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Dispatch of the Court Decision by E-mail

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Abstract: The conclusion of a civil lawsuit takes place by issuing the court decision. The way in which the court decision is served is particularly important because of the consequences it generates: the starting point for the time limit for lodging an appeal; determining the date when it became final; its binding and enforceability. In this study, the authors appreciate the legislative change of communication of court decisions by e-mail, because there is a need in court for those tools that contribute to the speed and simplification of the civil process.

Keywords: court decision, communication, the principle of availability, email; confirmation message.

1. Brief details of the court decision

All judicial work is carried out with the aim of resolving a concrete civil conflict. Because of this, the court decision – designating precisely the result of judicial activity – is undoubtedly the most important act of justice[3]. Therefore, the culmination of the judicial phenomenon is considered the „judicial act”, generically called „judgment” and meaning „utterance of the right” (*iuris dictio*). At the same time, it is the conclusion formulated to an approach having as object a litigious legal situation, as well as the enshrining of an irrevocable state of law by the force attached to the act under the name of „power of res judicata”[4].

The content of the judgment, as regulated by art. 425 C. pr. civ., is of considerable practical importance having regard, on the one hand, to the effects of the judicial act, but – in my view – also to a broader spectrum defined by the purpose of justice and the guarantee of the right to a fair trial. Starting the analysis with the provision contained in Art. 425 para. 1 lit. b) C. proc. civ., we recall that the judgment must contain the recitals, namely the part in which the subject matter of the application is set out and the brief submissions of the parties, the statement

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[3] I. Leş, *Noul Cod de procedură civilă. Comentariu pe articole*, Editura C. H. Beck, Bucureşti, 2013, p. 550.

[4] I. Deleanu, *Tratat de procedură civilă, vol. II*, Editura Servo-Sat, Arad, 2004, p. 11.

of the facts adopted by the court on the basis of the evidence administered, the factual and legal reasons on which the decision is based, showing both the reasons for admitting them, as well as those for which the parties' claims have been rejected. Although quantitatively it occupies the bulk of the judgment, the recitals tend to be overshadowed by the operative part because it encompasses the court's absolution of the disputed legal relationship and, essentially, the command that can usually be enforced.

However, in the report and the regulation contained in Art. 401 – 403 C. pr. civ., in reality the parties first get to know the solution given by the court, without finding out at the same time the reason for such a resolution of the disputed issue that formed the subject of the file. Consequently, I consider that, once the judicial decision has been drafted, the central element to which we should turn our attention is precisely the recitals of the judgment. Thus, referring to the provisions of art. 425 para. 1 lit. b) C. pr. civ. mentioned above, we note that it is only with the drafting of the judgment that the reasons for which the parties' applications were admitted or rejected are revealed, thus making known the court's reasoning. We recall in this regard that, according to the ECHR judgment ordered in Albina vs. Romania (Application no. 57808/00, Decision of 28.04.2005 published in the Official Gazette of Romania, no. 1049 of 25.11.2005) "the obligation imposed by art. 6 paragraph 1 (of the European Convention on Human Rights) on national courts to give reasons for their decisions does not require a detailed answer to every argument (Perez, v. France (GC), Application No. 47.287/99, par. 81; Van der Hurk v. the Netherlands, judgment of 19 April 1994, paragraph 61; Ruiz Torija and Hiro Balani v. Spain, judgment of 9 December 1994, paragraph 29; see also Jahnke and Lenoble v. France, Application No. 40.490/98, CEDH 2000-IX]". However, the Court recalls that, according to its case-law, 'the concept of a fair trial presupposes that a domestic court which has given only brief reasons for its judgment must nevertheless have genuinely examined the essential questions submitted to it, and not merely repeat the conclusions of a lower court (Helle v. Finland, of 19 December 1997, ECR 1997-VIII, p. 2.930, paragraph 60)".

