



KINGA LUIZA FLAGA-GIERUSZYNSKA

University of Szczecin, Poland

kinga.flaga-gieruszynska@usz.edu.pl

ORCID: 0000-0001-5177-4450

SELECTED ASPECTS OF INFORMATISATION OF JUDICIAL ENFORCEMENT PROCEEDINGS

ABSTRACT

Objective: The aim of the study is to present an advanced process of informatisation of court enforcement proceedings, which is a derivative of the progressive computerisation of social and economic life. As part of the considerations presented, not only the provisions of the Code of Civil Procedure relating directly to procedural and enforcement actions carried out in enforcement proceedings, but also the provisions of corporate laws governing the exercise of the profession of bailiff, which also transfer the activity of enforcement bodies to a certain extent to IT systems, will be analysed.

Methods: The study uses a dogmatic method, the essence of which is the analysis of legal texts and interpretation of the obtained legal norms to the extent necessary to determine the fundamental interpretative and practical problems in the area of informatisation of court enforcement proceedings. In turn, the analytical method refers to the examination of the achievements of civil procedural law doctrine and the case-law of the Supreme Court and ordinary courts in relation to the most important solutions transferring judicial enforcement to IT systems.

Results: An analysis of the current statutory provisions relating to the informatisation of judicial enforcement proceedings shows that this is a process *in statu nascendi*,

because the instruments introduced in this regard only to a certain extent implement the postulate of optimising the use of new technologies in order to improve the efficiency of court proceedings and enforcement proceedings. The lack of sufficient financial, organisational resources and solutions to tackle digital exclusion, with the simultaneous use of hybrid solutions, contributes to weakening trends in the deployment of new technologies.

Discussion: In judicial enforcement proceedings, the informatisation of procedural and enforcement actions is introduced, both directly in relation to judicial enforcement in civil matters, as well as in the sphere of communication between the authority, parties to the proceedings and other participants. This makes it possible to speed up and increase the effectiveness of judicial enforcement in civil matters.

KEYWORDS: *judicial enforcement proceedings, informatisation, computerisation, civil proceedings, bailiff*

INTRODUCTION

The informatisation of social and economic life is inevitably associated with technical changes in the system of justice and in the activities of auxiliary bodies, including court bailiffs. The main problem that the legislator has to face is changing the content of substantive and procedural law in order to keep up with the changes initiated by economic and social transactions. An equally important aspect is to increase the efficiency and effectiveness of enforcement proceedings through the use of IT tools that allow for quick performance of activities (in real time) with the involvement of significantly lower workload on the part of the users of these tools. The only problem is that the introduction of these changes requires significant financial and organizational outlays at the stage of their implementation, and thus burdens the State Treasury budget. At a later stage, the outlays related to the maintenance of IT tools, including ICT systems, become significantly lower compared to the total costs of enforcement proceedings in the traditional formula. However, at the implementation stage, the costs and organizational problems are a significant impediment to the optimal, dynamic development of informatisation of civil proceedings.

The doctrine of civil procedural law analyses the basic constructions of examination and enforcement proceedings relating to the use of IT tools

in any scope, in relation to the form of both procedural and enforcement activities. A separate group are situations in which IT tools are only technical support (e.g., covering the documentation of activities and archiving documents created in the course of proceedings).

The study will discuss the hypothesis that the implementation of IT tools is an essential element of the development of modern civil procedural law. These implementations basically include two groups of solutions:

1. structures related to communication between authorities, parties, and other participants in the proceedings, and sometimes also third parties, who have important information to ensure the effectiveness of enforcement proceedings,
2. legal solutions regarding the form and course of the procedural and enforcement activities.

These solutions should be organized and characterized, primarily due to the impact of the introduced regulations on efficiency (understood as a quick achievement of the purpose of the proceedings) and effectiveness (understood as the effective conduct of the proceedings with the involvement of proportional financial and organizational outlays). The informatisation of enforcement proceedings is a multifaceted phenomenon (Uliasz, 2019). It is part of the general informatisation of law, which includes both information about the law (e.g., about the content of legal provisions) and the so-called “information in law”, which includes cognitive content formulated and exchanged in legal transactions, including in the course of legal proceedings (Janowski, 2011, p. 214). The digitization of activities in the administration of justice and the use of electronic means of communication are nowadays the basic tools for organizing work, conducting proceedings and communication. Therefore, the organizational, informational, and procedural aspect of informatisation at the stage of enforcement proceedings requires a broader analysis (Monarcha-Matlak, Skoczylas, 2021, p. 101).

The aim of the work is to define the scope of IT tools currently used in enforcement proceedings and to determine the state of informatisation of enforcement proceedings, also in the perspective of *de lege ferenda* conclusions.

