

A Breakthrough in Turkish Litigation Practice: Proposed Amendments to Notification Law

Same as in most jurisdictions, “notification” constitutes an essential part of the Turkish legal system, particularly in terms of litigation. The first thing that any claimant/creditor should ensure while filing a lawsuit or initiating an execution proceeding is that the respondent/debtor has been served a due notice. Unfortunately, the latter is not always easy to do. Obstacles like delays/losses in the state-owned postal system, respondents/debtors who, deliberately, do not take delivery of notifications and further bureaucratic barriers usually retard and sometimes block (!) the relevant legal proceedings.

Since its enactment in 1959, Notification Law No. 7201 (the **Law**) has been subject to justifiable criticism. Accordingly, it was amended many times in the last half-century. However, technological developments in the last two decades have made the Law even more outdated than before. The provisions of the Law still reflect the long-standing traditions of Turkish law, which, from a procedural point of view, causes an inevitable slowness in proceedings. In the 21st century, there are still cases in Turkey where a creditor is obliged to send the same petition or payment order to fifteen different addresses of the recipient (*i.e.* the debtor or the claimant) in order to have made a due notification. The latter is simply not acceptable.

Considering the above, the Turkish government proposed the Draft Law No 1/742 amending the Law (the **Draft Law**) to the Parliament in October 2009. In an effort to catch up with the telecommunication era, the Draft Law introduces a number of novelties into the Law to meet expectations. The Draft Law, which is currently before the Parliament for discussion, aims to simplify and harmonize the notification procedure with respect to legal and natural persons. To this end, it adapts the provisions of the Law to the Civil Registration Services Law and the Turkish Identity Information Sharing System (“**MERNIS**”) contemplated by the said law. Once enacted, the Draft Law will literally have revolutionized the Turkish litigation practice, which will also be an immense contribution to the protection of the right to a fair trial, as underlined in Article 6 of the European Convention on Human Rights.

Below you may find the main features envisaged by the Draft Law.

- **Acceleration of notification process**

In order to better apprehend what the Draft Law introduces, its comparison with the current provisions of the Law is essential;

Current issues. Under the Law, in case a notification is to be made (through notary public, an execution office or court) to a natural person, it has to be sent to the “*last-known address*” of the recipient. This address may be the domicile (*ikametgah*), residence (*mesken*) or workplace (*isyeri*) address of the recipient. In the event the recipient is declared to be non-present at any of the above addresses, the sender and/or postal officer has to make a thorough address inquiry of the recipient by investigating his/her actual address before different establishments (*e.g.*, telecommunication service provider, utility companies, police department etc.) until the notification duly reaches its recipient. Where the person, against whom a legal action is initiated, has the tendency to run off and thus change his/her address constantly, legal practitioners encounter many impediments to finalize the notification procedure. There are cases where a single notification cannot be made for more than a year. The Draft Law aims to put an end to this costly ordeal, which fatigues and sickens notification senders.

The Draft Law. The proposed amendments of the Draft Law contain solutions with the sole purpose of simplifying the time and money consuming notification procedure set forth under the Law. Accordingly, if the “*last-known address*” of the recipient is not convenient for notification or if no notification can be made to such address, the recipient’s address registered in MERNIS is considered to be his/her “*last-known address*” and thus, the notification is made to such address. The sender or the postal officer does not have to perform a further address investigation. It is noteworthy that this solution is applicable even in the case where the recipient has permanently moved from its MERNIS address. To sum up, the Draft Law requires every Turkish citizen to have a registered MERNIS address convenient for notification. In case a

person moves from his/her MERNIS address without changing his/her address registered on MERNIS, notifications made to the said (old) address are deemed to have been duly received by him/her.

As for legal persons, according to the Draft Law, their addresses registered in official registries are considered as convenient for notification.

- **Introduction of e-notification**

In view of the day-to-day needs of business life and following its Italian, Spanish and Austrian counterparts, Article 2 of the Draft Law introduces a new Article 7/a entitled “*E-notification*” into the Law. Accordingly, in case the Draft Law is passed as it is now,

- (i) If a natural or legal person provides an e-mail address that is “*convenient for notification*”, this person will be able to be notified *via* e-mail.
- (ii) E-notification of capital companies (*i.e.*, joint stock companies and limited liability companies) will become compulsory.
- (iii) E-notification will be deemed to be received at the end of the third day following the day it falls into the recipient’s inbox.

Please be informed that a detailed regulation will also be issued in order to determine the implementation principles of the Draft Law.