



Non-litigious Proceedings under the Jurisdiction of the Court in Hungary

Noémi SURI

PhD, Assistant Professor

Pázmány Péter Catholic University, Faculty of Law and Political Sciences
(Budapest, Hungary)

Research Fellow, Ferenc Mádl Institute of Comparative Law (Budapest, Hungary)

E-mail: noemi.suri@mfi.gov.hu

Abstract: The objective of the study is to present the regulation of non-litigious electronic proceedings placed in the jurisdiction of courts, applicable in Hungarian civil procedure. The author examines such procedures in the fields of electronic company registration, insolvency procedures, and the registration of non-governmental organizations.

Keywords: digital technology, electronic procedure, non-litigious procedure, public authorities, Hungary

1. Introduction

The aim of our study is to explain the system of rules pertaining to non-litigious civil proceedings primarily based on electronic procedures under the jurisdiction of the courts.

Given the fact that most non-litigious proceedings examined in the essay are regulated by separate acts but all refer to the Hungarian Code of Civil Procedure as their background legislation, we will first review the regulation of electronic communication in the Code of Civil Procedure. Then, in the subsequent sections, we will describe the role, function, and purpose of electronic devices in each non-litigious civil procedure.

2. Digital Technologies in the New Code of Civil Procedure

On 22 November 2016, the Hungarian National Assembly adopted Act CXXX of 2016 on the Code of Civil Procedure, which is applicable in civil proceedings

brought before a court as of 1 January 2018. The major goal of the codification process during the creation of the new legislation was from the beginning to apply and use the possibilities of new technologies in order to ensure effective, fast, and timely closure of civil procedures.¹

Pursuant to the new code adopted by the Hungarian National Assembly as the prevailing legislation, the use and adoption of electronic technologies in civil procedures is jointly governed by Act CCXXII of 2015 on the general rules of electronic procedures and trust services (hereinafter referred to as the 'e-Procedure Act') and the Code of Civil Procedure. Government Decree 451/2016 should also be mentioned as the implementing regulation of the e-Procedure Act, which defines technically detailed provisions. The e-Procedure Act constitutes the legal framework for the applicability of electronic technologies and shall be considered as the main norm governing the issues not regulated under the Code of Civil Procedure.

The right to access electronic procedures is defined by § 8 (1) of the e-Procedure Act,² which is further limited in legal proceedings by the right of choosing electronic communication as outlined in § 605 of the Code of Civil Procedure.³ Parties are entitled to the right of choice regarding electronic communication if they act in person or through representatives not qualifying as legal representatives.

It is the e-Procedure Act that defines who is obliged to communicate electronically, not the Code of Civil Procedure.⁴ Bertold Baranyi identifies three categories of such parties: (1) business entities, (2) public entities (including in particular the state, local governments, budgetary bodies, the public prosecutor, notaries, public bodies, and other public administration authorities), and (3) a client through legal representative.⁵

1 *The Concept of the New Code of Civil Procedure* 2015. 18–19.

2 § 8 (1) of the e-Procedure Act: 'Lacking any provisions to the contrary in any law or government decree created through original legislative power, clients are entitled to execute their administrative tasks through electronic means and submit their declarations electronically towards an authority that provides for electronic communication.' (Translation by the author. Unless otherwise specified, all translations are by the author).

3 § 605 of the Code of Civil Procedure '[Optional communication through electronic means] (1) In civil procedures, the party not obliged to use electronic communication or its representative not qualified as a legal representative – except for the cases outlined in paragraph (5) – may submit any claims, other submissions and annexes thereto or documents (in this chapter furthermore referred to as "submissions") electronically as by their choice pursuant to the modes outlined in the e-Procedure Act and the implementation regulations thereof.'

4 § 9 (1) of the e-Procedure Act: 'Unless a law based on an internationally binding contractual obligation or an international convention defines provisions to the contrary, the following parties are obliged to apply electronic communication in cases pursuant to § 2 (1): a) party proceeding as a client, and it is either aa) a business entity, ab) a state, ac) a local government, ad) a budgetary body, ae) a prosecutor, af) a notary, ag) public body, or ah) any other public administration authority not named under points ac)–ag); b) legal representatives of clients.'

5 Baranyi 2018. 2097–2098.

3. Electronic Company Procedures

Electronic company procedures were the first electronic court procedures in Hungary. Online administration was first made possible from September 2005, and then Act LXI of 2007 on the amendment of Act V of 2006 on public company information, company registration, and winding-up proceedings (Company Information Act) and other acts made it mandatory from 1 July 2008 to apply electronic procedures for company registration and the registration of changes in company information. From this date, requests for company registration and change registration are submitted electronically to the registering court for all types of companies, and it is also possible to publish annual reports, query company information and submit applications for the conduct of statutory control procedures electronically.

The IT system for electronic company procedures is provided by the Company Information and Electronic Company Registration Service (Company Information Service). From an information technology perspective, clients communicate with the Company Information Service during electronic administrative procedures conducted at the registering court.

