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Preliminary communication

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## **DIGITAL TRANSFORMATION AS A MEANS TO EFFICIENT CIVIL JUSTICE IN POLISH LAW**

### ***ABSTRACT***

*This study discusses the significance of digital transformation for Polish civil procedure. The Author points out that it is important to maintain a proper balance between the legislator's legitimate desire to accelerate and simplify court proceedings and the protection of everyone's right to a fair trial. In the Author's opinion, new procedural regulations related to the development of digitalization should implement the basic principles of civil procedure, especially the principle of the equal rights of parties, principle of direct examination of evidence by the judge and principle of open proceedings. The study provides the genesis and legal analysis of the applicable procedural regulations that use digitalization techniques, in particular the service of court documents to attorneys via the Information Portal, remote hearings, electronic transcripts of hearings, electronic confirmation of receipt of court services, and the electronic random case assignment system for judges.*

**Keywords:** *civil procedure, digitalization of justice, serving, transcripts of hearings, remote hearing*

### **1. INTRODUCTION**

Each court proceeding is in its essence a legally organized human activity. Polish scholarship presents various definitions of civil proceedings, with the overwhelming majority referring to human activity as a set of actions, activities of procedural bodies and participants.<sup>1</sup> Considering the nature of court proceedings, it is not surprising that their protractedness is natural, although undesirable. In this way, there is a contradiction between the very essence of civil proceedings and the

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<sup>1</sup> Overview of the definition of the concept of civil procedure see Cieślak, S., *Formalism of civil procedure*, C. H. Beck, Warsaw 2008, p. 2 – 4.

fundamental right of every citizen to a fair trial, including, above all, to have their case heard within a reasonable time. In the sphere of international law, this requirement results directly from Article 6, paragraph 1 of the Convention for the Protection of Human Rights and Fundamental Freedoms<sup>2</sup> and Article 14, paragraph 1 of the International Covenant on Civil and Political Rights<sup>3</sup>. In turn, in Polish law, Article 45, paragraph 1 of the Constitution of the Republic of Poland<sup>4</sup> states that everyone has the right to a fair and public hearing without undue delay by a competent, independent, impartial and impartial court.

European legislators, striving to implement the right to have a case heard within a reasonable time and implementing the judgments of the European Court of Human Rights, have introduced into national legal systems remedies against excessive length of court proceedings. An example is the Polish Act of 17 June 2004<sup>5</sup>. The impetus for introducing this legal remedy in Poland was the judgment of the European Court of Human Rights of 26 October 2000 in the case of *Kudła v. Poland*,<sup>6</sup> in which it was indicated that the right to have a case heard within a reasonable time is ineffective if there is no possibility of filing a complaint against excessive length of proceedings with a national state authority. The Polish Act of 17 June 2004 was based on the basic assumptions of the Italian Act of 24 March 2001.<sup>7</sup> Excessive length of proceedings has been defined as a case where the proceedings aimed at issuing a decision ending the proceedings in a case last longer than necessary to clarify the essential factual and legal circumstances or longer than necessary to resolve an enforcement case or another case concerning the enforcement of a court decision.<sup>8</sup>

Since the 1990s, new social factors have begun to appear in organized civil society, forcing new legal solutions. Numerous crises in contemporary societies show the urgent need to revise paradigms, as well as to develop new legal models capable

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<sup>2</sup> Convention for the Protection of Human Rights and Fundamental Freedoms, Official Gazette - International Conventions, No. 18/1997, 6/1999, 14/2002, 13/2003, 9/2005, 1/2006, 2/2010, 13 /2017 (hereinafter: ECHR).

<sup>3</sup> International Covenant on Civil and Political Rights, No. 1966.12.19.

<sup>4</sup> Constitution of the Republic of Poland, Official Gazette, 1997.78.483.

<sup>5</sup> The Act on the complaint about the violation of the party's right to have the case examined in preparatory proceedings conducted or supervised by the prosecutor and in court proceedings without undue delay, Official Gazette, 2004.179.1843, No. 1725/2023.

<sup>6</sup> Judgment of the European Court of Human Rights of 26 October 2000 in the case of *Kudła v. Poland*, No. 30210/96.

<sup>7</sup> Previsione di equa riparazione in caso di violazione del termine ragionevole del processo e modifica dell'articolo 375 del codice di procedura civile, Official Gazette, No. 78/2001.

<sup>8</sup> Krakowiak, M., *Complaint about excessive length of enforcement proceedings*, Review of Enforcement Law, 1-6/2005, p. 26 – 27.

of meeting the increasingly greater and more urgent demand for ensuring judicial protection.<sup>9</sup>

The contemporary development of digital technology provides a great opportunity to improve the efficiency and reliability of the justice system, especially in civil and commercial cases, the number of which is the highest in Polish courts. The digital transformation in civil proceedings has accelerated as a result of the COVID-19 pandemic. This study discusses the changes in Polish civil procedure introduced in recent years, which concern the computerization of the random assignment of cases to judges for consideration, electronic service of documents, consideration of the case by the court during a remote hearing using a videoconferencing system and the preparation of an electronic record of the trial.

## **2. PROTECTING THE PRINCIPLES OF CIVIL PROCEDURE IN DIGITAL TRANSFORMATION**

The digitalization of civil proceedings is changing classical procedural institutions to such a significant extent that it is necessary to consider what are the boundaries that no legislator should cross. In my opinion, the boundaries of computerization of the justice system are determined by the basic (primary) principles of civil procedure. Therefore, it seems that it is not permissible to transform court proceedings solely into a series of electronic algorithms, without the participation of a human factor in the person of a judge or another entity acting as a legal protection authority. This issue is part of the practice of using artificial intelligence in resolving court cases. It can be noted that in 2024, the EU legislator adopted the first legal act on a global scale that introduces a legal framework for the creation and functioning of artificial intelligence systems with absolute respect for human rights and freedoms.<sup>10</sup>

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<sup>9</sup> Ribeiro, D. G., *Civil Law Enforcement: Experiences from Brazilian Law* [in:] Cachón Cadenas, M.; Picó i Junoy, J., *Civil Enforcement: Current Issues*, Atelier, Barcelona 2008, p. 371.

