INFLUENCE OF INFORMATIZATION ON THE EFFECTIVENESS AND RELIABILITY OF CIVIL PROCEEDINGS ON THE EXAMPLE OF POLISH SOLUTIONS

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Abstract

The Polish legislator has introduced to civil procedural law a series of solutions that allow the use of IT tools in the recognition and resolution of civil cases. In this respect, procedural construction can be indicated, referring directly to the manner of conducting proceedings, such as the possibility of carrying out the entire examination and enforcement proceedings in the ICT system (e.g. electronic proceedings by writ of payment) or using IT tools to a certain extent (e.g. the admissibility of electronic means of evidence, possibility of using distance communication means). Other instruments concern the informational sphere of the system of justice in civil matters and its relationship with the environment. They allow, among others to increase the level of information on the system of justice, as well as a specific civil case (e.g. Internet access to electronic protocols for parties and participants in the proceedings, and for third parties – access to the database of anonymised court decisions together with justifications). Organizational and technical tools are also not without significance, referring above all to the possibility of creating electronic case files, searching them and, more broadly speaking, allowing effective case management. All these solutions, which are at various stages of implementation, have a significant impact on the effectiveness of the proceedings (in particular evidentiary proceedings and later on enforcement proceedings), and also strengthen the guarantee of reliable proceedings, an example of which is the ability to faithfully document court meetings (protocol in the written form is only a shortened reflection of the course of the proceedings).

Keywords: *informatization of justice, electronic proceedings, e-court.*
JEL Classification: [K41].

1. Introduction

Polish civil procedural law is at the threshold of a revolution, which is based on introducing a wide range of IT instruments and means of remote communication as one of the factors to increase the efficiency of civil cases recognition, and at a later stage – enforcement of court judgments. The system of justice is currently struggling with the problem of excessive length of proceedings, and at the stage of enforcement proceedings – the low effectiveness of enforcement of pecuniary benefits. As a consequence, the legislator is looking for legal, organizational and financial solutions that will

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allow increasing the level of citizens' confidence in the operation of the justice system. Hence, reaching for solutions adequate to contemporary standards of functioning of the information society, in which IT tools play a fundamental role in the implementation of citizens' rights and obligations – in particular due legal protection. It should be emphasized that the solutions introduced in the Code of Civil Procedure[1] from 8 September 2016, promoting informatization will be applicable in all cases of examination proceedings as well as in a field of general provisions of enforcement proceedings and some methods of enforcement of pecuniary benefits. Thus, the current model of "insular" informatization was broken. This model of informatization referred to a narrow scope of examination proceedings (electronic proceedings by writ of payment) as well as consequently – execution of judgments issued in the ICT system as part of those proceedings. Its element was also creation of other narrow areas in which the possibility of using the ICT system was introduced (e.g. registration proceedings). However, the informatization of the system of justice in civil cases shaped in this way has created a natural creation of so-called silos of information, unrelated data sets created during the examination and enforcement proceedings conducted in the ICT system. In the latter case, the basic problem that became evident over time was the lack of interoperability of individual ICT systems with functionalities relating to the justice system and authorities supporting its activity.

These two phenomena, deeply rooted in civil procedural law, were not conducive to improving the efficiency of civil proceedings, hence the necessity of further legislative changes, and in the process – organizational ones. The indicated amendment to the Code of Civil Procedure has such a purpose. However, the main problem of implementing these solutions, and in particular designing and implementing the ICT system dedicated to examination and enforcement proceedings in civil cases remains.

