

THE ISSUE OF ELECTRONIC EVIDENCE IN POLISH CIVIL PROCEEDINGS

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Abstract

This paper is devoted to investigating the issue of electronic evidence in Polish civil proceedings. The considerations are set in the context of the development of new technologies and the widespread availability of electronic means of communication perceived as important challenges for procedural law. The paper will present proposals for defining the concept of electronic evidence and the various types of such evidence. In addition, part of the analysis will be devoted to the admissibility of electronic evidence and different methods of conducting them before the court. The paper will conclude with a summary and crucial conclusions on the presented issue.

Keywords: electronic evidence, Polish Code of Civil Procedure, electronic document, civil proceedings

Introduction

Evidentiary proceedings are an essential element of civil proceedings. They serve to establish the facts of the case and thus form the basis for deciding the subject matter of the proceedings in whole. Due to the generally contentious nature of court proceedings, it is the evidence gathered in the course of the proceedings, rather than the parties' arguments, which forms the basis for the court's final decision. Basing a court judgment on an assessment of the evidence also provides a much greater guarantee that the content and outcome of the judgment will correspond to the truth. Article 3 of the Polish Code of Civil Procedure states that one of the fundamental guarantees, but also one of the objectives of civil proceedings, is the principle of truth. Not only the court, but also the parties and participants in the proceedings are obliged to comply with this principle in both formal and material terms. According to this principle, a court ruling should always be based on findings of fact and law that are consistent with reality, regardless of whether the parties have provided the court with sufficient evidence to make such findings¹. Any possible deficiencies in this evidence should be supplemented by the court conducting an *ex officio* investigation. The court should therefore seek to clarify all circumstances relevant to the resolution of the case, with the aim of discovering the actual facts underlying the claim. The establishment of evidentiary proceedings as a key guarantee of the principle of truth in Polish civil proceedings confirms the importance of this procedural institution. At the same time, the ongoing digitalisation of life means that we perform many activities exclusively through online platforms or mass media. Every day, each of us is the

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¹ Andrzej MARCINIAK in: A. Marciniak (ed.), *Kodeks postępowania cywilnego. Tom I. Komentarz. Art. 1–205, wyd. 1, 2019, art. 3.*

sender and recipient of hundreds of declarations of will, sent and received exclusively via social media and sales platforms. The transfer of documents also takes place largely only by the Internet. The digitalisation of life seems to be particularly evident in economic relations between business entities and consumers. The purchase of certain goods or services has largely moved to the digital world. A significant part of the declarations we make the actions we take or the legal relationships we enter into do not have a specific physical form in the form of a paper document. With this in mind, one cannot overlook the scope of challenges faced by legal systems, including the Polish procedural law system, in order to enable and ensure, within civil proceedings, the possibility of proving facts and allegations raised by means of electronic evidence. As noted above, this issue seems to be crucial in the legal relationship between a consumer and a business, in which the consumer is the weaker party as he is at a disadvantage in terms of information and legal tools aimed at defending his interest. For this reason, it seems particularly important to guarantee the parties to a dispute in civil court the possibility of proving their claims by means of evidence adapted to the realities of the world around us.

1. Definition of the concept of electronic evidence in Polish civil proceedings

Any discussion of the characteristics and use of electronic evidence in civil proceedings should begin with a definition of the concept of evidence in the Polish Code of Civil Procedure. According to Article 227 of the Polish Code of Civil Procedure "The subject of evidence are facts that are relevant to the resolution of the case". As can be seen, the Polish Code of Civil Procedure does not contain a normative definition of evidence as a means of proving facts in court proceedings, limiting itself in this matter to defining evidence by its purposefulness for the resolution of the entire proceedings. The aforementioned article defines evidence in terms of its usefulness in proving facts relevant to the case². This definition of evidence suggests that, in fact, any medium of information relevant to the case may constitute evidence, provided that its properties allow it to be used in the light of the principle of directness and the technical capabilities available to the courts. This suggests that electronic evidence may also, in principle, constitute evidence in civil proceedings. However, this statement raises another key question concerning the nature of such evidence as documentary evidence referred to in Articles 243(1) to 257 of the Polish Code of Civil Procedure.

The resolution of this doubt requires reference to the rules of private law. The Polish Civil Code in Article 77 (3) introduced by the 2015 amendment, contains a legal definition of a document. According to this definition, a document is a medium of information that allows its content to be read. Civil law doctrine derives from the above legal definition of the word "document" that it is any freely disclosed content, including graphic symbols, sound or image, recorded on any medium and by any means, including digital information carriers³.

