

## The use of the electronic communication technologies in the judicial proceedings in Poland.

**Dr hab. Jacek Gołaczyński prof. UW.**<sup>1</sup>  
**Dr Marek Leśniak**<sup>2</sup>

### List of references:

W. Broniewicz, *Postępowanie cywilne w zarysie*, Warszawa 1995; W. Siedlecki, *Postępowanie cywilne zarys wykładu*, Warszawa 1997; P. Suski, *Rejestry sądowe spółek handlowych, spółdzielni i przedsiębiorstw państwowych*, Warszawa 1994; P. Suski, *Rejestry sądowe stowarzyszeń, izb gospodarczych, organizacji samorządu rzemiosła, samorządu zawodowego niektórych podmiotów gospodarczych, związków zawodowych, związków zawodowych rolników, społeczno-zawodowych organizacji rolników, organizacji pracodawców*, Warszawa 1994; St. Włodyka (ed.) *System Prawa Gospodarczego Prywatnego. Prawo Spółek*, Kraków 1996; M. Wrzolek-Romańczuk, *Rejestr handlowy – zagadnienia materialnoprawne i procesowe*, Pal. No. 3-4 of 1992; J. Frąckowiak, *Ustawodawstwo dotyczące przedsiębiorców pod rządami zasady jedności prawa cywilnego*, PPH 2000, No. 11; M. Leśniak, *Ustanowienie zastawu rejestrowego w celu zabezpieczenia wiarytelności posiadaczy obligacji wyemitowanych na podstawie ustawy o obligacjach*, PS 2002, No. 7-8; E. Niezbecka, J. Mojak, *Ustawa o zastawie rejestrowym i rejestrze zastawów. Komentarz*, Lublin 1997; S. Sołtysiński, A. Szajkowski, A. Szumański, J. Szwaja, *Kodeks spółek handlowych. Komentarz*, vol. 1, Warszawa 2002; M. Leśniak, *Wykorzystanie komunikacji elektronicznej w postępowaniu sądowym*, in: J. Gołaczyński (ed.), *Prawne i ekonomiczne aspekty komunikacji elektronicznej*, Warszawa 2003; J. Gołaczyński, *Podpis elektroniczny jako instrument dokonywania czynności procesowych*, in *Biuletyn CBKE*, 2003, No. 3, [www.cbke.prawo.uni.wroc.pl](http://www.cbke.prawo.uni.wroc.pl)

---

<sup>1</sup> The author is also a judge of the Circuit Court in Wrocław, Commercial Division

<sup>2</sup> The author works also as a judge of the District Court in Wrocław, the Head of the Register of Pledges Division

## § 1. Electronic court registers

### I. Introduction

Information technology has been introduced in these areas of court activity, where it is aimed at collection and disclosure of the particular kind of data concerning the parties subject to entry into a register, according to the legal provisions. Apart from the land and mortgage registers, since 1980, various types of registers have been established by different courts, including registers of state enterprises, registers of foreign enterprises, registers of cooperatives, registers of foundations, registers of socio-professional farmers' organizations, registers of research and development units, registers of professional self-government organizations of the selected economic subjects, chamber of commerce registers, registers of craftsmen's guilds and chambers, the register of Polish Crafts Association, registers of the farmers' trade unions, registers of associations, registers of the mutual insurance companies, and – especially important in the free market economy – commercial registers.<sup>3</sup> All these were at first paper documents or books. However, already in 1992 first attempt was made to adjust the form of court registers to the changing reality. A change in the Regulations of Civilian Courts Activities allowed the courts to arrange the registers not only in a form of a book, but also using IT systems based on the computer software.<sup>4</sup> However the process of computerization of the court registers was set the pace only in 1995, when the work on the project of the act on the pledge by registration and register of pledges began.<sup>5</sup> This register was introduced in 1998.<sup>6</sup> Another important step was establishing and introducing the National Court Register at the beginning of 2001, including three main registers: the register of entrepreneurs, the register of associations, other social and professional organizations, foundations, and public health service institutions, and also the register of the insolvent debtors.<sup>7</sup> Simultaneously, from the beginning of 1990s information technologies were introduced in the land and mortgage registers. As a part of these activities, a legal framework was created, which allowed transferring the content of the existing paper registers into the electronic form, mentioned in art. 25 of the act on the land and mortgage registers.<sup>8</sup> Key principles for the introduction of information

<sup>3</sup> See also P. Suski, *Rejestry sądowe spółek handlowych, spółdzielni i przedsiębiorstw państwowych*, Warszawa 1994, p. 3-4; P. Suski, *Rejestry sądowe stowarzyszeń, izb gospodarczych, organizacji samorządu rzemiosła, samorządu zawodowego niektórych podmiotów gospodarczych, związków zawodowych, związków zawodowych rolników, społeczno-zawodowych organizacji rolników, organizacji pracodawców*, Warszawa 1994, p. 3-5.

<sup>4</sup> Paragraph 198 (1) offered the possibility of arranging court registers in the book form or using the information system based on the computer software. This rule was added to the ordinance of the Minister of Justice, of 19<sup>th</sup> November 1987. Regulations of Civilian Court Activities (JL No. 38, item 218) were changed by the ordinance of the Minister of Justice (JL No. 16, item 67).

<sup>5</sup> See government's explanatory statement to the act of pledge by registration and register of pledges, parliamentary paper no. 1202, of the 2<sup>nd</sup> term of Parliament of the Republic of Poland.

<sup>6</sup> The act of 6<sup>th</sup> December 1996, on the pledge by registration and register of pledges (JL No. 149, item 703 with later amendments).

<sup>7</sup> The act on the National Court Register, of 20<sup>th</sup> August 1997 (JL No. 121, item 769 with later amendments).

<sup>8</sup> The act on the land and mortgage registers (uniform text in JL No. 124, item 1361 of 2001, with later amendments).

technology into the area of land and mortgage registers, are the regulations included into the act of 14<sup>th</sup> February 2003, on transferring the content of the land and mortgage registers into electronic form, based on the information technologies,<sup>9</sup> which entered into force on 1 July 2003.

## **II. The register of pledges**

### **1. General information**

On 1 January 1998 the provisions of the act of 6 December 1996, on pledge by registration and register of pledges, entered into force.<sup>10</sup> The main goal of this act was to “adjust the institution of register to the requirements of modern market economy so that the institution: offers relatively simple and efficient collateral for the creditor, allows the debtor (pledger) to use the item under pledge, and allows the third parties to obtain quick and reliable information concerning putting up such collateral.”<sup>11</sup> In order to achieve the latest of the mentioned goals, a decision was made to establish an electronic form of the register of pledges. The register was supposed to be held by those courts which had earlier held commercial registers.<sup>12</sup> The primarily assumed functions of the electronic form of the register of pledges were as follows: “each court holding the register of pledges will also have a local database, where all entries and all motions for entering will be stored. Additionally all information from the local databases will be transferred electronically to the central database, held by the separate legal unit, supervised by the Department of Justice.”<sup>13</sup> Another assumption was that “the main task of the central database would be collection, storage and making available on the commercial basis, all information transferred from the local databases, yet without any possibilities of adjusting the content of the data.”<sup>14</sup>

### **2. Legal sources, and organization and functioning of the register of pledges**

The organization and functioning of the register of pledges is – apart from the regulations of the act of pledge by registration and the register of pledges – are governed by the regulations included in the executive ordinances for the above mentioned act. These are: the ordinance of the Minister of Justice, of 15 October 1997 on the details of organization and holding of the registers of pledges<sup>15</sup>, the ordinance of the Minister of Justice, of 15 October 1997, on the structure and organization of the Central Information on Pledges by Registration and detailed principles

---

<sup>9</sup> JL No. 42, item 363

<sup>10</sup> JL No. 149, item 703, with later amendments

<sup>11</sup> See government’s explanatory statement to the Act of Pledge by Registration and Register of Pledges, parliamentary paper no. 1202, of the 2<sup>nd</sup> term of Parliament of the Republic of Poland.

<sup>12</sup> Ibid.

<sup>13</sup> Ibid.

<sup>14</sup> Ibid.

<sup>15</sup> JL No. 134, item 892.

of issuing information, copies and certificates<sup>16</sup>, the ordinance of the Minister of Justice, of 15 October 1997, on the official form patterns<sup>17</sup>, the ordinance of the Minister of Justice, of 30 December 1997, on the fees for information, copies and certificates issued by the Central Information on Pledges by Registration.<sup>18</sup>

According to art. 36 (2) of the act on the pledge by registration and the register of pledges, the register is held by the district courts (economic courts), located in the province capital cities and responsible for the entire province area. Primarily, i.e. from the beginning of 1998 six courts were responsible for holding registers of pledges, in such cities as Warszawa, Poznań, Katowice, Gdańsk, Lublin and Kraków. Then, in June 1999, next three registry courts were established, in Łódź, Białystok and Rzeszów. Finally, in 2000, the last court holding the register of pledges was established in Wrocław. Since these courts proved efficient in their everyday practices, there are no good reasons for establishing any other courts holding the registers of pledges in any other cities.

The register of pledges is computerized.<sup>19</sup> It includes seven columns divided into boxes. In the boxes of the first column, the following data is included: the item number of the register, the indication of the court making the entry, the consecutive number of the entry in the specified register item, file number, the date when the entry motion was handed in, the date when the decision of making the entry was taken, and the date when the entry was made in the register. The second column covers the pledgee data and the third column, the pledger data. Column four includes the data of the debtor of the claim secured by the registered pledge, unless it is the pledger. In the fifth column the data of the object of the pledge are provided, and in the sixth column, the details concerning the pledge. Column seven includes the information of the removal of a pledge entry.<sup>20</sup>

To establish a pledge by registration, apart from the pledge agreement or the resolution of a competent issuer's agency – in the case of establishing a pledge by registration for the benefit of the holder of the bonds issued on the basis of the act of 29 June 1995, on the bonds<sup>21</sup> and other debentures issued on the basis of the appropriate acts of law effective in the member states of the Organization of Economic Co-operation and Development (OECD) – an entry into the register of pledges is required. This entry is a result of a motion from a pledger or a pledgee. In case of establishing a pledge by registration for the benefit of the holders of the bonds issued on the basis of the act on bonds and other debentures issued on the basis of the appropriate acts of law effective in the member states of OECD, the motion for entering a pledge into the register of pledges may

---

<sup>16</sup> JL No. 134, item 893.

