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Factual And Legal Consequences For The Public Administration Of The Recognition Of A Fundamental Right To Digital Inclusion

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Abstract:
This article aims to analyze the factual and legal consequences, for the public administration, of the recognition of a fundamental right to digital inclusion. The deductive method and bibliographic and documentary research are used. First, from the analysis in the context of International Human Rights Law (IHRL), it seeks to verify, at the international level, the recognition of the existence of the right to digital inclusion as a Human Right. An analysis of the internalization of this human right within the Brazilian legal system is also made. In a second moment, the objective aspect of the fundamental right to digital inclusion and its implications for the Public Administration are analyzed. Finally, the role of shaping public policies of digital inclusion to be exercised by the principle of efficiency in public administration is analyzed, and should be taken as a true axiological and hermeneutic vector in the application of Administrative Law aiming at the realization of the fundamental right to digital inclusion. It is concluded that, in the existence of a fundamental right to digital inclusion, the public administration needs to face major challenges for the implementation of a digital public administration, which is undoubtedly necessary for the realization of this fundamental right.

Key Word*: Administrative Law; Public administration; Principle of efficiency; Fundamental right to digital inclusion; Digital public administration.*

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I. Introduction

A Proposed Amendment to the Constitution (PEC) number 47/2021 is under discussion in the National Congress, through which it is intended to recognize digital inclusion as a fundamental right, with its consequent introduction in the list of fundamental rights of article 5 of the CF/1988.

Therefore, considering the concrete perspective of the formal recognition of digital inclusion as a fundamental right, it is necessary to seek to understand what would be the conformation and legal content of this right, if it can really be concluded that this right exists and, therefore, from its objective perspective, what would be its implication to the Public Administration.

The Public Administration, in the face of the challenges of a digital society, needs to meet the fair expectations of achieving a fundamental right to digital inclusion, and in the recognition of a right to digital inclusion, it is necessary that the Administrative Law, through its inherent principles, exerts the necessary influences for the performance of the Public Administration, as well as to play the role of a hermeneutic and axiological vector of interpretation and hermeneutic reorientation so that the Public Administration acts, driven by these influxes, in the construction of public policies necessary for the realization of this new right.

This hermeneutic role, of interpretation and reorientation, will take place through the application of the principle of efficiency applied to the Public Administration under the terms of article 37 of the CF/1988.

Thus, this article will deal with the fundamental right of digital inclusion, its recognition at the international and national level, as well as its reflections on the Public Administration, considering that the principle of efficiency has a function that shapes the public policies of digital inclusion that must necessarily be developed by the Public

Administration, seeking to make this right real through the implementation of a Digital Public Administration, and that makes the fundamental justice postulate real.

From the analysis and application of Robert Alexy's theory of fundamental legal positions, the objective dimension of the fundamental right to digital inclusion will be verified, a dimension directed to the Public Administration and informed by the principle of efficiency in the public service, in order to create a true constitutional duty to implement a Digital Public Administration.

II. Is There A Fundamental Right To Digital Inclusion?

Initially, there is a fundamental question that needs to be adequately addressed: is there a fundamental right to digital inclusion? To this question, it is necessary to seek the answer from the conceptual analysis of what fundamental rights are.

It is necessary to bear in mind that the fundamentality of a right is not necessarily linked to the idea of provision expressed in the constitutional text, since, from the idea of a block of constitutionality and material fundamentality, there is the understanding that the rights considered fundamental should not necessarily be expressly provided for in the text of the Constitution.

The fundamentality of rights stems not only from their formal provision in the Constitution, but also from their importance for the constitutional primacy of the dignity of the human person and other constitutionally enshrined values. Thus, there are formal fundamental rights and material fundamental rights. Every formal fundamental right is also material, but it is possible that there are materially fundamental rights without being formally constitutional, that is, it is possible to recognize the existence of fundamental rights even if not expressly (formally) provided for in the Constitutional text.

