ARTICLE:

E-JUSTICE AS ADOPTED IN BULGARIA

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On the 21 November 2012, the Bulgarian Council of Ministers adopted with its decision an important document for the judicial reform of the Republic of Bulgaria, referred to as the Concept on E-Justice (the 'Concept'). The document is based on the Multi-annual Action Plan for the period 2009-2013 in the area of European E-Justice. [1]

The necessity for e-justice

The Concept outlines the scope of the of e-justice paradigm – a complex of financial, organisational, technological, educational and legislative measures aimed at the effective use of information and communications technologies in the judicial system. In particular, the measures are aimed at ensuring the:

a) opportunity for citizens and legal entities to exercise procedural rights in electronic form;

b) provision of e-services (referred to as "execution of certification statements") by judicial bodies;

c) internal organisation of work with electronic files;

d) exchange of electronic documents and data between judicial bodies;

e) exchange of electronic documents and data between judicial bodies and administrative authorities, persons performing public functions and organisations providing public services, and

f) performance of the commitments of the Republic of Bulgaria pertaining to its EU membership and the compliance with the European Commission's (EC) recommendations in the monitoring reports.

The introduction of e-justice measures should increase the efficiency of judicial bodies and their administrations. At the same time, at least the same level of security should be in place as for the exchange of information and documents on paper. The measures aim to create transparency of the judicial system in the performance of its functions and should lead to a reduction in costs. E-justice will be introduced following the requirements stipulated in the special acts – the Classified Information Protection Act, the Personal Data Protections Act, the Special Intelligence Means Act. Relevant amendments to these acts will be implemented, if necessary.

The legal framework

At present, there is no legal basis for using electronic documents and electronic signatures in relation to the judicial system, and respectively in the activities of judicial bodies and their administrations. Besides, there is no legal basis for exercising procedural rights in electronic form. Single provisions in procedural acts have introduced limited opportunities of keeping particular lists or books in electronic form and for the performance of particular actions in electronic form. An opportunity of presenting electronic evidence to prove property relations has also been provided.[2]

With the entry into force of the Electronic Document and Electronic Signature Act (EDESA)[3] electronic documents are acknowledged to be equivalent to paper documents and may be signed with a simple, advanced or qualified electronic signature, which has the legal effect of a handwritten signature. However, regardless of the scope of EDESA, there remains a large number of public relations issues concerning the acknowledgement of the legal effect of electronic documents and electronic signatures in the judicial system, and the exercise of

1 *OJ 2009/C 75/01 of 31.3.2009.*

2 *Art. 184 of the Civil Procedure Code - the electronic document may be presented reproduced on a paper carrier as a copy, certified by the party. In event of a request, the party shall present the document on an electronic carrier. If the court does not have at its disposal technical instruments and experts, which give opportunity to reproduce the electronic document and to conduct the due check of the electronic signature at the court hall, in the presence of the appeared parties, electronic copies of the document shall be presented to each of the parties to the legal proceedings. In this case the authenticity of the electronic document may be contested at the next court session.*

3 *Promulgated SG. 34/6 Apr 2001, amend. SG. 112/29 Dec 2001, amend. SG. 30/11 Apr 2006, amend. SG. 34/25 Apr 2006, amend. SG. 38/11 May 2007, amend. SG. 100/21 Dec 2010.*

procedural rights in electronic form in general.

In this regard, amendments to the relevant substantive and procedural laws should be adopted to stipulate the use of electronic documents and electronic signatures in the work of judicial bodies. The use of electronic documents and electronic signatures before judicial bodies, and the regulation of the use of technologies actually means that citizens will be able to exercise their procedural rights in electronic form, and judicial bodies will be able to undertake procedural actions in electronic form, such as the issuance of acts or notifications, as well as to make certification statements in electronic form.

