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Technology and Criminal Proceedings: An attempt to systematize the issue and determine the main directions of implementation

[Technologia a postępowanie karne – próba usystematyzowania problematyki i określenia głównych kierunków wdrażania]

Abstract

The article covers topics related to the implementation of new technologies in the framework of the criminal process in the broadest sense. The Author focuses his considerations on the current needs of the Polish justice system, known to him from his autopsy. He points out priority areas for technological implementations, areas of follow-up and directions of other potential planes of change. He analyzes in this prism the criminal process at all stages of its duration, from pre-trial to executive criminal proceedings, and moreover the range of necessary changes in substantive criminal law.

Keywords: technology, criminal procedure, computerization, digitization, electronification, courses of action.

Introduction

The issue of the presence of new technologies in law is currently being raised with increasing frequency in scientific discourse. Even a cursory analysis of the issue, however, indicates that the problem is extremely complex and does not boil down solely to the implementation of certain technological advances already present on the market into the process itself. Here, however, the field of implementation actually appears to be the largest. Technique has

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the property that it has many fields of creation and use, which also translates into the process of its implementations into law. It is, in fact, a range of various instruments, the common denominator of which becomes the permissibility of use in the process of administering justice. It should be added at once that the entry of new technologies into this field is not only necessary and needed, but also inevitable. The only unknown here is only the question of when it will realistically occur. Technology, on the other hand, can be used in criminal proceedings at all stages. A potential area of use, of course, is also in criminal fiscal proceedings, vetting proceedings and executive criminal proceedings. Moreover, a place for the implementation of the technique also exists in substantive criminal law, where it can be successfully implemented within the framework of several institutions located in the general part of the Criminal Code, and within the provisions of the special part. In doing so, it will be indispensable to introduce new types of crime, where the causative actions will involve new technologies. Already glaringly apparent, moreover, is the need to create a universal information system, serving the entire "criminal division" in the administration of justice , understood as a certain electronic process module used by many authorities. So far, activities in this field are not the result of some strategy or in-depth analysis. They are selective in nature, when in the meantime they should be systemic and long-term.

Just a cursory analysis of the above issues indicates that it is worth attempting a kind of systematization of the various areas of implementation, with the identification of those that appear to be priorities over others. The activity of implementing technology is, however, complicated insofar as, in addition to the arduous legislative and technological paths for this type of endeavor, the path of answering the question of what will be most beneficial to the judiciary in the current reality may become equally difficult to traverse. This state of affairs is further compounded by certain nuances regarding procedural solutions in the various branches of law. Such attempts have been made for almost 20 years,[1] however without spectacular success. How complex this process is and how difficult to achieve the conjunction of all the above-mentioned factors can be, is recently indicated, for example, by the process of allowing the filing of pleadings electronically in civil proceedings. On the grounds of these proceedings, on September 8, 2016, the provisions of the Act of July 10, 2015 on amending the Act – Civil Code, the Act – Civil Procedure Code and certain other acts (Journal of Laws 2015 item 1311) – the Act of July 22, 2016 on amending the Act – Civil Procedure Code, the Act – Notary Law and the Act on amending the Act – Civil Code, the Act – Civil Procedure Code and certain other acts (Journal of Laws 2016 item1358) came into force. They adopted the

[1] See e.g.: Government Draft Law on Informatization of Activities of Certain Entities Performing Public Tasks, Drug no. 1934 of August 26, 2003, Regulation of the Minister of Justice on Detailed Rules and Procedures for Service of Court Letters in Criminal Proceedings of June 18, 2003 (Journal of Laws no. 108, item 1022).