RESEARCH METHODS

The study uses primarily the dogmatic method, the essence of which is the interpretation of the applicable legal provisions. With this method, legal texts containing currently applicable standards are analysed. The doctrine indicates that the use of the dogmatic and legal method is “a mental activity which, through the interpretation of statutory texts, conceptualization, ordering, removing contradictions and filling the so-called gaps in the law – seeks an answer to the *quid iuris* question. How is it according to the law, what does the law say, what is the content of the legal order in its general principles and detailed solutions” (Longchamps, 1968, p. 6). As part of the results of using this method, the content of standards, basic concepts relating to enforcement proceedings and their informatisation, their systematization and verification of the practice of functioning of civil procedural law in the field of informatisation are determined. In this way, the analytical and empirical dimension of legal dogmatics is manifested. R. Alexy emphasizes that the normative aspect is of fundamental importance for the practice of law. In this case, it is about answering the question “what is the correct decision in a particular case, assuming positively applicable law” (Alexy, 2010, p. 36). As a consequence, for the practice of using IT tools in enforcement proceedings, the most important thing is that the applicable legal provisions create opportunities for their effective use to achieve the objectives of these proceedings.

The second method, equally important for a full consideration of the title issue, is the analytical method. This method includes a research process that focuses on the decomposition of the whole of the examined issue, breaking it down into several parts or elements in order to determine the causes, nature, and effects of specific legal events. In the case of the indicated problem, this analysis refers to the review of the views of the doctrine and judicature, the subject of which is the interpretation of the above-mentioned legal norms in the field of informatisation of enforcement proceedings. The literature on the subject and jurisprudence in many cases resolve doubts arising from the fact that the legal text does not always keep up with the changing reality and does not reflect the optimal use of IT tools, also in the case of enforcement proceedings and activities of enforcement authorities. At the same time, it is often

emphasized that the doctrine, recognizing the practical side of the proposed solutions, should have the ambition of being an analytical and intellectual base for the judiciary, because changing the attitudes of judges is sometimes more effective than interfering with the legal system (Olszak, 2022, Legalis). As a consequence, only the analysis of both of these sources of interpretation of legal texts allows for a full assessment of the discussed issue.

INFORMATISATION OF COMMUNICATION BETWEEN AUTHORITIES, PARTIES, AND PARTICIPANTS IN THE PROCEEDINGS

The term “service” in civil procedural law does not have a legal definition. The doctrine indicates that it consists in sending a document to the addressee in accordance with the law, in such a way that the addressee can read its content (Marciniak, 2019, Legalis). The institution of service in enforcement proceedings, as in all civil proceedings, is a guarantee of the implementation of the most important procedural rules, helps to ensure the proper course of the proceedings, protects the rights of parties and participants in the proceedings and is an expression of the implementation of the most important principles of proceedings: the principle of procedural formalism, officiality of service and direct service. The principle of officiality means that the judicial enforcement authority (the court bailiff and the court) serves documents *ex officio*, and only in exceptional cases specified in the act, upon request, while the principle of direct service is manifested in the fact that the enforcement authority serves documents directly to the addressee (to the addressee or a designated post office box) and suffers from limitations in the case of substitute service (Uliasz, 2007, p. 22). In turn, the principle of procedural formalism is generally expressed in the obligation to comply with the requirements regarding the form, place and time of preformed activities, and failure to meet them may result in procedural sanctions (Kaczmarek-Templin, 2007, p. 11). Effective and efficient service is to support the efficiency and effectiveness of enforcement proceedings.

For this reason, the area in which the informatisation of enforcement proceedings plays a fundamental role is the service performed during these proceedings. The court bailiff serves the administrative enforcement authorities, tax authorities and creditors of cash receivables, the enforcement of which has been taken over by the judicial enforcement authority as a result of the confluence of administrative and judicial enforcement, which are public entities obliged to provide and operate an electronic inbox on the basis of Article 16(1a) of the Act of 17 February 2005 on the informatisation of the activities of entities performing public tasks (Journal of Laws 2023.57), only via the ICT system or with the use of electronic means of communication, in the manner specified in the regulations issued on the basis of Article 63a § 2 of the Act of 17 June 1966 on enforcement proceedings in administration (Journal of Laws 2020.1427, consolidated text, as amended) (Art. 759² of the Act of 17 November 1964 Code of Civil Procedure (Journal of Laws 2021.1805, consolidated text, as amended, hereinafter referred to as: CCP)). As part of this regulation, the following types of documents are sent from court bailiffs to tax authorities via the ePUAP system: seizure of debtors' receivables for tax refund or overpayment, requests for information on the debtor's property status or enabling identification of debtor's assets and address to the extent necessary to ensure the proper course of the proceedings, and also return correspondence from the tax authorities in response to the above-mentioned seizures or inquiries. As emphasized in the literature, the amended regulations introduced the concept of a new type of document – the so-called annotation, which is a package of information about the case, such as in concurrent cases: type and amount of cash receivables, interest for failure to pay them on time, reminder costs and enforcement costs due as of the date of this annotation, other data necessary to conduct jointly enforcement of the item or property law and a qualified electronic signature (Janus, 2022, p. 15). The annotation on the confluence is provided in an electronic form corresponding to the logical structure available in the Public Information Bulletin on the website of the minister responsible for public finance. Thus, between public entities, IT tools, and above all, the ICT system, have become the exclusive channel of communication in enforcement proceedings.

