№ 6. – С. 43-46; В.П. Мироненко. Патронат як форма влаштування дітей-сиріт та дітей, позбавлених батьківського піклування / В. П. Мироненко // Бюлетень міністерства юстиції України. – 2013. – No3. – С. 56-63.
13. Черновалюк Ю. Ю. Деякі проблемні питання щодо правового регулювання патронату за законодавством України / Ю. Черновалюк// Актуальні проблеми держави і права : збірник наукових праць. – Одеса : Юрид. Літ.,– 2009. – С. 121-128.
14. Шаповал Л. Проблеми патронатного виховання й особливості влаштування вихованців дитячого будинку у патронатну сім'ю / Леся Шаповал // Підприємство, господарство і право. – 2013. No 1. – С. 31-33.
15. Кодекс про шлюб та сім'ю України від 20.06.69 // Відомості Верховної Ради. – 1969. – №26. – ст. 204.
16. Закон України «Про внесення змін до деяких законодавчих актів України щодо посилення соціального захисту дітей та підтримки сімей з дітьми» від 26.01.2016 року № 936-VIII. / [Електронний ресурс]. – Режим доступу:www.rada.gov.ua.
17. Цивільне право України : [підручник] : [У 2 т.] / Д. В. Боброва, О. В. Дзера, А. С. Довгерт та ін. [За ред. О. В. Дзери, Н. С. Кузнецової]. – К. : Юрінком Інтер, 2000. – Кн. 1. – 864 с.
18. Пчелинцева Л. М. Комментарий к Семейному кодексу Российской Федерации [3-е изд., перераб. и доп.] / Л. М. Пчелинцева – М., 2004. – 832 с.
19. Цивільний кодекс України в редакції від 16 січня 2003 року. / [Електронний ресурс]. – Режим доступу:www.rada.gov.ua.
20. Закон України «Про охорону дитинства» від 26.04.2001 № 2402-III. / [Електронний ресурс]. – Режим доступу:www.rada.gov.ua.
21. Цивільно-процесуальний кодекс України. / [Електронний ресурс]. – Режим доступу:www.rada.gov.ua.
22. Ухвала Голосіївського районного суду м. Києва від 24.02.2012 року. / [Електронний ресурс]. – Режим доступу: http://www.reyestr.court.gov.ua/Review/27139404.
23. Рішення Дарницького районного суду м. Києва від 30 листопада 2015 року. / [Електронний ресурс]. – Режим доступу: http://www.reyestr.court.gov.ua/Review/55038894.

Гаро Анна Александровна

СПЕЦИФИКА РАССМОТРЕНИЯ СПОРОВ, ВОЗНИКАЮЩИХ ИЗ ПРАВООТНОШЕНИЙ ПАТРОНАТА

В статье освещаются вопросы правового регулирования патроната как категории семейно-правового института сквозь специфику рассмотрения споров, возникающих из правоотношений патроната. Автор рассматривает вопросы особенностей законодательного регулирования правоотношений патроната, анализирует возможные разновидности и порядок рассмотрения семейных споров, которые могут возникнуть из правоотношений патроната. Сделан вывод о специфике споров, которые могут возникнуть из договоров патроната и в связи с этим необходимость в специализации судей, которые будут рассматривать семейные споры, возникающие из правоотношений патроната.

Ключевые слова: *патронат, охрана детства, семейный спор, семейно-правовой институт, специализация, судей, защита детей.*

Garo Ganna

SPECIFICITY OF RESOLUTON OF DISPUTES ARISING FROM FOSTER CARE RELATIONS

The article highlights the issue of legal regulation of foster care as a category of Family Law Institute by resolving the disputes arising from foster care relationships. The author examines the specificity of legislative regulation of foster care relationships, and analyzes possible types of family disputes, which may arise from foster care relationships, and the procedure of their resolution. The conclusion is made about the specificity of the disputes, which may arise from foster care contracts and, therefore, the need for the judges specialized in settling family disputes arising from foster care relationships.