The essence of electronic company procedures is that communication between the mandatory legal representative and the registering court as well as the registration of company data are carried out electronically, which is a faster and less costly way compared to traditional paper-based procedures.

The content of the e-file to be sent to the registering court consists mainly of digitized, i.e. scanned, PDF format copies of paper documents (articles of association, power of attorney, declaration of use/acceptance of the registered office, etc.) required for the company procedure. In addition to the documents prepared by the legal representative, the latter is also responsible for converting documents not prepared by it (e.g. a copy of the title deed, official licences, certificates of cash deposits from the payment service provider) into electronic form.

Applications for company registration (change registration) must be submitted electronically. An e-file is a complex data file containing all the documents to be sent to the registering court in the course of the company procedure, which is signed by the legal representative with a qualified electronic signature.

The application for company registration (change registration), together with the annexes, must be submitted to the competent commercial court according to the registered office of the company on the electronic form corresponding to the legal form of the company signed by the legal representative, in the manner specified in the Civil Code.

The key reason for the fact that the electronic procedures introduced later did not follow the pattern of the electronic company procedure is also the main weakness of the system, namely communication by e-mail.⁶

6 Szalai 2018. 48.

4. Insolvency Procedures

Under the current legislation in force in Hungary, debtors in payment difficulties have access to the following non-litigious civil procedures to restore their solvency.

Bankruptcy proceedings aim at restoring the solvency of economically distressed but still salvageable economic entities through the institutions of moratorium and the so-called reorganization programme in order to avoid the liquidation of the debtor entity.⁷ Bankruptcy proceedings are insolvency procedures governed by Act XLIX of 1991 on bankruptcy and liquidation proceedings (Bankruptcy Act). They are non-litigious civil proceedings initiated by application to the court, in which the debtor obtains a moratorium on payments and attempts to reach an arrangement agreement.

A *debt settlement procedure for natural persons* is a procedure enabling the settlement of debt for natural persons in payment difficulties. The aim of debt settlement procedures is to ensure that the debts of natural persons in payment difficulties are settled and their solvency restored within a regulated framework using the necessary assets and income. The procedure must not be aimed at a definitive discharge of the debtor's payment obligations. Act CV of 2015 on the debt settlement of natural persons (hereinafter: Debt Settlement Act) created the institution of *private bankruptcy* in Hungary as envisaged by EU legal sources.⁸

On 21 May 2021, the National Assembly of Hungary adopted Act LXIV of 2021 on restructuring and amending certain acts for the purposes of legal harmonization (Restructuring Act) in order to establish compliance with Directive (EU) 2019/1023 of the European Parliament and of the Council (20 June 2019) on preventive restructuring frameworks, on discharge of debt and disqualifications, and on measures to increase the efficiency of procedures concerning restructuring, insolvency, and discharge of debt, and amending Directive (EU) 2017/1132 (Restructuring and Insolvency Directive). The new legislation is expected to lay down the civil substantive law and applicable procedural rules for restructuring from 1 July 2022 and to introduce judicial non-litigious civil proceedings for restructuring as new non-litigious civil proceedings. The purpose of a restructuring procedure is to enable the debtor, in the event of a probability of insolvency, to decide on a restructuring plan in which it can agree with some or

⁷ Nagy 2001. 186.

⁸ In this context, reference should be made to the Entrepreneurship 2020 Action Plan adopted on 9 January 2013 [COM(2012) 795 final, 09.01.2013], Commission Recommendation 2014/135/EU on a new approach to business failure and insolvency [COM(2014) 1500 final, 12.03.2014] and Directive (EU) 2019/1023 of the European Parliament and of the Council (20 June 2019) on preventive restructuring frameworks, on discharge of debt and disqualifications, and on measures to increase the efficiency of procedures concerning restructuring, insolvency and discharge of debt, and amending Directive (EU) 2017/1132 [OJ 172/18. 26.6.2019].

all of its creditors on a restructuring plan that will prevent the debtor's future insolvency or ensure its operability.

Liquidation proceedings are insolvency proceedings that are of a non-litigious nature under the jurisdiction of the court against an entity that is already in debt with the aim to distribute the assets of the entity to its creditors in a specified order by dissolving the entity without a successor in title. In addition to bankruptcy, liquidation proceedings are insolvency proceedings governed by Act XLIX of 1991 on bankruptcy and winding-up proceedings (hereinafter: Bankruptcy Act).

Although voluntary liquidation is not considered by the literature as constituting an insolvency procedure, it does offer companies in payment difficulties the possibility in the context of *non-litigious civil proceedings within the jurisdiction of the court*⁹ to satisfy their creditors through the dissolution of a non-insolvent entity without a legal successor. The basic rules of voluntary liquidation are laid down in Act V of 2006 on public company information, company registration, and winding-up proceedings (hereinafter: Company Information Act). There are three conditions for voluntary liquidation: (1) the company must not be insolvent; (2) the (substantive) law applicable to the company must not contain any provision to the contrary; (3) the supreme body of the entity must decide to voluntarily liquidate the company without a successor in title.

Of these procedures, bankruptcy and liquidation are the main procedures to be affected by dematerialization.