It is precisely from this perspective that we consider that the importance of the considerations of the judicial decision is not limited to the effect mentioned in Art. 430 para. 2 C. pr. civ. where reference is also made to the considerations on which the operative part is based or by which a litigious question has been resolved as enjoying the authority of res judicata, but also propagates on the purpose of civil proceedings, being the effective manner of justice. For such reasons, moreover, the requirements established by case-law by the European Court of Human Rights emerge, the lack of an effective motivation of the problems with which the court has been vested in a specific case being equivalent to disregarding the right to a fair trial. Consequently, in such a context, I consider that the existence of sufficient considerations encompassing the court's reasoning for its decision is a *sine qua non condition* for ensuring fundamental guarantees in civil proceedings. However, we mention that such a requirement is not sufficient because the desideratum is not achieved if the result does not reach the addressees of the act of justice, namely the

parties to the case. As such, the actual communication of the court decision constitutes, in the same approach, a stage of the same significance as the very pronouncement and drafting of the procedural act of disvestment, and the exceptions to the rule are of strict interpretation, expressly provided for by law and justified by objective reasons[5].

2. General aspects regarding the service of the judgment

After the decision has been drafted and signed in accordance with the law, it will be communicated ex officio to the parties, in copy, even if it is final, as provided by art. 427 C. pr. civ. The text of the law mentions that this communication will be made "immediately", a notion that imprints not only an urgency in the sequence of procedural moments, but also the indissoluble link between the delivery of the judgment, drafting it and bringing it to the attention of the parties. Moreover, in relation to the effects they produce, certain court decisions shall be communicated ex officio to persons other than the litigants, respectively final decisions ordering an entry in the land register or, as the case may be, in other public registers shall also be communicated ex officio to the institution or authority keeping those registers[6]. Also, final decisions ordering the annulment, in whole or in part, of a notarial act shall be communicated ex officio immediately to the instrumenting notary public, directly or through the chamber of notaries public in whose district it operates. Last but not least, judgments by which the court rules on provisions contained in the Treaty on the Functioning of the European Union and in other legal acts of the European Union shall also be communicated, ex officio, even if they are not final, to the national authority or institution with regulatory powers in the matter.

We note that, although art. 427 C. pr. civ. regulates precisely the „service of the judgment", in reality it does not contain any reference to the service procedure, i.e. the manner in which it is carried out, but only rules concerning the obligation to communicate and the subjects to which it will be transmitted. Consequently, the general rules on summoning and service of procedural documents also apply in this case, Art. 154 C. proc. civ. stating that such rules apply not only to the service of summonses, but also to all procedural documents, including judgments. However, as regards the modalities of effective communication of court decisions by Law no. 192/2022 for the completion of Law

[5] In this regard, we recall the provisions of art. 144 para. 2 C. pr. civ. as an exception to the reasoning of the decision justified by the grounds on which the removal of a case may be requested or the provisions of Art. 667 C. pr. civ. postponing the service of the conclusion by which the court granted the application for a declaration of enforceability precisely in order to give the creditor time to commence enforcement without the risk of hindrance on the part of the debtor, if he were notified immediately of the imminent enforcement of enforcement acts against him.

[6] C. Roşu, *Drept procesual civil. Partea generală,* Editura C. H. Beck, Bucureşti, 2016, p. 320.

no. 134/2010 on the Code of Civil Procedure[7], certain express provisions have been inserted.

Thus, after art. 154 Art. 1541 C. pr. civ. according to which service of judgments shall be made, ex officio, by electronic mail if the party has indicated to the court the appropriate data for this purpose directly or at the express request of the court during the trial. The communication will be accompanied by the court's extended electronic signature, which will replace the court's stamp and the signature of the court clerk.

We note that, in accordance with the new technologies of distance communication, communication by electronic mail was given efficiency, obviously, if the party expressly indicated its e-mail address. We consider that the possibility of communicating the court decision by electronic mail represents a form of ensuring the speed of the civil process, but also a concrete application of the principle of availability of the parties in the process, bringing as an additional benefit a reduction in litigation costs.

Paragraph 1 of Art. 1541 C. pr. civ. establishes the obligation of the extended electronic signature of the court in communication by electronic mail. The attachment of the extended electronic signature is intended to demonstrate the authenticity and veracity of the court decision, thus replacing the stamp of the court and the signature of the court clerk that would have been used in the case of a common law communication on paper. We recall in this regard that, according to art. 4 point 4 of Law nr. 455/2001 regarding electronic signature[8], extended electronic signature represents that electronic signature that cumulatively meets the following conditions: a) is uniquely linked to the signatory; b) ensure the identification of the signatory; c) it is created by means controlled exclusively by the signatory; d) is linked to data in electronic form, to which it relates in such a way that any subsequent modification thereof is identifiable.

