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Bulgarian litigation pushed towards digitalization!

With State Gazette No.110 / 2020, promulgated on 29 December 2020 (hereafter the “**SG**”), the Bulgarian legislature introduced an extensive Amendment and Supplement Act (“**Amendment Act**”) to the Code of Civil Procedure (“**CPC**”), which is, arguably, the most significant leap towards e-judiciary and e-litigation the Bulgarian legislator has taken to date. The Amendment Act introduces changes not only to the CPC, but to various other instruments as well, such as the Criminal Procedure Act, the Judicial System Act, and the Bar Act, with the main goal to establish an overarching framework that would allow legal practitioners in Bulgaria to litigate and otherwise communicate with Bulgarian courts entirely electronically.

Of all the changes the Amendment Act brings about, those of key significance to the digitalization of Bulgarian litigation are undoubtedly found in the CPC. Systematically, they include two major groups of rules, the first of which concerns the exchange of documents between courts and litigation parties through various electronic means, whereas the second deals with the online conduction of procedural actions.

Exchange of Documents via Electronic Means

The principle that court documents (statements, applications, requests, summons, etc.) shall be served at the addresses the parties themselves have indicated remains intact. However, the parties shall now mandatorily include an electronic address (if they have such) in addition to their physical address in their initial litigation documents and shall indicate whether they do or do not agree to exchange and receive documents with the court via electronic means. These rules suggest that, as a rule, the parties’ consent shall be explicit, but the legislator has also included a situation where the parties’ consent shall be presumed – that is, when they have performed procedural actions via electronic means (the rules concerning the digital performance of procedural actions are reviewed below).

The Amendment Act envisages three types of electronic exchange services that the parties may choose from for the purposes of digital communication with the courts:

- The Unified Electronic Justice Portal (“**UEJP**”), the special information system of the Bulgarian judiciary, set up under the supervision of the Supreme Judicial Council. The main functionalities of the UEJP include the ability for interested parties to apply for e-certification and trust services, to carry out procedural actions under pending cases electronically, to send and receive court documents, and to access digital copies of case files and public registers. All authorities of the Bulgarian judiciary (courts of law, prosecution, and investigation offices) are obliged to create and maintain official portals with the UEJP. The judicial authorities shall create digital copies of all documents they receive from interested parties (statements of claim, attachments, secondary applications and requests, attachments thereto, etc.) and upload them to the UEJP for the purposes of organizing them into electronic case files.
- Electronic Qualified Mail (“**EQM**”), an online communication and documents exchange service the State Agency for Electronic Government (“**SAEG**”) provides.
- Regular e-mail service, such as Gmail, Yahoo, etc.

Depending on the type of service chosen, the Amendment Act provides for different rules that establish and verify the moment a document shall be considered served or a procedural e-action performed. In cases where documents are being served via UEJP or EQM, the document shall be considered served on the date the addressee has downloaded it from the respective system. To establish this, the UEJP and EQM services will generate and send to the issuing authority an automatic system message, which will show and verify the date and time the addressee has

downloaded the document. To this end, an addressee of an electronic document shall download that document within seven days. In case the addressee fails to do so, the documents will be presumed to have been duly served as of the next day following the expiration of that term.

This presumption applies only to documents served via UEJP or EQM and does not encompass documents served via regular e-mail. In the latter case, under the new rules of the CPC the documents shall be considered duly served on the date the addressee **has specifically confirmed their receipt**, e.g., via e-mail response or by read receipt. The addressee shall have a term of 7 days to provide such confirmation, but in case this term expires without result, the documents will **not** be presumed duly served. Instead, the court shall proceed to serving them again through the regular service procedure, i.e., in hard copies sent to the addressee's physical addresses (current or permanent) indicated under the case.

The new rules of the Amendment Act allow parties to withdraw their consent to receive court documents electronically at any time during the proceedings. In these cases, as well as in the cases where the party does not have an electronic address at all or has chosen not to give consent for electronic exchange of documents, court communication shall carry on as usual and documents shall be served in hard copies to the party's current or permanent address. To this end, the Amendment Act provides that the consent withdrawal shall not be effective retroactively - any document serving procedures and / or actions performed electronically prior to the party's withdrawal of consent shall remain fully valid after such withdrawal.

The fact that the Amendment Act allows the parties to refuse giving consent for electronic exchange of documents or to subsequently withdraw it shows that the electronic exchange of documents is, at least for now, an option at the parties' disposal. This notwithstanding, the legislator has also provided that the electronic exchange shall become the sole means for court communication and exchange for certain categories of parties.

