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Formalization of computerization processes in local and regional government bodies

ABSTRACT

A special role in enhancement of efficiency of public administration in accordance with principles of rational organization of work is played by computerization of administration bodies. Computerization processes in administration bodies take place in virtually all areas of their functioning, from registration, collection, and storage of information, through providing the possibility to handle individual case to issuing administrative acts, to reporting and control functions. Legal formalization of computerization processes determines the effectiveness of the actions taken by public administration bodies in the area of collection and processing of data and performance of management processes. Local and regional government bodies, by performing a significant part of public tasks for the society, play a special role in popularization of information technologies, especially in the area of e-services. Legal formalization not only enables use of information technologies in relations between citizens and public offices but also guarantees protection of basic rights of citizens arising from those relations.

KEYWORDS: *computerization, local government, formalization, law*

Formalization of computerization processes in local and regional government

Effectiveness of public administration requires application of principles of rational organization of work which, by using specific means and

measures, enable performance of public tasks in compliance with applicable laws and expectations of citizens. Such principles shape the management processes, especially proper circulation of documents and handling of citizens' matters, as well as processes of mechanization and automation of activities performed by administration bodies. A special role in enhancement of efficiency of administration bodies in accordance with the aforementioned principles is played by computerization of administration bodies (the theses formulated in this article were presented in the author's paper titled "Legal aspects of computerization of administration on the level of the commune/municipality office" during the conference "Computerization in local and regional governments as an important element of good administration" which was held on 18 June 2018 in the Senate of the Republic of Poland). Computerization processes in administration bodies take place in virtually all areas of their functioning, from registration, collection, and storage of information, through providing the possibility to handle individual case to issuing administrative acts, to reporting and control functions (Leoński, 2004, p. 51–54). The advancement of information technologies has resulted in the need to adapt the activities of public administration to the changing reality (Błaś, Boć, Jeżewski, 2003, p. 107–127).

It must be emphasized that changes in the functioning of administration bodies caused by computerization processes cannot take place separately from legal norms (Lonchamps, 1966, p.893). This is because legal formalization constitutes a factor that consolidates the organization of public administration and reduces the uncertainty of its actions (Jełowicki, 1998, p. 25). Thus, legal regulation of computerization processes covers the system of government, material, and process area. Formalization should not only enable implementation of the objectives of computerization specified in strategic documents, but most of all should ensure protection of fundamental rights of citizens in their relations with public administration resulting from the principle of rule of law.

The rules of implementation of information technologies in public administration, similarly to implementation of management solutions, are based on technologies that have been tried and tested in the private

sector. The difference is that computerization is much more dynamic than implementation of modern management methods. Moreover, the characteristic feature of computerization in the public sector is the effort to ensure the possibility of exchange and sharing of information and knowledge between information technology systems and the (economic) processes supported by those system, which is generally defined as interoperability (Journal of Laws of 2012, item 526, as amended).

Consideration of the processes of computerization in legal and administrative studies is due most of all to the impact of information technologies on the functioning of public administration. This is because computerization shapes the structure and the organizational field of activities of public administration bodies. Also, it requires assignment to individual bodies the competences and tasks that will enable preparation and conduct of, and supervision over, the computerization process. Also, computerization processes affect the potential of public administration and the results of its external actions. It must also be emphasized that providing the possibility to use information technology solutions when handling citizens' matters is an expression of exercise of the right of people to take advantage of the technological achievements in, among others, access to public institutions (Sitek, 2014, p. 86). Moreover, computerization plays an important role in coordination of actions of public bodies related to improvement of public security and functioning of information technology systems that contain specific data catalogs is one of the main factors of effective fight against crime (Chodak, 2017, p. 267–269).

Formalization of computerization, from a methodological standpoint, can be defined as all possible legislative activities that enable creation of a digitally integrated economic area and development of a modern digital society that takes advantage of the possibilities provided by information available in the public sector. Formalization from the real standpoint, however, is the result of legislative activities. Consequently, formalization requires adaptation of the objectives, tasks, and competences of administration bodies and the principles and methods of their operation to conform to the implemented telecommunication and information technology solutions and to enable them to provide e-services.

An analysis of the content of the basic normative determinants of computerization of public administration demonstrates that formalization of the process of computerization from the methodological standpoint takes into account the propositions elaborated in the doctrine. The level of detail of the provisions of the Act of 17 February 2005 on computerization of activity of entities performing public tasks, the Act of 5 September 2016 on trust and electronic identification services, and individual provisions of the Code of Administrative Procedure and the Tax Ordinance Act (in the part pertaining to the possibility to use electronic signatures) appears to be appropriate given the objectives of the regulations (Journal of Laws of 2018, item 2096, Journal of Laws of 2018, item 800). The legislator has been able to avoid excessive formalization. The provisions that regulate the process of handling of citizens' matters using telecommunication and information technology systems are rather transparent and comprehensible. However, this does not mean that there is no risk of their incorrect use, e.g. in the event of a failure of telecommunication and information technology systems. Nevertheless, one can conclude that implementation of the process of computerization of public administration bodies from the methodological standpoint complies with the principle of legality of actions of public administration.