2. Efficiency and informatization of proceedings – basic issues

While analysing civil proceedings from the perspective of praxeological sciences, it should be assumed that their effectiveness can be perceived mainly in terms of a correct court resolution (or settlement concluded between the parties), obtained with the involvement of proportional costs of the functioning of judicial authorities. It should be noted that according to Polish dictionary (n.d.) "effective" means "giving good results, efficient" and "effectiveness", according to W. Doroszewski (n.d.), means "efficiency, positive result". The literature emphasizes that the effectiveness of civil proceedings is perceived as a factor determining the implementation of procedural justice, and through it – the right to court (Gapska 2014: brak numeru strony). Thus, the effectiveness of the

[1] Act of 17 November (1964) – The Code of Civil Procedure (consolidated text, Journal of Laws of (2018), item 155, as amended).

proceedings is one of the basic assumptions of court proceedings and is a necessary condition for a fair trial. Ensuring the effectiveness of the proceedings requires reconciliation of the basic objective of the trial, which is the issuing of a fair decision, with the postulate to consider the case as soon as possible, and certainly without unreasonable delay. The effectiveness of judicial protection depends largely on how quickly it will be granted. Ensuring the quickest and most effective proceedings, which at the same time respect procedural guarantees, belongs to the court, which should ensure its proper course skilfully applying the rules of proceedings[2].

In this respect, informatization has enormous potential related to the acceleration of proceedings, referring primarily to the acceleration of:

1. circulation of documents through the use of service in the ICT system in place of or beside the traditional model;
2. flow of information about effective service via the postal operator (Electronic Confirmation of Receipt);
3. activities carried out directly in the courtroom, if the presiding judge correctly uses the possibility of documenting the course of the court hearing with the use of the electronic protocol instead of strenuously dictating the paraphrased statements of persons taking part in the hearing; this also applies to the removal of the time barrier related to the use of judicial assistance provided by other courts in the field of taking personal evidence, through the use of distance communication means to hear witnesses, experts, etc. by the court conducting the case;
4. enforcement of court judgments in the course of court enforcement through the use of electronic instruments under certain methods of pecuniary benefits enforcement (e.g. electronic attachment of a bank account, electronic auction of chattels), as well as the use of interoperable IT systems to obtain information on the person and property of the debtor necessary to the enforcement authorities.

As A. Łazarska emphasizes, the effectiveness of proceedings is understood as a feature of the proceedings, which makes it possible to implement guarantees of the right to a fair hearing without undue delay. It therefore covers two aspects: the speed of the proceedings and the possibility of actually benefiting from the judicial protection guarantee (Łazarska 2012: brak numeru strony). Therefore, when considering the problem of the effectiveness of civil proceedings, one should also take into account the reliability of this proceeding and the accuracy of the decision issued by the court. This effect should be achieved primarily with the involvement of only necessary and justified costs of the proceedings. In order to properly assess the issue of cost-effectiveness of court proceedings, it is necessary to distinguish the need to

[2] Judgment of the Court of Appeal in Szczecin of 8 January (2016), I ACa 339/15, LEX no. 2039739.

maintain the common court system by the State Treasury, even if the cost is not balanced by the court and administrative fees from the unjustified waste of resources available under the justice system (e.g. by involving unnecessary financial and organizational resources in small and simple cases).

In this regard, informatization of civil proceedings can also play a vital role, in particular by:

1. reliable documentation of court activities, both by using an electronic protocol and other forms, such as, for example, documenting enforcement activities using ICT means;

2. rationalization of the costs of the proceedings by reducing the costs of service (if made via the ICT system), reduction of expenditures for the proceedings themselves (e.g. through the use of means of distance communication in the scope of taking evidence), and reduction of organizational expenses, e.g. through savings relating to the space necessary for archiving files due to their digitalization or originally electronic form.

It is worth noting that the representatives of the procedural civil law doctrine say that the most important points of a good trial are efficiency and meeting the needs of parties through the institution of exemption from fees, good organization of the trial with appropriate human and technical background, trial costs that should not exceed those necessary for the efficient course of proceedings, fairness of the court towards the parties in the proceedings in the aspect of not using the parties' helplessness to formally end the case, efficiency understood as the judge's attitude independent of the attitude of the parties that may have an interest in the longer trail. The court case should end with the issuance of a decision within a reasonable time (Marszałkowska 2013). Numerical figures prove the practical importance of using new technologies. The introduction of electronic proceedings by writ of payment resulted in a 36-fold increase in the efficiency of judicature, reduced the costs of proceedings, enabled the submission of applications online without the need to attach evidence, and shortened the time of settlement of the claim to about 7 days and facilitated the pursuit of claims. The new S-24 system allowed the company to be set up within 24 hours and reduced the associated costs by 45%. On the other hand, the possibility of obtaining extracts from the on-line National Court Register resulted in savings for entrepreneurs who do not have to pay for print-outs worth approx. 5 million PLN (Marszałkowska 2013).