It is worth noting that due to the lack of a common ICT system for examination and enforcement proceedings, the provisions of the procedural act do not refer to a specific system existing in practice, but to a model that must be able to handle civil proceedings on every stage, taking into account the specificity of individual activities and the widest possible development opportunities and an appropriate level of security confirmed by the appropriate accreditation of an authorized body (Uliasz, 2017, p. 29). The legal definition of an ICT system was set out in the Act of 17 February 2005 on the informatisation of the activities of entities performing public tasks (Journal of Laws 2023.57). According to this definition, an ICT system is a set of cooperating IT devices and software that ensures processing, storage, as well as sending and receiving data via telecommunications networks using a terminal device appropriate for a given type of telecommunications network within the meaning of the Act of 16 July 2004 – Telecommunications Law (Journal of Laws 2022.1648, consolidated text). The doctrine emphasizes that this approach is exemplary and basic in terms of terminological interpretation in other branches of law. Subsequent legal acts contain references to these definitions, while others do not define the discussed institution, assuming the precision and transparency of the quoted model definition (Uliasz, 2017, p. 31). The legislator has not yet decided definitively on the only possible solution, which is the use of a single ICT system. The name “ICT system” is not an individual name referring to a specific ICT system, but it is a general name referring to any system that can handle court proceedings comprehensively, or – adequately to individual provisions of the Code of Civil Procedure” (Flaga-Gieruszyńska, 2018, Supplement). This means that the legislator has still not defined the direction in which it will go in the field of informatisation of enforcement proceedings, so at the current stage of this process it is possible to both create a single, universal ICT system and create a network of interoperable systems by connecting existing systems and those created in the future, the essence of which is to create functionalities allowing for the achievement of the objectives of enforcement proceedings.

On the other hand, service between the bailiff and the head of the tax office in the event of a confluence of court and administrative enforcement is made via an account in the e-Tax Office. In this case, service is not performed with the use of an electronic inbox. In addition, the court bailiff may, at the party’s request,

serve copies of documents via the Electronic Platform of Public Administration Services (ePUAP). Copies of documents served in this way do not require additional authentication by the bailiff. If the addressee fails to collect the document, it is deemed to have been served by default after 14 days from the date of sending it via ePUAP (Art. 759² § 3 of CCP). The need to introduce such a form of communication results, on the one hand, from the fact that the ICT system that supports enforcement proceedings, to which the provisions on the profession of court bailiff apply, does not, by definition, provide for functionality that would allow the parties to be served with documents via this system. On the other hand, the new provisions on electronic service are characterized by a relatively long *vacatio legis* and it is currently unknown when this method of serving correspondence in the case will become fully functional. At the same time, the legislator takes into account that, especially in professional transactions, citizens expect from the state far-reaching facilitations in the circulation of correspondence (this applies in particular to entities dealing with debt recovery) and speeding up the exchange of information between the bailiff and the party or its proxy (Olczak-Dąbrowska, 2023).

However, communication via an ICT system may also be used in relation to communication between the authorities and the parties to the proceedings. According to Article 760 § 1 of CCP, applications and statements in enforcement proceedings are made, at the applicant's choice, in writing or orally for the record, unless a special provision provides otherwise. However, if a special provision so provides or a choice has been made to submit documents via the ICT system, applications and statements are submitted only via the ICT system. The bailiff immediately, but not later than within 7 days from the date of receipt of the application, takes the necessary actions. The necessity to introduce such a regulation in enforcement proceedings was related to the change made in Article 125 § 2¹ sentence 1 of CCP relating to the entire examination procedure. This provision could be applied accordingly on the basis of Article 13 § 2 of CCP referring to the provisions governing the examination proceedings, but given the objectives of the enforcement proceedings, one could have doubts whether the provision of Article 760 § 1 and 2 of CCP would not constitute a *lex specialis*, as it regulates issues related to the submission of statements within the institution of hearing (Gil, 2023).

If, according to the provisions of the Code of Civil Procedure, there is a need to hear a party, the hearing takes place, as appropriate, by writing down minutes in the presence or absence of the other party, or by a statement of the party made in writing or via the ICT system (Art. 760 § 2 of CCP). This applies to both the proceedings conducted by the bailiff and the court acting as both the enforcement authority and the enforcement court.

The use of IT tools also refers also to obtaining information for the purposes of effective conduct of enforcement proceedings. The enforcement authority may request information on the debtor's property status or information enabling identification of debtor's assets and address to the extent necessary to ensure the proper course of the proceedings from: 1) public administration authorities, 2) entities performing tasks in the field of public administration, 3) tax authorities, 4) pension authorities, 5) banks, 6) cooperative savings and credit unions, 7) insurance or reinsurance companies, 8) entities keeping securities accounts, listed in Article 4(1) of the Act of 29 July 2005 on trading in financial instruments (Journal of Laws 2023.646, consolidated text), 9) housing cooperatives, 10) housing associations, 11) other entities managing premises, 12) economic information offices, 13) other institutions and persons not participating in the proceedings. If obtaining this information is possible via ICT systems operating on the basis of separate provisions, the bailiff uses these systems with the exclusion of other forms of communication – on the terms set out in these provisions (e.g., this solution can be used in the case of the Central Register of Vehicles and Drivers). The existence of an increasing number of systems and registers in which data useful for conducting proceedings are stored, as well as the existing communication paths, enable a shortened way of obtaining this information by the enforcement authority. Therefore, the provision in question results not only in the possibility for the bailiff to independently obtain data from these systems, but also in the obligation to do so. It seems that the provision is also addressed to the court as an enforcement authority. There are no arguments to prevent such a simplified action by the court. A *de lege ferenda* postulate would be to change the cited provision in this respect (Sikorski, 2021, p. 318).

