administration and on the systemic nature of the changes that are legitimately perceived when they are introduced. However, if we interpret the transparency requirements and the new relationships and practices of public authorities, which are being created through the implementation of digitalisation, as drivers for the development of public administration, and if we view them as opportunities rather than as a forced task, they can contribute to a higher degree of compliance with the rules of administrative law implementation activities and can be an important innovation factor in making the respective public administration systems more efficient, open and client-oriented. It is with this in mind that the author of this article publishes this work, hoping that the findings and conclusions of this article will contribute to strengthening this approach.

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[28] Mészáros, G., *Rethinking the Theory of State of Exception After the Coronavirus Pandemic?: The Case of Hungary.* In: Reljanović, M. (Eds.): *Regional Law Review: Collection of Papers from the First International Scientific Conference, 2020.* Belgrade, Institute of Comparative Law, 2020, pp. 91-100.

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