

# Digitalization of civil proceedings in the light of openness, equality and immediacy in the Polish legal system<sup>1</sup>

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## **Abstract:**

This article is a voice in the discussion on the aims and function of digital transformation of the Polish civil procedure. The author also points out the changes in the Polish legal order introduced by the legislator in recent years, in particular those connected with temporary solutions for the time of Covid-19 Pandemic. She analyses IT-tools used in civil proceedings in the light of procedural rules. At first glance, it seems that digitalization may have quite an impact upon all the construction rules of civil procedure. However, contrary to this impression, it does not directly affect all of them. The greatest correlation can be seen in the case of the principle of openness, the principle of equality and the principle of immediacy. As the conclusion the author indicates that digital transformation allows for a more complete implementation of procedural principles and it supports the realisation of those rules.

**Keywords:** Civil procedure, digitalization, rules of civil proceedings

## **Introduction**

In recent years, the Polish civil procedure has been amended many a time<sup>3</sup>. In many cases, the changes were meant to enable the use of new technologies as tools supporting the course of civil proceedings<sup>4</sup>.

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<sup>3</sup> See e. g. A. Gołąb, New rules regarding the concentration of procedural material, <https://polishprivatelaw.pl/new-rules-regarding-the-concentration-of-procedural-material-in-the-polish-code-of-civil-procedure/#more-5886> (29.08.2022)

<sup>4</sup> P. Rylski, Polish Civil Procedure: Yesterday, Today and Tomorrow – some remarks about recent changes of procedural law in Poland, "Bratislava Law Review" 2019, No 1, pp. 141-149.

Digital transformation of the Polish civil procedure actually started in 2009, when the Code of Civil Procedure allowed for taking evidence from the examination of a witness via videoconferencing (Art. 235 § 2 of the Code of Civil Procedure), which still had to take place in the building of some other court in Poland. The electronic-writ -of-payment procedure<sup>5</sup> has been in place since 2010, which is often considered the first actual stage of digitalization. After subsequent changes to the Code of Civil Procedure, a new method of recording the course of court hearings came into being, i.e. by using sound and image recording devices (the so-called e-protocol). Afterwards, electronic registration proceedings (company registration, the so-called s-24<sup>6</sup>) and electronic land and mortgage register proceedings were introduced. Subsequently, new provisions applying to electronic service of judicial documents as well as provisions introducing the possibility of submitting procedural documents by electronic means were made<sup>7</sup>.

In addition to code instruments, other tools were introduced to streamline civil proceedings, even though they did not relate directly to the course of legal proceedings. First of all, electronic case lists, case management systems as well as portals of judicial decisions and rulings ought to be mentioned.

The case list is a list of court cases placed by order in which they are to be heard on a given day<sup>8</sup>. It contains names and surnames of the parties to the procedure and other persons summoned in connection with the cases, basically personal data of the parties, names and surnames of the judges and lay judges, reference case numbers for the session and times for which the cases were scheduled; in civil cases, the subject matter of the case is provided as well. Case lists in paper form are usually displayed by the door of the court room; however, more and more often, traditional case lists have been replaced with electronic displays, with the electronic version available online, on websites of particular courts.

The Online Case Management System allows for the authorized or validated entities, by means of the data communication system, to have access to the information on the pending cases which they participate in. Most often, it is used by barristers, although anyone interested in particular cases may take advantage of the system. Its users obtain access to the data on the case covering, i.e. the present status of the procedure, activities performed by the court, marked dates, access to documents generated by the court in electronic form (rulings, decisions, justifications, electronic minutes)<sup>9</sup>. The portal allows to view the electronic version of a case files and to print out their copies. Using the portal is free of charge. The user obtains the information as generated to his account; any changes in the cases, incoming sessions and new cases are listed automatically.

For the past few years, the Ministry of Justice has been implementing the project of the portal of judgments and decisions, namely the Internet website making available

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<sup>5</sup> The Act of 9 January 2009 amending the Act - Code of Civil Procedure and certain other acts (Journal of Laws No. 26, item 156), with effect from 1 January 2010.

<sup>6</sup> Limited liability company registered electronically on the basis of an electronic form made available in the ICT system of the registry court within 24 hours.

<sup>7</sup> Actually, there are currently no implementing regulations or technical possibilities to implement these provisions.

<sup>8</sup> Latin. *vocanda* – cases to be called.

<sup>9</sup> <https://www.gov.pl/web/sprawiedliwosc/portal-informacyjny> (access 29.08.2022 r.)

the judgments of common courts (district, regional and appellate courts)<sup>10</sup> for the users. Decisions of common courts become source of knowledge for all citizens, which enables effective social control over the course of legal procedures and the rationality of judgments and rulings given by courts of law<sup>11</sup>. Decisions and rulings are available for free and without the need of any prior registration. Some appellate courts issue their own bulletins, which are also available in electronic form (e.g. the Appellate Courts in Białystok, in Katowice, in Lublin, in Szczecin and in Wrocław).

