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**NEW TECHNOLOGIES IN
COMMERCIAL LAW COMPANIES
ON THE EXAMPLE OF
COMPUTERIZATION OF
REGISTRATION PROCEEDINGS**

ABSTRACT

The article deals with the problem of IT solutions implemented in the registration procedure in the Polish legal system. The functioning of the ICT system (Portal of Court Registers) in the registration procedure in the field of the register of entrepreneurs kept by the National Court Register was shown. The technological solutions used improved the submission of registration applications, which contributed to faster and more efficient entry in the register of entrepreneurs of the National Court Register, although there are some shortcomings of the functionality of the PRS system, which require its improvement. However, there are examples of digitization of the register of entrepreneurs that require greater attention of the legislator. The conducted analysis leads to the conclusion that the legislator paid more attention to the possibility of conducting registration proceedings initiated on request than to those conducted *ex officio*. By deciding to keep registration files only in electronic form, the legislator leaves the cases of applications and documents submitted in paper form are somewhat unregulated.

KEYWORDS: *Portal of Court Registers, register of entrepreneurs, commercial law companies, computerization of registration proceedings, digital development of entrepreneurs*

INTRODUCTION

The amendment of 26.01.2018 significantly reformed the registration procedure^[1]. Regulations have been introduced to aim full digitization of the registration procedure. Among the implemented changes, attention should be paid to those that eliminate the circulation of documents in paper form from the registration procedure and replace it with electronic form. From the date when the amended act came into effect, i.e. from July 1, 2021, registration files for entities entered in the register of entrepreneurs of the National Court Register (KRS) may be kept only in the ICT system (Article 9 of the KRS Act[2]).

[1] Act of January 26, 2018 amending the Act on the National Court Register and certain other acts, Journal of Laws of 2018, no. 398

[2] Act of August 20, 1997 on the National Court Register, Journal of Laws of 2023, no. 685

A similar requirement has been provided for applications concerning these entities, as they may be submitted only via the ICT system (Article 19 act 2 of the KRS Act). It should be emphasized that the electronic form of the registration procedure covers entities entered only in the registers of entrepreneurs of the National Court Register or those which also appear in other registers of the National Court Register. Entities disclosed only in other registers of the National Court Register, until they are entered in the Register of Entrepreneurs of the National Court Register, are not covered by the mandatory electronic form^[3].

The legislator saw the need to streamline entries in the register of entrepreneurs of the National Court Register. In the justification for the draft amendment of 2018, attention was drawn to the need to extend the digitization not only to the first stage of the procedure, i.e. registration of newly established commercial law entities, but also those already existing. Only full digitization was to affect the speed and efficiency of the registration procedure^[4]. The 2018 amendment thus covered not only the provisions of the Act on the National Court Register, but also the provisions of the Code of Civil Procedure. The legislator introduced the requirement of electronic form for almost all activities undertaken in active registration proceedings. Both further letters in the course of registration proceedings and actions taken by judicial panels in a case taking place via the ICT system may be recorded only by this system (Article 694/2a § 1 of the Code of Civil Law. Article 694/2a § 1 of the Code of Civil Law). Complaints in registration proceedings are also submitted through the system, with one exception. In cases where the Supreme Court remains competent to consider it, there is no requirement to lodge an appeal through the system (Article 694/3a § 1 of the Code of Civil Law).

It seems, however, that the legislator devotes too much attention to registration matters initiated upon request, setting aside the fact that in certain cases these proceedings may also be conducted *ex officio*. This makes the 2018

[3] Pursuant to Article 19 of Act 3 of the NCR Act, Journal of Laws of 2023, no. 685

[4] Justification of the government draft act amending the act on the National Court Register and some other acts, Parliamen of the Republic of Poland of the 8th term, Parliament document No. 2067, page 31, <https://orka.sejm.gov.pl/Druki8ka.nsf/0/AE6903979D22A8FDC12581E8004AECB7/%File/2067.pdf> [access: 24.07.2023]

amendment incomplete. There are no tools enabling the registry courts to act directly via the ICT system in cases conducted ex officio. This justifies the analysis in this article. For this purpose, the functioning of the ICT system in registration proceedings will be shown, the advantages will be presented and the disadvantages of the legal solutions introduced by the 2018 amendment will be outlined.

