

UDC: 347.9

INFORMATIZATION IN CIVIL PROCEEDINGS IN POLAND

The article discusses the use of information technologies in the polish civil proceedings. In particular, focuses on the fact that these technologies are voluntary, so if the plaintiff uses the electronic form of consideration, the defendant has the opportunity to decide on a form of judicial review and appeal application, and also return to the traditional form of trial.

Keywords: justice, information technology, computerization, claim, court.

1. Introduction

Civilization and technical changes related to the economic and social life lead to a need to harmonize the judiciary in civil matters with the new opportunities created by information technology and tools available today. This is due to the fact that virtually none of the government agencies that operate in the information society can not work in isolation from information and communication technologies [1, p. 133]. This process goes beyond computerization and is understood only as the introduction of appropriate hardware and software development and to the use of information technology in the practical functioning of the judicial system. The process of informatization of Polish civil proceedings first applied only to certain types of cases that can be conducted entirely in system ICT, from the proceedings to the trial stage performance. Currently we are dealing with breakthrough solutions, which comes into force in September 2016 and applies to all stages and forms of civil proceedings. However, all these constructions, due to the still limited access of part of the society to the Internet, still have the voluntary nature, because if the plaintiff uses the electronic form of the proceedings, the defendant has the opportunity to decide on the form of conducting the legal proceedings, and – in the case of making such a choice – they can appeal against this statement and return to the traditional form of the proceedings. Surely this is a breakthrough in the development of electronic forms of civil proceedings.

2. Information technology instruments in examination proceedings

The first stage of informatization on the grounds of civil procedural law was the introduction of the first proceedings conducted entirely in the ICT system – electronic proceedings by writ of payment [2, p. 84]. In this procedure, the provisions on the proceedings by writ of payment are being used, together with separations resulting from the provisions of Art. 505²⁸ – Art. 505³⁷ of the Code of Civil Procedure (hereinafter referred to as: CCP). The e-Court, which is the District Court Lublin-West in Lublin VI Civil Division, is competent regardless of the value of the dispute. Currently technical limitations allow to pursue a pecuniary claim in the amount of not more than 100 000 000 (one hundred million) Polish zloty.

The electronic proceedings by writ of payment have been introduced as a separate kind of proceedings, having the character of an order for payment in cases of pecuniary claims, in which the facts are not complicated and do not require conducting evidence proceedings. The parties in proceedings before the e-court have the same rights as in traditional court proceedings. The plaintiff, however, has more responsibilities, the fulfilment of which provides a higher level of protection of the defendant. The obligation to provide in the lawsuit, among others, social security number or tax number of the defendant (the number in the National Court Register or other register) allows prevents a situation in which proceedings could be brought against the wrong entity only because of the coincidence of names or surnames. The electronic system has also a control mechanism to prevent the practice of bringing the lawsuit several times on the same claim. On the other hand, in order to protect defendants against judgments relating to the expired claims, the electronic proceedings by writ of payment can be used to pursue only claims that have become due during the three years before filing a lawsuit.

Payment order cannot be issued to the content of the claim: 1) the factual state presented by the plaintiff causes doubts (e.g. the plaintiff does not specify the reason for demanding the payment from the defendant); 2) the claim is clearly unfounded (e.g. the plaintiff demands payment for a service which has not been performed); 3) fulfilment of the claim depends on the mutual consideration (e.g. in a situation where the defendant had to pay the plaintiff only after the delivery of the sold goods, and the plaintiff has not delivered the goods so far); 4) the defendant's are not known, or if the service of the order could not take place in the country. The payment order issued in the electronic proceedings by writ of payment has an electronic form only and is available in the ICT system of the e-court – www.e-sad.gov.pl [3] after providing a unique code of the order, which is given on a verification print (paper image of the judgment).

After issuing the order of payment in the electronic proceedings by writ of payment, the e-court serves the order to the defendant in a paper form, by registered mail, together with the instructions, among others, on the way of submitting the objection – a legal remedy which is used to challenge the effectiveness of the issued order of payment.

The defendant can choose how to communicate with the e-court between a traditional way and an electronic form – through an account established in the ICT system of the e-court (choosing this solution is irrevocable in these proceedings). In a situation when the defendant believes that the order has been wrongly issued, they may file an objection within two weeks of the service of the order – an appeal remedy which is used to challenge the effectiveness of the issued order of payment. In case of not taking any action, the payment order will become final after two weeks from the date of serving the order to the defendant. The appeal against the payment order has a very simplified form, because it does not require justification and presentation of the evidence. In the event of a properly filed appeal, the order of payment is repealed entirely and the e-court refers the matter to a court of general jurisdiction.

