



Court Watch Poland  
Foundation



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Online Access to Courts  
in Poland and Selected Countries

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# Introduction

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In order to be effective, law as a social tool should constantly evolve and adapt to match new needs resulting from numerous social, cultural, and technological changes. This principle also applies to the functioning of the judiciary, which should also respond to the challenges of today. Today, perhaps more strongly than ever before, the existing legal and technical solutions are being verified. They provide an actual implementation of the constitutional principle of open litigation and make it possible for all the interested parties to access the court.

We treated the limitations in public gatherings and movement caused by the COVID-19 pandemic and the difficulties caused by them as an opportunity to develop the computerization of the justice system, as well as to develop new ways of communicating with participants in litigation. In addition to practical problems, there appeared also legal controversies, e.g. between the principle of open court litigation enshrined in the Polish Constitution and the orders of many presidents of courts, which limited access to public hearings and sessions to persons summoned and notified without the public and the media.

## Scope of the analysis

For this reason, we have decided to review the technological innovations in the field of justice that have been introduced not only in Europe but also in the rest of the world. We looked at Anglo-Saxon countries, Canada, the USA, Ireland, Great Britain, then European leaders in computerization of the judiciary: Spain, the Netherlands, Austria, the Federal Republic of Germany, Estonia, as well as solutions used in Russia, China and Indonesia. We also described Polish experiences with the use of information and communication technologies in the judiciary. Such a broad spectrum is to serve both as an illustration of different

philosophies for the implementation of modern technologies in the justice system, as a series of recommendations and inspirations in the implementation of innovative solutions, and finally as a warning against risky ideas that have not been successful in other countries. In a sphere so important for citizens, such as the judiciary, failed experiments may turn out to be particularly painful (which, at the same time, does not constitute an excuse to give up developing and introducing new solutions). It makes sense then to use the experiences of others and learn from their mistakes. Overview of the solu-

tions used in the countries surveyed by the Foundation is based on the extended version of the report available in Polish<sup>1</sup>.

The voices of lawyers-practitioners

contained in the report, who themselves participate in the computerization of the Polish justice system, are an extremely valuable supplement to the research.

## Goal of the report

The short catalog of solutions presented in this study – sometimes impressive, sometimes a bit disturbing – is a starting point for a discussion on the opportunities and threats that the implementation of modern technologies in the functioning of the justice system entails. Above all, however, it is our intention to recommend these innovations that have contributed to increasing the accessibility and transparency of the judiciary, strengthening the principle of open court hearings, and improving the operation of the judicial administration, which may ultimately translate into an increase in citizens' trust in the judiciary.

When reviewing the solutions used in Poland and around the world, we should not forget that by eliminating personal contact from communication, we lose the part of information that is most difficult for us to verbalize. The formula

of videoconferencing, which has gained great popularity in the judiciary around the world now, limits the transmission of non-verbal communication, it may even unknowingly set us up negatively against the interlocutors due to a delay and lack of video fluidity in the current state of technology and the speed of connection. All of this can make it difficult to build trust between participants in such communication. Meanwhile, contact with the court – even if we act as a witness – should build trust in the administration of justice, state and law in each participant. This does not mean that videoconferencing technology should not be used in courts. However, one should always remember the functions that the justice system should perform in society and use technology with them in mind, taking into account the additional workload needed for citizens to experience justice through it.

## Acknowledgments

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<sup>1</sup> B. Pilitowski, B. Kociołowicz-Wiśniewska (ed.), *Sądy dostępne przez Internet. Lekcje z Polski i 12 krajów świata*, Court Watch Poland Foundation, Toruń 2020, <https://courtwatch.pl/projekty/publikacje/sady-dostepne-przez-internet> (Chs. on Canada, USA, Irland and UK by Z. Branicka; chs. on Spain, Holland, Germany and Austria by K. Kumor; chs. on Estonia, Russia, China and Indonesia by B. Kociołowicz-Wiśniewska, ch. on Poland by B. Pilitowski).

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## The most important conclusions and recommendations

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1. **Keeping case files only in digital form** will help minimize the time, costs and inconvenience associated with handling files in a traditional form, enable the use of the material gathered so far in any place by several interested persons at the same time (e.g. the judge preparing for the meeting and representatives of the parties) and facilitate the search for important issues. Thanks to the introduction of digital files, participants in litigation could freely participate in an on-line court session or submit new pleadings electronically without having to visit the reading room first. This solution is also convenient during the meeting, because an attorney, referring to a given issue, can indicate the page they would like to go to, and all other participants are able to follow their proposal on their computers. When designing a file handling system, in addition to taking into account obvious security issues, it is important to enable the parties and representatives to track changes in the documentation as well as effectively notify about them. As long as computers are not devices of general use, it is necessary to provide infrastructure that allows parties who are not in the possession of such to read the files on computers in court – any court, thanks to the cooperation of courts under one system.
  
2. **Implementation of a uniform and comprehensive IT system of the judiciary** should make it possible to handle all the formalities from the opening of the case to the justification of the judgment. It should enable comprehensive communication between the parties, the court and attorneys, as well as notify about the course of procedural deadlines and send summons that would be generated automatically and would not require the involvement of the court office. Information portals of common courts existing in Poland may fulfill this role. Currently, their potential seems not to be fully utilised. Ultimately,

the portals should function as universal electronic administration offices allowing for the submission and collection of documents.

- 3. Standardization of interfaces and rules for using centralized justice services currently available via the Internet** such as electronic writ proceedings (e-Court), National Court Register (eKRS), Electronic Land and Mortgage Registers (EKW), or a database of common court judgments. Currently, they are scattered and inconsistent, which makes it difficult for users to freely take advantage of the above solutions. It also does not allow for conflict-free cooperation of these systems. Unifying the databases in a clear and functional way for users would be an additional opportunity to speed up some proceedings and relieve the judicial administration. Standardization or commonality of interfaces would facilitate access to justice and would increase the level of satisfaction.
- 4. Dissemination of internet communication channels between citizens and courts** such as e-mail, contact forms and on-line chats. The latter allow for real-time conversations with several people at the same time, quick transfer of relevant references to websites, e.g. with application templates, as well as recording a conversation. In this way, the employees of the Customer Service Offices could more efficiently and effectively answer the questions of interested persons.
- 5. Creating conditions conducive to the use of videoconferences** where it is in the interest of the judiciary and participants in litigation. It is understood that to increase the accessibility of courts via the Internet, they need to be equipped with videoconferencing tools. It should be emphasized, however, that transferring cases to virtual courtrooms requires the judges and administrative employees of the judiciary to be willing to use the opportunities offered by new technologies. The functioning of alternative solutions to closing the courts during a pandemic often requires the development of new skills and, above all, the courage to go beyond the current, safe framework. The possible reluctance of some judges or attorneys should not be an excuse to abandon the modernization of the judiciary.
- 6. Keeping the open nature of litigation and court hearings** by creating a comprehensive procedure for audience participation in on-line meetings. Persons interested in the course of the entire proceeding should be able to observe it by joining the videoconference via publicly available software,

regardless of whether the participants in the litigation are physically located in the court building or also participate in the meeting using remote communication tools. The recommended solutions also include the following: broadcasting public hearings live on the Internet and publishing their recordings on courts websites, or in publicly available websites. This makes it possible to ensure the public nature of court litigation irrespective of restrictions on movement and public gatherings.