Stages of the reform

The concept of the proposed set of legislative acts for amendment and supplement to the existing legal framework is based on a number of items, discussed below. The introduction of e-justice is not a single act, but a process, which should take into account the current state and readiness of the judicial system to introduce reforms, as well as the financial security of the reforms. At present, the simultaneous transition to e-justice of all judicial bodies is impossible due to the discrepancy in the level of organisational readiness, the use of different information systems, the different level of modern technological equipment availability, and the different level of qualification of employees with respect to new phenomena and processes in e-justice. Finally, the diversity of organisational processes in the particular groups of judicial bodies should be noted – courts, the prosecution and investigatory bodies, each requiring an individual reengineering approach to the work of e-justice. Therefore, the reform which is to introduce e-justice should undergo the phases discussed below.

First Phase – transitional, decentralised approach

The aim is to undertake this phase within three years after the entry into force of the amending legislation.

Nature of the reform

To ensure the flexible and gradual transition of the judicial system towards operating in the context of e-justice, the Concept envisages that the legal opportunity to exercise procedural rights should arise in the first stage after a decision is adopted by the Supreme Judicial Council (SJC) and with the technological readiness of the respective judicial body. Upon request by the respective body, SJC will establish whether the judicial body has taken the relevant set of measures and secured the required level of information security of its information systems, technological security, education of magistrates and administrative officials, organisation of the service, and keeping of electronic files, etc.; and which procedural rights may be exercised in electronic form before this particular judicial body.

After the SJC decision enters into force, the judicial body will not have the right to refuse the performance of the relevant procedural actions in electronic form. When technological readiness is achieved, the volume of procedural actions may be extended, also following a decision by SJC. In this first stage (within six months as of the entry into force of the act), the Supreme Judicial Council will ensure the development of an integrated portal providing citizens with access to the web sites of judicial bodies, and enabling them to use services of the judicial system for the provision of certification statements and performance of procedural actions.

Secondly, within the six month term, SJC will elaborate the fundamental requirements for work in the context of e-justice, such as technological standards for procedural actions in electronic form, rules for the simultaneous retention of electronic and paper files, standards and rules for the interoperable exchange of information between judicial bodies, requirements for information security, and such like.

After this term, when the respective judicial body has the technological and organisational readiness, and has reorganised its internal work and has readjusted its activity to comply with the rules established by SJC, it will be able to declare its intention to ensure the performance of individual procedural actions (or the making of certification statements) in electronic form. The SJC will check the readiness of the judicial body, and by issuing its own act, will announce the provision of the respective actions. Thus the transition of judicial bodies to e-justice will take place gradually, enabling citizens to exercise procedural rights without waiting for all judicial bodies to reach an equal level of organisational and technological readiness in order to provide citizens with one or more opportunities.

Measures to be taken in the first stage

Technological measures

The reform of the judicial system to introduce e-justice is indisputably related to undertaking various technological measures to ensure technical equipment and software security in pursuance of legislative requirements. The measures shall be undertaken in two stages. The first stage, to be within six months as of the entry into force of the amending legislation, the measures to be undertaken

by SJC are aimed at the:

a) adjustment of the existing e-justice portal for providing access to the web sites of judicial bodies;

b) implementation of the information system of the electronic register of judicial bodies;

c) integration of the register with the information systems of judicial bodies and persons performing public functions, where these functions include the adoption of regulations and making notes with regard to the act of the judicial body;

d) interoperability for interconnection of the various information systems used in judicial bodies, as well as with the information system of the Uniform Information System for Crime Counteraction (UISCC);

e) provision of exchange between the information systems used by judicial bodies with the same or with different administrative bodies, persons performing public functions and organisations providing public services, and specifying the initial time for provision of the exchange;

f) approval of information systems which may be currently used by judicial bodies.

The measures to be undertaken by each judicial body should be aimed at using its own funds within the budget provided by SJC to provide technical and other equipment, electronic signature certificates, Internet connectivity, and for their web sites to comply with the requirements of the SJC. During this period, an integrated portal should be developed to provide citizens with access to the web sites of judicial bodies, enabling them to use the services of the judicial system for the provision of certification statements and the performance of procedural actions.

