JOURNAL OF MODERN SCIENCE
SPECIAL ISSUE
5/59/2024
www.jomswsge.com

DOI: doi.org/10.13166/jms/194478

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ELECTRONIC INJUNCTIVE PROCEEDINGS – THE FUTURE OF THE POLISH CRIMINAL PROCEDURE

Summary

The article is intended to analyse the possibility of implementing electronic injunctive proceedings into the Polish criminal procedure. The rationale for that action, the positive aspects and the barriers to the implementation of the proposed solutions have been identified. The author analysed the historical development of injunctive proceedings and subjected the existing regulations to legal-dogmatic analysis from the perspective of the solutions proposed. The results of the study pointed to the possibility of electronization of the injunctive proceedings, presenting a broad justification for this direction of change in the criminal procedure. The author proposes two stages of modification of the electronic injunctive procedure, distinguishing the electronic injunctive procedure of the first degree and of the second degree. As part of the 1st-degree electronic injunctive procedure, it was proposed to electronize individual procedural acts, in particular the service of procedural documents and keeping the court records, but also to change the jurisdiction of courts which decide cases through injunctive proceedings, by establishing one or a maximum 2 to 4 courts dealing exclusively with injunctive proceedings. Depriving district courts (*sądy rejonowe*) of the competence to consider injunctive cases would, in the author's opinion, accelerate the consideration of other criminal cases. The 2nd-degree electronic injunctive procedure would include an element of AI implementation, which should be subject to evolution, starting from the proposing of a substantive resolution of the case to automating the process of issuing injunctive judgments. While discussing the results of the research, the author also points to potential obstacles to the implementation of the second stage, in particular the need to make amendments to the Constitution of the Republic of Poland. As part of the conclusions, the author proposes to undertake the first-stage activities in the short term, but at the same time to conduct further research on the implementation of AI in the injunctive procedure in the medium term.

Keywords: *electronization, e-court, electronization of court files, injunctive judgment*

Introduction

Injunctive proceedings are one of special types of criminal proceedings under the Code of Criminal Procedure. The origins of injunctive proceedings can be found in the legislation of the powers which had partitioned Poland in the 18th century (Austria, Russia and Prussia), which was in force once Poland regained its independence after WW1 (Daszkiewicz, Paluszyńska-Daszkiewicz, 1965, 10,19,26). As Z. Wrona noted, a common feature of the laws of the partitioning powers was the possibility for a state authority to issue a decision attributing an offence to the accused and imposing a penalty without a trial (Wrona, 1997, 13).

As regards the Polish regulations, it should first be pointed out that the injunctive mode (procedure) was not included in the text of the Code of Criminal Procedure of 1928. (Rozporządzenie Prezydenta Rzeczypospolitej z dnia 19 marca 1928 r. Kodeks postępowania karnego, Dz.U. 1928 nr 33 poz. 313), but formed part of the provisions introducing the Code of Criminal Procedure (Rozporządzenie Prezydenta Rzeczypospolitej z dnia 19 marca 1928 r. Przepisy wprowadzające kodeks postępowania karnego, Dz.U. 1928 nr 33 poz. 314), which should be regarded as a peculiar legislative technique. Pursuant to Article 31 of the provisions introducing the Code of Criminal Procedure, in criminal cases which, according to the previous provisions, had been within the jurisdiction of municipal courts, the district (*powiat*) court may issue a criminal injunction if the offence is only punishable, irrespective of the additional and alternative penalties, by detention and a fine or one of these penalties. A criminal injunction could be issued by one person, without trial. As conditions for the application of this mode of procedure, Article 33 of that law pointed to the assumption that the evidence for charging the offender are sufficient and raise no doubts. The nature of the proceedings also took into account the narrow catalogue of penalties applicable under this mode of procedure. With a criminal injunction, only a fine and detention for up to fourteen days or one of these penalties may be imposed. The penalty of substitute detention, together with the imposed penalty of imprisonment, may not exceed fourteen days.