<sup>17</sup> JL No. 155, item 1018.

<sup>18</sup> JL No. 2, item 4, of 1998.

<sup>19</sup> See the ordinance of the Minister of Justice, of 15 October 1997 on the details of organization and holding of the registers of pledges (JL No. 134, item 892.).

<sup>20</sup> *ibid.*

<sup>21</sup> Uniform text in JL No. 120, item 1300, of 2001 with later amendments.

come from the administrator of the pledge. The motion is submitted on a special official form. The official form consists of three columns, divided into boxes, structured similarly to the columns and boxes of the register of pledges. There are three types of official forms of motions: a motion for entering the pledge by registration into the register of pledges (form RZ-1), a motion for changing the entry in the register of pledges ( form RZ-2), and a motion for removing the pledge by registration from the register of pledges (form RZ-3).<sup>22</sup> The need for the official forms of the motions is a consequence of the computerized registers, as the data need to be unified in order to ensure quick availability of the data stored in the register of pledges. Thus, the official forms of motions have been created to achieve unification of data stored in the register.

The motion on entering the pledge by registration to the register of pledges must include the so called common identification number of the pledger, pledgee and the debtor, unless the debtor is a pledger.<sup>23</sup> For a natural person this is a number granted by the Common Electronic Census System (Powszechny Elektroniczny System Ewidencji Ludności), the so called PESEL number<sup>24</sup>, while for the legal persons, limited partnerships, general partnerships and other organizations which do not have the status of legal persons, it is the identification number, granted by the register of the national economy subjects, on the basis of the regulations on the public statistics, the so-called REGON number.<sup>25</sup> Including the REGON or PESEL numbers in the motion for entering the pledge of registration into the registry of pledges is necessary in order to compare the data presented in the motion with the data of the specified subject, stored in the Common Electronic Census System or the register of the national economy subjects. This comparison allows the verification of data and, as a consequence, standardization of the data regarding the subject in all registers which collect and store them. The so-called common identification number of participant of a legal relation of a pledge by registration is a part of the entry of this pledge into the register of pledges (art. 40 (1) (2) of the act on the pledge by registration and the register of pledges).

### **3. Free access to the register of pledges**

The function of an entry into the register of pledges is to provide the information, just as handing the item to the pledgee in case of an ordinary pledge. In order to fulfill this function, every interested party must be offered a free access to the data stored in the register of pledges. Therefore, according to art. 37 (1) of the act on the pledge by registration and the register of pledges, the register, and all the documents stored in it, are freely accessible. The copies

<sup>22</sup> See the ordinance of the Minister of Justice, of 15 October 1997, on the official form models (JL No. 155, item 1018).

<sup>23</sup> This order does not refer to the subjects not obliged to hold PESEL or REGON identification numbers.

<sup>24</sup> See the act on the census and identity documents on 10 April 1974 (Uniform text in JL No. 87, item 960 of 2001, with later amendments).

<sup>25</sup> See the act on the public statistics of 29 June 1995 (JL No. 88, item 439, with later amendments).

of documents form the register of pledges, being proofs of entries, as well as certificates showing lack of entries of the pledger or of the pledger and the object of the pledge, are issued on request of every interested party (art. 37 (2) of the act on the pledge by registration and the register of pledges). Both above mentioned provisions constitute a principle of a formal free access to the register of pledges. Every person, not only the participants of the proceedings of entering the pledge by registration into the register of pledges, is ensured full and open access to the register files, in order to become familiar with the documents stored in the register. It is worth emphasizing, that art. 37 (1) of the act on the pledges by registration and the register of pledges mentions the documents submitted to the register. The content of this article is undoubtedly based on the content of art. 13 § 2 of the Commercial Code.<sup>26</sup> As the register of pledges is computerized, it is not really possible to hand any documents into it. Certainly one must distinguish between the register of pledges, as a collection of data and the register files. The register files include mostly those documents, which are the grounds for registration of the pledge in the register of pledges.<sup>27</sup> The fact that the information is collected in two forms – as a collection of data and as the register files – protects and strengthens the principle of the formal free access to the register of pledges. In turn, the principle of the formal free access to the register of pledges is the basis of the physical free access to the register of pledges. Physical free access to the register of pledges is manifested in two presumptions included in the content of art. 38 of the act on the pledge by registration and the register of pledges. The above mentioned rule states the presumption of the common knowledge of the data recorded in the register of pledges (art. 38 (1) of the act on the pledge by registration and the register of pledges) and the presumption of the accordance of the entries in the register with the actual legal and factual status (art. 38 (2) of the act on the pledge by registration and the register of pledges). Both of these presumptions are rebuttable presumptions.

#### **4. Organization and functioning of the Central Information on Pledges by Registration**

The fact that the register of pledges is held in the form of a computer system strongly influences the possibilities of accessing the data stored in the register. For example, the interested persons do not have a direct access to the register of pledges. It does not mean, however, that such situation opposes the principle of formal free access to the register of pledges, as every person has the right to access the data stored in the register of pledges via the Central Information on Pledges by Registration. The Central Information on Pledges by Registration is an agency of the Ministry

---

<sup>26</sup> Art. 13 § 2 of the commercial code said: „The commercial register, along with the documents being the ground for registration, is freely accessible.”

<sup>27</sup> See art. 9 of the act on the National Court Register for the distinction between the register and the register files.

of Justice. The tasks of revealing the information, and issuing copies and certificates are accomplished by the Central Information on Pledges by Registration through the Customer Service Department in Warszawa and its branches located by the courts holding the registers of pledges.<sup>28</sup> The main goal of the Central Information on Pledges by Registration is creation and use of the links within the computerized register of pledges, collection of information from the register of pledges and issuing the information, copies of documents and certificates (art. 44 (2) of the act on the pledges by registration and the register of pledges). The copies and certificates issued by the Central Information on Pledges by Registration have the legal validity of the court documents. The Central Information on Pledges by Registration charges fees for the information, copies and certificates. The information, copies and certificates are issued on request of the interested persons. Because the register is computerized, the search for data in the register of pledges is made on the basis of the information included in the appropriate form of a motion submitted to the Central Information on Pledges by Registration. These forms include: the motion for issuing the copy of documents from the register of pledges (form DW-4), the motion for issuing the certificate of entering a subject as a pledger in the register of pledges (form DW-2) and the motion for quoting the item number of the register of pledges (form DW-3).

The motion for issuing the copy of documents from the register of pledges should include the item number of the register of pledges. The motion for issuing the certificate of entering a subject as a pledger in the register of pledges should include the following features: for natural persons – PESEL number, or the christian name and family name; and for the legal persons, limited partnerships, general partnerships and other subjects, not being natural persons – REGON number or the name. In the motion for issuing the certificate of entering a subject as a pledger of a specified object of pledge by registration in the register of pledges, the same features are included, as in the motion for issuing the certificate of entering a subject as a pledger in the register of pledges and the item number in the Catalogue of the ways of describing the objects of pledge.<sup>29</sup> It is also allowed to indicate the features, as in the motion for issuing the certificate of entering a subject as a pledger in the register of pledges and the item number in the Catalogue of the ways of describing the objects of pledge, and also a feature identifying the object of the pledge which, according to the Catalogue of the ways of describing objects of the pledge, is the so-called distinctive feature (search feature). If PESEL or REGON numbers were not indicated in the motion for issuing the certificate of entering the subject as a pledger in the register of pledges and in the motion for issuing the

---

<sup>28</sup> See the ordinance of the Minister of Justice, of 15 October 1997, on the structure and organization of the Central Information on Pledges by Registration and detailed principles of issuing information, copies and certificates (JL No. 134, item 893 with later amendments).

<sup>29</sup> The Catalogue of the ways of describing the objects of pledge is annex 1 to the ordinance of the Minister of Justice, of 15 October 1997 on the details of organization and holding of the registers of pledges (JL No. 134, item 892).

certificate of entering a subject as a pledger of a specified object of pledge by registration in the register of pledges, a middle name and the address details may be stated, such as the name of the province, commune and place, while for the legal persons, limited partnerships, general partnerships and other subjects, not being the natural persons, only the address details may be stated, such as the province, commune and place names. In the motion for an item number of pledge by registration in the register of pledges to be quoted, the file number should be indicated. The motions directed for the Central Information on Pledges by Registration, may be submitted to the Customer Service Department in Warszawa or its branches located by the courts holding the registers of pledges. The branch may reveal information or issue copies and certificates only replying to the motions handed directly in this branch. The motions, which arrive in the branch by post are then transferred to the Customer Service Department in Warszawa. The motions which are not properly completed, not paid for or underpaid, are left without any further actions, of which the sender is informed.

When the motion for issuing the copy from the register of pledges is accepted, the Central Information on Pledges by Registration issues the copy or informs the mover of the lack of the specified item number in the register of pledges, or issues information of removing of the pledge by registration of the specified item number, along with the date of the removal and name of the court, which made the decision of removal. The copy issued by the Central Information on Pledges by Registration may be abbreviated, current or full. The abbreviated copy includes the current data concerning the pledger, defined in the column three, boxes one to seven, of the specified item of the register of pledges. The current copy includes the current content of the entries in the register of pledges, under the specified item number. The full copy includes all the entries made in the register of pledges under the specified item number. Each copy includes also the information of the proceedings pending, concerning the changes in the entry or removal of the pledge of the specified file number, or that no such proceedings are being carried. The information of a lack of the specified item number in the register of pledges is issued when the register does not contain any data concerning the number. In the case, when the pledge under the specified item number has been removed, the relevant information is issued, including the date of the removal and the name of the court, which made the decision of removal. When the motion for issuing certificates of entering the subject as a pledger in the register of pledges or of entering a subject as a pledger of a specified object of pledge by registration in the register of pledges is accepted, the Central Information on Pledges by Registration may issue the following kinds of documents: the certificate of a lack of entry of the subject in question as a pledger in the register of pledges or of entry of the subject in question as a pledger of a specified object of pledge by registration in the register of pledges, indicating, that the proceedings are being carried under the specified file number, concerning

entering the new pledge by registration, where the subject in question acts as a pledger, or concerning entering the new pledge of registration, where the subject in question acts as a pledger of a specified object of pledge in registration, or that no such proceedings are being carried; or a certificate that the subject in question, as a pledger or as a pledger of a specified object of pledge by registration, has been entered in the register of pledges under the specified item number, indicating, that the proceedings are being carried under the specified file number, concerning entering the new pledge by registration, where the subject in question acts as a pledger, or concerning entering the new pledge of registration, where the subject in question acts as a pledger of a specified object of pledge in registration, or that no such proceedings are being carried. In reply to the submitted motions for giving the item number under which the pledge by registration has been recorded in the register of pledges, the Central Information on Pledges by Registration offers the following four types of information: of the absence of the case of the specified file number in the Register of Pledges Center; of the item number in the register of pledges, which is relevant for the specified file number; of the fact, that the case of the specified file number is open, indicating the date when the motion was handed; and of the situation, that the pledge by registration of the specified file number has been removed, indicating the date of removal and the name of the court which made the decision of removal.