Formally fundamental rights can be understood and characterized as follows:

Formal fundamentality, generally associated with constitutionalization, points to four relevant dimensions: (1) the norms enshrining fundamental rights, as fundamental norms, are norms placed at the highest level of the legal order; (2) as constitutional norms they are subject to aggravated review procedures; (3) as norms incorporating fundamental rights, they often become material limits of the revision itself [...]; (4) as rules endowed with immediate binding on the public authorities, they constitute material parameters for choices, decisions, actions and control of legislative, administrative and judicial bodies [...]. (CANOTILHO, 2003, p. 379)

However, the dimension of fundamentality of rights is not limited to those that are expressed in the Constitution in its article 5 or in another topographically different provision in the constitutional text. In fact, it is possible to identify rights that are not constituting the so-called materially fundamental rights. They are characterized as follows:

The idea of material fundamentality insinuates that the content of fundamental rights is decisively constitutive of the basic structures of the State and society. *Prima facie*, material fundamentality may seem unnecessary in the face of constitutionalization and the formal fundamentality associated with it. But this is not the case. On the other hand, fundamentalization may not be associated with the written constitution and the idea of formal fundamentality, as demonstrated by the English tradition of Common-Law Liberties. (CANOTILHO, 2003, p. 379)

The existence of only materially fundamental rights is perfectible, so that it is possible to say that, on the general theory of fundamental rights, an "open clause" or a "principle of non-typicality" of fundamental rights is applied (CANOTILHO, 2003).

Thus, fundamental rights are today understood from a broader block of systemic spectrum that authorizes us to understand them as the set of inalienable, basic and essential rights of the human being, based on their recognition within an internal norm, the internal legal system, which internalizes a human right thus recognized within the scope of the international legal community, but not only, since its formal recognition is not a *sine qua non* condition for the application of the legal regime of fundamental rights.

Therefore, from what can be seen, a human right, when internalized, that is, recognized within the scope of a national legal system, can be conceptualized, from a classical view, as a fundamental right of the human being from a formal perspective. However, in the case of the Brazilian legal system, corroborating the recognition of the existence of a range of only materially fundamental rights, article 5, paragraph 2, of the FC/1988 is an open clause that expressly translates that the legal regime of fundamental rights is not restricted only to the rights formally recognized in the constitutional text, but also to those human rights recognized within the scope of the constitutional regime of fundamental rights and its adopted principles, as well as as as a result of international treaties and conventions to which Brazil is a party.

In this way, our domestic legal system recognizes, by express option of the constituent, the possibility of material recognition of a fundamental right based on the analysis of international documents for the promotion and protection of Human Rights, without prior need for its internalization through a Proposed Amendment to the

Constitution. In this sense, what is intended with PEC 47/2021 is the formal introduction of the right to digital inclusion as a fundamental right, based on its insertion in the list of articles 5 of the CF/1988.

It is a movement of formal inclusion by the constituent derived, within the scope of domestic law, from a human right that is currently widely recognized in international documents and organizations for the protection of Human Rights. It is a new right, which refers to an important dimension of promotion and protection of human dignity, thus characterizing a true "international expansion" (PRETI; LÉPORE, 2022, p. 156) resulting from the advances and progress in the international protection of human rights.

The so-called digital inclusion should be taken, today, as a legitimate human right, since it is human dignity that is intended to be protected and promoted, considering this as the perspective of protection and promotion of human rights. Undeniably, from this understanding, it is possible to extract the understanding that digital inclusion, in current times, is an undeniable human right to be protected and put into effect, since in this way, human dignity will be protected.

It is inconceivable in the current context of social relations that depriving someone of access to the means and resources of the digital age, due to its various instruments such as the internet, applications, artificial intelligence, social networks, is something tolerable from the point of view of the promotion and protection of their human dignity.

It is true that the international and national legal community needs to integrate itself in a multidisciplinary way with this reality arising from the environment of the cyber world, so that it can respond to the demands of this virtual reality that is more real in our lives than any other reality.

The virtual today is real, and the real is virtual, and it can no longer be said that there is a separation of the real/virtual world, considering that these two realities interpenetrate and merge into a single current reality, which is the reality of the digital and cybernetic world, without borders and without limitations of territorial bases. This brave new world is no longer consistent with traditional ideas of state sovereignty, social contract, and other traditional institutes of Law, which needs to reinvent itself for an adequate legal regulation of these phenomena.

It is necessary to understand this virtual reality as something independent and dissociated from the formal processes of social regulation historically developed by the Law. You are facing a reality that the traditional means and institutes of Law are not yet prepared. In fact, it is a brave new world, cyberspace, which can be understood as follows:

Cyberspace consists of transactions, relationships, and thought itself, arrayed like a standing wave in the web of our communications. Ours is a world that is both everywhere and nowhere, but it is not where bodies live. We are creating a world that all may enter without privilege or prejudice accorded by race, economic power, military force, or station of birth. We are creating a world where anyone, anywhere may express his or her beliefs, no matter how singular, without fear of being coerced into silence or conformity. Your legal concepts of property, expression, identity, movement, and context do not apply to us. They are all based on matter, and there is no matter here. (ELECTRONIC FRONTIER FOUNDATION, 1996)

Digital inclusion is shown to be one of the countless aspects resulting from the virtual reality of a digital world that is part of cyberspace, since, currently, for the purposes of the full exercise of civil, political, freedom and citizenship rights, the need for inclusion of people in this digital world is undeniable.

