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Digitisation in the Profession of Attorney-at-Law and the Security of Customer E-Service

Abstract

The article presents the issue of electronic transactions in the market of legal services. The study seeks to present the issue of digitisation in the professional activities of attorney-at-law (radca prawny) in Poland and the risks and needs associated with it in terms of security guarantees in electronic legal transactions. Developments in information management and the use of electronic technologies and artificial intelligence-based systems in the activities of professional legal representatives have been presented. The article focuses on digitisation in the attorney's professional activities, which entails considering existing legislative protection in the field of e-services. The author points out that supervision of due diligence, security and ethics in digitising the attorney's professional activities is an essential element in the fair exercise of activities of legal professionals.

Key words: information management, digitisation, attorney-at-law, electronic legal transactions, electronic security

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Introduction

Electronic transactions, developing so fast in recent years, have transformed the current legal services market, challenging lawyers in the era of information society. Strategic information management has become a crucial matter for legal professionals. The emphasis put in the literature on the need for a forward-looking approach to information is reflected in the legal field¹. The strategic concept of information processing is motivated by the following needs: the information environment needs to be better arranged; information resources can be deployed more effectively. Moreover, the information strategy facilitates and streamlines changes and influences the deliberate use and generation of information; it creates an information culture that is characterized by the high quality of source data, teamwork capabilities, the possibility to exchange information efficiently and the ability to use computer information resources, including the ability to use information in decision-making processes.

The primary role of the attorney-at-law (Polish: *radca prawny*) activities is to provide customer service in the most efficient and effective way possible. An essential element of this study is the accessibility to up-to-date legislation, case law and scholarly opinion, including comments. At the current pace of legislative changes and enormous amount of legal services provided every day, electronic innovations have started to play a dominant role in the work of an attorney-at-law. The dynamics of the legal market in Poland imposes on attorneys-at-law the need to operate in a quickly changing environment. Activities relating to the use of state-of-the-art information technologies and efficient communication using new means of rapid communication have become widely required². Undoubtedly, the advantage is gained by the ability to extract from a large amount of legal content the relevant information needed for efficient work³. Attorneys would not be able to provide competitive legal services without quick access to up-to-date legal information. On the other hand, the daily analysis of large amounts of content, case law and legal acts

1 See J. Buko, *Wprowadzenie do zarządzania informacją w przedsiębiorstwach usługowych* [in:] *Drogi dochodzenia do społeczeństwa informacyjnego. Stan obecny, perspektywy rozwoju i ograniczenia*, vol. 1, Szczecin 2011, p. 14–15.

2 K. Chałubińska-Jentkiewicz, M. Karpiuk, *Prawo nowych technologii. Wybrane zagadnienia*, Warszawa 2015.

3 G. Wierczyński, W. Wiewiórowski, *Informatyka prawnicza. Nowoczesne technologie informacyjne w pracy prawników i administracji publicznej*, Warszawa 2016, p. 79.

began to exceed the capacity of one legal professional or one law firm. The rapidly growing scale of the legislation being enacted leads to the phenomenon known as „inflation of law”. This has led to establishing a system in which any other method of finding legal information, referred to as traditional, is no longer sufficient and effective⁴. A strong demand appeared for the development of digital databases that would collect and update on an ongoing basis the latest amendments and allow for a fast search of information.

Competition between legal firms forces them to look for solutions that reduce operating costs and improve the quality of services offered. The processes that take place between service providers (lawyers) and recipients (institutional and individual clients) have made the modern legal services market inclined towards the use of new technologies⁵. Due the above change in legal domain, the subject and purpose of this study is to present the phenomenon of digitisation in the activity of an attorney-at-law and the associated risks and needs in the field of security guarantees in electronic legal transactions.

Digitisation in the activities of an attorney-at-law

The growing digitisation in the legal professions stems from the cybernetisation of law. The above term refers to the process of replacing law with information and knowledge management processes. The application of this phenomenon in law takes place through standardisation, schematisation, computerisation, automation, instrumentalisation, proceduralisation and mediatisation as well as virtualisation of individual activities or entire processes⁶. The main complication in running the above processes is the techno-cybernetic modification of law, which results in law (as a field closer to ethics) being dominated by cybernetics (a field belonging to the domain of technology)⁷.

