

## SERVICE OF COURT DOCUMENTS IN CIVIL PROCEEDINGS TO ATTORNEYS DURING THE COVID PANDEMIC – ANALYSIS OF SELECTED ISSUES

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**Abstract.** The serving of court documents on parties to civil proceedings and their attorneys-at-law is primarily regulated under the Act of 17 November 1964, the Code of Civil Procedure. However, in response to the COVID-19 pandemic some temporary solutions have been implemented by the legislator. Their role is to expedite communications between common courts and attorneys by using IT-based technology, and specifically, an e-service platform for serving court documents electronically. The aim of this paper is to analyze electronic service on attorneys in civil cases, and in particular, such issues as: which court papers may be delivered via the e-service platform, when should a document be deemed as served considering exceptions from the e-service rule, application of Article 134 of the Code of Civil Procedure to e-service of court documents and e-service in case of a multiple power of attorney.

**Keywords:** civil proceedings, service of court documents, COVID-19, electronic service platform, information platform, e-service

### INTRODUCTION

Since the state of pandemic was declared in Poland<sup>1</sup> in response to the growing number of SARS-CoV-2 infections, organs of public government, including common courts, have been struggling to provide continuity to their operations under these extraordinary circumstances. Over a span of one year, the Polish legislator has implemented a number of temporary solutions pertaining to civil procedures in order to ensure safe, uninterrupted access to courts and uphold access to justice in general. To that end, some principles of civil procedural law were modified, i.a., public court sessions and open hearings were suspended and moved to operate remotely, thus amending the principle of local jurisdiction [Litowski 2021, 70–71]. The legislator pushed for digital transformation of courts by amending the Act of 2 March 2020 on

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<sup>1</sup> Regulation of the Minister of Health of 20 March 2020 on announcing the state of pandemic in the Republic of Poland, Journal of Laws item 491 as amended.

specific solutions related to the prevention, counteraction and eradication of COVID-19, other infectious diseases and crisis situations,<sup>2</sup> which introduced new ways of service of court documents to attorneys via an electronic service platform (information platform). The rule of electronic serving of court documents will remain in place until the pandemic threat or the state of COVID-19 pandemic is revoked, and for one year after the last of the two states is revoked.

For some years now representatives of the legal doctrine have been emphasizing the urgent need to expand the use of technology in civil procedures, including e-service of process as much faster and cheaper than traditional service by mail [Szostek 2015, 61]. The legislator acknowledged the need to expand avenues of electronic filing of documents to enable, i.a., initiation of court proceedings. This was made possible by amending Article 125 of the Code of Civil Procedure<sup>3</sup> by adding para. 2, which enabled filing digital documents, i.e. recorded on electronic devices, subject to specific provision.<sup>4</sup> In view of reservations with regard to terminology and absence of a specific regulation, further amendments to laws and regulations were necessary for civil proceedings to be conducted remotely [Kościółek 2017, 4–5]. Essential changes were introduced by amendments to the laws in 2015,<sup>5</sup> enabling parties to the proceedings to choose how they prefer to file documents, either by “traditional,” registered mail or via the e-service platform (Article 125(22<sup>1</sup>) CCP). The new regulations provided that documents are to be served by the court via the e-service platform (electronic service) if this is how the document was initially filed or if the party ticked “e-service” as preferred method of filing and sharing documents (Article 131<sup>1</sup> CCP). However, ultimately, the e-service platform (teleinformatic platform) for filing of documents was never created.

To be clear, at present, there are several electronic systems that can be used for electronic serving of documents. Besides the Electronic Writ of Payment Procedure (EPU), the following electronic systems are in place: a) Electronic Land and Mortgage Register (Article 626<sup>4</sup> CCP – accessible only for notaries and bailiffs); b) electronic National Court Register Portal (Article 3a of the

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<sup>2</sup> Journal of Laws item 1842 as amended [hereinafter: Act on counteracting Covid].

<sup>3</sup> Act of 17 November 1964, the Code of Civil Procedure, Journal of Laws of 2020, item 1575 as amended [hereinafter: CCP].

<sup>4</sup> This provision was implemented by the Act of 24 May 2000 amending the Act – the Code of Civil Procedure, the Act on Registered Pledge and the Pledge Register, the Act on Court Fees in civil proceedings and the Act on Court Bailiffs and Execution, Journal of Laws No. 48, item 554, which entered into force on 1 July 2000.

