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DIGITALIZATION OF CIVIL PROCEDURE: THE DEVELOPMENT OF E-FILING IN THEORY AND PRACTICE

Abstract: The current technological advancement of society is reflected in the development of information systems, a development that is being applied to the digitization of civil court proceedings within the domestic judicial system. "E-filing" refers to the electronic submission of documents to the court. Currently, the "eSud" (e-Court) application is available on the Serbian Judiciary Portal, though it is used exclusively by the Administrative Court. The application itself supports only e-filing; specifically, it is designed exclusively for submitting lawsuits, objections, actions for the reopening of proceedings, and requests for enforcement decisions, in accordance with the Law on Administrative Disputes. Regarding the initiation of proceedings, it offers pre-formatted initial documents submissions that can be used to launch a digital administrative procedure.

The trend in the development of the domestic judicial system is to extend the application of this system to civil proceedings as well, in line with the implementation of the Action Plan for Chapter 23 regarding European Union accession. According to the said plan, implementation is required in the final quarter of 2025. The goal is to reduce the unnecessary

burden associated with the need for physical access to the court; therefore, it is necessary to enable the use of the e-Court application for civil proceedings.

Keywords: *e-court, e-procedure, e-filing, digitalization of civil proceedings, electronic submissions*

INTRODUCTION

The conduct of civil proceedings is traditional, rooted in 19th-century civil procedure laws. Generally, the proceedings themselves are based on principles such as immediacy, oral presentation, public hearings, and the adversarial and inquisitorial principles, with a focus on access to the court for the purpose of litigation. The entire 20th century was also characterized by this classic, traditional approach to civil proceedings, particularly when considering the 1929 Law on Judicial Procedure in Civil Disputes and the Laws on Civil Procedure from 1956 and 1976. The essence of the main hearing regarding the initiation of proceedings, the evidentiary process and the proving of facts, as well as the conclusion of the case is regulated in a traditional manner, such that any deviation by the judge would result in a fundamental violation of civil procedure rules and the setting aside of the court's decision

At the beginning of the 21st century, within the current Law on Civil Procedure (hereinafter: LCP2011), we already observe a legislative trend toward implementing information and communication technologies such as the optical and audio recording of hearings and the electronic submission of certain documents via the Internet to the court's email address.

Today, the Ministry of Justice aims to align civil procedure with global trends and leverage the benefits offered by advancements in information and communication technologies (ICT) such as the internet and the development of AI within the judiciary. We observe that the current progress in digitalization is evident at the Administrative Court in Belgrade, which was selected for a pilot project due to its status as one of the most overburdened courts. The progress of digitalization is reflected in the introduction of the e-Court platform and application, which facilitates easier access to the court while enhancing the transparency and efficiency of judicial proceedings. For other courts, the ability to check the status of a case represents a current success in the development of digitalization aimed at ensuring the transparency of court proceedings.

ICT-based or electronic legal communication refers to the ability to submit documents to the court such as a complaint, counterclaim, or documentary evidence via specially regulated electronic messages. This form of legal communication is provided for not only between the parties and the court but also between the court handling the case and other courts, administrative bodies, and other entities that indirectly perform judicial functions, such as notaries, the legal profession, and enforcement proceedings. (Salma, 2014, p.135)

1. Electronic submission of filings – e-filing and e-Court application

According to the Action Plan for the Implementation of the Judicial Development Strategy for the 2020–2025 period, Measure 5.8 envisages the further expansion of opportunities for lawyers and citizens to initiate and conduct court proceedings electronically using the e-Court application or other commercial software available on the market via Application Programming Interface (API) technology in compliance with prescribed standards. Thus, Item 5.8.1 outlines the development of e-filing for courts where the statutory conditions for conducting electronic proceedings have been met. This measure is to be implemented in courts of general jurisdiction and commercial courts, with a completion deadline set for the fourth quarter of 2025.

Measure 5.8.2 stipulates the need to support courts in implementing and using e-filing and to raise public awareness of the service specifically for courts of general jurisdiction and commercial courts with an implementation deadline set for the fourth quarter of 2025. In reality, the electronic case management system has not yet been implemented in courts of general jurisdiction and commercial courts. A few courts are currently serving as pilot sites for e-filing, after which the system will be rolled out across all courts of general jurisdiction and commercial courts.