7. **Development of e-dockets** which should contain up-to-date data and inform interested persons about the meetings taking place on a given day and about possible changes. To make it possible in practice, e-dockets should be correlated with the proposed comprehensive IT system of the judiciary. Additionally, the e-dockets should contain links for the audience to watch a live broadcast of a meeting or its recording.
8. **Investing in the level of technical competence** of judges and judicial staff necessary to operate devices and applications, as well as creating space for the exchange of experience in conducting on-line meetings and the functioning of implemented solutions, and in this way to work out the best solutions and not to make mistakes that may accompany the introduction of innovative solutions.
9. **Preceding changes with pilot programs and their circulation using the cascade method.** This means that units participating in the pilot can, after gaining experience and eliminating the imperfections of the original solutions, gradually transfer knowledge and skills to subsequent units, until the whole country is prepared for change. Such a formula of changes gets the court staff involved in their implementation, which should translate into both the effectiveness of the process and higher identification with the change of persons affected by it. One should also strive to standardize the practice of using technology based on good practices selected and adapted to the conditions of the entire country, developed by individual courts. Taking into account the human factor in order not to miss the target audience that these modern solutions are intended to serve – every citizen and society as a whole. It also happens that technological innovations used in theory to increase the efficiency of the judiciary may in practice pose a threat to the implementation of the right to a fair trial. When designing new institutions, we should keep it in mind that they can also have unintended consequences and may be misused. Therefore, appropriate precautions should be taken at the stage of planning and analyzing solutions not only from a legal but also an economic and social perspective.

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# World situation

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fot. Reuters / Forum

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## United States

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The US justice system was prepared in the event of emergencies long before the COVID-19 pandemic broke out. Several years ago, the digitization of files was introduced in some states, it was possible to publish recordings of court sessions on the Internet, or to conduct hearings using videoconference. In some states, piloting on-line recording and sharing of hearings has been going on for a decade.

In 2016, the National Center of State Courts also published a report Preparing for a pandemic: A contingency sheet and operations guide for judges and state court administrators. In May 2019, Nebraska's state medical university hosted the National Pandemic Summit, attended by judges, executive and legislative representatives from 25 states, to start a discussion about the problems that arise with quarantine obligations. Consequently, some state



courts had contingency plans in place even before COVID-19.

At the outbreak of the COVID-19 pandemic, the United States Judicial Conference temporarily approved the use of video and teleconferencing in certain criminal litigation and access via teleconference to civil litigation during COVID-19. The law gave this power to the Conference and the presidents of individual courts Coronavirus Aid, Relief, and Economic Security Act (CARES Act). However, the law stipulated that meetings in criminal cases may be held by videoconference only with the consent of the accused. The conference did not agree to conduct the trials themselves via teleconference.

Transparency of the judiciary is of great importance in the USA. To ensure public access to public hearings during a pandemic, courts publish hearings on YouTube, provide broadcasts via the Zoom application, allow connection with the participants of the sessions (in the form of audio or video), allow the media to participate in the litigation, broadcast from the courtroom to watch a virtual meeting.

There are also more original solutions contributing to increasing the accessibility of justice. In Salt Lake City, trial participants are directed to a camper van parked at the curb in front of the courthouse to speak with the judge present. Inside the vehicle, you are connected to the prosecutor and lawyer. A similar solution has been introduced in Tennessee, where Judge Mike Pemberton is organizing a “parking court” for sites that do not have internet access.

The pandemic has also changed the way the US Supreme Court works. While other federal courts had previously broadcast the hearings over the Internet and allowed the use of remote communication, the Supreme Court organized the hearings in the traditional form, providing only transcripts and tapes of the proceedings. In view of the threat to the health of judges, in May 2020 it was decided to hear the parties in the form of a televised telephone conference. For the first time in history, a debate in a major American court could be heard by Americans live.



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## Canada

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In Canada, as early as in the previous decade work was initiated to facilitate some interviews to be conducted by videoconference, as part of pre-trial procedures in civil, criminal and rehabilitation conferences. In this country, the digitization of files has also been implemented for a long time. In 2019, among others, pilot trials took place in Ontario, Victoria and Vancouver with all participants using a file stored in a secure cloud. The COVID-19 pandemic turned out to be an accelerator of the digitization process, which was to be phased in until 2025. Where full digitization has not been achieved, judges who work from home are assisted by the parties' attorneys who, according

to the guidelines, send them necessary materials to conduct a hearing.

In addition to the above-mentioned, other facilitations of access to justice are also being implemented, e.g. enabling contact with the court via e-mail and court portals, expanding the catalog of cases that can be resolved in writing, introducing new methods of verifying participants in litigation, resolving "non-urgent" cases with the help of new technologies, or following on-line hearings by the media and observers. New solutions are developed as part of the cooperation of court representatives, attorneys-in-fact and other persons related to the administration of justice.

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## Ireland

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Ireland is another example of a country that for a long time has been planning to implement technological innovations in the daily work of the judiciary – primarily videoconferencing. The Supreme Court of Ireland has already allowed the conduct of evidence in civil litigation via videoconference in the previous decade. Videoconferencing has also been used in other courts to hear certain testimonies or explanations. Until now, however, there have been no legal regulations and technical possibilities that would enable entire cases to be carried out via the Internet.

Shortly before the European outbreak of

the COVID-19 pandemic, it was announced that the Court Service (the agency responsible for the administration of the judiciary) is preparing to implement a strategy for the digitization of courts, for which the government would allocate €100,000,000. The process was supposed to last 10 years, but like in the case of other initiatives, the pandemic substantially accelerated the course of events. Initially, Irish courts handled urgent cases in a traditional way, which received negative feedback from the public. However, the statement issued by Irish judges on March 31, 2020 shows that we now have procedures thanks to

which a large part of the judicial administration gets electronic assistance in order to avoid the requirement to appear in the court building. The statement also explained that the judicial service introduces the necessary infrastructure

to facilitate distance interviews while fulfilling the constitutional obligation to administer justice to the public by allowing journalists access to court hearings.

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## United Kingdom

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As early as 2018, the UK's Ministry of Justice tested the country's first tax court video hearings in which appellants and tax office representatives attended remotely from their home or office. The most advanced solutions are used in England and Wales, while Northern Ireland started digitizing files in 2017. Given the rapidly changing situation, there was an urgent need to increase the use of modern technologies in order to conduct remote interviews as often as possible. It was assumed that interrogations requiring the physical presence of the parties and their representatives and other persons should take place only when it is not possible to organize it remotely, provided that all security measures are provided. Links to prisons and courts and new videoconferencing centers were also established as the preferred method of liaising with the courts and defense lawyers of detained suspects.

The United Kingdom has introduced several on-line services related to the functioning of the justice system, which can be used by court staff, lawyers, and ordinary citizens. Ultimately, they are to replace telephone, e-mail or postal contact with the court. In this way, you can, among others, pay a fine, confess to committing a traffic offense, file for divorce, file for money claims, make arrangements for children, appointments and custody that can help parents see their children, approve a will.

Using modern technology, the judiciary of Great Britain tries to keep the proceedings open by allowing the presence of observers and the media in open hearings courts (of course in accordance with the rules of social distancing) and during remote hearings by providing interested parties with a trial transcript or by enabling the hearing of the audio recording of the trial in the court building.

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## Spain

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The LexNet system and the extensive use of videoconferencing in a criminal trial deserve special attention among digital solutions within the Spanish justice system. The main goal of the LexNet system is to provide citizens and judicial staff with the opportunity to complete all formalities before the judiciary in an electronic form. LexNet acts as an electronic judicial office that can be used with an electronic ID card or card with an accredited electronic signature. Apart from judicial authorities, the system is used by prosecutors, legal representatives and associations, state registers, public entities, such as the labor inspectorate, the tax office and legal aid stations. All pleadings may be filed electronically, and if the document is submitted on paper, it is immediately digitized. All documents created during the procedure are digital. Another ele-

ment of digitization of litigation was the introduction of the eFidelius system, which replaces written protocols with video recordings of hearings and meetings.