<sup>10</sup> Regulation (EU) 2024/1689 of The European Parliament and of The Council of 13 June 2024 laying down harmonised rules on artificial intelligence and amending Regulations (EC) No. 300/2008, (EU) No. 167/2013, (EU) No. 168/2013, (EU) 2018/858, (EU) 2018/1139 and (EU) 2019/2144 and Directives 2014/90/EU, (EU) 2016/797 and (EU) 2020/1828 (Artificial Intelligence Act), OJ L, 2024/1689, 12.7.2024.

## **2.1. The concept and types of the Principles of Civil Procedure in Polish science**

### **2.1.1. The concept**

In the Polish science of civil procedure law, the issue of procedural principles has been taken up by many authors, but it should be remembered that this issue is an important general theoretical problem. In general, it can be stated that procedural principles are certain standards of functioning of the justice system and individual procedures. Isolation of a specific principle will occur only when the elements and features that make it up are dominant.<sup>11</sup> The principles of civil procedure should be assigned a guarantee function, which is expressed in ensuring the correctness of court decisions and their effectiveness, as well as an interpretative function, because they are used as interpretative directives.

In Polish legal literature, various concepts of the principles of civil procedure are presented. In order to understand their essence, it is enough to recall three representative definitions. According to the first definition, the principles of civil procedure are directives for the efficiency of the proceedings, ensuring the fulfillment of its function by properly handling the cases to which the proceedings relate.<sup>12</sup> According to another concept, the principles of civil procedure can be defined as the guiding ideas of the civil procedural law system, according to which the content and form of individual procedural institutions are shaped and their connection into a system by means of legal and procedural relations, in order to ensure the fullest possible implementation of the functions of civil procedure.<sup>13</sup> According to the third definition, the rules of civil procedure are the central ideas of the procedural law system, which are closely related to the principles according to which the justice system is organised in a given country.<sup>14</sup>

### **2.1.2. Types**

Just as the doctrine presents various definitions of the principles of civil procedure, there are also significant differences in the formulation of their catalogue.<sup>15</sup> A

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<sup>11</sup> Piasecki, K., *Litigious examination proceedings*, C. H. Beck, Warsaw 2004, p. 43.

<sup>12</sup> Broniewicz, W., *Civil Procedure in outline*, LexisNexis, Warsaw 2008, p. 55.

<sup>13</sup> Berutowicz, W., *Civil Procedure in outline*, State Scientific Publishing House, Warsaw 1974, p. 227 – 228.

<sup>14</sup> Siedlecki, W.; Świeboda, Z., *Civil Procedure. Lecture Outline*, PWN Law Publishers, Warsaw 1998, p. 53 – 54.

<sup>15</sup> A compilation of various catalogues of civil procedure rules, *vide* Piasecki, *op. cit.* note 11, p. 47 - 48.

detailed discussion of this issue goes beyond the scope of this study. However, for the considerations concerning the digitalization of civil procedure, it is enough to mention first of all: the principle of equal rights of parties, which manifests itself in the fact that the court cannot issue a judgment without giving the opposing party the opportunity to express its opinion (*audiatur et altera pars*) and that each party should be entitled to the same procedural means (*non debet actori licere, quod reo non permittitur*);<sup>16</sup> the principle of direct examination of evidence by the judge, which means that the adjudicating court (i.e. the court that issues a decision in the case) should familiarize itself directly with the parties' demands and claims as well as with the evidence;<sup>17</sup> the principle of oral proceedings, according to which statements made by the parties, witness testimonies and court procedural actions (e.g. announcement of court decisions) should be made orally during the hearing;<sup>18</sup> the principle of open proceedings, which introduces the primacy of public examination of the case in the form of public court sessions, public announcement of judgments, the possibility of access to case files and the possibility of participating in certain court activities.<sup>19</sup>

When introducing new legal regulations based on digital techniques into court proceedings, the legislator should examine in each case whether the procedural simplifications are not taking place to such an extent that the fundamental principles of civil procedure are being annihilated. In my opinion, diagnosing abuses, informing the legislator and participants in legal transactions about them, and formulating conclusions as to the limits of permissible digital transformation are important tasks of the modern science of civil procedure.

### 3. THE COMPUTERIZATION OF THE RANDOM ASSIGNMENT OF CASES TO JUDGES

The implementation of the fundamental right of a citizen to a fair trial should take place immediately after the initiation of civil proceedings. It should be emphasized that, in accordance with Recommendation No. R(94)12 of the Committee of Ministers to Member States on the independence, efficiency and role of judges, adopted on 13 October 1994,<sup>20</sup> in order to respect, protect and strengthen the independence of judges, steps must be taken to ensure that the allocation of cases

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<sup>16</sup> Dolecki, H., *Civil Procedure. Lecture Outline*, LexisNexis, Warsaw 2011, p. 59.

<sup>17</sup> Berutowicz, *op. cit.* note 13, p. 246.

<sup>18</sup> Piasecki, *op. cit.* note 11, p. 89.

<sup>19</sup> Broniewicz, *op. cit.* note 12, p. 68 – 70.

<sup>20</sup> Jasiński, J., *Legal Standards of the Council of Europe. Recommendations. Volume IV. Judiciary. Organization-Proceedings-Adjudication*, Scientific Office, Warsaw 1998, p. 27, p. 36.

is not influenced by the wishes of any party or any person with an interest in the decision of the case. Cases may be allocated, for example, by drawing lots, automatically distributing them in alphabetical order or in some other similar manner (paragraph 2e of Principle I).