But would it be possible to extract the existence of a specific human right of digital inclusion from international documents for the promotion and protection of human rights? It is understood that this new right to digital inclusion is a logical consequence of the human right statement contained in article 19 of the Universal Declaration of Human Rights of 1948, which states: "Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas by any means and regardless of frontiers" (UNITED NATIONS, 1948).

This provision contained in the UN Universal Declaration of Human Rights confers formal and material legitimacy, at the international level of the global system for the protection of Human Rights, to the recognition of the right to digital inclusion as a human right to be supported and protected, as a kind of necessary right for the protection of the right to freedom of opinion and expression, in its aspect of freedom to use any means to manifest this right as well as to obtain and obtain information "by any means and regardless of frontiers" (ORGANIZAÇÃO DAS NAÇÕES UNIDAS, 1948). Indeed, how can such a right to freedom of opinion and expression be fully exercised today if not through the internet and its multiple tools?

It is in this sense that the United Nations Human Rights Council, through special report A/HRC/17/27, expressly stated that, considering the Internet as a means by which the right to freedom of expression can be exercised, States must take the lead in developing effective policies to provide all their citizens with universal access to the Internet. Indeed, "in the absence of policies and plans for specific actions, the Internet will become a technological tool that can only be accessed by a certain elite, which will perpetuate the 'digital divide'" (UNITED NATIONS HUMAN RIGHTS COUNCIL, 2011).

Undeniably, the realization of the human rights of freedom of expression, of obtaining knowledge and being informed, can only be achieved through the delivery of concrete services by States in order to ensure adequate means of access to the internet through the digital inclusion of populations.

Thus, even if there is no formal presence of a fundamental right to digital inclusion in the constitutional text - which is intended to be incorporated into the constitutional order as of PEC 47/202 -, the existence of this materially fundamental right must be recognized from the opening clause carved out in article 5, paragraph 2, of the CF/1988, given that, at the international level, this right is already recognized based on the exegesis of article 19 of the UN's 1948 Universal Declaration of Human Rights.

In this sense: "From the beginning, the Internet has become a fundamental means for people to exercise their right to freedom of opinion and expression, guaranteed by article 19 of the Universal Declaration of Human Rights and the International Pact on Civil and Political Rights" (UNITED NATIONS HUMAN RIGHTS COUNCIL, 2011).

It is not the object of this research to approach and identify which dimension or generation of human right this new right would include, however, it is undeniable that digital inclusion is not limited to a mere declaration of right with a merely rhetorical and enunciative aspect of proclamation of this right, but should, in addition, serve as an axiological vector of practical conformation, as well as to demand concrete benefits from the States for its implementation. Indeed:

Digital inclusion as a fundamental right, in this evaluative perspective, is a condition for overcoming formalism and the restrictive reductionism of interpretations and an open field of critical questioning. Digital inclusion as an inducer of processes that carry out the human condition in times of technological networks of information and communication. (GONÇALVES, 2011, p. 126)

It is for the realization of the intrinsic value of human dignity that digital inclusion, through its digital instruments, such as the internet, applications, systems, websites and social networks, must be a concern of the Public Administration. In this regard, the recognition of a right to digital inclusion should be considered as a material parameter for choices, decisions, actions and control (CANOTILHO, 2003) by the Public Administration. It will then be up to Administrative Law to properly order the performance of the Public Administration through optimization warrants, for the creation of appropriate public policies aimed at the realization of this fundamental right.

III. The Objective Face Of The Fundamental Right To Digital Inclusion

Once the existence of a fundamental right to digital inclusion is recognized, its subjective perspective will always be in vogue in the foreground, since such a right is added to the plexus of rights inherent to human dignity and that can be exercised by the individual, and its realization is required from the State, given the subjection of the citizen to positive status as exposed by Alexy when recalling Geog Jellinek's theory of status (ALEXY, 2007).

