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**SELECTED ASPECTS OF ELECTRONIC ADMINISTRATION.
COMMENTS ON MEANS OF COMMUNICATION BETWEEN
PARTIES TO GENERAL ADMINISTRATIVE PROCEEDINGS
AND PUBLIC AUTHORITIES****Introduction**

The term “communication” was introduced in science in the late 19th century by F. Tonnies, a German proponent of the system of general sociology¹. The word “to communicate” means to convey a message, to pass information, to notify about something². They are derived from the Latin words: *communicare* (“make common”, “connect”, “share opinions”, “inform”) and *communis* (which can be translated as “community”, and “sense of being connected”)³. The so-called electronic communication is the latest type of communication between an individual and an administrative body. Services of this type are regulated by normative acts, which often contain conflicting provisions. Undoubtedly, today one of the objectives for the state is to facilitate ways of electronic communication between bodies of public administration and parties to as well as other participants of general administrative proceeding, regulated by the Act of 14 June 1960 on the Code of Administrative Procedure⁴. This increased efficiency of the process is reflected e.g. by the more and more advanced ways of filing applications in administrative proceedings as a result of which it is possible to contact the relevant body from any place in the world, at any time, with a speed previously unheard of, and at a lower expense than in the past.

¹ M. Targaszewska, P. Zając, *Technologie przekazywania informacji na odległość*, <http://kwasnicki.prawo.uni.wroc.pl/pliki/Targaszewska%20Zajac%20informacje%20na%20odlegsc.pdf> (5.07.2019), p. 2.

² *Słownik wyrazów obcych*, eds. B. Pakosz, E. Sobol, C. Szkiłdź, H. Szkiłdź, M. Zagrodzka, Warszawa 1993, p. 445.

³ M. Targaszewska, P. Zając, *Technologie przekazywania...*, p. 2. Cf. *Słownik wyrazów obcych*, eds. B. Pakosz, E. Sobol, C. Szkiłdź, H. Szkiłdź, M. Zagrodzka, Warszawa 1993, p. 445.

⁴ Dz.U. 2018, Item 2096 as amended.

The present study, because of its limited scope, focuses on a few selected problems. First of all, it briefly presents advancements in means of communication which have been available to clients (or other parties) since 1928, allowing them to file applications in general administrative proceeding. These include telegraph, teletypewriter (or telex), facsimile and broadly defined “means of electronic communication”, which correspond to the rapid changes and technological progress in public administration in Poland. Furthermore, statistical data published by the Statistics Poland (GUS) presented here show what percentage of Polish population used electronic means of communication in 2018. The author also discusses a few important problems which emerge in connection with the use of electronic means of communication in administrative proceedings. As a result, it is necessary for instance to ask a question if currently it is still valid to assume, in accordance with the doctrine, that the catalogue of the ways to file a request, as defined in Art. 63 § 1 of the Code of Administrative Procedure (CAP), is indeed closed. Issues related to filing of a request by means of an electronic data carrier are also discussed.

Outline of the methods of filing applications to public administration bodies with the use of modern technologies

Pursuant to Art. 15 clause 1 of the Ordinance issued by the President of the Republic of Poland on 22 March 1928 on general administrative proceeding⁵ (further herein: OAP), requests could be “lodged with authorities in writing or via telegraph, or communicated orally for the record, unless special regulations and type of case” stipulate otherwise. In the case of requests filed via a telegraph “without signature authentication, the authority, if doubts arise, shall be entitled to have the relevant person confirm the telegram in writing” (Art. 15 clause 2 OAP). In interwar Poland telegraph was the most advanced communication tool used by administration bodies, and enabling transmission of brief messages with the use of symbolic codes⁶. Notably, it was only in 1921 that uniform models were implemented in offices as well as postal, telegraph and telephone communications agencies. In addition to uniform regulations related to the relevant facilities, it was also determined which of these were to provide only postal or only telegraph services, and which were to provide both⁷. However, in 1928 telegraphy was an important means of telecommunication in Poland; the service was carried out via overhead steel-wire lines and various types of telegraphs (in total slightly more than 2,500 devices)⁸.

⁵ Dz.U. 1928, No. 36, Item 341.

⁶ M. Targaszewska, P. Zając, *Technologie przekazywania...*, p. 6.