The Code of Criminal Procedure of 1969 (Kodeks postępowania karnego z dnia 19 kwietnia 1969 r., Dz.U. 1969 Nr 13, poz. 96) does not contain this special mode of procedure. As Z. Wrona notes, injunctive proceedings appeared again in the Polish legal order in 1985 under the Act on special criminal liability (Ustawa z dnia 10 maja 1985 r. o szczególnej odpowiedzialności karnej, Dz. U. 1985 nr 23, poz. 101), and returned to the Code of Criminal Procedure in 1988. (Ustawa z dnia 17 czerwca 1988 r. o zmianie niektórych przepisów prawa karnego i prawa o wykroczeniach, Dz. U. 1988 nr 20, poz. 135) (Wrona, 1997, 19).

The literature on the subject points to the fact of frequent regulating the injunction mode outside the Code regulation, which was supposed to show the interim nature of these regulations (Wrona, 1997, 19). The aspect of interim nature cannot be now considered valid, as the legislature included injunctive proceedings in the Code of Criminal Procedure of 1997.

(Ustawa z dnia 6 czerwca 1997 r. Kodeks postępowania karnego, Dz.U. 1997 Nr 89, poz. 555), and these provisions have been in force in the Third Polish Republic for over 25 years now.

Pursuant to Article 500 of the Code of Criminal Procedure, in cases where an inquiry has been carried out, the court, deciding on the basis of the material collected in the pre-trial proceedings that a hearing is not necessary, may, in cases allowing for the imposition of the penalty of restriction of liberty or a fine, issue an injunctive judgment. The injunctive judgment is issued by one judge at a session without the participation of the parties.

In light of the cited conditions for the injunctive mode of procedure, it is reasonable to analyse the possibility of implementing the electronization of injunctive proceedings. Further herein, I will address the potential for risks associated with the electronization of this special mode, particularly in view of the guiding principles of the criminal procedure.

Electronization of penal proceedings – the current state

Before discussing the electronization of injunctive proceedings, from the perspective of the reality of this process, it is necessary to present legal regulations in this area. After a preliminary analysis of the changes in criminal procedural law made to date, four main conclusions can be distinguished.

Firstly, the changes are of a fragmentary nature. Examples include the changes introduced during the COVID-19 pandemic. The possibility of remote participation by the suspect in a detention session was introduced (Article 250 §3b of the Code of Criminal Procedure), by specifying that the suspect's forced appearance in court may be abandoned if the suspect's participation in the session, in particular suspect's explanations, is ensured using technical equipment that allows for this session to be held remotely with simultaneous direct video and audio transmission. Interesting regulations referred to remote participation in the main hearing. Article 374, § 3 and § 4 of the Code of Criminal Procedure, which provide that the adjudicating panel chairman, at the request of the prosecutor, agrees to the accused person's participation

in the hearing using technical devices enabling him/her to participate in the hearing at a distance with simultaneous direct video and audio transmission, if technical reasons do not prevent this. In addition, the chairman may waive the of the accused, auxiliary prosecutor or private prosecutor who are deprived of liberty obligation to appear at the hearing if the participation of those parties at the hearing is ensured by means of technical devices enabling them to participate at the hearing remotely with simultaneous direct video and audio transmission. One of the recent changes concerning this issue is the introduction of Article 133a of the Code of Criminal Procedure (under the Act of 7 July 2023 amending the Act – Code of Civil Procedure, the Act – Law on the Ordinary Courts Organization, the Act – Code of Criminal Procedure and certain other acts, [Ustawa z dnia 7 lipca 2023 r. o zmianie ustawy – Kodeks postępowania cywilnego, ustawy – Prawo o ustroju sądów powszechnych, ustawy – Kodeks postępowania karnego oraz niektórych innych ustaw, Dz.U. z 2023 r. poz. 1860], which entered into force on 14.03.2024), which provides that the court shall serve pleadings or other procedural documents to the prosecutor, defence counsel and representative who is an advocate or attorney-at-law, or the State Attorney Office of the Republic of Poland by posting their content in the information portal referred to in Article 53e § 1 of the Act of 27 July 2001 – The Law on the System of Common Courts [Ustawa z dnia 27 lipca 2001 r. – Prawo o ustroju sądów powszechnych (Dz.U. z 2023 r. poz. 217, z późn. zm.)] in a way that allows the sender and the recipient to obtain a document confirming the service.