### **Electronic writ-of-payment procedure**

The analysis of the digital transformation process of court proceedings allows us to assume that one of the most significant changes was the introduction of a new type of proceedings to the Code of Civil Procedure, which were the electronic writ proceedings<sup>12</sup>.

The electronic writ proceedings have been in operation within the Polish civil proceedings since January 1, 2010<sup>13</sup>. They were introduced as separate proceedings, optional and depending only on the will of the claimant. Only the plaintiff has the right to initiate proceedings in this manner by submitting a claim electronically via the court's dedicated ICT system. The disputes dealt with by the electronic court include only financial claims, regardless of the amount in dispute.

This particular type of proceedings may only be instituted by one court in the country appointed to do so. It is the Lublin West District Court. Due to the fact that most procedural steps are conducted in electronic form, the issue of jurisdiction becomes irrelevant. The participants in the proceedings do not experience the issue of jurisdiction at any stage of the case. Due to the type and specificity of the proceedings, no hearings are scheduled during the proceedings and there is no need to appear in court, and the entire proceedings are conducted without any actual participation of the parties. The claimant submitting the claim states the facts and provides the evidence that they can offer to support their claim. No attachments are added to the statement of claim. While assessing the case, the court referendary relies solely on the claimant's statements. If they are considered substantiated, an order for payment is issued. No evidentiary proceedings are carried out. If the defendant disputes the grounds of the order for payment, they may file an objection.

In the current procedure, it is assumed that the electronic writ of payment may be independent of other proceedings, and its effect may include an order for payment in the form of an enforceable title, unless the defendant effectively objects. However, if there are no grounds for issuing an order for payment or if the defendant lodges an effective appeal, the order for payment ceases to be in force, and the electronic writ of payment becomes only a preliminary stage of examining the case under the usual procedure (possibly taking into account other separate proceedings).

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<sup>10</sup> <http://orzeczenia.ms.gov.pl> (access 29.08.2022 r.)

<sup>11</sup> P. Rodziewicz, A. Zalesińska, Publiczne bazy orzeczeń sądowych [in:] L. Górnicki (ed.) *Technologia informacyjna dla prawników*, Biblioteka Cyfrowa Uniwersytetu Wrocławskiego, <https://www.bibliotekacyfrowa.pl/dlibra/publication/37369> (access 29.08.2022).

<sup>12</sup> R. Kulski, Some Remarks on the Course of Polish Electronic Proceedings by Writ of Payment [in:] M. Kengyel, M. Electronic Justice – Present and Future. Colloquium of the IAPL, Pecs, 2010, p. 17.

<sup>13</sup> The provisions regulating electronic writ proceedings were introduced to the Code of Civil Procedure by the Act of January 9, 2009, Journal Of Laws of 2009, No. 26, item 156.

The Polish electronic writ of payment was modelled on the English solution (Money claim online) and on the German solution (*Mahnverfahren*)<sup>14</sup>. As a matter of fact, the Polish solution is more similar to the German one, in which the writ proceedings are a specific court order for payment. Failure to react by the defendant sanctions the obligation to pay the amount requested by the plaintiff. On the other hand, if the defendant initiates any defensive actions, it is necessary to start a typical trial.

In electronic writ proceedings, the model of completely digitized proceedings has almost fully been implemented. Almost all procedural activities are performed in electronic form, i.e. the statement of claim is filed via the ICT system handling the proceedings; court actions, including the payment order, are made in electronic form; the enforcement clause is also in electronic form. The only operation that requires the traditional paper form is serving the defendant a printed order for payment along with the statement printed out from the system. If the defendant decides to take action, the way of communicating with the court can be selected. An objection to an order for payment may be filed in paper or electronic form via the system used for electronic writ proceedings. Letters of the plaintiff and the defendant, after choosing to lodge letters via the ICT system, cannot be filed in the traditional paper form, as then they will not have any procedural effect.

### **Electronic submission of documents**

The provision to the Code of Civil Procedure which was to enable the submission of letters by electronic means was introduced by the legislator many years ago. This option first appeared as a result of the amendment introduced by the Act of May 24, 2000 (Journal of Laws of 2000, No. 48, item 554), which entered into force in this respect on October 1, 2000. Paragraph 2 was introduced to Art. 125 of the Code of Civil Procedure in the wording, ‘if a special provision so provides, pleadings are filed on official forms or on electronic IT media.’ The Minister of Justice was to define, by way of a regulation, detailed rules and deadlines for the introduction of IT technology, the conditions to be met by electronic IT media on which pleadings are to be lodged, the mode of reproducing the data contained therein and the manner of their storage and protection, taking into account the technical equipment courts have at their disposal and the level of information technology.

Ultimately, the Minister of Justice did not issue the afore-mentioned regulation; however, the provisions of Art. 125 § 2 of the Code of Civil Procedure were changed.