### **III. National Court Register**

#### **1. General information**

On 1 January 2001 new provisions of the act on the National Court Register, of 20 August 1997 entered into force.<sup>30</sup> The act established the all-Poland central National Court Register. The main goal of the creators of the act on the National Court Register was to establish a court register of all economic subjects registrable in the courts or liable to report for administrative records, and other non-commercial subjects registrable in the courts.<sup>31</sup> Considering the tradition and convinced that only the courts guarantee proper resolving of all the questionable issues of the registration proceedings, the authors of the act appointed the courts to hold the established register, aware of the fact that in other countries the registers of economic subjects are held by extra-judicial institutions.<sup>32</sup>

---

<sup>30</sup> Uniform text in JL No. 17, item 209, of 2001 with later amendments

<sup>31</sup> See the explanatory statement to the project of the act of the Court Economic Register, parliamentary paper no. 1882, of the 2<sup>nd</sup> term of Parliament of the Republic of Poland.

<sup>32</sup> Ibid.

## **2. Legal sources, and the organization and functioning of the National Court Register**

The regulations governing the organization and functioning of the National Court Register may be found not only in the act on the National Court Register, but also in some other acts of law. These are in particular the following legal documents: the act of 20 August 1997 – the provisions introducing the act on the National Court Register<sup>33</sup>, The commercial company code<sup>34</sup>; and also the following executive regulations: the ordinance of the Minister of Justice, of 20 December 2000, on the detailed way of holding the registers included into the National Court Register, and the details of the entry contents in these registers<sup>35</sup>, the ordinance of the Minister of Justice, of 21 December 2000, on the structure and organization of the Central Information of the National Court Register, and the detailed principles of issuing information from the National Court Register<sup>36</sup>, the ordinance of the Minister of Justice, of 21 December 2000, on official form models for the motions for entry in the National Court Register, and the ways and places in which they are available<sup>37</sup>, the ordinance of the Minister of Justice, of 21 December 2000, on the ways of conducting the actions connected with holding the National Court Register by the communes, and the co-operation between the registry courts and communal governments<sup>38</sup>, the ordinance of the Minister of Justice, of 21 December 2000, on the level of charges for issuing the information, copies and certificates from the National Court Register<sup>39</sup>, the ordinance of the Minister of Justice, of 21 December 2000, on the qualifications required from the candidates for the positions of trustees, appointed according to the provisions of the act on the National Court Register, the ways of listing these candidates and data covered by the lists of candidates<sup>40</sup>, the ordinance of the Minister of Justice, of 21 December 2000, on the definition of the lowest and highest levels of rewarding for the trustees<sup>41</sup>, the ordinance of the Minister of Justice, of 21 December 2000, on the way of storing the hitherto registers and transferring the register files, and issuing copies, extracts and certificates.<sup>42</sup>

The National Court Register is held as a computer system by the district courts (economic courts), responsible for the province area, or its part, called the registry courts (art. 2 (1) of the act on the National Court Register). Currently the courts holding the National Court Register

<sup>33</sup> JL No. 121, item 770 with later amendments

<sup>34</sup> for more details see especially art. 5, art. 21, art. 26, art. 27, art. 93, art. 110, art. 133, art. 164-172, art. 188, art. 316-327 of the commercial company code (JL No. 94, of 2000, item 1037).

<sup>35</sup> JL No. 117, item 1237 with later amendments.

<sup>36</sup> JL No. 117, item 1238.

<sup>37</sup> JL No. 118 item 1247 with later amendments.

<sup>38</sup> JL No. 118, item 1248.

<sup>39</sup> JL No. 117, item 1240.

<sup>40</sup> JL No. 117, item 1241.

<sup>41</sup> JL No. 117, item 1242.

<sup>42</sup> JL No. 117, item 1239.

are located in twenty cities, as follows: Białystok, Bielsko-Biała, Bydgoszcz, Gdańsk, Gliwice, Katowice, Kielce, Koszalin, Kraków, Lublin, Łódź, Olsztyn, Opole, Poznań, Rzeszów, Szczecin, Toruń, Warszawa, Wrocław and Zielona Góra. Also the communes conduct the actions connected with holding the National Court Register, as the entrusted duties. These actions consist on ensuring the right to inspect Polish Classification of Activities and the official forms of motions for registration of one-man businesses and general partnerships for all interested parties, and on making available the information concerning the charges, the ways of payment and territorial jurisdiction of the registry courts (art. 2 (2) of the act of the National Court Register).

The National Court Register consists of three sub-registers: the register of enterprises; the register of associations, other social and professional organizations, foundations and public health service institutions; and the register of the insolvent debtors (art. 1 (2) of the act on the National Court Register). The authors of the act on The National Court Register assumed that it should define full range of data entered into the register.<sup>43</sup> Therefore the structure of the National Court Register was described in the introduced act. The National Court Register includes the subjects, which, according to the regulations of the acts are liable to being entered into one of the sub-registers.

The register of enterprises includes the following subjects:

1. natural persons undertaking economic activity<sup>44</sup>,
2. general partnerships,
3. partnership companies,
4. limited partnerships,
5. limited-stock partnerships,
6. limited liability companies,
7. joint stock companies,
8. co-operatives,
9. state-owned enterprises,
10. research and development units,
11. enterprises defined in the provisions of conducting the economic activity of a small manufacturing business of the foreign natural and legal persons on the territory of the Republic of Poland,

<sup>43</sup> See the explanatory statement to the Act of the Court Economic Register, parliamentary paper no. 1882, of the 2<sup>nd</sup> term of Parliament of the Republic of Poland.

<sup>44</sup> According to art. 1a of the act of 20 August 1997, the regulations introducing the act on the National Court Register (JL No. 121, item 770 with later amendments). Until 31 December 2003, undertaking the economic activity by the natural persons requires only the entry in the records of economic activity, based on the principles defined in art. 88a-88g of the act, of 19 November 1999, the economic activity law (JL No. 101, item 1178 with later amendments).

12. mutual insurance companies,
13. other legal persons, if they conduct the economic activity and are subject to entry into the register of associations, other social and professional organizations, foundations, and public health service institutions,
14. branches of the foreign enterprises, acting on the territory of the Republic of Poland,
15. main branches of the foreign insurance companies.

The data regarding specific enterprises entered into the register of entrepreneurs, are stored under a number destined for a specified subject, in six sections. These sections are then divided into columns, sub-columns and boxes. The kind of data inserted into each section is defined by the provisions of art. 38, 39, 40, 41, 43 and 44 of the act on the National Court Register, and the detailed principles of holding the register of enterprises and the details of the content of the entries in this register are defined by the executive regulations based in art. 48 of the act on the National Court Register.<sup>45</sup>

The register of associations, other social and professional organizations, foundations, and public health service institutions includes the following subjects:

1. associations
2. local branches of the associations, possessing their own legal personalities,
3. association unions,
4. foundations,
5. independent public health service institutions,
6. medical transport institutions,
7. agricultural sets,
8. farmers' branch associations,
9. unions of farmers, agricultural sets and organizations,
10. unions of farmers' branch associations,
11. farmers' trade unions,
12. craft guilds,
13. chambers of crafts,
14. Polish Craft Association,
15. confederations of commerce and services,
16. confederations of transport,

---

<sup>45</sup> See the ordinance of the Minister of Justice, of 20 December 2000, on the detailed way of holding the registers included into the National Court Register, and the details of the entry contents in these registers (JL No. 117, item 770, with later amendments).

17. national representations of confederations of commerce and services,
18. national representations of confederations of transport,
19. other organizations of economic subjects,
20. chambers of commerce,
21. the Domestic Chamber of Commerce,
22. trade unions,
23. organizational units of trade unions, possessing their own legal personalities,
24. national inter-branch associations,
25. national inter-branch confederations,
26. unions of employers,
27. federations and confederations of the unions of employers,
28. physical culture associations
29. sports unions,
30. Polish sports unions,
31. national physical culture associations,
32. other social and professional organizations, subject to entry into the National Court Register.

If a subject entered into the register of associations, other social and professional organizations, foundations, and public health service institutions undertakes economic activity, becomes liable to entry into register of enterprises, except for the independent public health service institutions and medical transport institutions. The registration of the non-commercial subjects does not require appropriate announcements in the Judicial and Economical Monitor. The data regarding specific subjects entered in the register of associations, other social and professional organizations, foundations, and public health service institutions are stored under the number destined for the specified subject, in six sections. These sections consist of columns, sub-columns and boxes. The kind of data inserted into each section is defined by the provisions of art. 38, 39, 41, 43, 44, 52 and 53 of the act on the National Court Register, and the detailed principles of holding the register of associations, other social and professional organizations, foundations, and public health service institutions; and the details of the content of the entries in this register are defined by the executive regulations based in art. 53 of the act on the National Court Register.<sup>46</sup>

---

<sup>46</sup> See the ordinance of the Minister of Justice, of 20 December 2000, on the detailed way of holding the registers included into the National Court Register, and the details of the entry contents in these registers (JL No. 117, item 770, with later amendments).