DIGITIZATION OF THE REGISTRATION PROCEDURE

It has been noted in the literature that the amendment adopted in 2018 is one of the most important changes to the Act on the National Court Register^[5]. The concept of digitization of the registration procedure was adopted, which is reflected in the following changes: registration files for entities entered in the register of entrepreneurs of the National Court Register are kept only in the ICT system (article 9 act on the National Court Register); applications regarding entities subject to entry in the Register of Entrepreneurs of the National Court Register are submitted exclusively via the ICT system (article 19 act 2 of the Act on the National Court Register); any further letters in the course of the proceedings are submitted only via the ICT system (article 684/3a of the Code of Civil Law); and appeals in proceedings before the registry court are submitted in electronic form (article 694/2a §1 of the Code of Civil Law); and remedies of appeal in proceedings in the registry court are submitted in electronic form (article 684/3a of the Code of Civil Law). The legislator also recognized the need for further legislative and technical changes towards full digitization of the registered procedure^[6]. In the further part of the article, attention was drawn to the changes introduced by the 2018 amendment and those in force on the date of preparation of this study.

^[5]T. Szczurowski, Nowa regulacja postępowania rejestrowego, [in:] Przegląd Prawa Handlowego 2018, Number 10, pages 48-51; Ł. Zamojski, Zmiany w ustawie o Krajowym Rejestrze Sądowym oraz w Kodeksie postępowania cywilnego uchwalone na mocy ustawy z 26.01.2018 r., [in:] Monitor Prawniczy 2018 Number 19, page 1022

^[6]See further: Uzasadnienie rządowego projektu..., op. cit., pages 35-36

In the justification of the draft amending act of 2018, the legislator specified the following assumptions of the draft electronic registration procedure^[7]. The ICT system is to support the completion and submission of an application in the registration procedure, thanks to which submitting an application via it supposed to be easier than filling in paper forms. The legislator pointed out that nearly 25% of applications submitted in paper form were returned due to the lack of filling in all the fields of the form or its incorrect filling. Such decisions of the registry court, focused solely on formal issues, postponed the moment of issuing a substantive decision in the case resulting in an entry in the register of entrepreneurs. The system will also not allow to leave empty fields that must be filled in and contains a number of hints in the form of e.g. the possibility of choosing from the list, and after the applicant has declared the subject of the case, it will *force* to provide the required data, which, in the opinion of the legislator, was to prevent the incorrect completion of the application^[8]. The construction of the system allows for its intuitive operation for the user. The draft amendment also assumed the connection of the ICT system with the system of entries, which was to lead to the automatic preparation of a draft judgment by the judges. Implementation of these assumptions of the project was entrusted to the so-called Court Registers Portal (PRS) available on the website: <https://prs.ms.gov.pl>.

It should be emphasized that the electronic form of submitting applications and issuing decisions by the registry court is not something new. Since 2015, there is an alternative to the traditional form of making entries in the register of entrepreneurs, the possibility of concluding an agreement of certain commercial law companies, i.e. general partnership, limited partnership and limited liability company, using the agreement template made available in the ICT system. Therefore, it is possible to register the company electronically via the so-called S24 system^[9]. In the justification for the draft amendment of 2018, a lower rate of returns of applications submitted under the so-called

^[7] See further: *Ibidem*, page 31

^[8] *Ibidem*

^[9] M. Romanowski, Zakładanie spółki z. o.o. przez Internet – nowelizacja Kodeksu spółek handlowych, [in:] *Monitor Prawniczy* 2011, number 15, page 797

the S24 system (approx. 6% of applications)^[10]. Deciding to introduce the PRS system, the legislator did not limit the functionality of the S24 system through which it is still possible to establish and introduce changes in the register of entrepreneurs in the cases specified by the provisions of the act of 15 September 2000, Commercial Companies Code^[11]. The implementation of the ICT system did not introduce any changes to the provisions of law concerning commercial law companies.

RULES FOR SUBMITTING APPLICATIONS REGARDING ENTITIES SUBJECT TO DISCLOSURE IN THE REGISTER OF ENTREPRENEURS OF THE NATIONAL COURT REGISTER

The procedure for submitting an application for entry in the register of entrepreneurs to the registry court is regulated in article 19 act 2 in the National Court Register Act. The standard contained in this provision imposes an obligation to submit an application via the ICT system for an entity subject to entry in the register of entrepreneurs. The 2018 amendment introduced solutions that eliminated the forms from the register of entrepreneurs. Submission of an application in registration procedure is possible via the Court Registers Portal created for this purpose, which can only be done by an authorized entity that has an account used to handle court proceedings^[12]. Detailed technical conditions for submitting a letter in the registration procedure have also been specified. Pursuant to § 5a act 1 of the Regulation of the Minister of Justice of October 20, 2015 on the method of submitting pleadings via the ICT system that supports court proceedings^[13], the submission of a pleading in registration proceedings requires the following activities to be performed jointly: filling in the application made available in this system for submitting specific requests