Secondly, certain provisions were adopted with a long *vacatio legis*, which were then modified before the entry into force. I am referring here to the concept of electronic service of documents introduced by the Act of 18 November 2020 on electronic service of documents (Ustawa z dnia 18 listopada 2020 r. o doręczeniach elektronicznych, t.j. Dz.U. z 2023 r. poz. 285). The Act, until 01.07.2024, used to be amended nearly ten times and has two consolidated texts. As regards service in criminal matters, these provisions are to enter into force as of 01.10.2029, which is an extremely distant date for modern times.

Thirdly, it should be noted that the penal procedural legislation has been amended too often. In 2023 only, the Parliament adopted six acts amending the Code of Criminal Procedure, which certainly is not conductive

to the consistency of regulations and increases the difficulty in applying these regulations.

Fourthly, in view of numerous amendments, not only to the Code of Criminal Procedure, one cannot notice any model changes, which unfortunately leads to the conclusion that there is no comprehensive, coherent vision for the electronization of criminal proceedings.

The above diagnosis shows the significance of developing a comprehensive vision for the electronization of criminal proceedings. Such a broad analysis, however, goes beyond the scope of this study, therefore I would like to focus solely on the electronization of injunctive proceedings.

Rationale for the electronization of injunctive proceedings

Injunctive proceedings, as an extremely reduced special procedure, may be subjected to the electronicization process as first. The main characteristic elements are adjudication without the participation of the parties and usually the synthetic nature of the evidence. At this point, it is worth considering the factors that would justify the electronization of injunctive proceedings. The analysis of this issue allows us to distinguish five basic aspects.

Firstly, the need to relieve the burden on the courts, both in terms of organisation and adjudication, should be noted. Taking into account the human resources potential (adjudication and administrative positions), it should be noted that the cases examined under the injunctive procedure involve court employees in a significant way. Of course, the scale of formalism is smaller than in the regular procedure, but it nonetheless requires a number of technical activities to be carried out, not to mention the question of examining the case files for the purposes of issuing the decision. A good example is the electronic writ of payment proceedings and the so-called e-court, which significantly relieved district courts of the simplest yet numerous cases.

Secondly, an acceleration of proceeding can be noticed. In practice, proceedings are considerably shorter than under the ordinary procedure, but the

possibility of further accelerating should be recognised, taking into account the electronization of individual procedural acts.

Thirdly, the possibility of unification of case law should be mentioned. According to my practice as an attorney-at-law, courts in different locations approach similar facts differently. Creating an electronic injunctive procedure and the involvement of a certain (small) group of courts to hear these cases would, in my opinion, result in the development of a consistent line of case-law, without creating significant divergences in identical or similar cases.

These arguments are accompanied by a corresponding fourth aspect: improvement of how the judiciary is seen by the public. The social perception of the judiciary related to criminal matters shows the problem of lengthiness of proceedings and uniformity of judicial decisions. This is because we are getting here to the essence of how *justice* is understood by proceedings participants, but also how it is perceived by the wider public – people who come across news about criminal trials presented by various communication channels.

Fifthly, the need to electronize the injunctive procedure also points to a trend towards the electronization of the justice system in general. In the Polish legal order, it is the civil procedure that is leading in changes towards deformalization and electronization (for more detail, see Gołaczyński, Szostek, 2016). The literature also invokes examples of other countries that have successfully implemented, on a pilot basis, certain solutions in the criminal procedure (Dragas-Draganik, 2022, 93-106). Thus, the electronization of injunctive proceedings in Poland will also be justified by the need to look for model solutions, in the medium and long term. A kind of pilot implementation should be carried out precisely in special proceedings, as those characterised by a lower degree of formality and conducted in cases involving a lower degree of social harmfulness.

Having these arguments in mind, it should be pointed out that, of all the Code's special procedures, it is the injunctive procedure that is characterised by the greatest degree of simplification. It is the conditions of this mode of procedure that are key to the implementation of the concept discussed herein. It should be remembered that the conditions of the injunctive mode of procedure include: 1) inquiry conducted in the case; 2) recognizing that the penalty of restriction of liberty or a fine will be a sufficient penal response;