Individual public administration bodies have been transparently assigned competencies and responsibilities for implementation and maintenance of computerization processes in administration. The Minister of Digitization has been granted a number of competencies that enable effective implementation of the objectives of computerization, i.e. supervisory competencies (supervision over trust service providers), the right to issue administrative acts (the right to issue or invalidate certificates of trust service providers, giving permission for acting as a point confirming the ePUAP trusted profile), control competencies (ordering audits to be conducted at trust service providers), coordination competencies (coordination of actions on the national level in the area of cooperation with member states of the European Union in matters related to electronic identification systems), and organizational competencies, i.e., among others, ensuring the functioning of the ePUAP system. The legislator has been able to avoid excessive

accumulation of competencies, since some actions related to computerization of administration bodies have been delegated to other public entities and trust service providers (Journal of Laws of 2017, item 570; Journal of Laws of 2016, item 1579).

There was also a good reason for regulating the technical aspects of computerization, such as, e.g. specification of the minimum requirements applicable to public records and exchange of information in the electronic form, and of the minimum requirements applicable to telecommunication and information technology systems only in secondary legislation or by reference to recognized international standards. This makes it possible to avoid excessive level of detail in provisions of law, while ensuring the necessary standardization of the actions taken by public entities.

As a part of the formalization process, the decision was made to regulate the key elements of computerization in the strategic documents: the Integrated State Computerization Program, which constitutes the "implementing document" for the Effective State Strategy. The program defines the objectives, priorities, and action plans related to computerization both on the central level and on the regional level (Resolution of the Council of Ministers no. 1/2014 of 8 January 2014).

The development of information technologies has changed the relations between offices and citizens, thus raising the need for integration of the external sphere and the internal sphere of administration (Lipowicz, 2004, p.35, Fleszer, 2014, p.130). The key objectives and priorities of computerization on the level of an office are implementation of electronic management of documentation, improvement of the efficiency of the organization by using good practices of management of information technology services, use of available technologies, and sharing of resources, knowledge. and information technology tools (Resolution of the Council of Ministers no. 1/2014 of 8 January 2014).

An analysis of regulations pertaining to computerization on the level of an office indicates that their objective is to involve public entities in the computerization process, to enable both gradual and irreversible process of computerization, to ensure legal effectiveness of the actions

performed using telecommunication and information technology systems, and to ensure proper functioning of telecommunication and information technology systems. The legislator has also introduced sanctions intended to protect the internal and external sphere of administration against unauthorized use of qualified electronic signatures and signatures through the trusted ePUAP profile.

The requirement for local and regional government bodies to participate in the process of computerization is manifested among others in the fact that the Act on computerization (...) imposes the requirement to use information technology systems to perform public tasks. Moreover, commune/municipal bodies are required to maintain public records in a way that ensures fulfillment of the minimum requirements applicable to telecommunication and information technology systems. They are also required to make available an electronic mail account inbox and to ensure its operation (Journal of Laws of 2017, item 570).

An important act of law that introduces standards and methods of implementation of information technologies on the level of a commune/municipal office is the Regulation of the Prime Minister of 18 January 2011 concerning a secretarial instruction, uniform material lists of files, and instructions concerning organization and scope of operation of company archives ((Journal of Laws of 2011, no. 14, item 67). In § 1 (2), the instruction indicates that secretarial activities are performed in a traditional system or an Electronic Documentation Management (EDM) system, whereby the duty of the head of the office is to indicate which of the system for performance of secretarial activities is the basic system for documentation of the course of handling and resolving of cases. The instruction, in cases where an office has adopted the EDM system, indicates quite clearly how to handle documentation in cases conducted and not closed in the traditional system. In such a situation, the office should start a new case, recording, however, of the reference number of the case that was not closed in the files of the new case and the reference number of the new case in the files of the case that was not closed, so as to enable finding the mutually related case files, or should continue to keep

the files in the traditional system until the case is closed. Digital copies of documents received in connection with such case files must be treated as documentation that does not constitute the case file with archive category Bc or B5, if they have been entered only electronically.

Adoption of the principle of gradual computerization in real activities of the administration is also demonstrated by the requirement to ensure inclusion in electronic documentation of information that enables finding the corresponding non-electronic documentation (if such documentation exists at the entity), as well as analogous inclusion in non-electronic documentation information that enables finding the corresponding electronic documentation (if such documentation exists at the entity).

Irreversibility of computerization processes on the level of an office is guaranteed by the provision of § 1 (4) of the Instruction, which prohibits repeated indication of a traditional system if an EDM system has been used as the basic method of documentation of handling of cases. However, the instruction provides for some exceptions to the prohibition to return to a traditional system. Such return is possible in situations where provisions of law set forth a method of documentation of handling of cases for specific types of documentation and such method contradicts the system selected by the head of the entity. Return to a traditional system is also possible if there are important organizational and technical reasons that prevent the use of the basic method of documentation of handling and resolving of cases. Especially the latter exception may slow down the process of computerization. On the other hand, it may be necessary to conduct proceedings in accordance with the principle that requires acting in a way that increases the trust of the participants in the public authorities and with the principle that requires using the simplest possible means to handle a case (Journal of Laws of 2011, no. 14, item 67).