The term "e-filing" used in the cited acts essentially refers to the electronic submission of documents. Electronic document submission is not a novelty, as it has been applied in domestic legislation since LCP2011. Specifically, Article 98, Paragraph 2 of the LCP2011 stipulates that submissions sent to the court via telegram or email also satisfy the written form requirement. This provision regarding submissions differs from the 2004 Law on Civil Procedure (LCP2004), as the legislator sought to facilitate the broadest possible digitalization of proceedings and create the regulatory conditions for the widespread use of technical aids. (Stanković,

2011, p.46) Regarding the timeliness of a submission sent via email and in an effort to facilitate the digitalization of proceedings the law specifies when an email submission to the court is considered timely; the time of submission is deemed to be the time indicated in the email receipt confirmation. (Stanković, 2020, p.52)

The e-Court application represents an innovation in the Serbian judiciary specifically, one of the initial steps toward the true digitalization of the judicial system. Following the introduction of the e-Court application in 2018, the possibility for electronic communication was established, though currently, this is limited to proceedings before the Administrative Court. The application aims to facilitate the exchange of legal submissions and the tracking of case progress for end-users. The exchange of submissions takes place via a portal that allows parties to receive notifications regarding the arrival of documents whether through in-app alerts, SMS messages, or email. (Babović Vuksanović, 2025, p.65).

2. Submission of electronic filings

There are two ways to submit documents to the court electronically, and a distinction must be made between an electronic submission sent to the court's email address and the electronic submission of documents via the eSud application.

The service itself is governed by Article 157a, Paragraph 2 of the Rules of Court Procedure, which stipulates that electronic documents are to be served on the court via email sent to the email address designated by the court for the receipt of electronic submissions or by other electronic means (the e-Court application), in accordance with the law.

Furthermore, regarding service of process in civil proceedings, Article 129 of the Civil Procedure Act (ZPP) stipulates that service may also be affected electronically in accordance with special regulations specifically, as governed by the provisions of the Law on Electronic Documents, Electronic Identification, and Trust Services in Electronic Transactions (hereinafter: LED), which we will outline in this paper. (Stanković, 2024, p.454)

The traditional and original method involves sending documents to the court's email address. While widely used during the COVID-19 pandemic, this approach is considered an unreliable method for submitting electronic filings. The reasons for this include uncertainty regarding actual delivery and the inability to confirm receipt by the designated personnel; for instance, some courts list only the general administrative or court president's email address, whereas others such as the Higher Court in Belgrade have a

dedicated address for receiving electronic documents bearing a qualified electronic signature (e.g., elektronski.podnesak@bg.vi.sud.rs). Additionally, issues arise regarding whether the address is accurate and officially registered for the exchange of documents between the court and the parties involved.

The e-Court application enables the submission of electronic filings and represents one of the more reliable submission methods, as the entire process takes place within the application itself. To submit a filing, the user must authenticate by inserting their ID card into a reader and logging into the application; subsequent actions such as selecting the court, the type of filing, and the party involved, as well as the actual submission leave a record within the application regarding the time and type of filing sent, thereby eliminating the possibility of tampering that exists with the traditional email-based method. (https://esud.sud.rs/home/assets/pdf/Uputstvo_za_upotrebu_eSud_aplikacije.pdf)

There is another method of electronic delivery via the e-Government portal, specifically the e-mailbox; this reduces the possibility of tampering with submissions and ensures a high degree of delivery accuracy, owing to the unambiguous link established with the individual's Unique Citizen Number (JMBG).

Pursuant to Article 157b of the Rules of Court, the court that has received an electronic submission shall, without delay and no later than within six working hours, confirm receipt of the submission to the submitter electronically. If the service of documents to a party in electronic form requires the party's prior express consent, such consent shall be deemed given if the party has indicated their email address in their electronic document.

Article 129 of the Law on Civil Procedure stipulates that service by electronic means is deemed affected provided that such a method of service enables confirmation that the person has received the document. Proof of receipt of a document served electronically consists of a printed electronic record indicating the date and time the electronic data transmission device registered the document as sent to the recipient, the names of the sender and the recipient, and the title of the document.

3. Current State of Digitalization in Civil Proceedings

The current state of digitalization in civil proceedings can be checked on the Serbian Judiciary Portal at https://portal.sud.rs/sr. The portal itself

displays the current status of judicial digitalization development. Features applicable to civil matters include e-court fees (available at https://etakse.sud.rs), case tracking (https://portal.sud.rs/sr/tok-predmeta), and e-auctions (https://eaukcija.sud.rs/#/), the electronic notice board at https://etabla.sud.rs, as well as the electronic delivery of documents via the e-mailbox (https://euprava.gov.rs/eSanduce_uputstvo). Indeed, the electronic submission of filings and electronic delivery constitute the goal for the initial digitalization of civil proceedings. Currently, nearly 3 million citizens have opened an e-mailbox to receive electronic documents.