^[10] See *Uzasadnienie rządowego projektu...*, op. cit., page 31

^[11] Journal of Laws of 2022, no 1467

^[12] Regulation of the Minister of Justice of November 30, 3021 on an account in the ICT system that supports court proceedings, Journal of Laws of 2021, no 2204

^[13] Regulation of the Minister of Justice of October 20, 2015 on the method of submitting pleadings via the ICT system supporting court proceedings, Journal of Laws of 2023, no 540

or entering in this system of the content of a non-application letter; attaching attachments, if they are submitted; affixing the letter with an electronic signature; payment of the court fee using a mechanism made available by the ICT system that guarantees irreversible initiation of the procedure for paying for the document and identification of the person paying the fee or attaching proof of payment of the fee in a different form to the application, unless the document is subject to a fee and a special provision does not provide otherwise; sending a letter to the court by the user of the account preparing the letter.

To the application should be attached documents being the basis for entry in the register of entrepreneurs or to be submitted to the register files. These documents, in accordance with the provisions of article 694/4 §1 of Civil Procedure should be submitted in originals or officially certified copies or excerpts. If the indicated documents constituting attachments to the application submitted via the ICT system were prepared in electronic form, they should bear a qualified electronic signature, a trusted signature or a personal signature (article 694/4 § 2 of the Civil Procedure). In the case of preparing such documents in paper form, the following should be attached to the application: electronic copies certified by a notary public or a proxy acting in the case who is an advocate or legal advisor, or electronic copies of documents (article 694/4 § 2/2 of the Civil Procedure), and the original document (or its certified copy or excerpt) should be sent to the registry court within 3 days from the date of submission of the letter (article 694/4 § 2/3 of the Civil Procedure). The provisions of the Act of 14 February 1991, Law on notaries^[14], impose on notaries the obligation to place an electronic excerpt in the Repository of a notarial deed containing in its content data constituting the basis for entry in the register of entrepreneurs of the National Court Register or subject to submission to the registration files of an entity entered in this register (article 92a § 2 Notarial Law). This makes it necessary for the applicant to provide only the number from the Central Repository of Electronic Excerpts of Notarial Deeds (CREWAN),

^[14] Journal of Laws of 2022, no 1799

and the electronic notarial deed will be automatically downloaded from the CREWAN Repository in the case of submitting a registration application^[15].

The obligation to submit an application applies to entities entered in the register of entrepreneurs. The legislator decided not to introduce the obligation to submit applications via the ICT system in the case of entities entered in the register of associations, other social and professional organizations, foundations and independent health care facilities. In the case of entities entered in this register, the legislator left the right to choose the form of submitting the application for the entity initiating the proceedings between submitting the application on an official paper form and submitting it via the ICT system. It should be emphasized that the form of further proceedings in this particular case is related to the choice of the applicant. If the form of submission of the application in the registration procedure is chosen via the ICT system, any further letters in this case are submitted only via the ICT system, excluding appeals, which the Supreme Court is competent to hear (article 694/3a § 1 of the Civil Procedure). There is nothing to prevent the registration court from conducting proceedings initiated in writing in another registration case concerning the same applicant^[16]. In the case of conducting a case via an ICT system, in accordance with the disposition of article 9 act 5 of the Act on the National Court Register, the registration files of this entity store a printout of applications and documents along with an indication to name those responsible for signing signed them.

PRACTICAL ASPECTS OF THE FUNCTIONING OF THE ICT SYSTEM

The use of new technologies in business transactions is fully desired by entrepreneurs who use technological solutions in their enterprises on a daily basis, thus adapting to the needs of the client. There is no doubt that entrepreneurs also expect improvements related to the handling of registers

^[15] See further: K. Kosicka-Polak, Praktyka pouczeń o sposobie składania wniosku do Krajowego Rejestru Sądowego, [in:] Nowy Przegląd Notarialny 2021 Number 2, page 25

^[16] See also: Ł. Zamojski, Krajowy Rejestr Sądowy. Komentarz, II, LEX/el 2023, article 19

required by law. Implementation of the ICT system into the National Court Register was inevitable. The PRS system presents many advantages. Remote access to the register of entrepreneurs of the National Court Register is the best example of this^[17]. The system itself is easy to use for the applicant and more intuitive compared to the S24 system^[18]. It should be emphasized that not all assumptions of the 2018 amendment have been fully implemented.