⁷ K. Sobień, *Państwowe Przedsiębiorstwo Pocztowe, Telegraficzne i Telefoniczne w II Rzeczypospolitej*, „Kwartalnik Kolegium Ekonomiczno-Społecznego. Studia i Prace” 2017, no. 3, p. 170.

⁸ *Ibidem*.

Likewise, the CAP in its original form dating from 1960 contained Art. 58 § 1 which stipulated that requests may be lodged in writing or via telegraph, or communicated orally for the record. It was only in the early 1980s that rapid and multidimensional changes took place as a result of the astounding advancements in information and communication technologies (ICT)⁹. As a result of the changes introduced by the Act of 31 January 1980 on the Supreme Administrative Court and amending the act on Code of Administrative Procedure¹⁰, the available options for filing requests, defined in Art. 63 § 1 (the formerly Art. 58 § 1) were expanded to include the means of teletypewriter. The device, otherwise known as telex, can be described as a type of telegraph. At the receiver facility it was controlled by punched tape rather than an operator; the former was created by the perforator in accordance with the signals from the sender¹¹. Later, from 1 January 1999, filing of requests via telefax and electronic mail was permitted by the Code *expressis verbis*. It was only from the early 21st century, resulting from the rapid expansion of the Internet and after the relevant legal regulations were “refined”, that those involved in administrative proceeding started to file requests in an electronic form. This became possible mainly owing to the changes introduced from 21 November 2005 by the Act of 17 February 2005 concerning informatization of activities carried out by public entities¹². According to the new wording of Art. 63 § 1 CAP, applications can be made in writing, by telegraphic means, teleprinter, fax or e-mail, or by means of a form posted on the website of the relevant public administration body that enables data to be entered into the computer system of that authority, or orally for the record. It should be noted, by the way, that this change was slightly surprising since both telegraphy and teletypewriters at that point were only used in administrative practice exceptionally as they had been replaced by facsimile and e-mail. Formally speaking, telecommunications companies stopped using teletypewriters on 9 February 2007¹³. On the other hand, postal telegram service for individual customers was discontinued by Polish Post from 1 October 2018. The service is still available for business customers cooperating with Polish Post under agreements concluded in writing for a specified or unspecified duration of

⁹ S. Wilk, *E-administracja w społeczeństwie informacyjnym. Model a rzeczywistość na przykładzie województwa podkarpackiego*, Rzeszów 2014, p. 9.

¹⁰ Dz.U. 1980, No. 4, Item 8.

¹¹ T. Goban-Klas, P. Sienkiewicz, *Społeczeństwo informacyjne: Szanse, zagrożenia, wyzwania*, Kraków 1999, p. 17.

¹² Dz.U. 2005, No. 64, Item 565. Current uniform text: Dz.U. 2019, Item 700.

¹³ M. Płociński, *Dalekopis – historia teleksu*, „Rzeczpospolita”, 8.02.2012, <https://www.rp.pl/artykul/809032-Dalekopis---historia-teleksu.html>; *Kodeks postępowania administracyjnego. Komentarz*, e/LEX 2019, commentary to Art. 63, thesis 3 (5.07.2019).

time, and it will be provided until these expire or are terminated¹⁴. Notably, however, such request is sent to a final post office via the national WAN network of Polish Post¹⁵, and then printed and delivered in this form to the addressee; therefore, it has nothing to do with traditional telegraphy.

Currently applicable provision of Art. 63 § 1 CAP stipulates that “applications (...) can be lodged with public entities in writing, by telegraphic means, via facsimile or orally for the record, and by other means of electronic communication via electronic in-box of the public administration body, established pursuant to the Act of 17 February 2005 concerning informatization of activities carried out by public entities”.

The Code does not define the term “means of electronic communication”. Their definition should be derived from the combined contents of Art. 3 point 4 of the Act of 17 February 2005 concerning informatization of activities carried out by public entities (further herein: AIPE)¹⁶ and the provisions contained in Art. 2 point 5 of the Act of 18 July 2002 on provision of services via electronic means (further herein: ASEM)¹⁷. These are “technical solutions, including ICT devices and software tools cooperating with them, enabling long-distance communication between individuals, by using data transmission between ICT systems”. It is emphasised in the doctrine that we can speak about “means of electronic communication” only if all of the above requirements are met jointly¹⁸. The definition of “means of electronic communication” by assumption was to be universal and possibly most general. The legislator aimed to guarantee compliance with the principle of technological neutrality and to extend the definition to include the largest possible number of existing and upcoming technological solutions related to communication¹⁹.