In order to comply with the judgment, the plaintiff must obtain an enforcement clause published in the electronic proceedings by writ of payment, which has the electronic form only and is always available along with the payment order, which was issued in the ICT system of the e-court. The bailiff also documents its activities in the ICT system.

However, informatization has extended beyond the electronic proceedings by writ of payment, because the legislature has used information technology resources also to document the course of justice. With the Act of 29 April 2010 on amending the Act – Code of Civil Procedure (Journal of Laws No 108, item 684), which came into force on 1 July 2010, a new form of protocol of the court proceedings in civil matters was introduced – the so-called electronic protocol. An electronic protocol is a recording of image and sound, or sound only of all the activities that are carried out in the courtroom during the proceedings. This does not exclude forms of traditional protocol, because if for any technical reasons preservation of the course of the meeting by instruments recording the sound or the image and the sound is not possible, the protocol shall be made in writing only, under the guidance of the chairman, in accordance with Art. 158 § 2 CCP. Also, the written form is used to prepare the so-called public annotations (available to the entities of the proceedings) and private annotations – for the exclusive requirements of the court (information important for the judge, e.g. about the behaviour of witnesses). They represent a kind of a table of content for faster searching of electronic records. If it is necessary to ensure proper adjudication in the case, the chairman may order a transcription of a relevant part of the electronic protocol. The introduction of the electronic protocol will allow for the development of other process solutions, for example it has created the possibility of the use of oral justification for the cases of uncomplicated factual and legal nature.

Recording of hearings was thus mandatory in civil cases and misdemeanour cases. The courts of appeal carried out an implementation of the audio systems in order to record the court hearings. And in the case of district and regional

courts a recording system is being implemented to cover not only the sound records of court meetings, but also allowing for the image retention, with the possibility of performing and recording video conferences. All district courts and courts of appeal have been equipped with hardware and software for recording. Currently, the process of equipping the district courts in the necessary infrastructure takes place. The full implementation of the system of digital registration of the court hearings is planned for December 2017 [4].

A similar improving character had the introduction of an electronic acknowledgment of receipt (EAR). Instead of paper return receipt, an electronic acknowledgment of receipt with a handwritten signature of the recipient returns to court as proof of service. Sending the acknowledgment of receipt is done through ICT connections, immediately upon signature of the recipient. The primary objective of this solution is to shorten the duration of recognition of court cases by speeding up the cycle process of correspondence between the court and the participants in court proceedings.

From September 2016 an additional system solutions referring to performance of court actions will appear, which mainly determine the efficiency of proceedings. This means the implementation of the proposed doctrine toward informatization, which is the introduction of legal solutions and, as a result, also technical solutions, enabling filing pleadings in the ICT system in any civil proceedings [5, p. 391]. Moreover, the court will be able to deliver the decision in the form of an electronic document, which will allow full use of the changes in civil material law, in which the documentary form of the actions appear. For its prevention there will be a requirement of submitting a declaration of will in the form of a document, in a way allowing for determination of the person submitting the declaration, so without the need for handwritten or electronic signature.

Also, not without significance is the introduction from September 2016 of an ability to conduct hearings at a distance, through the use of video conferencing. In this way, new solutions will appear to lower the cost of conducting the cases with the participation of entities scattered around the country or witnesses living far away from the court in which the proceedings take place.

3. Informatization in proceedings to secure claims and enforcement proceedings

Informatization process also applies to proceedings to secure claims and enforcement proceedings, which is a natural consequence of the use of ICT instruments on the stage of examination of the case and the judgment. Current solutions related to performing actions in the ICT system are therefore a continuation of solutions for electronic proceedings by writ of payment, with the proviso that the submission of the request for the execution of the order of payment in the electronic proceedings by writ of payment via the ICT system is optional. The creditor can therefore take advantage of this opportunity, or submit an application in the traditional (paper) form. The next step will be the extension of the possibilities of submitting pleadings in the ICT system on the

same basis as it will be introduced at the stage of examination proceedings (creating the so-called electronic filing office also for the bailiffs).

The literature emphasizes that the drawback of the regulations relating to the actions carried out in enforcement proceedings through information systems is that they do not have a comprehensive character, but fragmentary (partial) character. This "segmentation" is the source of numerous doubts. They concern the possibility of using electronic tools in relation to specific activities. In a wider perspective, the lack of complexity undermines the objective of the informatization of civil proceedings [6, p.155]. As a consequence, also at this stage of civil proceedings the process of informatization should be continued, introducing changes of a comprehensive character, but still maintaining the model based on the rule of optionality. The latter is justified because of the constantly occurring in practice, the risk of digital exclusion, especially in rural areas. Thus, the parties of enforcement proceedings will still be able to use the acceptability of carrying out activities in the ICT system if they choose so, and not on the basis of statutory duty.