admissibility of electronic correspondence in the field of pleadings by means of an ICT system supporting court proceedings. The problem, however, is that although a corresponding causa appeared in the law, the system itself was not introduced in parallel with its entry into force. The legislature provided as much as three years for its creation and implementation. Parallel implementation, that is, the prior creation of the tool, its extra-procedural testing and its entry into force including the legal basis for this, would be good practice. Such an action results in fewer complications and explanations on the part of representatives of the judiciary, and strengthens the citizen's trust in the state, in whose eyes the latter acquires professionalism. A certain gateway in the case in question is the Electronic Platform for Public Administration Services [ePUAP], while it is not a substitute for this system, but a tool that exists alongside it. In accordance with the Act of February 17, 2005 on Informatization of the Activities of Entities Performing Public Tasks (Journal of Laws 2013 item 235), the Act of September 18, 2001 on Electronic Signature (unified text, Journal of Laws 2013 item 262) and the Ordinance of the President of the Council of Ministers of September 14, 2011 on preparing letters in the form of electronic documents, serving electronic documents and providing access to forms, templates and copies of electronic documents (Journal of Laws of 2011 no. 206 item 1216), the option of serving electronic documents to courts through the platform has appeared. However, the disadvantage is the significantly limited scope of use. This is because the ePUAP platform can only be used for petitions, complaints, applications and other letters filed outside of the relevant court proceedings. Thus, it is a *de facto* 'periprocedural' tool, as formal pleadings still cannot be filed electronically. In a situation where a party to the proceedings, however, decides to file a pleading in this manner, it will not have any legal effect.[2] This is confirmed by recent case law. It is indicated there,[3] that in accordance with Article 125 § 2^1 of the Code of Civil Procedure, pleadings shall be filed with the court by means of an ICT system, if a special provision so provides. Correlated with this provision is Article 165(4) of the Code of Civil Procedure, which provides that the entry of a pleading into an ICT system is equivalent to the filing of a pleading with the court. In turn, according to Article 165 § 2 of the Code of Civil Procedure, the handing over of a pleading in the form of registered mail at a Polish postal facility of a 4 postal operator postal law within the meaning of the Postal Law Act or at a facility of an entity engaged in the delivery of correspondence within the European Union is equivalent to bringing it to court. Article 165 § 3 of the Code of Civil Procedure equates the filing of a letter with the court with the filing of a letter by a soldier with the command of a military unit or by a person deprived of

[2] A separate regulation governs the so-called electronic writ-of-payment procedure.
[3] Decision of the Supreme Court of 29.03.2023, III CZ 427/22, decision of the SA in Katowice of 12.07.2023, III AUz 88/23.

liberty with the administration of a penitentiary institution, and by a member of the crew of a Polish sea vessel with the captain of the vessel. It follows from the above exceptions that the principal permissible way of filing a pleading is to bring it to court. The rules of a formal nature do not provide for any other way of filing a pleading with the court other than filing it at the seat of the court (at the registry office), through a specific postal operator or, in situations provided for in special regulations, through an ICT system or another (other than a postal operator) authorized entity (e.g., a ship's captain). Since these are exceptions to the general rule of filing pleadings, they cannot be interpreted broadly. The detailed procedure for dealing with letters received by the court – directly, in an envelope, through the teleinformation system – is regulated by the provisions of the Order of the Minister of Justice of June 19, 2019 on the organization and scope of activities of court secretariats and other departments of court administration (§ 14–16). They do not stipulate how to deal with letters received by email or through the e-PUAP platform. In turn, the manner of filing pleadings through the ICT system is regulated in the Order of the Minister of Justice of October 20, 2015 on the manner of filing pleadings through the ICT system supporting court proceedings, issued pursuant to Article 125 § 31 of the Code of Civil Procedure. The ICT system through which a pleading may be filed is a special system serving a specific court proceeding, e.g., writ of payment proceedings, registration proceedings. The electronic Platform of Public Administration Services e-PUAP, used for communication of citizens with public administration units, is not such a system. This platform is not provided for in the regulations governing civil proceedings as a way for parties to contact the court in judicial proceedings. 5 In this state of affairs, one should share the views expressed in the doctrine and case law that – as a general rule – the effective filing of a pleading with the court must be in traditional (material) written form and should contain a machine-readable text. Only the fulfillment of this condition triggers the initiation of court proceedings and a possible remedial procedure aimed at eliminating the formal deficiencies of the pleading. A pleading filed in electronic form – to the extent not regulated by specific provisions – does not produce the legal effects that the law associates with the filing of a pleading, whereby it is not the formal deficiency of the pleading that is at issue, but its original, irremovable ineffectiveness caused by the use of unauthorized technology (see Supreme Court decisions: of March 26, 2009, I KZP 39/08, OSNKW 2009, no. 5, item 36; of July 15, 2010, III SW 87/10, OSNP 2011, no. 3-4, item 53; of October 25, 2011, III SW 70/11, OSNP 2012, no. 11–12, item 144).