The Electronic Random Case Allocation System was introduced into Polish law only on 1 January 2018.<sup>21</sup> Before that date, there was no uniform court practice regarding the method of assigning cases to judges, and in fact it was decided by the judge who held the position of the head of a given court division. This system was not transparent and led to abuses, because it remained beyond any control.

As already indicated, the Random Case Allocation System has been in force since 1 January 2018. In accordance with Article 47a § 1 of the AALO, cases are assigned to judges randomly, within individual case categories, unless the case is subject to assignment to a judge on duty. It is rightly emphasized in the academic literature that since that date, for the first time in Poland, the random assignment of cases to judges has been recognized as a constitutional principle. Its purpose is to ensure an equal and fair workload for the adjudicating staff of courts and to guarantee impartiality to the parties to court proceedings, including civil proceedings. The Random Case Allocation System has excluded the possibility of human interference in the course of drawing cases and has adapted the Polish justice system to EU recommendations. It is worth noting that the Supreme Court in its judgment of 6 August 2019<sup>22</sup> stated that Article 47a of the AALO is a provision of a typically organizational nature, not a procedural one, which is intended to evenly and randomly burden judges with official duties. In turn, its violation does not mean that the composition of the court is contrary to the provisions of the law, but at most a violation of the principles of the organization of the court's work. Such a violation does not result in the invalidity of the proceedings, as provided for in Article 379, point 4 of the Code of Civil Procedure.

Detailed rules for the functioning of the Random Case Allocation System are included in a legal act of a sub-statutory nature - the Rules of Procedure of Common Courts.<sup>23</sup> In § 2 point 16 of the EROCC, the Random Case Allocation System is defined as an IT system used for random allocation of cases and court tasks, operating on the basis of a random number generator. This system is an IT tool - a network application available from computers logged into internal IT networks in courts. The central computer, which uses the random number

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<sup>21</sup> Act of 12 July 2017 amending the Act – Law on the Organization of Common Courts and certain other acts, Official Gazette, No. 1452/2017 (hereinafter: AALO).

<sup>22</sup> Supreme Court Judgement, No. II PK 42/18.

<sup>23</sup> Executory order of The Secretary of Justice of 18 June 2019 Regulations of the Office of Common Courts, Official Gazette, No. 1141/2019, 867/2024 (hereinafter: EROCC).

generator, after court hours deals with each division of each common court in Poland in turn and randomly assigns a reporting judge in each case entered into the System on a given day. A characteristic feature of the System is the daily sending to the central office via the IT network of a list of cases that have been filed with the court. After registration, these cases are assigned special codes, and then a drawing of judges is carried out, and the results of the drawings are sent back at night.<sup>24</sup>

## 4. ELECTRONIC SERVING OF DOCUMENTS

### 4.1. Serving in general

The basic legal regulation concerning the institution of service of documents in Polish civil proceedings can be found in the Code of Civil Procedure (Articles 131 – 147)<sup>25</sup> and in a legal act of a sub-statutory nature – the regulation of the Secretary of Justice on the detailed procedure and method of serving court documents in civil proceedings.<sup>26</sup>

At the beginning of the considerations in this part of the study, it should be explained that the subject of service in civil proceedings are court documents, procedural documents, orders of the presiding judge and court decisions in the form of judgments, decisions and payment orders. For the sake of clarity, it should be indicated that court documents are documents drawn up by the court or executive authority, addressed to the parties and other participants in the proceedings (e.g. notification of the date of the hearing)<sup>27</sup>. In turn, according to art. 125 § 1 ACCP, procedural documents are documents submitted outside the hearing by the parties and other participants in the proceedings (e.g. a witness, an expert) to the court or executive authorities, which contain various motions and statements (e.g. a lawsuit, an appeal). Orders are exclusively decision-making actions of a judge who acts as the presiding judge (i.e. the presiding judge of the hearing, the reporting judge in a given case), and not as a court (procedural authority).

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<sup>24</sup> Pytlewska, M., *The Random Case Allocation System as a guarantee of the impartial right to a court in the context of the European Union recommendations*, Law in Action, 40/2019, p. 273.

<sup>25</sup> Act of 17 November 1964 – Code of Civil Procedure, Official Gazette, 1964.43.296, No. 1568/2024 (hereinafter: ACCP).

<sup>26</sup> Executory order of The Secretary of Justice of 6 May 2020 on the detailed procedure and manner of serving court documents in civil proceedings, Official Gazette, No. 819/2020, 19/2024 (hereinafter: Executory order of The Secretary of Justice of 6 May 2020).

<sup>27</sup> Bładowski, B., *Methodology of work of a civil judge*, Zakamycze, Kraków 2005, p. 90.

Currently, Polish civil procedure regulates various methods of service, i.e. electronic service, service by placing the content of the court document in the Information Portal, service to the address for electronic service, direct service between attorneys, substitute service to an adult household member of the addressee, service by submitting a double notification, service of procedural documents by an executive authorities, service to a guardian appointed for a party whose place of residence is unknown, service by posting the document in the court building.

Attention can also be drawn to the general regulation contained in Article 149[1] of the ACCP. The provision provides for the possibility of summoning parties, witnesses, experts or other persons in a manner that the court deems most expedient, bypassing the previously mentioned methods of service, if it deems it necessary to expedite the examination of the case. A summons made in this way produces the effects provided for in the ACCP, if it is beyond doubt that it has reached the addressee. The provision allows for the summons to be made, for example, by e-mail, telephone, or electronic communicator.

Further considerations will be limited exclusively to cases of service made using electronic systems.

#### **4.2. Electronic service**

It should be noted that electronic communication in civil proceedings may be bilateral, and therefore not only in the case where the addressee is a procedural body, but also a party or another participant in the proceedings. In addition to using the global computer network to send a procedural document to the court, there is a possibility of using these services analogously by the court. This method of delivery may apply to both copies of procedural documents filed by the parties and court documents. It is correctly emphasized in science that the basic advantage of using IT systems for the purposes of delivery in civil proceedings is economic considerations. Each court proceeding involves the need to incur certain expenses by the State, and these are largely related to covering the costs of delivering procedural documents to the opponents of the proceedings and court documents. Therefore, replacing traditional - expensive and time-consuming - deliveries involving post offices with electronic services simplifies and speeds up communication and reduces its costs.<sup>28</sup>

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<sup>28</sup> Kościółek, A., *Electronic procedural activities in civil court proceedings*, Wolters Kluwer, Warsaw 2012, p. 273.

