

LOCUS STANDI IN ELECTRONIC JUDICIAL
AND EXECUTION PROCEEDINGS IN CIVIL CASES
IN POLAND

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The 20th and the 21st century are characterized by unusual dynamics in terms of social and economic relationships, etc. The reasons for the intensification thereof are many, but an important factor that undoubtedly contributed to this process is the development of electronic communication. Currently, it is difficult to imagine the lack of access to the Internet, and therefore also no possibility to check e-mails, inability to watch your favourite sitcoms available on VOD technology or carry out conversations using Internet communicators. Electronic communication is omnipresent; it entered into our daily life and now touches virtually all aspects of our life.² Modern technology, requiring new ways of doing in many areas, is now one of the main determinants of change. Technological development affects streamlining and improvement of the majority of measures undertaken by man. The most significant role in this respect is played by the development of information technology,³ which can be defined as a combination of solutions – in particular hardware and software – with technological communication solutions in order to provide modern mechanisms for

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2 We are currently dealing with the development of the so-called information society and its services. Information society is a society based on information treated as special intangible property. The information is collected, stored, processed and made available using information and communication systems that enable communication at a distance. For more on concepts and different definitions of information society see M. Kuliński, *Electronic communication regulations in the development of the information society*, Warszawa 2010, pp. 4-16.

3 Information technologies are omnipresent. Today, 2.2 billion people use the Internet, 800 million has an account on Facebook, 3.5 billion use e-mail, mobile phones networks have more than 5 billion subscribers – R. Susskind, *Tomorrow's Lawyers*, Warszawa 2013, p. 32.

carrying out activities related to the processing of data. The development of information technology is accompanied by two basic processes – computerization and informatization.⁴ That influence can also be seen in the legal sphere – both in terms of substantive and procedural law. As Magdalena Marucha-Jaworska rightly pointed, deep changes in the manner of communication that took place in the information and digital society affected transactions, agreements and signing electronic documents. Development of new technologies and the widespread use of the Internet resulted in the introduction of new solutions in the existing legal system, as a kind of necessity due to the frequent maladjustment of regulations to the specifics of modern technology. The task of the legislature is sanctioning of choices and making any necessary restrictions on the use of new technological solutions, among others, by their admission to the improvement of judicial proceedings and administrative proceedings.⁵ This notably involves the use of means of electronic communication in modern business transactions, which in turn affects the fundamental institutions of law because the specifics of electronic communication has caused the need for the regulation of the activities carried out in cyberspace in the sphere of public (e-government) and private (establishing legal relations between the parties to transfer documents, successful conclusion of a contract through the Internet, secure storage of documents in the form of electronic data) law.⁶ Also in terms of access to courts and court communication with the public the introduction of modern ICT solutions is now expected. These expectations of informatization of the judiciary,⁷ increasingly introducing ICT solutions, enable litigation and communication with

4 See A. Kościótek, *Electronic procedural actions in civil judicial proceedings*, Warszawa 2012, pp. 17-18.

5 J. Jankowski, *Electronic legal relations*, Warszawa 2008, pp. 39-40.

6 M. Marucha-Jaworska, *Electronic signatures, biometrics, electronic identification. Electronic legal relations in the digital society*, Warszawa 2015, pp. 17-18.

7 The term of informatization is sometimes mistakenly equated with computerization, which is a process of applying computers in the activities of various entities. However, the computer used in the civil section of the court matters is reserved exclusively for only the office management replicate court. The smooth running of the repertory will not accelerate recognition of cases, only streamline reporting. Informatization is based on the rational use of previously entered data already in the electronic form to the IT systems to the greatest possible range by other data communication systems and automation of many simple, repetitive tasks – S. Kotecka, [in:] J. Gólaczyński (ed.), *Computerization of court proceedings under Polish law and selected countries*, Warszawa 2009, p. 194.

the court electronically. In this study, considerations will be based primarily on civil judicial proceedings, mainly due to the fact that the process of informatization in the case of civil proceedings is the most advanced, often acting as the model solution for the informatization of even criminal prosecution or administrative courts.