However, on the other hand, as in all fundamental rights, there is also an objective face of this new right, which is more directly important for the Public Administration. Considering that there is a central idea in force in the Constitutional State of Law that the State must be a State that is a friend of fundamental rights, its effectiveness depends on the so-called State duties of protection within the scope of its action. This is because the simple enunciation of a fundamental right in its subjective sphere is not enough for its effectiveness, but it is necessary that the State, through the Public Administration, make available to citizens a set of actors, instruments and processes capable of putting into effect the legal-constitutional enunciation of a fundamental human right.

The realization of a fundamental right statement in its subjective sphere, for the world of facts, to be perceived and felt by people, depends on concrete actions on the part of the Public Administration, which needs to appropriate the meaning and scope of the fundamental right norm, seeking to create public policies necessary to achieve this objective of implementing the fundamental right of digital inclusion.

According to Robert Alexy's theory of fundamental legal positions (2007, p. 214), every statement of fundamental right corresponds to a bundle of fundamental legal positions, that is, each fundamental right performs more than one function, and it is appropriate to state that the concept or normative type of a fundamental right should be understood as a bundle of positions of rights, which is to say that a provision of fundamental right corresponds to a set of norms that are associated with them based on that statement.

From this it can be concluded that every statement of fundamental right corresponds to an objective sphere that must be at the service of the subjective sphere. In fact, according to Canotilho (2003, p. 399), the objective dimension of a fundamental right means a duty of protection of the State in relation to the fundamental right, since it is primarily the responsibility of the State to safeguard subjective fundamental legal positions against possible violations of all kinds, whether by action or omission of the State itself or of third parties. These are legal duties imposed on the State.

Furthermore, as Andrade (2007, p. 155) warns, there cannot be a "pure and simple redirection of all state activity at the service of the subjective dimensions", since the protection of a fundamental right, in addition to

serving the realization of subjective rights, also serves to protect the right at its level of collective interest in society.

Therefore, from the understanding of the existence of an objective dimension in every statement of fundamental right and that this dimension is at the service of the subjective dimension, in addition to being at the service of the collective and social interests arising from said statement of fundamental right, it is necessary to understand that this objective dimension is embodied through appropriate public policies to be implemented by the Public Administration.

With regard specifically to the right to digital inclusion, we can cite as a result of the objective face of this new right, the need to create a public policy for digital inclusion, through different and varied instruments, such as digital government, transparency and access to information by digital means, universalization of access to the internet, reduction of digital illiteracy, popular participation through the direct exercise of democracy through community councils with participation through information technology tools. In short, there are many instruments through which public policies for digital inclusion should be developed.

Likewise, from the objective aspect of the right to digital inclusion, state activity is called upon to provide an adequate solution to problems arising from a communication society, or global or information society (ANDRADE, 2007), as a result of the new modus of interaction in today's society, which is highly complex and highly dependent on the internet in its social relations. requiring the action of the Public Power, in the sense of creating, at the normative level, an adequate and sufficient legal protection.

In view of all this, a "constitutional malaise" is created (CANOTILHO, 1988) resulting from a deficit of regulation at the normative level, with unsatisfactory responses to the new social standard and to the new social dilemmas, which need to be resolved based on a constitutional and infra-constitutional interpretation appropriate to the new dilemmas arising from an information society that holds a right to digital inclusion.

Numerous challenges such as the accountability of service providers and social networks, the regulation of virtual spaces without this meaning censorship of individual rights and freedoms of expression and freedom of expression, protection of intimacy and private life, protection of personal data, among many other challenges that put at risk the current society and individual fundamental human rights.

IV. The Principle Of Efficiency And Its Role In Shaping Public Policies For The Implementation Of A Fundamental Right Of Digital Inclusion By The Public Administration

From the understanding of the existence of a fundamental right of digital inclusion to be made effective by the State through its Public Administration, it is questioned whether Administrative Law will have any role in the realization of this right, through its postulates and due to the effects arising from the objective face of the new right, as verified.

Immediately, digital inclusion, understood as a true fundamental right, gives rise to the need for Administrative Law to be rethought in its theoretical bases, institutes, postulates and principles, so that its merely regulatory role must be overcome to become a mechanism for the enforcement of fundamental rights, through a critical application in the hermeneutic-interpretative field (should be), as well as in the material field (of being). In this sense, as Gonçalves (2011, p. 126) points out:

Digital inclusion as a fundamental right, in this evaluative perspective, is a condition for overcoming formalism and the restrictive reductionism of interpretations and an open field of critical questioning. Digital inclusion as an inducer of processes that carry out the human condition in times of technological networks of information and communication.

