PROGRAMAREA ONLINE: ÎNTRE DIGITIZARE ȘI ÎNCĂLCAREA DREPTURILOR ȘI LIBERTĂȚILOR FUNDAMENTALE

ONLINE PROGRAMMING: BETWEEN DIGITIZATION AND VIOLATION OF FUNDAMENTAL RIGHTS AND FREEDOMS

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Summary

The procedure for acquiring citizenship is regulated by law and involves the presentation of documents both directly at the counter and online. In other words, the person has an alternative, and the competent state authorities have the obligation to receive the documents in the manner applied by the applicant. In this communication we will expose the advantages and disadvantages of online programming, as well as proposals to remove the preferences of the National Authority for Citizenship in favor of online programming, thus affecting the right of the person to decide alone on how to present documents for acquiring Romanian citizenship.

Keywords: *acquisition of citizenship; online programming; presentation at the counter; alternative; the preeminence of the person's right; the obligation of the official.*

With the development of social life and the expansion of the Internet and its implementation in all levels of social life, the emergence of a new challenge was foreseen - online programming.

This measure was designed mainly to simplify and streamline waiting times when a citizen intends to exercise a right in front of a public institution, but also as a legal instrument that allows every citizen to exercise fundamental rights and freedoms in a easily, in the era of digitalization, in the spirit of the National Strategy on the Digital Agenda for Romania 2020. From the analysis of the fields in which online programming was implemented, as a form of digitalization of public services, it materialized as a complementary / optional measure to benefit from a public service directly at the counter, without an online appointment.

Below I will exemplify some institutions where the online pre-appointment procedure was implemented, such as: Bucharest General Passport Directorate, where the registration of passport issuance applications based on an online

pre-appointment increased from 2% in January 2016 to 10% in June 2017, the trend being increasing. Another institution is the National Agency for Fiscal Administration[4], where citizens have the opportunity to create an account on the virtual private space, to file tax returns and tax returns online, receiving notifications regarding the status of payment obligations by e-mail. The Driving Permits and Vehicle Registration Regime Directorate is another public institution which, in addition to the option to present you directly at the counter, has successfully implemented the online scheduling facility for registering the examination file, changing the Romanian license, transcribing the vehicle registered in Romania, vehicle registration, etc.

We must note that these public institutions mentioned understood to comply with the letter of the law by creating for citizens, as a tool to facilitate access to public service - online programming, in addition to the possibility of filing directly at the counter. However, the challenge of 2020 in terms of respect for human rights and fundamental freedoms comes from the Control Body of the Minister of Justice aimed at implementing online programming by the National Authority for Citizenship - legal issues that I will analyze below.

Since 1991, when the organic law 21/1991 was adopted, and until now, the legislator has understood to regulate as the only way to register a file of Romanian citizenship - personal, directly at the counter. There is only one exception to register the file by authentic and special warrant only in duly justified cases.

Ten years ago, since its founding by the O.U.G.5/2010 of the National Authority for Citizenship, and until 2017 the citizenship files were registered by presenting each citizen, directly at the counter, without prior online appointment. In May 2017, the president of the National Authority for Citizenship issued a provision establishing that the only way to register a citizenship file under Article 11 of Law 21/1991[6] is online pre-programming, the immediate effect of implementing this provision was halving the number of applications registered at the headquarters of the National Authority for Citizenship in Bucharest. For the most part, this provision was discriminatory because it provided for online scheduling only for petitioners who filed applications under Article 11 of Law 21/1991 and not under Article. 8, 81, 10, 27 and, on the other hand, to persons who did not have access to online programming software. Noting the shortcomings of this measure, of programming exclusively online, the management of the National Authority for Citizenship returned to this measure, allowing in parallel with the submission of files based on online appointments and the submission of files directly at the counter without prior online appointment.

Currently, the main problem encountered in the file registration procedure is the obligation of citizens to register a Romanian citizenship file exclusively based on an online pre-appointment, prohibiting citizens from presenting directly at the counter, without prior online appointment.

If we look at it from the point of view of legality, we can say that there is no legal norm that allows any public institution to carry out the activity with the public and to register files of any nature exclusively based on an online appointment. From this point of view, the obligation of pre-programming exclusively online appears as a restriction in exercising the fundamental right to obtain Romanian citizenship, temporarily suspending, for an indefinite period, the very existence of this right, as petitioners are deprived of the right to have their applications resolved. legally of 5 months provided by law 21/1991, being postponed from the start the term of registration of the application, by several months, due to the prior online appointment. The restriction of some fundamental rights and freedoms can be done according to art. 53 of the Constitution only by law, in certain exceptional situations, by force majeure, but we are not in any of the situations provided by the Constitution. We mention that other provisions of the Romanian Constitution were violated (art. 1 paragraph 3, paragraph 5; art. 5 paragraph 1, etc.).

We think that the measure discussed above, which is mandatory for the National Authority for Citizenship, is not appropriate because the implementation of pre-programming exclusively online starting with 03.02.2020 had the immediate effect of halving the number of Romanian citizenship files registered at the National Authority for Citizenship, not to mention the fact that it is a discriminatory procedure against people who do not have access or do not have the necessary skills to use the media.

In conclusion, applying the principle of roman law "*Ubi lex non distinguit, nec nos distinguere debemus*" - Where the law does not distinguish, nor should we distinguish, the National Authority for Citizenship requires a return to the previous way of interaction with citizens respecting the legitimate right and the legal possibility of every citizen who meets the conditions of the law to register a Romanian citizenship file - either based on an online appointment or directly at the counter, through a responsible collaboration between the Minister of Justice, the Control Body of the Minister of Justice, the National Authority for Citizenship and civil society representatives.

Conclusion. The study allows us to draw the following conclusions:

1. *The digital age has shown considerable support in the process of bringing public services closer to the taxpayer, the citizen. On the one hand, it facilitates the person concerned by saving time, excludes the queuing state, as well as the reception of the necessary information. On the other hand, it allows the civil servant to take over the documents presented and provide the necessary information to the applicant.*
2. *At the same time, the applicant must be given the alternative: online programming or directly at the counter. Thus, the access to information will be respected according to the technical means available to the applicant, as well as to his own conviction that the documents were received correctly and in accordance with the legislation in force.*
3. *Thus, the predominant use of the online programming as the only way available affects the right of the person to benefit with good confidence from the public services provided, including in the process of acquiring, regaining Romanian citizenship.*

Proposal: Based on the above, we consider it appropriate to provide legally for the following regulation as lege ferenda under art. 13 from law 21/1991.

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