The first procedure that provided a full possibility of redress using means of electronic communication was introduced to the Code of Civil Procedure in the form of an electronic writ of payment proceedings.⁸ The introduction of this procedure to the Polish civil process was a breakthrough for the computerization of court proceedings. Until then, informatization did not provide any real possibility of a widespread use of information technology to bring pleadings and serve judicial documents. In principle, existing regulations⁹ were not applied then. The provisions on electronic writ of payment proceedings have proved to be effective in practice and, in consequence, established, legal and information technology standards for further informatization.¹⁰ It should be emphasized that despite all the specifics of electronic writ of payment proceedings, it does not mean cases are automatically decided. E-court is not a virtual court; judgments therein are handed down by judges or clerks in the same way as in any other proceedings. It is distinguished only by the manner of communication with the parties. Informatization of this procedure is associated only with the electronic flow of information, the exchange of pleadings and the use of electronic instead of traditional (paper) methods by a court. Thus the first electronic proceedings do not affect the role of the ruling body, but only the form of communication with the parties.¹¹ One court has been

8 Introduced by the Act of 9 January 2009 on amending the Act – the Code of Civil Procedure and some other acts (Journal of Laws 2009, No. 26, item 156). Electronic writ of payment proceedings essentially became operational on 1 January 2010.

9 It is all about placing in the CCP a concept of electronic media information (introduced by the Act of 25 May 2000 on amending the Act – the Code of Civil Procedure, the Law on Registered Pledge and Pledge Register, the Law on court costs in civil matters and the Law on court bailiffs and enforcement (Journal of Laws 2000, No. 48, item 554) and means of electronic communication (introduced to CCP by the Act of 4 September 2008 on amending the laws in order to harmonize terminology, Journal of Laws 2008, No. 171, item 1056). Problems in relation to those originally implemented solutions in the field of electronic communication are depicted by Łukasz Goździaszek – Ł. Goździaszek, *Electronic writ of payment proceedings*, Warszawa 2014, pp. 49-52.

10 *Ibid.*, p. 13.

11 See Ł. Goździaszek, *Informatization of Civil Procedure*, [in:] Ł. Błaszczak (ed.), *Constitutionalisation of Civil Procedure*, Wrocław 2015, pp. 243-244.

appointed for the whole country to deal with jurisdiction matters in the electronic writ of payment proceedings – the Regional Court Lublin-West in Lublin, VI Civil Division. In the electronic writ of payment proceedings an electronic manner of communication is obligatory for the plaintiff (Art. 505³¹ § 1 of the Code of Civil Procedure¹²), while optional for the defendant (Art. 505³¹ § 2 CCP); s/he does have a possibility to bring the writ electronically and since then this method of communication is binding (Art. 505³¹ § 3 CCP). Moreover, the activities of the court, clerk and chairman are recorded only in the ICT system (Art. 505³⁰ § 2 CCP). It should be noted that at present the admissibility of bringing letters using information and communication system that supports litigation (electronically) depends on the existence of a specific provision allowing the manner of communication with the court – Art. 125 § 2¹ sentence 1 CCP. Such specific provisions of the regulations are dedicated to the electronic writ of payment proceedings.¹³ With regard to the legal consequences of bringing letters using information and communication system, it should be primarily based on the content of Art. 125 § 2¹ sentence 2 CCP: if a specific provision stipulates that a letter be sought only electronically, letters not submitted this way do not produce legal effects of the law involving submitting letters to the court. This rule applies fully to the plaintiff – Art. 505³¹ § 1 CCP, and to the defendant when s/he brings a letter electronically – Art. 505³¹ § 2 CCP. The possibilities of electronic communication are currently envisaged also in relation to the registration proceedings and so-called S24 companies (in terms of a general partnership, limited partnership and limited liability company)¹⁴ – Art. 19 para. 2b of the Act of 20 August 1997 on The National Court Register.¹⁵ This adjustment is completed by the provisions of the Civil Procedure Code, namely Art. 694³ § 3 and 3¹.¹⁶ With regard to the land register, due to fact that now

12 The Act of 17 November 1964 – the Code of Civil Procedure (consolidated text – Journal of Laws 2014, item 101, as amended), hereinafter referred to as CCP.

13 At present, electronic writ of payment proceeding is one and only fully electronic proceeding.

14 See also the Ordinance of the Minister of Justice of 13 January 2015 on the manner and procedure for submitting applications for entry into the National Court Register on companies whose agreement was concluded using the company's standard contract made available in the ICT system (Journal of Laws 2015, item 65).