<sup>5</sup> Act of 15 January 2015 amending the act – the Code of Civil Procedure and some other acts, Journal of Laws item 218 and Act of 10 July 2015 amending the act – the Civil Code, the act – the Code of Civil Procedure and some other acts, Journal of Laws item 1311.

Act on National Court Register<sup>6</sup>) and c) electronic Register of Pledges (Article 43a of the Act on Registered Pledges and the Register of Pledges<sup>7</sup>). Another platform facilitating communication between courts and Polish citizens is the Common Courts Information Portal.<sup>8</sup> Though it supports only certain legal actions, the Portal provides authorized persons with access to information regarding their case. Until recently, the Portal provided information only about actions taken by the court and the date of hearings, electronic case files, cases connected to the case pending before the court, and access to electronic transcript of the hearing, with an audio-option. However, the Information Portal did not support e-filing of documents by either party (except for filing a request to participate remotely in scheduled court hearing – the so-called “delocalized” virtual hearing, on the grounds of Article 151(2) CCP).

Despite positive reception of online information portals [Mikołajczuk 2020, 43–44], representatives of the doctrine advocated adding an electronic serving functionality to the Information Portal [Gołaczyński and Zalesińska 2020, 640–41; Hajduk 2020, 276–87; Szostek 2015, 69–70]. Doubtlessly, the reform introduced by the Act on counteracting COVID, i.e. electronic service of court papers via an online platform (Information Platform) addresses the expectations of representatives of the judiciary and academics voiced prior to the pandemic. Although, the initiators of the project originally intended to use professional email as means of electronic communication between courts and attorneys, with the email address identified in the first court paper,<sup>9</sup> ultimately, faced with negative reception of such a solution by the National Council of Legal Advisors and the Supreme Bar Council, the legislator decided to expand the Information Portal and add the desired functionality: e-service of court documents to attorneys, legal counsels, patent attorneys and the Office of the Prosecutor General.

In the context of digitization of the justice system, it should be noted that the Act on electronic service of documents<sup>10</sup> also lays down the rules for correspondence exchanged via the registered public e-service and by using the hybrid model of filing and serving documents. The legislator has introduced the possibility to use electronic email address as service address, to be used further on for correspondence with other entities that also use the e-service

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<sup>6</sup> Act of 20 August 1997 on the National Court Register, Journal of Laws of 2021, item 112 as amended.

<sup>7</sup> Act of 6 December 1996 on Registered Pledge and the Register of Pledges, Journal of Laws of 2018, item 2017 as amended.

<sup>8</sup> Further on referred to as: the Information Portal or Portal.

<sup>9</sup> Draft amendment of the Act – the Code of Civil Procedure and some other acts, doc. no. 899 with substantiation can be accessed at: <https://www.sejm.gov.pl/Sejm9.nsf/PrzebiegProc.xsp?nr=899> [accessed: 12.07.2021].

<sup>10</sup> Act of 18 November 2020 on electronic service of documents, Journal of Laws item 2320 as amended.

platform. The Act puts an obligation on attorneys to have an electronic service address listed in the electronic address database which is connected to the registered public e-service or is qualified as registered e-service (Article 9(1)(1) and (2) of the Act on electronic service of documents). The provisions imposing the obligation to have an email address for electronic service will come into force as of 5 July 2022, yet parallel regulations set forth in the Act on legal advisors<sup>11</sup> (Article 22<sup>10</sup>) and the Law on the Bar<sup>12</sup> (Article 37c) entered into force on 5 October 2021. Based on the wording of the said self-government regulations, it seems therefore that legal advisors and attorneys are already obliged to have an e-service address listed in the electronic address database. However, since the courts will be bound to apply the provisions of the Act on electronic service with respect to any correspondence served via the registered public e-service or hybrid service as of 1 October 2029, serving of correspondence regulated under the said Act is beyond the scope of this paper and will not be considered.

The aim of this paper is to discuss selected issues regarding application of the new e-service rules to attorneys in civil proceedings. The author shall focus, in particular, on the kind of court documents that are subject to e-service, including exceptions, and a list thereof, application of Article 134 CCP to e-service of court documents and the appointment of multiple attorneys.