To this end, with the expiration of the *vocatio legis* of the Amendment Act (most of the provisions are set to enter into force in June 2021, with some exceptions entering into force in June 2022), the electronic exchange of documents becomes mandatory for state authorities, enforcement agents, public notaries, banks, financial institutions, insurance companies, mobile and communal service providers, and, most notably, **attorneys**. In contrast to most of these categories of parties, where the legislator has found it sufficient to simply place them under an obligation to communicate with the court entirely electronically, there is an entire set of new rules that deal with the serving and receipt of documents between courts and attorneys.

Prior to the Amendment Act, the principle was that attorneys shall receive documents at their law offices. Now, that principle is abolished and instead attorneys shall receive documents through UEJP, and only as a secondary option - at any other place where they carry out business activities. For this purpose attorneys shall mandatorily create and maintain a user profile with the UEJP. The same provision also obliges attorneys to create and maintain a user profile with the portal of the SAEG for EQM services no later than **30 June 2022**.

The Amendment Act also introduces an interesting new concept, which could be construed as an attempt to ensure that attorneys in Bulgaria may use up to 60 consecutive days of annual leave, during which they could put the receipt of pending court documents on hold. This also applies to sickness leave periods, which are regulated as a separate option and do not count towards the 60 days of leave. Attorneys shall specifically indicate in the UEJP the period during which they will not receive court documents. They shall receive (i.e., download) all court documents sent to them during the indicated leave period within 7 days following the leave period's expiration. In case the documents are not downloaded within this deadline, they shall be considered duly served to the attorney on the first day thereafter.

Lastly, the Amendment Act entitles courts to serve documents electronically regardless of the parties' consent in case of unforeseen circumstances, such as natural disasters, emergency situations, etc.

Procedural Actions in Electronic Form

The second major group of new rules the Amendment Act brings into effect concerns the digital performance of valid procedural actions before courts.

The courts of law will be obliged to issue all court acts and perform all other procedural actions predominantly in digital form. Courts shall only be allowed to use traditional (non-digital) means to do so when acting digitally is not possible due to the respective action or act's nature or if a special law provides otherwise.

The new rules define "procedural actions in electronic form" as acts in performance of procedural rights and obligations, undertaken entirely remotely (through optical, electromagnetic, radio or other type of remote transmission means) by using devices for electronic transmission and storage of information. Courts are explicitly obliged to accept such actions only if they have been performed through the UEJP or via SAEG's EQM service. This means that courts can still refuse to recognize procedural actions performed by regular e-mail.

The Amendment Act also introduces multiple secondary obligations, aimed at ensuring that all interested parties are properly informed of the possibility to conduct procedural actions digitally and the necessary steps to validly do so. To this end, courts shall immediately confirm the valid receipt of a party's digital procedural action or notify the party in case there are technical irregularities preventing the digital action from being validly performed.

The rules of the Amendment Act also reinforce the obligation for courts to create and maintain digital copies of case files in the UEJP and, upon request, to provide the parties or their representatives with access to these copies for review and verification purposes. If these rules are implemented properly in practice, they might both facilitate the obtainment of information about the development of proceedings by practitioners and significantly allow for better organization of the workload of court desk officials. They can also bring significant health safety benefits in the light of the ongoing COVID-19 situation, as they have the potential to reduce the accumulation of large groups of people in small, limited premises.

The identification of parties who have performed digital procedural actions or have otherwise digitally communicated with the court shall be verified pursuant to the rules of the Electronic Identity Act. It remains to be seen how this particular provision will play out in practice, because it implies that anyone who would like to use the benefits of electronic communication with Bulgarian courts shall obtain an official digital identity certificate pursuant to the Electronic Identity Act. All documents and procedural actions for which the CPC requires written form or signature, shall be verified / performed by qualified electronic signature.

The Amendment Act also introduces rules that regulate the processing of submitted documents and their attachments. When a procedural action or statement on behalf of a litigation party is carried out by a proxy, the proxy shall attach a digital copy of their hardcopy power of attorney. If the power of attorney has been given digitally, the proxy shall present a digital copy, signed with qualified electronic signature. Parties shall not provide counterparty copies of court documents and statements that they submitted electronically; instead, these will be available for the counterparties to review and receive directly inside the UEJP.

To encourage active use of digital means of exchange, there will be a 15% reduction of all state fees. In case parties who have benefitted from this incentive subsequently withdraw their consent to receive court documents electronically, they shall pay the difference between the reduced amount of the state fee and its full amount within 7 days.

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