

DIGITALIZATION IN THE DECISION-MAKING PROCESS IN THE LOCAL GOVERNMENT IN THE REPUBLIC OF MOLDOVA *(The electronic control of local acts)*

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Abstract

The article contains reflections on the needs of the processes and reforms in progress in the Republic of Moldova. Many external and internal factors such as globalization, informatization and communication, democratization and opening of the society, international benchmarking of the governance performance, increase pressure for more responsive and accountable governance around the world, by requesting more transparency, accountability, efficiency or delivery of quality public services and tangible results. These requests have steadily influenced traditional behavior of administration in many developing countries. Formal reports on PA functioning have been gradually replaced with reports that reveal more evidence on wider community benefits, generated as a result of good governance performance. The traditional, implementation-based approach could not answer the question whether implemented reforms have also produced intended results. At the same time the government needs such feedback to assess outcomes and impact and then to feed this information back into the decision-making procedures.

Keywords: *informational resource, electronic register, legality control, transparency, decision-making process*

1. Introduction

The policy documents are elaborated for the purpose of describing and analyzing the existing problems, identifying the objectives related to the problem concerned, defining the state and society. In order to achieve them, the Strategy for the reform of the public administration for the years 2016-2020 has been elaborated and implemented. Through its activity program for the period 2016-2018, the Government of the Republic of Moldova has undertaken to continue to make the public administration more efficient in order to provide citizens with services at the highest level in accordance with the practices of European democracies [1]. Given that the purpose of public administration reform is to strengthen public administration by applying European Union standards and rules, the principles underlying the implementation of this Strategy reflect the principles of good governance recognized and applied at European Union level by the White Paper on Governance and the Guidance on the quality of public administration, both documents approved by the European Commission, and the principles for local governance, recommended by the Council of Europe. [6]

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According to the component regarding the accountability of the public administration, transparency in the decision-making process has become a desire of the government under the terms of the rule of law. Accordingly, as stated by the Strategy, decisions must be formulated, approved and implemented following clear rules and procedures. All public information is accessible. Information on decisions, policy implementation and results is available to the general public, so that any citizen has the opportunity to supervise and contribute to the activity of central and local public authorities. Namely, for this purpose and by virtue of it, the State Register of Local Acts was elaborated.

In order to execute the provisions of Law no. 161/2016 for the modification and completion of some legislative acts [2], by the Government Decision of the Republic of Moldova no. 672/2017 for the approval of the regulations regarding the State Register of Local Acts, the Regulation on the way of keeping the State Register of Local Acts and the Regulation regarding the record of the documents subject to administrative control of legality was approved [5].

Informational resource “The State Register of Local Acts” (hereafter RSAL) was created exclusively for the purpose of establishing an efficient mechanism of transparency of the decision-making process and its result. The elaboration of this unique instrument ensured the involvement of citizens in good governance (an integral part of it).

RSAL, whose owner is the state, represents a state information resource, which contains the electronic texts of the documents of the local public administration authorities and their related materials, which ensures the centralized recording, preservation and recording of the acts of the local public administration authorities and of the materials related to them, which is created in order to ensure the access of natural and legal persons to the documents issued / adopted by the local public administration authorities. The State Chancellery also manages the State Register of Controls and the Register of Public Functions and Civil Servants.

2. Research goal

The study represents a theoretical research with reference to the use of the information system “The State Register of Local Acts”. The research contains information from RSAL, in the years 2018-2019, including information presented by the Territorial Offices of the State Chancellery for year 2017, on paper, normative regulations, and aims to identify the place of this resource in the national information system “e-government”.

In the research process, the RSAL was taken as reference, with the information included in the period that became mandatory, according to the legal framework, 28.10.2019. Starting with 28.10.2019, the inclusion of documents in the RSAL is mandatory. Another time frame, which cannot be neglected is the period between 28.10.2018 until 28.10.2019, i.e. the “transitional period”, in which the local public authorities presented the documents for legality check, both on paper and electronically, including them afterward in the electronic Register. As of 28.10.2019, the acts that are not included in the RSAL, do not have legal power, do not enter into force and remain only projects of administrative acts.

The concrete data show that in 2017, according to the summary of the State Chancellery [7], the local public administration authorities submitted 174,464 administrative acts for legality check, and 213,261 acts were registered. There is a huge difference, respectively. Or, in this case, it can be stated that the local public administration authorities did not submit for verification all the documents, some of them being concealed, and implemented without a legality check.