The Spanish legislator allowed for the hearing by videoconference both at the parties' and the office's request. This solution is used if it contributes to the acceleration of the process and reduction of its costs, as well as ensuring safety and public order. Parties may object to the use of videoconferencing, but there are no restrictions on the participation of parties to the litigation or of any person involved in the taking of evidence, be it a witness or an expert. All courts in Spain are equipped with audiovisual devices to record hearings and examinations, which are then archived on DVDs. Their copies are made available to the parties for a fee.

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## The Netherlands

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The digitization of the judiciary has for many years been considered one of the priorities of the reform of the judiciary in the Kingdom of the Netherlands. This is due both to the desire to streamline court litigation and to keep up with the digitization of society in general. In 2016, these aspirations took the form of four legal acts, according to which digitization of the legal system

in the Netherlands was to end in 2021. One of the first stages of this process – “Quality and Innovation Program” (“KEI programma”), a joint undertaking of the Ministry of Security and Justice and the judiciary, aimed at simplifying and digitizing civil and administrative proceedings and making the legal system more accessible and flexible. However, the program failed – goals

were too ambitious and the division of tasks between the entities involved in its implementation was unclear. Finally, in October 2019, the “Emergency Quality and Innovation Program” (Spędwet KEI) was announced, assuming withdrawal from the digital civil and administrative proceedings and harmonization of procedures throughout the country. Despite the lack of spectacular

success in the field of digitization of civil and administrative proceedings, the digitization of bankruptcy and criminal litigation should be considered successful. Data published in November 2018 by the official justice portal shows that 82% of bankruptcy cases and 80% of criminal cases were processed digitally at that time.

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## Austria

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Austria was the first country in the world to introduce electronic communication with courts – the first electronic communication systems with the judiciary were introduced in 1990.

The Austrian judiciary is supported by the Automated Judicial Information System (Verfahrensautomation Justiz-VJ), which supports all courts and prosecution offices in keeping records of over 66 different types of proceedings. Certain types of proceedings (e.g. payment orders) are fully automated. Reports and decisions are sent via the Electronic Legal Communication System (Elektronischer Rechtsverkehr – ERV), and court fees are charged as cashless payments. ERV makes it possible for the files, applications, and other legal documents to be transmitted electronically, and enables electronic work with these

documents in IT applications of the judiciary, as well as far-reaching automation of proceedings.

Since March 2011, all courts, public prosecutor’s offices, and prisons are equipped with videoconferencing systems. In 2017, around 4,000 videoconferences took place across Austria, around 12% of which involving foreign courts.

Since 2013, Austrian citizens using a mobile app for signature with a mobile phone called “Citizen Card” (Bürgerkarte) can send all their applications to all courts and prosecution offices online via secure communication via the website. In 2018, this option was introduced for foreigners using identification compliant with eIDAS (EU regulation on electronic identification and trust services in relation to electronic transactions).

The Justice intranet is an internal information portal for all employees and a central point of access to all internal and selected external web applications and information for law enforcement professionals. Information from internal

web applications such as the integrated prison administration, web mail, ministerial ordinance portal, international court aid or the database of official publications can be searched quickly, easily and in an orderly manner.

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## Germany

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In 2013, a provision was introduced into the German civil procedure (Zivilprozessordnung – ZPO) allowing for a meeting by videoconference, provided that the parties agreed. Witnesses, experts and parties may be heard by videoconference. Audio and video must be transmitted simultaneously to the place where the witness or expert is present during the hearing and to the courtroom. If the parties, legal representatives and advisers are authorized to be elsewhere, the image and sound from the hearing must also be transmitted there. In 2017, the German parliament adopted an amendment to the Act on the Functioning of German Courts, which allows for live audio broadcast of court litigation in a separate media room, the announce-

ment of judgments and justifications of judgments of the highest federal courts, and the registration of court litigation of historical importance for Germany. In addition, the amendment facilitates access to justice for people with hearing or speech disabilities.

After the German legislator had created the necessary legal framework for electronic legal transactions, the Electronic Court and Administrative Mailbox (Elektronisches Gerichts- und Verwaltungspostfach – EGVP) were designed. In cooperation with other elements of the infrastructure, it enables efficient and secure transfer of documents in electronic form to all courts and authorities.

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## Estonia

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Estonia is currently the undisputed leader in the use of modern technologies in public administration in Europe. Modern solutions applied in the Estonian administration of justice cannot be discussed without taking into account the

rest of the public administration. X-Tee (Eng. X-Road) – an integrated system of data exchange between institutions. Automating the flow of information in practice means that, when necessary, one institution obtains information from

another, instead of demanding it from the citizen or drawing up a relevant written request.

Estonian judiciary is based on the E-File central information system introduced in 2008. This system enables access to information on the course of civil, criminal, administrative and misdemeanor cases for all interested parties, led by the client and their representatives. With its help, customers can send a demand for debt payment or maintenance obligations. In civil and administrative cases, the parties to the litigation may send and receive documents and view digitized court files. Data relevant to a specific case are collected from the information systems of the police, judiciary, prosecutor's office and prisons. In addition to the E-File system, there is also the KIS (Court Information System) through which it is possible to bring a case, which is then assigned to the judge. As part of the KIS system, subpoenas are generated, and court decisions are made available.

The security of the system is based on the one hand on a virtual identity card assigned to each citizen, by means of which he or she authorizes all activities when dealing with official matters via the Internet, and on the other hand on registering the origin of each change in each case, thanks to which it is possible to reach an institution or a person initiating it.

Currently, every Estonian court and prison has at least one videoconferencing device. In Estonian justice practice, videoconferencing is primarily used to interview witnesses. Until now, the accused and suspected of committing crimes or misdemeanors had to consent to participate in the trial by videoconference. Now, considering the COVID-19 pandemic, the government has approved a bill by the Estonian Ministry of Justice that such consent will no longer be required as long as the court is satisfied that the rights of defense have not been violated.

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## Russia

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The possibility of remote participation in the hearing is provided for in Art. 155 sec. 1 of the Code of Civil Procedure of the Russian Federation. It is limited by the technical capabilities of the court and requires an application. Currently, all participants in the hearing via videoconference must use the equipment

located in the courts – the connection cannot be established, for example, between the court and the private apartment of a party or a witness. Therefore, participation in the hearing by videoconference requires the physical presence of the participants in the court, although according to the regulations it should al-

ways be the court closest to their place of residence.

Due to the COVID-19 pandemic, a bill has been proposed. It concerns the extension of the citizens' access to remote participation in court hearings using personal devices with Internet access. However, there is a controversial provision in it, transferring the responsibility for the quality of the video connection and possible problems to the person who wi-

shes to use these solutions. Ultimately, the project was not converted into a binding law. This does not mean, however, that work on modernizing the judiciary has been abandoned in Russia – by 2022 the “Justice On-line super service” will have been implemented, under which it will be possible to remotely participate in the trial, exchange documents in electronic form and follow the course of the case by the parties.

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## China

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In the People's Republic of China, extensive digitization of the justice system was introduced with the 2014-2017 reforms. One of its pillars was the practical implementation and popularization of the principle of openness and transparency of the judiciary (open justice). Currently, using the Internet, we can, among others, obtain information on specific court cases, watch a broadcast of the trial, or familiarize ourselves with the ruling.