The area of activities for the informatisation of enforcement proceedings is also court enforcement from a bank account. Under this method of judicial enforcement, the court bailiff serves documents to the bank via the ICT system

that handles the seizure of receivables from a bank account, and the bank submits documents to the bailiff only through this system (Art. 893^{2a} of CCP). By introducing an obligatory use of the ICT system between the above-mentioned entities, making a choice has no procedural significance, as well as a subsequent possible resignation from the choice made (Flaga-Gieruszyńska, 2017, p. 273). The cited regulation in the procedural act corresponds to the provision of Article 112c(1) of the Act of 29 August 1997 – Banking Law (Journal of Laws 2022.2324, consolidated text), according to which banks operate an ICT system that handles the seizure of receivables from a bank account. The scope of application of Article 893^{2a} of CCP covers the exchange of documents between the bailiff and the bank and only in the scope of activities related to the seizure of a bank account. Such activities include actions that may be taken following the seizure (Art. 889 § 1 and 3 of CCP), seizure of a joint account (Art. 891¹ of CCP) and the account referred to in Article 893¹ § 1 of CCP. It is indicated in the literature that Article 893^{2a} of CCP also applies to other documents from the court bailiff addressed to the bank, in particular reminders, notices of extending, limiting or revoking (cancelling) the seizure, notices that the debtor is using the amount free from seizure as part of enforcement from another bank account, notices regarding the method of solving confluence of court enforcements or administrative and court enforcements, and notices of exemption from seizure of a share in a joint account (Flaga-Gieruszyńska, 2017, p. 20). This provision does not apply to the bailiff's communication with the parties in, the court or other entities, as well as the bank's correspondence with the creditor and debtor. In this respect, the general rules valid in a given case apply (Art. 760 of CCP). In particular, a bailiff's order imposing a fine on a bank employee is not served under this procedure, because it is addressed to the employee, not the bank.

Communication with the use of IT tools has also been used in the case of court enforcement against receivables for overpayment or tax refund. The legislator separated and streamlined the enforcement of the debtor's receivables due to overpayment or tax refund. In this method of judicial enforcement, the notice of seizure of overpayment and tax refund and other documents related to the seizure are served to the debtor of the seized receivables with the use of the ICT system or electronic means of communication, in the manner

specified in the regulations issued on the basis of Article 67 § 2c of the Act of 17 June 1966 on enforcement proceedings in administration. Service between the bailiff and the head of the tax office is made via an account in the e-Tax Office (Art. 902² § 3 of CCP).

However, not only the means of communication are an element of the informatisation of enforcement proceedings, because solutions concerning enforcement activities, i.e., activities directly aimed at satisfying the creditor from the debtor's assets, are equally important.

INFORMATISATION OF PROCEDURAL AND ENFORCEMENT ACTIVITIES IN ENFORCEMENT PROCEEDINGS

IT solutions in enforcement proceedings are not unique to the Polish legal order. A good example is an IT project implemented by the Italian Ministry of Justice. Its aim is to modernize court services in civil matters so as to increase their efficiency by using new technologies. The main assumption of the PCT (*Il Processo Civile Telematico*) is to allow the performance of procedural activities, such as submission of pleadings, documents, service of summons and notifications, determination of the status of proceedings, examination of case files – electronically, remotely using IT tools and remote communication, without the need to physically go to the court. The aim of the PCT project is to reduce and dematerialize procedural activities, process data in digital form, delocalize activities of attorneys, streamline, and rationalize office services and shorten the time of civil proceedings (Soldi, 2016, p. 338; Krakowiak, 2022, p. 12). This model, based on the universality of IT solutions used in enforcement proceedings, seems to be the most widespread in European countries.