The Polish legislator introduced a general regulation on electronic service to the ACCP in Article 131[1] in 2009. Over the following years, this provision was subject to subsequent amendments. According to the current content of Article 131[1] § 1 of the ACCP, the court shall deliver documents via an electronic information system (electronic service) if the addressee has submitted the document via an electronic information system or has chosen to submit documents via an electronic information system. It should be emphasized that this regulation applies only if the party has chosen to submit documents via an electronic information system, although, as a rule, the addressee may waive electronic service.

The addressee who is obliged to submit documents via the IT system under the provisions of law cannot waive electronic service, e.g. in electronic summary proceedings – the plaintiff submits documents exclusively via the IT system (Art. 505[31] § 1 of the ACCP), in the proceedings for entry in land and mortgage registers – the notary and the enforcement authority submit the application exclusively via the IT system (Art. 626[4] § 1 of the ACCP), in bankruptcy proceedings, procedural documents and documents are submitted exclusively via the IT system supporting court proceedings using the forms provided in this system (Art. 216a sec. 1 of the Bankruptcy Law Act<sup>29</sup>).

In the case of electronic service, the letter is deemed to have been delivered at the time indicated in the electronic confirmation of receipt of the correspondence, and if there is no such confirmation, electronic service is deemed to be effective after 14 days from the date of placing the letter in the IT system. For the speed of electronic services, apart from the fast transfer of data, it is also important that there are no restrictions on deliveries on non-working days (e.g. Sundays) and at night (i.e. from 9 p.m. to 7 a.m.).

It is worth noting that the detailed procedure and method of making electronic services are regulated in the implementing regulation of the Secretary of Justice of 20 October 2015.<sup>30</sup> This legal act states that a document is delivered via the IT system that supports court proceedings, in such a way that it is placed in the account from which the addressee submitted the first document in the case. After the document is received, the account in which the document was placed displays the date of receipt, and in the event that the document is not collected within 14 days from the date of placing the document in the account - the date

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<sup>29</sup> Act of 28 February 2003 - Bankruptcy Law, Official Gazette, 2003.60.535, No. 794/2024, 1222/2024.

<sup>30</sup> Executory order of The Secretary of Justice of 20 October 2015 on the procedure and method of making electronic service, Official Gazette, No. 1776/2015, 452/2023 (hereinafter: Executory order of The Secretary of Justice of 20 October 2015).

on which the 14-day period expired. Electronic confirmation of receipt of correspondence is sent to the court automatically, via the IT system. Electronic confirmation of receipt of correspondence contains: the designation of the delivered document, information on the time of its receipt, the name of the account user to whom the document was delivered, or - if the document is not received - information that the document was deemed to have been delivered, information on the time of placing the document in the IT system together with the designation of the delivered document, and in the case of registration proceedings - information that the document was delivered to the account indicated by the user, other than the account from which the document was submitted.<sup>31</sup>

In addition to the previously mentioned legal regulations regarding electronic services, it is also necessary to refer to the Act of 18 November 2020 on electronic services.<sup>32</sup> This Act regulates the issue of electronic service for parties to proceedings and the principles of exchanging correspondence with public entities (e.g. public finance sector entities, enforcement authorities, non-public universities) in relations with other public entities and non-public entities, including natural persons. The Act specifies the principles of electronic harassment using the registered electronic service and the qualified registered electronic delivery service and the hybrid form of delivery. It should be emphasized that the AES provides that ultimately all correspondence of public entities will be sent in electronic form. In terms of procedural law, it is important that the AES has introduced an obligation for attorneys and other professional legal representatives to establish an address for electronic service, but the AES provisions will be applied to such services made in common courts only from 1 October 2029. This means that establishing an address for service, according to the principles specified in the AES, will not result in receiving correspondence from common courts in civil and criminal cases at this address.

According to the regulation contained in the AES, the provision of the public service of registered electronic service in contacts with public entities has been entrusted to a designated operator. Trusted providers (public and qualified) will issue proof of sending and receiving the document, providing certainty to the sender and addressee and the time of delivery. It has been emphasized in science that electronic service is a service provided to third parties, and the provider of this service is an independent entity. In particular, this independence can be ensured by using technical or organizational mechanisms. Hence, the provider of the

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<sup>31</sup> Gołaczyński, J., *Computerization of civil procedure. From separateness to the basic model*, Gdansk Law Studies, 5/2022, p. 158.

<sup>32</sup> Act of 18 November 2020 on electronic service, Official Gazette, No. 2320/2020, 1045/2024 (hereinafter: AES).

electronic delivery service will be an „impartial witness” who provides evidence of the entire delivery process (evidence of sending, making the document available for collection and receipt). This evidence is made available to the sender and addressee.

In addition, an advanced electronic signature or an advanced electronic seal is used to secure both sent and received data, which is intended to exclude the possibility of undetectable data change.<sup>33</sup>

Under the AES, a new Article 131[2] on deliveries to an address for electronic service was also introduced to the ACCP. This provision introduced an alternative method of electronic services to Article 131[1] of the ACCP. If the conditions are met, delivery to an e-mail address under Article 131[2] of the ACCP takes precedence over electronic service under Article 131[1] of the ACCP. Electronic service under Article 131[1] of the ACCP may therefore retain its significance only outside the scope of application of delivery to an e-mail address.<sup>34</sup> It should also be emphasized that Article 131[2] of the ACCP applies only when the technical and organizational conditions of the court allow such service. Service may be effected on a party that is a natural person only if it has submitted a document from an address for electronic service or has indicated this address as an address for delivery. This does not apply to deliveries to entrepreneurs entered in the Central Register and Information on Economic Activity. In its substantive scope, this regulation covers court deliveries of court documents and procedural documents to parties to the proceedings.

