

## **The Impact of the e-Court Solution on the Polish Judicial System**

**mgr Dariusz Sielicki**

***Sędzia SR we Wrocławiu delegowany do Min. Sprawiedliwości Doktorant Uniwersytetu Wrocławskiego***

Anyone who has been involved with the Polish judiciary system for a number of years realizes that it is quite a static and conservative endeavor. However, the impact of today's new technologies on almost every field of human activity seems to be overwhelming. The court's operation can be fairly conceptualized as an information - processing system. Information enters the system in the form of pleadings and evidence; is processed through various pretrial, trial, post-trial, and appellate operations; and exits the system in the form of orders and judgments, data, and opinions. This makes information technology (i.e., any computer-assisted means of processing information) a natural instrument for progress and improvement of the judicial and administrative operations of the courts.

The introduction of information technology in Polish courts occurs in an environment, and is based on rudiments, quite distinct from the environment and rudiments in Western European Countries. So far the Polish judiciary seems to be quite oblivious to the demands dictated by examples from other fields.

Computerization of the Polish judiciary is well behind many other fields where Western standards have been successfully achieved. There, where the rules of the free-market economy dictate strong competitiveness, effectiveness, and reduction of cost, computers are commonly used. The good news is that making use of the experience of other, more technologically advanced countries can definitely change this situation.

After some months of research and experiments with the eCourt system prototype the results seem to be very promising. There are no doubts that the solutions provided by eCourt can vastly improve the operation of the Polish courts in many ways. It can improve speed of court

proceedings and positively influence the quality of decision making. It can also help to standardize court decisions in the same type of cases. Remote access to court documents stored in electronic form can give parties much better possibilities to perform their due process rights during the trial than traditional archives could ever give. It also makes judicial work more effective and less time consuming. Such an access is also a very good method of legal education of society.

## **I. The benefit that could be gained from adopting the eCourt solution**

### ***a) The speed of court proceedings and quality of records***

According to Polish criminal and civil procedures almost all of the judicial proceedings are to be recorded in writing. A written record must be kept in files. For many years the only possibility to fulfill these conditions was to write down all depositions by hand or using a typewriter. Since July 1, 2003 Polish criminal procedure allows the possibility of using audio and video recording instead of written records. A verbatim transcript of the record must be attached and kept in the case file. The parties are entitled to obtain a transcript, as well as a copy of the record (that means a tape or CD).

On most occasions court reporting in Polish courts is being done manually, word after word. It has nothing to do with shorthand or stenography. Polish court reporters are not trained in these skills. They just write down everything they hear using ordinary characters and only the most common abbreviations. The disadvantages of this method are quite obvious: manual writing is at least three times slower than natural speech. Therefore, it is not possible for court reporter to maintain speed and accuracy during court hearing. It forces judges to dictate a content of minutes. The judge often has to order a witness or defendant to testify slowly or even make pauses to enable court reporter to capture the most important facts. This intervention, however, very often destroys one of the most required qualities of any testimony: it's spontaneity.

To any participant or observer, the most annoying outcome of dictation in trials is sluggishness of proceedings. Obviously, it takes more time than they would expect. It should be commented on from the economic point of view: slow court proceedings create high costs that could be avoided if it is accelerated by employing different means. Reimbursements of witnesses and experts expenses are calculated on hourly basis. The less time they spend in court the less it costs. The less time one hearing takes, the more hearings can take place in one day, fewer courtrooms are needed, the less judges are occupied to hear cases, etc.

As a result of dictating the content, the minutes is simply the judge's interpretation of utterances that he hears. In fact this content is only a résumé of the testimony given in front of a

judge. As such, the testimony is deprived of all the nuances which a verbatim record would preserve...

Audio- and video recording which the e-Court solution provides help to eliminate all the above disadvantages. A cumulative effective of e-Court solution is a significant reduction in the amount of time spent in a courtroom. Moreover, with the e-Court solution witnesses and defendants testify more naturally and spontaneously, with less time to control emotions. This method has the further advantage of preserving non verbal cues like blushing, voice trembling, sweating, gestures etc. -something that the traditional record lacks-.

#### **b) The remote access to court documents**

According to eCourt concept a digitized record of all judicial documents, including all case-related information should be kept in a computer system. Storing information on computer disc has an advantage that appears to be more than simple improvement of traditional, paper-based approach. Information stored in an electronic form makes possible a remote access to all public court information stored in such a form. A remote access to court records, in turn, allows individual parties, or their attorneys, to examine and copy information without going to the courthouse And the overall effect is that it makes obtaining all court information more accessible and cheaper.