Both commentators and representatives of the literature pointed to the shortcomings of the functioning of this system, starting with the most obvious ones in the form of incorrect transfer of data from the application to the ruling by the system, which requires the laborious involvement of panels in verifying the correctness of the *loaded* data^[19]. Suggestions in completing the application, which either have not been implemented to date or do not fulfill the function planned by the legislator, were also negatively assessed^[20]. It seems, however, that definitely more defects in the functioning of the system are visible from the point of view of judges and referendaries than from the point of view of applicants. Ł. Zamojski pointed out that the panels signaled defects in the system resulting in extended time for performing the necessary technical activities in a case conducted by the system in relation to a typical case conducted in paper form^[21]. However, the defects noticed by the panels in registration cases concern the operation of the PRS system and the lack of technical solutions to facilitate their work. There were no comments regarding the digitization of the registration procedure^[22].

In this field, two issues should be noted: proceeding in registration cases initiated *ex officio* and keeping registration files in the ICT system. Due to the importance of the problem raised, but also the volume limitations of this article, both issues should be discussed together. From the content

^[17] See also: J. Gołaczyński, e-Sąd przyszłości, [in:] *Monitor Prawniczy* 2019, no 2, page 97

^[18] See further: Ł. Zamojski, Elektronizacja postępowania rejestrowego przed sądem prowadzącym Krajowy Rejestr Sądowy – zagadnienia wybrane (cz.1), [in:] *Monitor Publiczny* 2022 no 17, page 894

^[19] See Ł. Zamojski, Elektronizacja postępowania..., op. cit., page 894

^[20] See more K. Kosicka-Polak, Praktyka pouczeń..., op. cit., page 24; Ł. Zamojski, Elektronizacja procesów..., op. cit., page 895

^[21] See also: Ł. Zamojski, Elektronizacja postępowania..., op. cit., pages 894-895

^[22] *Ibidem*

of article 19 act 2 of the Act on the National Court Register and article 694/3a § 1of the Civil Procedure, it follows that the obligatory electronic form covers only registration proceedings concerning entities subject to entry in the register of entrepreneurs initiated upon request. Taking into account the literal wording of the provisions indicated, it can be argued if registration proceedings initiated ex officio may be conducted with the exception of the ICT system. Such a thesis is in contradiction with the wording of article 9 act 7 of the Act on the National Court Register, requiring the electronic processing of a paper document constituting the basis for the court to take action ex officio, and then attaching the processed document to the register files kept in the ICT system. This issue has been resolved by the legislator, but it should be noted that the construction of the provisions of the Act on the National Court Register makes them difficult to understand. Quite extensive and containing too many different issues, the provisions of the Act negatively affect their readability and make it difficult to understand the regulations^[23].

It is also worth paying attention to the consequences of submitting an application for entry in the register of entrepreneurs bypassing the ICT system. Article 19 act 7 of the Act on the National Court Register requires the return of such an application without requesting to supplement the deficiencies. Article 19 act 10 of the Act on the National Court Register states that *if an application is returned in accordance with act 7-9, it may be submitted again within 7 days from the date of delivery of the return order. If the repeated application does not contain any deficiencies, it shall take effect from the date of the original submission.* In other words, if the application for entry in the register was submitted in a form other than via the ICT system, the application will be returned. If the applicant, within 7 days from the date of receipt of the order to return the application, submits it in the correct form, the application will take effect from the time of its original submission, i.e. from the date of submission of the application in paper form.

^[23] See further: Ł. Zamojski, Krajowy Rejestr Sądowy..., op. cit.; T. Szczurowski, Ustawa o Krajowym Rejestrze Sądowym. Komentarz 2023, Legalis/el 2023, article 19 no 15

This is an interesting issue from the point of view of the functioning of the PRS system and the conduct of the registration procedure. It is argued in the literature that the consequences of failure to submit an application via the ICT system have been regulated in the provisions of the Code of Civil Procedure^[24]. According to article 125 § 2/1 of the Civil Procedure *Letters not lodged via the ICT system do not have legal effects that the law binds to the submission of a letter to the court, of which the court instructs the person lodging the letter*. It seems, however, that the provisions of the Act on the National Court Register are sufficient to outline the effects of violating the rules for submitting registration applications and there is no need to apply the provisions of the Civil Procedure Code. Consideration should be given to the case in which the registry court uses the provisions of the Civil Procedure Code, on the basis of which it instructs the applicant about the consequences of not submitting the application in the correct form. It should be noted that the mere instruction to the applicant is not a procedural act and may be made in the usual paper form^[25] by physically returning the letter together with the instruction referred to in article 125 § 2/1 of the Civil Procedure. Regulation of article 19 act 7 of the Act on the National Court Register, i.e. the return of an application submitted without the use of the PRS system is a procedural act. Thus, after submitting an application for entry in the National Court Register without the use of the PRS system, the court should assign the case number and issue an order to return the application. The decision should be delivered to the applicant via the ICT system^[26].