In the Polish legal system, it is not without significance that the legislator introduced electronic proceedings at the stage of examination proceedings. This determined the manner of shaping the provisions of clause and enforcement proceedings for the purposes of electronic enforcement titles. The decision on granting the execution clause to the enforcement titles indicated by the legislator (1) a final or immediately enforceable court judgment, as well as

a settlement concluded before the court, 2) a final or immediately enforceable judgment of the court referendary), issued in electronic form is left only in the ICT system, except for cases expressly indicated by the legislator, which will be omitted here. In such a situation, an application for the initiation of enforcement on the basis of an electronic enforcement title may be submitted to the bailiff also via the ICT system. Such an application for the initiation of enforcement or a request for *ex officio* enforcement is accompanied by a document obtained from the ICT system, enabling the enforcement authority to verify the existence and content of this title, and in the case of submitting an application for the initiation of enforcement via the ICT system, the enforcement title is indicated. In the case of an electronic enforcement title, the court bailiff is obliged to verify the content of the document obtained from the ICT system, and to mark in this system the fact of carrying out the enforcement on the basis of this title (Art. 797 § 4 of CCP). Verification is carried out based on the Regulation of the Minister of Justice of 30 November 2018 on the activities of the National Council of Bailiffs enabling bailiffs to carry out enforcement on the basis of an electronic enforcement title and the bailiff's activities performed via the ICT system in enforcement proceedings (Journal of Laws 2018.2372, as amended). The bailiff's official seal, handwritten signature and date are placed under the appropriate annotation from the verification.

At the same time, the legislator introduces solutions adapting the manner of performing activities based on an electronic enforcement title to its specificity, stipulating that whenever the Code of Civil Procedure refers to the presentation (showing, attaching, serving, or submitting) of an enforcement title, and this title is an electronic enforcement title, a document obtained from the ICT system verified by the bailiff should be presented. If the enforcement title is to be submitted in proceedings conducted by a court or bailiff, it is sufficient to submit a document obtained from the ICT system. In each of these cases, the bailiff is obliged to verify the indicated documents and reflect the fact that enforcement has been initiated on the basis of an electronic enforcement title. Verification of such a document by the bailiff is conducted by confirming the compliance of the verification printout with the electronic enforcement title, and then recording in the ICT system of the fact of carrying out the enforcement on the basis of the electronic enforcement title, and after

the enforcement is completed – the date of its completion and the result. At the same time, the bailiff confirms the compliance of the printout with the record of the enforcement title in the ICT system, noting this fact on the printout, and affixing the note with an official seal, handwritten signature, and date, in which the month is written in words. If the application for enforcement on the basis of an electronic enforcement title has been submitted to the bailiff via the ICT system, the creditor only indicates the submission of such a title in the repository, and the bailiff makes a verification printout and confirms its compliance with the original title.

IT tools are also used to document enforcement activities for the purpose of subsequent verification of the correctness of the performance of the court bailiff's activities, in particular in the event of a complaint against the court bailiff's activities by a party to the proceedings. According to Article 809¹ § 1 of CCP, the course of the following enforcement activities performed by the bailiff outside the office is subject to recording by means of an image and sound recording device: 1) activities with the participation of the debtor aimed at determining the property status, 2) seizure of movable property, 3) enforcement of the decision on placing movable property under the supervision of another person than the debtor, 4) auction of movable property, excluding electronic auction, 5) auction of real property, unless its course is recorded in the manner specified in Article 972 § 2 of CCP, 6) inspection of real property, 7) appointment of an administrator for real property under the procedure of Article 933 of CCP, 8) emptying the premises of persons or things; 9) release of movable and immovable property, 10) possession, 11) forced opening of the premises, 12) search of the debtor's apartment or utility room. The bailiff records the course of the activity in the same way also when such a request is made by at least one of the parties to the proceedings. From the perspective of these considerations, the content of § 5 of this provision is particularly important as it states that the court bailiff enables the parties and participants in the proceedings to familiarize themselves with the image and sound recording in the bailiff's office. The parties or participants in the proceedings do not receive the image and sound recordings. This rule therefore constitutes a *lex specialis* in relation to the general regulation of internal publicity of the proceedings provided for in Article 9 § 2 *in initio*, according to which the parties and other

participants in the proceedings have the right to receive sound or image and sound recordings from the case files (Muliński, 2020, p. 1528). These activities are carried out on the basis of the standards specified by the Minister of Justice by way of a regulation, types of devices and technical means for recording image and sound, the method of storing, reproducing and copying recordings and the method of familiarizing oneself with the image and sound recordings, bearing in mind the need for proper securing the recorded image and sound against loss, distortion or unauthorized disclosure and ensuring the protection of the rights of persons participating in the proceedings and third parties whose image has been recorded (Regulation of the Minister of Justice of 14 December 2018 on the recording of image and sound from the course of the court bailiff's activities, Journal of Laws 2018.2449). The recordings are made available only by their presentation on devices that play the image and sound that belong to the bailiff. In turn, if the files of an enforcement case are made available in court, the recording is made available only in the court building, on devices that are part of the court's equipment (§ 8 of the Regulation). Moreover, the administrative and judiciary supervision authorities (i.e., courts, presidents of ordinary courts and the Minister of Justice), as well as other authorized bodies, are provided with the recordings via an account in the ICT system in which the case files are kept, or on a data carrier (§ 9 of the Regulation).

A separate area of analysis are IT solutions for the sale of movable and immovable property in the course of enforcement proceedings. In both cases, the possibility of using electronic auction was introduced.