3) recognising, on the basis of collected evidence, that it is not necessary to conduct a hearing; 4) establishing, on the basis of collected evidence, that the circumstances of the offence and fault of the accused do not raise any doubts (Kruk, 2015, 425-426). The conditions thus described, combined with procedural aspects, such as issuing the decision at a session without the participation of the parties, lead to the conclusion that adjudication is made based on the evidence collected in the case file at any place and at any time. Studies on the external transparency of sessions were carried out in the literature. K. Eichstaedt has rightly pointed out that the parties are not notified of the date and place of the injunction session (K. Eichstaedt, 2010, 196). D. Świecki has referred to the substantiation of the Supreme Court's resolution of 25 March 2004 (I KZP 46/03, Legalis 366238) stating that the parties may be present at an injunctive session only as part of the public (Świecki, 2013, 139). However, the cited author rightly questions the sense of public participation in an injunctive session, given the lack of procedural rules for the conduct of the session in question (Świecki, 2013, 139; Kruk, 2015, 446). However, there are also other positions presented in the literature. R. A. Stefański has stated that the current regulations do not prevent the participation of the parties if these appear (Stefański, 2003, 17). The Supreme Court, on the other hand, ruled that the injunction session was open externally, so the public could participate. This argument appears to be purely academic in the light of practice, since there is a common practice that secretariats do not inform of the dates set for injunction sessions. Nonetheless, if the injunctive procedure were to be electronized, it would be possible to provide remote access to that session or to amend the Act by indicating that the session is closed to the public and that only the announcement of the injunctive judgment, carried out in accordance with 418a of the Code of Criminal Procedure, is open to the public.

An important argument in the discussion on the advisability of electronization of the injunctive procedure is also the mode of challenging the injunctive judgment. It should be borne in mind that the injunctive judgment is a kind of sentence issued *on a trial basis*. Pursuant to Article 506 § 3 of the Code of Criminal Procedure, if an objection is lodged, the injunctive judgment becomes null and void and the case is to be heard under the general rules.

To sum up the above considerations, it should be stated that, given the conditions of the injunctive proceedings and their procedural aspects, the electronization of this special procedure is advisable. It also seems possible from both theoretical and practical perspectives. However, it is crucial to break this process into stages, which will be discussed in the next part of this study.

Stages of electronization of injunctive proceedings

The analysis of cases of implementation in the field of electronization in criminal proceedings undertaken to date, but also the organizational and financial possibilities of the Polish justice system makes it advisable to propose the concept of two stages of the electronization of the injunctive procedure. For the purposes of this study, I have proposed to distinguish the first-degree and second-degree electronic injunctive procedure. First, it should be noted that the implementation of the second-degree electronic injunctive procedure requires the introduction of a 1st-degree injunctive procedure and its subsequent assessment with respect to the practical legal application. It appears that the assessment should cover a minimum of two years of operation of the new system, given the pace of processing of injunctive cases, but also the possibility of challenging the ruling and subsequent decisions in ordinary proceedings.

The 1st-degree electronic injunctive procedure should first take into account the electronization of procedural acts. This is primarily about the electronization of service of documents. It is certainly a step in the right direction to introduce service of documents via the Information Portal (*Portal Informacyjny*) on the basis of Article 133a of the Code of Criminal Procedure. It is not sufficient, though. It should be soon extended to juridical persons and unincorporated entities. Juridical persons, including undertakings, are currently obliged to handle certain official matters only electronically (e.g. National Court Register, signing financial statements). Natural persons who are already obliged to communicate electronically with a given entity in selected cases (e.g. applications for *800* + welfare benefits) should also be included successively. The second important area of change is the introduction of electronic

case files. Currently, the Act offers this possibility, but there is no decision to switch entirely to electronic case files, such as the functioning electronic documentation management systems in the public administration. Such a course of change would significantly accelerate the circulation of case files, but at the same time enable the cases to be processed efficiently by designated courts and not all the district courts.