With particular relevance to the studied topic, we mention that, prior to the adoption of Law no. 192/2022, the High Court of Cassation and Justice was seized on 1 February 2022 by the Dolj Court – Administrative and Tax Section, for a preliminary ruling on the following points of law:

'The provisions of Article 154 (1) shall not be exceeded. (6) in relation to the provisions of Article 158, Article 163 para. (3), (5), (8), (111), Art. 164 para. (4) of the Code of Civil Procedure may be interpreted as meaning that the request does the applicant's compliance with the procedure for summoning and serving procedural documents by e-mail require the court, as the only way to carry out this procedure, to serve by electronic mail?

If, under these circumstances, the summons procedure carried out by postal agent, in accordance with the provisions of the Code of Civil Procedure, is null and void, in the absence of use by the applicant of the guarantees provided by

[7] Law nr. 192/2022 for the completion of Law no. 134/20210 on the Code of Civil Procedure was published in the Official Gazette of Romania, no. 643 of 29.06.2022.

[8] Law nr. 455/2001 regarding the electronic signature was republished in the Official Gazette of Romania, no. 316 of 30.04.2014, as amended.

Art. 163 para. (5) and Art. 164 para. (4), respectively the registration in forgery against the report drawn up in accordance with art. 164 of the Code of Civil Procedure'.

By Decision No. 75/2022, the High Court of Cassation and Justice – Panel for ruling on legal issues,[9] admitted the complaint filed by the Dolj Court – Administrative and Tax Division regarding a preliminary ruling and, in interpreting and applying the provisions of art. 154 para. (1), (6) and (6)1, Art. 163 para. (5), Article 164 para. (4) and Art. 175 para. (1) of the Code of Civil Procedure, established that carrying out the summons procedure, in accordance with the provisions of Art. 154 para. (6) of the Code of Civil Procedure, if the party has requested and indicated the appropriate data for this purpose, constitutes a principal method of service of procedural documents, without being conditioned by the performance of the procedure in letter format, as provided for in Art. 154 para. (1) of the same enactment.

The act of summoning the party to proceedings, in a manner other than that invoked by the application addressed to the court, is null and void pursuant to the provisions of Art. 175 para. (1) of the Code of Civil Procedure, if failure to comply with the method of service of the procedural document has caused the party an injury which can only be removed by its abolition, without being conditioned by the use of the procedure of false entry, pursuant to the provisions of Art. 163 para. (5) and Art. 164 para. (4) of the Code of Procedure.

In order to adopt this solution, the supreme court held that a fundamental principle of civil procedural law is that of availability, regulated by Art. 9 of the Code of Civil Procedure, which implies not only the claimant's right to initiate civil proceedings, to use the remedies provided for by law or to waive the action or right, but also the parties' right of disposition regarding the exercise of their procedural rights.

However, in so far as it is established that the transmission of procedural documents, in accordance with the provisions of Article 154 para. (6) of the Code of Civil Procedure, by e-mail, if the party has requested and indicated the appropriate data for this purpose, constitutes a primary means of communication, then the principle of availability allows the party to request electronic service, the court being obliged to do so in civil proceedings.

The Supreme Court also noted the opinion transmitted by the Faculty of Law of the West University of Timișoara according to which summoning by means other than those expressly indicated by the applicant does not meet the requirements of a correct and legal summoning, so that the summons procedure cannot be considered fulfilled. Only if, compared to the specifics of a dispute, the method of communication chosen by the parties would lead to the prolongation of the process, the court could choose another way, in order to ensure the resolution of the case in an optimal and predictable time. Communication by e-mail fulfills

[9] Decision No. 75/2022 pronounced by the High Court of Cassation and Justice – Panel for ruling on legal issues, was published in the Official Gazette of Romania no. 182 of 3 March 2023.

the function of being a much faster and safer means than communication by procedural agent or postal agent.