Another aspect of this matter should be noted in passing, namely the scale of the complexity of access to the aforementioned system and, in general, all the technological tools that would appear in the administration of justice. In order to use the ePUAP platform, it is necessary to have a user account and an

electronic signature, which is verified using a certificate. However, not all of society is an information society, proficient in the use of and access to technological innovations. The right to a court is available to everyone. A sizable group of society is still – for various reasons – digitally excluded. Only 44% of citizens have at least basic digital skills, one of the lowest scores in the European Union.[4] Digital exclusion, on the other hand, is associated with mere access to the Internet, but also the lack of skills to take advantage of available technological ones. This leads to social rejection of people of all ages and to various types of exclusion, especially of a competence nature.[5] It is therefore necessary, on the one hand, to maintain maximum simplification of access to individual IT tools for the citizen, and on the other hand, to preserve the existing traditional solutions. Technology cannot yet "supplant" current forms of communication with the court, as this would be to the detriment of citizens. From the legal side, this would violate Article 45 of the Polish Constitution, which states that everyone has the right to a fair and public hearing without undue delay by a competent, independent, impartial and independent court. Indeed, the right to a court consists of three elements, in the form of the right of access to a court (to initiate the procedure before the court, the right to a court procedure that complies with the requirements of fairness and openness, and the resolution of the case.[6]

It is aptly pointed out in the literature on the subject that it is necessary to identify systemic measures that would be orderly enough to ensure in the long term to reach the optimal state, which will enable the efficient conduct of criminal proceedings.[7] Looking at the overall implementation related to the interference of new technologies in criminal proceedings, it should also be noted that all tools should be so universal that it is possible to use them at any stage of criminal proceedings, so in the following scheme: pre-trial proceedings /jurisdictional proceedings/ executive proceedings. The idea is that, for example, a court (also an executive court, a penitentiary judge or certain other bodies of executive proceedings) may, at the stage of its proceedings, use a tool intended essentially for law enforcement agencies at the pre-trial stage. This is because it may sometimes be necessary and of vital importance to the evidence proceedings in progress. As a rule, it will also lead to its acceleration. Moreover, these tools should allow the transfer of various types of data between the different stages of the proceedings, which entails the creation of a path for the transfer of data between different public

[4] https://www.gov.pl/web/cyfryzacja/prawie-400-mln-zl-na-rozwoj-umiejetnosci-cyfrowych-polakow.

[5] https://instytutpiastow.pl/wp-content/uploads/2023/11/raport-wykluczenie-cyfrowe.pdf.

[6] P. Tuleja, *Commentary to Article 45* [in:] P. Tuleja (ed.), Constitution of the Republic of Poland. Commentary, LEX/el. 2023.

[7] J. Kosowski, *Directions of Effective Electronization of the Criminal Process*, 'Bulletin of the Association of Graduates and Friends of the Faculty of Law of the Catholic University of Lublin', vol. XVII, 2022, 19, 1, pp. 161 and 162.

authorities (prosecutors' offices, other law enforcement bodies, financial and non-financial pre-trial investigation bodies, branch IPN Lustration Offices, etc.) and common courts and the Supreme Court. Such a system should therefore be multi-layered and multi-channel, with the scope of access to it from the subjective side being thoroughly analyzed at the stage of creation. The key to access, it seems, should be first of all the actual procedural needs and systemic conditions of a given body, as they determine the actual use of such a system. In this way, the national internal justice system should function. The only open question is when we will reach the moment of full creation of an appropriate nationwide internal system and what costs this will require. Once it is created, the field of follow-up opens up, for the wider use of this system within the countries of the European Union and within the framework of international criminal law. However, these aspects of the issue require a separate study, where the already implemented national system and its capabilities, as well as the coherence of individual system capabilities in other European Union countries, should be taken as a reference. However, it can be predicted that this will not happen soon, if such a system is not a pipe dream at all. Instead, it seems that on a truncated scale it would be beneficial for EU countries.