In one of my publications, I have already had the opportunity to analyze the issue of electronization of procedural files. In this regard, it is worth mentioning the conclusions expressed therein regarding the potential benefits (Kosowski 2022, pp. 361-362). From the perspective of procedural bodies I listed the following as positive aspects: the acceleration of proceedings, relieving administrative staff in a given unit of some workload, abandoning/reducing direct service provided to clients, facilitated forwarding to other authorities. The acceleration of proceedings is due to the speed of the implementation of this activity and, as a rule, abandonment of repeating it each time when collecting new files for the case. Relieving employees of part of their workload will be significant as simple tasks will be performed in the ICT system, without the need to search and transport paper files and supervise the party during the activities of viewing paper files. With regard to the parties to the proceedings, I considered the following as positive aspects: acceleration of the proceedings, cost reduction (e.g. costs of travel to the seat of the court), reduction of time spent on accessing the case file (no need to travel to the seat of the court, no losses in working time and earnings), permanent access to the case file without the need to repeat this activity. The acceleration of proceedings is associated with faster access to the case file, which may also affect the faster exercise of other rights by the party, e.g. challenging the decision. The reduction of costs in the case of electronic case files is particularly important in the situation where one resides away from the seat of the court. For both these categories of proceeding participants, a positive aspect will be the uninterrupted use of access to the case file in emergency situations.

In the context of the implementation of first-degree electronic injunctive proceedings, changes in the jurisdiction of the court are also justified. For electronic writ proceedings in the civil procedure, we have one so-called e-court. The question arises whether this system would work in criminal

proceedings. Taking into account the number of cases, the e-court certainly processes more of them than the number of injunctive proceedings. In 2019, there were over 2.5 million electronic writ cases, while all the criminal cases in the reporting year amounted to approximately 1.5 million. Therefore, from the organizational point of view it would be possible that cases be processed by one or no more than 2 to 4 courts in Poland.

The 2nd-degree injunctive proceedings should be the next stage of implementation of electronization in this special mode of procedure. It should take into account, in the first place, using AI in suggesting a decision to the judge. This system would undoubtedly harmonize the line of case-law and help in the appeal proceedings. It would also allow avoiding/reducing pathologies in the judiciary, particularly in smaller towns where there may often be certain close relations between the participants in the proceedings. As regards the assessment of judges, it would be crucial to demonstrate why a decision other than suggested was taken for the same or similar factual states. I do not mean the need to prepare a comprehensive statement of reasons, but merely to indicate why the ruling is different. It should be borne in mind that currently, in accordance with Article 504 § 2 of the Criminal Procedure Code, the injunctive judgment may contain no statement of reasons. The use of AI should aim at full automation of the injunctive proceedings, i.e. issuing rulings without the participation of a human factor. I am, naturally, aware that this is the distant future of the Polish criminal procedure, which may face numerous obstacles, including psychological ones. Nevertheless, in order to avoid surprise and paralysis of criminal justice similar to that caused by the COVID-19 pandemic, it is reasonable to devise models in a 10 – to 20-year perspective. This idea, of course, requires an amendment to the Polish Constitution, as the Constitution provides for a human factor in adjudication. Nevertheless, given the nature of injunctive proceedings, this seems possible. After all, we must not forget that an injunctive judgment is a kind of judgment issued *on a trial basis* which is very easy to challenge by writing a single sentence in an opposition to the ruling, after which the case is then subject to examination on general rules. Then all the existing constitutional guarantees would be fully implemented in ordinary proceedings, while the human factor should continue to adjudicate.

Conclusions

The concept of electronization of the injunctive procedure presented herein demonstrates the possibility, but at the same time the need for action in the proposed direction. The implementation of the 1st-degree electronic injunctive procedure should be considered absolutely necessary in the extremely short term. It seems that these regulations will have a positive impact on the promptness of handling cases, but they also relieve judicial staff of some workload, particularly technical activities. The transfer of injunctive proceedings to a separate e-court (or e-courts) will also result in a more efficient examination of cases that are more difficult in evidentiary terms. It should be noted here that these changes will not adversely affect the rights of the parties to the proceedings or the main procedural rules. Given the previous regulations of Chapter 53 of the Code of Criminal Procedure and the limitations provided for therein, I do not see a negative impact of the above proposals on the guarantees of procedural parties' rights. In some areas, however, I would expect a raise of standards, including the promptness of handling cases and unlimited access to electronic case files without incurring additional costs.

While the concept of first-degree electronic injunctive proceedings does not seem to raise controversy, I am aware that further electronization (with the implementation of AI) requires many organizational and legal changes, but also overcoming psychological barriers among the public. This will undoubtedly be a long process, but the key issue is to start it and prepare a road map. Only then will criminal judiciary be able to keep pace with the dynamically changing socio-economic reality. This topic should be the subject of further detailed scientific research, and the legislature's interest in this matter should also be raised.

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