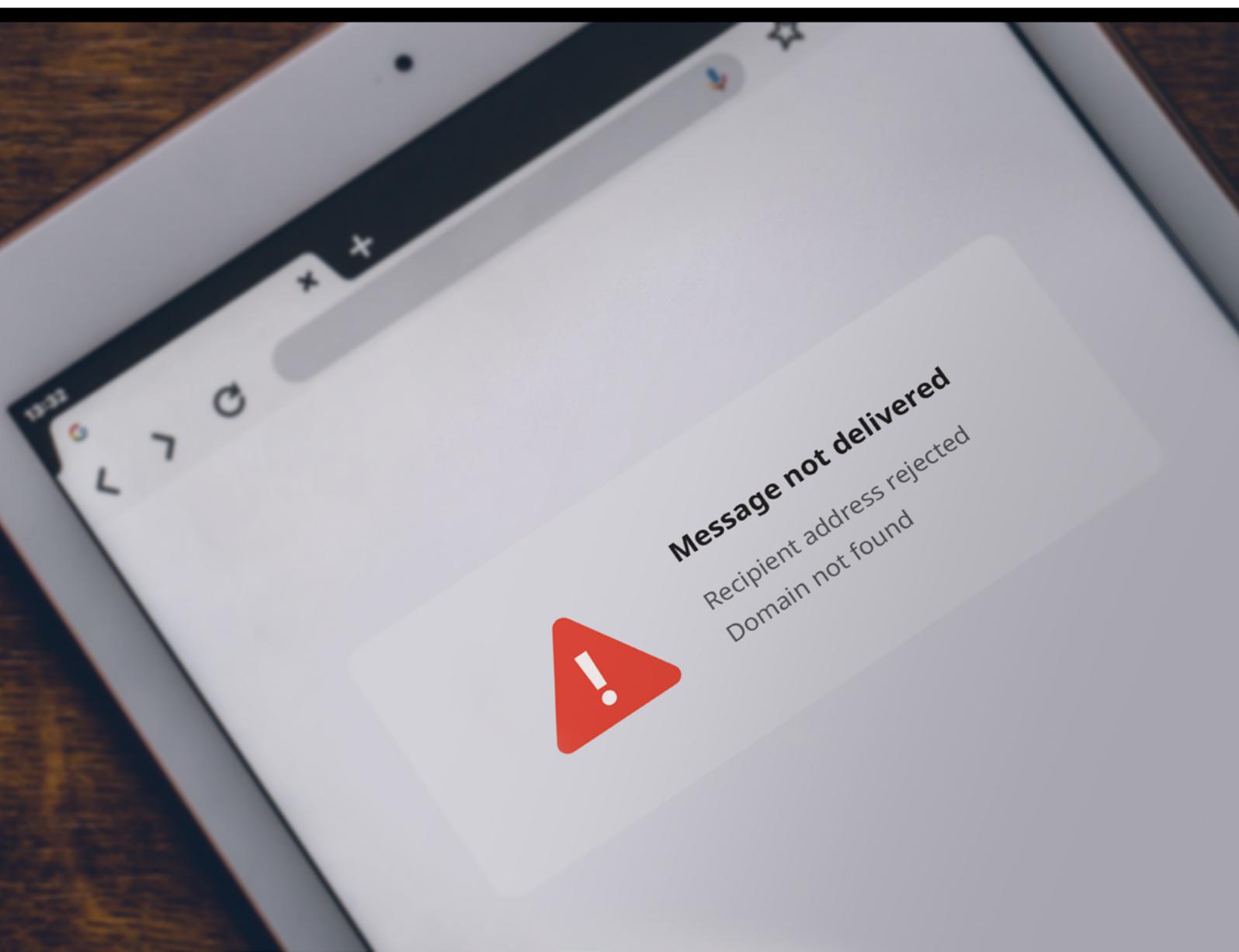


Access to court in times of a pandemic

Analysis – part I

POLAND

Warsaw, April 2020



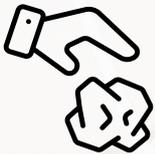
Executive Summary



The Polish justice system does not widely use means of electronic communication.



Due to this fact, when the pandemic-driven restrictions on the operations of the courts were announced, it was impossible to automatically switch to electronic communication between the court and parties (including those represented by an attorney).