The use of remote electronic access obviously raises issues of access, privacy, confidentiality, security, and data integrity. Methods that made data available through a computer network should respect all problems that such a possibility creates. The issues of what kind of information and how much thereof should be on a public record is of strictly legal nature. On the one hand, if the information is now available to the public in court paper files, there can be no public policy reason for restricting access to that same data in electronic form. Data that is currently considered confidential would continue to be unavailable. Sealed material can be sealed electronically as well as physically. On the other hand the nature of paper records makes it virtually impossible for private interests to extract large amounts of information for commercial exploitation from them and collate it with other information on the parties involved. It raises the question that maybe less information should become part of the public record in the first place. The eCourt solution gives the judge an option to decide on a case-by-case basis whether access to particular data should be public or restricted to parties of the trial.

Storing court documents in a computer system and accessing them in a remote way allows judges to conduct fast and effective search for precedents. Theoretically, the possibility for a judge to conduct electronic research should have little or almost no impact on litigation. Most courthouses in Poland today have at least basic law libraries. In practice, electronic research appears as a very time-saving feature. And although judges may recess the proceedings in order to consult a case, or

for that matter send a clerk to retrieve a critical volume, these actions slow or delay the trial which is something most trial judges prefer to avoid. The ability to have instant access to a case when unsure as to its applicability may greatly improve the accuracy of legal rulings. The eCourt multilingual information retrieval feature allows judges to consult cases decided by foreign courts. The use of this possibility could lead to standardization of court decisions on the same type of cases in different countries which is a great benefit for a common and shared understanding of the rule of law. The possibility of finding an applicable precedent could also be very useful for lawyers and the parties they represent. Simply, they could predict what ruling is to be expected in the court. In some cases it may lead to stipulation, and therefore it may also convince parties to avoid litigation.

## **II. Limitations the e-Court solution may experience when adopted in the Polish judicial system**

### ***a) The lack of skilled personnel***

A successful implementation of audio and video recording requires fast and reliable transcribers. The most apparent limitation that can stop judges and court administrators from using e-Court solutions is a lack of a computer-literate personnel. Touch-typing using a computer keyboard is a very rare skill among Polish court workers. This situation has resulted from many years of fluctuation of court personnel due to low wages and the common availability of other positions demanding much less skill than court reporting. In most cases court reporters begin their career in the court just after high school without any professional training. Because of the tight job market today, positions at the court are considered as economically safe and stable. More workers decide to take them as a long lasting employment. It creates a chance to increase the qualifications of office workers and court reporters. Before audio and video recording takes the place of traditional court reporting, Polish court reporters must be trained to become skilled transcribers.

### ***b) Psychological barriers***

To explain how complex may the problems concerning the implementation of e-Court solutions in Polish courts some historical remarks are necessary. The mentality of several generations of Poles has been affected by a long period of limited political and economic freedom during the time of socialism that ended in 1989.

The socialist economy did not know unemployment. For forty five years, Polish employment policies supported that assumption with no respect for economic realities. Governmental policy purported to guarantee the right to work by disregarding all notions of economy and efficiency thereby creating an overflow of unnecessary jobs. There was also no need for a rational organization of work. Access to information was limited by governmental censorship.

The centrally planned economy had led to the moderate poverty of the state and its citizens. It made many Polish people develop a subconscious ability to get by without expensive modern technical innovations. The relationships between government and citizens had a definite bureaucratic character. Any public office was a place designed to remind a citizen of his inferiority to the authority of the state. To obtain any, even basic, information from a public official, the inquiring person had to explain his reasons and then go through a usually and objectively unnecessary procedure. Long waiting lines in public offices were perceived by citizens as something normal and unavoidable.

Reminders of the past and the psychological barriers that were created can still be observed in many Polish courts. Despite the time lapse and radical social changes this negative phenomenon has molded the mentality and attitude of many court officials who on many occasions still do not notice the growing demand for an improvement of work organization and efficiency, and of convenience in public access to information. The judicial and court officials' unwillingness in Poland appears to be an important and unique factor that must be considered while planning any modernization of Polish court system.

While a strong unwillingness of judicial and court officials to change their working environment can still be observed, judges and court personnel are aware of their inability to keep up with the increasing workflow and are frustrated by their inability to efficiently perform their duties to the public. The crucial issue is that many of them do not realize what technological solutions are available and how much they can improve their working capabilities by adopting these new solutions.

