

## ADMINISTRATIVE PROCEDURE LAW AND E-SERVICES IN LATVIA

### *Abstract*

*The Article provides an insight in the scope of regulation of the Latvian Administrative Procedure Law and the use of e-services and other means of electronic communication in administrative procedure. The scope of regulation of the Latvian Administrative Procedure Law is mainly determined by the definition of an administrative act, which, in turn, is derived from the German administrative law. The adoption and application of the Administrative Procedure Law is generally regarded as very successful example of transformation of the legal system. For the past ten years the government has introduced various e-services and other electronic tools designed to facilitate electronization of administrative procedure. The article outlines basic legal regulation of these tools, as well as gives a short insight towards recent impact of the pandemic of COVID-19 on use of electronic communication between the government and private persons.*

**Keywords:** *administrative procedure, e-services, electronic identification, pandemic.*

### **1. General Characteristics of Administrative Procedure Law in Latvia**

The Administrative Procedure Law (hereinafter: APL) was adopted in 2001 and it came into force in 2004. The APL is designed to regulate procedure of adoption of administrative acts and performance of real acts as well as to provide judicial review thereof. The scope of application of APL is determined by the main legal concept under it – an administrative act. The concept of administrative act is mainly derived from the German Administrative Procedure Law (*Verwaltungsverfahrensgesetz*) and is similar to the German concept of “*der Verwaltungsakt*”. The legal definition of an administrative act is provided in the Article 1, Paragraph 3 of the APL. The definition consists of both positive and negative parts: “An administrative act is a legal act directed externally which is issued by an institution in the field of public law with regard to an individually indicated person or individually indicated persons establishing, altering, determining or terminating specific legal relations or determining an actual situation. The administrative act is also a decision issued by an institution in the cases provided for in the law with regard to an individually

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undetermined range of persons who are under specific and identifiable circumstances (general administrative act). The administrative act is also a decision on the establishment, alteration or termination of the legal status of an official or a person specially subordinate to the institution, or the disciplinary punishment of this person, and also any other decision if it significantly restricts the human rights of the official or the person specially subordinate to the institution. Within the meaning of this Paragraph an official is not an employee of the institution with whom employment relationships are to be established in accordance with laws and regulations. The administrative act is not the following:

- 1) a decision or another action of an institution in the field of private law;
- 2) an internal decision of an institution which only affects the institution itself, an institution subordinate to it or a person specially subordinate to it;
- 3) an interim decision (including a procedural decision) within the framework of administrative proceedings, except for the case where it in itself affects significant rights or legal interests of a person or significantly impedes the exercise thereof;
- 4) a political decision of the *Saeima*, the President, the Cabinet or a local government council (a political statement, declaration, invitation, and notification of the election of officials, etc.);
- 5) a court ruling, a decision in criminal proceedings, and also a decision taken in the proceedings of an administrative offence case.

Although the wording of the positive part of the definition is more explicit, the positive definition of an administrative act contains five mandatory elements: 1) externality (i.e., it affects private persons, and not the “inner” organization of the government or individuals working in the government (with the exception of recruitment, dismissal, disciplinary actions or other decisions that significantly affect human rights of public officials)); 2) an institution (any legal person, its department or official) which is empowered with executive functions, including private persons which have been authorized to use public power; 3) the field of public law (as opposite to the field of private law; the difference is whether an institution in a respective case uses public powers (exclusive rights or obligations provided in the legal provisions solely for public entities) or acts as any other private individual could act; 4) individually indicated person or persons (excludes normative acts); 5) creates final legal consequences (Danovskis, 2019, pp. 232-233; Briede, Danovskis, & Kovaļevska, 2021, pp. 96-107).

The negative part of the definition in addition to positive part clearly states which decisions are not administrative acts. The most important decisions included in the negative definition are political decisions (the content of a decision is not ruled by legal provisions, for instance, a decision to elect or dismiss from office a chairman of a municipal council or a chairman of the Parliament), criminal procedural decisions (all decisions adopted in accordance with the Criminal Procedure Law), judgments and decisions of courts and decisions adopted in administrative offence cases (all decisions adopted in accordance with the Law on Administrative Liability).

In addition to administrative acts, the APL also regulates performance of real acts and conclusion of contracts of public law. A real act is a concept similar to administrative act and is based on same elements as administrative act, with the exception that the real act is not a decision, but an action (usually physical actions or inaction, when the legal provisions demanded physical action), and creates actual consequences rather than rights and obligations. Typical instances of real action are use of force by the police to detain a person, or a case when a deviated missile gun destroys a building or a failure by a detention facility to provide food for prisoner.