New Technologies in Criminal Proceedings

Turning to the criminal proceedings, two stages should be distinguished, as they are characterized by separate needs from the side of the potential use of technology. This follows directly from the objectives of these proceedings, although full coherence should be maintained at both stages. It should be pointed out here that the aftermath of the statutory changes[8] is that since December 2021, a nationwide ICT system PROK-SYS has been in operation in the common organizational units of the prosecutor's office. It is designed, among other things, to digitize files of pre-trial proceedings and make them available to authorized entities. However, the digitization of files is not being implemented in a holistic manner, hence it cannot be said to have already become a reality. Access to viewing digitized case files is possible through a special portal.[9] It is rated as unreadable and time-consuming.[10] In order to use it, one must apply for access at the prosecutor's office unit that conducts the pre-trial investigation, and before that obtain information on whether

[8] Law of March 11, 2016 on amending the Law – Criminal Procedure Code and some other laws, Journal of Laws, item 437.

[9] https://portalzewnetrzny.prokuratura.gov.pl/.

[10] P. Przybyłowicz, *Issues of Obtaining Evidence from Personal Evidence Sources and the Computerization of the Criminal Process*, 'Annals of Administration and Law' 2024, 3, p. 250.

the case file is digitized. After that, you need to apply for access to the case file, which is possible in both traditional forms, that is, in writing or orally (for the record). After granting permission to inspect the file, the prosecutor should issue an order specifying the scope of access. A good solution here is the possibility to log in to the portal also through the login.gov.pl service, i.e. without the need to receive or obtain a separate login and password. An authorized person to log in using the login.gov.pl service must have a trusted profile. However, the condition for using this access is to provide the prosecutor with the PESEL number. Consent to access the file is temporary in nature. This solution should nevertheless be evaluated positively and treated as a kind of test for a future, more extensive instrument. If it is created, it will be possible to avoid the shortcomings that are evident today.

This, however, is only one sliver of the possibilities drawn in pretrial proceedings. The initial differentiation will undoubtedly require the identification of the necessary areas of need within the framework of exploratory activities and within the area of procedural activities. In terms of communication, it would also be worthwhile to create a system that is coherent with all the entities involved (prosecutor, police, tax authorities, General Inspector of Financial Information, etc.), obviously taking into account the nature of the tasks of the various entities and adjusting their access rights to the system. This would undoubtedly improve the course of individual procedural activities and the collection of evidence itself.[11] The aim here should be to shorten the path of obtaining all data as much as possible. However, the issue of data acquisition and recording, due to its scope and complexity, goes far beyond the scope of this paper. It is only necessary to emphasize here that it is necessary to develop detailed legal acts regulating the sphere of acquisition of data fixed in electronic form, and concerning so-called sensitive data at the stage of national law. In particular, it is necessary to normatively implement rules for installing programs with keys for encrypted messages and for remote searching of devices, as well as the rights of entities interfering with data, conditions for protecting data integrity, etc.[12] The adoption of these statutory solutions will only pave the way for further activities of a strictly technical nature.

[11] See more extensively: A. Lach, Electronic Evidence in the Criminal Process, Toruń 2004, *passim*, M. Kusak, *Access to Electronic Data on Content in Criminal Proceedings: Domestic and international challenges*, 'Gdańskie Studia Prawnicze' 2024, 2, p. 72 *et seq.*, M. Rogalski, *Controlling and Recording the Content of Other Conversations or Transmissions of Information* [in:] System prawa karnego procesowego, vol. 8. Dowody, pt 3, J. Skorupka (ed.), Warszawa 2019, p. 4059 *et seq.*; the same Author, *The European Commission's E-Evidence Proposal: Critical remarks and proposals for changes*, 'European Journal of Crime, Criminal Law and Criminal Justice' 2020, vol. 28, 4, https://doi.org/10.1163/15718174-BJA10018; A. Grzelak, K. Zielińska, *Between the Right to Privacy and Personal Data Protection and Ensuring Public Security and Fighting Crime. The Problem of Data Retention Continues: A gloss on the judgments of the Court of Justice of 6.10.2020: C-623/17, Privacy International, and in joined cases C-511/18, C-512/18, C-520/18,* La Quadrature du Net and others, EPS 2021, 8, pp. 28–36.

