

E-TRAVEL LOGBOOK IN OFFICIAL PROCEDURE

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Abstract: In the time of the Infocommunication society it is obvious we use the new generation technologies in our every day actions. The man of the digital age was made for to use these appliances to surmount his environment. But was the „legal environment” ready for the infocommunication technologies? A simple GPS based e-log book - which can be used as simple as an ordinary log book – distressed the offices. For the solution we had to wait till the hole official procedures processed and reached the 21. century. Their trust in the infocommunication's technologies depends on their acceptance by the society, and the legislator's activity contributes to it (or interferes it) vigorously. In our case we examine that a simple document with an elaborated technological foreground how it goes through the mill, thanks to the legal changes.

Keywords: e-travel, Infocommunication society, law of the transportation

1. New technologies and law

By the second decade of the XXI. century the tools of infocommunication became the part of our days uneventfully, infiltrating in our in our life in such a way that their attendance is next to unperceivable, but their absence is a serious challenge for us in short run too. The post-industrial societies, in which the digital tolls and applications are working as society-shaping force, called infocommunication society.²

These societal transformations' obligate attendants are the transformations of the societal connections and the maturation of new systems of rules and relations. The law – as one of the most dominant societal systems of rules – will be forced to take up the question according the new occurrent phenomena sooner or later, even if the legislator does even later, then sooner. The legislator has a specially delicate situation, if the environment to be regulated is changing so dynamically, outranking the considered juridical mechanisms successively. So it happens if the object of the regulation connects with the use of all-time state-of-the-art technology, then the legislator (and the law enforcer) implements the new technology, creates the regulation, by the time the enforcement could gain currency and the practice of courts could evolve, then the regulated solution is already transcended, and in this way the regulation too.³ This phenomenal generates problems on the site, on which the

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²About the information and infocommunication society: Daniel Bell: *The Coming of Post-Industrial Society*. New York, Basic Books, 1976; Frank Webster (2002) *Theories of the Information Society*. London: Routledge; Balogh Zsolt György: *Az infokommunikációs jogról, Infokommunikáció és Jog*, 02. szám 2004., *Dialog Campus Könyvek* Budapest-Pécs, Torma András: *Az információ jelentősége a (köz)igazgatásban*. Budapest: Virtuóz, 2002.

³The situation is similar – for example – by the defence of intellectual property. By the time the legislator had created the opportunity of the effective counter-move against the multitudinous duplication on the physical carrier, there were the new technologies (for example: the FTP or the torrent-file sharing method) and virtually

binding regulation draws the line at the use of analogy, respectively from the status of the parties follows the pretence of a strict regulation (when the state, as the wielder of the executive power, is the subjective of the legal relations). On the basis of this all and in the interest of that the electronic document becomes utilizable in the magisterial procedure, the legislator is in a fix, specially if we take account of that the number of the type of cases is more than ten thousands and that's why the mulding is not simple. The problem is given and now the solution(or the attempt of this) though the example of the electronic travelling warrant.

2. E-administration

To find the correspondences between the difficulties of the electronic documents' use, we need to scrutinize how the current Hungarian rules of procedure evolved.

2.1. From the electronic administration to the e-public administration, there and back.

In Hungary the rules of magisterial procedure was re-regulated in 2004, it materialized in the Act CXL of 2004 on the general rules of administrative proceeding and services (called Ket.) It is relevant to place emphasis on that the Ket. came into effect after joining the European Union, reflecting the specialties of the EU's harmonization of law. One of the most expressive instances is the Chapter X about the Electronic Administration, which appraised the opportunity of the electronic way of the administrative proceeding foremost. The electronic procedural regulation was unknown in the inland legislation till this event(however it had antecedents)⁴. The Act defined as first: the *electronic administration*⁵ and the *electronic way*⁶, with which it opened the door to use of the *electronic documents*⁷ in magisterial proceeding. But the door was opened just on the face of it, namely because the self governments and governments got the authority to foreclose certain cases from the electronic way(and it eventued by the great majority of cases⁸), so there was only a narrow breach, across which the e-documents and electronic proceeding could begin their career. The digital travelling warrant was not found between the receivable documents.

The breakthrough came with the 2007-2013 budget of the EU, together with the transformation of the regulating environment. The eEuropa 2002 Strategy⁹ had already set an aim to work up the information society, and it had determined the group of basic

they squeezed out the former rules too, because the law (and extremely the criminal law) obviates the use of analogy.