4 J. Petzel, *Wprowadzenie [in:] Systemy wyszukiwania informacji prawnej*, Warszawa 2017.

5 M. Gnusowski, *Konkurencyjność kancelarii prawnych. Jak zdobyć i utrzymać przewagę?*, Warszawa 2017.

6 J. Janowski, *Globalna cyberkultura polityki i prawa [in:] Tendencje rozwojowe myśli politycznej i prawnej*, eds. M. Maciejewski, M. Marszał, M. Sadowski, Wrocław 2014, p. 315–316.

7 J. Janowski, *Cyberkultura prawa. Współczesne problemy filozofii i informatyki prawa*, Warszawa 2012, p. 328.

Digitisation is the process of dissemination and promotion of digital technology and introducing electronic infrastructure on a large scale⁸. A turning point for the digitisation of lawyers' activities in Poland was the establishment of the LEX Legal Information System.

The system was created as a database operating as part of the Lex Law Firm, established in 1987 in Gdańsk, Poland. They noticed that consolidated versions of legal acts improve work. With time, the demand for up-to-date legal acts went beyond the Lex Law Firm, which led to the creation of a publishing house⁹. The legal information search system SIP LEX developed its products by creating specialized versions of the software and this is how LEX Kancelaria Prawna was created.

Other popular legal information database systems used in Poland are Legalis and the EUR-Lex database of European Union legal acts.

The emergence of the above systems has led to a change in the perception of the performance of activities by an attorney. Access to legal information is a key issue in the work of an attorney-at-law that determines the choice of a procedural strategy or the method of shaping obligations between the parties¹⁰. The development of computerisation of information search support systems has opened the possibility of further use of new IT systems in the work of the Law Firm. Rapid changes in technology and electronic capabilities resulted in the extensive digitisation of the activities of legal representatives. The main software currently used in the activities of professional legal representatives are: law firm utility software systems, document management systems, decision support systems and expert systems¹¹.

The introduction of electronic infrastructure in large-scale use has offered opportunities for the provision of legal assistance in the direction of customer e-service. The work of attorneys-at-law has been transferred to a large extent into the electronic infrastructure resulting in a dominant share of customer service provided electronically. Contact with clients takes place via IT means such as forms on the law firm's website, e-mail correspondence,

8 Cyfryzacja, <https://sjp.pwn.pl/sjp/cyfryzacja;2553935.html> [access: 12.03.2022].

9 P. Śwital, *Systemy wyszukiwawcze w nauczaniu informatyki prawniczej w szkole wyższej*, „Labor et Educatio” 2015, no. 3, p. 195.

10 T. Kopoczyński, *Systemy informacji prawnej w praktyce adwokata i radcy prawnego* [in:] *Informacja prawna a prawa obywatela. Konferencja z okazji XXXV-lecia informatyki prawniczej w Polsce i XV-lecia Systemu Informacji Prawnej LEX. Gdańsk, 19-20 czerwca 2006*, eds. K. Grajewski, J.K. Warylewski, Sopot 2006.

11 G. Wierczyński, W. Wiewiórowski, op. cit., p. 81-89.

on-line meetings or on-line hearings. Increasingly, AI technologies are used in the provision of legal services. This is due to the fact that artificial intelligence can be more efficient and faster than a lawyer¹². This is why the rate of use of artificial intelligence in legal services is quickly increasing, and innovative software, applications and products are appearing on the Polish market, e.g. InteliLex, which suggests phrases of text and clauses while drafting documents. Meanwhile, on the global market, very advanced products are being developed in law offices, such as „lawyer’s assistants” operating based on an artificial intelligence system that proposes draft answers with references to literature and Internet resources¹³.

Despite their high effectiveness and the benefits of efficient information management, their electronic use entails a security risk and mistakes undermine trust in the legal assistance being provided. Therefore they may pose a threat to the profession as a whole. They also give rise to financial liability.

Security in the use of artificial intelligence in professional activities of attorneys-at-law

Digitisation is transforming legal services, and the speed of technological change in electronic infrastructure poses a challenge not only in technical and financial terms, but also in terms of security. A particularly important issue in this regard is the protection of personal data under the Regulation of the European Parliament and of the Council on the protection of personal data¹⁴. However, the use of electronic means in customer service has also raised the issue of ethical security. Electronic automatisms introduced in the systems of the Law Firm may perform mechanical actions, but it is questionable whether

12 See *Sztuczna inteligencja w świecie firm prawniczych. Czy systemy oparte o AI zastąpią prawników?*, <https://www.sparkbit.pl/pl/sztuczna-inteligencja-swiecie-firm-prawniczych-systemy-oparte-o-ai-zastapia-prawnikow/> [access: 12.03.2022].