[12] M. Kusak, *Access...*, pp. 84 and 85.

On the grounds of the judicial stage, considerations should begin with an act that already exists in the form of the Ordinance of the Minister of Justice of March 12, 2024 on the service of letters in electronic form in criminal proceedings, which came into force on March 14, 2024. Its appearance should be seen in terms of positives, as it fits in with the need to modernize the course of proceedings. However, it has a narrowly defined scope, as it applies to attorneys, legal advisors, and only to those for whom an account has been established in the information portal referred to in Article 53e § 1 of the Law of July 27, 2001 – Law on the system of common courts (Journal of Laws of 2024, item 334), and, moreover, for the prosecutor and the General Prosecutor's Office of the Republic of Poland, for whom an institutional account has been established. The foundation for the electronification of service has already been normatively created, for it is contained in the provisions of the Law of 18.11.2020 on electronic service.[13] The legislator in criminal proceedings, however, provided for too distant *vacatio legis* for their entry into force (01.10.2029), which was rightly criticized.[14]

In the criminal process at the jurisdictional stage, however, there is already a growing presence of technological innovations. One of them is the e-protocol, however, still in the implementation stage. Where it has been successfully implemented (misdemeanor proceedings), however, there is a visible lack of use of its full capabilities by some judges, distortion of the actions performed, and, moreover, frequent equipment failures are observable, preventing its preparation. It should be postulated here to intensify activities aimed at implementing e-protocols in the framework of criminal proceedings and providing an efficient tool for transcription, which should be introduced as mandatory. Without going into details, it is only necessary to point out that this will make it much easier for both parties and courts to analyze the course of procedural actions.

Videoconferencing also continues to be a novelty. Their importance is steadily increasing. It seems that already in simpler cases they should be the norm, from which the traditional trial, combined then with the mandatory participation of the accused, will become a deviation. The need for wider use of this institution and simplification of the course of activities is perceived here.[15] After all, they can (and even should) take place without the participation of certain entities in the place of the witness. However, this requires the introduction of a separate procedure for verification of the identity of these persons, which should take place during the preparation for the trial (hearing), and in principle immediately before it begins. The abandonment of these steps would be mandatory for persons deprived of liberty and others, staying,

[13] Journal of Laws item 230.

[14] F. Radoniewicz, *Commentary to Article 82* [in:] K. Chałubińska-Jentkiewicz, J. Kurek (ed.), Ustawa o doręczeniach elektronicznych. Commentary, Warszawa 2022, pp. 245–248.

[15] A pertinent postulation in this regard is made by J. Kosowski, *Directions...*, pp. 165 and 166.

for example, in hospitals, embassies, consular offices or other institutions that guarantee adequate verification. This solution should not violate the right to defense.[16]

As part of the postulates, it can also be proposed that electronic supervision solutions be introduced into the criminal process, if only on the model of Portuguese solutions.[17] The supervision will work in several situations, but above all it can be an alternative to pretrial detention. The value of electronic supervision is great. It is a versatile, even chameleon-like institution – it adapts to different legal situations. Thus, it would increase the procedural palette of instruments, providing the needed flexibility of proceedings. This fits in with correct criminal policy. The power of the use of electronic surveillance and the constant technological advances dictate that electronic surveillance should sooner or later be an essential tool.