The APL regulates basic provisions of administrative procedure within authorities, judicial review procedure and execution of administrative acts and court judgments. In general, the Latvian administrative procedure is stable and well developed both in legal provisions and case law, cherishing the principle of rule of law in the relationships between administration and individuals. If 20 years ago such principles as proportionality, prohibition of arbitrariness, fair procedure and rule of law were almost unheard of in Latvian administration, then today adoption and implementation of APL is widely seen as a “success story” (Danovskis, 2019, pp. 234-234).

In addition to the APL, which regulates submissions of individuals when they have subjective rights to an administrative act or real act, the Law on Submissions regulates submissions of private individuals in situations where a private person does not have subjective rights to ask for an action, but rather the submission contains a general complaint, a question or proposal with regard to activities of the government. In this case a person is entitled to receive a reply in a month's time. However, a person is not entitled to receive “a likeable” answer, i.e., no further claims or petitions regarding the answer are available.

The APL and the Law on Submissions are the most important laws regulating procedure of communication between government institutions and private individuals. However, since the time of their adoption the use of electronic devices like smartphones, tablets and laptops as well as advances of software technology and availability of internet have drastically increased. Therefore, as explained below, the electronic communication has gradually been introduced in legal relationships between the government and private individuals.

## **2. Evolution of e-Services in Administrative Procedure and Other Legal Relationships**

The legal framework to facilitate use of internet technologies in communication between the government and private individuals in Latvia has developed gradually and on a step-by-step basis.

The first normative enactment aimed to facilitate e-communication was the Electronic Documents Law, adopted in 2002. The law is intended to grant to electronic documents the same legal status as “paper documents” and provide conditions for acknowledgment of legal force of an electronic document. The law originally was intended to harmonize the Latvian law with the EU law by introducing the Directive 1999/93/EC

of the European Parliament and of the Council of 13 December 1999 on a Community framework for electronic signatures. In general, in order to acknowledge the legal status of an electronic document, it should contain a secure electronic signature (Article 3, Paragraph 2). Regarding obligations of the state institutions to accept electronically submitted documents, Article 6, Paragraph 4 provides: "State and local government institutions shall develop internal circulation instructions for electronic documents which comply with this Law and the regulations of the Cabinet referred to in Paragraph two of this Section, as well as the work specifics of the institution, and shall ensure the possibility of natural persons and legal persons to submit and receive State and local government institution documents, their copies, true copies, extracts and duplicates electronically or in another form according to the choice of the person." The law also obliges the State and local government institutions to accept electronic documents from natural persons and legal persons no later than 1 January 2004 (Point 1 of Transitional Provisions). Therefore in the administrative procedure and other communication between the government and private persons the use of electronic documents was legally allowed as early as 2003, when the law came into force. However, the technological solutions had fallen behind the legal regulation and the first electronic document was signed only in 2006 by Prime Minister Aigars Kalvītis (see E-paraksta vesture). During the first ten years the electronic signature was used rarely. In 2012 there were only around 26,000 users of e-signature (Četrkāršojies e-paraksta lietotāju skaits, 2012). However, the use of e-signature has gradually increased and in 2021 the signature has been used 38,000 times daily and at least one fifth of the population above 15 years of age has used the e-signature (Kādas priekšrocības sniedz e-paraksta izmantošana?, 2021).

The concept of e-services, including possibilities to submit a request for an administrative act or perform other procedural actions in administrative procedure, has developed gradually and initially without any uniform legal regulation. In 2015 the Law on Electronic Identification of Natural Persons was adopted. Article 2, Paragraph 1 stated that the purpose of the law, inter alia, is to prescribe requirements for electronic identification in order to ensure a possibility for a natural person to demand or receive the electronic service provided by a public person while performing the assigned functions or tasks thereof and types of electronic identification that are equivalent to on-site verification of the identity of a natural person by presenting a personal identification document. As was explained in the annotation of the law, no uniform legal framework existed that would regulate the already existing means of identification of private persons used in praxis (Likumprojekta "Fizisko personu elektroniskās identifikācijas likums" sākotnējās ietekmes novērtējuma ziņojums (anotācija), 2015). In general, the law was designed to "legalize" the already existing government e-services, using as a tool for authentication internet banks.