The above issues clearly indicate the need for an in-depth analysis of individual solutions relating to informatization of the system of justice in civil cases, and above all civil proceedings at their every stage – both as part of the examination and enforcement proceedings, which are an important element of the correct application of the right to court.

3. Selected solutions of a procedural nature

The first construction constituting the expression of informatization of examination proceedings, and at the same time one of the few that is fully functional, and is also very popular among people who claim pecuniary benefits is electronic proceedings by writ of payment. This proceeding is conducted entirely in the ICT system (with the exception of hybrid designs available to defendants who do not want to, or are unable to use, the electronic form of procedural actions carried out in the ICT system). In turn, the plaintiff must be consistent in his or her choice, because letters not filed via the teleinformation system do not produce legal effects, which the law entails with bringing the letter to the court (art. 125 § 2^1 of the Code of Civil Procedure). The purpose of introducing this proceeding was mainly to relieve the courts from recognizing minor cases, in which the factual situation is so simple that it does not require evidentiary proceedings. However, this does not exclude the possibility of issuing an order in the discussed proceedings in cases where higher claims are pursued – if the circumstances presented by the plaintiff allow it, and the court does not raise doubts as to the legitimacy of the claims pursued.

The only proper court (so-called e-court) in the discussed electronic proceedings – irrespective of the value of the subject of the dispute – is the Lublin-West District Court in Lublin, 6th Civil Department. In these proceedings, the provisions on the writ of payment proceedings are applied with separations resulting from the provisions of art. 505^{28} – art. 505^{37} of the code of Civil Procedure. However, technical limitations allow pursuing pecuniary claims in the amount not exceeding 100,000,000 (one hundred million zlotys). The communication between the plaintiff and the e-Court takes place exclusively within the ICT system and between the defendant and the e-Court in a traditional way, unless the defendant decides to use this system as well. Actions of the court, the chairman, and also the court referendary (performing court and chairman actions which do not form the system of justice) are recorded only in the ICT system, and the declarations of will, conclusions, etc. generated as a result thereof – are provided in electronic form with an electronic signature with an appropriate legal status. Therefore, in order to use the electronic proceedings by writ of payment, one must have access to a computer and the Internet and set up a user account in the ICT system (www.e-sad.gov.pl). As emphasized in the guides for people who could benefit from this method of pursuing claims, the electronic proceedings by writ of payment gives many benefits to the plaintiff. These include:

1) Lower costs of proceedings – in the ordinary proceedings, the claim fee amounts to 5% of the value of the claim, while in the electronic procedure it is 1.25% (however, not less than 30 PLN);

2) The plaintiff does not have to send to the competent court a lawsuit together with attachments in paper form, but only describe the evidence in the online form;

3) The discussed procedure is much faster than the traditional proceedings, and the order for payment can be obtained within a few days;

4) The electronic proceedings by writ of payment facilitate pursuing claims for people with disabilities, as the claim can be filed without leaving your home (Ministry of Justice n.d.).

After a certain period of functioning of the electronic proceedings by writ of payment, the legislator introduced constructions to minimize the risk of mistakes regarding the identity of defendants and adjudication of time-barred claims, which was the domain of the so-called mass plaintiffs (e.g. banks and insurers). Press reports dominating in this respect over the positive aspects of the use of this procedure disrupted its proper perception as an effective instrument for pursuing claims as part of fair proceedings. The changes introduced were intended, among others, to minimize the risks related to the service of pleadings at the defendant's outdated address. In this way, the legislator also wanted to limit the risk of conducting the execution against a person who is not a debtor due to the possible convergence of the first and last name. As a consequence, the plaintiff must provide in the lawsuit filed via the ICT system the defendant's Personal Identification Number (if the defendant is a natural person), tax identification number, National Court Register number or other relevant register number (if the defendant is a legal person or other organizational unit). In addition, a restriction has been introduced stating that claims can be pursued in the electronic proceedings by writ of payment only if they have become due within three years before the date of filing the claim.