Article 243(1) of the Polish Code of Civil Procedure indicates that the rules and presumptions guaranteed for documentary evidence under the Code apply only to documents containing text and enabling the identification of their issuers. This definition, like the one in the Civil Code, was introduced by an amendment to civil procedure introduced in 2015 in response to the development of computerisation. According to this, documents within the meaning of the code may be both descriptive and constitutive, i.e. shaping the will of their

²Kinga FLAGA-GIERUSZYŃSKA in: K. Flaga-Gieruszyńska, A. Zieliński, *Kodeks postępowania cywilnego. Komentarz*, ed. 13, 2025, art. 227.

³Małgorzata MACIEJEWSKA-SZALAS, *Komentarz do art. 77(3). In: Kodeks cywilny. Komentarz aktualizowany*. (eds.. Balwicka-Szczyrba, Małgorzata – Sylwestrzak, Anna), LEX/el., 2025.

issuer. Due to the freedom of the parties to shape their will within legal relations, a document may be partly descriptive and partly constitutive. There are also documents constituting a statement of knowledge⁴. Within the meaning of Article 243(1) of the Polish Code of Civil Procedure, the constructive feature that qualifies a document is its intellectual content, which includes various types of human thoughts and statements, including both statements of knowledge and will. However, for a specific record to be recognised as a document, it is irrelevant whether its content was disclosed in writing or in any other way. The technique used to record the content of such a document is irrelevant to the Polish legislator. The definition presented in this way takes on the character of a document, within which a document, as long as it is a carrier of certain intellectual content, may also be presented in the form of electronic data files⁵.

The two above-mentioned understandings of a document are closely related. The definition of evidence for the purposes of substantive and procedural law is linked by the statement that a document is any information carrier that allows the recipient to familiarise themselves with the information contained therein. As noted above, both the substantive and procedural law regulations mentioned above are the Polish legislator's response to technological progress and the resulting digitisation of legal relations. This was confirmed by the legislator itself in the explanatory memorandum to the draft act amending the Polish Civil Code, the Polish Code of Civil Procedure and certain other acts, stating that the purpose of the amendment is to extend the scope of application of statements made in electronic form to documents previously accepted only in written form.

The provision of Article 243 (1) of the Polish Code of Civil Procedure limits the scope of evidence from electronic documents within the rules of evidence provided for documents to those whose issuers can be objectively determined by a court. In the case of documents drawn up in traditional form, this restriction is easily verifiable, primarily through analysis of the issuer's written signature. In the case of electronic documents, the possibility of such verification remains ambiguous, given the freedom of form in which such documents may appear.

This requirement will certainly be met by a declaration of will made in electronic form using a qualified electronic signature, as referred to in Article 78 (1) of the Polish Civil Code. The regulation on qualified electronic signatures introduced into the Polish legal system is a response to the content of Regulation (EU) No 910/2014 of the European Parliament and of the Council (EU) No 910/2014 of 23 July 2014 on electronic identification and trust services for electronic transactions in the internal market and repealing Directive 1999/93/EC. According to Article 3 (12) of the aforementioned Regulation, "qualified electronic signature means an advanced electronic signature which is created using a qualified electronic signature creation device and which is based on a qualified certificate for electronic signatures".⁶ Such a signature, affixed to an electronic declaration of will by means of special computer software, constitutes a declaration of will equivalent in form to that made in writing. For documents drawn up in this form, the rule in Article 243 (1) of the Code of Civil Procedure certainly applies.

However, the issue of the application of Article 243 (1) of the Code of Civil Procedure concerns most declarations of will, knowledge or declarations of a descriptive nature,

⁴Andrzej TURCZYN, *Komentarz do art. 243(1)*. In: *Kodeks postępowania cywilnego. Komentarz aktualizowany. Art. 1–505(39). Tom I*. (ed. Piaskowska, Olga Maria), LEX/el., 2025.

⁵Uzasadnienie projektu ustawy o zmianie ustawy – Kodeks cywilny, ustawy – Kodeks postępowania cywilnego oraz niektórych innych ustaw. VII kadencja, druk sejm. nr 2678, 8.

⁶Regulation (EU) No 910/2014 of the European Parliament and of the Council of 23 July 2014 on electronic identification and trust services for electronic transactions in the internal market and repealing Directive 1999/93/EC. OJ EU L 257, 73.

submitted electronically but not certified by a specialised qualified signature. This is the case for most activities carried out and statements made via the Internet, e.g. messages sent by e-mail or orders placed on websites. Such statements made in this way must also be assessed to determine whether they meet the criteria for classification as an electronic document. The literature on the subject indicates that "The assessment of whether a given medium should be considered a document, and if so, what character to assign to it, is always up to the court adjudicating the case. First, the court examines whether the evidence submitted in the case contains the constitutive elements of a document. If the findings in this regard are positive, further assessment concerns those features of the document that allow it to be recognised as a text document with the possibility of determining its issuer [...]"⁷

It should be noted that this issue essentially boils down to the lack of a clear definition of an electronic document in civil law, which in turn affects the reference point for the subsequent rules of evidence applicable to electronic evidence. This issue seems very apparent when compared to the solutions adopted in other branches of Polish law. Polish administrative law, in the Act of 17 February 2005 on the computerisation of the activities of entities performing public tasks, in Article 3(2), contains a legal definition of an electronic document, according to which "An electronic document is a set of data organised in a specific internal structure and stored on a computer data carrier, constituting a separate, meaningful whole."