Keywords: *foster care, child protection, family dispute, Family Law Institute, judges specialized in, protection of children.*

Karolina Ziemianin
Assistant Department of Civil Procedure
Faculty of Law and Administration
University of Szczecin
Poland

POLISH MODEL OF THE ELECTRONIC PROTOCOL

The subject of the considerations contained in the article is the electronic protocol in the Polish legal system. It was introduced in year 2010 as a new way of recording the open hearings of the court. The electronic protocol is prepared in every court which provides a suitable technical equipment. A special

value of this protocol is an exact reflection of the sittings of court. The base of analysis in this article is, however, the protocol of a court hearing made in a traditional written form, because the Polish legislator did not give up this form, despite the introduction of the e-protocol.

Keywords: *electronic protocol, e-protocol, written protocol, court.*

1. Introductory remarks

The changes made in Polish civil procedure in recent years are associated with the development of modern technologies. One of the most important changes was the introduction in 2010 of a new way of recording the course of an open hearing of the court, the so-called electronic protocol (known as the e-protocol).

The electronic protocol is a digital recording of sound or image and sound. It preserves the course of a hearing with the system of microphones or microphones and cameras on a computer storage medium. Technical aspects of the use of the e-protocol are contained in the Regulation of the Minister of Justice. The first regulation on the matter was issued in 2011 [1]. From this point, it was possible to use the electronic protocol in practice. Currently the Regulation of the Minister of Justice of 2 March 2015 applies to this matter [2].

According to the Art. 157 of the Polish Code of Civil Procedure [3] a court recorder prepares a protocol of the course of an open sitting. In its content the course of the sitting is preserved by devices used for recording of sound or image and sound, as well as in writing (§ 1). If for any technical reasons the preservation of the course of the sitting by devices used for recording of sound or image and sound is not possible, the protocol is made in writing only (§ 1^1). The correctness of the protocol is controlled by the chairman (§ 1 and 1^1).

Currently, technical equipment suitable for the preparation of the electronic protocol is present in 2 267 courtrooms in 239 courts, including 11 courts of appeal, 45 regional and 183 district courts [4]. Until 20 October 2015 a total of 1 400 000 sittings have been recorded. The project of implementation of the e-protocol to the judiciary in the coming years will include the remaining common courts in Poland.

The basis of considerations on the electronic protocol is a protocol prepared in the traditional written form. The Polish legislator did not give up this form, despite the introduction of the e-protocol. The written protocol is prepared together with the electronic protocol in the courts, which are equipped with necessary equipment, while in other courts it is the sole record of the open sitting. The main subject of the analysis contained in this article are the provisions of the Polish Code of Civil Procedure in their present form, and after the changes introduced by the Act of 10 July 2015, which enters into force on 8 September 2016 [5].

2. Protocol in the traditional sense

In traditional sense, the protocol has a written form. It is prepared by a court recorder under the direction of the chairman. The most common method of writing the protocol is dictating its content by the chairman. For this purpose the chairman interrupts the parties' statements, while sometimes shortening and modifying them. This method is referred to as a reassumption method. Another way of preparing the protocol is based on an individual writing down of its contents by the court recorder. The role of the chairman is limited to the regular control of the protocol and implementation of amendments, if such are needed. This method sometimes requires the modification of the statements of the parties and other people involved in the proceedings. It is called a chronological method.

In the light of the provisions of CCP if during the course of an open sitting an electronic protocol is done, a written protocol, created in conjunction with the e-protocol, is prepared in a shortened form (Art. 158 § 1 CCP). However, if the course of the court sitting is preserved with a written protocol only, the protocol also contains additional information (Art. 158 § 2 CCP).

In accordance with Art. 158 § 1 CCP, every written protocol includes inter alia the name of the court, places and dates of the sittings, the names of the judges, the court recorder, the prosecutor, the parties, the interveners, as well as the statutory representatives and proxies present at the meeting, case number and transparency reference, information on orders and decisions issued at the meeting, the activities of the parties affecting the outcome of the case (settlement, waiving a claim, admission of the claim, revocation, modification, extension or reduction of the claim). If the preparation of the separate conclusion of the judgment is not required, it is sufficient to include in the protocol the content of the settlement. Actions that require a signature of a party can be placed in a separate document, which is part of the protocol.