Thus, in the circumstances invoked, the question arises why the local public authorities did not include all of the acts in the information system, even if they risked being sanctioned contraveniently.

During the reference period 28.10.2018-28.10.2019, 215,368 documents were included in the RSAL for legality control, and in-between 28.10.2019-26.01.2020, 57,291 documents were registered. As noted, there is a considerable increase in the number of acts included in the information system. This is probably due to a complex of factors that contributed to these achievements.

An important factor is the need to include the draft administrative act in the Register in order to become effective and to produce legal effects, as well as in order to be implemented. Or, only administrative documents issued / adopted and included in the RSAL have the status of administrative act to be implemented.

In the complex of factors mentioned, the serious emphasis is on the sanctions / fines applied due to the non-observance of the provisions of Law no. 436/2006, by not consulting the draft normative act, omitting the term, preventing access to the meeting room, including in the Register a text different from the published one. The coercive accountability of responsible and authorized persons by the legislator has also led to an increase in the number of acts included in the RSAL.

The third factor would be the empowerment of the public administration authorities and the increase of interest in order to make the decision-making process transparent and the need for the active involvement of citizens at local level.

Compared to other states in the world, it is important to mention that such a Registry is not commonplace. The legality control procedure is performed otherwise, either on paper, the case of Romania, or the legality control is exercised only of the administrative acts with normative character, but also on request, as is the case of Estonia.

A special case refers to Romania, where according to the normative acts on this dimension, the control is exercised by the prefect, on paper.

In spite of the legal regulations, the question arises, if the elaborated system will be able to ensure transparency in the decision-making process at local level?

Or, if the punitive method (e.g., contravenient sanctions) provided by the legislation will ensure the necessary element of the rule of law, i.e., the transparency of the decision-making process.

The Tables below comprise the analysis of the statistical data that are of particular interest to the subject, presented in quarterly and annual reports of the Territorial Offices of the State Chancellery. The information from the 2018 report is much more comprehensive than the information presented in all the quarterly reports for 2019. Because of this, the type of data available for 2018 and for 2019 differ, being incomplete for the previous year (2019).

However, the existing data allow us a quite detailed and conclusive analysis – the following 2 tables summarize the results of ex-ante control carried out by the Territorial Offices of the State Chancellery in 2018-2019.

The most complete and relevant data are in Table 1 which shows the number of administrative acts for 2018, in total and in structure, subject to ex-ante control, obligatory or optional, the number of documents notified to the local authorities as being with problems and the number of new actions brought in administrative litigation.

	Administrative acts subject to ex-ante control				Administrative acts subject to obligatory control				Administrative acts subject to legality control and notified				Actions in administrative litigation
	Total	Acts of deliberative authorities	Acts of executive authorities	Procurement and tender contracts	Total	Acts of deliberative authorities	Acts of executive authorities	Procurement and tender contracts	total	Acts of deliberative authorities	Acts of executive authorities	Procurement and tender contracts	
	175.992	63.997	106.684	5.311	170.721	63.997	101.413	5.311	1.860	1.405	431	24	407
Percent structure	100%	36,36%	60,62%	3,02%	100%	37,49%	59,40%	3,11%	100%	75,54%	23,17%	1,29%	
Percent notification, from obligatory									1,09%	1,39%	0,42%	0,45%	
Percent notification, per categories									1,06%	1,32%	0,40%	0,45%	
Percent actions in administrative litigation from notification													21,88%

Table 1: 2018, synthesis of results from ex-ante control

First of all it is observed that in the structure of the acts subject to ex-ante control (especially under the category “obligatory”), dominates the category of administrative acts issued by the executive authorities (various provisions of the mayor or the chairman of the district council) - over 60%, and the weight of the contracts for the procurement and tenders is low - 3.02%. The weight of the acts subject to optional ex-ante control is very low. Furthermore, the small number of acts notified as problematic – i.e., violating the legislation – represents only a surprising 1% of the total, with a significant differentiation: from the total of the documents issued by the deliberative authorities (local and district councils) about 1.3% -1, 4% are notified as legally problematic, while out of the total number of documents issued by the executive authorities only about 0.4% (i.e., a 3 times smaller percentage). In this context it also must be taken into account that the volume of documents issued

by the executive authorities represents about 60% of the total percentage - thus the most important share by far. It should be mentioned that in the case of procurement and tender contracts the share of notified acts is very small and similar to that of the executive authorities - 0.45%