The act on provision of services via electronic means, refers only to electronic mail. This means that the legislator has not provided an exhaustive list of all the means which make it possible to effectively file an application in a form of an electronic document. Hence, there is a question if it should be recognised

¹⁴ W. Ziomek, *Ta ostatnia niedziela. Telegram odchodzi do lamusa, nadaliśmy pożegnalne depesze*, „wp.finanse”, 30.09.2018, <https://finanse.wp.pl/ta-ostatnia-niedziela-telegram-odchodzi-do-lamusa-nadalismy-pozegnalne-depesze-6300947523155585a> (5.07.2019); P. Przybysz [in:] *Kodeks postępowania administracyjnego. Komentarz*, e/LEX 2019, commentary to Art. 63, thesis 3 (5.07.2019).

¹⁵ P. Przybysz [in:] *Kodeks postępowania administracyjnego. Komentarz*, e/LEX 2019, Commentary to Art. 63, thesis 3 (5.07.2019).

¹⁶ Dz.U. 2019, Item 700 as amended.

¹⁷ Dz.U. 2019, Item 123 as amended.

¹⁸ D. Lubasz, W. Chomiczewski [in:] *Komentarz do ustawy o świadczeniu usług drogą elektroniczną*, eds. D. Lubasz, M. Namysłowska, Warszawa 2011, e/LEX 2019, Commentary to Art. 2, theses 27–29 (5.07.2019).

¹⁹ M. Świerczyński [in:] *Ustawa o świadczeniu usług drogą elektroniczną. Komentarz*, ed. J. Gołaczyński, Warszawa 2009, e/LEX 2019, Commentary to Art. 2, thesis 45 (5.07.2019).

that the catalogue of such means is open. In the doctrine it is suggested that the requirements characteristic for these means are also met by: electronic platform for public administration services (ePUAP), regional electronic platform for public services, Electronic In-Box apart from ePUAP²⁰, mobile phones (even 3G phones may be used to carry out most of the activities enabled by computers, e.g. sending text messages and picture messages)²¹, online communicators (e.g. Skype, Telegram²², Yahoo Messenger e.g. 0.8.288 version, FB Messenger, Google talk e.g. 1.0.0.104 version, or IRC rather rarely used in Poland today), mobile apps, operational systems (e.g. WhatsApp, Signal, Wire, Viber), latest generation fax devices²³, and other unnamed technical means, those which are now being created or those to come in the future. Theoretically such means also include pagers²⁴ (devices for sending short text messages to be seen on the display), however POLPAGER network no longer exists and the last nationwide calling network (Metro-Bip) in Poland was closed at the end of 2013.

Hence, there is a question whether the open catalogue of means of electronic communication which can be used in Poland to file an application, entails a breakthrough – both in science and in jurisprudence – related to the well-established view that there is a *numerus clausus* of the ways to lodge applications²⁵. To provide a response to the above question it is necessary to define the terms “application” and “application in a form of an electronic document”.

Submission of applications in a form of electronic document to public administration bodies via means of electronic communication

The possibility for individuals to submit applications via means of electronic communication to public administration bodies is only related to applications in a form of an electronic document and it is one of the important achievements of

²⁰ See: K. Wojsyk, *E-podręcznik, e-usługi publiczne*, https://epodrecznik.mc.gov.pl/mediawiki/index.php?title=%C5%9Arodki_komunikacji_elektronicznej (5.07.2019).

²¹ J. Rzucidło, *Telefon komórkowy jako narzędzie elektronicznej administracji*, „CBKE e-Biuletyn” 2009, no. 2, p. 1; M. Świerczyński [in:] *Ustawa o świadczeniu usług drogą elektroniczną. Komentarz*, ed. J. Gołaczyński, Warszawa 2009, e/LEX 2019, Commentary to Art. 2, thesis 46 (5.07.2019).

²² See: Telegram.org.