As far as partial solutions are concerned, they constitute a further stage of informatization of civil proceedings, but refer to the entirety of the examination proceedings. Procedural solutions referring to the electronic form of procedural actions and electronic serving are of particular importance. As stated in the aforementioned art. 125 § 2^1 of the code of Civil Procedure, if a special provision provides so (as is the case of the electronic proceedings by writ of payment) or a choice of filing pleadings via the teleinformation system has been made, pleadings in such a case are submitted only via the ICT system. Letters not filed in this way do not produce legal effects, which the law entails with bringing the letter to the court, about which the court instructs the applicant. The statement on the selection or resignation from submitting pleadings via the ICT system is made via this system. This statement is binding only for the person who submitted it. Consequently, it should be acknowledged that the statement made in this way is individual (e.g. the statement of the legal representatives has no effect on the principal) and revocable (the party may change his or her mind during the proceedings, except for the plaintiff operating in the electronic proceedings by writ of payment, whose decision as to the proceedings is irrevocable). The most important in this structure is that the legislator did not introduce any time limits for submitting statements on the selection or resignation from

submitting pleadings via the ICT system. This means that the applicant can submit the statements concerned at any time, at any stage of the proceedings, or even repeatedly change his or her mind in this matter.

Consequently, the legislator has also introduced new options for the service of pleadings and court letters related to the emergence of the possibility of submitting them via the ICT system. Of key importance in this respect is art. 131^1 § 1 of the Code of Civil Procedure. The court makes service via the teleinformation system (electronic service), if the addressee has submitted a letter via the teleinformation system or has made a choice to submit letters via the teleinformation system. In this respect, the issue of choice must be interpreted in the same way as in relation to the electronic form of procedural actions.

In the case of electronic service, the letter is deemed delivered at the time indicated in the electronic confirmation of receipt of correspondence. The provision of art. 134 § 1 regarding restrictions on the service of documents on public holidays and night time does not apply to the effective service of letters in electronic form. In the absence of confirmation of receipt of the letter, electronic service is deemed effective after the lapse of 14 days from the date it was placed in the teleinformation system. In this case, we also deal with the construction related to the individual and revocable nature of the statement on the selection of the electronic route, because the addressee, who made the choice of submitting letters via the teleinformation system, may resign from the electronic service. Thus, "this provision therefore establishes the principle that electronic service is possible only when there is a teleinformation system that supports court proceedings. Only such a channel of communication between the party and the court is admissible. If the party wishes to file a procedural letter by e-mail to the Court's Electronic Inbox, such delivery of correspondence will not be effective, because it does not constitute delivery via the teleinformation system. Hence, it is not possible to approve a situation where a party submits a procedural letter by e-mail to the court's electronic inbox and affix the letter with an electronic signature (even equivalent to written legal actions), when the party selects to submit procedural documents only in an electronic form or there is an obligation of submitting procedural documents only electronically (e.g. in electronic proceedings of writ of payment)" (Gołaczyński 2016: brak numeru strony).

At the stage of enforcement proceedings, in addition to the already indicated constructions related to the form of actions in relation to the examination proceedings, as well as the possibility of the use of service in the ICT system, there are also those relating only to enforcement proceedings. The electronic attachment of a bank account, made with the use of an ICT system, proved to be particularly beneficial for the effectiveness of the execution of pecuniary benefits.