Initially, it was anticipated that the electronic submission of pleadings would take place on electronic information carriers. Then, IT data carriers and the possibility of using electronic means of communication were referred to in the provision. Another amendment stated that letters may be submitted via the ICT system (by electronic means) and on IT data carriers. At the same time, the electronic way was identified with the ICT system. It was only the amendment of January 9, 2009 that established the ICT system as

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<sup>14</sup> B. Kaczmarek-Templin [in:] J. Gołaczyński (ed.), D. Adamski, Ł. Goździaszek, B. Kaczmarek-Templin, S. Kotecka, M. Kutylowski, W. Łukowski, B. Pękalski, D. Szostek, *Elektroniczne postępowanie upominawcze. Komentarz*, Wolters Kluwer (Warszawa 2010), B. Kaczmarek [in:] J. Gołaczyński (ed.), Ł. Goździaszek, D. Góra, A. Jaroszek, B. Kaczmarek, S. Kotecka, P. Pęcherzewski, D. Sielicki, P. Skórniak, D. Szostek, A. Waloszczyk, A. Zalesińska, A. Zawiślańska, *Informatyzacja postępowania sądowego w prawie polskim i prawie wybranych państw*, C. H. Beck (Warszawa) 2009.

the only method of submitting electronic pleadings<sup>15</sup>.

According to the current wording of Art. 125 § 21 of the Code of Civil Procedure, letters may be brought to the court if a special provision so states or a choice has been made to submit pleadings via the ICT system; submitting pleadings via the ICT system is permitted only if it is technically possible in a particular court of law.

So far, despite many amendments, it has been possible to effectively bring letters to court by electronic means with regard to regular proceedings.

Basically, it is currently possible to submit pleadings in electronic form only in the case of electronic writ proceedings. In addition, it is also possible to submit, via the ICT system, applications for entry in the register of entrepreneurs of the National Court Register of a limited liability company, limited partnership and general partnership. Apart from the e-court's ICT system (Lublin West District Court), supporting electronic writ proceedings and apart from the system supporting the S24 portal, and the system supporting the National Court Register, no court provides the parties with the functionality of the IT system that would allow the submission of letters by electronic means. Moreover, there is no provision to promote such a formula of submitting pleadings, which does not fall within the semantic scope of performing actions electronically<sup>16</sup>.

Recent changes to the provision of Art. 125 of the Code of Civil Procedure are in line with social expectations and postulates regarding the digitalization of the judiciary<sup>17</sup>. After all, more and more everyday activities are performed electronically. One can indicate here electronic commerce, streaming platforms for music, games, films, as well as contacts with public administration offices<sup>18</sup>.

The legislator abandoned the term 'electronic means' in favour of the term 'ICT system' in Art. 125 § 21 of the Code of Civil Procedure. The change was introduced primarily due to the interpretation problems of the ambiguous term 'electronic means,' which may mean submitting a pleading via the ICT system in which court proceedings are conducted as well as lodging a pleading by e-mail<sup>19</sup>.

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<sup>15</sup> The Act on Amending the Code of Civil Procedure and Certain Other Acts (Journal of Laws of 2009, No. 26, item 156), which entered into force on 1 January 2010.

<sup>16</sup> Compare J. Gołaczyński, *Elektroniczne czynności procesowe*, [http://www.digitallibrary.pl/Content/24974/Elektroniczne\\_czynnosci\\_pro.pdf](http://www.digitallibrary.pl/Content/24974/Elektroniczne_czynnosci_pro.pdf) (29.08.2022), p. 5 and S. Kotecka, M. Kutylowski, *Wnoszenie do sądu pism procesowych*, [https://www.bibliotekacyfrowa.pl/Content/23633/Wnoszenie\\_do\\_sadu\\_pism\\_procesowych.pdf](https://www.bibliotekacyfrowa.pl/Content/23633/Wnoszenie_do_sadu_pism_procesowych.pdf) (29.08.2022), p. 4.

<sup>17</sup> S. Cieślak, *Forma czynności w procesie cywilnym – stan obecny i perspektywy rozwoju*, [w:] K. Markiewicz (ed.), A. Torbus (ed.), *Postępowanie rozpoznawcze w przyszłym kodeksie postępowania cywilnego*, C. H. Beck (Warszawa) 2014, p. 155 onwards; J. Gołaczyński, *Model informatyzacji postępowania cywilnego w nowym Kodeksie postępowania cywilnego*, [in:] K. Markiewicz (ed.), A. Torbus (ed.) *Postępowanie rozpoznawcze w przyszłym kodeksie postępowania cywilnego*, C. H. Beck (Warszawa) 2014, p. 391 onwards.; K. Markiewicz, *Informatyzacja postępowania cywilnego – de lege lata i de lege ferenda*, [in:] K. Markiewicz (ed.), A. Torbus (ed.), *Postępowanie rozpoznawcze w przyszłym kodeksie postępowania cywilnego*, C. H. Beck (Warszawa) 2014, p. 403 onwards.

<sup>18</sup> Compare M. Załucki, *The Road to Modern Judiciary. Why New Technologies Can Modernise the Administration of Justice?* [in:] D. Szostek (ed.), M. Załucki (ed.), *Internet and New Technologies Law*, Nomos 2021, p. 159-171

<sup>19</sup> J. Gołaczyński [in:] J. Gołaczyński, D. Szostek (ed.), *Informatyzacja postępowania cywilnego. Komentarz*, C. H. Beck 2016 (Warszawa), p. 139.