However, in the light of Art. 158 § 2 CCP, if for any technical reasons it is not possible to prepare an electronic protocol, a written protocol also includes conclusions and statements of parties, as well as provided instructions, and results of evidentiary proceedings and other circumstances relevant for the course of the sitting. Instead of conclusions and statements, the protocol can refer to the preparatory documents.

Adjusting the content of the written protocol to the requirements of a particular case was allowed in August 2014. At that time Art. 158 § 1^1 CCP was added, according to which a written protocol drawn up in conjunction with an electronic protocol may contain conclusions and statements of parties, a summary of the results of the evidentiary proceedings and other circumstances relevant for the course of the sitting. Instead of conclusions and statements, the protocol can refer to the preparatory documents. In the light of this provision a sitting of the court results, in fact, in two protocols containing a full reflection of the course of the sitting: an electronic protocol and a written protocol. The written protocol repeats information contained in the electronic version of the protocol.

The Act of 10 July 2015 changed the wording of Art. 158 § 1 and 1^1 CCP. A summary of the results of evidentiary proceedings was added as

a mandatory element of each electronic protocol. The use of the term «summary» means that the protocol should include only minimum information on the evidentiary proceedings [6]. There is no doubt, however, that the content of a written protocol has been significantly expanded.

In accordance with the provisions of CCP, the protocol, which is not a correct reflection of the proceedings may be supplemented or corrected at the request of the parties (Art. 160 § 1 CCP). Supplementing a written protocol means adding information to its content, while correcting – changing or removing certain information contained in the protocol.

An important institution in terms of the effects of the proceedings is the possibility of raising objections to the protocol by the party. According to Art. 162 CCP, parties may in the course of the sitting, and if they were not present at the next meeting, draw attention of the court to the failure to comply with the procedural provisions by raising an objection to the protocol. The party, which did not raise any objection, is not entitled to refer to such shortcomings in the further course of the proceedings, unless they concern the procedural provisions, the violation of which the court should take into consideration *ex officio*, or if the party proves that the lack of objection was not deliberate.

3. Protocol in the electronic sense

The preparation of on electronic protocol from the course of an open sitting is mandatory if technical conditions allow it. To record the sitting in electronic form it is required that the courtroom was equipped with a system of microphones and cameras as well as computers with the software needed to capture sound and image on a computer storage medium.

The preparation of an electronic protocol is independent from the actions of the chairman and the court recorder. Their role is limited to checking the accuracy of the recording. The electronic protocol is signed by the court recorder. CCP requires the use of an electronic signature which guarantees the identification of the court recorder and the recognition of any subsequent changes in the protocol (Art. 158 § 3, first sentence CCP). The use of such a signature is to provide safety of the computer storage medium which contains the e-protocol against any unauthorized access by third parties.

The advantages of such method of preparation of the protocol contributed in the introduction of an electronic protocol to the Polish civil procedure. Among them, it is especially important that the e-protocol is a faithful reflection of the course of an open sitting. This brings many facilities for the court, as well as for the parties. First of all, the literature emphasizes that the use of an electronic protocol reduces the time of the sitting. There is no need for the chairman to interrupt the speech of the parties in order to dictate the information to the protocol. This in turn increases the effectiveness of the procedure. The court and the parties can focus on the actions carried out during the proceedings without unnecessary, distracting interruptions.

The main advantage of an electronic protocol is also its positive impact on the transparency of the proceedings. This in particular, concerns the transparency towards the parties and other participants in the proceedings (i.e. external transparency), mainly because the protocol is a part of the case files. In the light of Art. 9 CCP those files are available for the participants in the proceedings. They have the right to view them and receive copies of them, as well as and extracts. The content of the protocols and the documents can be shared in an electronic form through information and communication system (§ 1). The parties and the participants in the proceedings have the right to receive from the files the sound recordings or image and sounds recordings, unless the protocol has been prepared in written form only. The chairman releases the sound recording, if the release of the image and sound recording is in opposition to an important public or private interest (§ 2). If the sitting is held behind closed doors, the parties and the participants will have the right to receive from the files only sound recordings (§ 3).

