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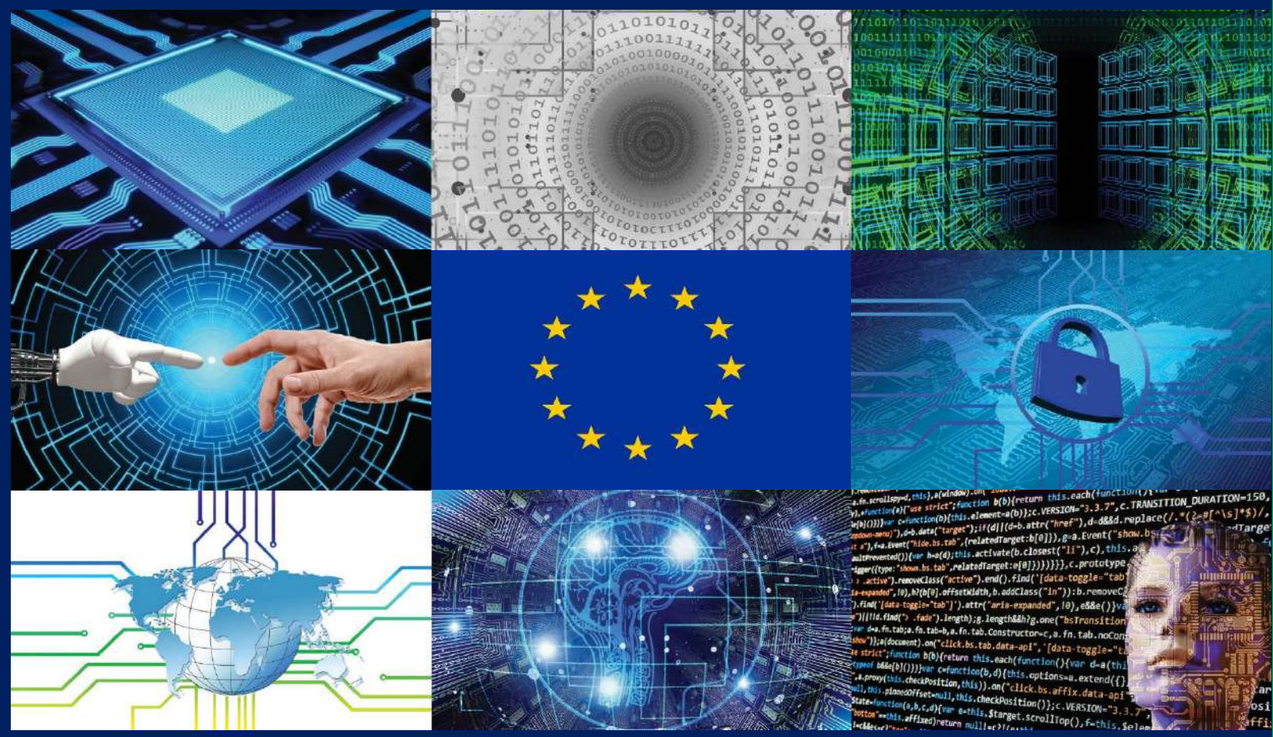

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*Form of Administrative Act at Time of Internet: Cues on Sidelines of a 'strange' Electoral Tie-in between Different lists (apparentamento)**

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ABSTRACT The aim of the essay is to investigate, starting from a specific case, the maintenance of classical institutions of administrative law, such as the form of the administrative act in the light of the impact of new technologies and the need to adapt the prevailing formalism to modernity. Administrative Court and legal knowledge's reluctance to innovate creates considerable problems of application, between form and substance in administrative law.

1. *Administrative act between content and form*

It is increasingly difficult for legal institutions to resist, as they have traditionally been restored, studied and assimilated, to a time when years run so fast, as technology evolves, so that each of them seems like a decade.

Not many years ago, the interpreter's attention was mainly focused on the content of the administrative act and on the reconstruction of what its peculiar characteristics - the subject, the object, the content, the cause, the will[1] - were, or should be, while the problem of its form, even though it was also considered among the necessary elements, remained almost in the background.