⁴ The Act XXXV of 2001 about the electronic signatures, Directive 1999/93/EC of the European Parliament and of the Council of 13 December 1999 on a Community framework for electronic signatures., The Act CVIII of 2001 about electronic commercial services, about some questions according the services of information society.

⁵ Electronic administration: the administrative magisterial cases equipment in electronic way, and the totality of the needful contentional and formal technical circumstances of work.

⁶ Electronic way: the completion of actions of procedure through electronic data processing, data holding and forwarding, line-, raditechnical optical or electro-magnetical tools

⁷ Electronic document: joint of data which can be defined through electronic tools

⁸ The reason is usually the absence of infrastructure, respectively the absence of the needful liquid assets

⁹ http://europa.eu/legislation_summaries/information_society/strategies/l24226a_en.htm (21. april 2012)

services¹⁰, which must be accomplished for the private and economic sphere by the government. It ensured the sources of the new budget for it and the working out of the electronic services became an emphasised field.¹¹

Falling into step with the new aims of the budget the eEuropa 2002 Strategy improved in eEuropa 2005 (keeping the original aims till the last), then the new budget set the source with expanded content for the information society in the i2010 Strategy.¹²

The stronger and stronger countenance of the European Union according working out the information society meant commitment too for the member states next to the opportunity. This resulted in the Directive 2006/123/EC of the European Parliament and of the Council of 12 December 2006 on services in internal market.

3. E-logbook as documentation

The Ket. (§52.) laid the opportunity for using of the documents in the administrative proceeding. The utilizable documents (and peculiarly the group of the legal documents) can be narrowed onwards in certain proceedings by the type specific rules.¹³

Let's examine the general requirements for the documents, and then compare them with specific requirements of travelling warrant.

In the interest of proving the contest which it incorporates, the documents must to measure up to the requirement of the identification, truthfulness, integrity, undeniability. The former four requirements' fruition must be ensured without reference to the technology of preparation unconventionally, it refers to the original paper documents equally in this way, together with the electronic documents. This points to the fact the distinction can be based only on law, wit the rule decided which document can be accepted out of the documents (found in the part 2.)

If we examine the two cycles, when the electronic travelling warrant could be used (2009-2011)¹⁴, respectively the following cycle when the same technology did not suit the legal requirements, we can see that the requirements didn't change, all in all the rules to make the opportunity of the electronic way emerged.

So between 2009-2011 the travelling warrant's terms within named:

- a) The designation of the Upkeeper, the name of the Driver
- b) Registration number and premise of the vehicle
- c) Data of carriage, number of persons, departure, stops, location and date of arrival, status of Km-Clock, the charged Km-yield,

with this end in view it must be proved with a strict major blank, or with an electronic document accordingly.

¹⁰ Common List of Basic Public Services contains 12 services, which the private sphere has resort to and the 8 services, which must be ensured for the economic sphere.

http://ec.europa.eu/information_society/eeurope/2002/action_plan/pdf/basicpublicservices.pdf (01-05-2012)

¹¹ Keringer Zsolt: Elektronikus közigazgatás I. part http://terinformatika-online.hu/index.php?option=com_content&task=view&id=103&Itemid=1 (2007. szeptember 08)

¹² European Digital Agenda

http://europa.eu/legislation_summaries/information_society/strategies/si0016_hu.htm (21.april 2012)

¹³ § 190-199 in the Act III of 1952, Judicial Procedure Code

¹⁴ <http://www.nkh.hu/Gepjarmu/tevekenysegek/jarmuvekhaszn/egyebokmanyok/menetfuvarok/Lapok/default.aspx> (21. april 2012)

From 2012 these rules for the same travelling warrant are the following:

- The designation of the Upkeeper, the name of the driver
- Registration number and premise of the vehicle
- In case of transit: Data of carriage (number of travelling warrants made by Ware-Owner, the designation, amount and origin of carriage, wise of package; In case of dangerous ware, the ADR data)
- departures', stops' and arrivals' (and stowages') location and date, status of Km-Clock, together with the charged Km-yield.

On the merits there is no difference, the Electronic GPS Documentation is competent to provide the required information, but the accepted technology lost its availability without authorization in the magisterial proceeding as it reads well through the orientation on the website of National Transport Authority.¹⁵

This actuality procedures an awkward situation in the progress of relations' system of the legislation-technology (detailed in the Point 1.), on the basis of that the regulation isn't statute-barred on the grounds of technology's development, on the contrary we can take cognizance of that the technology became to be "exceeded", because of the legal environment's transformation. It's true, that the regulation chooses the not-forward solution, but it means withdrawal compared to the former legal regulation. Inasmuch as there is no statement, which reflects on the question if the inducted e-documentation came up to the expectations, and such a technological change didn't eventuate, which made the elaboration of new regulation's system justified, hence the law enforcer remained without soothing answer, in respect to the changes which existed behind.