With the e-protocol, the parties can thus refer to the full, not affected in any way course of the sittings. This also applies to the results of evidentiary proceedings conducted at the sitting. The electronic protocol is therefore a reliable source of information about the proceedings. It also implements the principle of transparency of court proceedings. In light of this principle the party should be able to get acquainted with the circumstances justifying the decision of the court. When it comes to the written protocol, the transparency of the procedure was limited. The party could, for example, read only brief and summarized testimony of witnesses. As a consequence of this, the scope of the information has been limited. These problems have been solved by the use of an e-protocol.

The above advantages have an effect on the conduct of the proceedings before the court of second instance. The court has the possibility to directly get acquainted with the course of the hearing before the court of the first instance by tracing the image and sound recording. This in turn causes that the verification of the claims of the parties in relation to the proceedings is facilitated. The court of second instance can therefore objectively assess the previous proceedings [7].

The advantage of using an electronic protocol is also forcing the court and the parties to act in accordance with the law and with morality. This is conducive to increasing the level of culture in the courtroom, as any abnormal behaviour of the parties can be recorded and form the basis of further consequences (e.g. disciplinary).

The practical use of an electronic protocol has been facilitated by the creation of Information Portal of Common Courts. The access to the Portal is possible through the websites of the various common courts in Poland. According to § 106 of the Rules concerning the operation of those courts [8] the president of the court may order the disclosure of data about the case, content of the protocols and judicial and procedural documents

to the parties or participants in the non judicial proceedings as well as to their representatives or proxies through the accounts in the IT system.

In the Information Portal authorized persons (among other: parties and their proxies) can become familiar with the protocols from the sittings in particular cases, information about the state of a case, dates of sittings and documents sent by the court. In order to gain the access to this information it is necessary to create an account protected by a password. The creation of such an account in the Information Portal is free and voluntary. Using it is possible twenty four hours a day, seven days a week. If the authorized person does not have an account in the Portal, the aforementioned information may be accessed in the building of the court in its office hours. Using the Information Portal is therefore an important facilitation. The doctrine also emphasizes that it lowers the cost of litigation. The party does not have to appear in person in the court to read the case files.

The electronic protocol has some drawbacks also. These include the difficulty with the use of the e-protocol. Professional proxies emphasize that the use of the electronic protocol, in particular containing only sound is time-consuming, and determining who is the speaker – sometimes impossible.

What improves the use of the electronic protocol is the transcription of sound or image recordings. If it is necessary to ensure proper adjudication of the case, the president may order a transcription of a relevant part of the protocol recorded with a device allowing for recording sound or image and sound (Art. 158 § 4 CCP).

The prior legal status stated that the president of the court was the only person allowed to order the transcription. They did this on the request of the chairman. Prepared transcription became an annex to the protocol, and was therefore a part of the protocol of the court sitting (cf. Art. 161 CCP). Art. 158 § 4 CCP has been in force in the present form since 27 October 2014 [9]. In the light of the new wording of this provision preparing transcriptions of electronic protocols is facilitated, because the decision is made by the chairman. The basis for such a decision is a necessity for proper adjudication of the case. The transcription is no longer annexed to the protocol, so it is not a part of it.

The details of transcribing are contained in the Rules concerning the operation of the common courts. Transcription is carried out by the employees of the court (§ 93 paragraph 3 of the Rules). The Chairman of the meeting, by ordering the preparation of the transcription should indicate the fragment of the protocol which should be transcribed and the expected date of completing the transcription (§ 93 paragraph 2 of the Rules).