These services are not only a tribute to the citizens. An independent priority of the reforms was the computerization of the judiciary, which consisted of four elements: the collection by the Supreme People's Court of data on all courts and judges in real time, allowing for the generation of statistics and their analysis, the use of artificial intelligence in improving the work of judges and

improving the quality of jurisprudence, implementing on-line tools facilitating the use of justice by interested parties, including On-line filing, ordering payments or on-line trial and setting up an Internet Court in Hangzhou, which is responsible for settling first-instance civil and administrative cases, the common denominator of which is the Internet environment, i.e. cases related to infringements of intellectual property on the Internet, consumer disputes or dissemination of private data. Every step of the procedure, from the filing of the statement of claim to the delivery of the judgment, is conducted on-line, although cases are (still) decided by real judges.

Parallel to the establishment of internet courts, robots appeared in the corridors of Chinese “traditional” courts, whose task is to provide legal advice to clients



and to identify lawyers dealing with cases similar to the legal problem indicated by the applicant.

Last year, ten Shanghai courts carried out a six-month pilot program, under which the so-called System 206 based on artificial intelligence was used during hearings. The virtual assistant records the course of the trial in real time, distinguishing the voices of the participants, reacts to the instructions by displaying the required information on screens that are placed in such a way that every person in the courtroom, including the audience, can use them. The system is also to analyze the evidence in terms of credibility and consistency, drawing the judge's attention to possible inaccuracies that could distort his assessment and lead, for example,

to the conviction of an innocent person. The system "learned" to recognize potential gaps in the evidence material by analyzing data from archival cases. Access to this information also allows for the maintenance of consistency in judicature in specific cases, which was one of the priorities of judicial reforms. The system also uses model interrogation scenarios that are to unify the actions of the police in this area.

The Chinese constitute the largest group of Internet users using mobile devices in the world. Therefore, under this pilot scheme, "mobile courts" have been created. Users of the WeChat communication platform can count on the help of a virtual assistant who guides them through all the procedures related to the court case.

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## Indonesia

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In April 2018, the process of modernizing the Indonesian judiciary began. It consisted mainly in the implementation of the e-Court allowing for the settlement of court formalities by electronic means. Examples of activities that can be performed using the system include case registration, payment or case status control. The regulation defines specific categories of matters that can be administered electronically – these are civil, religious, administrative, and military-administrative matters.

The next step towards the digitization of the Indonesian justice system was the launch of the e-Litigation application. It extends the existing e-Court functionalities for other user groups, incl. prosecutors and law offices, also appellate and cassation cases. Previously, both parties had to appear at the first hearing, from that moment on, only the defendant was bound to do so. Witnesses and experts may be interviewed both in a traditional form as well as in the framework of videoconference,

provided the parties agree. The system also makes it possible for the parties to exchange letters. Despite the need to provide evidence in an electronic form, the originals of these documents must be delivered to court. The opposing parties gain access to the electronic version of the evidence provided by the opposing party after prior verification of the material by the court.

The Indonesian Supreme Court's ambition was that by 2020 all court litigation could be conducted through the e-court system, to which lawyers were actively encouraged. The COVID-19 pandemic has made plans a necessity. While in

March and early April, selected cases were held in a traditional form with precautionary measures being taken, from April 13 all hearings in lower courts are held in the form of videoconference using the Zoom application. Unfortunately, the Indonesian Supreme Court does not plan to broadcast hearings to the public in its courts. In explaining this decision, the spokesman of the Court referred to security reasons – revealing the identity of witnesses in cases involving drugs, terrorism or trafficking in organs could, in his opinion, expose them to violence by criminal groups.



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# The situation in Poland

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fot. Anatol Chomicz / Forum

Most of the dozen or so million cases brought to Polish courts are still tried in a traditional way – based on paper files, correspondence with the help of traditional mail and meetings with the direct presence of participants in the courtroom. It happens that judges preside over a hearing from behind file piles spread all over the judge table. Some adjudicators are flooding social media with photos of offices that are increasingly cluttered with files, which can be interpreted as a longing for a more digital, and therefore ergonomic, work environment. Many steps in this direction have already been taken. However, the judiciary is far from the level of use of

IT tools and electronic communication observed in other sectors.

Despite the fairly centralized structure of the judiciary, the IT solutions applied are not uniform and even in the area of the common judiciary itself, services such as electronic writ proceedings (e-Court), the National Court Register (eKRS), Electronic Land and Mortgage Registers (EKW), or a database of common court judgments, are distributed, and their interfaces and usage rules differ greatly.

In Poland, electronic communication is used to the greatest extent in the electronic reminder procedure (EPU), ava-

ilable since 2010. This is an example of computerization through the creation of a new legal institution in order to solve a problem previously belonging to the jurisdiction of courts. In addition to legal provisions, e-Court has been created, i.e. technical and personal conditions for considering claims filed with the EPU in a fully electronic form. The e-Court was assigned to the Lublin-West District Court in Lublin with its seat in Świdnik as a division fed with over 100 referendary positions. It examines claims filed with the EPU from all over the country. Thanks to the introduction of the EPU, creditors have been able to submit applications for a payment order on-line and in a simplified form. The e-Court's feedback with them is also electronic. However, this procedure does not require the participation of the other party. The reduced entry threshold, i.e. the simplified application form, the possibility of submitting it

on-line (also in a mass form) and the fee reduced by 75%, made the EPU a huge success among creditors. On the other hand, no need to present evidence and, until recently, no sanctions for providing an invalid address of the debtor, combined with a low legal awareness of the public, resulted in the fact that the EPU was abused.

Currently, administrative courts offer the broadest possibilities of communication via the Internet. PASSA, the Portal of Court Records of Administrative Courts, was launched, with the possibility of submitting letters in proceedings before administrative courts via an electronic inbox. Administrative court boxes are located on the electronic platform of public administration services (ePUAP), using the existing infrastructure and a method of authentication common to the public administration environment, i.e., the Trusted Profile.

## Communication with the parties

Information portals of common courts allow the parties to obtain information about the case on their own via the ICT system. Thanks to this system it is possible, among others, to follow the court activity, read documents issued by the court and listen to e-minutes of the sessions, if they were recorded. They do not yet provide access to the entire case file as they are invariably kept on paper. The Internet also makes

it easier for interested parties to obtain information. It is standard for courts to run websites and public information newsletters. However, they are not very transparent from the point of view of a person who does not deal with the judiciary on a daily basis. The District Court for Łódź-Śródmieście met its clients halfway when it implemented an internet chat during the pandemic, which enables quick communication

with employees of the Customer Service Office.

In response to the outbreak of the pandemic, a bill appeared that would allow common courts to contact the parties using the ePUAP system, the Information Portal, and even an ordinary e-mail box. This idea was twice included in the draft anti-crisis laws known as “Shields,” but each time this change was withdrawn at the stage of parliamentary work. In the end, presidents of some courts made it easier to communicate with the courts on their own. The President of the District Court in Warsaw – judge Joanna Bitner – issued an

order that the employees of the administration office should issue confirmation stamps for correspondence sent to the court by e-mail. As a result, the date of receipt of the remedies or the application for a statement of reasons in court is the date of receipt of the e-mail by the court, and not the date of submitting it in person to the post office or posting it, which could expose you to contracting COVID-19. Judges and court employees were also obliged to use e-mail communication with participants in the proceedings, attorneys, and experts, which may indicate that this was not a frequently used form before.