The use of various information systems for internal organisation of processes (the keeping of files, etc.) and their maintenance, on the one hand, and on the other hand, the use of various software platforms and hardware security, the maintenance of separate web sites and systems for communication with citizens for taking procedural actions and access to services for certification statements of the judicial system, is meant to be cost-ineffective for each judicial body.

The second stage follows the sixth month, and can continue up to three years after the entry into force of the amending legislation.

After the completion of the first stage, SJC should undertake further technological measures to secure the substantial phase of e-justice, which should commence after the third year from the adoption of the amending legislation. In this regard, after the sixth month, the SJC should undertake the following technological measures:

a) Development of an assignment and implementation of a modern integrated centralised web-based information system for courts, and an integrated centralised web-based information system for the prosecution and the investigation, both systems to replace the current diverging systems. Copyright should be owned by the judicial system, in contrast to the present situation, where they are owned by the developers of the various information system – which should lead to significant savings. It is anticipated that the support of these just two systems will also save money.

b) Elaboration of the concept of an integrated e-justice portal with completely different functionality. The same should become an information system through which statements of citizens and legal entities for all judicial bodies will be received. This system will be integrated and easy to support, thus releasing individual judicial bodies from the financial burden of supporting separate web-based systems. It will allow easy development, depending on the emergence of new technologies, easy inclusion of new functionalities, and will ensure a single policy for providing citizens with access to justice.

c) Provision of technical and other equipment for the courts and other judicial bodies to ensure the work in the context of e-justice, including for scanning of all incoming documents at the entry of the judicial system to ensure working entirely with electronic documents.

d) Provision of internal infrastructure for public keys to ensure working by electronic means of all judicial bodies and their employees, as well as electronic signing of each action in the system, including working with files, access to content, assignment and control on the performance of tasks, and such like.

e) Provision and maintenance of the necessary number of qualified electronic signatures certificates.

f) Provision of connectivity and interoperability between all information systems introduced and with UISCC.

g) Provision of connectivity between the information systems of judicial bodies and the integrated

environment for the exchange of electronic documents.

Organisational measures

Organisational measures include the re-organisation of the internal logistics and work of the individual departments in the judicial system for working in the context of e-justice, such as:

a) Revising the work processes inside the judicial administrations, aimed at working with electronic files, and in the first six months of the reform – simultaneous work with electronic and paper files;

b) Change in the requirements and logistics of the work in each workplace;

c) Provision of new conditions for the storage of evidence, where the material carrier has a legal effect for the respective proceedings;

d) Ensuring and assignment of the performance of new functions of the departments and employees that are in charge of the information technologies and the information security;

e) Ensuring the organisational readiness of SJC to make inspections of judicial bodies at their express wish to commence the implementation of the measures stipulated in the amending legislation at the very first stage of the reform.

Educational measures

At the first stage of the reform the employees and judicial bodies should be prepared to work in the context of e-justice. The measures cover the systematic introduction to the normative rules and main problems to be faced by the judicial system upon exercising procedural rights in electronic form and making certification statements in electronic form.

All participants in the judicial system without exception – magistrates, administrative managers and employees – should pass through training courses on:

1. The legal framework of e-justice in the administrative, civil and penal proceedings;
2. The regime of exercising procedural rights in electronic form;
3. The regime for making certification statements in electronic form;
4. The legal regime and rules for working with electronic documents and with electronic signatures;
5. The rules for working with electronic files, and a regime for simultaneous work with electronic and paper files for the first three years of the reforms;
6. Issuance of acts in electronic form and announcement in the electronic register of acts issued by judicial bodies;
7. The substantive legal and evidential issues relating to electronic evidence and means of evidence;
8. Operating with the electronic portal and newly established information systems of judicial bodies (according to groups of bodies – the judicial power, the prosecution and the investigation);
9. The information regime in the context of e-justice – personal data protection, data of files; classified information, public information, reuse of information from the public sector, and such like.

