



ORIGINAL PAPER

Application of the Convention for Services Abroad of Judicial and Non-Judicial Acts on Civil and Commercial Matters in Republic of North Macedonia

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Abstract:

The purpose of this scientific paper is paying attention to the application of a very important convention, which during the period of intensification of the mutual physical and legal relations in the foreign element, enables a significant facilitation in the delivery of judicial and non-judicial acts on civil or commercial matters through channels of delivery which are provided with this Convention. Of course, the main accent is the application of this Convention in the Republic of North Macedonia and the supplies or statements provided during its signing and ratification.

Keywords: *judicial acts, convention, channels of delivery, requests, commercial matters.*

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1. The aim of the Convention for delivery of judicial and non-judicial acts on civil or commercial matters abroad

The development of legal systems depends on the level of the legal culture in the countries in terms of respecting the international obligations undertaken by international agreements. The cross-border cooperation on the civil and commercial matters represents one of the most significant segments in developing the cooperation between countries. The coordination of the legal systems in these cases enables a legal certainty, and facilitates the everyday life and function of a huge number of physical and legal entities. In the center of development of these relations is the Hague Conference for International Private Law, who, with its instruments, in a period longer than 125 years has relieved the cross-border cooperation between 150 states which are part of some of its Conventions as well as between 90 states member of this international organization. The European Union is a member of this international organization as the Regional Organization for Economic Cooperation (ROEC) and thus some of these instruments are part of its legal order. This has a significant importance for Republic of North Macedonia regarding the compliance of our legal system with the EU law .(Rupanchevski : 2022)

Republic of North Macedonia accessed the Convention for delivery of judicial and non-judicial acts on civil and commercial matters abroad on 23.12.2008, which entered into force on 01.09.2009, otherwise this Convention is known by the name Convention of delivery.

The main purpose of the Convention of delivery 1965 is related to the civil and commercial matters, where there is a need to deliver judicial and non-judicial acts abroad to enable channels of delivery of acts from one contracting country to the other contracting state. This convention applies exclusively to the channels of delivery from one contracting country to the other, without going into the internal regulations regarding the delivery of acts. Thus the three main purposes of the Convention are:

- a) Establishing a system that will deliver the acts, as far as possible, to a certain person in order for them to prepare their defense;
- b) Simplifying the system of delivery of these acts from one member country to the other;
- c) Enabling proof that the delivery abroad has been completed, through a confirmation provided in an uniform form.

2. The relationship between the convention and legal order of Republic of North Macedonia

After signing and ratifying the Convention, it is highly important to find a place for applying the legal system in the country, and the regulation of the subordination of acts has a significant importance in the process of their application. In order to fix this relationship, each country builds a hierarchy in their domestic and international legal sources. In this regard, Republic of North Macedonia starting from the highest legal act, the Constitution of Republic of North Macedonia, where it is prescribed “International agreements that are ratified in accordance with the Constitution are part of the internal legal order and can not be amended by law”.(Rumenov, :2022)

Also, the Law on courts predicts “When the court considers that the application of the law in the specific case is in contradiction with the provisions of an international agreement ratified in accordance with the Constitution shall apply the provisions from

the international agreement, under the condition so they can be directly applied". (Article 18, par. 4 from the Law)

The law on civil procedure in Chapter 12 from Part I predicts that the Courts shall provide legal assistance to foreign courts in cases foreseen by an international agreement, as well as when there is a reciprocity in providing legal assistance. In cases of doubt on the existence of mutuality, the explanation shall be provided by the Ministry of Justice.(Art. 171 par.1)

However, if the international agreement does not determine otherwise, the courts shall process requests for legal assistance from foreign courts, only if submitted through a diplomatic manner and if the requests and attachments are submitted in Macedonian language or if a certified translation of that language is attached.(Art.173)

Also, if anything else is not determined by an international agreement, the requests of domestic courts for legal assistance shall be submitted to the foreign courts in a diplomatic manner. The requests and attachments have to be submitted in the language of the state requested or they have to be accompanied by a certified translation in that language.(Art. 174)

In order to apply the Convention for delivery 1965, the following aspects must be fulfilled.(Rumenov: 2022)

1. The Act shall be sent from one member state to the other in order to execute the submission to the latter state. The right of the origin country determines if the act should be sent for delivery to another country;

2. The address of the person to whom the delivery should be made needs to be known. (in case the address is unknown, the practice depends on the member country);

3. It is a judicial or non-judicial act;

4. The act that should be submitted is related to the civil and/ or commercial matters. As long as these conditions are met, the act shall be submitted in accordance with the channels of delivery predicted by the Convention for delivery 1965, unless the countries do not use the derogative channels. (Art. 11, Art. 24 and Art. 25 of the Convention for delivery 1965)

Although the Convention predicts more channels for delivery abroad of judicial and non-judicial acts on civil and commercial matters as a main channel for delivery, alternative channel (which includes consular and diplomatic channels (direct and indirect), postal channels, direct communication of court officers, state officials or other competent people of the state of origin and the state where the act is being referred to and direct communication between the person of interest and court officials, state officials or other competent people of the state in which the act has been referred to) and Derogative channels of delivery or Additional agreements between the member states, the Republic of North Macedonia does not use all the channels for delivery, and those that are used are not in a satisfactory level either. It should be certainly noted that all the channels offer the same service and facilitation in delivering the judicial or non-judicial acts, but the choice of the channel depends on the choice of the party and the opportunities offered by the state in accordance with the possible exceptions made in the moment of signing and ratifying this Convention.