The register of the insolvent debtors includes *ex officio*:

1. natural persons conducting economic activity, if their bankruptcy has been declared or if the motion for the declaration of bankruptcy has been legally overruled due to the lack of sufficient assets to cover the cost of the bankruptcy proceedings, or the administrative or judicial enforcement carried out against them has been discontinued because of the fact, that the enforced sum of money will be less than the enforcement expenses,
2. partners subject to unlimited personal liability for the company's obligations, except for the limited partners in the limited partnership, if its bankruptcy has been declared or if the motion for the declaration of bankruptcy has been legally overruled due to the lack of sufficient assets to cover the cost of the bankruptcy proceedings, or the administrative or judicial enforcement carried out against them has been discontinued because of the fact, that the enforced sum of money will be less than the enforcement expenses,
3. debtors, who are subject to affidavit of assets in the course of the regulations concerning the enforcement proceedings defined in the Code of the Civil Procedure,
4. persons, who, by the decisions of the court conducting the bankruptcy proceedings, have been divested of the right to conduct economic activity on their own and fulfill a function of a representative or plenipotentiary of an entrepreneur, member of a supervisory board and audit committee in a joint stock company, limited liability company or co-operative.

Additionally, on request of a creditor holding a valid order for enforcement against a natural person, a debtor is entered into the register of the insolvent debtors, who has not covered the liabilities defined in the order for enforcement within the period of 30 days from the date of the call for fulfilling the obligation. The registration of the insolvent debtors does not require appropriate announcements in the Judicial and Economic Monitor. The registry court *ex officio* removes the entries from the register of insolvent debtors in case of quashing or change of the decision which formed the grounds for the entries. The registry court removes the entries *ex officio* also when the decision of declaration of bankruptcy has been reversed. This is done on request of the person entered in the register of insolvent debtors, when the order for enforcement which was the grounds for the entry, has been annulled by the valid decision of the court. The entries in the register of the insolvent debtors are removed after the period of 10 years from the date they were made. The entries, which have been removed in full, are not subject to disclosure. The register of insolvent debtors is divided into sections and boxes. The kind of data inserted into the register of the insolvent debtors is defined by the provisions of art. 57 of the act on the National Court

Register, and the detailed principles of holding the register of the insolvent debtors and the details of the content of the entries in this register are defined by the executive regulations based on art. 60 of the act on the National Court Register.<sup>47</sup>

The proceedings before the registry courts are based on the provisions of the Code of Civil Procedure, regarding the non-litigious procedure, unless the act states otherwise. It is a rule, that the entries into the National Court Register are made on request. The regulations provide also the possibility of inserting an entry into the National Court Register, by the registry court *ex officio*.<sup>48</sup> The motion for entry into the National Court Register should be delivered no later than 7 days after the event justifying the entry, unless the specific regulation provides otherwise.

In the procedure of inserting an entry into the National Court Register the motion must be delivered on the official form. Currently there are 67 models of the official forms, which cover all kinds of motions for entry into the register, for all kinds of entered subjects.<sup>49</sup> The forms allow accurate statement of the request included in the motion for entry into one of the registers constituting the National Court Register, which is a necessary condition for inserting the content into the register held in a computer system.<sup>50</sup>

In case when a natural person is entered into the National Court Register, the motion should include the family name, christian and middle names, and the PESEL number.<sup>51</sup> In case when a subject, other than a natural person is entered into the National Court Register, the motion should include the name of the person or company, and the identification number, so called REGON.<sup>52</sup> If the subject is registered in one of the sub-registers constituting the National Court Register, also his number in this sub-register should be stated (art. 35 of the act on the National Court Register).<sup>53</sup> It allows the comparison of the data submitted to the National Court Register with the data concerning the specified subject, already stored in one of the sub-registers. The courts which hold the National Court Register give their opinions on the entries and then make them in the central registry facilities of the National Court Register, inserting the data into the operating

<sup>47</sup> See the ordinance of the Minister of Justice, of 20 December 2000, on the detailed way of holding the registers included into the National Court Register, and the details of the entry contents in these registers (JL No. 117, item 770, with later amendments).

<sup>48</sup> See especially art. 12 (2) and (3), art. 20 (3), art. 24 (3), art. 25, art. 31 (2), art. 45 (1), (2), (3), (4) and (5), art. 46 (2), art. 55, art. 59 (1) and (2), and art. 60 (1) of the act on the National Court Register; art. 8 (2) of the act of 25 July 1985, on the research and development entities (Uniform text in JL No. 33, item 388 of 2001 with later amendments); art. 74 § 1 and 2, art. 277 § 3, art. 464 § 3, art. 510 § 1, art. 545 § 1, and art. 552 of the Code of Commercial Companies; art. 3 (3), art. 6 (4), and art. 10 (1) of the act of 20 August 1997, the regulations introducing the act on the National Court Register (JL No. 121, item 770 with later amendments).

<sup>49</sup> See annexes 1-47, 49-59 and 60-69 to the ordinance of the Minister of Justice, of 21 December 2000, on official form models for the motions for entry in the National Court Register, and the ways and places in which they are available (JL No. 118, item 1247 with later amendments).

<sup>50</sup> See the explanatory statement for the project of the ordinance of the Minister of Justice on official form models for the motions for entry in the National Court Register, and the ways and places in which they are available; Materials of the Department of the All-Polish Court Registers Center and Information Technologies, unpublished.

<sup>51</sup> See the act of 10 April 1974, on the census and identity documents (Uniform text in JL No. 87, item 960 of 2001, with later amendments).

<sup>52</sup> See the act of 29 June 1995, on the public statistics (JL No. 88, item 439, with later amendments).

<sup>53</sup> This order does not refer to the subjects not obliged to hold PESEL or REGON identification numbers.

computer system, and also hold and make available the registry files. The maintenance of the central registry facilities is ensured by the Center of the National Court Register.

### **3. Free access to the National Court Register**

The National Court Register is open and everyone has free access to the data included in one of three sub-registers via the Central Information of the National Court Register. Everyone has also the right to obtain the certified copies, extracts and certificates concerning the data included in the National Court Register (art. 8 of the act on the National Court Register). The relevant provision expresses the principle of formal free access to the National Court Register. This principle is additionally emphasized by the content of art. 10 (1) of the act on the National Court Register. This regulation states, that everyone has the right to inspect the register files of the subjects entered into the register of enterprises. It follows that everyone has free access to the data included in the National Court Register and the right to inspect the register files of the subjects entered into the register of enterprises, without any need to show the legal interest, or any other interest which should be protected. Limitations of the possibilities of inspecting the files refer only to the register files of other subjects than those entered into the register of enterprises, and also the files of subjects entered into the register of the insolvent debtors. A supplement to the principle of free access to the National Court Register is the regulation of art. 13 (1) of the act on the National Court Register, providing the obligation to announce all the entries inserted into the National Court Register in the Judicial and Economic Monitor, unless the act provides otherwise. This regulation, along with the norm specified by art. 8 of the act on the National Court Register constitute the principle of extended formal free access to the National Court Register. The entries which are not subject to the announcement are the ones regarding natural persons undertaking economic activity (art. 13 (2) of the act on the National Court Register).

The necessity of announcing certain information is also stated in art. 5 of the Code of Commercial Companies. According to this provision the documents and information regarding the associations of capital and limited-stock partnerships require an announcement or submitting the documents or information in the registry court, considering the regulations concerning the National Court Register. Also the information of achieving or loss of the dominant position of the commercial company in the joint stock company. The statutes of the company may provide that instead of announcing, the stockholders may be informed by means of registered letters. The announcements required by law and issued by the company, are published in the Judicial and Economic Monitor, unless the act provides otherwise. The company agreement or statutes may also impose an obligation of issuing other forms of announcements.

The principle of extended formal free access to the National Court Register is the basis of the principle of physical free access to this register, expressed in the provisions of art. 14, 15 and 16 of the act on the National Court Register. According to art. 15 of the act on the National Court Register, from the day when the entries are announced in the Judicial and Economic Monitor, the ignorance of these entries is no longer an acceptable excuse for anyone. However, regarding the actions taken within the period of sixteen days after the announcement, the subject entered into the National Court Register may not refer to the entry towards any third party, if this party can prove that they could not know the content of the entry. In case of differences between the entry in the National Court Register and the announcement in the Judicial and Economic Monitor, the entry in the register is valid. However, any third party may refer to the content of the announcement, unless the subject entered into the National Court Register can prove the third party knew the content of the entry. The third party may refer to those documents and data, in relation to which the obligation of announcing has not been yet fulfilled, if the lack of announcement does not deprive it of the legal effect. If the entry into the National Court Register is not subject to announcement in the Judicial and Economic Monitor ignorance of the content of the entry is no longer an acceptable excuse for any person, unless they could not know about the entry, despite showing due diligence (art. 16 of the act on the National Court Register). These provisions express the positive aspect of the principle of physical free access and establish the presumption of common knowledge of the data inserted into the National Court Register. It is a rebuttable presumption, which means it can be abolished in the case when a third party can prove, that they could not know about the registered and announced data (in the situation referred to in art. 15 of the act on the National Court Register) or of the registered data (in the situation described in art. 16 of the act on the National Court Register). The very proving that the third party did not know about the data is not sufficient. However, the regulations of art. 14 of the act on the National Court Register express the negative aspect of the physical free access. According to this article the subject obliged to submitting the motion for the entry into the National Court Register may not refer towards any third parties acting in good faith, to the data, which were not entered into the National Court Register or were removed from the register.

Simultaneously the principle of the presumption of truthfulness of the entry follows art. 17 of the act on the National Court Register. The presumption of truthfulness of the entry, i.e. its conformance to the existing legal and factual status, seems to have been also included in art. 24 of the Commercial Code.<sup>54</sup> The subject entered into the National Court Register is responsible for

---

<sup>54</sup> And so referring to art. 24 of the Commercial Code see J. Szwaja, in *System Prawa Gospodarczego Prywatnego. Prawo Spółek*, ed. by St. Włodyka, Kraków, 1996, p. 263; P. Suski, *Rejestry sądowe: spółek handlowych, spółdzielni, przedsiębiorstw państwowych*,

any damage caused by stating untrue data in the register, if they were entered on the subject's request, and also by not stating any data subject to entry into the National Court Register, within the period specified in the act, unless the damage was due to force majeure or was caused solely by the wronged person or any other third party, for which the subject bears no responsibility (art. 18 (1) of the act on the National Court Register). If a commercial company is entered into the National Court Register, the responsibility mentioned in paragraph 1 is born jointly and severally by the company and the persons subject to unlimited personal liability for the company's obligations (art. 18 (2) of the act on the National Court Register).