15 Consolidated text – Journal of Laws 2015, item 1142.

16 § 3. The application to the court registry electronically should bear a secure electronic signature verified by a qualified certificate profile or a signature confirmed by a trusted Platform of Public Administration (ePUAP).§ 3¹. An application submitted electronically for

it exists in an electronic form in the ICT system, the possibility of using electronic ways of communication have also been provided here, yet to a limited extent. Art. 36⁴ para. 4-6 of the Act on Land and Mortgage¹⁷ provides for the possibility of obtaining information from a centralized database of land registers through the Central Information Register, also using the electronic communication system. Nevertheless, it should be emphasized that unlike in the case of electronic writ of payment proceedings, the registration procedure and estate register allow the use of electronic means of communication only in a certain range; they are still not fully electronic procedures.¹⁸

It is clear from the above that at present only electronic writ of payment proceedings are electronic court proceedings in the full sense of the word. Estate register and registration proceedings will soon achieve such a status too. Certainly, major importance for the development of electronic procedures and electronic communication will come into effect on 1st July 2016 in the Regulation of the European Parliament and Council No 910/2014 on electronic identification and trust services in relation to electronic transactions in the internal market and repealing Directive 1999/93/EC.¹⁹ It is fair to say that this Act fundamentally changes the electronic identification market and introduces the concept of an electronic document as well. Most of all, this will undoubtedly have an impact on court proceedings because the regulation introduces new types of electronic signatures as well as re-defines them.²⁰ Changes also occur in the context of evidence due to the insertion of the meaning of an electronic document defined by the regulation as “any content stored in

entry in the National Court Register, a limited liability company whose contract was concluded using a standard contract of a limited liability shared in the ICT system may also bear another electronic signature which meets the requirements for electronic signatures of an agreement containing such a company. This provision does not apply to an application for amendment and cancellation of registration.

- 17 The Act of 6 July 1982 on Land and Mortgage (consolidated text – Journal of Laws 2013, item 707, as amended). See also the Ordinance of the Minister of Justice of 27 November 2013 on the Central Information Register (Journal of Laws 2013, item 1407, as amended).
- 18 It should be mentioned that in a field of land register there will be a change of a regulation which will come into force on 1 April 2016. This change will allow wider use of electronic communication.
- 19 Journal of Laws EU.L. 2014, No. 257, item 73, hereinafter referred to as eIDAS Regulation.
- 20 This is important primarily through the prism of the current article 126 § 5 of the CCP introducing a formal requirement that a document filed electronically had to bear a secure electronic signature within the meaning of the Act of 18 September 2001 on the electronic signature.

electronic form, particular text or sound, visual or audiovisual.”²¹ Having introduced the changes by the eIDAS Regulation, the Polish legislator passed the Act of 10 July 2015 on amending the Act – the Civil Code, the Act – the Code of Civil Procedure and some other acts,²² providing for a wide range of possibilities of introducing electronic procedures for CCP in every case, including enforcement proceedings. In our field of interest, it is essential to challenge the introduction to the Amending Act and the new wording of § 2¹, sentence 1 Art. 125 CCP: if a specific provision stipulates so, pleadings in a matter shall be submitted only via a data communication system. In relation to the current regulation, a choice of the communication system has been changed. It was abandoned and the terms “information and communication system that supports litigation (electronically)” was changed into “ICT system.”²³ Moreover, in each case it introduced a possibility of submitting pleadings electronically. A statement on the election or resignation of the choice for bringing pleadings via a data communication system shall be made via this system. This statement is binding only in relation to the person who made it – § 2⁴ Art. 125 CCP introduced by the Amending Act. If electronic transfer of letters results from the specific provision or the choice was made, writs not transferred via a data communication system would not result in the legal effects stipulated by the Act for submitting letters to the court § 2¹ sentence 2 Art. 125 of the Code of Civil Procedure as amended by the Amending Act. A consequence of the option to institute proceedings through information and communication system is a possibility to consolidate the judgment in the IT system – Art. 324 § 4 CCP as amended by the Amending Act.