Similarly, it is worthwhile to carry out the electronification of warrant proceedings. These cases involve lesser crime and are generally less complicated. With simple digitization of files (scanning) and streamlining the courts' remote communication with the parties, this could be done relatively quickly and easily, up to the stage of filing an objection to the warrant judgment. An analogous picture emerges in criminal fiscal proceedings conducted under the voluntary surrender of responsibility procedure. In contrast, this is about half of criminal fiscal cases.[18]

New Technologies in Executive Criminal Proceedings

The field of use of technological advances in the framework of executive criminal proceedings is similar to that which occurs at the stage of exploratory proceedings. This is primarily due to the fact that it is, in fact, a subsequent judicial proceeding in which the provisions of the Code of Criminal Procedure apply (to the extent not regulated) accordingly. Thus, the issue of contact with the parties and the possibility of filing and sending pleadings electronically comes to the fore. Another aspect is the full digitization of criminal files at the executive stage, with the possibility of accessing the main file, containing not only files created at the exploratory stage, but also at the pre-trial stage. Areas where technological advances can be used, moreover, are the various aspects of proceedings involving the implementation of electronic surveillance and probationary measures, headed by early release. The field for the use of tech-

[16] See: C. Kulesza, *Remote Hearing and Remote Custody Hearing in Light of the Convention Standard of the Rights of the Accused*, 'Białystok Legal Studies' 2021, 26, 3, pp. 205–221.

[17] I. Zgoliński, *The Institution of Electronic Surveillance: The Polish and Portuguese experience*, 'Revista Ibérica do Direito' 2024, *in print*.

[18] I. Zgoliński, Voluntary Surrender to Liability in Fiscal Penal Law, Warszawa 2011, pp. 234–254.

nology also appears in the new institution, to come into force from January 1, 2026, in the form of a break in the execution of the sentence deprivation of liberty provided for a certain category of convicts combined with electronic control of their whereabouts.[19]

The key to all these novelties should be rapid communication between all participants in the proceedings. After all, it should be mentioned that within the framework of the national system of internal justice, understood as a kind of system of data transfer between various public authorities related to the administration of justice, perhaps the largest number of actors will appear at this stage of the proceedings. This is determined by the multiplicity of entities performing various enforcement activities, sometimes even fragmentary. Among them, only a portion constitute the internal structures of the judiciary. However, they also include bodies that supervise the execution of punishment, non-judicial bodies that execute judgments, and others that merely cooperate in the execution of judgments, and otherwise have their own, and separate, responsibilities.[20] Therefore, it is necessary to create such a module that ensures the smooth participation and mutual cooperation of these entities.

New Technologies in Substantive Criminal Law

A different field of use of new technologies appears in substantive criminal law, although they can and should also penetrate into this area. Criminal law is the law of last resort, which is applied when other branches of law have proved insufficient (*ultima ratio*). Its specifics are therefore different. What comes to the fore here, however, are possibilities related to various types of calculations such as for statutes of limitations (with the introduction of a variable in the form of amendments to the statutes of limitations in the current regulation, as well as in the 1969 Criminal Code), the statute of limitations for the execution of a sentence and the erasure of a conviction. This would seem to be a simpler solution, as it requires the introduction of this kind of computational facility, for example, into an information system serving the entire "criminal division" in the judiciary. However, this information would need to be updated periodically, according to the progress of the proceedings, and thus the modification of charges and the assignment of the perpetration of a particular act. Similarly, a simple procedure would

[19] See: I. Zgoliński, *The Scope of Changes in the Area of Criminal Executive Law Made Under the Act of July 7, 2022 on Amendments to the Act – Criminal Code and Some Other Acts*, 'Quarterly of the National School of Judiciary and Public Prosecution' 2024, 1, p. 90.