## On-line meetings

In Poland, the possibility of holding a hearing using means of remote communication in civil litigation was introduced by the 2015 amendment to the Code of Civil Procedure. Until the outbreak of the pandemic, it was not used, because the participants of the proceedings had to appear in person at the building of another court, which involved their time and resources. In turn, in the face of the epidemic threat, this requirement basically destroyed the sense of using videoconferences as a measure to reduce the risk of spreading COVID-19.

The solution that would really give court participants and staff a sense of security was to connect by means of remote communication with people in

their normal place of residence or work. The District Court in Wrocław was the first to take advantage of this possibility, which, after receiving the consent of the parties, held the meeting by connecting with participants not staying in the court buildings as early as April 2020. In May, such a solution was sanctioned in the so-called “Anti-crisis Shield 3.” According to Art. 46 sec. 21 of the Act of May 14, 2020 on amending certain acts in the field of protective measures in connection with the spread of SARS-CoV-2 virus, the provision of Art. 15zsz<sup>1</sup> was introduced. In it, the legislator not only decided that the participants of civil litigation do not have to be in the court building when the trial or hearing

takes place remotely, but also made the delocalized mode default during the period of the epidemic threat or epidemic state announced due to COVID-19 and during one year from appeal.

Soon the courts started using this solution. In response to the problem of limited public access to sittings and hearings held locally, judge Dr. Krzysztof Kurosz – President of the District Court for Łódź-Śródmieście, issued an order regulating the procedure in which persons interested in participating in such sessions as an audience may do so.

Delocalized meetings are becoming more and more popular, but mainly due to the lack of readiness of some judges and participants to use videoconferencing, as well as difficulties in arranging an on-line meeting when the parties are not represented by professionals.

In November 2020, just over 3% of public hearings in civil cases was held remotely.

The actions of individual courts and the Department of Computerization of the Ministry of Justice in order to popula-

rize this procedure are worth noticing. Back in June, the District Court for Łódź-Śródmieście prepared a technical manual for other courts on how to use the equipment owned in district courts to conduct delocalized court hearings and configure videoconferencing software in such a way that it cooperates with the ReCourt e-protocol registration system. It also organized, in cooperation with the Court Watch Poland Foundation, a webinar for judges on the conduct of such sessions with the use of equipment available in courts.

The Łódź District Court, like many other courts, independently implemented videoconference systems based on software commonly used in the private sector, because the software purchased by the Ministry of Justice – Avaya Scopia – turned out to be useless in the experience of many judges. Ultimately, in cooperation with the Wrocław courts, the Ministry provided an alternative videoconference system based on the Jitsi software, available under a free license.

# Practitioners' opinions



Panel discussion on on-line hearings during the annual conference of the Court Watch Polska Foundation, September 2020. The recording of the panel is available on the YouTube channel of the Foundation.

## Interview with judge Kaja Angerman



**Kaja Angerman** – judge of the Provincial Administrative Court in Warsaw. Previously, she adjudicated in the District Court for the capital city of Warsaw in Warsaw, acting as chairperson of the department and vice-president for registration departments as well as in the Regional Court in Warsaw. For several years she also worked in the Civil Law Department of the Ministry of Justice. She is a recipient of the Honorary Title of „European Judge 2008” and „European Judge 2016”.

**What is your experience and participation in the computerization of the justice system?**

I had the greatest connection with computerization during my work in the District Court for the capital city of Warsaw.

For many years I was an adjudicating judge in the pledge register department and as part of this work I used the IT system created for this department. Eventually, I became the vice president of the court responsible for registry departments.

**How did you get to the Ministry of Justice?**

When I was the vice-president, I came up with the idea of introducing a one-stop counter, i.e., entrepreneurs would be able to register a company dealing with all the formalities, including obtaining a tax identification number or registering as ZUS contribution payers, by applying to the court for an entry in the National Court Register. Unfortunately, the matter was initially resolved ineffectively, i.e. a number of forms had to be submitted to these institutions along with the application to the National Court Register. So, one counter meant that the court accepted documents and then sent them to other offices.

**So, the court was basically just an intermediary in the passing of correspondence?**

Yes. I also realized that entrepreneurs and officials had to rewrite the same data many times. Meanwhile, the National Court Register was a reference register and other offices could use its data. I decided that having the data of the National Court Register, one can open a real one-stop shop. This required the creation of an IT path allowing the transfer of data to other offices. I prepared the legal foundations, assumptions, and the draft act and the main issue was to bring together these institutions, each of which wanted to have its own data set. Everyone had to be made awa-

re that we were to act for the common good and that everyone's interests could be reconciled. We were successful. Today one counter really works and that was the goal of my a few-year-long delegation in the Ministry.

**Today you work in the administrative judiciary, which is a pioneer in the implementation of electronic files. Do plaintiffs take advantage of this option?**

I have just before me the case file brought to court electronically. However, it is on paper. The electronic file for this case – available in the PASSA system – includes only the complaint and the response of the authority. It is possible for the entire case file to be kept only in an electronic form (both court files and administrative files that contain evidence collected in the case), but in my practice I have not encountered such a case yet.

**What might be the reason for it?**

Our department hears complaints against decisions of public administration bodies. The provisions allow for keeping the entire case files in electronic form, but this requires the authority to forward the case files to which the complaint was submitted in the form of the so-called electronic parcel. Administrative courts are prepared to handle cases in a fully electronic form, but an obstacle is that the authorities send us files in paper form.



**Could the authorities not provide you with scans of documents?**

The situation in the courts of law is varied, but everyone will shun scanning, because it involves extra work. Currently, most cases are handled on paper. Therefore, the entire system of conducting cases by authorities in the direction of conducting cases in electronic form requires changes. In my opinion, we would have to see a change in the mindset of the parties initiating the administrative procedures. If they filed applications electronically more often, it would be easier for the authorities to keep case files electronically. Then also the case files in administrative courts would be fully electronic.

**Is this change anticipated by the judges or do they prefer to work with hard copy files?**

I wish that such fully electronic files would be as many as possible. However, I understand the concerns. In our department, for example, files contain huge maps that take up the entire room when unfolded. It may seem easier to work with them when you can view them in full. But if they are properly mapped on a computer, you can see them both in full and in details that are often less visible on paper. It is a matter of habit.

**The court where you adjudicate has over 1/3 of all cases brought befo-**

**re administrative courts. How would such changes affect your work?**

Certainly, the popularization of electronic files would facilitate remote work on a larger scale. Especially now it seems very needed, but it would be necessary to provide judges with safe access to judicial systems from home. Currently, only in court we have access not only to the files (including the PAS-SA system), but also to the full digest of administrative courts. So far, we have received electronic signatures, and work is underway to provide us with secure access to judicial systems and secure communications within the tribunals so that we can issue a ruling during the pandemic without meeting physically.

**The electronic form of correspondence may encourage parties to submit longer and longer letters. How does the judge refer to the idea that the court could reserve the maximum size of a party's written position in a given situation?**

I think this could be a useful solution. Obviously, easier to enforce from professional attorneys than from independent clients. However, if it was clear what the court expects from them and in what volume, it might also be easier for the interested parties to present their stance on their case.



## Interview with judge dr. Krzysztof Kurosz



**dr Krzysztof Kurosz** – judge and president of the District Court for Łódź-Śródmieście in Łódź, adjudicating in the XXII Intellectual Property Department of the Regional Court in Warsaw. He is a lecturer at the Faculty of Law and Administration of the University of Łódź. In 2012 he received, for his doctoral dissertation „Artistic performance and the limits of its protection”, he was awarded by the Minister of Science and Higher Education in the competition for the best dissertation on intellectual property announced by the Polish Patent Office. On his initiative, on 28 May 2020 in the District Court for Łódź-Śródmieście, the first court session in Poland was held using a videoconference system, in which the public could also participate via the Internet. For this initiative, among others, he received a distinction in the plebiscite „Citizen Judge of the Year 2020”.