It was an acquired assumption rather than an element in itself that qualified the administrative act or measure. This thesis was known: the administrative act has, in principle, the written form as an ordinary form to express the will of the administration[2] and different forms - the example is that, too much abused, of the authority of public security[3] - are to be considered exceptional, or at least, looked at with a certain caution, in a world where paper was the master.

It seems to be talking about an ancient and different era, but until the beginning of this century - especially within government institutions - it did not exist, except in very exceptional cases, form of communication other than paper.

Even if the latter did not have had - as a first statement of this form - it was asked, however, that public will, in order to have actual value, would be formalized in an act that would contain exactly that content, maybe anticipated through other forms of communication.

2. *Case study: local elections in Seregno municipality and agreements in the network*

The case study to start from - for its representativeness - involved candidates for mayor of a large municipality near Milan[4].

Mayor candidates, of the two opposing coalitions admitted into the run-off, would not have made any appearance between the first and second rounds, the subject of the dispute was exactly that.

As a result of this, polling positions were distributed taking into account only the first round of polling stations. One of the candidates not admitted to the runoff ballot was one of those who protested against this type of distribution of

* Article submitted to double-blind peer review.

[1] This is evidently the most recent approach. As is well known, the current trend, having overcome the centrality of the structure underlying the declaration of will, has evolved in relation to the function concretely exercised in the logic of the procedure, in which the declaration of will becomes objective and which would be characterized by the unilaterality of the resulting act. In fact, even this last approach would seem to suffer from an attitude that takes little account of the evolution of the administration towards consensual instruments; on this point, see R. Villata and M. Ramajoli, *Il provvedimento amministrativo*, Torino, Giappichelli, 2017.

[2] Once again, this is clearly the least modern approach. On this point we refer to M. Mazzamuto, *L'atipicità delle fonti nel diritto amministrativo*, in *Diritto amministrativo*, vol. 4, 2015; F. Saitta, *Struttura e strumenti privatistici dell'azione amministrativa*, in *Ordines,* vol. 1, 2016, 188, seems to express himself with some concern about the tendency towards atypicality. On the contrary, it should be emphasized the rigid position of the administrative judge - especially with regard to contracts - in supporting the written form as an essential and ordinary condition of the way in which the administration expresses itself, a form that must exist *ab origine* and is not even curable, as noted by Cons. Stato, no. 5138 of 2018.

[3] For extensive case histories and examples, see R. Cavallo Perin, *La validità dell'atto amministrativo tra legge, principi e pluralità degli ordinamenti giuridici*, in *Diritto amministrativo*, vol. 4, 2017.

[4] These were the local elections held in the municipality of Seregno in 2018 following the early dissolution of the municipal administration.

seats, who claimed that, in fact, the association between electoral lists had been and had been widely published.

It had in fact happened - and indeed it is not, in its essence, the subject of dispute[5] - that, in the first round, excluding the minor candidates, four candidates who had obtained almost all the votes had been compared.

Those same four candidates had, subsequently, divided into groups of two at the runoff, with each of the two candidates, not admitted to the runoff, who had openly supported, who one or the other, two final competitors.

Regarding a substantial link between polling lists - it is repeated that on this point there is no complaint - there was ample evidence from statements that had taken place on all the most social widespread such as Facebook, Youtube, Instagram, Twitter, where support had been full from part of the two candidates not admitted to the runoff to the two candidates who had been, instead, allowed.

However, these elections were completed in favor of the mayor's candidate who came second at the runoff which, only probably thanks to the open support of one of the candidates not admitted to the runoff had managed not only to make up the disadvantage, but even to win, albeit by a fistful out of votes, in a municipality of over 40.000 inhabitants[6].

Lack of connection between electoral lists (of a formal type) ensured that the candidate was not admitted to the that had supported the winning candidate, had not participated in the distribution of the victorious coalition seats, but that he was counted among losers.

In essence, a majority had had more seats than the formal link between electoral lists would have given them, obtaining not only the majority seats, but also some of the minority seats.