The issue of service of court documents looks different. As a rule, court correspondence is delivered to participants in the proceedings in the traditional paper form. The court performs service via the ICT system (electronic delivery) if the addressee has submitted the letter via the ICT system or has chosen to submit the letters via the ICT system.

In connection with the obligation by professional attorneys (attorneys, legal advisers, patent attorneys, advisors at the State Treasury General Prosecutor's Office) to serve copies of pleadings with attachments in the course of the case, the legislator, extending the scope of electronic service, recognized that in this respect, new opportunities should be introduced as well. Pursuant to Art. 132 § 13 of the Code of Civil Procedure, attorneys shall deliver pleadings to each other only in electronic form if they submit to the court consistent declarations of appropriate content and provide the court with the address data used, in particular e-mail addresses or fax numbers. The declarations are not subject to withdrawal, and reservations of a condition or deadlines are considered invalid. In justified cases, the court may order to waive this method of service.

For several years, the Case Management System has been operating as part of handling court proceedings, however, until recently, obtaining information about the case did not have any legal effects. The system functioned as an alternative source of information on pending cases. Since 2020, when the coronavirus pandemic broke out, and after the introduction of the lockdown, when the maintenance of the proper functioning of the judiciary was at risk, there were voices in the discussion that it was necessary to urgently implement the possibility of communication between the participants in the proceedings and the court by electronic means, in particular allowing electronic service of pleadings and other court documents.

### **Covid-19 regulations**

The provision of art. 15zsz 9 Section 2 of the Act on special solutions related to the prevention, counteracting and combating COVID-19, other infectious diseases and crisis situations caused by the diseases (Journal of Laws, item 1842, as amended) introduced a revolutionary change in terms of deliveries<sup>20</sup>. Although, as the legislator declares, this change is temporary, it is safe to assume that it will last longer. Pursuant to this provision, during the period of the pandemic threat or the state of pandemic announced due to COVID-19 and within one year of the repeal of the last of them, in cases conducted under the Code of Civil Procedure, if it is not possible to use the ICT system supporting court proceedings, the court serves barristers, advisors, patent attorneys or General Prosecutor's Office of the Republic of Poland legal letters by placing their content in the ICT system used to make these documents available<sup>21</sup>. This does not apply to letters that are subject to service along with copies of the parties' pleadings or other documents not originating from the court. The date of delivery is the date on which

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<sup>20</sup> P. Rylski, Transformation of Polish Civil Procedure in Light of Covid-19 [in:] B. Krans, A. Nylund (ed.), Civil courts coping with Covid-19, Eleven International Publishing 2021, p. 155-165, <https://boeken.rechtsgebieden.boomportaal.nl/publicaties/9789462362048#165> (29.08.2022)

<sup>21</sup> P. Rylski Covid-19 and the civil justice in Poland [in:] Bart Krans, Anna Nylund, David Bamford, Laura Ervo, Frédérique Ferrand, Aleš Galič, Wolfgang Hau, Jordi Nieva Fenoll, Clement Salung Petersen, Catherine Piché, Piotr Rylski, Elisabetta Silvestri, John Sorabji, Vigita Vėbraité, and Hermes Zaneti jr. (2020). Civil Justice and Covid-19. *Septentrio Reports* 5. <https://doi.org/10.7557/7.5473>, p. 45-46.

the recipient opens the letter posted in the ICT system. In the event of failure to open the letter, the letter is considered delivered after 14 days from the date of making the letter available in the ICT system. The service of a letter via the ICT system produces procedural consequences specified in the Code of Civil Procedure, appropriate for the service of a legal document. The chairman shall order that the letter should not be served through the system if it is impossible to deliver the letter due to the nature of the letter.

### **Digitalization and procedural rules**

The digitalization of the justice system has aroused a lot of emotions and fierce discussions for years, with many praising<sup>22</sup> as well as many critical voices<sup>23</sup>.

It is well worth considering whether the digitalization of civil proceedings is in conflict with the principles (procedural rules) governing the proceedings<sup>24</sup>. It should be analysed whether the procedural rules are obsolete and no longer valid, and whether it is necessary to develop new rules or, possibly, it will be enough to introduce a new interpretation of the existing rules, whether there is a need to make any changes in this regard.

The procedural principles include openness of proceedings, directness, availability, equal rights of the parties, procedural formalism, oral proceedings (word of mouth), free evaluation of evidence. At first glance, it might seem that digitization may have quite an impact upon all the construction rules of civil procedure; however, contrary to this belief, it does not directly affect all of them. The greatest correlation can be seen in the case of the principle of openness, the principle of equality and the principle of immediacy.

The digitalization of the proceedings undoubtedly helps exercise the right to a fair trial. Admittedly, the right to a fair trial is considered one of the guiding principles of the administration of justice, and due to its importance, it is worth distinguishing also in the context of procedural rules.