On this issue, under the conditions of Art. 520 para. 11 and Art. 516 para. 6 C. pr. civ. I have expressed my view that the question of law does not raise any difficulty of interpretation having regard to the specific nature of the summons procedure and its role, as well as the way in which that matter is regulated. For example, in the hypothesis envisaged by art. 158 para. 1 C. pr. civ., the legislature is quite clear, meaning that, by virtue of the principle of availability, service is effected at the address indicated by the party as the domicile/seat of proceedings chosen. However, failure to comply with this procedure and, possibly, summoning the party to an address other than that indicated, without applying the provisions of art. 161 para. 1 or 2 C. pr. civ. will inevitably lead to the conclusion that the summons procedure is flawed, and the provisions of Art. 160 C. pr. civ. or, as the case may be, the possibility of appeals on that very ground. As in the case of indicating the domicile / procedural seat chosen, there is no dilemma in considering that failure to comply with the summons procedure in the version chosen by the party will lead to the nullity of the summons procedure, I consider that the same reasoning applies if the party has chosen the method of communicating the court decision, namely by electronic means.

In this respect, the correct and legal interpretation was considered that the court is obliged to follow the method of summons chosen by the parties, and the act of summons performed in another way is null.

We note the anchoring of the Supreme Court to today's reality, which in its decision noted that the technological evolution of society offers new possibilities for communicating procedural documents that correspond to the legitimate needs and interests of the parties, which is, moreover, among others, the purpose of Law no. 134/2010 on the Code of Civil Procedure, republished, with subsequent amendments and completions, namely to modernise and make the procedure more flexible, so that it can be carried out expeditiously, in an optimal and predictable time.

3. Particularities of service of the court decision by email

Returning to Law nr. According to Regulation (EC) No 192/2022, a very important aspect is to determine exactly when the time limit for lodging appeals runs or, in the absence thereof, when the final judgment remains.

In this respect, para. 2 of § 1541 C. pr. civ. provides that judgments are deemed to have been served at the time they have received a message from the system used that they have reached the addressee according to the data provided by him. In this aspect of service, namely the moment at which the service procedure is deemed to have been completed, I note that the legislature has adopted the same reasoning applied in other cases where the actual delivery of the procedural document to be served is not made personally, namely neither to the addressee itself nor to any other person empowered or empowered by law to receive the document subject to service. As examples in this regard, we mention

the provisions of art. 158 para. 2 or Art. 163 para. 8 in conjunction with Art. 163 para. 3 sentence I C. proc. civ. Thus, the mere deposit in the mailbox or mailbox will mean that the service procedure was carried out at that time, as indicated in the proof of delivery pursuant to Art. 164 C. pr. civ., even if, in reality, the party was not actually handed over the document subject to service, but was merely made available to him. As such, the legislature's choice of establishing a legal presumption of service and acknowledgement precisely from the date of receipt by the addressee's electronic system represents an application adapted to that method of communication of the rules which also applied under ordinary law. Just as the procedural period running from the service of the document will be counted from the date on which the envelope is deposited in the mailbox or mailbox, being irrelevant the moment when the party actually received the document served, the same will be calculated in the case of service by electronic mail, namely from the moment when a message was received from the system used that they had reached the addressee according to the data provided by it. Similarly, from the point of view of the course of the procedural period, it will be completely irrelevant when the communicated email is actually accessed, just as, in the case of letter communication, the date of actual opening of the envelope is irrelevant.

Moreover, we consider this particular solution applied to service by electronic mail (drawn from the general rules on service of procedural documents) to be natural since, particularly in the field of procedural time limits, a right of option cannot be granted to the parties. Thus, the starting point of the period cannot be left to the party's discretion or choice, that is to say, it cannot be considered that the period could begin to run only from the moment when the party chooses to become actually aware of the content of the procedural document served. Just as it has no procedural relevance when the party actually opens the envelope delivered to him or her in the mailbox, so it is irrelevant when the party opened the email addressed to him. In other words, the legislature establishes the same rules regarding the service of the court decision by mail as in the general case of service of procedural documents in letter format, the relevance being strictly the moment of service itself. As a consequence, although the information system distinguishes and can highlight both the moment when the email is received by the addressee (by arriving in his electronic mail) and the moment when it actually opens – that is to say, the date of access to the electronic communication – nevertheless only the former has legal significance since, otherwise, it would lead to the same situation expressly avoided by the legislature in which the parties choose the starting date of the procedural period. This is the reason why Art. 1541 para. 2 C. pr. civ. expressly states when judgments sent to the parties by electronic mail are deemed to be served.