#### **4.3. Service via the Information Portal**

The legal regulations on electronic deliveries discussed earlier are not generally applicable in Polish civil proceedings, as a universal IT system for their handling has not yet been created. Currently, such a system operates only in certain types of civil proceedings, in particular in electronic summary proceedings (Article 505[28] – 505[39] ACCP), in bankruptcy proceedings.

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<sup>33</sup> Gołaczyński, J., *Electronic services in civil and criminal cases*, Palestra, 5/2024, p.17–18.

<sup>34</sup> Weitz, K., *Service in civil proceedings. Commentary to Articles 131-147 of the Code of Civil Procedure*, Wolters Kluwer, Warsaw 2024, p. 32.

#### **4.3.1. The Information Portal**

In Polish court proceedings, one of the online means of communication between courts and citizens is the Information Portal, defined as a system enabling access by authorized or authorised entities to information on cases pending before courts via the Internet, to which the State Treasury is the holder of the copyright and related rights.<sup>35</sup> The first Information Portal was launched in 2006, in the economic cases of one district court. Later, the system was gradually introduced in courts throughout the country. Currently, all courts dealing with civil and criminal cases have an Information Portal.

It should be emphasized that the initial purpose of introducing the Information Portal was solely to provide persons participating in the proceedings and their representatives with access to data concerning their court cases (i.e. the content of minutes of hearings, court documents and procedural documents) via publicly available computer networks.

By introducing the Information Portal, the Polish legislator primarily wanted to relieve court secretariats, as the obligation to provide information to the parties was very time-consuming, e.g. photocopying individual cards of the case files. Moreover, it involved the necessity of the party or its representative to come to the court in person, to order files for the reading room in advance, and to incur additional costs related to receiving photocopies of the case files.<sup>36</sup> It should also be noted that the use of the Information Portal has been free of charge since its inception, allows the parties to access the court case from a computer, and saves time and money.

#### **4.3.2. Introduction of services via the Information Portal during the COVID-19 pandemic**

After the outbreak of the COVID-19 pandemic, the Polish legislator, as part of extraordinary legal actions related to the epidemic situation due to COVID-19, by the Act of March 2, 2020 on special solutions related to the prevention, counteracting and combating of COVID-19, other infectious diseases and crisis situations caused by tchem,<sup>37</sup> introduced the possibility of serving court

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<sup>35</sup> Mikołajczuk, E., *Analysis of the functioning of the Information Portals of Common Courts*, Justice System Analyses. Justice System Institute, Warsaw 2020, p. 15.

<sup>36</sup> *Ibid.*, p. 16.

<sup>37</sup> Act of 2 March 2020 on special solutions related to the prevention, counteracting and combating of COVID-19, other infectious diseases and crisis situations caused by tchem, Official Gazette, No. 568/2020 (hereinafter: COVID-19 Act).

documents via the Information Portal. Pursuant to art. 15zzs[9] of the COVID-19 Act, during the period of the state of epidemic threat or the state of epidemic declared due to COVID-19 and within one year of the revocation of the last of them, in the absence of the possibility of using the IT system supporting court proceedings, the court served the attorney and other professional legal representatives with court documents by placing their content in the IT system used to make these documents available (Information Portal). This regulation did not apply to documents that were to be served together with copies of the parties' procedural documents or other documents not originating from the court.

The date of service of the document was the date on which the recipient read the document placed on the Information Portal. In the event of failure to read it, it was assumed that the document was served after 14 days from the date of placing the document on the Information Portal. It should be emphasized that the delivery of a document via the Information Portal produced the procedural effects specified in the ACCP appropriate for the delivery of a court document. The judge could refrain from delivering a document via the Information Portal if delivery was impossible due to the nature of the document.

The described regulation was in force until March 14, 2024, i.e. until the legislator transferred the provision on delivery via the Information Portal to the ACCP.

#### **4.3.3. Current legal solution for services via the Information Portal in ACCP**

Considering that Article 15zzs[9] of the COVID-19 Act was a temporary provision and did not comprehensively regulate delivery through the Information Portal, the Act of 7 July 2023,<sup>38</sup> which is in force from 14 March 2024, a new Article 131[1a] was introduced in the ACCP. The provision states that if delivery via the electronic system is impossible, the court shall deliver court documents to the attorney and other professional legal representatives, exclusively by placing their content on the Information Portal in a manner enabling the recipient to obtain a document confirming delivery. This does not apply to documents that are to be delivered together with copies of the parties' procedural documents or other documents not originating from the court, unless the court has a copy of them recorded in electronic form. It should be emphasized that currently delivery via the

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<sup>38</sup> Act of 7 July 2023 amending the Act - Code of Civil Procedure, the Act - Law on the Organization of Common Courts, the Act - Code of Criminal Procedure and certain other acts, Official Gazette, No. 1860/2023 (hereinafter: Act of 7 July 2023 amending the Act - Code of Civil Procedure).

Information Portal for professional representatives is, in principle, mandatory and exclusive.

In the case of delivery via the Information Portal, the document is deemed to have been delivered at the time indicated in the document confirming delivery. If there is no document confirming delivery because the attorney did not read the content of the delivered document, delivery is deemed to be effective after 14 days from the date of placing the content of the document on the Information Portal. The judge shall refrain from delivering the document via the Information Portal if it is impossible to deliver it in this way due to the nature of the document, in particular if there is a need to issue a certified copy of the judgment or enforcement title to the party.