The right to a fair trial includes both the right to apply to a court for legal protection (the right to have a dispute heard by an independent body), as well as the right to be heard within a reasonable time and the right to fair and reliable proceedings, and the right to be heard and to be informed.

Accordingly, it appears that IT tools ideally support the implementation of the

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<sup>22</sup> J. Gołaczyński, D. Szostek, *Informatyzacja postępowania cywilnego. Komentarz*, C. H. Beck (Warszawa) 2016, A. Zalesińska, *Wpływ informatyzacji na założenia konstrukcyjne procesu cywilnego*, C. H. Beck (Warszawa) 2016, J. Gołaczyński, S. Kotecka, A. Zalesińska, *Protokół w postaci zapisu dźwięku albo obrazu i dźwięku z posiedzenia jawnego w sprawach cywilnych*, „Monitor Prawniczy” 2010, No. 19, C. H. Beck.

<sup>23</sup> J. Grykiel, *Kilka uwag o nowej definicji dokumentu i formie dokumentowej*, „Monitor Prawniczy” 2016, No. 5, pp. 236-244, C. H. Beck.

<sup>24</sup> So far in Polish doctrine, there have not been many scientific papers on the influence of digitalization on legal principles. It is worth paying attention to B. Kaczmarek-Templin, *Electronic support of civil proceedings and the need for data protection in Poland* [in:] *The Book of Articles National Scientific Conference “e-Factory of Science” IV edition November 14, 2020*, p. 5-13, <http://promovendi.pl/wp-content/uploads/2020/11/The-Book-of-Articles-National-Scientific-Conference-e-Factory-of-Science-IV-edition-ISBN-978-83-957816-7-4.pdf> (29.08.2022), B. Kaczmarek-Templin, *Zasady procesowe a informatyzacja postępowania cywilnego* [in:] E. Marszałkowska-Krześ, I. Gil (ed.), „*Transformacje postępowania cywilnego w postępowaniach wykonawczych*”, *Currenda* 2017, pp. 279-297

right to a fair trial. With the use of electronic writ of payment proceedings, the parties may pursue their claims regardless of their place of residence or the place of residence (or seat) of the defendant. The minutes taken with the use of sound and image recording devices allow for the substantiation of the right to fair proceedings. The right to be heard by a party may be exercised, *inter alia*, through remote participation in a hearing by means of distance communication. The right to information is reflected, among others, in the right to receive video and audio recordings of the hearings (Art. 9 of the Code of Civil Procedure), as well as by the possibility of getting acquainted with the state of the case and some documents via the ITC system.

Although the principle of openness is usually mentioned as one of the principles of the administration of justice, i.e. relating in general to the organization of judicial organs and the manner in which they perform the tasks entrusted to them (this applies to both civil and criminal courts), this principle is closely related to the mode of court proceedings. For this reason, it is also included in the procedural rules<sup>25</sup>. It is mentioned both in the provisions of the Polish Constitution, as well as in the provisions of the Code of Civil Procedure.

The principle of open proceedings is usually associated with the right to a fair trial and the right to information (the principle of openness)<sup>26</sup>, which also affects the recognition of its fundamental importance as a legal value<sup>27</sup>.

The ITC system<sup>28</sup>, although not established by code regulations, enables parties to have access to information about the case pending with their participation. Usually, it is used by professional representatives (barristers, legal advisers). Information about the case, actions performed by the court, set dates, access to documents generated by the court in electronic form (judgments, decisions, justifications, electronic minutes) fall within the scope of available data<sup>29</sup>.

Thanks to the system, interested parties can view the electronic version of case files and print out copies thereof. Users receive notifications about the status of their accounts, changes made to cases, upcoming hearings and the emergence of new cases with their participation. The ITC system is a manifestation of the principle of open proceedings.

The principle of immediacy, on the other hand, applies to the manner in which the court obtains information about the facts that are the factual basis of the decision, regardless of whether they come from the parties or from sources of evidence (personal and factual)<sup>30</sup>. This is one of the principles that apply to determining the factual basis of a decision or ruling<sup>31</sup>.

<sup>25</sup> W. Siedlecki, *Postępowanie cywilne. Zarys wykładu*, Warszawa 1977, p. 52.

<sup>26</sup> B. Kaczmarek-Templin, *Zasada jawności a informatyzacja postępowania cywilnego – wybrane aspekty* [in:] Ł. Błaszczak (ed.), *Konstytucjonalizacja postępowania cywilnego*, Presscom 2015 (Wrocław), pp. 231-240, K. Gajda-Roszczyńska, *Zasada jawności w postępowaniu cywilnym*, „Iustitia” January 2013, p. 18.

<sup>27</sup> T. Stawecki, *Jawność jako wartość prawna*, „Studia Iuridica” 2004, No. XLIII, p. 217 onwards.

<sup>28</sup> A. Zalesińska, T. Januszkiewicz, *Udostępnianie akt sądowych online przy wykorzystaniu dedykowanych portali internetowych*, „Człowiek i dokumenty” 2013, No. 1, 2013, pp. 55-58.