The distribution mechanism was, moreover, so that the applicant, in fact associating himself with the list of the candidate for election to the runoff ballot but losing, was awarded one seat less than he would have been entitled to if the distribution had been made on the basis of a formal appearance. Hence the losing candidate's appeal.

Administrative Court of Lombardy, which certainly did not understand which scenarios arise and what relevant issues would have been the background to its decision, solve the matter with extreme - and it would not be wrong to say excessive - speed[7].

Legal precedent from which the Administrative Court is based is one, seemingly not too much, dating back to a statement drawn up by the Council of State (Cons. Stato, 22 April 2004, no. 1379) according to which the link between candidates on the second round must result from convergent declarations made by candidates and list delegates and that such declarations can only take the form of one or more writings to be presented as for the declaration of candidacy to the secretariat of the municipality to further fulfillment.

The T.A.R. Lombardy, Milan, 4 October 2018, no. 2210, expresses itself along the same line of thought, retaining that any statements made to press in absence of formal acts or, in any case, of an expression of will revealed in deeds produced during submission of a list do not produce effects, since the need for certainty regarding the effective connection between the statutory auditor and the list must be safeguarded, given the relevant consequences that this entails in terms of the conduct and outcome of the electoral process.

Since the written act of the link between the lists was missing, the same cannot be considered to have happened with the consequent rejection of the appeal by Administrative Court. It has just been said that the legal precedent referred to, for the failure to accept the arguments of the applicant candidate mayor, is apparently not even too far back. Appearances in reality, as often it happens, they cheat.

This ruling is in fact typical of another era and another world, now completely disappeared, almost as if it were another geological era, the comparison is deliberately extreme but, after all, not so much.

The world in which the legal precedent invoked is produced takes place in a context that still totally ignores the spread of today's communication tools - the so-called social media, but on the same definition there would be no shortage of say - that they have radically changed the lives of each of us and upset the politics of the entire Western world.

In the year from which the Lombard Administrative Court draws the precedent that conditions him, is the same year in which is launched in Italy Facebook. Twitter is two years later, in 2006, Youtube, in its Italian version, in 2007, WhatsApp in 2009 and Instagram in 2010[8].

[5] News can also be easily found on the web at the moment that reports a clear summary of what actually happened between the first and second round "*Ballottaggio Seregno. Defined the agreements: civic lists needle in the balance*", in www.mbnews.it.

[6] Both candidates had achieved in the first round respectively 38.08%, the candidate who would be the runner-up and 35.46% the candidate who would then be rewarded by the runoff. Altogether two candidates immediately following in the ranking they had.

[7] For an initial comment, see V.A. Piscopo, *Commento a T.A.R. Lombardia, sec. III, 4 October 2018, n. 2210*, in www.giustamm.it, vol. 14, 2018.

[8] About the spread of social media and concerns that result from it the Guarantor Authority of the Communication has

It is a Copernican revolution in which everything changes and changes with an absolutely unknown and probably unexpected swiftness.

Nowadays the telematic system as a whole unites about 30 million active users in Italy and the communication through WhatsApp is also used by administrations that want to communicate with citizens both news of general interest and individual profiles of their individual lives[9].

Communication, and the meeting of wills in its broadest sense, now takes place in electronic form, whereby systems entrusting the certainty of their content to social control rather than the traditional forms that have always been used.

Obviously, all this raises problems of enormous complexity: ranging from the security of data, to its controlled dissemination, to the very definition of the concept of truth and legal certainty.

Intricate topics on which it is will have to re-enter, albeit within necessary limits of an analysis addressed to a specific episode and a specific theme.

But what we must emphasize is the backwardness on these issues of the legal culture and an administrative judge who seems - if expression is allowed - more concerned with sweeping the dust under the carpet than dealing with sensitive issues than with the times impose.

That is, we are still tied to concepts and reconstructions that no longer exist and that do not can come back, almost as if the political dynamic has remained - even if it has ever been - a gentleman's agreement sealed in front of a city secretary.