Without going into the detailed course of the indicated form of forced sale of movable property as part of the enforcement of cash considerations, it is necessary to indicate the key circumstances for the application of this mode of sale. The bailiff carries out the sale by electronic auction at the creditor's request after the seizure. If a movable property has been seized to satisfy several claims pursued in different proceedings, the creditor at whose request the first seizure took place decides on the mode of sale of the movable property (Art. 879² § 1 CCP). In the event of submitting an application, the bailiff places the seized movable property, for which the seizure has become final, under the supervision of a person other than the debtor, unless the debtor

gives a guarantee of proper supervision or such supervision has already been established, or the movable property has been deposited with the court or given for safekeeping to a competent institution. Before the amendment, the seizure of movable property held by the debtor was automatic, without the need to assess whether supervision by the debtor would be inadvisable due to the assumption that it would not be exercised properly. This condition of admissibility of electronic auction met with apt criticism in the doctrine based on the reasonable assumption that the risk of the debtor hindering the viewing and handing over of the item is the same, regardless of the form – traditional or electronic – in which the auction will be held (Kunicki, 2020, p. 264). If the supervision is revoked, the auction may not begin earlier than two weeks after the day of revoking the supervision. For the sale of movables by electronic auction, the provisions relating to the sale of movables in the traditional formula with differences resulting from the specificity of electronic sales apply. The Minister of Justice, by way of a regulation, specifies the method of conducting the auction and using the ICT system that supports electronic auctions for activities related to the selection of the entrepreneur or person to whom the bailiff will sell the item, taking into account the protection of the rights of persons participating in the auction, the efficiency of the proceedings, the effectiveness of enforcement, the safety of using documents in electronic form and the availability of the ICT system (Regulation of the Minister of Justice of 7 September 2016 on the manner of conducting an electronic auction of movable property in court enforcement proceedings, *Journal of Laws* 2016.1431).

In science and practice, views were often expressed indicating the need to develop the potential of the electronic auction of movables already functioning in the Polish legal system (Kunicki, 2019, p. 18). This justified the introduction of electronic auctions also in relation to real property. The sale of real property by electronic auction is carried out at the creditor's request. An application for a sale by electronic auction may also be submitted in the event of an application for another or second auction (Art. 986² § 1 of CCP). As noted in the literature, "the requirement of the creditor's application clearly determines the need for the creditor's assessment of the legitimacy and desirability of using sales by electronic auction" (Pękałski, 2012, p. 28). If real property has been seized to

satisfy several claims pursued by different creditors, the sale of the property by electronic auction is carried out if any of the creditors so requested. For the sale of real property by electronic auction, the provisions relating to the sale of real property in the traditional formula with differences resulting from the specificity of electronic sale apply. For the sale of real property by electronic auction, the provisions relating to the recording of enforcement activities by means of a device recording sound or image and sound do not apply. The Minister of Justice, by way of a regulation, specifies the method of conducting the sale of real property by electronic auction and the method of authentication of users of the ICT system that supports electronic auction, taking into account the protection of the rights of persons participating in the auction, the efficiency of the proceedings, the effectiveness of enforcement, the safety of using documents in electronic form and the availability of the ICT system (Regulation of the Minister of Justice of 27 October 2021 on the method of conducting the sale of real property by electronic auction and the method of authentication of users of the ICT system supporting electronic auction, *Journal of Laws* 2021.2005). The introduction of electronic auctions of real property is a form of further digitization of public services, which in the current epidemiological situation has ensured a much higher level of security than sales by traditional auction. However, this mechanism was to be used not only in the era of the pandemic. Electronic auctions should significantly contribute to the acceleration of real property enforcement, especially a long-term one due to the multitude of entities participating in it, and improve the transparency of transactions (Gimlewicz, 2022, p. 83). This aspect of the use of electronic auctions in court enforcement of cash considerations is the basic axiological justification for developing the use of IT tools as instruments to extend the availability of sales in enforcement proceedings.

In the case of the sale of movable and immovable property by electronic auction, the enforcement authority performs activities via the ICT system. The condition for participation in the tender is the creation of an individual account in the ICT system. An electronic auction allows for the sale of a seized item, and at the same time, due to the lack of the need for the personal presence of the participants during the bailiff's activities, it gives a chance to overcome geographical barriers. The positive features of electronic auctions include

not only the above-mentioned risk reduction during the development of the pandemic, because this type of auction gives a chance for a larger number of bidders to participate than in traditional auctions and, consequently, to obtain a higher sale price, and it may contribute to the elimination of a phenomenon emphasized by project promoters – the so-called collusive bidding, which leads to a reduction in the price of the auctioned item (Sadza, 2023). The use of this form of sale thus leads to a real improvement of enforcement proceedings and increases the effectiveness of the enforcement itself by reducing additional costs that could potentially lead to incomplete satisfaction of the creditor or would burden the creditor in the event of ineffective discontinuation of enforcement. The regulations introduced in the field of electronic auctions are aimed at increasing the efficiency of the sale of seized items while maintaining procedural guarantees (Gimlewicz, 2022, AIR, p. 56). The previous experience related to this form of sale in enforcement proceedings shows how much potential lies in this type of solutions, which makes it possible to conclude that *de lege ferenda* it is worth developing further manifestations of informatisation of court enforcement of cash considerations.