In the case of a repeated, correctly submitted application for entry, further processing of the registration case takes place via the ICT system. However, the question should be asked what should be done with the application originally submitted in writing and then submitted via the ICT system. There seems to be

^[24] See further: T. Szczerkowski, *Ustawa o Krajowym Rejestrze Sądowym...*, op. cit., pages 63-65; Ł. Zamojski *Elektronizacja postępowania...*, op. cit., page 899

^[25] The author's own experience as a professional attorney shows that the registration courts, applying the instruction that the application should be submitted via the ICT system of PRS, at the same time send back applications submitted in paper form.

^[26] The lack of a full statutory regulation in this respect may result in the development of various practices of the registry courts as to the application of the rule specified in Article 19 of the Act 7 of the Act on the National Court Register.

no doubt that this application cannot be physically returned to the applicant, as it is the basis for examining the registration case. It should be attached to the registration files of the entity it concerns. This, in turn, is a violation of article 9 sec. 1 of the Act on the National Court Register, which clearly states that registration files for entities entered in the register of entrepreneurs are kept only in the ICT system, which justifies the cessation of keeping paper registration files as of the date of entry into force of the 2018 amendment, i.e. on July 1, 2021. There is no provision that would regulate this issue. The registry courts are forced to adopt their own practice of proceeding in the event of such a situation. It seems, however, that this issue should be the subject of a detailed statutory regulation. All the more so that the complete cessation of keeping paper registration files by the registry courts remains unlikely, if only in the context of the possibility of submitting further letters in the course of appeal proceedings in the traditional written form^[27].

The legislator also did not decide to digitize paper registration files. Adoption of an analogy based on the content of article 9 act 5 of the Act on the National Court Register and the creation of the practice of registry courts allowing for the printing of applications and documents submitted via the ICT system and storing them in paper files is devoid of justification. Especially that one of the reasons for the elimination of paper transactions is the lack of technical capacity of the courts to store paper registration files. Leaving this issue without a separate regulation causes the registration courts to develop their own practice as to the maintenance of registration files. This requires the legislator to focus on the comprehensive regulation of this matter on the occasion of the next amendment to the registration procedure.

^[27] See further: Ł. Zamojski, *Krajowy Rejestr Sądowy...*, op. cit., LEX/el. 2023, article 9; Ł. Zamojski, *Elektryzacja postępowania rejestrowego przed sądem prowadzącym Krajowy Rejestr Sądowy – zagadnienia wybrane (cz.2)*, [in:] *Monitor Prawniczy 2022*, numer 18, Legalis/el.

CONCLUSION

The construction of full computerization of the registration procedure adopted by the legislator did not cause any significant changes in the functioning of commercial law companies. The rules of registration proceedings with respect to entities entered in the Register of Entrepreneurs of the National Court Register have changed. The use of technological solutions in the implementation of the registration obligations of entrepreneurs streamlines the proceedings in the case and allows to eliminate the so-called form errors, the occurrence of which results in the return of the application, which obviously extends the time of settling the case. Electronic forms of the National Court Register have tools to eliminate quite common errors, i.e. empty fields, the occurrence of which was one of the most common reasons for returning the application. The ICT system gives the possibility to choose the answer from the list and forces the applicant to provide specific data, which will allow to exclude incorrect completion of the application. These solutions streamline the registration procedure, as they speed up the circulation of documents and eliminate the most common reasons for returning the application or negative recognition of the application. An advantage of the digitization of the registration procedure for the entrepreneur is also the access to the registration files on-line, which makes it possible to implement the principle of transparency of the registration procedure and facilitates business transactions. However, some disadvantages of the ICT system should be noticed. The largest percentage is related to technical shortcomings in the functionality of the PRS system itself and the different jurisprudence of registry courts in this regard.

Undoubtedly, the correct reform direction still needs to be clarified. The legislator seems to have devoted too much attention to the computerization of the registration procedure initiated by an application for entry, and the digitization of the registration procedure *ex officio* was carried out in fragments. The legislator also did not provide for the digitization of registration files, which means that in the case of existing commercial law companies, paper registration files of companies will simultaneously operate (until the date of entry into force of the amendment, i.e. until July 1, 2021, and after that date, an electronic register. In many, however, In some cases, it is necessary

to convert documents submitted in paper form into electronic form, which is connected with keeping registration files in two ways (both in paper and electronic form). The assumptions expressed in the 2018 amendment were thus only partially implemented.

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