For each subject entered into the National Court Register separate register file is held, including in particular the documents forming the grounds for the entry. If a specific regulation orders to submit specified data to the registry court or to enter them into the National Court Register, and the data are not subject to entry into any of the sub-registers constituting the National Court Register, according to the act on the National Court Register, then the documents including them should be submitted to the register files. In case when the subject entered into the National Court Register acts on the basis of an agreement or statutes, this agreement or statutes should be attached to the motion for entering into the register. In case of any changes in the agreement or statutes of the company or any other subject entered into the National Court Register, the full uniform text of the revised agreement or statutes should be attached to the motion regarding these changes. The provisions of the form of the legal transaction do not apply to the submitted uniform text. The register files include the set of specimen signatures of the persons authorized to represent the subject entered into the National Court Register and every person has a right to inspect this set. The specimen signatures are not held for the natural persons conducting economic activity.

#### **4. The organization and functioning of the Central Information of the National Court Register**

As it was indicated earlier, every person has the right to free access to the data stored in the National Court Register via the Central Information of the National Court Register. The Central Information of the National Court Register is an agency of the Ministry of Justice and consists of the head office in Warszawa and its branches located by the courts holding the registers of pledges.<sup>55</sup> The main goal of the Central Information of the National Court Register is creation and use of the links within the computerized National Court Register, and transferring *ex officio* all

---

Warszawa 1994, p. 75; and opposite see M. Wrzolek-Romańczuk, *Rejestr handlowy – zagadnienia materialnoprawne i procesowe*, Pal. No. 3-4, of 1992, p. 28.

<sup>55</sup> See the ordinance of the Minister of Justice, of 21 December 2000, on the structure and organization of the Central Information of the National Court Register and detailed principles of issuing information from the National Court Register (JL No. 117, item 1238).

the data from the National Court Register, concerning entering or removing the enterprise, along with its address and major business activity, to the appropriate local authorities within seven days from the date of entering the data into the National Court Register (art. 4 (2) of the act on the National Court Register). The Central Information of the National Court Register charges fees for the issued information, copies and certificates from the National Court Register, which have the legal validity of the court documents. The State Treasury and state agencies not conducting any economic activities do not incur any charges for obtaining copies, extracts and certificates from the National Court Register.

The Central Information of the National Court Register issues copies, extracts, certificates and other kinds of information from the National Court Register on request, derived from the data found in the register of enterprises or register of non-commercial subjects, corresponding to the requested data. The copies issued by the Central Information of the National Court Register may be full or current. The full copy of documents from one of the registers includes all the entries made in the specified register, under the specified KRS number, starting from the very first entry, except for the entries not subject to disclosure. The current copy includes the current content of the entries in the specified register, under the specified KRS number. The extract from the register of enterprises or register of non-commercial subjects includes the current content of the entries concerning the subject entered into the register under the specified KRS number, covering the register sections indicated by the mover. The Central Information of the National Court Register issues also the following certificates: the certificate that a specified subject has been entered into the register of enterprises or the register of non-commercial subjects, under a specific KRS number; the certificate that a specified subject has not been entered into the register of enterprises or register of non-commercial subjects; and the certificate that a specified subject has been removed from either of the above mentioned registers. The motions for issuing a copy, extract or certificate from the register of enterprises or register of non-commercial subjects are submitted in special official forms. There are several types of these forms: motion for issuing the copy of documents from the National Court Register (form CI KRS-COD), motion for issuing the extract from the National Court Register (form CI KRS-CWY), motion for issuing a certificate of entering the subject into the National Court Register (form CI KRS-CT), motion for issuing the certificate that a subject has not been entered into the National Court Register (form CI KRS-CZN), motion for issuing the

certificate of removing the subject from the National Court Register (form CI KRS-CZW) and motion for quoting the KRS number (form CI KRS-CNR).<sup>56</sup>

The motion submitted to the Central Information of the National Court Register should define the kind of requested copy, extract or certificate and quote one of the following identifications, dependant on the kind of subject searched. For the entrepreneurs – natural persons – these are, in turn: the KRS number, PESEL number, and christian and family name – only for the certificates that a specified subject is not entered into the register of enterprises. For other subjects, entered into the register of enterprises or register of non-commercial subjects these are the following features: KRS number, REGON number, and accurate description of the company (name) and, if necessary, also the head office – only for the certificates that the specified subject is not entered into the register of enterprises or register of non-commercial subjects. In cases when the motion includes more than one of the identifications listed above, the search in the register follows only one of them, in accordance with the sequence stated above. In case when the christian name, family name, company name are stated in the motion as the identifications for search of the item in the register of enterprises or register of non-commercial subjects, special rules are applied, used in case of the so-called equivalence: of the christian names, family names and company names.<sup>57</sup> If issuing an extract or copy is not possible due to the absence of the specified subject in the register of enterprises or register of non-commercial subjects, then a written notice is issued, explaining the circumstances making the issuance of the extract or copy impossible. If the data entered into the register are insufficient to issue the requested certificates, which were mentioned above, the Central Information of the National Court Register issues a written notice explaining the circumstances making the issuance of the requested certificate impossible. Additionally the Central Information of the National Court Register issues written information concerning the KRS number, under which the specified subject has been entered. This information is also issued on request. The motion is submitted in an official form. The motion for quoting the KRS number should include only one of the following features: for the entrepreneurs – natural persons – these are, in turn: PESEL number, the christian and family name, or the name of the enterprise run by the entrepreneur, and if necessary also the address data, limited to the commune and county names (all these components may be also stated jointly). For other subjects entered into the register of enterprises or register of non-commercial subjects the features are as follows: REGON number, company name, and

---

<sup>56</sup> See annexes 1-6 to the ordinance of the Minister of Justice, of 21December 2000, on the structure and organization of the Central Information of the National Court Register and detailed principles of issuing information form the National Court Register (JL No. 117, item 1238).

<sup>57</sup> See annex 10 to the ordinance of the Minister of Justice, of 21December 2000, on the structure and organization of the Central Information of the National Court Register and detailed principles of issuing information form the National Court Register (JL No. 117, item 1238).

if necessary the legal form and the address data limited to the commune and county names. In cases when the motion includes more than one of the identifications listed above, the search in the register follows only one of them, in accordance with the sequence stated above. In case when the christian name, family name, company name are stated in the motion as the identifications for search of the item in the register, special rules are applied, used in case of the so-called equivalence: of the christian names, family names and company names.<sup>58</sup>

The information obtained as a result of submitting the motion for quoting the KRS number includes the following data: for the entrepreneurs – natural persons: KRS number, christian name (names), family name, seat address, the name of the enterprise run by the entrepreneur, and private address, if provided in the motion, limited to the commune and county names. For other subjects entered into the register of enterprises or register of non-commercial subjects, the information includes: KRS number, company name, definition of the legal form, head office address and REGON number. In cases, when the search results exceed 100 items of the National Court Register, the written notice is issued, which includes only the indication of the number of all items. Whereas, when no subject fulfilling the specified criteria has been found in the register on the basis of the data provided in the motion, a written notice is issued indicating lack of the KRS number for the subject specified of the identifications in the motion.

Regarding the principles of issuing information, certificates and copies of documents from the register of the insolvent debtors, it has to be pointed out, that the Central Information of the National Court Register issues solely: full or current copies, and certificates that the specified subject is entered into the register of the insolvent debtors, or certificates that the specified subject is not entered into the register of the insolvent debtors. In the motion for issuing the copy, the kind of requested copy should be indicated and also the item number in the register of the insolvent debtors. In the motion for issuing certificates from the register of insolvent debtors, the kind of the requested certificate should be indicated, and for the natural persons the following features should be stated: debtor's PESEL number, christian name (names) and family name. For other subjects the following features should be stated: REGON number, company name, and KRS number of the subjects entered into the National Court Register. The motions for issuing copies and certificates from the register of the insolvent debtors are also submitted on special official forms. There are the following kinds of forms: the motion for issuing a copy of documents form the register of the insolvent debtors (form CI KRS-CDO), the motion for issuing the certificate that a subject is entered into the register of the insolvent debtors (CI KRS-CDT), and the motion for issuing the

---

<sup>58</sup> For details see annex 10 to the ordinance of the Minister of Justice, of 21 December 2000, on the structure and organization of the Central Information of the National Court Register and detailed principles of issuing information form the National Court Register (JL No. 117, item 1238).

certificate that the subject is not entered into the register of insolvent debtors (CI KRS-CDN). The motions for issuing copies, extracts, certificates, or any other information by the Central Information of the National Court Register are submitted to the head office or in its branches. Any branch of the Central Information of the National Court Register issues information, certificates, extracts and copies from the National Court Register, only as a reply to the motion submitted to this very branch. The head office of the Central Information of the National Court Register issues information on the same basis as the branches and additionally issues information by post, and also distributes the official forms of motions for issuing copies, extracts or certificates from the National Court Register to all interested parties. To the motions submitted directly, an original payment receipt should be attached, and to the motions submitted by post, an original or a copy of payment receipt should be attached. The State Treasury and state agencies, i.e. the subjects not conducting any economic activities which do not incur any charges for obtaining copies, extracts and certificates from the National Court Register, must submit their motions only in the head office of the Central Information of the National Court Register. The motions which are not properly completed, not paid for or underpaid, or the motions submitted directly to the head office or its branch, but without the original payment receipt attached, are left by the Central Information of the National Court Register without any further actions, of which the mover is informed.

#### **IV. New land and mortgage register<sup>59</sup>**

##### **1. General information**

The analyses and project works regarding the use of information technology for the land and mortgage registers have been carried out by the Ministry of Justice since 1995.<sup>60</sup> The first legislative result of these works was the amendment to the act of 6 July 1982, on the land and mortgage register, introduced in 2001.<sup>61</sup> The provisions of the act of 11 May 2001 on the amendment to the act on the land and mortgage register, the act Code of the Civil Procedure, the act on the court fees in the civil cases, and the act on the notarial services law<sup>62</sup> introduced a number of legislative changes, which aim at improving the court register system and full implementation of the modern land and mortgage register system, as the traditional system of records done by hand in the land and mortgage register has become outdated in the age of electronic data processing,

---

<sup>59</sup> The notion „New land and mortgage register” appears in the documents of the Ministry of Justice, defining the computerized land and mortgage register, as referred to in art. 25 of the act on the land and mortgage register.