Electronic auctions of items apply only to cases strictly defined by the legislator. In other cases, for the sale of things or rights by a court bailiff, where there is no specific provision referring to the application of the provisions on auction (or enforcement) sale of things, the provisions in question cannot be applied. The bailiff also cannot apply the provisions on electronic auction of movable property or use the ICT system supporting this auction for purposes other than those indicated in the provisions of the procedural act (Kunicki, 2022, p. 16).

When referring to the already discussed electronic standard for the exchange of correspondence between the court bailiff and the bank in court enforcement against a bank account, it is necessary to emphasize, as a supplement to the form of enforcement activities under this method of enforcing cash considerations, that the seizure of receivables from a bank account also takes place via the ICT system. The seizure is made upon serving the notice on the prohibition of withdrawal from this account and also includes amounts that were not on the bank account at the time of the seizure but were accumulated on the account after the seizure. As indicated above, this provision applies

in the course of enforcement of receivables from a bank account, also a joint account (Art. 891¹ and 891² of CCP), as well as an account containing a savings deposit for which a personal certificate has been issued (Art. 893¹ of CCP).

It should be added that data in electronic form generated as a result of the bailiff's activities listed in Article 797 § 4 and Article 816 § 2 of CCP are provided with a qualified electronic signature. In order to ensure an appropriate level of data security and changes made to the ICT system used for the purposes of electronic proceedings, the legislator referred to the structure of the qualified electronic signature, already known and used in practice. A qualified electronic signature is a special form of an electronic signature, and when verified by means of a qualified certificate, it produces legal effects specified in the act, if it was submitted within the validity period of that certificate.

CONCLUSIONS

Starting from 2016, the legislator has been gradually introducing legal and organizational solutions allowing for the wider use of IT tools, including ICT systems, in order to increase the efficiency of enforcement proceedings. Considerations relating to the informatisation of enforcement proceedings are important because it should generally be recognized that the development of informatisation at this stage of the proceedings increases their efficiency, and thus serves to effectively protect the debtor (Rylski, 2022, p. 127), and at the same time secures the interests of the creditor. The exceptions in this regard, most often resulting from incorrect practice or not fully properly shaped legal regulations, do not negate this general link between increasing the efficiency of proceedings and the use of IT tools. These actions are of fundamental importance, because examination proceedings constitute only the so-called initial phase, and only enforcement serves the proper implementation of effective judicial protection (Gaul, 2003, p. 41). There is no doubt that the process of informatisation can be described as *in statu nascendi*, because so far no general solutions have been introduced, only "island" constructions regulating individual methods of enforcement or groups of entities to which

they apply. Most of all, there is no common ICT system within which activities would be performed at the stage of examination and enforcement proceedings.

It is worth pointing out that all these solutions are hybrid in nature, as the legislator provides for the possibility of performing actions in enforcement proceedings also in paper form (sometimes in oral form) for persons who are unable or unwilling to use the electronic form and ICT system. This approach is undoubtedly accurate from the perspective of the access of excluded persons or those at risk of digital exclusion to IT tools at the stage of compulsory execution of enforcement titles. At the same time, however, there is a problem of fragmentation of informatisation activities, which reduces the possibility of accelerating and increasing the effectiveness of enforcement proceedings. As a consequence, it is necessary to consider a change in the state policy towards the introduction of comprehensive solutions, covering all activities performed in enforcement proceedings, with the simultaneous introduction of support mechanisms for persons who are excluded or at risk of digital exclusion, which will allow them to be included in the legal protection system in the field of electronic elements of enforcement proceedings.

Only the development and implementation of a coherent policy for the implementation of IT tools in the system of justice in civil cases and in the activities of auxiliary bodies at the stage of enforcement proceedings (including court bailiffs) will make it possible to achieve the optimal state of informatisation of enforcement proceedings, positively influencing the efficiency and effectiveness of court enforcement in civil cases.