²³ See: K. Wojsyk, *E-podręcznik...*

²⁴ M. Świerczyński [in:] *Ustawa o świadczeniu usług drogą elektroniczną. Komentarz*, ed. J. Gołaczyński, Warszawa 2009, e/LEX 2019, Commentary to Art. 2, thesis 45 (5.07.2019). Although pagers are nearly forgotten now, it should be mentioned that in some situations it was more effective that mobile phones or Wi-Fi networks. They used lower frequencies than these devices as a result of which the waves penetrated various engineering structures.

²⁵ P. Przybysz [in:] *Kodeks postępowania administracyjnego. Komentarz*, e/LEX 2019, Commentary to Art. 63, thesis 3.

modern administration. The regulation contained in Art. 63 § 1 CAP does not provide a normative definition of application; it only specifies that this broad group of declarations of will and/or knowledge most of all includes “demands, explanations, appeals and objections”, containing a minimum of elements stipulated by CAP or by specific regulations. These are submitted to initiate a proceeding (e.g. a request to start a procedure), as well as during the proceeding (e.g. a request to suspend a procedure), and sometimes after it is concluded (e.g. a request for access to files related to the proceeding – Art. 73 CAP), and they make it possible for the party to (and other participants of) the proceeding to communicate with an administrative body during all the stages of the procedure²⁶. The types of applications listed in Art. 63 § 1 CAP do not constitute *numerus clausus*. According to science of administrative proceeding and to court rulings, applications also include: reminders (Art. 37 CAP), requests to reinstate a time-limit (Art. 58 CAP)²⁷, prosecutor’s objections (Art. 184 CAP)²⁸, requests to review the case again (Art. 127 § 3 CAP)²⁹, requests to withdraw an appeal (Art. 137 CAP), requests to forego an appeal (Art. 127a § 1 CAP), as well as the party’s consent for a change or for revoking the final decision pursuant to Art 155 CAP³⁰. In line with judicature, applications do not include requests for information pursuant to the Act of 6 September 2001 on access to public information³¹. The differences between requirements defined for applications filed in a form of electronic document and those submitted in writing or orally mainly lie in the range of formal conditions³², stipulated by CAP or by specific regulations. Applications in a form of electronic document are in fact understood as declarations of will and/or knowledge made by parties to (and other participants of) a proceeding and lodged with public administration bodies, containing a minimum of elements stipulated by CAP (or by specific regulations)³³, and submitted using means of electronic communication via an electron-

²⁶ A. Skóra, *Ogólne postępowanie administracyjne. Zarys wykładu*, Elbląg 2015, p. 51; A. Skóra [in:] *Postępowanie administracyjne. Podręcznik*, eds. A. Skóra, P. Krzykowski (in print).

²⁷ A. Skóra, *Ogólne postępowanie...*, p. 51; P. Przybysz [in:] *Kodeks postępowania administracyjnego. Komentarz*, e/LEX 2019, Commentary to Art. 63, thesis 3; J. Wegner [in:] *Kodeks postępowania administracyjnego. Komentarz*, eds. W. Chróścielewski, Z. Kmiecik, e/LEX 2019, Commentary to Art. 63, thesis 1.

²⁸ A. Skóra, *Ogólne postępowanie...*, p. 51; J. Wegner [in:] *Kodeks postępowania administracyjnego. Komentarz*, eds. W. Chróścielewski, Z. Kmiecik, e/LEX 2019, Commentary to Art. 63, thesis 1.

²⁹ *Ibidem*.

³⁰ A. Skóra, *Ogólne postępowanie...*, p. 51 and references therein.

³¹ See: e.g. judgment of the Regional Administrative Court (WSA) in Opole dated 13 June 2016, II SAB/Op 35/16; judgment of WSA in Warsaw, dated 6 Oct. 2017, II SA/Wa 422/17; judgment of WSA in Gdańsk, dated 16 November 2017, II SA/Gd 540/17.

³² P. Gacek, *Istota podpisu na podaniu – wybrane zagadnienia*, PPP 2019, No. 6, p. 49.

³³ The legislator defined specific requirements to be met by applications and annexes submitted via electronic in-box (§ 17 clause 1 DSED) in a different way than in the case of applications submitted in writing or orally. Applications prepared in a form of electronic document should be made in XML data format, based on the templates of electronic documents available in the central

ic in-box (EIB) of the administrative body. Specific requirements with regard to electronic in-box are defined in the Decree of the President of the Council of Ministers of 14 September 2011 on the preparation and service of electronic documents and on providing access to application forms, templates, and copies of electronic documents (further herein “DSED”)³⁴. It is not inconsequential for the administrative body, and the party filing an application in an administrative procedure what hardware and software is used. Furthermore, the use of advanced technologies in communication with public administration should take place only if adequate security is provided to the participants in the proceedings.