[20] More extensively L. Osiński, *Commentary to Article 2* [in:] J. Lachowski (ed.), Executive Penal Code. Commentary, Warszawa 2023, pp. 13–17.

be to equip all courts (criminal divisions) with direct access to the National Criminal Register, thus without any intermediate links, including in courtrooms, of course, without the possibility of editing the data contained therein. This will accelerate the establishment and verification of recidivism. Within the framework of the institutions located in the general part, a system signaling the existence of conditions for the issuance of a combined sentence, correlated with the relevant procedural and executive regulations (*de lege lata*, the court should examine the prerequisites for the issuance of a combined sentence *ex officio*) seems to be more complex. This tool should also be equipped with the option of creating drafts of joint sentences. This would significantly facilitate work in the extremely complicated conditions of regulation of this institution. This tool would undoubtedly contribute to the optimization of convictions and offset the costs of executing sentences from the very beginning. The institution of electronic surveillance, possible to be adjudicated as a protective measure, is also being actualized in substantive law. Here it becomes potentially possible to use the latest technology used in this field.

As for the special part, first of all, it is also important to have in mind here the new technologies that are entering society and at the same time implying new crime phenomena. These are relatively new behaviors of perpetrators who use technology as a causal tool for their acts. The palette of this type of behavior is quite large. Just for the sake of illustration, it is worth pointing out that it already seems necessary to criminalize, for example, fraud carried out through automated store checkouts as a separate type of criminal act. However, the field for the use of technological achievements also exists here on several other levels. The multitude of these behaviors, however, requires a separate, detailed study.

Among other demands, it is worth pointing out, moreover, the need to create a module for various types of court announcements, which would not be limited to the area of a single court or district. After all, as time goes by, the traditional press, i.e. the paper press, in which such announcements are usually made, will lose importance. The issue, however, does not only involve announcements. The issue also concerns the specific criminal measure of making a judgment public (Art. 39[8], 215 of the Criminal Code). The same is true of the institution of apology to the victim, used with probationary measures (Art. 67 § 3, 72 § 1 item 2 of the Penal Code).

Conclusions

Criminal proceedings are characterized by the lowest degree of electronization among court procedures.[21] Two elements emerge as priority areas in the implementation of new technologies into criminal proceedings.[22] The first is the full and ongoing digitization of files, both at the pre-trial stage and at both stages of jurisdictional proceedings (exploratory and executive). A drawback of the activities currently underway is the failure to define a clear threshold from which the full digitization of files would take effect. Such a move, i.e., indicating in the law a cut-off date for the introduction of full digitization, would, on the one hand, intensify the efforts of the authorities responsible for its implementation, and, on the other hand, avoid logistical chaos and the maintenance of mixed files, consisting in part of traditional (paper) documents and electronic documents. The second priority area is the introduction of electronic communication of courts and prosecutors with parties to proceedings. This aspect has already been recognized, as one of the draft amendments to the Code of Criminal Procedure provides,[23] that prosecutors, attorneys, legal advisors and representatives of the Attorney General's Office will be able to send letters to the court via an information portal. Although this is another step in the right direction, it is a half-hearted solution at best. This is because it does not apply to all parties to the proceedings. What's more, it covers only some of the pleadings, in the form of motions for a statement of reasons for a judgment, appeals (appeals and complaints), responses to appeals and other letters drafted in appeal proceedings. It is to be implemented in a cautious manner, for there is concern about disrupting proceedings. The assumption is that the letter, once sent through the information portal, will go to a specific case. It will then not be necessary to send the letters by traditional mail, or to forward them through the registry office to the relevant court department.

Once these priority areas have been fully implemented, we will face the next challenge, albeit a more important one because it is of systemic importance. It will be the creation of a universal electronic justice module, so to speak, "linking" the activities of all bodies involved in the criminal process. Then an internal information system of justice will be created. Its closer details can, of course, be presented only after the first two priority elements are

[21] J. Kosowski, *Directions*..., p. 151.

[22] See: B. Pilitowski, B. Kociołowicz-Wisniewska, Z. Branicka, Courts Accessible Through the Internet: Opportunities and threats, Toruń 2020, https://courtwatch.pl/wp-content/uploads/2020/12/FCWP_raport_sady_dostepne_przez_internet_szanse_i_zagrozenia.pdf.