In order to achieve effective computerization on the level of a commune/municipal office, it is necessary to ensure legal effectiveness of qualified electronic signatures or signatures confirmed by the ePUAP trusted profile. It must be noted, however, that despite the clearly equal status with regard to legal consequences (Art. 20b of the Act on computerization, among others

Art. 14, 33, 39, and 63 of the Code of Administrative Procedure) between a document bearing a hand signature and a document with a signature confirmed by the ePUAP trusted profile (unless separate laws provide otherwise), there may be problems that have not been encountered so far in the process where cases are handled in the traditional manner. One of such possible problems is a breakdown of a computer that prevents submission by the required deadline of such documents as, e.g. an appeal against a decision. Although, in the light of the verdict of the Supreme Court of 12 January 2017, file no. IIPZ 27/16, a breakdown of a computer does not demonstrate guilt of a party, proving or demonstrating the likelihood of this fact can be quite different due to the need to have specialized knowledge of computer technology (Decision of the Supreme Court of 12 January 2017, file no. IIPZ 27/16). It must be mentioned that, in its recent verdict of 24 April 2014, file no. I SA/Bd 130/180, the Provincial Administrative Court stated that *lack of possibility to receive a letter from the ePUAP platform and lack of possibility to read a letter on that platform may be considered as circumstances that demonstrate lack of guilt in relation to a failure to observe the deadline; however the occurrence of those circumstances must be demonstrated to have been likely. Just a reference to occurrence of unspecified technical difficulties may not be considered as demonstration of likelihood of such technical difficulties (...). In this case, the argumentation of the Company is based on general statements concerning technical problems; however, it is not known whether they did occur and what they pertained to, because the attorney did not present any evidence to confirm the circumstances that were presented. The attorney blames responsibility for receipt of a decision, sending it, and operation of a computer on technical problems. However, the attorney fails to explain whether the breakdown and the failed attempt to send an appeal against the decision through the ePUAP portal took place only in relation to sending of an electronic document through the portal, or whether the failure affected the computer as a whole and prevented use of the computer, printing the document on paper, and sending it by post* (Verdict of the Provincial Administrative Court in Bydgoszcz of 24 April 2018, file no. I SA/Bd 130/180).

The above verdict shows that a party to a proceeding can practically bear negative consequences of its lack of specialized knowledge of operation of telecommunication and information technology equipment and systems. Also, there is the problem of evidence that an administrative body or a court would consider to be sufficient to confirm or to demonstrate the likelihood of a failure, as well as its type and the time of its occurrence and duration.

Another problem associated with use on the level of an office of qualified electronic signatures and signatures through the ePUAP trusted profile is the risk of use of such signatures by unauthorized persons. Those two types of signatures are used not only by citizens whose cases are handled at offices but, most of all, by the managers of the offices who are authorized to sign correspondence sent from the offices. It must be noted that telecommunication and information technology systems are used by commune/municipal offices to send hundreds of letters, responses, reports, information, decisions, and certificates. Such documents are usually provided with electronic signatures or signatures affixed through the ePUAP trusted profile, which are assigned to the managers of the offices who perform the functions of administrative bodies, or to persons authorized by the managers. In practice, such signatures may be affixed not by persons to whom they are assigned but by employees to whom the managers provided the data needed to do it, e.g. an office clerk or an IT specialist. Such persons are subject to criminal responsibility provided for in Art. 40 and 41 of the Act on trust services. Pursuant to those provisions, whoever places an electronic signature or an advanced electronic signature using the data needed to place the electronic signature assigned to another person, is subject to the penalty of restriction of liberty or imprisonment for up to 3 years. The same penalty applies to persons who, without an authorization, copies or stores data needed to place an advanced electronic signature or an electronic data that are not assigned to them, as well as other data that could be used to create them (Journal of Laws of 2016, item 1579).

The key barrier to computerization on the level of an office is the attitude of administration workers in relation to the changes being implemented. The literature on this subject mentions the following attitudes toward

computerization: ignorance, isolation, idealization, and integration. An effective way to eliminate the barriers to computerization appears to be the principle of gradual implementation of changes, adopted in European laws and in the Polish legal system. An important factor of elimination of barriers to computerization on the level of an office is involvement of rank-and-file employees in activities performed using telecommunication and information technology systems, maintaining an appropriate information policy in relation to employees and the local community, and providing training on use of telecommunication and information technology systems.

In the light of the above interpretations, it can be concluded that legal formalization of computerization processes determines the effectiveness of the actions taken by public administration bodies in the area of collection and processing of data and performance of management processes. Local and regional government bodies, by performing a significant part of public tasks for the society, play a special role in popularization of information technologies, especially in the area of e-services. Legal formalization not only enables use of information technologies in relations between citizens and public offices but also guarantees protection of basic rights of citizens arising from those relations.

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