Pursuant to § 3 clause 1 DSED, the public entity in its subpage at Biuletyn Informacji Publicznej (Public Information Bulletin) provides information, inter alia, related to the address of its electronic in-box, and the maximum size of electronic document sent including attachments, expressed in megabytes³⁵. This is linked with the fact that, in accordance with opinions issued by administrative courts consistently since the late 1980s³⁶, “application (Art. 63 § 1 CAP) related to a specific matter does not only comprise a letter with a request but also relevant documents issued in official forms”.

As it was already mentioned, in accordance with the interpretation of Art. 63 § 1 CAP, previously prevailing in the literature, the catalogue of permissible ways to submit applications was closed³⁷. A different opinion was consistently presented by A. Wróbel³⁸. An application was considered to be legally effective only if one of the forms indicated *expressis verbis* in the relevant regulation was maintained. In the context of the existing legal framework it can justifiably be assumed that there is an open catalogue of means of electronic communication to be used to submit an application in a form of an electronic document.

or local repository. Annexes attached to letters are to be saved in data formats and in ways complying with regulations issued based on Art. 18 of the Act on informatization of activities carried out by public entities. In accordance with § 18 DSED, the template of the electronic document sent to the central repository should contain – in the XML data format – a definition of the structure of applications created on the basis of this template, defined in the XSD data format; determined method for visualisation of applications created based on this formula, defined in the XSL data format; and meta data describing the template of electronic document. These metadata should in particular specify: designer of the template (an entity responsible for the template), legal framework (if there is a legal regulation defining a requirement for the application to be filed in a specific form or in accordance with a specific template); title of the template briefly indicating the use of the documents which are to be created based on the template, and a description (range of potential uses for the template).

³⁴ Dz.U. 2018, Item 180.

³⁵ B. Kwiatek, *Istota i funkcje dokumentu elektronicznego w ogólnym postępowaniu administracyjnym*, unpublished doctoral dissertation, Warszawa 2019, typescript owned by the author, p. 178.

³⁶ Judgment of the Supreme Administrative Court of 9 June 1987, SAB/Wr 1/87 (not published).

³⁷ G. Łaszczycza, C. Martysz, A. Matan, *Kodeks postępowania administracyjnego. Komentarz*, vol. 1, Warszawa 2010, p. 530–531.

³⁸ *Ibidem*. Cf. Also: A. Skóra, *Ogólne postępowanie...*, p. 52 and references therein.

This conclusion is mainly supported by the argument claiming that it is impossible to predict the speed and the range of technological changes which may be reflected in the advancement of electronic communication. A valid point can also be made by referring to the principle of minimum formalism applicable to procedural activities (in other words: reduced formalism)³⁹. This principle, in my opinion, is one of the basic rules determining the difference between administrative procedure and the formalised litigation in court⁴⁰. Therefore, it should provide a standard for the most extensive protection of the rights applicable to parties to (other participants of) proceedings, in their relation to public administration bodies with a power of authority⁴¹.

This rule has not been stipulated *expressis verbis* in CAP Part 1, Chapter 2 “General principles”, but its contents are derived from the provisions of Art. 63–66 CAP⁴². In this light, first of all, although activities performed by an administrative body are formalised and should be executed in a specific manner, complying with the order and timelines stipulated in the regulations, declarations of will and knowledge lodged by parties to proceedings (mainly those expressed in the form of application) may (unless specific regulations do not stipulate otherwise) comprise only a minimum of formal requirements defined by law⁴³. Most importantly the principle assumes that the scope of the claim raised by a party to (or another participant of) a proceeding should be examined and processed by the administrative body in accordance with the purpose of the declaration containing the said request rather than based on the name applied to it by the party (or another participant). In such a case the administrative body should provide the applicant with explanations and instructions to determine the actual will of the client, because ultimately the nature of such declaration must be specified by the client him/herself. Hence, if interpretation of an application raises any doubts, an administrative body should ask the relevant client for explanations, also advising them on possible consequences if such defects of the application are not corrected⁴⁴. As rightly pointed out by M. Karpiuk, another important purpose of the principle of deformalisation is to create such options for parties (other participants) whereby the process of filing an application with a public administration