In the early stages of the pandemic emergency, a legislative proposal was put forward to introduce the option of electronic submissions for the duration of the restrictions. However, this proposal has been withdrawn in the course of legislative works.



The lack of systematic guidance on access to courts creates uncertainty for parties to judicial proceedings. There are no uniform rules on the submission of letters and documents or the operations of court registry offices. Also, the courts have not implemented any standardised method of publishing online updates and notifications.

Existing legal framework

In Poland, letters and documents lodged in judicial proceedings, including appeals, may be delivered by hand to a court registry office. At the same time, a standard way of communicating with the court is mailing a letter or document at a post office, as per Article 124 of the Code of Criminal Procedure (“CCrP”)¹ and Article 165 § 2 of the Code of Civil Procedure (“CCivP”)^{2,3}. Only in the case of the electronic summary order for payment procedure (Polish: *elektroniczne postępowanie upominawcze*) is it possible to file letters and documents by electronic means (Art. 505³¹ CCivP)⁴. Thus, it is generally not possible in Poland to submit letters and documents, including, in particular, means of recourse, by way of electronic communication.

Measures introduced in connection with the pandemic

Owing to the introduction of the State of Epidemic in Poland, all court-imposed time limits and the time limits in criminal proceedings have been suspended (Art. 15zys (1) the Act of 2 March 2020 on special measures related to preventing, counteracting and combating COVID-19, other infectious diseases and emergencies caused by them, “COVID-19 Act”)⁵. The suspension period started as of 31 March 2020, the date when the provision concerned became effective. However, Polish courts still work on the cases classified as “urgent”. The Ministry of Justice decided that the category of “urgent” cases includes:

1. Cases concerning the application and extension of pre-trial detention, cases in which a protective measure in the form of committal to a psychiatric institution was ordered, cases allocated under the fast-track criminal procedure and cases in which the prosecution of a criminal offence, or the enforcement of a sentence, is at risk of being time-barred, and cases involving the application of a detention measure in the form of the placement of a foreign national in a guarded immigration centre or the application of immigration detention of a foreign national, cases involving the enforcement of a custodial sentence or other penalty or coercive measure resulting in the deprivation of liberty, if the decision of the court concerns the release of a person deprived of their liberty from

1 A consolidated text published in the Journal of Laws of 2020, item 30, as amended.

2 A consolidated text published in the Journal of Laws of 2019, item 1460, as amended.

3 In the court and administrative procedure, this matter is governed by Article 83 § 3 of the Administrative Courts Procedure Act of 30 August 2002 (“ACPA”, a consolidated text published in the Journal of Laws of 2019, item 2325, as amended).

4 Letters and documents submitted in the court and administrative procedure can be sent to an electronic inbox (Art. 12b ACPA).

5 Journal of Laws of 2020, item 374, as amended.

prison or remand centre or is necessary for the enforcement of such a sentence, penalty or coercive measure at the prison or remand centre;

2. Cases involving the removal of a person remaining under parental authority or is under guardianship, which require an order under Art. 569 § 2 CCivP, cases referred to in the Mental Health Protection Act⁶, cases involving the placement of a minor in a youth detention centre, cases in which a minor has been placed in a youth detention centre and cases involving the placement a minor foreign national in a custody and care centre, as well as any enforcement procedures related to the aforementioned cases, and cases concerning the examination of applications for the appointment of a guardian ad litem to represent the interests of minors in proceedings before a court or other authority;
3. Cases referred to in the Act on the proceedings concerning the persons with mental disorders posing a threat to life, health or sexual freedom of other persons;
4. Cases initiated by the application referred to in Art. 11a of the Domestic Violence Prevention Act⁷;
5. Cases related to the enforcement of a European Arrest Warrant (EAW);
6. Taking the testimony of a person within the framework of the procedure for securing evidence or a person who may reasonably be expected to be unable to give testimony at the trial.

At the same time, according to the Ministry guidance, the president of the court may decide to allow working on other cases “requiring examination”. The Ministry of Justice has asked all common courts in Poland to publish a list of urgent cases on their websites. Accordingly, the courts continue to issue and deliver decisions in the urgent cases and means of recourse may still be brought in these proceedings.

Notably, a draft version of the Act amending the COVID-19 Act and certain other Acts (Sejm Papers Nos. 299 and 299-A) provided for the possibility of sending letters and documents in court proceedings through the ePUAP platform, the Common Courts Information Portal or via e-mail.