**How did it happen that the you preside over was the first to launch on-line hearings with public access?**

After cancelling the court work suspension in May, it became legally possible to conduct open hearings by videoconference with people who are not in the court building. It was necessary to prepare for it technically. The judges, court staff, have worked hard to make it technically possible as soon as possible. They rose to the occasion. It was obvious to me that such delocalized meetings must be held in public.

**As our research shows, it is not so obvious. On the other hand, your court has made additional efforts to ensure that everyone who visits the court’s website knows that they can apply to participate in the**

**trial on-line as an audience. Why?**

I realize that people are often afraid to take matters into their own hands in court. Nor can they always count on someone to be with them. Imagine a lonely person, living in a small town, where there are no social organizations that can accompany them to the trial. Thanks to the delocalization of the hearing, the audience can cheer them up and observe the course of the case from anywhere in the country. The opportunity to get help from the digital world may be very important to someone.

**How often does a hearing take place through a videoconference?**

There are not many of these hearings in our court. In my opinion, on-line hearings at the level of district courts will not be applied widely soon. This is because many parties do not have the

technical capabilities or skills to go to court on-line. That is why it has become more popular among judges to receive testimonies in writing. It is completely different in district courts.

**Yes, for some time you have been adjudicating in one of the newly established intellectual property courts. Did videoconferences become more popular there?**

In general, many more on-line hearings are held in the district courts. Wherever there are professional attorneys participating in the case, it works very well there. I myself started scheduling all hearings on-line or in hybrid mode. So I am providing a link to the hearing, but whoever wants to, can also come to the courtroom. I have already completed several such hearings and I can say that it is very convenient.

**How do the attorneys find representing clients via the Internet?**

They are very satisfied. They even make sure to wear togas. After all, the same rules apply to such a hearing as to a hearing in court. The attorneys embrace the developing technology. For example, I did not have a problem with the representative sending me an electronic version of a letter, if I require it.

**So, you have already been working on electronic files?**

Not yet. In the courts where I work, the case files are still on paper. I only use electronic versions of documents as a guide. From the beginning of November, a file scanning shop was implemented in the district court in which I adjudicate. I can – as a judge – have a document scanned and later access it via a secure VPN connection on the Internet. This makes my work much easier, especially in cases where the files are large.

**So, you are slowly acquiring tools for remote work. Is it possible to hear a case in a common court now solely via the Internet?**

As of today, we still do not have the option to completely abandon paper. The decision must be signed, and therefore printed, because judges in our courts do not have electronic signatures (the procedure does not provide for such a possibility). Another obstacle is the necessity to serve the ruling, which now can only be done by traditional mail.

**Publication on the Internet on the Court Information Portal is not enough?**

Not yet, but we are getting there soon. There are already some systems in which handwritten signatures are not required for letters from judges. For example, judges have profiles in the electronic system of the National Council of the Judiciary. Once verified, the

judge's identity allows him to submit applications electronically later. Likewise, a judge could sign sentences electronically using an account in a specific court system or EPUAP. We also have a central printing system, thanks to which the printing and mailing of letters are commissioned to one of the courts. This facilitates remote work of officials who can actually remotely perform some of the activities related to the performance of various orders. Letters (but also payment orders) are then sent to the parties in the form of a printout – without a signature. In the short and medium term,

central printing should be used more and more often and for a wider range of documents than before. However, I believe that we should move away from this in the future (in the long term).

**What do you mean?**

Dropping paper. I am enthusiastic about the idea that the correspondence leaving the court could be delivered remotely to professional attorneys and parties (if they agree to it). Of course, keeping some form of notification. After all, attorneys cannot be tied to a computer.

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## On-line court hearings during the COVID-19 pandemic

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**Paweł Lewandowski** – legal adviser and the co-manager of the DZP Dispute Proceedings Practice. He is representative in numerous court and arbitration cases, especially disputes related to construction works. Author of many cassation appeals to the Supreme Court. He is an attorney of enterprises in administrative proceedings, including before administrative courts. Adviser to many companies in the field of company law, mergers and acquisitions, especially in the energy, construction, real estate, insurance and media industries. Currently, he is preparing a doctoral dissertation in the field of international civil procedure and cooperates with the Civil Law Codification Commission. Author of many publications in the field of civil litigation. Member of the District Chamber of Legal Advisers in Warsaw.

### Introduction

The outbreak of the COVID-19 pandemic and the related restrictions on the activities of various state bodies, including courts, made the issue of handling cases by these bodies and contacts with them topical. This applies in particular to proceedings before common courts and the Supreme Court, be it in civil or criminal cases.

It cannot be denied that both the civil procedure and the criminal procedure adhere to the principle of oral hearing, which shows that the focal point of each of these proceedings is an oral and, in principle, open hearing, at which the court physically meets the participants of these proceedings – parties, participants or their representatives.

Limitations related to interpersonal contacts made the holding of such hearings

difficult, if not impossible.

In this study, we will attempt to briefly outline the current legal status and legal mechanisms that allow a hearing to be held using means of distance communication (we will call them for the purposes of this study „hearings on-line,, although in legal terminology you can also meet the concept of delocalized trials), and on the other hand, to present the first practical experiences of conducting such hearings.

### Legal status before the COVID-19 pandemic

Before the outbreak of the COVID-19 pandemic, and specifically before the introduction of the state of the epidemic (which took place in March 2020), the

provisions of the Code of Civil Procedure provided for only a limited possibility of holding a remote hearing.

The rule was, according to Art. 151 sec. 1 of the Code of Civil Procedure, that court sessions are held in the court building, and outside this building only when court actions must be performed elsewhere, or if holding a meeting outside the court building facilitates the conduct of the case or contributes to saving costs. On the other hand, pursuant to sec. 2 of this article, the chairman could order a public hearing with the use of technical devices enabling it to be held remotely. However, in such a case, participants in the proceedings may participate in the court session when they are in the building of another court and perform procedural acts there, and the course of procedural activities is transmitted from the court room of the court conducting the proceedings

to the place of stay of the participants in the proceedings, and *vice versa*.

In practice, this meant that everyone, both the court and the participants in the proceedings (and therefore the parties, attorneys, experts, witnesses, etc.) must stay in the building of this or that court. In practice, this provision was used sporadically and was mainly used to hear witnesses who could not come to the trial court. In this case, they had to go to another court building, where they needed to be provided with a suitable place and connection. By nature, such a system posed in fact an additional problem as it required a logistic involvement of the court to carry out these “service activities” for the court involved in proceedings. Therefore, the courts (as well as the parties) were reluctant to use this institution.

## Change in the legal status due to the introduction of the COVID-19 epidemic

After first declaring the state of epidemic threat, and then the state of epidemic, further functioning of the courts, in particular the holding of open hearings and hearings, was questioned. It should be remembered that as of March 31, 2020, on the basis of another amendment of the Act on special measures to prevent and fight COVID-19 and other infectious diseases and the crisis

situations caused by them of March 2, 2020, (hereinafter referred to as the „COVID-19 Act”), the courts generally stopped holding hearings and ruled only in closed sessions.

Another amendment was adopted as part of the “defrosting” of the judicial system to the COVID-19 Act and in this regard Art. 15zszs<sup>1</sup> which entered into

force on May 16, 2020. This provision is currently the basic regulation on the conduct of on-line hearings.