4. The Concept, Content, and Structure of Electronic Submissions in Domestic Law and in Other Countries

There is no deviation regarding the use of electronic filings in comparative law either. In Ireland, the use of electronic filings is governed by Order 117: Requirements regarding the form and submission to the offices of documents and copies in both physical form (hard copy) and digital form (soft copy). In cases where a document is permitted to be filed or submitted to one of the offices via digital delivery or prepared and submitted in digital form (as an electronic record) for use before the Court such a document may contain or include: (a) information transmitted over a network in the form of an electronic document or other electronic data, (b) information made available to a digital user on a network to which that user has access, where such information can be displayed or reproduced in a readable form, and such document does not have to be delivered in printed form. (https://www.courts.ie/court-rules/full-court-rule?url=requirements-as-to-form-and-delivery-to-offices-of-documents-and-copies-in-corporeal-form-(hard-copy)-and-in-digital-form-(soft-copy)

In Croatia, e-Communication is a web application that enables citizens to exchange documents electronically with courts in the Republic of Croatia specifically, submitting filings to the court, receiving documents from the court electronically, and viewing the status of case files. Access to e-Communication is provided via the NIAS system to ensure unique user identification. (https://sudovi.hr/hr/gradani/e-komunikacija)

Slovenia has the e-Sodstvo portal. The e-Sodstvo portal is a public website that forms part of the judicial information system and enables access to electronic services within digital court proceedings (e-proceedings). The e-Sodstvo information system allows these electronic services to be used on every working day between 8:00 a.m. and 8:00 p.m. (https://esodisce.si/spa/en)

In Serbia, the electronic submission is regulated by various legislative and subordinate acts. Article 2, paragraph 1, item 4 of LED stipulates that an electronic document is a set of data composed of letters, numbers, symbols, graphics, audio, and video materials in electronic form.

Based on the definitions of an e-document, a distinction must be drawn between an original electronic submission and a previously written submission that has been converted into digital format. To properly address the digitalization of the judiciary, we must differentiate between a traditional submission which is printed, physically signed, scanned into digital format, and sent via email to the court and an electronic document created on a computer, electronically signed, and bearing a record of the time and method of dispatch. (Palačković, 2011, p.775)

Article 157a of the Rules of Court Procedure stipulates that electronic documents in the form of an original electronic document, bearing an appropriate electronic signature and a timestamp, may be received by the court using software for the receipt of electronic documents in accordance with special regulations following verification of the electronic signature and timestamp via appropriate technical means.

The signature itself is regulated in Paragraph 3 of the cited article, which stipulates that if the law requires an act to be signed by a specific person, this condition is deemed met for an act in the form of an electronic document if the full name of the relevant person appears at the end of the electronic document and the document is signed with that person's qualified electronic signature.

Just as with a complaint filed via traditional means where, if drafted by a non-professional, the court returns it to the plaintiff for amendment with an order to correct and resubmit it within eight days a similar procedure for amendment applies to electronic submissions. If an electronic document submitted to the court cannot be read or fails to meet the technical requirements set forth in Article 157a of the Rules of Court Procedure, the court must notify the submitter without delay, call upon them to amend the submission within a specified timeframe, and advise them of the consequences of failing to do so. Electronic documents received are entered into the case management system, converted into hard copy via technical means (printing), and handled in the same manner as all other documents, in accordance with the provisions of Article 154 of the Rules of Court Procedure. If large-volume files or multimedia files (drawings, photographs, etc.) are attached to the electronic document, they are downloaded and saved within the appropriate software and are considered an attachment to

the printed electronic document. It is recommended that the total size of the data submitted does not exceed 8 megabytes.

Electronic mail received at the official email address between 00:00 and 24:00 hours is logged on the first subsequent working day, under the date of receipt, and is entered according to the chronological order of receipt. Exceptionally, when deadlines are calculated in hours, electronic mail is logged on the same day according to the chronological order of receipt. (http://www.su.os.sud.rs/tekst/1123/-elektronski-podnesak.php)

A party submitting documents via email is required to specify the email address designated for receiving confirmation of receipt of the document in electronic form, or for the purpose of delivery of such confirmation via a public postal operator their address of permanent or temporary residence or the address of a person authorized to receive official correspondence. (Ibid)

5. Storage of electronic submissions

Received electronic documents are stored in an information system or an appropriate program on media that ensure the permanence of the electronic record for the established retention period.