[23] Draft Law on Amendments to the Law – Code of Criminal Procedure and Some Other Laws, UD143, https://www.gov.pl/web/premier/projekt-ustawy-o-zmianie-ustawy---kodeks-postepowania-karnego-i-ustawy---prawo-o-ustroju-sadow-powszechnych.

in place. As a last resort, it seems, the legislature will have to face the challenge of digitizing the archives, that is, the files of completed cases. This, of course, requires a huge investment in storage equipment as well. A parallel, but necessary, activity is already the cyclical adjustment of IT systems, training in their use and ensuring IT security. As the electronic development of criminal proceedings progresses, it will also be necessary to create a special system of assistance for the digitally excluded.

The process of implementing new technologies into criminal proceedings in the broadest sense is therefore a highly complex issue. It has many areas of commonality between the various bodies that appear at its various stages. It is also structurally complex, as the needs of these bodies are sometimes different. In some ways, the need for the necessary technological implementations was forced by the COVID-19 pandemic, forcing courts and penitentiary units and other authorities to at least cooperate in this regard. However, there were also issues that caused controversy at the time, such as e-custody.[24] However, the pandemic has undoubtedly nevertheless broken the previous, rather distanced, thinking about new technologies in judicial proceedings. It can also be pointed out that on the needs side, the nature of technological implementations will be two-way. It will be internal in terms of the needs of the authorities. If, on the other hand, it concerns forms of communication between the actors involved in the process, and especially with the parties to it, then it will be a package of implementations of an external nature. All of this needs to be taken into account during the work on technical facilities, whether undertaken as part of a universal system or as part of individual streamlining implementations. However, this is an inevitable process, and it is only a matter of time when and how it will occur. It is also apparent that the standard of digitization is at a much higher level in pre-trial proceedings than in later stages of the proceedings. Any implementation, on the other hand, should be carried out using previous, albeit still meager, experience, with the indispensable support of legal, forensic and criminological knowledge. This will help to set the right directions and areas of implementation. The challenge, so to speak, is the interface of social, humanistic and technical knowledge. The main technical operation must deal with data in the form of various types of information. It is the production of information, its collection and then its various types of use that is essential for the proper execution of justice. It would seem that the easiest area to introduce is the use of such technological advances as digitization of files or pleadings. This, by the way, is a process of fundamental importance. However, it is currently very sluggish, and so far it is difficult for a citizen to communicate, for example, with a court via e-mail, or to review a digitized file. Incidentally, email correspondence or the use of pdf files can hardly be considered new technologies anymore.

[24] J. Mierzwińska-Lorencka, E-Trial in Criminal Cases in Connection with Shield 4.0 Regulations, LEX 2020.

Still, they are almost absent from criminal proceedings. It is gratifying to see that we have moved away from the raft that until recently linked documents within individual file volumes. We have also (partially) achieved the standard of recording hearings, computerized preparation of minutes and e-protocols in misdemeanor proceedings. However, there is still a lot of work to be done in this field, which gives rise to the assertion that we are still (and have been for almost several decades) at the threshold of the path of technological implementations. A completely separate issue, however, is the question of adequately preparing the staff to handle such facilities and the public itself to take full advantage of these tools, which will gradually be dedicated to them. All these aspects and related tasks have a certain feature in common, which at the same time, it can be assumed, also significantly delays the process of entry of technology into criminal proceedings. These are high financial expenditures.

Technologia a postępowanie karne – próba usystematyzowania problematyki i określenia głównych kierunków wdrażania

Abstrakt

Artykuł obejmuje problematykę związaną z wdrażaniem nowych technologii w ramach szeroko rozumianego procesu karnego. Autor koncentruje rozważania na obecnych potrzebach polskiego wymiaru sprawiedliwości, znanych mu z autopsji. Wskazuje priorytetowe obszary wdrożeń technologicznych, obszary dalszych działań oraz kierunki innych potencjalnych płaszczyzn zmian. Przez ten pryzmat analizuje proces karny na wszystkich etapach jego trwania – od postępowania przygotowawczego po postępowanie karne wykonawcze – a ponadto zakres koniecznych zmian w prawie karnym materialnym.

Słowa kluczowe: technologia, procedura karna, informatyzacja, cyfryzacja, elektronizacja, kierunki działań.

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