The literal wording of Ar. 158 § 4 CCP shows that the transcription may include only part of the protocol. Despite this, there is a view in the doctrine, according to which the transcription made under this provision may include all records contained in the electronic protocol. This position, though disputed on the basis of a literal interpretation of Article. 158 § 4 of the Code of Civil Procedure is right. It cannot be ruled out that in exceptional circumstances necessary for proper adjudication on the preparation will be transcribed the entire electronic minutes.

However, some doubts are raised by the premise of preparation of the transcription, namely the necessity of proper adjudication. It seems that on this basis, transcripts can be created in situations where the court has difficulty in using the protocol containing image and sound recording. On the other hand, this premise does not apply to problems in the use of this protocol by the parties and other participants in the proceedings. It would be deliberate to change the provision by including other causes of preparation of the transcription. Among them, a very important premise should be considered, which is facilitation of the access to the state of the case.

In the future, a change of the method of transcription may also be justified. The development of technology causes that it seems possible to prepare a transcription automatically through programs created for that purpose, and not by the employees of the court. Such a solution would relieve court employees, who would only watch over the correctness of transcription. It would also allow for transcription of a larger number of cases.

Some doubts are also raised by other provisions on the electronic protocol. The legislator did not foresee the implications for the course of the proceedings of the anomalies in the sound or image and sound recordings which create the e-protocol. In the current legal state, it is also problematic to determine the status of the transcription of the recording of the open sitting.

These issues were the subject of the decision of the Supreme Court. In its resolution of 23 March 2016, Ref. III CZP 102/15, it ruled that if the protocol drawn up by means of the sound or image and sound recording does not allow in the part covering evidence activity to determine its content, the court repeats this action to a proper extent (Art. 241 CCP). However, according to the Court the transcription of the protocol prepared by means of a sound or image and sound recording it is not an official document and does not constitute the basis of the factual findings.

In the light of the current provisions of the Code of Civil Procedure, the decision seems right. However, it does not dispel all doubts concerning the applicability of the e-protocol in practice. In fact, the application of the provisions according to the resolution proposed by the Supreme Court may in some cases lead to the prolongation of the proceedings. Therefore, it would be contrary to one of the fundamental objectives of the introduction of the e-protocol, which is the acceleration of judicial proceedings. It seems, therefore, that the provisions in this regard require some changes.

In accordance with Art. 160 § 2 CCP the electronic protocol is not a subject to correction. For its essence, it allows for the restoration of full course of the sitting. This therefore excludes the necessity to change, omit or delete its fragments. In contrast, the legislature did not rule out the

possibility of supplementing the protocol. This should be done by adding the omitted part to the protocol. This necessity may occur in case of errors in the recording of the sound or image and sound (e.g. a break in the record) [10]. However, this matter is controversial in the doctrine [11].

4. Final remarks

The electronic protocol is now an integral part of civil procedure. It is commonly used in the practice of courts in Poland. It should be assessed positively. A special value of this protocol is an exact reflection of the sittings of court. This corresponds to the demands of the society and has a beneficial effect on the course of civil proceedings.

Ensuring the correctness of the use of the electronic protocol still requires some changes. First of all it is necessary to equip all courts in the system of technical devices allowing recording the image and sound of the sitting. In addition, legislative solutions relating to e-protocol require certain modifications. Any changes should be aimed at ensuring the correct use of the electronic protocol and its objectives. Particular attention should be paid to the speed of the proceedings.

REFERENCES:

1. Regulation of the Minister of Justice of 10 August 2011 on recording of sound or image and sound of the course of an open hearing (Journal of Laws, No. 175, item 1046), (Rozporządzenia Ministra Sprawiedliwości z 10 sierpnia 2011 r. w sprawie zapisu dźwięku albo obrazu i dźwięku z przebiegu posiedzenia jawnego (Dz.U. Nr 175, poz. 1046)).
2. Regulation of the Minister of Justice of 2 March 2015 on recording of sound or image and sound of the course of an open hearing in civil proceedings (Journal of Laws, item 359), (Rozporządzenia Ministra Sprawiedliwości z dnia 2 marca 2015 r. w sprawie zapisu dźwięku albo obrazu i dźwięku z przebiegu posiedzenia jawnego w postępowaniu cywilnym (Dz.U. poz. 359)).
3. Act of 17 November 1964 – the Code of Civil Procedure, (Journal of Laws 2014, item 101 as amended), hereinafter referred to as CCP, (Ustawa z dnia 17 listopada 1964 r. – Kodeks postępowania cywilnego (Dz.U. z 2014 r., poz. 101 z późn. zm.)).
4. https://www.ms.gov.pl/pl/sady-w-internecie/e-protokol/, access 20 May 2016.
5. Act of 10 July 2015 on amending the act – the Civil Code, the act – The code of Civil Procedure and some other acts (Journal of Law, item 1311 as amended), (Ustawa z dnia 10 lipca 2015 r. o zmianie ustawy – Kodeks cywilny, ustawy – Kodeks postępowania cywilnego oraz niektórych innych ustaw (Dz.U. poz. 1311 ze zm.)).
6. A. Zalesińska, *Komentarz do art. 158 KPC*, [in:] J. Gołaczyński, D. Szostek (eds.) *Informatyzacja postępowania cywilnego*, Warszawa 2016, p. 171.
7. G. Karaś, *Protokół elektroniczny – osiągnięte rezultaty i postulaty de lege ferenda*,[in:] K. Flaga-Gieruszyńska, J. Gołaczyński, D. Szostek (eds.) *Informatyzaja postępowania cywilnego. Teoria i praktyka*, Warszawa 2016, p. 75.
8. Regulation of the Minister of Justice of 23 December 2015 – Rules concerning the operation of the common courts (Journal of Laws, item 2316), (Rozporządzenie Ministra Sprawiedliwości z dnia 23 grudnia 2015 r. – Regulamin urzędowania sądów powszechnych (Dz.U. poz. 2316)).
9. Act of 29 August 2014 on amending the act – the Code of Civil Procedure and the act on court costs in civil cases (Journal of Laws, item 1296), (Ustawa z dnia 29 sierpnia 2014 r. o zmianie ustawy – Kodeks postępowania cywilnego oraz ustawy o kosztach sądowych w sprawach cywilnych (Dz. U. poz. 1296)).
10. Justification of the act on amending the act – the Code of Civil Procedure, the Sejm VI Term, Sejm form No. 2870. The act was passed on 29 April 2010 (Journal of Laws No. 108, item 684).
11. E. Stefańska, *Komentarz do art. 160 KPC*, [in:] M. Manowska (ed.) *Kodeks postępowania cywilnego. Komentarz*. Vol. I, Warszawa 2015.

Кароліна Землянин

ПОЛЬСЬКА МОДЕЛЬ ЕЛЕКТРОННОГО ПРОТОКОЛУ

В даній статті предметом розгляду є електронний протокол польської правової системи. Він був введений в 2010 році як новий спосіб запису відкритого судового слухання. Електронний протокол підготовлений в кожному суді, який забезпечує відповідну технічним обладнанням. Особливе значення цього протоколу полягає в точному відображенні засідань суду. Основою аналізу в цій статті, є протокол судового засідання зроблений в традиційній письмовій формі, тому що польський законодавець не відмовився від цієї форми, незважаючи на введення електронного протоколу.

Ключові слова: *електронний протокол, письмовий протокол, суд.*

Каролина Землянин

ПОЛЬСКАЯ МОДЕЛЬ ЭЛЕКТРОННОГО ПРОТОКОЛА

В данной статье предметом рассмотрения является электронный протокол польской правовой системы. Он был введен в 2010 году как новый способ записи открытого судебного слушания. Электронный протокол изготавливается в каждом суде, который обеспечен соответствующим техническим оборудованием. Особое значение этого протокола заключается в точном, что он отображает заседание суда. Основой анализа в этой статье, однако является протокол судебного заседания, сделанные в традиционной письменной форме, так как польский законодатель не отказался от этой формы, несмотря на введение электронного протокола.

Ключевые слова: *электронный протокол, письменный протокол, суд.*