Both the European Union's legal trends and the Hungarian legal way proceeds consistently to the mutual acceptability of the paper-based documents and the electronic documents. With this end in view of the principles of the technology's neutrality and the interoperability it is expectable from the legislator of any states which called itself an Infocommunication society to make this minimal expected step, namely to aim to create the equivalence between the documents. In every respect for the law enforcer's trust in the e-documents (which has a special emphasised role in EU 2020 Information society Strategy) such an inconsistent legislation of the legislator means a serious danger. It's specifically dangerous in an environment, in which the traditional (paper-based) documents prevail (in contrast with the vitally digital based societies, for example in Japan)

The dark curtain on the e-travelling warrant seems to lift, namely in August of 2012 the legislator - perceiving the untenable situation of the regulation – traces the electronic way back to the channel of legality. The 228/2012 (VIII. 23.) Government Decree § 6 (10) (operative from 22. October 2012) makes possible the use of the electronic travelling warrant. It won't be restored to the former liberal legislation, just in narrow circle, in case of

¹⁵ „Electronic letter of carriage or travelling warrant 261/ 2011 (XII. 7.) Government Decree and other regulation don't contain the definition, the terms, the approval, the quality, the usage, the control and the use's opportunity of electronic letter of carriage or travelling warrant. In stead of no other specifically strict major blank can be used electronic version of it automatically, regulation must permit it. On the basis of this all the driver must keep a record on the paper based letter of the carriage and must show it in case of control. The document must be retained accordance with serial number for 8 years. Any electronic letter of carriage can be a statement to help the internal function of the enterprise, but it is not eligible for magisterial aims!” (21.april 2012)

the *several accounted vehicular ware-transportation*¹⁶ it is possible to use the electronic documentation.

In regard to that the travelling warrant is a strict major blank, so (rightly) the rule seized the condition of the use of e-documents. In case of electronic travelling warrant the *defined data*¹⁷ must be seized in a closed system automatically or in the time of their availability.

The record equipment of the electronic document must be able to

- a. visualize the actual content of the stored data holistically,
- b. make an attested printing or to ensure the direct actual download of the stored data – in the way of the closed informatic system operated by the operator of the vehicle – for the controlling authority.

That is to say the new legislation returns to the former model, to one technology-neutral solution. So it means that the former elaborated and operable GPS based systems become to suited again, even if just in narrower circle, for the involvement of magisterial procedure, raising hope for the return of the highlight in 2009.

4. Summary

The electronic travelling warrant, as a common recognized proceeding, is an adequate technically subsidised electronic documenting form's gauntlets in the magisterial proceeding and it draws perfectly clear picture about the status of the electronic administration in our country. It's fact, that the documentation in the unchanged form is unsuitable to use, then it suits to the legal requirements, and nowadays it became „outlaw” again (but surely not permanently). It represents that the Hungarian electronic public administration is groping its way yet. The uncertainty of the legislator is recognizable when the practice tries to shape the elaborated solutions for its own interest in the given regulating environment, it generates tension between the state's expectations and the accepted practice.

We hope that this process won't make no following sacrifices and we can see the elaborated well-practiced solutions' resuscitation and acceptance.

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¹⁶ Several accounted vehicular ware-transportation: is the transportation of the ware or other thing by the economic entity, if the transported ware or other thing is the property of the transporter or the transporter bought, sold, rented or created by the transporter, extracted, took over for processing or repairing, processed, repaired thing, and the aim of the transportation is the carrying of the ware or other thing, or the dispatch from the transportation done by the operator's or rented vehicle;

¹⁷ The designation of the Upkeeper, the name of the driver, registration number and premise of the vehicle.

In case of transit: Data of carriage (number of travelling warrants made by Ware-Owner, the designation, amount and origin of carriage, wise of package; In case of dangerous ware – with the bias of ministerial decree about the territorial chemicals and fuels tracked by territorial wrecker or slow vehicle, track trailer - , the ADR data), departures', stops' and arrivals' (and stowages') location and date, status of Km-Clock, together with the charged Km-yield.

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