Many of e-services were available in the state service portal [www.latvija.lv](http://www.latvija.lv). The site was designed as early as 2006, but its development and popularity increased only gradually. Although there were laws that contained references to the e-services available in the portal, in 2016 amendments to the State Administrative Structure Law were adopted, cementing the status of the portal in Article 100, Paragraph 1 as follows:

“The portal of State administration services is a website which ensures accessibility to State administration services and information related thereto in one place for private individuals and State administration, access to e-services and electronic communication between private individuals and State administration.” As of 2021, the portal offers 123 e-services, for instance, e-services to submit requests for various social security benefits, enterprise registration, several permissions as well as options to make tax payments and receive information from government data bases (Dārziņa, 2021a). Besides e-services available in the portal, there are other government institutions, which offer services in their websites. For instance, the website <https://e.csdd.lv/> of the Road Traffic Safety Directorate offers various e-services, such as change of an owner of a car in the register, tax payments and submissions for various on-site services (technical examination, driving licence exam etc.).

A notable e-service administered by the State Revenue Service is the Electronic Declaration System. It has been designed to submit various tax declarations in electronic form as well as to announce administrative acts of the State Revenue Service. The Law on Taxes and Fees, as well as other laws provide that for some taxpayers (legal persons and physical persons, who perform economic activity) the use of Electronic Declaration System is mandatory and there are no other means to submit information to the State Revenue Service, but through this system. However, in 2019 controversial amendments to the Law on Taxes and Fees were submitted by the Cabinet of Ministers, which intended to make the use of various submissions to the State Revenue Service, including tax declarations, as the only means of submissions for all tax payers. The annotation to the law explained that nearly one fifth of all declarations submitted by natural persons are still submitted in paper form and that processing of such declarations is a financial and time consuming burden (Likumprojekta “Grozījumi likumā ‘Par nodokļiem un nodevām’” sākotnējās ietekmes novērtējuma ziņojums (anotācija), 2019). However, after the Legal Office of the Parliament objected to such proposal, arguing that such regulation would disproportionately limit the rights protected in the Articles 90 and 104 of the Constitution to “know one’s rights” and “petition rights” (Atzinums par likumprojektu “Grozījumi likumā ‘Par nodokļiem un nodevām’”, 2020), the Parliament decided to exclude from the obligation to use the Electronic Declaration System for any submissions natural persons, who are not registered as performers of economic activity. However, with the amendments to the Law on Taxes and Fees of 6 July 2021, all submissions addressed to the State Revenue Service by all other taxpayers are to be submitted only by using the Electronic Declaration System.

The above mentioned proposals regarding mandatory use of electronic systems in administrative procedure had raised a constitutional issue – whether the state can oblige private persons to use electronic forms of communication in legal relationships. At least at the moment the reply from the Latvian legislator is – yes, but limited to legal persons and to natural persons only in instances, when their field of operation inevitably demands use of electronic means of communication. Total electronization at least in the area of tax administration would be disproportionate for natural persons, who for one or another reason prefer submitting documents in paper form.

The above mentioned possibilities to use e-services demand a legally valid expression of will. Most e-services are available if authentication, either using e-signature, internet bank or other means of authentication, has been performed. In general, the function of a signature as a proof of will expressed in paper form is being replaced by “authentication of person” and its will. Indeed, if the identity of a person has been determined by using means of electronic authentication, it is sufficient to acknowledge the respective expression of will to submit legally valid requests to issue administrative acts and perform other legally valid activities. Although instances of fraud might occur, at least in Latvia there are no publicly known instances, when electronic means of authentication have been used malignantly. In this regard, electronic authentication seems to be even more trustworthy than a signed submission in a paper form, when a person, who has signed the document as its author, is rarely verified by other means.

Another tool used to facilitate electronic communications between the government and private persons is the official electronic address. This instrument is regulated in the Law on the Official Electronic Address, adopted in 2016. The official electronic address is an e-service which, similarly as e-mail, grants access to an account of official electronic address. The law provides that all state institutions are obliged to create and use the official electronic address account. The law also provides, that for legal entities registered in the records (for instance, limited liability companies, stock companies, associations, etc.), the official electronic address account shall be activated to 31 December 2022. A legal entity registered in the registers, if it has an activated electronic address account, shall be contacted using electronic means, and an electronic document shall be sent using the official electronic address. Natural persons are entitled to choose whether or not to create electronic address account. But when the account is created, the State institution is bound to send all correspondence in administrative proceedings, including an administrative act, as well as any other correspondence to the official electronic address account. The private person, in turn, is presumed to have received all such correspondence. Therefore, this tool is used to diminish paper correspondence between the government and private persons. However, until 2021 only 13,000 private persons have created an electronic address account. It is thought, that at least for the moment private persons do not feel the need to change the already used communication with government institutions by e-mail or other e-services (Dārziņa, 2021b).