The next stage of informatization introduces very important solutions which are characteristic for the proceedings to secure claims and the enforcement proceedings – electronic attachment of selected claims, and electronic auctioning of the chattel.

With regard to electronic attachments of claims the legislator has introduced mandatory use of the ICT system within the framework of the execution from a bank account, but this applies only to the exchange of correspondence between the bailiff and the bank. The provision of Art. 893^{2a} CCP states that bailiff's letters addressed for the bank and bank's letters submitted to the bailiff will be able to be transmitted only via the ICT system that supports the seizure of bank accounts. The system supporting attachment of bank accounts will be created by Krajowa Izba Rozliczeniowa S.A., and banks will be obliged to use this system.

The process of informatization covered also the bailiff seizure of claims in respect of overpaid tax or tax refund. First of all, the bailiff will serve an electronic notice of the seizure to a tax authority as a debtor of seized claims. In addition, all correspondence between the enforcement authority and the tax authority in the course of the proceedings will be sent only via the ICT system or with the use of electronic means of communication.

As indicated above, another new solution will be conducting an electronic auction as a method of increasing the availability of sales compared with the traditional auction, which requires personal commitment of the bidders. Electronic auctions will be governed by the provisions on oral auctions with modifications resulting from Art. 879¹–879¹¹ CCP. An electronic auction is a mode of sales of chattels which is optional, because the decision to use this mode depends on the request of the creditor. The creditor will be able to file a request for the auction in this form not only while submitting the request for levy of the execution, but also during the proceedings – until the date of

appointment of the first auction or in the request for the appointment of the second term of the auction. The creditor will be able to submit a request in writing, orally for the protocol, or if they made such choice – through the ICT system.

An electronic auction will be public and will be conducted in the ICT system developed by the National Council of Judicial Officers, shared online, also in every district court (which allows the use of electronic auctions by persons without access to the Internet).

In order to protect the interests of bidders using the mode of selling "at a distance" the system introduces mechanisms that are intended to avoid a situation in which the auctioned chattel is lost or damaged. Therefore, in this mode, the chattel put on sale is placed under the supervision of a person other than the debtor or deposited with the court or put under safekeeping with a competent institution. On the other hand, if the seized chattel will be left under the supervision of the debtor, the submission of a request for electronic auction will be an independent basis to take away the supervision from the debtor and establish another caretaker of the goods. The auction must be determined in such a way that its duration is at least seven days (counting from the start of the auction, not from the time of placing a notice in the electronic system). A moment of its finish must occur during the office hours of the district court at which the bailiff operates. The bidder will be able to make increments only after the payment of the warranty, unless there is no obligation to pay it. According to the Art. 867¹ § 1 CCP, such an exemption would be entitled if the total estimated value of chattels is less than five thousand Polish zloty. The creditor entering the auction also doesn't have to pay the warranty, if they are entitled to a claim which is covered by the starting price. If the claim is only partial covered, the creditor pays only a part of warranty (Art. 867¹ § 4 CCP). The warranty will be paid through the bidding system or directly into the hands of the bailiff or into bailiff's bank account. The tender will be conducted according to the same rules as those that are used in online auction sites.

The buyer will be obliged to pay the purchase price (after the deduction of the warranty) until six o'clock p.m. on the next day after receiving of the notice of the winning bid. If this day falls on a Saturday or public holiday, the price shall be paid on the day following the day or days off. Failure to pay the money within this period, the buyer will lose the rights arising from the winning bid. It should be added that if the first electronic auction does not take place, at the request of the creditor the second auction will be conducted, which (depending on the will of the creditor) may be have an electronic or oral form.

As an addition to the regulations relating to the informatization of the enforcement proceedings there is also a new solution for real estate register proceedings expressed in Art. 626⁴ CCP, under which the notary, bailiff and the tax office acting as an administrative enforcement authority will be able to submit a request for entry in the real estate register only via the ICT system. This is a direct

result of the computerization of real estate register proceedings and digitalisation of land registers, which are now also available via the Internet.

4. Conclusions

This study mentioned only selected aspects of the informatization on the grounds of Polish civil procedural law. It should be emphasized that those solutions are not the only expressions of the process.