³⁹ A. Skóra, *Ogólne postępowanie...*, p. 52; M. Karpiuk, *Obowiązywanie zasady ograniczonego formalizmu w postępowaniu administracyjnym*, „Rocznik Nauk Prawnych” 2012, no. 3, p. 254; A. Skóra [in:] *Postępowanie administracyjne. Podręcznik*, eds. A. Skóra, P. Krzykowski (in print).

⁴⁰ A. Skóra, *Ogólne postępowanie...*, p. 26.

⁴¹ M. Karpiuk, *Obowiązywanie zasady...*, p. 253.

⁴² A. Skóra, *Ogólne postępowanie...*, p. 26, 52.

⁴³ *Ibidem*.

⁴⁴ Administrative body is bound by the essence of the client’s claim and cannot independently define it in more precise terms, without „cooperation” with the client. *Ibidem*, p. 26, 52; M. Karpiuk, *Obowiązywanie zasady...*, p. 253. Cf. wyrok WSA w Łodzi z dnia 19 czerwca 2015 r., II SA/Łd 122/15 CBOSA.

body will as trouble-free as possible⁴⁵. It is well known that it is the client who should always decide on the method of submitting the application, unless specific provisions stipulate otherwise⁴⁶. Certainly, freedom in this respect should be within the limits set forth by legal regulations specifying the minimum formal requirements for applications⁴⁷. Undoubtedly, given the continuous advancements in the methods enabling electronic communication between clients and administration bodies, the use of such means of communication will be more and more common. Hence, development of optimum legal solutions, construction of adequate technical infrastructures, as well as a change in the mentality of the Polish society and elimination of digital exclusion should, in the coming years, lead to increased number of applications submitted this way. However, the current statistical findings, presented below, clearly show that in Poland the rate with which individuals communicate with administrative bodies via electronic means is one of the lowest in the EU.

Use of electronic communication between individuals and public administration bodies in the light of statistical data

In the light of statistical data for 2018 published by GUS, in Poland people using the Internet accounted for 77.5%, while this technology was regularly (i.e. at least once a week) used by 74.8% of the Polish population. A minimum of one computer was owned by 82.7% households consisting of at least one person aged 16–74 years. As shown by GUS data, the rate has been systematically increasing year by year⁴⁸. Notably, in 2018 as many as 84.2% of households had Internet access⁴⁹.

In 2017 nearly two in three business enterprises were parties to administrative procedures (including administrative proceedings) conducted exclusively via electronic means, without the use of hard copy (paper) documents. Services of e-administration were independently used by 71.3% of enterprises while 46.0% did that through another entity (e.g. accounting office)⁵⁰. As for natural persons, those using public administration services via electronic means, in 2018, accounted for 35.5% of the population aged 16–74 years. According to GUS, in the last five years there has been an increase in the number of people

⁴⁵ M. Karpiuk, *Obowiązki zasady...*, p. 254.

⁴⁶ A. Skóra, *Ogólne postępowanie...*, p. 26, 52; M. Karpiuk, *Obowiązki zasady...*, p. 254

⁴⁷ P. Gacek, *Istota podpisu...*, p. 59.

⁴⁸ 100 lat GUS. *Spółeczeństwo informacyjne w Polsce w 2018 r.*, https://stat.gov.pl/.../pl/.../spoleczenstwo_informacyjne_w_polsce_w_2018_roku.pdf, p. 2.

⁴⁹ *Ibidem*, p. 1–2.

⁵⁰ *Ibidem*, p. 2.

downloading official forms, and sending completed forms, mainly to the electronic in-box of public administration bodies⁵¹. However, the progress is not overwhelming, as in 2018 the rate of those downloading official forms increased by 5.3% and those sending completed electronic documents by 8.9% in comparison to 2015⁵². Importantly, GUS does not specify whether these data relate to administrative proceedings, other administrative procedures or generally to any types of communication between individuals and administration bodies. Another interesting category reported by GUS for year 2018 is related to access to online information about e-services in administration. For instance, 24.4% of those using online services of public administration searched for the required information on the websites of these administrative bodies. However, electronic versions of official forms were downloaded from these websites by only 22.1%, and completed forms were sent by 24.6% of clients⁵³ (the data from GUS do not specify whether the communication was executed via the relevant electronic in-box).