<sup>29</sup> <http://ms.gov.pl/pl/sady-w-internecie/portal-informacyjny/> (29.08.2022)

<sup>30</sup> See W. Berutowicz, *Postępowanie cywilne w zarysie*, Warszawa 1974, p. 246.

<sup>31</sup> See także B. Kaczmarek-Templin, *Zasada bezpośredniości a nowe przepisy o dowodzie z dokumentu*, „Wrocławskie Studia Sądowe” 2016, Special Edition.



It demands that the extraction of evidence from means of proof, and then its assessment, should be performed by the adjudicating court without any intermediary links. The adjudicating court, while making a decision in a case, should learn about the demands and statements of the participants in the proceedings directly from them; the adjudicating court should also examine the evidence directly. The principle of immediacy also allows for issuing a judgment in accordance with the actual state of the case (objective truth), which is commonly postulated.

The principle of immediacy may be defined in material terms as a direct contact between the judging panel and the evidence, and in formal terms as evidence proceedings before the adjudicating court. Direct contact of the court with the evidence allows to optimally establish the facts of the case<sup>32</sup>.

The application of this principle is reflected in Art. 235 of the Code of Civil Procedure, which stipulates that evidence proceedings should be held before the adjudicating court, unless the nature of the evidence contradicts it, or there are reasons for serious inconvenience, or the costs of such proceedings are disproportionate in relation to the subject matter of the dispute. The possibility of hearing the parties and witnesses via videoconferencing undoubtedly allows for the implementation of the principle of immediacy. This applies in particular to people who live at a considerable distance from the court. The necessity to travel to court may effectively discourage people from taking action related to pursuit of claims. Remote participation in a hearing also allows the court to contact a party or a witness and to hold hearings. Until recently, in such cases, the court conducting the proceedings ordered another court, in whose district the examined person was residing, to conduct such hearings by sending a list of questions. The court that was to conduct the hearings performed only auxiliary and technical activities. It was not allowed to ask any questions that were not included in the list it received even in the case of doubts or in order to inquire more carefully.

The principle of equality is based on the fact that the court may not issue a judgment without granting both parties the opportunity to express their opinion and that each party is entitled to the same means of procedural struggle and the same possibility of using them<sup>33</sup>. The principle stipulates that both parties can submit their comments on the pleadings of the opponent as well as statements during the hearing; the principle also establishes the rule according to which the court should issue a judgment only after hearing both parties<sup>34</sup>.

### **Digital exclusion and the accessibility to the persons with special needs**

Digital transformation of justice is vital for the whole society. Digital technologies have a great potential to improve access to justice and its efficiency. The European Commission's priorities for 2019-2024 list the digital strategy, 'Europe fit for the digital age.' Its main objective is to provide people with access to the latest generation technology and strengthen its digital sovereignty, as well as setting its own digital

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<sup>32</sup> J. Jodłowski [in:] J. Jodłowski, Z. Resich, *Postępowanie cywilne*, Warszawa 1979, p. 155, also W. Siedlecki, *Postępowanie cywilne. Zarys wykładu*, Warszawa 1977, p. 70.

<sup>33</sup> W. Siedlecki, *Postępowanie cywilne. Zarys wykładu*, Warszawa 1977, p. 65.

<sup>34</sup> This does not apply to situations where a party waives this right, for example, by not submitting a statement of defense or by failing to appear at the hearing.

standards with a clear focus on data, technologies and infrastructure<sup>35</sup>.

It seems that there is a huge social expectation for digital court services, and this is due to the fact that a large number of business and administrative services are possible in this form. However, because of the fact that it is easier to commit fraud online, transparency of digital services related to the administration of justice should be guaranteed in order to minimize the risk of fraud, extortion and other unlawful activities. On the other hand, one should remember about the significant role of the court in settling disputes as a manifestation of the state's sovereign activity. This means that certain rights of citizens must be guaranteed, and thus an adequate level of security of services and access to court must be maintained. A citizen must be sure, among others, as to the identity of judicial officers and as to the effectiveness of their actions. Transparency of court services provided digitally should also be postulated. Transparency implies that the right of citizens to a fair trial must be pursued, and it stems from the fact that citizens must trust the court. In fact, it can be said that transparency is an essential element for the implementation of the right to a fair trial.

Digitization of the judiciary, unless standards for the provision of electronic services are implemented, may lead to the loss of the authority of the judiciary, as citizens, due to the lack of personal contact with the judge, may not feel that such services are actual court proceedings. Another problem that needs to be counteracted is digital exclusion, which may lead to a situation in which digital services will be available only to part of a society. Incompatibility of the operating systems used by the parties and operated by the court may also be a problem, which may also result in limitations on the use of such services.

As far as the implementation of digital services by the judiciary is concerned, it would undoubtedly be useful to introduce the so-called codes of good practice, which could regulate general rules of conduct in the provision of digital services. They would refer to aspects of digital services not directly regulated by statutory provisions. Accordingly, certain standards related to the use of digital services could be introduced. Good practice would for sure contribute to the transparency of such services.