13 See G. Wierczyński, W. Wiewiórowski, *op. cit.*, p. 89–90.

14 Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation), OJ 2016, L. 110.1

due diligence and ethical principles will be kept with their use¹⁵. This problem has been noticed on the European market, as reflected in documents such as: Artificial Intelligence for Europe¹⁶, European Parliament resolution of 20 October 2020 with recommendations to the Commission on a civil liability regime for artificial intelligence¹⁷ or Ethics Guidelines for Trustworthy AI wherein the European Commission outlined the requirements for the use of artificial intelligence to be considered trustworthy. These are: 1) Human agency and oversight (including fundamental rights); 2) Technical robustness and safety (including resilience to attack and security, fallback plan and overall safety, accuracy, reliability and reproducibility); 3) Privacy and data governance (including privacy and data protection, quality and integrity of data, and access to data); 4) Transparency (including traceability, explainability and communication); 5) Diversity, non-discrimination and fairness (including avoidance of unfair bias, accessibility and universal design, and stakeholder participation); 6) Societal and environmental well-being (including sustainable and environmental friendly AI); 7) Accountability (including auditability, minimisation and reporting of negative impacts, trade-offs and redress)¹⁸.

The above guidelines form a set of principles according to which artificial intelligence systems should be lawful, that is, comply with all regulations, ethical, that is comply with ethical norms and values, and reliable from the technical point of view and taking into account the social environment¹⁹. Problems covered by the above issue and the need for a strategy for the development of artificial intelligence and legal regulations concerning it are becoming more and more noticeable also in Poland. On 28 December 2020, a resolution of the

15 J. Kostrubiec, *Sztuczna inteligencja a prawa i wolności człowieka*, Warszawa 2021, p. 5, <http://wydawnictwo.iws.gov.pl/en/produkt/sztuczna-inteligencja-a-prawa-i-wolnosci-czlowieka/> [access: 12.03.2022].

16 Communication from the Commission to the European Parliament, European Council, European Economic and Social Committee and the Committee of the Regions Artificial Intelligence for Europe of 25.04.2018, COM/2018/237 final.

17 European Parliament resolution of 20 October 2020 with recommendations to the Commission on a civil liability regime for artificial intelligence (2020/2014(INL)), OJ 2021, C 404/05.

18 *Ethics guidelines for trustworthy AI*, 2019, p. 17–18, <https://data.europa.eu/doi/10.2759/32075> [access: 13.02.2022].

19 M. Kuchta-Nykiel, *Sztuczna inteligencja powinna być zgodna z prawem, etyczna i solidna*, <https://aibusiness.pl/sztuczna-inteligencja-powinna-byc-zgodna-z-prawem-etyczna-i-solidna/> [access: 14.03.2022].

Council of Ministers established the „Policy for the development of artificial intelligence in Poland from 2020”²⁰.

A crucial issue for security of electronic customer service is the use of artificial intelligence to solve repetitive cases. Regularly recurring questions can be processed in automated legal services. On the basis of their guidelines, the customer, after enquiring about a legal issue, can be assisted in taking appropriate legal steps. Such systems operate in the form of decision trees based on mathematical algorithms. By answering a series of questions in an electronic system, the mechanisms of proceeding for the client are activated. Legal advice or a suggestion to consult a lawyer is then generated. The above-mentioned capabilities in the use of systems based on artificial intelligence in the future will lead to a reduction of the sensitive problems in the legal services market, concerning the time of waiting for legal services, their quality and price²¹. However, there is a problem of liability for any possible errors in the use of AI technology.

Electronic systems are characterized e.g. by their vulnerability to malfunction. The use of artificial intelligence systems raises doubts concerning the protection of personal data, storage of files, the correctness of the advice provided and the reliability of the procedural document forms. Also an important aspect is the issue of professional duties of the attorney-at-law, as set out in Art. 3 of the Law on attorneys-at-law, such as the obligation of keeping professional secrecy and due diligence in the provision of legal services when using electronic systems²². The key question is still the extent of the liability for the operation of AI in the event of its malfunction and wrong advice. Undoubtedly, the attorney-at-law is responsible for the legal services provided by the law firm. However, it remains unclear as to what extent the attorney is responsible for system failures independent of the attorney's will and due diligence.

20 Uchwała Nr 196 Rady Ministrów z dnia 28 grudnia 2020 r. w sprawie ustanowienia „Polityki dla rozwoju sztucznej inteligencji w Polsce od roku 2020”, M.P. 2021, poz. 23.