The idea, or preconception, is that it is more important to affix and publish the agreement on the *Register paper praetorium* of the city hall - which, not surprisingly, no longer exists[10] - rather than the concrete diffusion of the political message in the streets and homes, in short, in everyday life, as happens today through the continuous connection to smartphones or tablets.

3. *An appeal against a Tweet*

The crucial point is that administrative courts have, almost deliberately, denied any openness to the new in the past.

Again, it is singular how the interest in the case - after some immediate declaration of interest - has almost immediately faded out[11].

It had happened that the Municipality of La Spezia had decided to remove, from one of its town squares, some plants considered foreign to the morphology of the area and that the intervention had been approved by the Superintendence.

This decision was followed by a lively controversy on behalf of some of those citizens' councils who had called for the plants not to be removed, believing them to be, contrary to what administration claims, consistent with the urban context[12].

As a result of protests, Minister of Cultural Heritage had tweeted "The Municipality of La Spezia will be asked to suspend the start of work (...) for the project to be verified by *MIBACT*".

This led to a complex dispute, as the Ministry had effectively cancelled the authorization originally granted.

The dispute took precedence over the

released the 2018 Information Consumption Report, which shows that that the percentage of those who inform themselves about political problems through the web is higher of those who do not inform themselves about politics and, above all, that 34% of the electorate is now informs through the use of computer systems in its most varied exceptions. Percentages which tends to increase and will definitely increase if you consider that much larger numbers are younger generations and that the percentage means that the system remains second to after the use of television only for participation in the sample of older age groups of the population.

[9] The *Icity Rate 2017 Report* shows - among many cases - that the Municipal Police of Maranello has activated a number for communication on accidents in progress and all traffic news; the municipalities of Bologna and Ferrara have the highest number of citizens registered on the Facebook page of the Municipality with more than 50% of the resident population; the Municipality of Milan has activated a service that allows through web to issue certificates of age and marital status.

[10] As evidence of an evident slowness of the legal system to accept new instruments of communication, resistance to the concrete institution of the electronic register is well known. In fact, article no. 23 of Law no. 69 of 18 June 2009 provided that, as of 1 January 2010, the advertising ensured through the municipal register was to be acquitted by publication on computer sites. The rule has had many slippages in the various so-called '*mille proroghe'* decrees that have followed over the years and in fact it became effective only in 2017.

[11] L. Dinella, *Il tweet può essere considerato un atto amministrativo?*, in *Diritto dell'informazione e dell'informatica,* vol. 11, 2017; S. Ungaro, *Il Consiglio di Stato si pronuncia sulla comunicazione istituzionale via tweet: attenzione ai cinguettii inopportuni,* in *Forum PA*, 2015.

[12] The issue was related to the redevelopment of Piazza Verdi, in the municipality of La Spezia. The municipal administration, in the project of requalification, had foreseen that they would cut down a few rows of trees, as they were considered alien to the urban context. According to the municipal administration, it was in fact a subsequent intervention, not coeval. to the original plant. Some environmental associations, on the other hand had considered that the planting would have constituted an original element of the square, and its deletion would have resulted in the original reading elements of the urban context being altered. The Superintendence joined the approach taken by the Municipality administration and had issued the required authorisation. Hence the appeal of those who had deemed the exercise incorrect power of intervention by the Ministry to exercise the powers of annulment of the act. Annulment had been preceded by a Tweet from the Minister who somehow, at least as it had been perceived, had anticipated what the central administration would do.

municipal administration, which had contested the annulment, both in first instance (judgment no. 787 dated 19 May 2014 by T.A.R. Liguria) and on appeal (Cons. Stato, sec. VI, no. 769 dated 8 January - 12 February 2015). Both in the first and second instance, in which Municipality was against the appeal, and had therefore intervened with an incidental appeal, the Tweet of Minister was also challenged, such as anomalous and illegitimate intervention in the procedure and as an indicator of a blatant - according to the administration - excess of power of the act adopted.

The dispute has been resolved, as has been said, positively for the administration, even if for different reasons compared to the last of those profiles that have just been mentioned[13], so much so that that the Council of State has declared the above profile inadmissible.