Simply put, it can be concluded that the indicated provision is, on the one hand, addressed to the participants in the proceedings, and on the other hand, to the court – i.e. the bench.

As for the first part, the provision of Art. 15zszs<sup>1</sup> of the COVID-19 Act stipulates that during the period of the epidemic threat or epidemic state announced due to COVID-19 and within one year from the appeal of the last of them, in cases considered under the Code of Civil Procedure, a hearing or a public hearing is carried out using technical devices thanks to which it is possible to conduct them remotely with the simultaneous direct transmission of image and sound, but the people participating in them do not have to be in the courthouse unless holding a hearing or a public hearing without the use of the above devices does not pose an excessive health risk to the participants.

As for the part addressed to the courts, sec. 3 of the aforementioned provision stipulates that, at the above-mentioned time, if the president of the court orders so due to special circumstances, the bench, except for the chairman and the clerk of the case, may participate in the meeting by means of electronic commu-

nication devices, except for the meeting at which the hearing gets finalized.

Of course, it is of much greater practical importance to enable the parties (participants in the proceedings) or their attorneys to participate in the hearing, as well as witnesses, experts and other persons participating in the meeting. In practice, this makes it possible to hold a hearing on-line, as these people can connect to the court from places other than the court building. It should be added that the court (in fact the chairman) still has the possibility to hold a hearing or a hearing in open court in the classic mode (i.e. in the courtroom), if it deems that this form of meeting will not pose an excessive health risk to the participants. On the one hand, this provision may offer some flexibility as to the nature and manner of holding a hearing (classic vs. on-line version), but on the other hand, it may discourage some judges from switching to electronic hearing. Moreover (as already pointed out by the judiciary community), this provision may lead to a situation where it is the judge who takes responsibility for assessing the epidemic threat in the area of the court's operation, which does not seem to be a too prudent solution (e.g. the question of whether the court should consult sanitary inspection authorities in this respect or make this decision independently).

Summing up, the change consisting in the location of meetings and making on-line hearings more realistic in such a way that participants in the proceedings do not have to stay in the court building should be welcomed. However, it should be borne in mind that the aforementioned regulation is incidental – after all, the provision 15zsz<sup>1</sup> of the COVID-19

Act is binding only during the COVID-19 epidemic and one year after its revocation. It can only be counted on the fact that the legislator, knowing the positive experience of conducting on-line hearings, will regulate this issue systematically, allowing for such hearings to be held also in “post-pandemic” times.

## Practical issues related to conducting on-line hearings

Introduction of 15zsz<sup>1</sup> of the COVID-19 Act, unfortunately, did not go hand in hand with the reception of special regulations concerning practical and technical methods of conducting on-line hearings. In particular, no central and unified on-line hearing platform has been established. As a consequence, the decision on the technical aspects of holding such hearings was dropped into the lap of individual court presidents and even individual judges. Some of the presidents of courts have issued an order regarding the procedure for conducting on-line hearings, however, these are general and rather rudimentary solutions (a certain exception in this regard is the Order of the First President of the Supreme Court of November 12, 2020).

Turning to the practical experience of conducting an on-line hearing, it should be indicated that the key problem is the choice of a specific electronic

platform. In this respect, it should be noted that individual on-line communication platforms perform differently in terms of their capacity and perfection. For example, the most prosaic issue is the uninterrupted possibility of voice and visual communication by the participants of the hearing and the reduction of distortions in the form of reverberations, murmurs or other sounds. In this respect, the tested systems offered by global computer companies have an obvious advantage.

Moreover, the practical skills of conducting interviews, teleconferences and on-line videoconferences should be taken into account. While in the case of short and uncomplicated court hearings, such as, for example, a preparatory hearing held by a court with the participation of attorneys, such communication may not be difficult, while conducting full-day hearings with the participation of



witnesses or interpreters can be quite a challenge. The point is, for example, for the trial judge to establish the possibility of speaking by individual participants in the trial, so that there is no situation in which several people speak at the same time, which prevents the perception of any statement.

Interrogating witnesses remotely is also a particular challenge. There may be a situation (experienced by the author of this study) that the case is testified by a witness who does not speak Polish and additionally they are staying outside the country. In this situation, it is necessary to have a sworn translator participate in the trial, and they must properly hear and interpret statements from and to the witness.

It should also be remembered that, especially when hearing witnesses and experts in on-line hearings, the court is not able to identify such person's data (obviously, it is not possible to show the court an ID or a passport). In this case, the court relies on a witness or expert's statement of their identity. It is also not practically possible to check whether a witness does not use documents or other auxiliary materials when giving evidence, as is the case with a classic hearing. In this regard, it is possible to imagine a situation in which the parties agree with each other (and with the court) that the witness uses the camera to show the room in which he

or she is located, or finally – which is an extreme solution – that the witness is “assisted” when giving evidence by a representative of the opposing party who will take care of the transparency of the testimony.

Finally, in the case of on-line hearings, the issue of presenting documents in the case file looks different than at a classic one. At first glance, it might seem impossible. However, some of the electronic platforms offer the possibility of presenting documents on-line, which may even be a more accessible solution than the presentation of documents from multi-volume case files. The aforementioned communication systems allow not only to place a document on a computer or TV screen, but also enlarge this image, highlight a specific, interesting fragment, color it, etc.

To sum up, the world of technology offers a great variety of forms of conducting on-line hearings. After all, these systems, even before the COVID-19 pandemic, were used for business communication and can be easily adapted to the world of court trials. A lot depends on the judge's creativity and ingenuity, and at the same time on the friendly cooperation of the parties and their representatives with the court. Under these conditions, conducting on-line hearings is not only safer, but also cheaper, and sometimes even more convenient than conducting classic hearings.

As a conclusion, the author of this study has for over two months been participating in on-line hearings held twice a week, for seven hours at a time before one of the local courts in Poland, attended by a total of four large law firms in which testified over 20 foreign-language witnesses. After initial opposition and concerns over a hearing of this type, all concerned, including the court, deeply value on-line hearings and plan to proceed in this way even after the COVID-19 pandemic is over.



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## Court communication in times of plague

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### Introduction

The restrictions introduced by the legislature and the executive related to the COVID-19 virus epidemic ruthlessly exposed the legal, technological, and mental backwardness of the judiciary.

Professional users of the system – existing for years – know the situation very well and are reluctant to accept the lack of alternatives. The situation caused by COVID-19 meant that the maladjustment of the judiciary to the realities of the present day became obvious and incomprehensible even to outside observers.

The actual modernization of court proceedings, understood as its adaptation to the current conditions in other areas of social life, was a marginal phenomenon until 2020.

It is true that over the last 15 years, technological modernization (e.g. recording of hearings, introduction of information portals of common courts) has undoubtedly brought about positive changes to some extent. However, this is a slightly different phenomenon as technology does not in itself improve anything. In addition, the importance of this phenomenon for accelerating court proceedings is, as a rule, quite universally and uncritically overestimated or misunderstood.

I argue that paradoxically – from the point of view of the modernization of judicial proceedings – COVID-19 is the best thing that could have happened to the Polish judiciary. One by one, legal and mental barriers and paradigms that

have maintained this system in the 19th century reality for many years are being dropped. The best example is the principle of immediacy, which in its traditional understanding is only an excuse and a brake, and not a real value. In fact, these changes happened very quickly. Today, from behind my home desk, I am taking part in a hearing before the District Court in Wrocław, while the second attorney is in Częstochowa, and the witness in Gdańsk. Back in November 2019,

nobody would have believed it. It would have sounded like *science fiction*.