## 1. DOCUMENTS SUBJECT TO ELECTRONIC SERVICE

Article 15 Draft amendment to CCP<sup>1</sup>, section 2 of the Act on counteracting COVID, provides that documents to be served electronically via the Information Portal are “court documents.” However, in reference to the subject of e-service, two different terms have been used in the Code of Civil Procedure, section 2, title 6, i.e. “court document” (Article 131(2), 133(3), 135(2), 136(2), 138(1), 141(2) CCP) and “pleadings and other papers” (Article 132(1), 133(2) and (2<sup>1</sup>) and (2<sup>2</sup>) and (2<sup>3</sup>) CCP). Moreover, on several occasions, the term “document” is used without specifying the type of document (Article 131<sup>1</sup>(1–2), 139(1) and (1<sup>1</sup>) and (2) CCP). In the doctrine on civil proceedings, several different standpoints can be found with regard to the understanding of the term “court document” used by the legislator also in the Act on counteracting COVID. Some authors claim that the term “court document” embraces notices, summons and judicial decisions intended for parties to proceedings, their attorneys and witnesses, expert witnesses and other participants in civil proceedings [Siedlecki 1966, 165]. Thus, these are solely documents that are filed and generated by the court. An alternative view is that

<sup>11</sup> Act of 6 July 1982 on legal advisors, Journal of Laws 2020, item 75 as amended.

<sup>12</sup> Act of 26 May 1982, the Law on the Bar, Journal of Laws 2020, item 1651 as amended.

a “court document” should be understood as all documents sent to the parties by the court [Wolwiak 2015, 43–50]. Notwithstanding the foregoing, the view that the term encapsulates both court documents (including summons, notices, judicial decisions and orders) and pleadings is rather well-established [Weitz 2012a, 600]. Although the above statement considers the subject matter of e-service to be both documents produced by court and documents drawn up by parties, but transmitted in copies to other parties, the term “court document” should apply only to the former. In turn, this conclusion allows to assert that the subject matter of e-service pursuant to Article 15 of the Draft amendment to the CCP<sup>9</sup> of the Act on counteracting COVID are only documents from the court, and generated by the court, i.e., court-issued documents.

The analysis of the subject-matter scope of e-service provided by the Information Portal has to include the Ordinance of the Minister of Justice of 19 June 2019 on the organization and scope of responsibilities of court secretariats and other departments of the court administration.<sup>13</sup> According to the rules for drawing up documents provided therein, court documents and certified true of court documents should, in principle, be certified true copies, i.e. they should bear a signature of a certifying person (justice, judge, clerk, attorney) along with specific data, such as the court’s name, file reference number, date of signing the document, the position or authority and the full name of the document signatory (para. 31(4) of the Instruction). In turn, court documents listed in Appendix no. 3 to the Instruction, included in the electronic court system and recorded as “issued” by the system, may be sent without a signature, and do not require an official stamp and do not have to be certified as true copy of the original document. The list of court documents that may be served without a signature (thus subject to e-service via Information Portal pursuant to Article 15 Draft amendment<sup>9</sup> Act on counteracting COVID) embraces: a) summons, b) notices, c) return of documents requests, including statement of claim and procedural motion, d) orders of payment under the writ of debt proceedings pursuant to the provisions of CCP, e) non-appealable decisions (i.e. the decision was not and is not subject to any measures of appeal – except appealable decisions in which case appeal remedies have been exhausted, in result of which appeal measures do not apply anymore), f) covering documents along with copies of documents served by court, and g) instructions, notes of guidance and cautions. Most importantly, president of a court may extend the list of documents that do not require signing beyond the ones enumerated in Appendix no. 3 to the Instruction, subject to the rule that such an extension cannot include copies of judicial decisions being enforcement orders and decisions in criminal cases and non-execution of enforceable judicial decisions (para. 21(6) of the Instruction). However, it should be noted that, in

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<sup>13</sup> Official Gazette of 2019, item 138 as amended [hereinafter: “the Instruction regarding court office administration” or “Instruction”].

fact, presidents of courts use these powers when issuing orders to extend the list of signature-exempt documents.<sup>14</sup> In consequence, for professional representatives and attorneys it becomes more difficult to determine the effects of opening and reading the documents added to the Information Portal, since they are required to check in a specific court whether an extending decision to the list of documents served electronically has or has not been issued. It seems that in order to ensure efficiency of proceedings and to secure interests of parties represented by attorneys, it would be necessary to harmonize the rules of document service across Poland, or else, introduce a requirement that every document should mention the legal grounds for electronic service – CCP or Article 15 Draft amendment<sup>9</sup> section 2 sentence 1 Act on counteracting COVID.