Nevertheless, the Council of State held to underline - almost as if for future reference - that "for the sake of completeness, the Board observes that acts by political authorities, limited to direction, control and appointment pursuant to Legislative Decree no. 165 of 2001, must always take the form typical of the activities of the public administration (Cons. Stato, sec. V, 24 September 2003, no. 5444, Supreme Court of Cassation, sec. II, 30 May 2002, no. 7913; Supreme Court of Cassation, sec. III, 12 February 2002, no. 1970), also, and all the more reason, in today's age of mass communications, messages, chirping, and more, due to new technologies and new and widespread ways of communicating political activity".

The terms 'messages and tweets' seem to appear to be objectively used, in the context of ruling motivation, somehow with some defiance, almost as if the authoritativeness of the expression of public authority had been muddied by them.

The overall position is essentially clear: the new communication tools that inform - whether it be for better or for worse - our daily lives are extraneous to the administrative procedure and must be relegated to so-called legal irrelevance.

4. *Public and private law*

It is necessary to examine what avenues are opened up in the face of such a clear-cut position of administrative case law.

The first remark has to be made - which would obviously need much more than that investigation - is the substantial backwardness of public law compared to private law that, for years now, has metabolized the presence of the network in the legal system[14].

Hence the feeling that the traditional form of act as a written deed appears, nowadays, to have the only bulwark of administrative law, in its (losing) attempt to remain anchored to old traditions and ancient certainties.

Beyond this unquestionable truth, there remains the question of what attitude to adopt in the face of a reality - that of the world of *ICTs* - before everyone's eyes and with which, inevitably, one will have to - it is only a matter of time - come to terms.

4.1. *Using what is available: the Digital Administration Code*

First approach to this is to step away from what already exists and try to implement it from time to time, to individual cases that may occur, provisions already in force, interpreting them in the way more useful to respond to the challenges facing us in the telematic world. Applying the approach to the case may be particularly useful to prove possible use.

Linking electoral lists that mature, after the first round, between the lists in support of a candidate admitted to the runoff ballot is, as is well known, governed by article no. 72 of T.U.E.L.[15] which states: "candidates admitted to the runoff ballot may, within seven days of the first ballot, declare the link with other lists than those with which the link was made in the first round". The rule states nothing about the form in which one must (necessarily) express consent to appearances. Less than ever it refers to the written form that case-law considers - as we have seen - implicit and therefore necessary and not substitutable.

Administrative courts forget - since the use is much lower than it should be[16] - that article no.

[13] The dispute was resolved positively for the administration as the applicants request was essentially directed to evaluate specific cultural interest in the square as a whole and therefore also including the existing tree species. On this point, however, the ruling is very clear in stating that it is not possible to see, what interest the Superintendence may have, once it has positively authorized an intervention, taking for granted the existence of the cultural interest of the object, to stimulate a further negative verification, aimed at the exclusion of the object from the cultural interest, which, at most, would be in the interest of the party directed to carry out action.

[14] C. Perlingieri and L. Ruggeri, *Internet e diritto civile*, Napoli, Edizioni Scientifiche Italiane, 2015; F. Finocchiaro and G. Delfini (eds.), *Diritto dell'informatica*, Torino, Utet, 2014. Evidently, problems faced are different and largely related to liability profiles.

[15] On the distribution of the seats in case of formal connection between electoral lists, see Cons. Stato, sec. V, 10 July 2012, no. 4057, from which perhaps the choice in the case under discussion has resulted. The judgment is of particular interest since the distribution of the relative's seats among the seats assigned to the winning coalition leads exactly to what is indicated in the text.

[16] The expansion seems evident notwithstanding that the presence of additional means of carrying out the administrative activity has been warned for some time now that, when the innovations allow it, it is necessary to carry out operations to adapt the old institutions to the new situations, on the point, A.G. Orofino, *L'informatizzazione*

20 of the Digital Administration Code explicitly provides that the document administrative form, intended as an expression of the will that underlies it, may also be produced/formed electronically and that this form "meets the requirement of written form and has the effectiveness provided for in article no. 2702 of the Italian Civil Code".