The pace and scope of changes are, of course, uneven. One of the basic, practical problems is still communication outside the court session between participants in the proceedings, as well as between the participants and the court. In this commentary, I will briefly present the legal and practical presentation of the indicated issue.

## Principle of official deliveries

For decades, communication under court proceedings has been based on the so-called principle of official deliveries. They are carried out by the court via Poczta Polska S.A. As long as I have been alive, I have not heard or seen in practice the “court delivery service” (see Art. 131 § 1 of the Code of Civil Procedure).

The rules of service provided for in the Code of Civil Procedure are, like many other provisions, obligatory. Therefore, different settlements of the party or the court in this respect are excluded. This means that the service performed in a manner deviating from the provisions of the Code of Civil Procedure will be ineffective. This in turn means the risk of negative consequences for the sender.

Every communication, no matter how trivial, from the court to the participant and from one participant to the other takes the form of a registered mail (after all, the principle of writing applies). Thus, for example, in one case, the Katowice Regional Court informs 6 professional attorneys of the parties and the interveners that it awarded the witness PLN 23 as reimbursement of the costs of appearance. It is a completely unnecessary activity, generating only costs for the court.

While preparing one of the amendments to the Code of Civil Procedure in 2015 The Ministry of Justice estimated that the service would cost the common courts and professional attorneys over PLN 170 million annually.

## Exceptions

The Code of Civil Procedure provides for a few exceptions to the principle of official deliveries. First of all, deliveries by a dedicated IT system (see Art. 1311 kpc). This regulation has a very narrow scope of application, i.e. it is limited to electronic writ proceedings, land and mortgage register proceedings – to a limited extent, and registration proceedings. In the remaining scope, it simply does not function due to the lack of a dedicated IT environment or legal regulation permitting alternative methods of operation.

Secondly, from November 7, 2019, during the case, professional representatives may serve pleadings with attachments, with some exceptions, directly only in electronic form (see 132 § 13 kpc). I have not seen such a case even once in practice, but the regulation allowing lawyers to opt out of postal services clearly exists. The inquiry into the reasons why this provision does not function in practice deserves a separate study.

## Attempts to modernize deliveries during COVID-19

At the end of March 2020, the press reported that appeals sent by e-mail to the departments' e-mail addresses were printed by court offices. A draft of a special act appeared in the Sejm, the provisions of which were to allow, on the one hand, submission of documents by e-mail, and on the other hand, for the service of court documents on parties. It was not a great surprise that the project did not become law. Therefore, further

submitting pleadings in this way has no legal basis and will be procedurally ineffective.

The topic returned at the end of April 2020, with the same result, or rather its lack. The minutes of the meeting of the Public Finance Committee leave no doubt as to whose interests determine the results of subsequent attempts to amend the law.

## What is next?

However, it must be clearly stated here that the possibility of submitting pleadings by electronic means and this method of communication with the court will not translate into the speed of proceedings. The speed of the procedure is not determined by (traditional)

deliveries. It is only a matter of a certain convenience, efficiency, or effectiveness (saving time and money) and the mundane need to adapt the procedure to how we operate every day, i.e. primarily electronically.

Certainly, in court practice, a greater openness to electronic communication with professional representatives can be observed. More and more prosaic, organizational or technical matters can be settled by e-mail, and I appreciate it very much. On the other hand, in urgent cases, I clearly indicate in writing to the court that I am asking for feedback by phone or e-mail. Good practice is that secretariats confirm receipt of e-mails from an attorney, print them and attach them to a case file.

Nota bene, it should be standard for attorneys to provide their full contact details (mobile phone, email) in each letter for the convenience of court employees, and in commercial proceedings also in relation to witnesses.

It is worth recalling here that pursuant to Art. 1491 of the Code of Civil Procedure, the court may summon parties, witnesses, experts, or other persons in the manner it deems most expedient, disregarding the provisions on service, if it deems it necessary to speed up the examination of the case.

The Information Portal of Common Courts is an extremely valuable and underrated tool. The user of this system receives an e-mail notification of each action in the case, provided that, of course, the action was entered manually. Thanks to this, I can almost immediately respond to the court's request. The court also informs me by e-mail that it has already

taken appropriate steps and that it is not necessary to send me a letter by post. Such, in fact, ordinary human kindness.

A year ago, it could be assumed that it was based on this system or on the basis of e-PUAP that an IT system dedicated to court service would be created. For example, administrative courts use e-PUAP. Although it is not completely excluded, the enactment of the Act of 18 November 2020 on electronic service renders it highly unlikely. This is not the time and place to discuss the solutions introduced by this act, but the most important thing is that common courts are not obliged to use them until October 1, 2029 (Article 155 (7) of the Act). So, it is a very, very distant future.

Meanwhile, the Polish legislator could investigate solutions used in proceedings before the Court of Justice of the European Union. Pursuant to the provisions of the Rules of Procedure before the CJEU, in order to meet the deadline, it is enough to send a letter by fax or e-mail, and then the original letter must be sent within 10 days. What is key, the provisions of the Regulations and the so-called practical instructions contain clear guidelines as to the length of specific letters (basic letters max. 30 pages, reply/rejoinder – 10 pages; written comments to the question referred – 20 pages).



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## Publisher

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For 10 years, the **Court Watch Polska Foundation** has been striving to ensure that every person who enters the court can be confident that they will be treated fairly. Annually, up to 10,000 people in Poland feel safer because the course of their trial is watched by the Foundation's volunteers. To date, it has managed to engage over 3,000 volunteers, thanks to which it gathered the largest database of observations of the work of courts in the world (over 44 thousand observations of trials and 3,500 observations of court infrastructure). Its methodology has been translated into English and published

with the support of the OSCE Office for Democratic Institutions and Human Rights. The Foundation has many years of experience in advocacy activities and is a professional research center with a strong scientific background. By analyzing the observations of hearings and conducting training courses for judges on their basis, the Foundation uses the rich scientific achievements of psychology and sociology of law. The Award of the President of the Republic of Poland "For the Common Good" and the Award of the Polish Business Roundtable of Andrzej Czernecki.

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# Court Watch Poland Foundation

The COVID-19 pandemic and related limitations have challenged the IT solutions used so far in the justice system. The level of court equipment with tools for conducting videoconferences and the level of competences needed to operate devices and applications were verified. In addition to practical problems, there were also legal controversies, for example between the principle of open court proceedings enshrined in the Polish Constitution and the orders of many presidents of courts, which limited access to public hearings and sessions to persons summoned and notified, bypassing the public and the media. In light of the above, we review technological innovations in the field of justice that have been introduced not only in Europe but also around the globe. We looked at the Anglo-Saxon countries of Canada, the USA, Ireland, Great Britain, then European leaders in computerization of the judiciary: Spain, the Netherlands, Austria,

the Federal Republic of Germany, Estonia, as well as solutions used in Russia, China and Indonesia. We also described Polish experiences with the use of information and communication technologies in the judiciary and gave the floor to practitioners. Such a broad spectrum of examples is to serve both as an illustration of different philosophies for the implementation of modern technologies in the judiciary, but also as a series of recommendations and inspiration in the implementation of innovative solutions, and finally as a warning against risky ideas that have not been successful in other countries, but above all, our intention is to recommend these innovations that have contributed to increasing the accessibility and transparency of the judiciary, strengthening the principle of open hearings and improving the operation of the judicial administration, which may ultimately translate into increased citizen confidence in the judiciary.

The report is available at: [courtwatch.pl/sady-dostepne-przez-internet](https://courtwatch.pl/sady-dostepne-przez-internet)

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