The Secretary of Justice has issued an implementing regulation in which he regulated the detailed procedure and manner of delivering court documents via the Information Portal, as well as the electronic form in which these documents are delivered.<sup>39</sup>

It should be emphasized that attorneys and other professional legal representatives are required to set up individual accounts on the Information Portal.<sup>40</sup>

#### **4.4. Electronic form for acknowledging receipt of a court parcel**

From the point of view of improving the speed and efficiency of Polish civil proceedings, the electronic form of acknowledgment of receipt of a court document, which has been in operation since 2013 (§ 14 – 16 Executory order of The Secretary of Justice of 20 October 2015), is of great importance. Courts that decide cases in civil proceedings commonly use this solution. The essence of the electronic form of acknowledgment of receipt is that it has only electronic form and is transmitted using the sending court's IT system used to handle the electronic form of acknowledgment of receipt. The sending court obtains information about delivery only via the IT system, because there is no acknowledgment of receipt in paper form. The addressee of the parcel confirms its receipt and the date of receipt of the parcel in the electronic form of acknowledgment of receipt using a device that allows for the reproduction of a handwritten letter, placing a legible signature containing the first and last name. It should be emphasized that the software supporting the device enabling the reproduction of handwritten letters

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<sup>39</sup> Executory order of The Secretary of Justice of 12 March 2024 on the delivery of court documents via the information portal in civil proceedings, Official Gazette, No. 368/2024.

<sup>40</sup> Gołaczyński, *Electronic services...*, *op. cit.* note 33, p. 14 – 15.

and the IT system used to support the electronic form of acknowledgment of receipt ensure the integrity of the data contained in the electronic form of acknowledgment of receipt with the handwritten signature affixed by the person receiving the shipment, in such a way that any changes to these data made after the signature are recognized. The completed electronic form of acknowledgment of receipt is provided by the operator's employee with an electronic signature and is transferred to the IT system of the sending court no later than the next business day.

The electronic form of acknowledgment of receipt of a court document has eliminated the waiting time for the court to receive written proof of service to the parties and other participants in the proceedings. Electronic forms of acknowledgment of receipt are continuously disclosed in the teleinformatic system of the court hearing the case, thanks to which the court can independently and quickly determine whether the court document (e.g. summons to a hearing) was properly served, on what date and who received it. The described solution is not complicated in its design, but it greatly streamlines court proceedings.

## 5. REMOTE HEARING

### 5.1. Taking evidence by videoconference

As part of the computerization of Polish civil procedure and thus its streamlining, one of the first actions of the legislator was to adopt a provision that allowed evidence to be taken remotely. By virtue of the Act of 5 December 2008<sup>41</sup> added new paragraphs 2 and 3 in Article 235 of the ACCP.<sup>42</sup> In Polish science, even before 2008, a *de lege ferenda* postulate was put forward to introduce into the ACCP the possibility of questioning a witness using technical devices for direct remote communication, i.e. by transmitting image and sound.<sup>43</sup> Article 235 of the ACCP is still in force, although in a slightly modified wording. Currently, if the nature of the evidence does not prevent it, the adjudicating court may decide that it will be conducted remotely as part of a remote hearing. It can be indicated that this solution is particularly useful in cases involving foreign entities. It is

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<sup>41</sup> Act of 5 December 2008 amending the Act - Code of Civil Procedure and certain other acts, Official Gazette, 2008.234.1571. The regulation entered into force on 1 July 2009.

<sup>42</sup> It should be noted that this provision was introduced in order to adjust Polish law to Regulation (EC) No. 861/2007 of the European Parliament and of the Council of 11 July 2007 establishing a European Small Claims Procedure, OJ L 199, 31.7.2007, p. 1–22.

<sup>43</sup> Muliński, M.; Krakowiak, M., *Hearing a witness in civil proceedings using modern technology – a postulate de lege ferenda*, Judicial Review 3/2005, p. 64 – 65.

worth adding that in 2023<sup>44</sup> Article 235[1] of the ACCP, which concerns the content of a party's request to take evidence, has been supplemented in such a way that the request may expressly indicate whether the party requests that evidence be taken in a remote session.

## 5.2. The original regulation of the remote hearing in ACCP

In Polish civil procedure, the first legal regulation regarding remote hearings was introduced by the Act of 10 July 2015.<sup>45</sup> The legislator added a new paragraph 2 to Article 151 of the ACCP, according to which the judge could order the hearing to be held using technical devices enabling it to be held remotely. It was important that in such a case the parties could participate in the hearing when they were in the building of another court and performed procedural acts there, and the course of procedural acts was transmitted from the courtroom of the court conducting the proceedings to the place of residence of the parties and from the place of residence of the parties to the courtroom of the court conducting the proceedings. The purpose of introducing a remote hearing was primarily to reduce the costs of the parties' and other participants' appearance at the hearing by allowing them to be held via videoconferencing. It should be emphasized that the original content of Article 151 § 2 of the ACCP indicated that in the event of a remote hearing, the parties could participate in it only when they were in the building of another court, and not in any other place and perform procedural acts there.<sup>46</sup> The restriction on the place where the party was to be present during the remote hearing was the main reason for the non-use of the analyzed regulation in court practice. The remote hearing in the legal form resulting from Article 151 § 2 of the ACCP was a completely dead institution. Another reason for this situation were mental issues, which concerned the change in the approach to remote hearings by judges and lawyers, intellectual acceptance of them.<sup>47</sup>

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<sup>44</sup> Act of 7 July 2023 on amending the Act - Code of Civil Procedure, the Act - Law on the Organization of Common Courts, the Act - Code of Criminal Procedure and certain other acts, Official Gazette, No. 1860/2023.

<sup>45</sup> Act of 10 July 2015 amending the Civil Code Act, the Code of Civil Procedure Act and certain other acts, Official Gazette, No. 1311/2015. The act has been in force since 8 September 2016.

<sup>46</sup> Krakowiak, M., *Electronic hearing in Polish civil proceedings*, [in:] Białecki, M.; Kotas-Turoboyska S.; Manikowski, F.; Słyk, J.; Szczepanowska, E., *Resolving Civil Cases: Current Challenges and Perspectives*, Wolters Kluwer, Warsaw 2022, p. 218 – 219.