According to the new rules, the bailiff serves letters to the bank via the ICT system that handles attachments of claims from the bank account, and the bank submits letters to the bailiff only through this system. Entities obliged to run an ICT system and to perform attachments of claims from bank accounts through a teleinformation system servicing the attachment of claims from bank accounts are banks, whereby such a system is maintained by a clearing house. Moreover, as part of the change, banks are obliged to provide bailiffs via the ICT system with information about the debtor's account balance – including funds accumulated on the debtor's account, whether the account is subject to attachment and whether there are limitations in this respect, and other information necessary for the proper conduct of the enforcement proceedings, proceedings to secure claims, and other activities resulting from the statutory tasks of the bailiff. Using the ICT system, the bailiff also conducts correspondence with the heads of tax offices in the scope of enforcement activities, the subject of which is the attachment of claims due to overpayment or refund of the tax.

This part of the article discusses only selected solutions introduced into the Polish Code of Civil Procedure which are a manifestation of informatization of this procedure, which already exist in practice or will start to work with the implementation of the ICT system dedicated to the system of justice by the Ministry of Justice, which will have functionalities that increase the efficiency of legal protection in cases civil.

4. Selected organizational solutions

The provisions of Article 53 and subsequent articles of the Law on the system of common courts [3] are of key importance for the organizational aspects of informatization of court proceedings. They allow the case files to be created and processed also using information technology. What is more, a document from a court obtained from an ICT system that supports court proceedings has the power of a document issued by a court, provided that it has features allowing its verification in this system. This provision is directly related to the amendment of art. 140 of the Code of Civil Procedure, according to which, in the current wording of the provision, instead of a copy of a letter or a ruling, a document obtained from an ICT system may be served, provided that it has features enabling verification of the existence and content of a letter or a ruling in this system. Such a document will have the power of a document issued by a court. Based on art. 53a § 2 of the Law on the system of common courts, the Minister of Justice determines by means of a regulation the way and characteristics enabling verification of the existence and content of a letter in the ICT system supporting court proceedings, bearing in mind the minimum

[3] Act of 27 July (2001) – Law on the system of common courts (consolidated text, Journal of Laws of (2018), item 23).

requirements for ICT systems and the need to protect the rights of persons participating in court proceedings. In addition, the court may also verify via the ICT system the status of prosecutor, assistant prosecutor, barrister, trainee barrister, legal advisor, trainee legal advisor, foreign lawyer, patent attorney, trainee patent attorney, or counsel of the General Counsel to the Republic of Poland who perform procedural actions. In order to ensure that this competence can be exercised, the legislator imposed on the professional self-government bodies the requirement to keep the list of barristers, trainee barristers, legal advisors, trainee legal advisors, foreign lawyers, patent attorneys, and trainee patent attorneys in the ICT system.

In turn, § 104 para. 2 of the Rules concerning the operation of the common courts[4], states that at the request of a party or participant in non-litigious proceedings or their representative or proxy, the court issues, according to the rules of court proceedings, a recording or a copy of a recording of sound or image and sound by means of an ICT system or on a data carrier, unless the provisions of court proceedings provide otherwise.

The recording of sound or image and sound is delivered on an IT data carrier (in practice it is a CD). The file should be saved in a format commonly used for file sharing. The recording is delivered together with annotations, i.e. with an electronic document related to the recording and containing information on the course of the open hearing, in particular on the opening of statements of the persons participating in the hearing. These annotations are made by the recording clerk under the supervision of the chairman and allow to automatically finding the appropriate part of the recording.

The copy of a recording of sound or image and sound is issued after payment of the fee, unless the procedure is not subject to a fee according to the rules of court proceedings, or if the applicant has been released from the obligation to pay it. This fee should be paid for the recording, i.e. the recording of the entire hearing, regardless of whether it is saved on one IT data carrier, or on two or more data carriers.

As it results from the provisions of the above-mentioned Rules, the president of the court may order disclosure of data on the case, content of minutes and court and procedural letters to parties or participants in non-litigious proceedings and their representatives or proxies through accounts in the ICT system. The term "data on the case" should be understood as information that should be included in the repertory or other recording device kept in accordance with the provisions of the Instruction. This provision also allows access to these "components" of case files, which are recorded in the ICT system. This is especially about the possibility of playing the recording of sound or image and sound from the course of the hearing (Romańska 2017: brak numeru strony).