<sup>60</sup> See the explanatory statement for the project of the act on transferring the content of the land and mortgage register to the computerized structure of the land and mortgage register and of the amendment to the act the Code of the Civil Procedure and the act on the land and mortgage register, parliamentary paper no. 773 of the 4<sup>th</sup> term of the Parliament of the Republic of Poland.

<sup>61</sup> Uniform text in JL No. 124, item 1361, of 2001, with later amendments.

<sup>62</sup> JL No. 63, item 635.

which supports the need for replacing it with the modern computer system using a central database.<sup>63</sup> Considering all the above mentioned goals, especially art. 25 was added to the content of the act on the land and mortgage register. The introduced regulation enabled establishing and holding computerized land and mortgage registers, and simultaneously imposed an obligation on the Minister of Justice to create a computer system of establishing and holding these registers, in which all the features of the land and mortgage registers, held in a way referred to in art. 25 (1) and (2) of the land and mortgage registers will be preserved<sup>64</sup>, and additionally imposed an obligation on the Minister of Justice to create a way of inspecting the computerized land and mortgage registers.

## **2. Migration of the land and mortgage registers**

All the land and mortgage registers have been until now held as paper documents. Due to this form, it is not technically possible to use the data included in the existing land and mortgage registers in the computerized land and mortgage registers.<sup>65</sup> In order to allow the transfer of the data entered into the existing land and mortgage registers to the computerized land and mortgage registers, it was necessary to create a special regulation by law of the importance of an act, defining the rules of transferring the contents of the existing land and mortgage registers to the computerized structures of the land and mortgage registers.<sup>66</sup> To this end, the act of 14 February 2003 was created, on transferring the contents of the land and mortgage registers into the computerized structure of the land and mortgage registers<sup>67</sup>, which entered into force on 1 July 2003. The act regulates the rules and procedures of the so-called migration of the land and mortgage

<sup>63</sup> See the explanatory statement for the project of the act on the amendment of the act on the land and mortgage register, the act Code of the Civil Procedure, the act on the court fees in the civil cases, and the act on the notarial services law, parliamentary paper no. 1680 of the 3<sup>rd</sup> term of the Parliament of the Republic of Poland.

<sup>64</sup> The provisions of art. 25 have the following content:

Paragraph 1. The land and mortgage register consists of four sections, of which:

section one includes the description of the real estate and the entries of the rights regarding the ownership,

section two includes the entries regarding the ownership and perpetual usufruct,

section three is designed for the entries regarding the limited rights in property, except for the mortgages, the entries regarding the limitations of the disposal of property or perpetual usufruct, and the entries of other rights and claims, except for the claims concerning the mortgages,

section four is designed for the entries regarding the mortgages.

Paragraph 2. The land and mortgage register for the limited rights in property consists of four sections, of which:

section one includes the description of the premises or the detached house and the description of the real estate to which it is joined,

section two includes the entries regarding the person which is vested in the cooperative member's right to their own apartment, the cooperative member's right to use of the business activity premises, or the right to the detached house in the building cooperative,

section three is designed for the entries regarding the limitations of the disposal of rights, and entries of other rights and claims, except for the claims concerning the mortgages,

section four is designed for the entries regarding the mortgages.

Paragraph 3. The land and mortgage register is held according to the established models, covering specific sections of the land and mortgage register.

<sup>65</sup> See the explanatory statement for the project of the act on transferring the content of the land and mortgage register to the computerized structure of the land and mortgage register and of the amendment to the act the Code of the Civil Procedure and the act on the land and mortgage register, parliamentary paper no. 773 of the 4<sup>th</sup> term of the Parliament of the Republic of Poland.

<sup>66</sup> Ibid.

<sup>67</sup> JL No. 42, item 363.

register, the organization of the migration centers of the land and mortgage registers, and the tasks of the district courts and the migration centers during the migration. The term “migration of the land and mortgage register” describes the totality of activities aimed at transferring the contents of the land and mortgage registers held in accord with the established models (the so-called existing land and mortgage registers) into the computerized structure of the land and mortgage registers. The migration center is an organizational unit of the circuit court (the branch), acting on behalf of the district court, which holds the existing land and mortgage register. Transfer of the contents of the existing land and mortgage register into the computerized structure of the land and mortgage register takes place in the migration center, and is conducted with the use of the IT system, as referred to in art. 25 of the act on the land and mortgage register. The adopted solution of appointing special organizational units of the circuit courts, called the migration centers is justified by the huge amount of work connected with “rewriting” of over 14 million existing land and mortgage registers, and additionally aims at increasing the effectiveness of the migration process, which will be carried out by the prepared and specialized staff.<sup>68</sup> The basic feature, which differentiates the “New land and mortgage register” project from the projects concerning the National Court Register and the Register of Pledges, realized earlier by the Ministry of Justice, is the successive introduction of the “New land and mortgage register” project. As a consequence creation of the individual migration centers will be a time-consuming process.<sup>69</sup> The migration of the land and mortgage registers in the land and mortgage register departments of the individual courts begins with the introduction of the IT systems, as referred to in art. 25 of the act on the land and mortgage register, in these departments. When the migration starts, the relevant district court passes the existing land and mortgage registers on to the relevant migration center. In the above mentioned situation the provision of art. 36 (1) of the act on the land and mortgage register, which prohibits transmission of the land and mortgage register outside the building housing the department of the land and mortgage register, does not apply. The land and mortgage register subject to migration is passed on to the migration center for the period of ten days. At first the migration center receives those of the existing land and mortgage registers, which include the not examined motions. The rule is that, after the migration of the land and mortgage registers, held by the given department starts, no entries are made in the existing land and mortgage registers, however it is possible to inspect the existing land and mortgage registers, and issue the copies and

---

<sup>68</sup> See the explanatory statement for the project of the act on transferring the content of the land and mortgage register to the computerized structure of the land and mortgage register and of the amendment to the act the Code of the Civil Procedure and the act on the land and mortgage register, parliamentary paper no. 773 of the 4<sup>th</sup> term of the Parliament of the Republic of Poland.

<sup>69</sup> See the explanatory statement for the ordinance of the Minister of Justice on creating and dissolving of the migration centers, their number, location and territorial range. Materials of the Department of the All-Polish Court Registers Center and Information Technologies, unpublished.

extracts, until the existing land and mortgage registers are transferred to the migration center. Only in case of the prolonged obstacle in the migration process of the specific department of the land and mortgage register which cannot be overcome, Minister of Justice may, by means of special ordinance allow to make entries in the existing land and mortgage registers in the specified time. Migration will be held first of all for those land and mortgage registers, which were created or established after 1 January 1947, and also for the remote registers, i.e. created before 1 January 1947, for which further volumes were established, by the ordinance of Minister of Justice on 29 November 1946, on holding the existing mortgage registers (land, perpetual) after 31 December 1946.<sup>70</sup> Subject to migration are all the entries, mentions and annotations which have not been removed, except for signatures, entries of removal, changes of the removed entries and the entries concerning separation of a part of an immovable property. Transferring of the entries from the existing land and mortgage register into the computerized structure of the land and mortgage registers is conducted in a way which makes it impossible to change the contents or scope of the disclosed rights and claims. This applies also to the possibilities of correcting any noticed defects of the entry, done by the court *ex officio*, i.e. correcting these defects of the entry, which may not cause the discrepancies between the content of the land and mortgage register and actual legal status. In case of any doubts regarding the way of transferring the contents of the land and mortgage register, a judge or court official defines the part of the content of the land and mortgage register subject to migration and the way of inserting this content into the computerized structure of the land and mortgage register. When the content of the land and mortgage register subject to migration appears to be illegible, the judge or the court official undertakes the clarifying measures, aimed at defining the content of the land and mortgage register due to transfer. When these measures are completed, the judge or court official indicates the way of inserting the decoded content of the existing land and mortgage register into the computerized structure of the land and mortgage register. If the clarifying measures do not allow to define the content of the land and mortgage register, the existing land and mortgage register is returned to the district court, which *ex officio* undertakes immediately the activities aimed at defining the content, and in case of their ineffectiveness, closes the register. Closing of the register is not a verdict and thus is not subject to appeal. In the course of the migration of the land and mortgage registers, the migration center checks the consistency between the specification of the real estate in the existing land and mortgage register and the data included in the real estate cadastre, unless this check is impossible. The result of this check is then inserted in the land and mortgage register. To do this, the body holding the real estate cadastre ensures direct and free of charge access of the migration centers to the real estate

---

<sup>70</sup> JL No. 66, item 367 with later amendments.

cadastre database copies, without the right of transferring them to any third parties. Such solution allows to ensure the synchronization between the resources of the real estate cadastre with the land and mortgage registers which is one of the main direct objectives of the PHARE 2000 program.<sup>71</sup> The judge or court official, delegated to the migration center, approves the correctness of transferring the contents of the existing land and mortgage register to the computerized structure of the land and mortgage register. The approval may be done also by the employee of the migration center, provided that they were appointed by the migration center manager. From the moment that the content of the land and mortgage register is entered into the central database of the land and mortgage registers, the existing land and mortgage register becomes a part of the land and mortgage register files. The existing land and mortgage register is immediately returned to the district court, which attaches it to the land and mortgage register files. The district court assumes the content of the land and mortgage register entered into the central database of the land and mortgage registers, and supplements it immediately with the mentions of motions, cases initiated *ex officio*, remedies at law, and complaints of the court officials decisions, which were submitted during the period of migration. When these activities are completed, the transferred content of the existing land and mortgage register becomes the content of the computerized land and mortgage register and from this moment becomes accessible. Transfer of the content of the existing land and mortgage register into the computerized structure of the land and mortgage register is not a verdict and thus is not subject to appeal. Transfer of the content of the existing land and mortgage register into the computerized structure of the land and mortgage register is a purely mechanical process of transferring the entries.<sup>72</sup> As transfer of the content of the existing land and mortgage register into the structure of the computerized land and mortgage register is not a verdict, the act on migration provides specific procedure of correcting the errors made during the migration process of the land and mortgage registers. The correction is done by the court *ex officio* or on request of the interested party in the course of the non-litigious procedure. The court activities may be conducted by the court officials. The grounds for the decision are prepared only in case of an appeal. The court's decision concerning the correction may be also subject to complaint. The procedure of error correction does not require any court fees. In case, when after the completion of the migration of the land and mortgage registers held by the district court department, some existing land and mortgage register is still found there, the president of the district court immediately passes this register on to the land and mortgage register migration center or orders transferring the content

---

<sup>71</sup> See the explanatory statement for the project of the act on transferring the content of the land and mortgage register to the computerized structure of the land and mortgage register and of the amendment to the act the Code of the Civil Procedure and the act on the land and mortgage register, parliamentary paper no. 773 of the 4<sup>th</sup> term of the Parliament of the Republic of Poland.