<sup>47</sup> Fruk, A.; May, J., *Remote hearing in civil proceedings – origins, standards and perspectives (part I – general issues)*, *Folia Iuridica Universitatis Wratislaviensis*, 12(2)/2023, p. 139.

### 5.3. Introduction of remote hearing during the COVID-19 pandemic

The previously presented regulation of remote hearings under Article 151 § 2 of the ACCP in the wording introduced in 2015 became the prototype for solutions adopted by the Polish legislator during the COVID-19 pandemic. Namely, as part of extraordinary legal actions related to the epidemic situation due to COVID-19, by virtue of the Act of 14 May 2020<sup>48</sup> a new Article 15zsz[1] was introduced in the COVID-19 Act. The aforementioned provision provided for a public hearing and trial conducted using technical devices enabling them to be conducted remotely. It should be emphasized that Article 15zsz[1] of the COVID-19 Act concerned only cases examined in accordance with the provisions of the ACCP, although it was irrelevant whether these were examination proceedings, enforcement proceedings, in particular judicial enforcement proceedings, or other proceedings to which the provisions of the ACCP applied.

The fundamental difference between the previously described Article 151 § 2 of the ACCP and the remote hearing under Article 15zsz[1] of the COVID-19 Act was that, in the light of the latter provision, the entities participating in it did not have to be in the court building, but could be anywhere. The solution adopted in the COVID-19 Act was fully justified by the epidemic situation and the legislator's desire to minimize interpersonal contacts in the court building and avoid large gatherings of people.<sup>49</sup> From that moment on, remote hearings began to be widely used in court practice, especially since they were the rule under Article 15zsz[1] of the COVID-19 Act.

It should be explained that Article 15zsz[1] of the COVID-19 Act was a temporary provision, as it was applicable only during the period of the state of epidemic threat or the state of epidemic declared due to COVID-19 and within one year of the revocation of the last of them. Moreover, the COVID-19 Act did not contain any indications as to the technical conditions that should be met when conducting a remote hearing. There was also no universal software certified by the Secretary of Justice for conducting remote hearings. In practice, the Microsoft Teams program was widely used. The lack of detailed regulation of the remote hearing in the form adopted in the COVID-19 Act raised doubts as to the full preservation of the citizen's right to a court and the principles of civil procedure such as the principle of open proceedings, adversarial nature, oral proceedings, equality of the parties and directness.

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<sup>48</sup> Act of 14 May 2020 amending certain acts on protective measures in connection with the spread of the SARS-CoV-2 virus, Official Gazette, No. 875/2020.

<sup>49</sup> Krakowiak, *Electronic hearing...*, *op. cit.* note 46, p. 221.

The regulation of a residual and temporary nature violated the authority of the court and caused difficulties as to the correct identification of persons participating in the hearing, the security of data transmission, the protection of personal data and the technical preparation and conduct of the hearing.<sup>50</sup> Moreover, it should be emphasised that during the COVID-19 pandemic, two contradictory forms of remote hearing were in force in parallel, i.e. the one contained in Article 151 § 2 of the ACCP and Article 15zsz[1] of the COVID-19 Act.

#### **5.4. Current legal solution for remote hearing in ACCP**

Significant changes to the content of the previously cited art. 151 of the ACCP were introduced by the Act of 7 July 2023 amending the Act - Code of Civil Procedure, which are in force until 14 March 2024. The legislator decided to transfer the solutions regarding remote hearings from the COVID-19 Act to the ACCP. The purpose of the amendment was to permanently regulate in the ACCP the solutions consisting in enabling remote hearings to be conducted using IT means enabling remote communication.

The current Article 151 of the ACCP contains a detailed solution regarding the method and conditions for conducting a remote hearing, with the assumption that the court conducts the hearing in a courtroom, to which free access is guaranteed for all parties and persons summoned, while some may come outside the court building, if they express such a wish (so-called hybrid hearing). In contrast to the solutions introduced in Article 15zsz[1] of the COVID-19 Act, the current rule is that a party may always appear in the courtroom, and remote participation in the hearing is its privilege. The party is informed of such a structure of the institution of the hearing in the notification of the date of the hearing. Moreover, Article 151 § 4 of the ACCP explicitly states that the judge may order that a person deprived of liberty participate in procedural activities only as part of a remote session. In such a case, a representative of the prison or detention center administration, a proxy, if appointed, shall participate in the remote session at the place of stay of that person. This provision shall apply accordingly to persons covered by therapeutic proceedings.

A person participating in a remote hearing who is outside the court building is required to inform the court of their location and make every effort to ensure that the conditions at their place of stay are consistent with the dignity of the court and do not constitute an obstacle to carrying out procedural activities involving them. In the event of a refusal to provide the indicated information or if the behavior of

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<sup>50</sup> *Ibid.*, p. 226.

this person raises reasonable doubts as to the proper course of activities conducted remotely involving them, the court may summon this person to appear in person in the courtroom.

The Secretary of Justice has specified detailed technical standards for software and hardware requirements necessary to participate in a remote meeting.<sup>51</sup>

It should be emphasized that currently remote hearings in civil proceedings – in the hybrid form described earlier – are a real alternative to traditional hearings. Court practice commonly applies the applicable Article 151 ACCP in proceedings before the court of first instance, as well as in appellate proceedings.

## **6. ELECTRONIC RECORD OF THE TRIAL**

Another element of the digitalization of Polish civil procedure concerns the recording of the hearing using devices recording sound or image and sound (electronic protocol; e-protocol). It should be emphasized that the recording is recorded using devices and technical means using digital technology, allowing for the recording of this record to be recorded on an electronic data carrier. The courts have been equipped with the appropriate IT infrastructure.