Due to this legal uncertainty, several attempts have been made to define and characterise electronic evidence in Polish legal doctrine. Some legal scholars argue that an electronic document should be defined as any method of effective and permanent storage of the content of a statement in the form of linguistic symbols or data recorded on a physical medium, as well as those stored by electronic means. According to this, an electronic document includes various types of computer files containing graphic data, acoustic (audio) data, multimedia (video) data, as well as software. Electronic documents do not have a material form, which does not mean that they cannot be recorded on a data carrier⁸. However, this definition does not correspond to the one set out in the Regulation of the European Parliament and of the Council (EU) No 910/2014 of 23 July 2014 on electronic identification and trust services for electronic transactions in the internal market and repealing Directive 1999/93/EC, according to which it is not the physical medium on which the information is stored that constitutes an electronic document, but rather the information and content itself, stored and reproduced by means of an external medium.

The content of the regulation adopted by the European legislator would suggest that an electronic document in civil proceedings should be treated as an electronic medium of information that allows its content to be read. Therefore, once the procedural requirements in civil proceedings have been met, digital evidence is information stored or transmitted in digital form. Such information, which is the subject of electronic evidence, does not have to be transmitted on a physical data carrier, because due to the electronic nature of the document, its content can be transmitted in digital form by means of remote data transmission.⁹

⁷Edyta RUDOKOWSKA-ZABCZYK, *Komentarz do art. 243(1)*. In: *Kodeks postępowania cywilnego. Komentarz*. (ed.: Marszałkowska-Krześ, Elwira – Gil, Izabella), ed. 36, C.H. Beck, Warszawa, 2025.

⁸Jacek GOLACZYŃSKI, *Dowód z dokumentu tradycyjnego (papierowego) a dowód z dokumentu elektronicznego. Problem odrębności czy tożsamości środków dowodowych. Postulaty de lege lata i de lege ferenda*. *Przegląd Prawa i Administracji* CXXXIII (2023), 49–61.

⁹Jacek KUDŁA, *Dopuszczalność wykorzystania dowodów cyfrowych w postępowaniu cywilnym*. LEX/el., 2020.

2. Types of electronic evidence in Polish civil proceedings

Turning to the main part of this paper, it is crucial to emphasise in the beginning, the relevant statutory context, i.e. how electronic evidence is situated in Polish procedural law in relation to other known types of evidence. In the Polish Code of Civil Procedure, the legislator has introduced an open catalogue of means of evidence. These categories include, inter alia, documents, witness statements, expert opinions, inspection, questioning of the parties and other means of evidence such as photographs. However, the court may, in a given case, admit alternative means of evidence, not literally listed in the Code, if it considers them to be potentially relevant to its final decision. The openness of aforementioned catalogue is definitely an argument in favour of the admissibility of electronic evidence in various forms. Significantly, evidence in Polish procedural law has not been arranged according to any hierarchy (article 233 of the Polish Code of Civil Procedure). The Court assesses the credibility and strength of evidence according to its own conviction, on the basis of a comprehensive consideration of the gathered material. This means that there is no prescribed classification of evidence or specific formal rules according to which the Court could disregard individual pieces of evidence or simply put certain evidence ahead of the other - it all depends on the characteristics and facts of the case¹⁰

The problem in general, in dividing electronic evidence into different types, is definitely connected with the lack of a legal definition of electronic evidence, as mentioned in an earlier part of the paper. It is possible that technological development, occurring also in procedural law, will force the legislator to regulate this issue more precisely. For the time being, we are left to rely on the doctrinal interpretation and the proposed definitions, as well as to look for a point of reference in the other provisions regarding the evidence proceedings. In the context of documents drawn up in electronic form, it is necessary to distinguish between the medium in which the information is recorded and the computer storage medium in which the document is stored. In the case of an electronic document, the medium is the file itself, i.e. the unit of storage and recording of the information. The computer storage medium on which such a document is recorded, on the other hand, must be equated with the envelope or folder in which the document is contained. Analysing what has been presented so far, for the purposes of civil proceedings, electronic evidence shall mean any information recorded in electronic form of evidential significance and relevance for civil proceedings purposes.