<sup>72</sup> Ibid.

of this existing register into the computerized structure of the land and mortgage register within this department.

The act on transferring the content of the land and mortgage registers into the computerized structure of the land and mortgage registers changes also some regulations of the Code of Civil Procedure, regarding the land and mortgage registers. The act defines precisely the moment of making an entry in the computerized land and mortgage register. Because of the specific features of the IT systems, to make an entry, a judge's or court official's signature and inserting the entry into the central database of the land and mortgage registers are necessary.<sup>73</sup> By signature the electronic data are meant, which attached to some other data are used to identify the judge or court official acting in the IT system (art. 626 § 9 C.C.P.). The entry into the land and mortgage register is made only on request and within its limits, unless a specific regulation provides making the entry *ex officio*. Considering the motion for an entry the court examines only the content and form of the motion, of the documents attached, and the content of the land and mortgage register. In case of a motion for entry into the computerized land and mortgage register, the court *ex officio* examines the consistency of the data indicated in the motion with the data arising from the systems keeping the records of the common identification numbers, unless there are factual obstacles making such check impossible. However considering the motion for changing the specification of the real estate in the computerized land and mortgage register, the court additionally checks *ex officio* the data indicated in the motion and the specification of the real estate disclosed in the land and mortgage register with the data of the real estate cadastre, unless there are factual obstacles making such check impossible. The lack of data consistency in both above mentioned cases creates an obstacle in registration. It must be emphasized that in the proceedings regarding land and mortgage registers, an entry into the land and mortgage register is a verdict. Also removal is considered an entry in this case. The land and mortgage register is established by making the first entry.

The proper functioning of the computerized land and mortgage registers required from the Minister of Justice preparing and issuing a number of executive regulations, according to the authority by act, defined in art. 25 (2) of the act on the land and mortgage register and in the provisions of the act on transferring the content of the land and mortgage registers to the computerized structure of the land and mortgage registers. In the ordinance of the Minister of Justice on the ways of transferring the content of the existing land and mortgage registers to the computerized structure of the land and mortgage registers, individual actions, necessary for the migration were described. It is aimed at ensuring the uniformity of transferring the existing entries,

---

<sup>73</sup> Ibid.

an as a consequence allows for faithful reflection of the content of the existing land and mortgage registers in the IT system. The computerized land and mortgage registers will be given new numbers, which will allow their quick identification and access from any place in the country.<sup>74</sup> The ordinances of the Minister of Justice on the models of official forms of the motions used by the departments of the land and mortgage registers holding the computerized land and mortgage registers, and the way and place in which they are available, describes models of seven official forms. These forms differ substantially from the forms introduced earlier in other registers, as they have been constructed in a way that the parties of the proceedings, mostly dispossessed of the professional lawyer's services, will define the content of the request, by filling in the form, while the content of the entry will depend not only on the request specified by the mover, but also on the content of the documents indicated and attached by them, which constitute the content of an entry in the land and mortgage register.<sup>75</sup> The ordinance of the Minister of Justice on establishing the Central Information of the Land and Mortgage Registers, its structure and organization and detailed principles of issuing information, indicates that the Central Information of the Land and Mortgage Registers is the agency of the Ministry of Justice and consists of the head office and branches. The principles of issuing information by the head office and branches of the Central Information of the Land and Mortgage Registers are to be similar to the principles of issuing information by the head office and branches of the Central Information of the Register of Pledges. The Central Information of the Land and Mortgage Registers will issue the ordinary copies, complete copies and certificates of closing of the land and mortgage register in the form of paper documents.<sup>76</sup> Finally the ordinance of the Minister of Justice on introducing the computerized land and mortgage registers in the district courts regulates the rules of establishing land and mortgage registers, rules of closing the land and mortgage registers, and the rules of making entries and annotations in the land and mortgage registers.<sup>77</sup> The computerized land and mortgage register consists of divisions, but the project eliminates the notion of a "column," introducing instead sections, subsections and boxes, where the latest may be also divided into sub-boxes if it is necessary to enter more than one element of information.<sup>78</sup> As the explanatory statement of the project shows, the German regulation influenced seriously the new solutions, and especially the Saxony's experience in introducing

---

<sup>74</sup> See the ordinance of the Minister of Justice on the ways of transferring the contents of the existing land and mortgage registers to the computerized structure of the land and mortgage registers (JL of 2003, No. 162, item 1574).

<sup>75</sup> See the ordinance of the Minister of Justice on the models of official forms used by the departments of the land and mortgage registers holding the computerized land and mortgage registers, and the way and place in which they are available, (JL of 2003, No. 156, item 1527).

<sup>76</sup> See the ordinance of the Minister of Justice on establishing the Central Information of the Land and Mortgage Registers, its structure and organization, and detailed principles of issuing information, (JL of 2003, No. 162, item 1571).

<sup>77</sup> See the explanatory statement for the ordinance of the Minister of Justice on introducing the computerized land and mortgage registers in the district courts. Materials of the Department of the All-Polish Court Registers Center and Information Technologies, unpublished.

<sup>78</sup> Ibid.

computerized land and mortgage registers. The solutions accepted in the project aim at reconciling modern technologies with the developed principles of holding the land and mortgage registers and hope to create long lasting regulations of holding these registers.<sup>79</sup>

## § 2 The use of electronic communication in the legal procedure

### *I. Electronic acts of legal procedure de lege lata in Polish law*

Based on the doctrine is the notion that the acts of civil law procedure are these actions of the subjects of procedure which produce consequences in this procedure.<sup>80</sup> The acts of procedure are then divided into the acts of legal procedure and the acts in enforcement proceedings. According to the principle of the civil law procedure formalism, the acts of the procedure, including also the acts of legal procedure must be done in the form defined by law.<sup>81</sup> Failure to observe the form requirement during the act of legal procedure conducted by the subject of procedure may not be recognized as an act of legal procedure. Thus, the term electronic act of legal procedure means an act of legal procedure performed by means of electronic information carriers.

The first step towards performing the electronic acts of the civil proceedings<sup>82</sup> was adoption of the act of 24 May 2000, on the amendment to the act – the Code of Civil Procedure, the act on the pledge by registration and the register of pledges, and the act on the court enforcement officers and enforcement.<sup>83</sup> This act changed for example the content of art. 125 of C.C.P., which now says that: “§ 1. Procedural writs include parties’ motions and statements submitted outside the trial. § 2. If a specific regulation provides so, the procedural writs are submitted on the official forms or on the electronic information carriers. § 3. Minister of Justice shall define, by way of ordinance, the model and ways of making accessible of the official forms, as referred to in § 2, which meet the requirements set for the procedural writs, specific requirements of the proceedings in which they are to be used, and including all necessary instructions for the parties, as for the way of completing and submitting them, and the results of failure to adjust the writ to these requirements. The official forms should be available in the court seats and outside courts, in a way convenient for the parties, at non-inflated fees. § 4. Minister of Justice shall define,

---

<sup>79</sup> Ibid.

<sup>80</sup> W. Broniewicz, *Postępowanie cywilne w zarysie*, Warszawa 1995, p. 64-65; W. Siedlecki, *Postępowanie cywilne zarys wykładu*, Warszawa 1997, s. 175-176.

<sup>81</sup> W. Broniewicz, *op. cit.*, p. 65

<sup>82</sup> the term „first step” was used in the explanatory statement for the project of the act on the amendment of the act – the Code of Civil Procedure, the act on the pledge by registration and the register of pledges, and the act on the court enforcement officers and enforcement, parliamentary paper no. 1202 of the 3<sup>rd</sup> term of the Parliament of the Republic of Poland.

<sup>83</sup> JL No. 48, item 554, with later amendments.

by way of ordinance, detailed regulations and the time limit of introducing the information technology; the conditions which the electronic information carriers used for submitting the procedural writs must fulfill; the procedure of reproducing the data recorded on these carriers; and the ways of storing and securing these carriers, taking into account the presence of the appropriate technological media in the courts and the level of development of information technologies.”

Prior to implementation of art. 125 § 2 of C.C.P., the official motion forms were used only in the proceedings for entry in the register of pledges (art. 39 (2) of the act on the pledge by registration and the register of pledges), i.e. in the non-litigious procedure. Supplementing the Code of Civil Procedure with the provisions of art. 125 § 2 and the provisions of art. 187, 493 § 2, and art. 505, introduced the official forms of procedural writs to the civil proceedings. Currently we use the following models of the official forms in the civil proceedings:<sup>84</sup>

1. the model of a suit form, identified by symbol P, for the suit used in the simplified proceedings, and for the suit used in the cases as referred to in art. 187 of the Code of Civil Procedure,
2. the model of the party supplementary data form, identified by symbol DC, for the attachment to the procedural writs, where the data of the additional parties, or the additional data concerning the indicated parties are presented,
3. the model of the writ including motions as to evidence, identified by symbol WD, for the procedural writ where the evidence not indicated in other writs is presented,
4. the model of the reply to a suit form, identified by symbol OP, for the procedural writ including a reply to a suit in the simplified proceedings,
5. the model of a counter-suit form, identified by symbol PW, for the counter-suit in the simplified proceedings,
6. the model of an objection form, identified by symbol SP, for the objection to a default judgment in the simplified proceedings, objection to the order of payment in the proceedings by writ of payment, and other cases as referred to in art. 187 of C.C.P.

Introduction of art. 125 § 2 of C.C.P. to the general provisions of the Code of Civil Procedure regarding the acts of legal procedure determined that the obligation to submit the procedural writs on the official forms or electronic information carriers may exist both in the

---

<sup>84</sup> The ordinance of the Minister of Justice, of 29 May 2002, on the models and ways of making accessible of the official forms of the procedural writs in the civil proceedings (JL No. 80, item 728).

lawsuit and in the non-litigious procedure. This obligation, however, must be clearly stated in the relevant provisions.