You cannot fail to notice that the process of informatization of Civil Procedure also extends to the protection and enforcement proceedings. As far as enforcement proceedings informatization is concerned, it is a complex and multifaceted process that is particularly difficult to implement due to the high level of formalization of

21 Art. 3 para. 35 of Regulation eIDAS.

22 Journal of Laws 2015, item 1311, hereinafter referred to as the Amending Act.

23 This solution is justified by the ambiguity found in the Code of Civil Procedure in the phrase “submission by an electronic way”. Regarding the merits of such a procedure, see notes of Andrzej Marciniak – A. Marciniak, [in:] A. Marciniak (ed.), *Electronization of judicial enforcement proceedings in Poland*, Sopot 2015, pp. 199-200.

enforcement proceedings.²⁴ Digitalization and informatization activities in enforcement proceedings can be one of the ways to improve the efficiency of these operations, particularly since in many cases the very positive effects of computerization have been achieved in other areas of civil procedure: delivery or the creation of an information exchange network between judicial authorities.²⁵ The use of modern information technology in court proceedings, which requires new terminology and methods of operation, is not an easy task. As a result, legislative measures undertaken in this field are not free from deficiencies and certain deficiencies. The same applies to new provisions of the Code of Civil Procedure devoted to electronisation.²⁶

There is a fundamental restructure of the institution of electronic executive titles and a possibility to use them in the procedure of electronic communications. A current limit according to which the only writs of execution which may be attributed to the electronic enforcement clause can exclusively be judgments given in the electronic writ of payment proceedings disappears – present Art. 783 § 4 CCP. The Amending Act adds § 3¹ to Art. 783 CCP providing an opportunity to give an electronic declaration of enforceability of executive titles referred to in article 777 § 1 and 1¹ CCP.²⁷ Moreover, it supplemented the existing possibility of submission of written and oral statements and conclusions by the possibility of the submission via the communication system if a specific provision allows or it has been selected to submit letters through the ICT system – Art. 760 § 1 CCP as set out by the Amending Act. According to the current legal status, electronic filing in enforcement proceedings applies only to an action for enforcement based on an electronic writ of execution, an order for payment issued in electronic writ of payment proceedings equipped with the electronic enforcement clause (Art. 797 § 2 and 3 CCP). The provision of Art. 760 CCP in the new wording indicates that specific rules may stipulate

24 A. Marciniak, *Judicial enforcement proceedings*, 2nd ed., Warszawa 2013, pp. 38-39.

25 K. Flaga-Gieruszyńska, [in:] A. Marciniak, *Electronization...*, pp. 78-79. See also the literature given there in footnote 28.

26 A. Marciniak, [in:] A. Marciniak, *Electronization...*, p. 197.

27 The final decision of the court or subject to immediate execution as well as a settlement concluded before a court and the clerk of the court with regard to a final decision or subject to immediate execution.

that letters containing other applications and declarations may be made only via a data communication system. These are, among other things, provisions on electronic auctions. This provision also allows to choose to submit letters through the information and communication system (like in the proceedings reconnaissance). In the event of such a choice, submitting documents via a data communication system is exclusive within the meaning of Art. 125 § 2¹ sentence 2 CCP.²⁸ The amendment therefore extends the possibility of using electronic means at the stage of enforcement proceedings. In this way it will be possible to submit documents not only for enforcement but also other documents (applications and statements) filed in this proceeding. Electronic document circulation formula are to be set for bailiffs, tax authorities and administrative enforcement authorities. Electronic form in their correspondence should be mandatory.²⁹

It follows conclusively that the legislator is trying to embrace information technology in the context of wider public accessibility for the judiciary. The validity of this process clearly demonstrates the success of electronic writ of payment proceedings, which became a pioneer in fully electronic legal proceedings, and showed that the use of electronic communication is not only possible but also effective in reducing financial expenses and staffing.³⁰ It has also increased the interest of citizens and representatives in a wider possibility of using electronic communication with the court. The result of these phenomena is undoubtedly discussed in the amendment to the Civil Procedure Code on 10 July 2015 introducing a wider than ever range of electronic possibilities to conduct investigations – in distinctive and enforcement proceedings. In conclusion, it is worth quoting an idea already quoted by Richard Susskind – whether a court is a service or a place. Is it necessary to resolve a dispute for the parties and their representatives to gather in one physical place and present their arguments to a judge? Or should they enter virtual courts and carry out online dispute resolution?³¹

28 A. Marciniak, [in:] A. Marciniak, K. Piasecki (eds.), *The Code of Civil Procedure. Volume III. Commentary on Art. 730-1088*, Warszawa 2015, p. 157.

29 J. Studzińska, [in:] A. Marciniak, K. Piasecki (ed.), *The Code...*, p. 148.

30 In 2010-2014 the e-court received 9 386 946 cases, of which settled 9 291 149 cases – <http://isws.ms.gov.pl/pl/baza-statystyczna/opracowania-wieloletnie/> (28 September 2015).

31 R. Susskind, *Tomorrow's...*, p. 128.