The progressive digitalization of public records and land registers is also not without significance, as it greatly increases the scope of the principle of transparency of these resources and significantly reduces the cost of ongoing maintenance (e.g. in the field of archiving files) and servicing (e.g. radically reduces the number of people with information offices in the traditional form).

At the same time another solutions are being introduced relating to the dissemination of legal information and information about the jurisprudence of common courts and the Supreme Court, by taking the form of Internet portals. An example of this type of portal is the Portal of Jurisprudence of the Common Courts, in which the judgments together with the justifications passed by the courts of law are being published. The judgments are available for free and without the need for prior user registration. The range of published decisions is determined by a panel of judges and does not imply sharing of content covered by the exceptions and irrelevant from the point of view of legal and information values or repeated judgments. All published decisions are first made anonymous, which means that in their contents one will not find any personal information allowing for the identification of the persons whose the judgments concern. This process takes place automatically thanks to an advanced text analysis algorithms. The portal offers a simple as well as advanced searching device.

As indicated in the literature, the new provisions are supposed to contribute to significant savings in the judiciary and improve the efficiency of the courts, as well as improve access to the courts. These include a number of significant changes that should be introduced in the Code

of Civil Procedure, and those apply, among others, to provisions on the form of legal actions, a new definition of a document in civil proceedings, increase access to justice by expanding the catalogue of cases that will be recognized in electronic proceedings and creation of opportunities for submitting pleadings through the ICT system and making the electronic deliveries not only with the use of electronic signatures, but also in ordinary civil proceedings [7, p.169]. Surely this is the direction of change of the civil procedural law, which should be maintained and continued, taking under consideration the solutions, introduction of which is possible in the current stage of development of technology and means of communication at a distance, e.g. application of further electronic proceedings, promotion of the idea of alternative online methods of resolving disputes or expansion of electronic auctions in relation to the real estate.

LIST OF REFERENCES

1. B. Mrugalska, M. Wyrwicka, *Analiza wykorzystania otwartego wspomaganie informatycznego w wielkopolskich urzędach*, in: *Europejska przestrzeń komunikacji elektronicznej*, Vol. 2, Zeszyty Naukowe US, Ekonomiczne Problemy Usług No 105, 2013.
2. J. Gołaczyński, *Elektroniczne postępowanie upominawcze*, Warszawa 2010.
3. https://www.e-sad.gov.pl/Subpage.aspx?page_id=17, 22.01.2016.
4. <https://www.ms.gov.pl/pl/sady-w-internecie/e-protokol/>, 23.01.2016.
5. J. Gołaczyński, *Model informatyzacji postępowania cywilnego w nowym Kodeksie postępowania cywilnego*, in: *Postępowanie rozpoznawcze w przyszłym kodeksie postępowania cywilnego*, eds.: K. Markiewicz, A. Torbus, Warsaw 2014.
6. M. Uliasz, *Informatyzacja postępowania egzekucyjnego*, in: *Informatyzacja postępowania cywilnego*, eds.: K. Flaga-Gieruszyńska, J. Gołaczyński, D. Szostek, Warsaw 2016.
7. J. Studzińska, *Wybrane kierunki zmian w postępowaniu egzekucyjnym*, in: *Informatyzacja postępowania cywilnego*, eds.: K. Flaga-Gieruszyńska, J. Gołaczyński, D. Szostek, Warsaw 2016.

Флага-Геружинська Кінга Андріївна ІНФОРМАТИЗАЦІЯ В ЦИВІЛЬНОМУ ПРОЦЕСІ ПОЛЬЩІ

У статті розглянуто використання інформаційних технологій у польському цивільному судочинстві. зокрема, зроблено акцент на тому, що такі технології мають добровільний характер, а тому, якщо позивач використовує електронну форму розгляду, відповідач має можливість прийняти рішення про таку форму проведення судового розгляду, а також оскаржити заяву і повернутися до традиційної форми судового розгляду.

Ключові слова: судочинство, інформаційні технології, комп'ютеризація, позов, суд.

Флага-Герушинська Кинга Андреевна ИНФОРМАТИЗАЦИЯ В ГРАЖДАНСКОМ ПРОЦЕССЕ ПОЛЬШИ

В статье рассмотрено использование информационных технологий в польском гражданском судопроизводстве. В частности, сделан акцент на том, что такие технологии имеют добровольный характер, а потому, если истец использует электронную форму рассмотрения, ответчик имеет возможность принять решение о такой форме проведения судебного разбирательства, а также обжаловать заявление и вернуться к традиционной форме судебного разбирательства.

Ключевые слова: судопроизводство, информационные технологии, компьютеризация, иск, суд.