[4] Regulation of the Minister of Justice of 23 December (2015) – Rules concerning the operation of the common courts (Journal of Laws of 2015, item 2316).

This account is made available after authentication, that is, entering the login and password. After authentication on the account, the party or participant in the non-litigious proceedings or their representative or proxy will have access to the data on the case. A party, its representative or proxy may, via the teleinformation system, with the consent of the president of the court, grant access to data on the case to other persons having accounts in this system, if such persons have the right to view it. This access is limited to viewing data on the case. The party, as well as its representative or proxy, deprive those persons of the granted access to data on the case via the teleinformation system, if these persons no longer have the right to view it.

The indicated organizational solutions are supplemented with ICT measures relating, for example, to the allocation of cases to judges and court referendaries, as well as other issues relevant to the organization of the work of common courts, also in relations with parties, participants in the proceedings and their legal representatives. These regulations will certainly be significantly extended and more detailed when the ICT system dedicated to the system of justice is implemented. Its functionalities should reflect all the needs of common courts and entities supporting their operation (court experts, court bailiffs, etc.) resulting from the lawful use of this system in the course of court proceedings and enforcement proceedings.

Summary

The situation of informatization of the system of justice in Poland is *statu nascendi*; so many legal solutions still have to be verified in practice as to their impact on the efficiency and effectiveness of the recognition of civil cases. It is not without significance that there are many barriers in this area that are essential for the actual effect of the changes.

The first barrier is the mentality and digital competences of both employees of the system of justice and people who seek legal protection. This is expressed above all in distrust and reluctance towards new technical solutions, especially when persons responsible for the administrative and organizational back-up of common courts use the incorrect practice of "duplication" of traditional and electronic constructions (e.g. simultaneous maintenance of paper and electronic documentation). In this respect, the limited expenditure on the improvement of digital competences of employees and educational campaigns towards people who use the services of the judicial authorities is a weak point. As a consequence, this is a natural reason for the limited use of IT instruments relating to the internal structure of courts (circulation of documents, case management), as well as solutions regarding communication between common courts and parties, legal representatives and other participants in the proceedings (e.g. information portals). Certainly, the Polish legislator has rightly introduced in the latter the "hybrid" solutions that allow an appropriate level of legal security also for people who, due to low

digital competences, would not be able to manage their affairs in the ICT system. However, it is necessary to strive for a gradual increase in the number of cases of using modern solutions instead of the traditional circulation of pleadings and court papers.

The financial barrier and the technical barrier directly related to it are not without significance. The system of justice in Poland has limited financial resources, and consequently – also material and organizational resources. For these reasons, actions such as the introduction of the electronic protocol in courtrooms are spread over time, and their functionality, limited to the necessary minimum, may discourage further development. This can be seen in the example of the electronic protocol, in which, despite the passage of many months, no module has been introduced to allow professional legal representatives to simultaneously take notes for their own needs on their own medium. This also applies to the equipment of common courts, which is not always adequate to the real needs and possibilities of modern IT instruments and means of communication at a distance. Similar importance have limited financial expenditures for service and preparation of rooms where it is possible, among other things, to conduct evidential proceedings without interruption, using modern technical means.

The indicated factors do not allow to fully assess the real impact of informatization of the justice system on its effectiveness, because solutions of a compromise nature certainly do not bring results adequate to their potential in the event of full implementation. However, even at this stage it is possible to see positive relations between the implementations and the effectiveness and efficiency of the proceedings, the basic example being the acceleration of the circulation of information on judicial service (Electronic Confirmation of Receipt) or the introduction of the possibility of taking evidence from a witness or an expert using means of remote communication.

Therefore, the fundamental value of the informatization of the Polish justice system is – provided that it is fully implemented and anti-efficient regulations are not introduced – to contribute to acceleration and improvement of procedural and organizational actions of common courts with simultaneous rationalization of their costs both in the scope of work organization (e.g. archiving resources in an electronic form) and the course of court proceedings (service, taking evidence or documenting activities).

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