The same article 20[17] provides that in case the document is formed through the use of electronic form, duly certified, the equivalence with the written form derives directly from the law. Furthermore, it provides that, in the event that it is formed without the use of this specific formality, "the suitability of the computer document to meet the condition of written form and its probative value are freely assessable in court, in relation to its features of security, integrity and unchangeability".

The reason for this is that the regulation aims to guarantee "the security, integrity and unchangeability of the document and, clearly and unequivocally, its traceability to the author".

In other words, there must be the certainty that what is produced by computerized means has - in the case that is relevant here - the same specific content and the same sharing of intent that the municipal secretary (or notary) ascertains through the rite of authentication in written form of the forms with which those concerned converge (in the connection between the electoral lists).

In the present case there could be no doubt either about the will of the parties (or winning, as of those losers) to make a deal for the runoff round.

There is even a video on websites with a joint declaration of the (winning) candidate admitted to the runoff ballot and the candidate preparing to support him in the second round, where together argue - as a basis for their convergence - the need for a change in management of the city's public affairs[18].

It would seem that there is no greater tool than a visual video, in which both parties, even in their physicality, definitively imprinted in the computer support, unequivocally appear, and agree on the common intention to proceed in a common political path, to ensure that certainty of the origin of the declaration to which the code refers.

Obviously the above statements are used as a simple abstract exercise, as there would remain, however, an issue of transferring agreement data to the electoral office for the preparation of the ballot to be used in the second round, with the symbols that it must contain, as well as the problem of whether the candidate for statutory auditor not admitted is at the same time the delegate of the list that supports him.

What we want to stress is, however, not so much what happened in this case, but rather the oversimplification with certain phenomena.

The castling over the mere defense of the written form of the administrative act appears to be a defense of rearguard and gives the feeling of a war fought with the techniques of the deployment of 19th century armies in a world where machine guns have now arrived. It remains the case that the use of contemporary weapons of thought spreading - the example just made it is therefore not accidental - it was such as to have allowed, through a substantial link between the electoral lists, and its use through the network, which multiplied and expanded it, to attain - with the endorsement of Administrative Justice - an overwhelming victory and, conversely, a resounding defeat in which the losers had to give up even a part of the seats that the law would have recognized them in the balance between majority and minority thought by the legislator.

Although the solution of this problem, even using just instruments that current legislation allows, the solution to the problem, as it has been proposed, appears much more complex than it would allow us to perceive, in its laconic nature, the solution that emerges from the judicial investigation.

4.2. *Rethinking legal instruments: form and substance of administrative act in modern world*

However, a more radical approach to the issue exists. Research about form of administrative acts was, or rather at least at the origin, still understood - and today one would say it is confusing - with the issue of the written form, almost as if these two aspects were so coessential that they could not be distinguished from each other.

dell'attività amministrativa nella giurisprudenza e nella prassi, in *Giornale di diritto amministrativo*, vol. 12, 2004, 1382.

[17] The opinion of the Council of State of October 4, 2017 regarding the corrective decree to the Digital Administration Code is honestly disappointing and - with a simple paraphrase of the rule - simply notes that: article no. 20 amends article no. 22 (Computer copies of analogical documents) of the Code, foresees that IT documents, entries and documents in general, are fully effective when there is a digital signature, another types of qualified or advanced electronic signature or, in any case, if they are drawn up after the identification of its author, so as to guarantee the security, integrity and unchangeability of the documents themselves and their traceability to their authors. An additional subparagraph, 1-*bis*, is added, providing that the computer image copy of an analogue document must be produced by means of processes and tools that ensure that computer document has the same content and form as the analogue document from which it is taken.

[18] The message can be easily found on the Internet, typing both candidates surnames and the reference to the local elections for Seregno Municipality in 2018.

It is known how the oldest approach considered in the written form an element from which one does not could opt out to build a serious system of individual guarantees.

The expression of sovereignty, such as the original sovereignty of public power, badly tolerated any form of limitation which, in some way, influenced its exercise. In this sense, the requirement that the act must inevitably be reflected in the written form became the first moment with which the exercise of a power otherwise completely free and devoid even of the (useful) sedimentation that is typical of the expression that manifests itself through the written form.