It is worth emphasizing that good practices should regulate the issue of accessibility of justice for disabled people, and it should also contain information about web browsers supporting a given service. Undoubtedly, it would also be useful to provide users with access to a reliable hotline with technical support with sufficient number of consultants. It is to postulate that good practices should also regulate the manner in which the action is performed, e.g. during a videoconference, the judge should introduce himself/ herself and show his/ her face, otherwise citizens may have doubts whether the action is indeed performed as part of court proceedings and that they answer to a judge.

## **Conclusions**

Providing the parties with the opportunity to participate in court sessions with the use of devices enabling remote communication undoubtedly contributes to the

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<sup>35</sup> [https://ec.europa.eu/info/strategy/priorities-2019-2024/europe-fit-digital-age\\_pl](https://ec.europa.eu/info/strategy/priorities-2019-2024/europe-fit-digital-age_pl) (access 28.09.2022).

implementation of the principle of equal rights. The parties<sup>36</sup> that have their place of residence or seat away from the seat of the court conducting the proceedings are then able to participate in the case. There is a similar situation with carrying out proof or providing evidence from a distance. Each party is able to participate in such evidentiary activities and possibly submit statements regarding the activities carried out. The recording of hearings in the audio-video system also enables the parties to learn about the course of a hearing by playing the recording; this is essential for the parties who were absent from the hearing.

The procedural rules are changing and depend on the changes taking place in the economic and social structure of the society<sup>37</sup>. It can be assumed that as circumstances change, their interpretation may and even should be updated, and the legislator should strive to change the procedural provisions so that they will be consistent with the objectives and guidelines resulting from these principles.

The analysis of the issues related to the digitization of civil cases allows us to assume that it does not entail the need to modify the model and its construction principles. Supporting the civil trial, among others through the ICT system as a channel of communication between the parties and the court, does not upset the existing procedural institutions. It seems that the digitization of the procedure comes within the framework resulting from the provisions of the Code of Civil Procedure, as none of the procedural principles is limited. It can even be concluded that digital transformation allows for a more complete implementation of procedural principles. In fact, it can also be an argument in favour of introducing modern technological tools to procedural regulations on condition that the legal requirements related to the accessibility of court services to vulnerable people are taken into account.

## References

- Berutowicz W. (1974), *Postępowanie cywilne w zarysie*, PWN
- Cieślak S. (2014), *Forma czynności w procesie cywilnym—stan obecny i perspektywy rozwoju* [in:] K. Markiewicz (ed.), A. Torbus (ed.), *Postępowanie rozpoznawcze w przyszłym kodeksie postępowania cywilnego*, C. H. Beck
- Gajda-Roszczyńska K. (2013), *Zasada jawności w postępowaniu cywilnym*, „Iustitia” No 1
- Gołąb A., *New rules regarding the concentration of procedural material*, <https://polishprivatelaw.pl/new-rules-regarding-the-concentration-of-procedural-material-in-the-polish-code-of-civil-procedure/#more-5886>
- Gołaczyński J. (2016) [in:] J. Gołaczyński, D. Szostek (ed.), *Informatyzacja postępowania cywilnego. Komentarz*, C. H. Beck
- Gołaczyński J. (2014), *Model informatyzacji postępowania cywilnego w nowym Kodeksie postępowania cywilnego*, [in:] K. Markiewicz (ed.), A. Torbus (ed.)

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<sup>36</sup> How to guarantee the actual equality of the parties is discussed by J. Jodłowski [in:] J. Jodłowski, Z. Resich, *Postępowanie cywilne*, Warszawa 1979, p. 155, and also W. Siedlecki, *Postępowanie cywilne. Zarys wykładu*, Warszawa 1977, p. 138.

<sup>37</sup> J. Jodłowski [in:] J. Jodłowski, Z. Resich, *Postępowanie cywilne*, Warszawa 1979, p. 125, W. Siedlecki, *Postępowanie cywilne. Zarys wykładu*, Warszawa 1977, p. 51, W. Berutowicz, *Postępowanie cywilne w zarysie*, Warszawa 1974, p. 225.

Postępowanie rozpoznawcze w przyszłym kodeksie postępowania cywilnego, C. H. Beck

Gołaczyński J., Kotecka S., Zalesińska A. (2010), Protokół w postaci zapisu dźwięku albo obrazu i dźwięku z posiedzenia jawnego w sprawach cywilnych, „Monitor Prawniczy”, No. 19, C. H. Beck

Gołaczyński J. (2006), Elektroniczne czynności procesowe, [http://www.digitallibrary.pl/Content/24974/Elektroniczne\\_czynnosci\\_pro.pdf](http://www.digitallibrary.pl/Content/24974/Elektroniczne_czynnosci_pro.pdf)

Grykiel J. (2016), Kilka uwag o nowej definicji dokumentu i formie dokumentowej, „Monitor Prawniczy”, No. 5, C. H. Beck