Information storage device as a tool for submitting an application in a form of an electronic document

An interesting practical issue, sometimes also encountered in scientific discussion⁵⁴, is whether it is acceptable to submit applications in general administrative proceedings to public administration authorities using an information storage device and whether submitting an application in this way can be qualified as an electronic method of submitting an application. It should be pointed out that in the light of **Art. 16 clause 1** AIPE public entities which organise processing of data in ICT systems are to allow for submission of data in an electronic form. This may be executed by exchange of electronic documents related to matters handled by a given administrative body, for which information storage devices may be used in addition to means of electronic communication and electronic in-boxes provided⁵⁵. The above is not merely a theoretical issue. The possibility to submit an application on an information storage device is particularly important if there are disturbances in electronic communication with an administrative body and it is difficult or impossible to submit an application using means of electronic communica-

⁵¹ *Ibidem*, p. 2–3.

⁵² *Ibidem*, p. 2.

⁵³ *Ibidem*, p. 4.

⁵⁴ J. Wegner [in:] *Kodeks postępowania administracyjnego. Komentarz*, eds. W. Chróścielewski, Z. Kmieciak, Commentary to Art. 63, thesis 3.

⁵⁵ *Ibidem*.

tion. It is assumed that such disturbances must not pose an obstacle for filing a letter in an electronic form⁵⁶.

To answer the above questions, first of all it is necessary to explain the term “information storage device”. Pursuant to Art. 3 point 1 AIPE this is “a material or equipment used for saving, storing and displaying digital data”. The above definition to an extent is clarified by Art. 61 point 1(1) AIPE, in accordance with which, in the event of doubts that may arise in connection to interpretation of legal regulations, “information storage device” should be understood, *inter alia*, as “an electronic storage device, electronic data carrier, data storage medium, computer data storage device, digital data carrier, electronic carrier, magnetic carrier, digital storage device”, or “portable storage device”. Like the definition of means of electronic communication, the general definition in Art. 3 point 1 AIPE is based on the assumption that it is necessary to account for ongoing technological developments⁵⁷.

Hence, “information storage devices” include such “materials” as e.g. disks: CD (or audio disk), DVD, BD (Blu-ray); USB memory (or flash drive), SIM cards (e.g. micro and mini SIM), SD and other⁵⁸. The role of information storage devices may also be played by “equipment”, in particular including computer, tablet, smartphone, MP3/MP4 player.

The question whether submission of an application saved in an information storage device complies with the requirements defined for electronic method of lodging applications, pursuant to Art. 63 § 1 CAP, is linked to the problem whether an information storage device can be viewed as a means of electronic communication as stipulated in Art. 2 point 5 ASEM in connection to Art. 63 § 1 CAP. As mentioned before, in order to be recognised as a means of electronic communication, an information storage device must meet four conditions defined earlier. Undoubtedly, an information storage device is a technology enabling individual communication between participants of a proceeding. Furthermore, specific information is saved in such devices in a form of electronic document. However, a storage device and the electronic document saved therein do not meet the condition requiring “individual distance communication by using data transmission between ICT systems” (Art. 2 point 5 *in fine* ASEM). Hence the lack of one of the essential characteristics defined for means of electronic communication, i.e. the lack of the

⁵⁶ G. Szpor, K. Wojsyk [in:] C. Martysz, G. Szpor, K. Wojsyk, *Ustawa o informatyzacji działalności podmiotów realizujących zadania publiczne. Komentarz*, Warszawa 2015, p. 263 et seq.; J. Wegner [in:] *Kodeks postępowania administracyjnego. Komentarz*, eds. W. Chróścielewski, Z. Kmieciak, Commentary to Art. 63, thesis 3.

⁵⁷ G. Szpor, K. Wojsyk [in:] C. Martysz, G. Szpor, K. Wojsyk, *Ustawa o informatyzacji działalności podmiotów realizujących zadania publiczne. Komentarz*, Warszawa 2015, p. 49.