The legislator provided for two exemptions from the rule of e-service of court documents via the Information Portal. The first exemption embraces documents which should be served along with copies of the parties' pleadings or other documents which did not come from the court (Article 15 Draft amendment<sup>9</sup> section 2 sentence 2 Act on counteracting COVID). Hence, it refers to situations in which a court document is served along with e.g. a copy of pleadings of the adverse party or expert testimony as a document not coming from the court. In such case, documents should be served by traditional registered mail. The second exemption includes situations in which president of the court issued an order waiving the use of the Information Portal for e-service (Article 15 Draft amendment<sup>9</sup> section 5 Act on counteracting COVID). The latter refers only to circumstances in which e-service is inadmissible in view of the nature of the document. However, the legislator did not provide a definition of "nature of document." It is only rational to assume that this term should refer to documents which have specific characteristics, function or purpose. Nonetheless, it must be emphasized that judges themselves have their reservations about the said regulation, since they often issue waivers of filing via the Information Portal in all civil law cases they preside over.<sup>15</sup> However, the practice for document service is different from court to court, and even between departments of a court or judges in one department, so it definitely lack uniformity. However, the interpretation of Article 15 Draft amendment<sup>9</sup> Act on counteracting COVID leads to the conclusion that there is no legal basis

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<sup>14</sup> Such decisions were taken, i.a., by the President of the District Court of Warsaw-Praga in Warsaw <http://warszawapraga.so.gov.pl/uploads/files/zarz%C4%85dzenia/83-21.pdf> [accessed: 19.07.2021], or the President of the Court of Appeal in Szczecin, <https://www.szczecin.sa.gov.pl/zarzadzenie-wysylania-pism-sadowych-bez-podpisu-wlasnorecznego-w-sadzie-apelacyjnym-w-szczecinie,new,mg,103.html,637> [accessed: 19.07.2021].

<sup>15</sup> Such decisions have been issued, i.a., in the District Court in Cracow: <http://www.krakow.so.gov.pl/container/struktura-organizacyjna/aktualnosci/komunikaty/2021/Komunikat%20Prezesa%20Sadu%20Okregowego%20w%20Krakowie%20z%20dnia%2009%20lipca%202021%20r-.pdf> [accessed: 19.07.2021].

for issuing decisions to waive electronic service of documents pertaining to all cases processed by a given judge, department or court. Such waivers may be issued only if electronic service of documents via the Portal is not possible in view of the nature of document.

It is worth to note that an attorney's lack of account on the Information Platform or lack of access to a given case is not considered to be circumstances that justify service by post. The legislator has not expressly stipulated that attorneys are obligated to have accounts on the Information Portal, as it was the case with mandatory provision of email addresses for electronic service, required under the law since 5 October 2021, pursuant to Article 2(1) of the Act on electronic service of documents. This obligation was imposed on, i.a., legal counsels, attorneys and patent attorneys. In fact, obligatory electronic service via the Information Portal implies that every attorney is required to have an account on the Portal. Hence, it might be concluded that an attorney is obligated to register an account on the Portal since Article 15 Draft amendment<sup>9</sup> Act on counteracting COVID entered into force.

Editing of Article 15 Draft amendment<sup>9</sup> Act on counteracting COVID states beyond doubt that the rule for serving court documents specified in Appendix no. 3 to the Instruction on court offices or documents specifically referred to in an order of the president of the court, shall be electronic service, provided that it will be a document addressed to an attorney, legal counsel, patent attorney or the Office of the Prosecutor General of the Republic of Poland.