REFERENCES

- Alexy, R. (2010). *Teoria praw podstawowych*, Wydawnictwo Sejmowe, Warsaw.
- Flaga-Gieruszyńska, K. (2017). *Elektronizacja doręczeń i zawiadomień w sądowym postępowaniu egzekucyjnym*, Przegląd Prawa Egzekucyjnego No. 8, Currenda.
- Flaga-Gieruszyńska, K. (2018). *Pojęcie systemu teleinformatycznego w postępowaniu cywilnym*, Przegląd Prawa Egzekucyjnego No. 1, Supplement, Currenda.
- Gaul, H.F. (2003). *Ochrona prawna egzekucji w świetle podstaw konstytucyjnych i dogmatycznych*, Przegląd Prawa Egzekucyjnego No. 1.
- Gil, I. (2023). *Komentarz do art. 760 k.p.c.*, Nb 4 in: E. Marszałkowska-Krześ, I. Gil (ed.), *Kodeks postępowania cywilnego. Komentarz*, C.H. Beck, Warsaw.
- Gimlewicz, M. (2022). *Sprzedaż nieruchomości w drodze licytacji elektronicznej – analiza nowelizacji*, Przegląd Prawa Egzekucyjnego No. 4.
- Gimlewicz M. (2022). *Sprzedaż w drodze licytacji elektronicznej*, Acta Iuridica Resoviensia No. 1(36).
- Janowski, J. (2011). *Informatyka prawa. Zadania i znaczenie w związku z kształtowaniem się elektronicznego obrotu prawnego*, UMCS Publishing House, Lublin.
- Janus, M. (2022), *Wybrane zagadnienia informatyzacji sądowego postępowania egzekucyjnego. Elektroniczna komunikacja sądowych organów egzekucyjnych z administracyjnymi organami egzekucyjnymi i podatkowymi oraz bankami*, Prawo Mediów Elektronicznych No. 3, C.H. Beck.
- Kaczmarek-Templin, B. (2007). *Formalizm procesowy a nowe przepisy odnoszące się do dokumentów w procesie cywilnym*, Prawo Mediów Elektronicznych No. 1.
- Krakowiak, M. (2022). *Teleinformatyczne poszukiwanie majątku dłużnika i jego zajęcie w egzekucji świadczeń pieniężnych na przykładzie włoskiego prawa egzekucyjnego*, Przegląd Prawa Egzekucyjnego No. 10, Currenda.
- Kunicki, I. (2019). *Elektroniczna licytacja ruchomości w sądowym postępowaniu egzekucyjnym. Komentarz*, C.H. Beck, Warsaw.
- Kunicki, I. (2022), *Reglamentacja prawna i zakres zastosowania elektronicznej licytacji ruchomości*, Przegląd Prawa Egzekucyjnego No. 9, Currenda.
- Longchamps, F. (1968). *Z problemów poznania prawa*, Zakład Narodowy Imienia Ossolińskich, Wrocław.
- Marciniak, A. (2019). in: A. Marciniak (ed.), *Kodeks postępowania cywilnego. Tom I. Komentarz do art. 1–205*, C.H. Beck, Warsaw.
- Monarcha-Matlak, M., Skoczylas, D. (2021), *Zasady postępowania egzekucyjnego a standardy wykonywania zawodu komornika sądowego*, Currenda, Sopot.
- Muliński, M. (2020), *Komentarz do art. 809^l k.p.c.* in: T. Zembrzusi (ed.), *Kodeks postępowania cywilnego. Koszty sądowe w sprawach cywilnych. Dochodzenie roszczeń w postępowaniu grupowym. Przepisy przejściowe. Komentarz do zmian. Tom I i II*, Wolters Kluwer, Warsaw.

- Olczak-Dąbrowska, D., (2023), *Komentarz do art. 759² k.p.c., Nb II.1* in: T. Szanciło (ed.), *Kodeks postępowania cywilnego. Komentarz. Art. 506–1217. Tom II. Wyd. 2*, Warsaw 2023;
- Pękalski, B. (2012). *Sprzedaż w drodze licytacji elektronicznej. Kilka pytań, wraz z odpowiedziami, o tym jak planuje się usprawnienie egzekucji komorniczej poprzez wykorzystanie technologii informatycznych*, Prawo Mediów Elektronicznych No. 1.
- Rylski, P. (2022). in: S. Cieślak (ed.), *Aksjologia egzekucji sądowej. W poszukiwaniu optymalnego poziomu ochrony praw wierzyciela i dłużnika w postępowaniu egzekucyjnym i upadłościowym*, Currenda.
- Sadza A. (2023). *Czy sprzedaż nieruchomości w drodze licytacji elektronicznej pozwala na przyspieszenie egzekucji?* accessed 20.05.2023 from <https://czytelnia.currenda.pl/publikacja?id=454&data-chapter=12272&data-text=elektronizacja>.
- Sikorski, G. (2021) in: K. Flaga-Gieruszyńska (ed.), *Postępowanie zabezpieczające i egzekucyjne. Tom 8, System Postępowania Cywilnego*, C.H. Beck, Warsaw.
- Soldi, A.M. (2016). *Manuale dell'esecuzione forzata*, CEDAM, Vicenza.
- Uliasz M. (2007). *Doręczenia dokonywane drogą elektroniczną w sądowym postępowaniu egzekucyjnym*, Prawo Mediów Elektronicznych No. 1, Currenda.
- Uliasz, M. (2017). *System teleinformatyczny obsługujący postępowanie egzekucyjne. Analiza pojęcia*, Przegląd Prawa Egzekucyjnego No. 4, Currenda.
- Uliasz, M. (2019). *Zasada jawności sądowego postępowania egzekucyjnego w dobie informatyzacji*, Wolters Kluwer, Warsaw, accessed 21.05.2023 from https://sip.lex.pl/#/monograph/369448161/41/uliasz-marcin-zasada-jawnosci-sadowego-postepowania-egzekucyjnego-w-dobie-informatyzacji?keyword=%22Informatyzacja%20post%C4%99powania%20egzekucyjnego%22&unitId=passage_4165.