It is the role of Administrative Law, based on this "process-inducing" view, to induce, through its postulates, the performance of the Public Administration for the construction of public policies, as well as the administrative acts resulting from the establishment of these public policies, so that they are always practiced with marked bias in the search for the realization of the fundamental right of digital inclusion in its various possible and necessary perspectives, aiming to make digital inclusion effective in people's lives in its most varied spectrums.

In this sense, according to the UN Human Rights Council, States must act to reduce the digital divide among their citizens, in order to create a technologically egalitarian society, citing, as an example, the objectives established by nations through the Plan of Action approved in Geneva in 2003 at the World Summit on the Information Society (UNITED NATIONS HUMAN RIGHTS COUNCIL, 2011), where concrete objectives and goals were established, which are:

[...] building an inclusive information society, putting the potential of knowledge and information and communication technologies at the service of development and promoting the use of information and knowledge to achieve internationally agreed development goals.

Thus, the report points out different initiatives that have already been adopted by States in order to seek the realization of a fundamental right to digital inclusion, in order to reduce the so-called digital divide. In this

sense, it must be questioned how can Administrative Law be put at the service of the realization of the fundamental right of digital inclusion?

It is necessary to understand that Administrative Law, based on its own institutes, principles and rules, is responsible for ordering and guiding the concrete action of the Public Administration, within the old and classic concept according to which it is responsible for disciplining the administrative function of the State, as well as its organs and people who exercise this function (MELLO, 2021, p. 33). It is undeniable that Administrative Law has a crucial role in the elaboration of optimization warrants and axiological and interpretative vectors, from which the practical conformation of Public Administration actions should be sought with a view to the elaboration of public policies that will be made effective by administrative acts in order to achieve a fundamental right of digital inclusion.

As optimization mandates, according to Alexy (2007, p. 67), constitutional principles, being legal norms, order that something be accomplished to the greatest extent possible, within the existing legal and factual realities, with principles being important axiological, interpretative and practical conformation vectors of a fundamental right.

In this sense, the principle of efficiency contained in article 37 of the CF/1988 has highlighted the role of shaping administrative action in the construction of public policies aimed at reducing technological inequality and the realization of fundamental rights of digital inclusion, and should be considered as a true axiological and hermeneutic vector for the interpretation of the fundamental right to digital inclusion.

Based on the principle of efficiency, thus considered as a constitutional norm of a conforming nature to the performance of the Public Administration, it is intended to emphasize that it serves to complete, specify, concretize and define (CANOTILHO, 2003) the content of protection of the fundamental right of digital inclusion, giving the Public Power a mandate to be fulfilled with a view to the realization of this fundamental right.

Thus, by the express principle of efficiency applied to the Public Administration introduced in article 37 by virtue of the action of the derived constituent, under the terms of EC 18/98, it must be understood from two perspectives, as Pietro (2007, p. 75) teaches:

The principle of efficiency presents, in fact, two aspects: it can be considered in relation to the way in which the public agent acts, from whom the best possible performance of his duties is expected, in order to achieve the best results; and in relation to the way of organizing, structuring, disciplining the Public Administration, also with the same objective of achieving the best results in the provision of public service.

It is precisely in its second perspective, that is, that of seeking to achieve better and more efficient results in the provision of public services, that the role of the right to digital inclusion played by the principle of efficiency applied to the Public Administration is situated. In fact, from the reading of this principle, for the Public Administration to be truly efficient, providing quality public services, it must have as one of its priorities the execution of public policies that promote the digitalization of its processes and procedures, offering citizens a wide range of virtual services, making the interaction between citizens and the Public Administration more agile, transparent and clear.

Thus, being efficient today involves the need to create and structure a network of virtual services to be offered to citizens by all spheres of government, especially in the municipalities where they live and where most of the services are provided to citizens, in the areas of health, education, public security, social assistance and culture. That is why digital government tools, public transparency, administrative processes, administrative dispute resolution, access to information and social control are instruments that still need to be greatly improved so that they can be accessed and used by the vast majority of the population, making Public Administration efficient.