## 2. DATE OF DEEMED SERVICE

Initially, the Draft amendment to the Act on counteracting COVID assumed that digital representation of documents will be deemed as served on the following working day from the moment they are uploaded to the electronic platform by the court in a way that enables the addressee to read the documents.<sup>16</sup> However, this solution was justly criticized (mostly by lawyers and attorneys) as undermining fundamental process guarantees and violating the right to a fair trial set forth in Article 35(1) of the Constitution of the Republic of Poland [Gołaczyński and Zalesińska 2020, 640–41]. Eventually, pursuant to Article 15 Draft amendment<sup>9</sup> section 3 Act on counteracting COVID, the deemed date of service to an attorney is the date the attorney reads the document uploaded on the Information Portal. Mere logging into the attorney's account will not be deemed as "read and understood," as the latter requires the attorney to download a document. This means that an attorney may log into his/her account and use other functionalities of the Information Platform (e.g. sittings, legal actions, motions) without worrying that the moment of

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<sup>16</sup> Draft amendment to the Act – the Code of Civil Procedure and some other acts.

logging will automatically be considered the moment of getting acquainted with the documents. It is thus unequivocal that only downloading of the document shall be interpreted as deemed service with procedural consequences stipulated in CCP.

In response to critical reception of the first draft, the legislator provided for a 14-day notice of service. The notice period starts running as of the day of uploading the document to the Information Portal. Document upload should be understood as the day the document is published on the Platform (the date of online publication in the system), although some inconsistency can be noticed between the term used by the legislator (“uploading to the Portal”) and the term used by the Platform (“publication on the IP”). In light of Article 15 Draft amendment<sup>9</sup> section 3 of the Act on counteracting COVID, it seems that in case the upload date on the Portal is earlier than account registration date or date of gaining access by a professional attorney, the 14-day notice period starts running as of the upload date (online publication) on the Platform. This is quite an issue since these days courts are swamped by cases, so it happens that attorneys are not provided electronic access to a given case.<sup>17</sup> In consequence, the 14-day notice starts to run the moment a document is uploaded to the Portal, and keeps running whilst an attorney has no access to the case, which creates many problems. As mentioned before, the legislator made only two exceptions to the rule of electronic service of court documents via the Portal, i.e. service of documents along with copies of the parties’ pleadings or other documents not coming from the court, and waiver of electronic service via the Portal based on an order of president of the court.

According to the doctrine and case law, the regulations regarding service are absolutely mandatory provisions of law, and thus leave no free choice to the courts as to selection of the document service method [Uliasz 2017, 32; Weitz 2012a, 603]. The Act on counteracting COVID provides that the service will be effective if the attorney has not received access to the case on the Information Portal. Any infringement of the deadline for actions on the attorney’s part and any adverse effects resulting from lack of access may be grounds to file a motion for reinstatement of deadline for procedural actions for which the deadline was set or for nullity of the proceedings due to the party’s being deprived of the ability to defend its rights (Article 379(5) CCP). While the mere construct of “substituted service” is admissible and does not infringe the right to a fair trial [Weitz 2012c, 661], both the doctrine and case law underline that it must provide parties with a guarantee that documents are delivered to the addressee and he has a chance to get acquainted with

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<sup>17</sup> In principle, it is the court that should automatically provide attorneys with access to case files, from time to time it happens that no access is granted. In such case, attorneys have to file a motion for access to the case. Instruction on how to gain Access is provided here: <https://www.gov.pl/web/sprawiedliwosc/instrukcje-obslugi-portal-informacyjnyego> [accessed: 21.07.2021].

them.<sup>18</sup> Definitely, electronic service to a professional attorney who has not been granted access to the case on the Information Portal cannot be considered a “guarantee.”

Hence, with regard to the two exceptions to the rule of service of court via the Portal, i.e. documents served with copies of pleadings or other documents not generated by court, and waiver of e-service via the Information Portal based on the order of president of court, documents should be served in a traditional way, by post. To conclude, upload of these documents to the Portal will have no procedural consequences and only play an informative role.

### 3. SERVICE AT NIGHT AND ON HOLIDAYS

Provisions of the CCP determine the time limit for service. The rule is that court documents cannot be served on bank holidays and weekends, and at night (Article 134(1) CCP). The exception refers to “exceptional cases” and situations requiring that a relevant order of the president of the court is issued before documents are served. In the context of Article 15 Draft amendment<sup>9</sup> section 2 to the Act on counteracting COVID, it is worth to pause and consider a situation when the uploaded document is opened and read at night or on a bank holiday. Since enforcement of Article 134 CCP is not suspended, it can be reasonably claimed that the provision shall apply to electronic service. However, on the other hand, the Information Portal is a “teletinformativ system” referred to in Article 9(1) CCP since it supports court proceedings by enabling performance of some actions. Hence, in fact, Article 131<sup>1</sup>(2) sentence 2 CCP which excludes the application of Article 134(1) CCP, should be applied.