### **III. The areas in which e-Court solution represent an enhancement of the judicial performance and an advance to the existing technologies in use**

#### ***a) Improvement of a basis for evidence evaluation***

The traditional court reporting method in Poland (i.e. dictation) has a limited accuracy. It is hard to estimate how much this phenomenon affects the quality of decision making. On many occasions an assessment of evidence is being made by judges only on basis of its record because it is virtually impossible to rely on memory of real impression. The problem is more evident when a case goes on appeal to a second instance court. In Poland appellate judges do not hear evidence themselves; their role is limited to studying the minutes of the proceeding at the court of first instance. A transcript of audio recording provided by e-Court solution is undoubtedly a better ground for evidence evaluation because it gives a full information on all words spoken out during court hearings.

Sometimes the non verbal cues shown by a testifying person are crucial for a proper assessment of her testimony. It applies especially to those people whose communication skills are imperfect, i.e. children and mentally handicapped persons. But also, in some situations people who testify under big emotional stress behave in a way that gives an observer more information than any words can convey. In such cases video recording gives a unique possibility of preserving the evidence for future consulting and evaluation, much better than any verbal description could give.

***b) Facilitation of work on court documents.***

Difficulties associated with reading handwritten minutes are an every-day problem for Polish judges today. Facilitations enabled by storing minutes of court proceedings in electronic form must therefore not be underestimated. Having in mind traditional, i.e. handwritten court reports, no one doubts the fact that reading printed documents is much easier and also more productive. Misreading, so typical for handwriting, can be practically eliminated. A risk of oversight is reduced. Eventually, one needs much less time to learn the contents of recorded minutes.

Electronic format enables features that make work on court documents comfortable in a way that can not be compared with traditional form. Automatic searching by exact word or phrase or even cluster of characters speeds up finding a relevant passage. This feature is a really great advantage. First-instance judges in Poland take a very active role in gathering facts. In Polish criminal and partially also civil procedure the principle of substantive truth obliges judges to take an active part in the questioning of witnesses. A judge must follow the witness testimony and simultaneously compare it with pre-trial depositions and other evidence. It is of great practical significance that the transcript given by e-Court solution would allow fast automatic search.

These observations may seem very obvious but according to many opinions expressed by judges, print and electronic information retrieval in fact make their work apparently faster and easier.

***c) Facilitation of work on audio- and video records.***

The e-Court system provides all benefits that digital recording brings. A picture can be "frozen", enlarged, enhanced. A digital record can be stopped, slowed, accelerated unlimited number of times, something that traditional tape would not survive. It is very important for production of transcript. Transcriber can operate the e-Court transcription software module employing a foot pedal. This makes his work much easier.

The system, furthermore, enables synchronization of transcript with sound and picture of the digitized record. This eliminates the biggest disadvantage of working with analogue audio or

video record, namely, the necessity to forward and rewind a tape. One can simply read the text of the transcript and then automatically launch the corresponding passage of the record.

#### The interaction between eCourt and the existing technologies

The computerization of Polish courts is so far limited to using computers mainly as word processors. Few court reporters use computers in courtrooms for taking minutes of hearings. In some courts there are simple databases that allow monitoring a case flow. Polish courts are today widely perceived as a bastion of manual clerical process. All records are kept exclusively on paper. Simple transactions like obtaining a copy of a court record or paying a fine entail waiting for a long time while the court personnel search for, or through, the required documents. Paradoxically it puts Polish judiciary in a privileged position: there is no problem with any obsolete information technology that would stop court managers from implementing modern solutions.

### **IV. Conclusions**

The e-Court solutions appear to be ready remedies to many problems that the Polish judiciary has to contend with. The greatest benefit from implementing the innovations that e-Court offers is an improvement of court reporting. Not only will new technologies promote work efficiency, but they will also change the quality of judicial proceedings. Much less time will be wasted during a trial.

The embracing of modern court-reporting technologies will guarantee the accuracy of court records and thereby also the due process of law. The possibility to access court documents remotely would speed up legal research conducted by judges, lawyers and members of the public, and will likely work to raise the quality of judicial decisions and foster a common understanding of the rule of law.

The existence and availability of the technologies discussed in the preceding sections do not guarantee their implementation by the Polish judicial system. The psychological and financial obstacles to the introduction of legal technologies are significant. However, examples from other fields hold promise that these obstacles can be overcome in a short time.

Furthermore, the successful implementation of the e-Court solutions will require a combination of technical expertise, administrative know-how, and judicial judgment. Judges cannot simply delegate or defer to administrators or technical staff on these critical issues. They must take a strong leadership role in the process, and receive an adequate training. And first of all, they must learn in what way information technology can be beneficial for various court activities.

E-court solutions could unquestionably improve the accuracy and speed up the flow of information through various organs of the Polish judicial system. They will also make the system

much more open, both to public inquiry and to the entities with which it regularly communicates. It is difficult to predict the precise form of these ancillary effects on the system structure, but it is virtually certain that they would occur.