	Administrative acts subject to ex-ante control				Administrative acts subject to obligatory control				Administrative acts subject to legality control and notified				Actions in administrative litigation
	total	Acts of deliberative	Acts of executive	Procurement and tender contracts	total	Acts of deliberative	Acts of executive	Procurement and tender contracts	total	Acts of deliberative	Acts of executive	Procurement and tender contracts	
	199.126								2.126				372
Percent structure													
Percent notification, from obligatory, per categories									1,07%				0,19%
Percent actions in administrative litigation from notification													

Table 2: 2019, synthesis of results from ex-ante control

The incomplete data for 2019 from Table 2 confirm only the very small share of the notified acts out of total verified administrative acts - about 1% which makes us suppose that in the structure, the situation for year 2019 does not differ significantly from that of 2018, due to the fact that the information system was being in the transition period.

3. Legal regulations and procedure

The data entered in the Register will be accessible to the following actors:

- 1) State Chancellery;
- 2) Territorial Offices of the State Chancellery;
- 3) local public administration authorities of both levels, including within the Gagauz autonomous territorial unit with special legal status;
- 4) central public administration authorities;
- 5) interested / targeted persons.

In the Register will be mandatory the inclusion of:

- 1) the decisions of the local councils of both levels;
- 2) the provisions of the mayor and of the district chairman;
- 3) other acts of the local public authorities that are subject to the legality control, under the provisions of Law no. 436/2006 on local public administration [3];
- 4) the materials related to the administrative acts that were the basis for their adoption / issuance, including the minutes of the meetings of the local councils, tenders, acquisitions, which are placed in a separate file in the Register.

When the documents are included, the system will automatically generate a number of records.

Depending on the access rights that users will have, they will be classified in the following categories:

- Level A - the authorized employees, the executive authorities of the local public administration of the first and second levels;
- Level B - State Chancellery (holder, designating a specialized Directorate);
- Level C - PI "Information Technology and Cyber Security Service", with responsibilities for ensuring the continuity and functionality of the system, in accordance with the activities established under the contract (technical administrator);
- Level D - the central public administration authorities that have the attribution of viewing the administrative documents issued / adopted by the local public administration authorities from the Registry;
- Level E - interested persons / the general public / citizens with the possibility of viewing the documents of the local public authorities, except for the personal and individual acts, which can be accessed in compliance with the provisions of Law no. 133/2011 on the protection of personal data [4].

According to point 5 of the Regulation on the way of maintaining the State Register of local acts, approved by the Government Decision no. 672/2017, the text of the administrative acts is included in the Register in the state language. The documents issued by the local public administration authorities within the territorial unit with special legal status are included in one of the languages established by the legislation on territorial unit, with special status, with the translation into the state language. Thus, the equality of linguistic rights of the inhabitants of the Gagauzian Territorial Autonomous Unit was ensured.

The State Chancellery, as the holder of the Registry, is exclusively obliged to ensure the creation and administration of the Registry and to undertake, with the technical support of the Information Technology and Cyber Security Service, the necessary measures to ensure the continuous functionality of the Registry.

Local public administration authorities of both levels, including the autonomous territorial unit with special legal status, as data providers regarding the acts of the local public administration authority, are obliged to ensure the provision of information in the Registry database, in the manner and within the deadlines established by the Regulation, carrying out actions to ensure information security and to process only the data strictly necessary for the fulfillment of their service duties

At the same time, the tasks established to the Information Technology and Cyber Security Service as technical administrator are stipulated by the legal norm, meant to take the necessary technical measures to ensure the functionality of the Registry.

In order to include the administrative documents in the RSAL, the local public administration authorities based on an issued administrative act, are obliged to designate the person responsible for the registration and publication of the administrative acts in the Registry, in accordance with the provisions of this Regulation. As a rule, this is the responsibility of the secretary of the district / municipal / local council.

Also, the legislator recommends to the executive authorities of the local public administration, including from the autonomous territorial unit Gagauzia, the concomitant appointment of the substitute person as an authorized employee for inclusion in the Register, according to the provisions of this Regulation, in case of absence of the secretary of the district / municipal / local council. In optimum / reasonable time, of 3 days from the signature date, the administrative deed of designation, is sent to the State Chancellery (on paper or electronically), which will assign the level of access to the Register to the authorized employee. The responsibilities for exercising this attribution are to be included in the job description of the designated official (on this dimension, starting with 28.10.2018, in the process of his activity the author / owner of the RSAL, identified some deficiencies influenced by the human factor, in particular the nature of the human relations within the authority of the local public administration. Consequently, in case of hostile personal relationships, political views, including different and shared religious culture, artificial impediments may occur in the use of RSAL by authorized persons).