It is only logical that the same should apply to attorneys-at-law. The fact that an attorney reads a document on the Portal at night or on a Polish bank holiday should have a procedural consequence, i.e. start the running of the time limit for taking action. Moreover, attorneys are free to choose when to read court documents. Hence, reading a specific document in the evening or on bank holidays should be considered a voluntary consent to receipt of documents, which renders the e-service effective [Weitz 2012b, 633]. Nonetheless, rules set by Article 115 CC shall apply even if the time limit ends on a Saturday or any bank holiday, the running period shall end on the consecutive day which is not a bank holiday or a Saturday. Therefore, if a document is opened and read on a Saturday or Sunday, the last day of the 7-day limit for taking action will fall on a Monday. Henceforth, as it is the attorney who decides when to read a particular document, thereby starting the running of the period, it cannot be

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<sup>18</sup> Judgment of the Constitutional Tribunal of 17 September 2002, ref. no. SK 35/01, Legalis no. 55383; judgment of the Constitutional Tribunal of 15 October 2002, ref. no. SK 6/02, Legalis no. 55388.

maintained that any of the attorney's or party's rights are thereby violated. In conclusion, for avoidance of doubt among legal scholars as to whether the Information Portal should be treated as a "teleinformatic system" or not, it would be legitimate to expressly exclude the application of Article 134(1) CCP. This is a *de lege ferenda* postulate.

#### 4. SERVICE OF DOCUMENTS IN CASE OF MULTIPLE ATTORNEYS

Besides the aforementioned issues relating to the application of Article 15 Draft amendment<sup>9</sup> Act on counteracting COVID, the situation in which documents must be served to a party's multiple attorneys is worth looking into. Since the Code of Civil Procedure does not foresee any limitations in this regard, a party may be represented in civil proceedings by more than one attorney.

In case of traditional mail service, the legislature provides that if multiple attorneys are appointed to represent a party, legal correspondence should be served to one of the attorneys (Article 141(3) CCP). The Code of Civil Procedure provides for two kinds of power of attorney: power of attorney *ad litem* (general POA for representation in court proceedings,) and limited (specific) POA (for performing specific legal actions). The scope of the general power of attorney is determined by Article 91 CCP and it covers, i.a., all actions relating to the case. The doctrine suggests that the scope of the general POA is subject to modification either by extension or limitation [Gawrylczyk 2001, 85ff; Krzemiński 1967, 4]. Henceforth, in the POA document or possibly, in a different document, a party can clearly identify the attorney to whom court documents should be transferred. However, if there is no clear identification of the attorney, the choice shall be made by the president of the court<sup>19</sup> [Krzemiński 1956, 51; Weitz 2012d, 678; Żyznowski 2013, 508]. In such case, the legal correspondence is delivered at the president's discretion.

A similar situation occurs when a substitute attorney (replacement attorney) is being appointed. Pursuant to Article 91(3) CCP, the original attorney has the right to appoint another attorney in their place. Moreover, a substitute attorney – as it transpires from the doctrine and the case law – has authority to act on behalf of the grantor, and is not a "deputy" or assistant of the primary attorney [Gawrylczyk 2001, 85ff; Gudowski 2012, 468; Krzemiński 1967, 10].<sup>20</sup> It must be ascertained that this is true in cases when the primary attor-

<sup>19</sup> Order of the Supreme Court of 19 December 2019, ref. no. IV CZ 112/19, Legalis no. 2269164; order of the Supreme Court of 12 December 2017, ref. no. IV CZ 89/17, Legalis no. 1733697; order of the Supreme Court of 07 June 2017, ref. no. II PZ 6/17, Legalis no. 1637275; order of the Supreme Court of 22 October 1999, ref. no. III CZ 109/99, Legalis no. 57684.