The Rules of Court Procedure stipulate that an electronic document possesses both an internal and an external form that defines it as such. The internal form consists of the content originally entered the electronic document itself, whereas the external form is the representation produced when the electronic document is transferred to paper, accompanied by metadata attesting to the qualified certificate whether a signature or a seal as well as the method and time of delivery.

Article 157v of the Rules of Court Procedure stipulates that a paper copy of an electronic document is produced by certifying a printed copy of the visual representation of the electronic document. The paper copy of the electronic document must bear an indication that it is a copy of an electronic document. Certification is performed by a court official authorized for electronic documents, within the scope of the court's jurisdiction and authority.

An authorized person confirms, by means of a handwritten signature and a seal, the identity of the paper copy of an electronic document with the visual representation of that electronic document. A copy of the original electronic document has the evidentiary value of the original or of a certified copy of that document and is treated in the same manner as other documents, in accordance with the provisions of the Rules of Court Procedure.

Article 13 of the Decree on Conditions for Preparing Documents for Reliable Electronic Storage and Document Formats Suitable for Long-Term Storage ("Official Gazette of the RS", No. 86/2018) stipulates that the best type of electronic format for storing an electronic submission is PDF/A, in accordance with the ISO 19005 standard "Electronic document file format for long-term preservation".

This standard has been adopted because PDF/A (where "A" stands for "archive") is reliable; it eliminates the possibility of tampering with a document once it has been electronically signed. The document will remain readable regardless of the operating system used in the future, or changes to fonts or other technical specifications. Electronic signing is facilitated by the "digitally signed" option: by selecting an area on the PDF file and drawing a rectangle, data is automatically retrieved from the ID card connected to the reader, and an integrated timestamp indicating the exact time of signing is displayed. This method of creating an electronic document also applies when submission is made via email. (https://crl.mup.gov.rs/Potpisivanje_PDF.pdf) A qualified electronic signature, which is legally equivalent to a handwritten signature, serves as the primary mechanism for authenticating electronic submissions. (Čanović, 2025, p. 590)

If an electronic document is not prepared in the prescribed manner, it fails to meet the requirements for that type of submission; this is illustrated by examples from judicial practice: "The authorized representative of the petitioner, BB, filed an appeal against the said ruling in the form of an electronic document; however, as the electronic document was not signed with a qualified electronic signature, the petitioner's appeal is incomplete, given that it lacks the signature of the submitter" (Rž1 g 15/2022 dated November 8, 2022), or “Therefore, the case files are returned to the court of first instance so that it may act pursuant to Articles 157a and 157v of the Rules of Court and determine whether the defendant’s appeal on points of law, submitted in the form of an electronic document, was signed with the qualified electronic signature of the defendant’s authorized representative” (Rev2 546/2024 dated April 3, 2024)

The submission of electronic filings in Serbia is best regulated within the Cadastre, where the e-Cadastre portal permits only electronic submissions, while the traditional method of handing in documents at a service counter does not exist.

The initial documents/submissions that may be filed with the Administrative Court via the e-Court application are the lawsuit, the

objection, the lawsuit for the reopening of proceedings, and the request for a decision on enforcement.

CONCLUSION

It is impossible to overlook the rapid development of information and communication technologies and their inevitable use in civil proceedings. Now that the process of digitalization is underway, it is essential to continue refining and implementing systems and applications to streamline civil proceedings themselves. The traditional system of electronic service via email is outdated and highly unreliable. Only a small number of courts currently have dedicated email addresses for receiving electronic filings; consequently, the likelihood of successful delivery is minimal. Furthermore, this necessitates subsequent correspondence with the court providing a return address for receipt, among other steps.

The development of a unified application like e-Court represents a significant step toward standardizing the system to ensure uniform usage and operation. Through this application, it is possible to initiate proceedings, track their progress, and submit filings. This approach eliminates the issue of failed service of documents, a major weakness of current procedural practices since service via the application is virtually guaranteed and deemed effected once the party accepts the document. A comparative legal analysis specifically regarding the former SFRY states reveals that Croatia and Slovenia possess fully developed e-filing systems, whereas the other states of the former SFRY remain in the initial stages of judicial digitalization. E-filing represents the future of civil procedure, and it is virtually certain that it will soon be implemented in practice in the Republic of Serbia as well.

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