As of 1 January 2015, the Bankruptcy Act made electronic communication between courts and legal entities (parties) mandatory. Natural persons may submit applications and other official documents and may be served such documents on paper too. In bankruptcy proceedings, as well as in liquidation proceedings opened at the request of the debtor, creditor, or liquidator, legal representation is mandatory on the side of the applicant.

Any party can switch to electronic means at any stage of the procedure.

⁹ Some authors question the nature of voluntary liquidation as a non-litigious civil proceeding within the jurisdiction of the court. In Judit Gál's view, voluntary liquidation is 'not a judicial or non-litigious procedure but (...) a special stage of a company's existence: a stage when its owners decide to terminate the company's activities permanently and without a successor in title' (Gál 2006. 49). In my opinion, this statement can be disputed from two aspects: on the one hand, the decision of the supreme body of the entity alone is not sufficient for voluntary liquidation to be carried out, as it requires the order of the commercial court declaring the opening of voluntary liquidation and its publication in the Official Gazette of Hungary; on the other hand, most of the procedures concerning the solvency and/or dissolution of entities are carried out at the request and with the active participation of the entity in the procedures (e.g. bankruptcy proceedings).

5. Registration Procedures for Non-Governmental Organizations

Act CLXXXI of 2011 on the court registration of COs ('civil society organizations', i.e. non-governmental organizations, or NGOs) and the related procedural rules (hereinafter: Civil Organizations Registration Act) constitutes the source of law for non-litigious procedures related to the registration of non-governmental organizations by the competent court (hereinafter collectively referred to as registration procedures).

Registration procedures include the registration of NGOs and other organizations (*registration procedure*), the entry, amendment, and deletion of data, rights and facts concerning the registered organization (*changes in registration procedure*), the erasure of organizations from the register (*deregistration*), the keeping of registers of NGOs and other organizations not qualifying as companies, and the provision of information on the data of these registers (*data provision*).

The Civil Organizations Registration Act is not structured according to the separate regulations of individual non-litigious proceedings. The legislator first laid down general provisions on submissions, followed by rules on serving documents and other specific tasks of the court, and then continued by the rules summarized under the term 'other general rules' pertaining to the use of the information technology system and the evidentiary value of electronic documents.

The second chapter of the act declares the mandatory content of applications for the initiation of certain registration procedures with separate provisions for registration, changes in registration, and deregistration.

Chapter III, titled *Rules of Non-litigious Civil Proceedings Regulated by This Act* and summarizing most of the procedural provisions, is essentially an overview of court functions containing detailed rules on the formal and substantive examination of applications, the rejection of applications, the simplified registration procedure, and deregistration. This chapter contains rules on the recording of the name, tax number, and statistical number of the organization in the register, on the registration of public benefit status and the removal thereof from the register, as well as on legal remedy proceedings.

Chapter IV of the Civil Organizations Registration Act lays down special provisions for foundations, associations, and other organizations that qualify as NGOs, and in a subchapter (Chapter IV/A) statutory control procedures are defined as separate non-litigious procedures.

Chapter V of the Act sets out the primarily technical provisions for record keeping and managing the NGO register, which contains the background rules for the use of the IT system. Chapter VI sets forth the provisions pertaining to data reporting, embodying the principle of publicity, while Chapter VII comprises of

a detailed list of the scope of data contained in the register of NGOs and other organizations not constituting a company.

As of 1 January 2015, electronic procedures also became mandatory for NGOs with regard to certain legal entities and for certain types of applications. Article 8 of the Civil Organizations Registration Act specifies which organizations are obliged to maintain electronic communication. Private pension funds, voluntary mutual insurance funds, voluntary deposit guarantee and protection funds for credit institutions, public bodies, mutual insurance companies, wine communities, political parties, national sports federations, associations and public foundations are obliged to use electronic procedures for court registration.

In addition, the submission may only be made electronically if:

- a) the applicant is acting through a legal representative, or
- b) the applicant requests a simplified registration (change in registration) procedure.

The application for public benefit status may only be submitted electronically, and the applicant may only file submissions in the procedure electronically. A public benefit organization may only file submissions electronically.

If the applicant is not required to use electronic procedure, they may submit the application on paper but may also voluntarily choose to submit it electronically. If they choose to submit their application electronically, they must communicate only by electronic means during the procedure.

The biggest advantage of the electronic procedure is the simplified registration procedure. The registration and change in registration of associations, foundations, and sports associations under the Act on Sports can also be carried out in a simplified procedure as of 1 January 2015. In principle, the procedure is similar to the simplified company procedure, but it differs significantly in practice.¹⁰

6. Summary

The study has examined – without claiming to be exhaustive – the civil non-contentious proceedings of the courts that have based their rules on electronic procedures. It can be concluded that electronic communication is becoming increasingly widespread not only in civil but also in non-contentious proceedings. Looking at the layers of legislation, it can be concluded that the e-Procedure Act is the basis for electronic procedures in both civil and non-civil litigation.

10 Vándor 2018. 69.

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