Financial measures

At the first stage of the reform, it is necessary for the financial resources to be secured. The first three years of the reform are not expected to require any additional burden. In 2013, funds under the Operational Programme 'Administrative Capacity' (OPAC), provides funds for the budget of the Supreme Judicial Council to undertake the work. In 2014 – 2015, the same funds under OPAC provide the Supreme Judicial Council with supplementary funds for the implementation of the other groups of measures; and individual judicial bodies will be allocated additional funds.

Legislative measures

To ensure the development of both stages of the reform, the legal framework should be developed and relevant amendments should be introduced in a number of stages. The first stage occurs six months after entry into force of the amending legislation, and the Supreme Judicial Council is required to develop the general rules for work in the context of e-justice. The rules will not create primary rights and obligations, but will specify technological details concerning the judicial system itself. This may be summarized as follows:

a) Adoption of rules for keeping and working with electronic files, and for the first three years from the adoption of the amending legislation – simultaneous

work with electronic and paper files;

b) Setting of standards and rules for interoperable exchange of information between judicial bodies;

c) Establishment of information security requirements;

d) Adoption of rules for keeping, storage and access to the electronic register of acts issued by judicial bodies;

e) Specifying the requirements to the web sites of judicial bodies;

f) Setting of the technical requirements for performance of procedural actions and certification statements in electronic form and the manner of their performance;

g) Determining the formats and technical requirements to be observed with respect to electronic documents sent to and by judicial bodies;

h) Determining the formats of scanned documents and other electronic evidence stored in electronic files;

i) Determining the manner of electronic payment of state fees, expenses and other liabilities to judicial bodies;

j) Specifying the graphic and other interfaces of the information systems used by judicial bodies;

k) Determining the organisation and procedure for keeping, storage and access to electronic files and the manner of storage of evidence and means of evidence related to the files that are a material carrier;

l) Determining the rules for the internal exchange of electronic documents, as well as other information processed in the judicial administrations for the exercise of their powers, including for the performance of certification statements in electronic form;

m) Determining the internal rules and work organisation upon obtaining, use, renewal and termination of electronic signature certificates in judicial bodies;

n) Establishment of the requirements for making certification statements by judicial bodies.

The second stage occurs within one year of entry into force of the amending legislation. The second stage of the development of the legal framework should introduce legislative amendments allowing for the performance of procedural actions for notaries and security procedures that have remained beyond the scope of regulation in the first stage, and the reform of acts of judicial bodies and respective legal entries of circumstances with regard to the acts of judicial bodies.

The third stage occurs within two years of the entry into force of the amending legislation. The third stage should regulate the reform of security registry proceedings and turning all registers of the various legal entities retained by the court into electronic registers (non-profit legal entities, law firms, religious organisations, political parties). This stage should also include adjusting the legislation regarding the work with classified information in the context of e-justice.

The fourth stage occurs within three years of the entry into force of the amending legislation. The fourth stage should regulate e-justice in penal proceedings in all their forms. With regard to penal proceedings and relations related to execution of punishments, it is too early to undertake procedural actions completely in electronic form before the judicial system establishes a practice of exercising procedural rights in electronic form. After understanding how the system works and the elimination of problems identified upon implementation of the preceding stages, it is possible to undertake a complete reform in the penal procedural law.

Second Phase – centralised approach

The second phase should begin after the third year of the entry into force of the amending legislation.

Essence of e-justice

E-justice is a state of the judicial system, making full use of information technologies for the provision of efficiency and transparency of the judicial system and convenience for citizens and legal entities. In its developed state, after all measures set forth above are undertaken at the first phase of the reform, the Bulgarian e-justice system will be governed by the underlying principles set out below.

Paperless judicial system

The whole judicial system will work with electronic content in an environment of paperless exchange. Upon receipt of paper documents, they will be scanned and processed only in electronic form. However, the storage and work with evidence will be preserved where the material carrier has effect in the respective proceedings. Beyond the purely economic effects on the system, the implementation of paperless justice aims to solve problems including the loss of files, loss of evidence presented, necessity of storage of huge paper archives and other problems caused by the paper world.