From this point of view, however, the written form, and above all the fact that it was considered an essential element of the act, save where the law explicitly provides otherwise, represented an element of modernity that authors, at the beginning of the last century[19], systematized and articulated within a system of guarantees that was beginning to be definitively structured.

Changes in times and, ultimately, the full affirmation of the Democratic Nation, with its coessential system of guarantees, reduces the need from which the first interpreters moved to justify their beliefs.

In this way, the idea of the freedom of forms, or at least the conviction of a less rigid necessity of the written form, begins to make its way, but above all, it is the opinion that the written form is no longer (always with exceptions) as an element *ad substantiam* in the act and, therefore, as its constitutive element, but only as a modality of externalization of the administrative will as it has expressed itself[20].

Hence de quotation of the written form as an element that identifies the administrative act as an exercise of will.

Essentially, when the question of form becomes blurred and is that of act certainty – in every meaning, both in terms of content and origin - in an administrative system that is evolving decisively - it is enough to think only of article 21 *octies* of Law no. 241 of 1990 - aimed at a materialistic reading, being tied to defense of written form, in its traditional meaning, appears to be a choice of storage, destined, in the long run, to be inevitably lost.

In this perspective, interpretations according to which the written form would be the necessary outcome of a system that calls for it, both with reference to some of its contents and with reference to the motivation that would be obliged by article no. 3 of Law 241 of 1990[21], both at the act which contains them, as is the case for the form required for public contracts or the agreements substituting the measure[22].

Simplified interpretations because they do not consider that even objectives - which once again lead to certainty - can be achieved by means other than in writing.

On the other hand, it is precisely in administrative law that the relevance of behavior in itself is understood peacefully, regardless of and beyond the formalization of the will that provides for it.

In this sense, the regulation regarding administrative silence[23] is, in this sense, very different in the public law system compared to what happens in the private sector, and the legislator and the public doctrine in recent years have certainly seemed - this time, modernly - careful to grasp its implications precisely from the point of view of guarantee.

The same requirement, in fact, to limit public power by means of the expression of authority which led, at the origin, to view the need for the written form as the explicit form of expression of will, is now based on an assessment of a conduct, one might say without any form whatsoever, which allows, at the very least, the possibility of responding to inertia or even of reaching the position of advantage sought from the administrative authority[24].

Modern systems with which willingness is manifested in the modern world are therefore painted with new suggestions and take on a new value at the junction between the old and the new system of legally relevant relations. New relationships which, not by chance, invokes the same law on administrative procedure where it provides that: "in order to achieve greater efficiency in their activity, public administrations encourage the use of telematics, in internal relations, between the various administrations and between these and private individuals".

The true point is that case-law - as we have seen - appears light years away from a problem that it does not even intuit.

Vicious - in its constancy - is the defense of

[19] G. Zanobini, *Corso di diritto amministrativo*, Milano, Giuffrè, 1948, 252.

[20] See. S. Cassese, *Le basi del diritto amministrativo*, Milano, Garzanti, 1995, 241.

[21] It is known that only the written form would make it possible to express factual assumptions and legal reasons that determined the decision of the administration in relation to the results of the investigation; G. Corso, *Manuale di diritto amministrativo*, Torino, Giappichelli, 2020, 294.

[22] Effective is the study carried out by M.C. Cavallaro, *Gli elementi essenziali del provvedimento amministrativo*, Torino, Giappichelli, 2012, 70.

[23] Authoritative studies by A.M. Sandulli, *Sul regime attuale del silenzio-inadempimento della pubblica amministrazione*, in *Rivista di diritto processuale*, vol. 9, 1977, 169; F. G. Scoca, *Il silenzio della pubblica amministrazione*, Milano, Giuffrè, 1971, 204.