According to the Law on Ratification of the Convention for delivery 1965, the Republic of North Macedonia has designated the Ministry of Justice as the Central Authority - Department of International Assistance, whereas the Basic Courts of the Republic of North Macedonia are competent to fill out the receipt of confirmation of the documents compiled according to the form attached to the Convention.

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As for the reservations, the Republic of North Macedonia has provided a statement that the Basic Courts of Republic of North Macedonia are competent to fill the receipt confirmation of the documents compiled in accordance with the form attached to the Convention.

The authority or the court official that are competent according the internal law of the country from where the act derives shall sent to the Central Authority of the requesting country, a request form in accordance with the form attached to this Convention where legalization or such formalities shall not be required. Also the act that will be submitted shall be attached to the request form or its certified copy. The request form and letter shall be submitted in duplicate.(Article 3 of the Convention for delivery abroad of judicial and extrajudicial acts in civil or commercial matters, Official journal of RM, no. 107 from 29.08.2008)

The Central Authority of the requested state shall deliver the act itself or shall undertake measures for delivering the act:

- (a) in a way which, according to its internal law is stipulated for delivering acts of people who are located within its territory, or
- (b) in a special way on which the petitioner insists, unless it contradicts the laws of the requested country.

The act can always be delivered directly to the addressee who accepts it, except in case predicted in point (b) from the first paragraph of this Article. If the act should be submitted according the first paragraph of this Article, the Central Authority might request the act to be delivered or translated in the official language or one of the official languages of the requested country.

The part of the request form which contains a resume of the act which will be delivered, compiled according the form attached to this Convention, shall be submitted together with the act.(Article 5 of the Convention)

The Republic of North Macedonia has provided a statement that all the acts which will be submitted in accordance with Article 5 paragraph 1 of the Convention shall be written or translated into Macedonian language, according Article 7 of the Constitution of Republic of North Macedonia from 17 November 1991, where it is stated that “In the whole territory of the Republic of North Macedonia and in its international relations, the Macedonian language and its cyrilic script shall be the official language. Another language spoken by less than 20% of the citizens, that language and its script is also considered as an official language, as determined by this Article. The personal documents of the citizens who speak an official language other than the Macedonian language, shall be issued in Macedonian language and its script, as well as in that language and its script according the Law. Any citizen that resides in the communities of the local governance where less than 20% of the citizens speak an official language other than Macedonian language, in the communication with the regional units of the ministries can use any of the official languages and their script. The regional units that are competent for these communities of the local governance shall respond in Macedonian language and its cyrilic script, as well as in the official language and its script used by the citizen. While communicating with the ministries, each citizen is eligible to use one of the official languages and their scripts, and the ministries respond in Macedonian language and its cyrilic script, as well as in the official language and its script used by the citizen. In the governing state authorities in Republic of North Macedonia, another different official language other than Macedonian language can be used in accordance with the law. In addition to the Macedonian language and its cyrilic

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script, in the communities of the local governance, the language and script used by less than 20% of citizens is considered an official language. The authorities of the communities of local governance decide on the usage of languages and scripts used by less than 20% of citizens of the communities of local governance.(Article 7 of the Constitution of the Republic of North Macedonia)

As for the alternative channels, it should be noted that the Republic of North Macedonia does not apply the postal channel, direct communication between court officials, state officials or other competent people of the country of origin and the country where the act is addressed and the direct communication between the interested person and court officials, state officials or other competent people of the state where the act is addressed, whereas a statement has been issued for the diplomatic or consular channel.

- Republic of North Macedonia has issued a statement in accordance with Article 8(2) according to which within the territories of the country, the court acts can not be directly delivered through diplomatic and consular agents of another contracting country, unless the acts are not being delivered to the citizens of the country from where the acts derive.

- Republic of North Macedonia has issued a statement in accordance with Article 9, according to which the acts can be delivered indirectly through diplomatic and consular channels of dispatch, with the delivery being carried through the Ministry of Justice of Republic of North Macedonia.

Derogatory channels of dispatch are the most used channels in delivery practice of acts in Republic of North Macedonia and until now has concluded an agreement with these countries, mostly for civil cases, and with some countries for criminal cases as well:

<i>Country</i>	<i>Agreement</i>	<i>Year</i>
<i>Republic of Albania</i>	Civil and criminal cases	1998
<i>Bosnia & Herzegovina</i>	Civil and criminal cases	2014
<i>Republic of Bulgaria</i>	Civil cases	2002
<i>Republic of Romania</i>	Civil cases	2004
<i>Republic of Slovenia</i>	Civil and criminal cases	1996
<i>Republic of Turkey</i>	Civil and criminal cases	1997
<i>Republic of Croatia</i>	Civil and criminal cases	1995
<i>Republic of Ukraine</i>	Civil cases	2000
<i>Republic of Serbia</i>	Civil and criminal cases	2013
<i>Republic of Montenegro</i>	Civil and criminal cases	2016
<i>Republic of Kosovo</i>	Civil cases	2021

3. Instead of conclusion

The tables are from the system of evidence in the Ministry of Justice, as a central authority in Republic of North Macedonia.

From the tables we can see that the level of application of possibilities offered by this Convention for delivery is quite weak and that the delivery of judicial and extrajudicial acts from other countries to our country is much higher than the opposite relation.

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