The legal regulation on the electronic protocol was introduced to the ACCP in 2010.<sup>52</sup> According to art. 157 § 1 and § 1[1] of the ACCP, the minutes are prepared by recording the course of the hearing using a sound or image and sound recording device and in writing, under the direction of the presiding judge. If for technical reasons it is not possible to record the course of the hearing using a recording device, the minutes are prepared exclusively in writing. It should be emphasized that at the same time as the electronic recording, an abbreviated written minutes are prepared by a court clerk. It is interesting that the original content of art. 158 § 1 of the ACCP indicated that the abbreviated written minutes contained only data identifying the court, judges, parties, attorneys, case designation and listed orders and rulings issued at the hearing, actions of the parties affecting the court's decision (e.g. settlement, change of claim). After several years of applying this provision in court practice, a problem related to the content of the abbreviated written minutes was revealed. Namely, in order to streamline their work, judges, in addition to the electronic record of the hearing, prepared a shortened written

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<sup>51</sup> Announcement of The Secretary of Justice of 5 March 2024 on the technical standards of software and hardware requirements necessary to participate in a remote meeting, Official Journal of The Secretary of Justice, No. 82/2024.

<sup>52</sup> Act of 29 April 2010 on amending the Act - Code of Civil Procedure, Official Gazette, 2010.108.684.

record, which contained the full course of the hearing, in particular the content of the testimonies of witnesses, parties and oral opinions of experts. However, there was no legal basis for preparing a record of such content. Court practice has shown that judges familiarize themselves more quickly with the written record of the hearing in a given case than by listening to CDs with recordings of the hearing, especially if several hearing dates were held in one proceeding. As a result, the legislator changed the content of Article 158 of the ACCP in such a way that the content of the written protocol drawn up together with the electronic record was expanded and it was allowed to include in this protocol the motions and statements of the parties and the results of the evidentiary proceedings and other circumstances important for the course of the hearing. Currently, the shortened protocol may include the same content as the traditional written protocol. Thanks to this change, familiarization with the course of the hearing by judges, parties and attorneys takes much less time than familiarization with the electronic record.<sup>53</sup>

The court official signs the minutes prepared using a sound or image and sound recording device with an electronic signature that guarantees the identification of the person and the recognition of any subsequent changes to the minutes. The possibility for the judge to request a transcription of the relevant part of the electronic minutes is also important for practice, if this is necessary to ensure the correct adjudication of the case. Transcription is a textual expression of the audio statements recorded on the audio-video recording, and is also a procedural institution, because it is expressly provided for in the ACCP. At the same time, it is an institution that the parties to the proceedings have no influence on, and at the same time it can be a really important source of information for the court adjudicating the case.<sup>54</sup> The transcript is an annex to the minutes.

The legislator in the implementing regulation<sup>55</sup> regulated in detail the issues concerning the types of devices and technical means used to record sound or images and sound; the method of making electronic records; the method of identifying persons making electronic records; the method of making electronic records available and storing them. It is also worth noting that the parties and other participants in civil proceedings may, without the court's permission, independently record the course of the hearing and other court activities at which they are present, using a sound recording device. The court must only be warned of the intention to record the course of the hearing in such a way. The court

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<sup>53</sup> Pietrkowski, H., *Methodology of work of a judge in civil cases*, LexisNexis, Warsaw 2014, p. 473 – 474.

<sup>54</sup> Goździaszek, Ł., *IT standards in civil procedure law*, *Judicial Review*, 2/2017, p. 49.

<sup>55</sup> Executory order of The Secretary of Justice of 2 March 2015 on the recording of sound or image and sound from the course of a public hearing in civil proceedings, *Official Gazette*, No. 359/2015, 309/2023.

prohibits the recording of the course of the hearing or other court activity using a sound recording device if the hearing or part thereof is held behind closed doors or if the proper conduct of the proceedings is against it (Article 9[1] ACCP). This regulation implements the principle of public civil proceedings. It should be emphasized that the preparation of an electronic protocol not only speeds up the course of the hearing, but also provides a guarantee for the parties and other participants in civil proceedings that the content of their motions and procedural statements, as well as the testimonies of witnesses, parties and oral opinions of experts will not be distorted by the judge or court official as part of the written protocol. Moreover, the electronic protocol allows the higher court to precisely analyze the procedural actions taken in the case, and allows the disciplinary authority to assess the conduct of the judge, including compliance with the principles of dignity of office.

## 7. CONCLUSION

The use of modern, digital technologies in court proceedings is a great opportunity to reduce their length. This is of great importance, especially in civil and commercial cases, the number of which has been steadily increasing in Polish courts for several years.

The scope of application of IT systems, or broadly understood artificial intelligence, in courts can be analyzed in two aspects: information, which involves providing information to the parties, their legal representatives and other participants in the proceedings, and procedural, which enables the performance of procedural activities, in particular the initiation of proceedings, filing of procedural documents, taking evidence, making court deliveries, recording the course of the hearing through the use of ICT tools.

When introducing the digitalization of civil proceedings, it should be noted that the adopted legal solutions should first and foremost implement the right to a court and the traditional, basic principles of procedure. It should also be noted that with the development of new technologies in civil proceedings, the legal nature of procedural provisions is changing. Namely, legal acts are increasingly becoming a set of IT standards, including in the form of numerous implementing regulations.

The process of digitalization of Polish civil procedure began at the beginning of the 21st century and is still ongoing. It should be noted that these are not comprehensive changes implemented in accordance with the previously developed concept. The digital transformation of civil procedure can be called a point transformation, as it concerns individual procedural institutions selected from time

to time. Despite such a rather chaotic approach of the legislator to the analyzed issue, it is necessary to appreciate the changes already introduced and very well accepted in court practice, in particular with regard to the delivery of court documents to attorneys via the Information Portal, remote hearings, which currently operate as hybrid hearings (remote and stationary), electronic transcript of the hearing, electronic confirmation of receipt of court correspondence, electronic system of random assignment of cases to judges.

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