According to a study carried out by the Development Bank of Latin America together with the Federal Government, released through the document "Digital Government Map 2022", it was pointed out that Brazilian Municipalities need to advance in digital inclusion strategies in order to promote efficiency in their services, going through actions that in summary are:

According to Mapa, for municipalities to achieve an effective digital transformation, they need to overcome 10 strategic challenges: the digitalization of public services; the digital inclusion of the citizen; the contracting of innovative solutions; leadership sponsorship; data security; the conversion of legacy systems; the redesign of processes; the promotion of digital skills; the retention of specialized teams; the guarantee of financial resources for constant updating and maintenance of the process. (BRASIL, 2022, p. 07)

For this to occur, it is necessary that public policies, seeking in the principles of efficiency their normative reference, act to strengthen the digital means necessary for the integration of services, through a digital charter of services to be made available to the citizen, through an operational, multichannel and intuitive, agile infrastructure, which requires investments in a robust information and communication technology (ICT) structure. improving as a whole the citizen's experience in their interaction with the Public Administration.

However, if, on the one hand, it is necessary to place the Public Administration at an advanced level of digitalization of its services and mechanisms of interaction with citizens, on the other hand, from the point of

view of the subjective face of the right to digital inclusion, it is necessary to invest in public policies that can prepare individuals for the digital world, through public policies for digital education and programs to increase Brazil's telecommunications infrastructure, such as the expansion of the 5G mobile phone network, the dissemination of fiber optics for broadband internet networks for the population, among other actions to improve the infrastructure of public services to provide internet access.

Therefore, it is undeniable that access to the internet can be considered a fundamental human right as well as access to drinking water or health and education services, since access to the internet, from the perspective of the citizen, is shown to be a necessary and basic means to protect human dignity, since it is through access to the internet that the citizen can exercise many other fundamental human rights.

Thinking about a maximum and efficient digitalization of the Public Administration and its services, it is necessary to ensure that individuals have the means to effectively enjoy these services through the effective possibility of accessing government applications and websites, and it is then necessary that there is, in fact, a real offer of internet access to the citizen, as well as the availability of quality in the provision of this service and access to adequate and efficient equipment, such as computers, tablets, and smartphones.

These are just a few examples of the implication arising from the recognition of the fundamental human right to digital inclusion and its reflections in the context of Public Administration and how the principle of efficiency should be taken as a principle that shapes public policies for the realization of this new right

V. Conclusion

Digital inclusion is a new right that requires new hermeneutic approaches based on a constitutional dogmatic that can reproduce, at the level of the postulates and institutes of Administrative Law, the search for the realization of this new right. Once this right has been declared, how can it be guaranteed and enforced? These are the crucial points that should be the object of concern of the hermeneutic who applies Administrative Law, within the scope of his performance. Who are these hermeneutics? They are the public servants and public managers involved in the process of planning, building, formulating and executing public policies for the factual implementation of a right to digital inclusion.

This article is not the object of investigation, but it seems interesting to us the provocation: in which dimension of fundamental rights would such a right to digital inclusion be situated? Undoubtedly, it is a right that has varied dimensions with a multifunctionality, provides and a fundamental guarantee for the exercise of other rights.

From the point of view of its multifunctionality, the statement of the fundamental right to digital inclusion includes subjective dimensions to be ensured to the individual, and may, from this perspective, require the citizen that the State provide him with a certain factual provision in order to ensure the enjoyment of this right, however, there is also an objective dimension that turns to the State as a normative command-imposed duties to materialize this fundamental right.

The implementation of the fundamental right to digital inclusion is complex, requiring a range of actions by the public authorities in order to make it effective. From the perspective of the Public Administration, the existence of this new right implies the requirement of the construction of public policies appropriate to meet satisfactory levels of effectiveness of the new right.

In this regard, what would be the role of Administrative Law in achieving this objective? Specifically, the principle of efficiency must play a preponderant role as an axiological and hermeneutic vector, acting as a conforming principle for the performance of the Public Administration in the realization of the fundamental right to digital inclusion, through public policies aimed at this end.

The realization of this new fundamental right implies the recognition of various factual and legal actions, considering their subjective and objective aspects. In the subjective aspect, the citizen has the ability to demand factual and legal benefits from the Public Power aiming at safeguarding his sphere of fundamental law protection necessarily through the effective protection of this right. From an objective point of view, this right implies for the Public Power the duty to implement such factual and legal actions, aiming to make available to the citizen a series of factual and legal services, aiming to materialize the right to digital inclusion. Still, from an objective point of view, the new law imposes on the Public Power the duty to transform the Public Administration, making it a Digital Public Administration.

The challenges are enormous, especially in relation to Brazilian municipalities that, given their administrative and financial autonomy, must promote the adequate construction of their own public policies for digital inclusion and digital efficiency of the Public Administration.

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