The provisions of art. 125 § 4 of C.C.P. created the grounds for the Minister of Justice to define the conditions of submitting the procedural writs by means of electronic information carriers. According to the creators of the amendments to the Code of Civil Procedure, such solution was meant to allow the use of the electronic technologies for trying these types of cases, where the mass influx of suits would be possible.<sup>85</sup> So far the Minister of Justice has not issued any ordinances defining detailed regulations and the time limit of introducing the information technology; the conditions which the electronic information carriers used for submitting the procedural writs must fulfill; the procedure of reproducing the data recorded on these carriers; and the ways of storing and securing these carriers, taking into account the presence of the appropriate technological media in the courts and the level of development of information technologies. Thus there are not any real possibilities of submitting the pleadings to the courts by means of the electronic information carriers.

## ***II. Electronic acts of legal procedure de lege ferenda on the ground of Polish law***

At the beginning of our study of this issue, we should discuss terminology used in various acts. And so, art. 125 of C.C.P. uses the term “information carrier,” while the provision of art. 60 and 78 § 2 of C.C. uses the expression “disclosure of will in the electronic form.” As indicated above, the “electronic carrier” may mean both the situation of submitting of the will statement via the information and communication network (Internet), and submitting the will statement by means of an electronic carrier (floppy disk, CD-ROM, DVD, and so on). Therefore it seems that both expressions are convergent.

It is also necessary to establish if an act of legal procedure or an act in the non-litigious procedure may be done with the use of electronic information carrier. And so, the act of legal procedure is any formal act of a party to proceedings, which according to the procedural act, may bring legal result of the civil proceedings.<sup>86</sup> Of course the acts of legal procedure may also be divided into those, which include will statements and knowledge statements. The act of legal procedure including the will statement aims at producing the procedural consequences, e.g. stay of proceedings. The acts of legal procedure must also be distinguished from the civil law acts. The aim and result of the latter is producing the consequences for the civil law relations

<sup>85</sup> See the explanatory statement for the project of the act on the amendment of the act – the Code of Civil Procedure, the act on the pledge by registration and the register of pledges, and the act on the court enforcement officers and enforcement, parliamentary paper no. 1202 of the 3<sup>rd</sup> term of the Parliament of the Republic of Poland.

<sup>86</sup> R. Lapierre, in J. Jodłowski, Z. Resich, J. Lapierre, T. Misiuk-Jodłowska, *Postępowanie cywilne*, Warszawa, 1996, p. 235.

(establishing, change, annulations). Finally it must be emphasized that the acts of legal procedure may include the will statements which produce consequences not only for the case but also for the substantive law, e.g. the deduction statement.

Another issue which should be discussed is the question if the regulations concerning the electronic will statements apply to the will statements included in the acts of legal procedure? It must be firmly stated that the regulations of the act on the electronic signature, and especially art. 5 of the act may apply to the will statements submitted as acts of legal procedure, as paragraph 2 of this article states that “the data in an electronic form, bearing the electronic signature verified by means of valid qualified certificate are equal in terms of legal consequences with the paper documents signed by hand, unless separate provisions state otherwise.” Thus, there is no need to reach for the provisions of the Civil Code, as the act on the electronic signature refers both to the documents used for submitting will statements as an element of the legal transactions, and the acts of legal procedure. As a summary of this part of our discussion it must be stated that until the Minister of Justice, according to the delegation expressed in art. 125 § 4 of C.C.P., issues a regulation providing other rules of submitting the will statements as elements of the acts of legal procedure, than those provided for the electronic signature, only the technology of electronic signature allows conducting the acts of legal procedure by means of electronic information carriers.

Predicting the increased development of electronic communication technologies in Poland and all over the world, it should now be considered what kind of proceedings may use the electronic signature, set in accord with the requirements of the act on the electronic signature. Considering only the civil proceedings, it must be stated, that a suit in the civil proceedings might be submitted via electronic information carriers, i.e. via Internet or email, or in case of wider approach to the notion, also via such carriers as floppy disk, CD-ROM, DVD, and so on.

The provisions of art. 126 of C.C.P. suggest that each procedural writ should include the indication of the court to which it is submitted, names of the parties, their statutory representatives and attorneys, indication of the kind of writ, essentials of the motion or statement and evidence supporting the presented circumstances, signature of a party or its statutory representative or attorney, and list of all attachments. Unless the evidence includes the written paper documents prepared earlier, such a suit might be submitted via electronic information carrier. If the party is represented by an attorney, the power of attorney *ad litem* must be established, which, according to art. 89 § 1 of C.C.P. should be submitted along with the principal's signature at the first act done by the attorney. Therefore if the suit is submitted by means of the electronic information carrier, the same carrier should also include the power of attorney bearing the principal's electronic signature put in accordance with art. 5 of the act on the electronic signature. This requires that, that not only

the attorney, but also the principal is entitled to putting the electronic signature. The situation becomes more complicated when the evidence referred to in a suit constitutes of the traditional (paper) documents. The provisions of art. 127 of C.C.P. suggest that there is no obligation of attaching the documents to the suit. The plaintiff may only request the admission of evidence supplied by these documents in a specified circumstance during the trial. Additionally, according to art. 129 of C.C.P. the defendant may request that the plaintiff submits the original paper document in the court, still before the trial. It also seems that there are no obstacles for the party or its attorney to submit the traditionally created paper documents by means of the electronic information carrier. It is then necessary to scan the document and put an electronic signature on the created copy. Of course the original or traditional paper copy may also be submitted to the case files in the court, on request of the opposite party, before the trial. Even if the legal procedure was initiated in such a way, it may not continue in this form and end up with a verdict. It is so because the evidence usually consists of documents present in the public circulation in a traditional, paper form, such as the witness testimonies or expert's opinions. Presenting these in an electronic form creates obvious difficulties. Of course, a situation is possible, when a plaintiff submits the suit and attaches to it the documents also in the electronic form, e.g. scanned paper documents, and requests for the witnesses, and only before the trial the plaintiff submits the originals or certified paper copies to the court. In this case, also the reply for the suit might be submitted in the electronic form. However, according to the current regulations, it is still necessary to set a trial.

In case of the ordinary civil law procedure, the preliminary acts might be done in an electronic form. However it is then necessary to decide when the procedure would transform from the electronic to traditional. This transformation might start from the reply for the suit accompanied by the motion for a dismissal of a suit in full or in part. However, if the reply is not submitted, or other prerequisites for passing a default verdict are fulfilled, then similarly to the current situation, in the proceedings before the economic court, the court might pass a default verdict.

The technology of electronic signature is even more important for the acts of legal procedure performed in the judicial proceedings, where the court examines the case during a closed session. It is the case especially in the proceedings by writ of payment, clause proceedings, registration proceedings, such as the entry into the register of pledges, the National Court Register, and the land and mortgage register.

The issues of submitting the suits with the motions for issuing an order of payment in the proceedings by writ of payment, may be only considered theoretically. The proceedings by writ of payment are based on the documents which have so far existed only in the traditional, i.e. paper

form (art. 485 of C.C.P. mentions the official document, a receipt accepted by the debtor, a call for payment and debtor's written statement of acknowledgement of a debt, accepted by the debtor with the demand for payment, returned by the bank and not paid due to lack of resources on the bank account, on the basis of a bill of exchange, cheque or properly completed warrant, whose veracity and content are beyond any doubt).

Even though the trial is not necessary for the court to solve the case and issue an order for payment, there are still the same problems as in the situations mentioned above. Is it possible to submit the official document? Well, it seems that there are no legal obstacles for the official document to be submitted in an electronic form. The provisions regarding the form of the official document are included for example in art. 107 of the Code of Administrative Procedure, in the notarial law, or the regulations concerning birth, marriage and death registers. The most important element of the official document is a seal. Therefore it is hard to imagine a sealed electronic document. Of course it is possible to scan the seal, and if the statement is then signed by the authorized persons, acting on behalf of a state agency, it will be an official document.

There is no doubt that the grounds for issuing the order of payment may be a receipt accepted by the debtor, provided it is submitted in the electronic form and bears the electronic signature, and if the debtor confirms by their electronic signature, that they accept the receipt. It also seems that the call for payment may be submitted via the will statement in the electronic form, as well as the debtor's will statement of acknowledgement of the debt. As the provisions of art. 485 § 1 point 3 of C.C.P. require that the debtor's statement of acknowledgement of the debt should be submitted in writing, then this statement should be submitted using the electronic signature, on the basis of a valid qualified certificate. The same refers to the demand for payment accepted by the debtor and returned by the bank due to lack of resources.

Therefore it seems that even now, it might be possible to submit the electronic motion for issuing the order of payment in the proceedings by writ of payment, provided the technological infrastructure of the court allows examination of such suits. This remark, however, does not refer to the documents of special kind, such as bills of exchange, cheques and warrants.

Therefore if the plaintiff would submit a suit using the electronic communication technology, the court might issue an order of payment, and the defendant would have a right to submit the objections, also via the means of electronic communication. Of course, when the objections are submitted, the court would set a trial, just like at present, and from that moment the procedure should continue in a traditional way, except for the procedural writs, which the parties might still transfer to the court or to each other in the electronic form.

Still the technology of electronic communication may be more important in the proceedings by reminder of payment. The regulation of art. 498 of C.C.P. provides that the court issues an order of payment, if the plaintiff pursues a financial claim, or, in other cases, if the specific regulation provides so. Art. 499 of C.C.P. mentions only the circumstances, which cause that the order of payment may not be issued – if the claim is obviously unfounded, presented circumstances give rise to doubt about the consistency with the actual state of affairs, satisfaction of a claim depends on counter performance when the place of temporary residence of the defendant is unknown or it was not possible to deliver the order in the country. It may be therefore stated that in the proceedings by writ of payment there is no obligation of proving the grounds for the claim with any specific documents. In such case the court might also issue an order of payment in the proceedings by reminder of payment.

The main problem of performing the acts of legal procedure in the electronic form will be storage and security of information. It is also necessary to consider if it is possible to give up the traditional files at the preliminary stage of for example the proceedings by writ of payment, and establish them only when the objections are submitted and the trial is being set. It seems that such technical problems must be first overcome, in order to allow performing the electronic acts of legal procedure. It is necessary to define the conditions, which the electronic information carriers should fulfill, the procedure of reproducing the data recorded on these carriers; and the ways of their storing and securing.