What is essential in this matter is the fact that, in all variants of letter communication, the procedural agent or other employee designated for this purpose is involved, the provisions of Art. 164 para. 4 C. pr. civ. relating to the evidential power of what was personally ascertained by the person drawing up the report. That is why it is so easy to establish the presumption provided for in Art.

165 C. pr. civ. relating to the date of service. For example, the fact that the procedural agent mentions a specific date in the report drawn up when the envelope is deposited in the mailbox will provide proof, subject to Art. 164 para. 4 C. pr. civ., that communication was made precisely at that time. On the other hand, in the case of communication by electronic mail, ab *initio* no longer involves any such official, meaning that his ex *proprius sensibus findings* and their evidential power cannot exist until they are entered in forgery. All this is replaced by a computer system. Consequently, we may consider that the legislation contained in Art. 1541 para. 2 C. pr. civ. must also be seen as a practical necessity since, in the absence of the procedural agent, the presumption as to the date of service would have remained unsupported and the only categorical date on which service would have been made became that chosen by the addressee when he accessed his electronic mail. Thus, through the legislation introduced, the legislature maintains the general rules in the field and assimilates the response sent by the information system regarding the communication with the personal findings of the procedural agent in the letter method of communication. Moreover, in the explanatory memorandum of Law nr. Regulation (EC) No 192/2022 states that there is no difference between the situation where the procedural agent or postman leaves the correspondence in the parties' mailbox by filling in a report to that effect and the situation where the court's system firmly indicates that electronic correspondence has arrived in the parties' virtual box[10].

Only if communication by e-mail cannot be carried out, the methods of communication enshrined in art. 154 C. pr. civ. Thus, in para. 3 of § 1541 C. pr. civ. states that if communication by electronic mail is not possible due to lack of data in this regard or the system used indicates error in transmission by electronic mail, service of court decisions shall be made in accordance with section 154.

In the legal literature it was considered that the difference from service of other documents would be that, at least from the wording of the text, service by electronic mail would be mandatory if the party indicated the corresponding data, not being a mere alternative for the court[11].

We consider that we need to make a nuance, the communication of the court decision becomes mandatory by electronic mail when the party has expressly formulated this request, not when it has only indicated the e-mail address in the header or in the contents of the applications addressed to the court. We believe that such a clarification is necessary given that art. 1541 para. 1 C. pr. civ. expressly states that this method of service is effective when the party indicates to the court the appropriate data for that purpose, that is to say, precisely so that the decision may be served on it by electronic mail. Moreover, the general rules applicable to the service of summonses and other procedural documents provide for the same

[10] R.- M. Necula, *Comunicarea hotărârii judecătorești prin e-mail. Reflecții cu privire la reglementarea art. 154[1] din Codul de procedură civilă,* Revista „Dreptul" Nr. 12/2022, p. 114.

[11] V. M. Ciobanu, T. C. Briciu, C. C. Dinu, *Drept procesual civil, Ediție revăzută și adăugită, Curs de bază pentru licență, seminare și examene,* Editura Universul Juridic, București, 2023, p. 412, footnote 2.

specificity[12], an aspect contained in Art. 154 para. 6 C. pr. civ. Thus, the indication of the corresponding electronic mail data is not sufficient to activate the court's obligation to serve the judgment in this way if the party's express request is absent. Such a rule represents a particular application of the principle of availability when the manifestation of will belongs to the party.