⁵⁸ J. Janowski, *Administracja elektroniczna. Kształtowanie się informatycznego prawa administracyjnego i elektronicznego postępowania administracyjnego w Polsce*, Warszawa 2009, p. 237.

process of communication by using data transmission between ICT systems, makes it impossible to recognise that an application submitted on an electronic data carrier is lodged via electronic means. Information storage devices, like applications submitted in writing, require a physical transfer of the information carrier between participants of the proceeding.

This, however, does not mean that an application saved in an information storage device is not acceptable⁵⁹. Because an application submitted on an information storage device, as it has already been explained, cannot be considered as submitted in an electronic form, it seems that in this case we can say that (some or all) requirements defined for a form in writing are met. More specifically, if an application in writing is submitted (e.g. in person or via a postal operator) to an administrative body with an information storage device attached, in accordance with the CAP provisions the requirements defined for a written application are met. Likewise, an application submitted exclusively on an information storage device may meet requirements defined for a written application.

Conclusion

Developments in new technologies enabling long-distance communication between clients and bodies of public administration in general administrative proceedings have continued since the time Poland regained its independence in 1918. In 1928, the first Polish regulations pertaining to administrative proceeding, OAP, confirmed *expressis verbis* that an application may be filed via telegraph. In 1980 a more modern version of telegraph, i.e. teletypewriter (telex) was used in administrative practice, and telefaxes came in use from 1999, as well. Theoretically, the first means of electronic communication (e-mail) could be used by administration bodies from 1999. In practice, however, the available statistical data show that it is only in recent years that we can speak about a noticeable tendency for individuals to communicate with public administration bodies by these means.

The use of means of electronic communication is clearly in line with the basic principles of administrative proceedings. This is mainly linked with the principles of its limited formalism with respect to parties (and participants of the proceeding other than the administrative body) as well as transparency and simplicity of the proceeding whereby the administrative body should perform procedural actions by using the simplest means in the process of handling an administrative matter.

⁵⁹ G. Szpor, K. Wojsyk [in:] C. Martysz, G. Szpor, K. Wojsyk, *Ustawa o informatyzacji działalności podmiotów realizujących zadania publiczne. Komentarz*, Warszawa 2015, p. 263.

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Summary

This article is an attempt to present the essence of electronic communication between clients (other parties to the proceeding) and administrative authorities in general administrative proceedings. It also presents advancements in the modern technologies of the 20th and 21st century (such as telegram, telex, fax) and especially means of electronic communication, which took place in recent

years in Poland. In its essence, electronic administration enables communication through strictly electronic means, eliminating the need for physical contact, as a result of which it is not necessary for parties to the proceeding and a body of public administration, to be present at the same time in the same place. Objectives of electronic administration are among the main factors allowing to overcome the problem of time and space in this modern organizational concept of state.

Keywords: electronic communication, electronic administration, means of electronic communication, administrative proceedings, IT data carrier

**WYBRANE ZAGADNIENIA ADMINISTRACJI ELEKTRONICZNEJ.
UWAGI NA TLE ŚRODKÓW KOMUNIKOWANIA SIĘ STRON Z ORGANAMI
ADMINISTRACJI PUBLICZNEJ
W OGÓLNYM POSTĘPOWANIU ADMINISTRACYJNYM**

Streszczenie

W artykule podjęto próbę przedstawienia istoty komunikacji elektronicznej między stroną (innymi uczestnikami ogólnego postępowania) a organem administracji publicznej w ogólnym postępowaniu administracyjnym. Zaprezentowano także rozwój nowoczesnych technologii XX i XXI w. (jak telegram, teleks, telefaks) i szczególnie środki komunikacji elektronicznej, które rozwinęły się w ostatnich latach w Polsce. Istotną cechą administracji elektronicznej jest zdolność do komunikowania się za pomocą środków *stricte* elektronicznych, eliminując potrzebę kontaktu fizycznego, co pozwala na możliwość braku jednoczesnej obecności uczestników postępowania, takich jak strona i organ administracji publicznej. Założenia administracji elektronicznej są głównym czynnikiem przyczyniającym się do pokonania problemu czasu i przestrzeni w nowoczesnej koncepcji organizacyjnej państwa.

Słowa kluczowe: komunikacja elektroniczna, administracja elektroniczna, środki komunikacji elektronicznej, postępowanie administracyjne, informatyczny nośnik danych