[24] A. Police, *Il dovere di concludere il procedimento e il silenzio inadempimento*, in *Codice dell'azione amministrativa*, M. A. Sandulli (ed.), Milano, Giuffrè, 2017.

the ancient certainties according to which "even in the lack of legal provisions explicitly imposing the written form, it must be considered that acts of public administration, even private acts adopted under the law common, but still functionalized should be discounted, as a general rule justified by requirements of certainty as well as to facilitate the control of the administrative activity in function of the good performance of the public administration, pursuant to art. 97 of the Constitution, the written form can be transformed into oral form only when the law or other regulatory source expressly establishes it (e.g. police orders, convocation of the Board of Directors and/or council for precise statutory or regulatory provisions)" (T.A.R. Puglia, Bari, sec. I, 20 May 2004, no. 2227; in the same sense Cons. Stato, sec. V, 22 September 1999, no. 1136; T.A.R. Veneto, sec. II, 30 April 1992, no. 395; T.A.R. Lazio, Sec. III, 24 September 1993, no. 1560).

Here the real blame of doctrine - but it is now widespread fault - is that of adapting to a cultural approach in which jurisprudence is no longer - as in the past - a point of arrival, but a point of departure.

5. *New unknowns and seeking different guarantees*

The breaking in of those modern ways of expressing the will in administrative law clearly opens up enormous problems and leads to issues that have so far been completely unknown.

It is impossible without mentioning it even with the limitations of the case. Once again, this first issue arises in terms of the certainty of legal relations and the protection of the rights of third parties. Moreover, there is a problem of preservation and classification of data that cannot be boiled down to a mere recall to traditional concepts of preservation in archives, even if computerized.

Lastly, there is an overt and dramatic security problem. The electronic data, precisely because it runs on an open web - or at least it can more or less easily become so - is easily exposed to much greater contamination than in the past for the traditional structures in which power, public or private, was manifested and expressed.

These tasks are huge in scale in which the administration has to find modern structures, just as modern is the phenomenon to be regulated, systems that cannot be left to the initiative of individual administrations, which, from time to time, are confronted with them.

The time has probably come, then, to seriously re-discuss the powers and roles of certain Independent Authorities, born in different contexts and for realities that are now substantially outdated.

Let us think - as far as this concerns - first of all, of the Privacy Protection Authority and the Authority for the Guarantee of Communications[25].

It is impossible to retrace their history and functions, but there is no doubt that their role as controllers must be reassessed and reassembled in a controlling role that is, for the issues that have been mentioned, much sharper than it is today.

Obviously, there is no denying how fundamental the function they assume is, but it is equally clear however that the background in which they were born has changed, with the need either to regulate, with autonomy, resources, which tend to be scarce, such as those on which information instruments used to travel in the past, or to ensure, within limited communities, protection of personal privacy.

These profiles today almost make one smile in a modern world where access to information systems is no longer central, but rather the excessive freedom that typifies it.

Similarly, the question of individual protection no longer arises as an individual need, but as a problem of data aggregation, of their use for commercial or, even worse, political purposes.

Without scandal, but the activities carried out today could, probably with the same capacity for government, be regulated by suitable governmental bodies and perhaps capable of directing the system with the same amount of incisiveness as is the case today.

It does not mean that the Independent Authorities being discussed should be overtaken or, worse, eliminated. On the contrary, it means to enhance even more its role and function in a challenge, which today seems almost impossible, and which tries to put order, with independence, compared to current political system, in the web network.

This all without leading - hence even more central to the issue of effective separation - to a pre-emptive control model for the expression of the will that manifests itself through the new freedoms that are the product of the network.

It is a challenge[26], which is not devoid of risks and which requires a deep-rooted change in our way of approaching the institutions that the new imposes, but, as Churchill wrote, that a war has really won it, "not always change is equivalent to improvement, but to improve one must change".

[25] C. Gianpiero and R. Chieppa, *Le autorità amministrative indipendenti*, Padova, Cedam, 2015; F. Luciani, *Le autorità indipendenti come istituzioni pubbliche di garanzia*, Napoli, Edizioni Scientifiche Italiane, 2011.

[26] About which the editorial, by B. Caravita di Toritto, *Social network, formazione del consenso, istituzioni politiche: quale regolamentazione possibile?*, in www.federalismi.it, vol. 2, 2019.