However, it has been pointed out in the legal literature that it would appear that the party does not enjoy the same freedom to assess whether he wishes to use electronic mail, since the court may expressly request the corresponding data. This last difference in regime is rather apparent, since there is no sanction for the party's refusal to comply with the court and, at least from a theoretical point of view, it is not excluded that a party does not routinely use email communication[13]. Thus, starting from the text of art. 1541 para. 1 C. pr. civ., it is concluded that the court may instruct the party to indicate the e-mail address in order to serve the judgment in such a manner when the party has not indicated it on its own initiative. If the party complies, it follows that the court will be able to use this means of communication even in the absence of an express request by the litigant. However, I consider that the party's right of option remains because, in complying with the court's request, it is presumed to want such a communication procedure since the refusal to comply does not produce any legal consequences and certainly does not entail any sanction. As such, it is obvious that the party remains to exercise the right to choose or reject such a form of communication, just as provided by the initial sentence of Art. 1541 para. 1 C. pr. civ. when the party expressly requests. On the other hand, where the party has indicated his electronic mail address but has not made an express request, the court cannot assume that the party would like the judgment to be served electronically, nor can it envisage him or her to specify the corresponding data (as they are already initially submitted by the party), meaning that the presumption of agreement due to the party's compliance cannot be operative either.

In the same vein, it was stated that in relation to the provisions of Article 154 para. 6 C. pr. civ., service of summons or other procedural documents may be affected by e-mail only if the party has expressly indicated that he wishes to serve those procedural documents in this way and has provided the court with the necessary data for this purpose[14].

We appreciate the changes made by Law nr. 192/2022 on how to communicate court decisions that are consistent with the new realities regarding the digitalisation of the civil process. However, we find it useful to mention that, despite the progressive nature of the regulation established by Art. 1541 C. pr. civ., in reality we consider that legislative advance is almost non-existent since, according to art. 154 para. 6 and para. 61 C. pr. civ., such methods of

[12] N.-H. Țiț, *Considerații cu privire la comunicarea prin e-mail a actelor de procedură în procesul civil*, în Analele Științifice ale Universității „Alexandru Ioan Cuza" din Iași, Tomul LXVI/Supliment, Științe Juridice, 2020, p. 202 și urm.

[13] *Ibidem.*

[14] R.- M. Necula, *op. cit.*, p. 116.

communication were also provided for prior to Act No. 192/2022. Thus, even if they refer to the service of summonses and other procedural documents, thus being of a general nature, the abovementioned texts apply accordingly also to the service of judgments. As such, the usefulness of a special regulation seems to be seriously mitigated given that, apart from expressly stating that it also applies to court decisions, it does not bring into substance anything new, art. 1541 para. 1 and 2 reproducing exactly the provisions contained in art. 154 para. 6 and 61 C. pr. civ. At most we could positively appreciate the provision contained in para. 3 of Art. 1541 C. pr. civ. because it establishes ex officio the recommunication of the judgment by ordinary means when the computer system is not functional either because of lack of data in this regard or when an error occurs in the transmission by e-mail.

It was considered that, if the aim is to digitize the judicial system as much as possible, the legislator should introduce a provision similar to Art. 1541 para. 1 C. pr. civ., i.e. to make it compulsory to serve all procedural documents by e-mail, if the party has indicated the appropriate data for this purpose, Service of procedural documents, in classic format, by procedural agent or postal agent, to be carried out only if communication by electronic mail is not possible due to lack of data in this regard or if the system used by the courts indicates error in transmission by electronic mail[15].

As a topography of the provisions relating to the service of judgments, we consider that the new provisions should have been inserted in Art. 427 C. pr. civ., in order to avoid overlapping the same title, but with different but consistent content. The legislative technique is objectionable and we consider it wrong as long as there is the same title in different parts of the Code of Civil Procedure.

Last but not least, we mention that, being still at the beginning, such a way of communicating court decisions may encounter technical problems, such as situations in which the file cannot be opened, copied or listed, but we believe that these inherent difficulties are surmountable and over time the errors encountered will be rarer.

Conclusions

We believe that it was necessary to adapt the Code of Civil Procedure to the progress made in recent years regarding digitalization and the use of technical progress instruments in the field of justice.

One of the particularly important aspects is precisely that of the communication of court decisions, since the 'classic' methods cannot be the only ones allowed.

Technological progress is inevitable and it is incumbent on the legislator to implement also in the judiciary those instruments that contribute to the speed and simplification of the civil process.

[15] *Idem*, p. 118.

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