<sup>20</sup> Order of the Supreme Court of 21 October 2010, ref. no. IV CZ 79/10, Legalis no. 1825559.

ney grants power of attorney with the same scope of authority as the one he was originally granted. However, the substitution may be only for a specific purpose, i.e. the original attorney may limit the substitute power to specific some legal actions being part of the POA he himself was given [Smyk 2010; Pietrzykowski 2020, 50–53]. However, there are some conflicting views in this regard [Turczynowicz–Kieryło and Cajselski 2003, 3ff], which emphasize that substitute power of attorney cannot be limited.

With regard to putting the above to practice, i.e. serving of documents on attorneys via the Information Portal, Article 5 Draft amendment<sup>9</sup> Act on counteracting COVID does not regulate the methods of service in case of multiple attorneys appointed by a party. Hence, Article 141(3) CCP is applicable here, save in so far the POA letter or another document expressly identifies the attorney to be served. If not, the document will be served to only one attorney. In fact, a court document to a party will be uploaded on the Portal, and posted on accounts of all attorneys representing the party, but the service is deemed effective upon first reading of the document by any of them. The same rule applies to accounts of substitute attorneys if their scope of substitute POA has not been limited only to specific legal actions. Therefore, the date of viewing a document, which shows on the Portal, is considered the date of reading the document by the given account user. Thus, it would be judicious to add to the Portal a functionality that would inform other co-representing attorneys of that fact, including the document opening date. Alternatively, automatically generated and posted confirmation that the document has been read would also be very useful. In case of multiple power of attorneys, such functionalities would enable other attorneys to easily identify when the period for taking actions starts to run if such a deadline was set in the document.

## CONCLUSIONS

The amendment enabling one-way electronic service of court documents to attorneys-at-law can definitely be perceived as a step towards digitalization of courts. The use of communication technology for communications regarding civil lawsuits between courts and attorneys is a long-expected novelty, and a push for technological innovation in the Polish judicial system. However, despite the fact that the legal basis for a two-way electronic communication has been in place for quite a time, until today no comprehensive solutions have been implemented to digitize civil proceedings and develop an e-judiciary system. At present, information systems that support judicial proceedings allow only for electronic writ-of-payment proceedings, real estate register proceedings (in a limited way), and registration procedures. Alongside these, there was the Information Portal used mostly as means to transfer information, i.e. providing authorized persons with online access to communications

regarding pending civil lawsuits. Despite the many appeals of representatives of the doctrine and legal professionals to add new functionalities to the Portal, the system has been improved, enabling e-communication, very recently, that is a year after the pandemic was declared. Additionally, the institution of electronic service introduced under Article 15 Draft amendment<sup>9</sup> Act on counteracting COVID is limited in scope as it includes only court documents served by the court to the attorney-at-law, i.e. legally qualified lawyers, legal counsels, patent attorneys or Office of the Prosecutor General of the Republic of Poland. Undoubtedly, prolonged pandemic restrictions have brought to the forefront the urgent need for informatization of communication between attorneys and courts. However, the changes seem to be too hastily made, without proper modernization of the Information Portal to ensure its compatibility with the systems used in common courts of law. Moreover, the legislator did not ensure cohesion of the terms used in Article 15 Draft amendment<sup>9</sup> act on counteracting COVID with the terminology used on the Information Portal. Inconsistent terminology is a source of confusion regarding many basic issues, e.g. when does the 14-day advice period start in case of documents available online? It seems that a big part of interpretative doubts and discussions could have been avoided if consultation with associations of lawyers or representative of courts had been held. At present, in result of the insufficient integration of court systems with the Information Portal, to avoid complications, some courts simply do not use the e-service.

In the context of the development of „smart courts,” it is important to support the demands of some scholars [Wójcik–Krokowska 2021, 135–36] to fully embrace modern technologies and extend the functionalities of the Information Portal so that, as an teleinformatic system, it enables electronic civil court proceedings, including e-filing of documents by attorneys, as it is the case with the National Court Register Portal. In view of the constitutional principle of democratic state of law and to ensure equal access to justice, the teleinformatic system could be dedicated solely to professional attorneys (which is the case of the registration procedure), while retaining the option for parties to file process papers traditionally. Such a solution would streamline the work of courts and attorneys, and significantly contribute to the development of e-justice and improvement of judicial efficiency.

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