The clearest distinction appears to be between electronic documents, firstly in terms of the way in which the data they contain is externalised (i.e. textual or non-textual), and secondly in terms of the identifiability of their issuer. Using such criteria, three basic sub-groups of electronic documents (evidence) emerge¹¹:

- electronic documents containing information expressed by means of text (e.g. a declaration of will, knowledge, feelings or experiences), the issuer of which can be identified. They will constitute a document within the meaning of the provisions of the Polish Code of Civil Procedure;
- electronic documents containing information expressed by means of text (e.g. a declaration of will, knowledge, feelings or experiences) and bearing a qualified electronic signature. Such documents should be viewed as private documents within the meaning of Article 245 of the Polish Code of Civil Procedure;

¹⁰FLAGA-GIERUSZYŃSKA : op. cit.

¹¹Mariusz NOWAK: *Rodzaje dowodów elektronicznych w postępowaniu cywilnym*, PPC 2022, nr 3, 540.

- electronic documents containing information (e.g. a declaration of will, knowledge, feelings or experiences) expressed in a manner other than text (e.g. by image or sound), the issuer of which can be identified. They will constitute a document within the meaning of the provisions of the Polish Code of Civil Procedure; however, they will not have (contrary to the textual ones) the presumption of authenticity¹².

The broadness of the definition of a document in Polish civil law makes it possible to put into this category of evidence not only documents in the most common perception, but also other potential forms of digital evidence - log files (e.g. cookies), billing data or even camera footage¹³.

3. Methods of conducting electronic evidence in Polish civil proceedings

Given the clear possibility of classifying electronic evidence as documents (as mentioned previously), practical problems in civil proceedings arise when it comes to determining the way in which the court and the parties can familiarise themselves with the content of such evidence. Electronic documents may be presented in three different, elementary forms: as data recorded on electronic carriers of information, as visualisation on a computer screen or as a paper printout. The most common form of presenting the content of electronic documents in court practice is a computer printout as a reflection of statements made in electronic form or content displayed on websites created by digital recording and thus documented. In addition to printouts of the content of websites, printouts containing the content of electronic correspondence are also submitted as evidence. In such situation it is a document expressed in a documentary form, belonging to the group of private documents. Since they do not bear a handwritten or electronic signature, they do not benefit from the presumptions inherent in a private document¹⁴.

The second option involves presenting electronic evidence directly to the court (via electronic carriers). It is pointed out in this context, that there is some risk of tampering with records on an electronic medium, in view of the fact that electronic documents quite often appear to circulate electronically when they are sent between users. This generates the possibility of tampering and falsifying the content and characteristics of the document itself. However, it has to be underlined that such possibility cannot be a reason to deny *a priori* the strength and reliability of electronic evidence in certain case. The necessity for the court to examine this issue will only arise if an appropriate objection is raised. The burden of proof for such modification should, however, fall on the party deriving legal consequences from this fact. Only then may it become necessary for the court to take cognisance of the evidence in the form in which it was created originally. In the majority of cases, in the absence of such allegations of interference with the records contained in the electronic medium, the court will not be familiarised directly with this medium, but only with the computer printouts reflecting the content. Evidence from sound or video and audio recordings (transcripts) should be provided to the court in electronic form (on a computer data carrier). However, it is not uncommon to also submit written transcripts of recorded conversations¹⁵.

¹²NOWAK: op. cit., 550-551.

¹³NOWAK: op. cit.

¹⁴Katarzyna WRECZYCKA, *Dowody elektroniczne w postępowaniu cywilnym*, PPIA 2023, nr 133, 197-198.

¹⁵WRECZYCKA: op. cit.

4. Summary and conclusions

In today's reality, commercial transactions are commonly concluded remotely, via electronic means. As outlined before, this also applies to contracts concluded between business entities and consumers. The courts hearing disputes arising out of such contracts are consequently confronted with the obligation to properly qualify and assess the evidence presented to prove the fact of concluding an agreement electronically, in particular identifying of the consumer (being the vulnerable party) as the author of the certain declaration of intent. This assessment must be made in accordance with the principles of free evaluation of the evidence. At the same time, it must be possible to examine the evidence in electronic form in a reliable manner that leaves no doubt as to its authenticity. A practical issue obviously, as described previously, is how the court will familiarise itself with the content of the electronic document which raises a question whether a printout reflecting the content of the electronic record is sufficient.

The universality of electronic evidence is certainly supported by the development of court technology observed on many levels - in Poland, significant efforts have been made over the years in terms of appropriate hardware equipment of courts, which is crucial for the proper use of the institution of electronic evidence. In the long run, one may wonder whether it would not be worth introducing a code definition of electronic evidence, even in the form of a specific reference. This could make it much easier for the parties in the context of formulating theses of evidence, and for the court - in the context of deciding on the admissibility of a given piece of evidence.