Jodłowski J. (1979) [in:] Jodłowski J., Resich Z., Postępowanie cywilne, PWN

Kaczmarek-Templin B. (2020), Electronic support of civil proceedings and the need for data protection in Poland [in:] The Book of Articles National Scientific Conference “e-Factory of Science” IV edition November 14, <http://promovendi.pl/wp-content/uploads/2020/11/The-Book-of-Articles-National-Scientific-Conference-e-Factory-of-Science-IV-edition-ISBN-978-83-957816-7-4.pdf>

Kaczmarek-Templin B. (2017), Zasady procesowe a informatyzacja postępowania cywilnego [in:] Marszałkowska-Krześ E. (ed.), Gil I. (ed.), „Transformacje postępowania cywilnego w postępowaniach wykonawczych”, Currenda

Kaczmarek-Templin B. (2016), Zasada bezpośredniości a nowe przepisy o dowodzie z dokumentu, „Wrocławskie Studia Sądowe”, Special Edition

Kaczmarek-Templin B. (2015), Zasada jawności a informatyzacja postępowania cywilnego – wybrane aspekty [in:] Błaszczak Ł. (ed.), Konstytucjonalizacja postępowania cywilnego, Presscom

Kaczmarek-Templin B. (2010) [in:] Gołaczyński J. (ed.), Adamski D., Goździaszek Ł., Kaczmarek-Templin B., Kotecka S., Kutylowski M., Łukowski W., Pękalski B., Szostek D., Elektroniczne postępowanie upominawcze. Komentarz, Wolters Kluwer

Kaczmarek B. (2009) [in:] Gołaczyński J. (ed.), Goździaszek Ł. Góra D., Jaroszek A., Kaczmarek B., Kotecka S., Pęcherzewski P., Sielicki D., Skórniak P., Szostek D., Waloszczyk A., Zalesińska A., Zawisłańska A., Informatyzacja postępowania sądowego w prawie polskim i prawie wybranych państw, C. H. Beck

Kotecka S., Kutylowski M. (2006), Wnoszenie do sądu pism procesowych, [https://www.bibliotekacyfrowa.pl/Content/23633/Wnoszenie\\_do\\_sadu\\_pism\\_procesowych.pdf](https://www.bibliotekacyfrowa.pl/Content/23633/Wnoszenie_do_sadu_pism_procesowych.pdf)

Kulski R. (2010), Some Remarks on the Course of Polish Electronic Proceedings by Writ of Payment. [in:] M. Kengyel, M. Electronic Justice – Present and Future. Colloquium of the IAPL, Pecs

Markiewicz K. (2014), Informatyzacja postępowania cywilnego – de lege lata i de lege ferenda, [in:] Markiewicz K. (ed.), Torbus A. (ed.), Postępowanie rozpoznawcze w przyszłym kodeksie postępowania cywilnego, C. H. Beck

Rodziewicz P., Zalesińska A. (2011), Publiczne bazy orzeczeń sądowych [in:] Górnicki L. (ed.) Technologia informacyjna dla prawników, Biblioteka Cyfrowa Uniwersytetu Wrocławskiego,

<https://www.bibliotekacyfrowa.pl/dlibra/publication/37369>

Rylski P. (2021), Transformation of Polish Civil Procedure in Light of Covid-19 [in:] Krans B., Nylund A. (ed.), Civil courts coping with Covid-19, Eleven International

## Publishing

Rylski P. (2020), Covid-19 and the civil justice in Poland [in:] Krans B., Nylund A., Bamford D., Ervo L., Ferrand F., Galič A., Hau W., Nieva Fenoll J., Salung Petersen C., Piché C., Rylski P., Silvestri E., Sorabji J., Vèbraité V., Zaneti jr., H.(2020) Civil Justice and Covid-19. Septentrio Reports 5. <https://doi.org/10.7557/7.5473>

Rylski P. (2019), Polish Civil Procedure: Yesterday, Today and Tomorrow – some remarks about recent changes of procedural law in Poland, “Bratislava Law Review”, No 1

Siedlecki W. (1977), Postępowanie cywilne. Zarys wykładu, PWN

Stawecki T. (2004), Jawność jako wartość prawna, „Studia Iuridica”, No. XLIII

Zalesińska A. (2016), Wpływ informatyzacji na założenia konstrukcyjne procesu cywilnego, C. H. Beck

Zalesińska A., Januszkiewicz T. (2013), Udostępnianie akt sądowych online przy wykorzystaniu dedykowanych portali internetowych, „Człowiek i dokumenty” 2013, No. 1

Załucki M. (2021), The Road to Modern Judiciary. Why New Technologies Can Modernise the Administration of Justice? [in:] Szostek D. (ed.), Załucki M. (ed.), Internet and New Technologies Law, Nomos

## ***Conflicts of interest***

The author of this paper certifies that she has NO affiliations with or involvement in any organization or entity with any financial or non-financial interest (such as honoraria; educational grants; membership, employment; affiliations, knowledge or beliefs) in the subject matter or materials discussed in this manuscript.