In case of substitution of the authorized employee, the executive authority of the local public administration is obliged to immediately inform the State Chancellery about the change that occurred and the reasons for the substitution, with the issuance of a new act in order to designate another person who will be responsible for registering and publishing the acts in the Register. With the change of the authorized person, the local public authority can initiate the change of the level of access to the Register for the authorized employee. The responsibility for the continuous assurance of the exercise of the functional attributions by the authorized employees for inclusion in the Register is the respective local executive public authority.

Procedurally, the inclusion of administrative documents and related materials in the Register is compulsory in a scanned form, in PDF format, meeting the form conditions (signed / countersigned, stamp), according to the attributes defined by the system. In this chapter, training for each authority of the local public administration of level I and level II was held and will be provided throughout the year 2020, due to the fact that the local elections took place on October 20, 2019, when the RSAL was in transition process, provided by the legal framework.

The content of the administrative document, as the case may be, can be placed in the Register as text (in DOC or DOCX format). It will not be public and will be used by the search engine to identify the administrative document in the public portal of local documents. Files related to administrative documents attached to the Register (in DOC or DOCX format) are not public and can only be viewed by authorized persons.

In case of placing the administrative document (with individual character) that contains personal data, the authorized employee is obliged to respect the requirements of the provisions of Law no. 133/2011 (depersonalization of the act - by concealing personal data). The materials related to the administrative acts (the minutes of the meetings of the local council, the opinions of the specialized commissions, the annexes to the minutes and other related documents) will be files annexed to the administrative act.

The materials related to the administrative acts are included in the Register after the introduction of the administrative acts.

At the same time, the RSAL establishes the records of the documents subject to the administrative control of legality, the mode and the conditions of record of the administrative acts subject to the control of legality by the territorial offices of the State Chancellery in accordance with art. 64-72 of Law no. 436/2006. The records of the documents subject to the administrative control of legality by the territorial offices of the State Chancellery are made through the Register, the compartment "Administrative control", which is an integral and indispensable part of the Register and represents an internal informational resource of the State Chancellery. This compartment ensures the centralized registration, preservation and recording of information regarding the acts of the local public authorities of both levels subject to the legality control by the territorial offices of the State Chancellery.

The authorized employees of the State Chancellery and its territorial offices have access to the database of the "Administrative Control" compartment as participants in the State Register of local acts, for the purpose of providing and viewing the data.

In order to ensure the transparency of the administrative control, the RSAL allows, in the conditions of the normative framework, the public view of the information regarding the results of the administrative control of legality exercised by the territorial offices of the State Chancellery. In the same context, RSAL allows the provision of the following public data from the "Administrative Control" compartment, without restrictions:

- 1) data regarding the submission of the administrative act to the legality control;
- 2) data regarding the stages of the legality control of the administrative act;
- 3) data regarding the result of the legality control.

According to the prohibitive nature of the norms of Law no. 133/2011 and in order to protect the personal data, the personal data from the "Administrative Control" compartment will not be publicly accessible or visible.

In order to secure and make more flexible the authentication and control of the access of the users in the information systems, for the authentication of the authorized users within the State Chancellery and the territorial offices of the State Chancellery the governmental electronic service of authentication and control of access (MPass) will be used. The modality for authenticated access will be established through the internal document of the State Chancellery.

4. Conclusions

In the Republic of Moldova through the implementation of the information platform RSAL has been able to achieve the initially proposed goal, namely ensuring transparency in the decision-making process, at local level. In case of non-observance of the procedure for inclusion of documents in the Register, the responsible persons bear a contraventional liability.

At the same time, civil society and the general public can view via the information system all the documents elaborated at local level, its control stage and the status of the administrative, legal or notified act (an important thing at the conclusion of the transactions).

To conclude, we will mention the following:

- the Register is a compulsory platform for the transparency of the decision-making process;
- the active involvement of the persons responsible for including the local acts in the Register in order to avoid the fines established by the contraceptional Code.
- the aspect of controlling the legality of individual administrative documents, which are depersonalized to be placed on the public interface, will be reviewed.

In this context, personal data protection takes place, but the general public does not view relevant information. Thus, in the context of the research the question arises should it not be the case to include the documents in question only for the control of legality to the territorial offices of the State Chancellery. The administrative acts are compulsorily brought to the notice of the persons concerned in those acts, under signature.

5. References

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