The Latvian tactics to electronization in administrative procedure has been to gradually introduce various legal instruments that facilitate the use of electronic communication between the government and private persons. The legal framework of electronic documents, electronic services, electronic identification and official electronic address has been introduced without any legal hurdles. The legal framework is intended not only for use in administrative proceedings, but in all other e-services and cases of communication between the government and private persons. However, the habits of private persons are not always changed easily. Though, as explained in the next chapter, the perspectives of the use of e-services have been widened during the pandemic of COVID-19.

### **3. The Impact of the Pandemic of COVID-19 on the Electronization of Administrative Procedure**

The pandemic of COVID-19 has facilitated the use of the above-mentioned e-services as well as drawn new perspectives of use of digital technology in communications between the government and private persons.

Direct communication is important in several phases of the administrative proceedings. Article 56 of the APL provides that a person is entitled to submit a request for an administrative act orally. In this case the institution writes down the oral submission and the person signs it. Oral communication is also important when gathering information, hearing opinions and also in administrative court procedure. During the pandemic, there have been adopted various restrictions for availability of services in-person, which significantly reduced access of private persons to government institutions. On 3 April 2020 the Parliament adopted the Law on the Operation of State Authorities during the Emergency Situation Related to the Spread of COVID-19. The adoption of the law was necessary to provide legal solutions for situations where epidemiological restrictions imposed by the government made many government services inoperative, at least in person. For instance, contrary to the right to submit oral submission provided by the APL, the Article 3, Paragraph 1 of the law stated that “a submission for the issuing of an administrative act, [...] or a submission for contesting an administrative act may only be submitted in writing. During the emergency situation an institution may, in specific cases, accept a submission for the issuing of an administrative act via telephone if the institution has other possibilities of identifying the submitter and the request made thereby.” This law was later replaced by the Law on the Management of the Spread of COVID-19 Infection, which additionally provided that court hearings may be organized using a videoconference (Article 10<sup>1</sup>). In administrative proceedings this procedure has been used rather frequently and without any substantial legal problems.

Although the use of videoconferences has in no way been prohibited before the pandemic, in practice government institutions did not use this tool to communicate with private persons. However, the widespread use of various video call software have inspired ideas to use this technology more often and create a digital platform that could ensure all functionality similar to in-person communication, including electronic identification, video calls, and submission of documents. Such a concept has been elaborated in legal science in a state financed project (see Danovskis, 2021). A pilot project testing the use of video calls in servicing clients of the State Social Security Agency as well as other state service institutions has been launched in mid-2021, thus providing new opportunities for digital communication in administrative procedure (VARAM uzsāk pilotprojektu valsts pakalpojumu sniegšanai jaunā veidā, 2021). However, the overall impact of the pandemic towards expansion of e-services is yet to be evaluated.

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## ZAKON O UPRAVNOM POSTUPKU I E-USLUGE U LETONIJI

### Sažetak

U radu se pruža uvid u domašaj odredaba letonskog Zakona o upravnom postupku i odredaba o upotrebi e-usluga i drugih sredstava elektronskih komunikacija u upravnom postupku. Domen primene odredaba letonskog Zakona o upravnom postupku je uglavnom određen definicijom upravnog akta koja potiče iz nemačkog upravnog prava. Donošenje i primena Zakona o upravnom postupku se načelno smatraju veoma uspešnim primerom

transformacije pravnog sistema. U toku poslednjih deset godina, država je uvela različite e-usluge i druge elektronske alate namenjene olakšavanju elektronizacije upravnog postupka. U radu se prikazuju osnovni pravni propisi kojima se regulišu ovi alati i pruža kratak uvid kakav je uticaj pandemija kovida 19 imala na upotrebu elektronskih komunikacija između subjekata privatnog i javnog prava.

**Ključne reči:** upravni postupak, e-usluge, elektronska identifikacija, pandemija.

**Article history:**

**Received: 19 November 2021**

**Accepted: 17 January 2022**