Art. 15zzv of the proposed Act⁸ provided that such letters and documents were required to bear a qualified e-signature. However, the proposed amendment was at the parliamentary stage of the legislative process.

6 A consolidated text published in the Journal of Laws of 2018, item 1878, as amended.

7 A consolidated text published in the Journal of Laws of 2020, item 218, as amended.

8 The draft may be downloaded from <http://orka.sejm.gov.pl/Druki9ka.nsf/0/0ED4D419861EFC71C12585370038D-29C/%24File/299.pdf> and <http://orka.sejm.gov.pl/Druki9ka.nsf/0/5EDFDA5A0BA099CBC1258538003A6786/%24File/299-A.pdf>.

A change in communication with the courts during the pandemic

The current state of affairs and introduced measures have raised doubts concerning the available methods of communication with the courts. In an attempt to address that issue, the HFHR reviewed the solutions adopted by different courts. Below, we present the first part of our review.

The Supreme Court

The Supreme Court has failed to clearly and unambiguously notify that its Customer Counter is closed and does not accept any correspondence. This information can only be found in the Supreme Court's Practice Directions accessible via links from the website.

Courts of Appeal⁹

Websites of Courts of Appeal do not provide uniform information about the available methods of submission of letters and documents. Nine Courts of Appeal provided relevant advice on their websites, either in a "News" tab or in a pop-up window. Two Courts of Appeal (in Gdańsk and Rzeszów) provides no information on the operations of their registry offices. Some registry offices still receive submissions, while some placed special inboxes but discontinued other customer services. The Court of Appeal in Warsaw is the only court of this level that accepts appeals delivered electronically to a dedicated e-mail address. A notice displayed on the court's website informs that only letters attached to e-mails in a separate pdf file will be printed, without attachments indicated in the letters. E-mails sent by 2 pm on a working day will be printed on the same day, those sent after 2 pm – on the next working day, and those sent during a weekend or holiday – on the following working day. Consequently, the date and time of receipt of the letter in court is the date and time of the printout. The court sends a scan of the first page of the printed letter with its confirmation stamp to the e-mail address of the letter's sender. Means of challenge and applications for the statement of grounds of a decision, submitted in the printout form, must be later amended in compliance with the legal requirement to remove their formal defects (the signature, appendices, etc.). Although the possibility of submitting letters to the letterboxes or by electronic means should be assessed positively, it should be stressed that there are different ways in which the court may confirm the receipt of a letter.

⁹ There are currently 11 Courts of Appeal in Poland.

Regional Courts¹⁰

There are no uniform rules on the submission of letters and documents to Regional Courts or the operations of their registry offices, even in court belonging to the same judicial circuit. As many as 10 out of 45 Regional Courts (22%) provides no information about the operations of their registry offices. The remaining 35 Regional Courts provide this information in different ways: in a pop-up window displaying upon visiting the court's website, in a notification placed on the homepage or via a link to the relevant Practice Direction. At the same time, in many courts registry offices are closed, which effectively prevents any submissions of letters or documents, even in urgent cases. Some Regional Courts introduced physical inboxes or accept e-mail submissions. However, these courts follow the footsteps of the Courts of Appeal and employ a variety of ways of confirming the receipt of incoming correspondence, which leads to difficulties concerning the observance of deadlines.

Communication through the public postal operator

The working rules of Poczta Polska (the public postal operator) also have an impact on the assessment of access to court and available options related to the submission of letters and documents in court proceedings. Under the arrangements adopted during the pandemic, post offices operate according to the following principles:

- ☒ On working days, post offices are open for 6 hours a day. In selected days, a post office may be open from 2 pm to 8 pm or for three hours on Saturday.
- ☒ All the post offices that were previously open for business on Saturday remain open for three hours on that day.
- ☒ The 24/7 post offices are open from 8 am to 8 pm, seven days a week.
- ☒ Customer Service Desks in shopping centres are closed.¹¹

More information on the arrangements made in the Regional Courts and Courts of Appeal, together with references to specific Practice Directions is available in → Table 1 (available only in Polish).

¹⁰ There are currently 45 Regional Courts in Poland.

¹¹ For more information on the availability and business hours of post offices, please go to <http://www.poczta-polska.pl/koronawirus-informacje-dla-klientow/>.



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