A right, but not an obligation

The introduction of procedural rights in electronic form should be only one more opportunity for citizens and legal entities, but not an obligation for them. In this regard, the changes proposed only expand the legal opportunities of citizens and legal entities to choose the manner of exercising their rights in electronic form, but not depriving them of the option to exercise their rights and to be notified on paper, as well as to receive paper copies of electronic documents.

Provision of interoperability and information security

During this period, judicial bodies should suspend the use of other internal information systems and their own web sites for the provision of procedural actions in electronic form and certification statements. After the entry of the reform in its second phase, the interoperable exchange between judicial bodies will be no longer necessary with a view to the implementation of integrated centralised information systems for each judicial body, all of which will supported by SJC. The interoperability and information security will be provided on the technological level by the development and accomplishment of the assignments regarding these information systems.

The exchange of documents and data between the administrative bodies whose acts are subject to judicial control, on the one hand, and the collection of information from administrative bodies for the purpose of making certification statements by judicial bodies, on the other hand, should be performed through linking the judicial bodies' systems to the electronic documents exchange integrated media created for the needs of e-government. The legal framework of the judicial system reform related to the implementation of e-justice does not require any changes to the legal regulation of the Uniform Information System for Crime Counteraction (UISCC). In this sense, in compliance with the imperative provisions of the Judicial System Act (JSA), the interoperability between the automated information systems of the UISCC and the information systems of judicial bodies will be secured. The rules to be adopted by SJC for the provision of e-justice by judicial bodies should be in compliance with the UISCC, which is already constructed and operating.

Economies

The implementation of e-justice and integrated centralised systems aims to solve problems with the decentralised support of various systems and related monthly costs. The economies concern the state budget and the gross domestic product with a view to the saving of millions of man hours that people would otherwise spend in travel to physically submit documents and check-ups at the premises of judicial bodies. Besides the above, it is anticipated that e-justice will lead to savings from paper, archive depositories and other expenses related to the paper world.

Transparency

E-justice in Bulgaria is aimed at providing for the transparency of the work of judicial bodies. Every citizen will be able to check up the progress of his or her file and case, and establish where it is delayed and for what reason. This opportunity of tracing will be also reflected in new methods of administrative and public control on the work of the judicial system.

Optimisation of the workload of magistrates

The opportunity of using centralised systems will lead to generating statistical data necessary for the adoption of political and structural decisions for the optimisation of the workload of magistrates according to districts, groups of cases, types of bodies and other criteria.

Flexibility and dynamics

With a view to the fast technological development, it is envisaged that dynamic relations that are not subject to permanent regulation – requirements relating to the formats for submission of electronic documents, requirements for interfaces for the provision of electronic statements, requirements for the design of the public interface of judicial bodies' web sites, etc., should be regulated by an act issued by SJC, and at the second phase of the reform – they will be centralised by SJC for all judicial bodies. Thus, upon readiness of the judicial system, SJC will be able to add new procedural actions that may be performed in electronic form, as well as to extend interfaces and manners of communication with the judicial power (mobile communications, cloud computing technologies, and such like).

Measures for maintenance and development of e-justice

The maintenance of e-justice in the developed phase requires that, in the future, more measures have to be adopted and observed, such as:

a) Current centralised maintenance and development of the integrated information systems;

b) Recurrent training programmes for magistrates and judicial officials regarding the implementation of new

technologies and processes;

c) Adjustment of the e-justice rules by SJC in compliance with the technological development. This will ensure prompt establishment of new interfaces for communication with citizens and performance of procedural actions in electronic form, expansion of the functionalities of the integrated portal and adjustment of the system to new technologies;

d) Connection of the e-justice systems with the systems of the European Union member states. Upon development of a common concept on the pan-European level, Bulgarian systems should be adjusted to the opportunity of interoperable exchange with the systems of other countries.

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