21 <https://www.sparkbit.pl/pl/sztuczna-inteligencja-swiecie-firm-prawniczych-systemy-oparte-o-ai-zastapia-prawnikow/> [access: 12.03.2022].

22 Ustawa o radcach prawnych z 6 lipca 1982 r., Dz.U. 1982, nr 19, poz. 145.

Securing procedural acts made electronically

An attorney-at-law, in accordance with Article 35 of the Code of Ethics, may perform professional activities electronically if, inter alia, he/she secures and ensures the availability of data processed electronically through periodic archiving; protects professional secrecy by informing in the content of electronic correspondence of its confidential nature; and the security shall be deemed appropriate if the customer, after having informed him/her of the risks associated with the use of electronic means, accepted implicitly or explicitly the means, techniques, methods, systems or standards of electronic communication used in communication with him or her²³. However, there are reservations about accepting „implicit or explicit acceptance”. The use of the possibility of „implicit consent” gives grounds for considering as granting such consent any „conduct from which it can be implied that the customer has agreed to a particular communication and its security. Although this does not exclude, of course, that the burden of proof of obtaining such consent is borne by the attorney²⁴.

Thus, the Code of Ethics clearly imposes obligations on attorneys-at-law to secure electronic customer service. However, it does not specify detailed criteria to meet the requirement of adequate security.

Guidelines in this respect are the recommendations of the Commission for Ethics and Professional Conduct of the Polish National Bar Council of Attorneys-at-Law, according to which an attorney-at-law is obliged to, among other things, perform periodic reviews of e-mail resources and permanent deletion of messages, including attachments, the archiving of which in the mailbox is not necessary or there is an obligation to delete them; provide a tool with safeguards to protect against unauthorised access to e-mail, disclosure of messages, including documents, transmitted with the use of it, or the possibility of reproducing those messages, including documents²⁵; systematically learn

23 Kodeks Etyki Radcy Prawnego [in:] Uchwała Nr 3/2014 Nadzwyczajnego Krajowego Zjazdu Radców Prawnych z dnia 22 listopada 2014 r. w sprawie Kodeksu Etyki Radcy Prawnego. Załącznik.

24 T. Jaroszyński, A. Sękowska, P. Skuczyński, op. cit., p. 172–173.

25 Where the attorney-at-law does not have sufficient knowledge in this area, he should seek assistance of a person having such expertise. See: Stanowisko Komisji Etyki i Wykonywania Zawodu Krajowej Rady Radców Prawnych dotyczące zaleceń dla radców prawnych w zakresie stosowania jako formy kontaktu z klientami przy wykonywaniu czynności zawodowych poczty elektronicznej (electronic mail) z 18 czerwca 2020 r., SK-18.06.2020-GW.

about the recommendations of relevant e-mail administrators regarding the principles of using this tool, including security rules, and consider complying with them²⁶.

Further guidelines governing the issue of performing professional activities electronically are based on references to other articles of the Code of Ethics, therefore an attorney-at-law is obliged to use electronic forms in a manner consistent with the law, good practices and the principles of the Code of Ethics²⁷. Therefore, an attorney-at-law should first and foremost ensure that he/she is unambiguously identified as the sender or recipient and should not use electronic means anonymously²⁸.

The client's consent and securing information electronically is not tantamount to releasing the attorney-at-law from the obligation to process personal data under the Regulation of the European Parliament and of the Council of the EU on personal data protection²⁹.

Threats resulting from electronic messaging pose a significant risk to the security of legal transactions. Dangerous abuses include accidental changes in content, content tampering, access to content by unauthorised persons, the possibility of interception of content during transmission, disavowal of authorship, and impersonation of the correspondent³⁰. Legal regulations should therefore correspond to the above challenges and create appropriate standards for securing electronically transmitted information. The necessity to further regulate and specify the rules of operating via electronic means results from the rapid development of communication methods and channels, which are a consequence of the ongoing technological progress and the growing presence of attorneys-at-law and clients in the electronic space³¹.

Conclusions

The use of modern information technologies transforms the nature of legal services and in the future, including due to the development of electronic

26 Ibidem.

27 T. Jaroszyński, A. Sękowska, P. Skuczyński, op. cit., p. 172.

28 Ibidem.

29 Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard...

30 J. Janowski, *Elektroniczny obrót prawny*, Warszawa 2008, p. 95.

31 T. Jaroszyński, A. Sękowska, P. Skuczyński, op. cit., p. 175.

legal advice systems, can first lead to a reduction in the role and importance of lawyers in society and then to the disappearance of this profession³². However, the prospect of doing legal acts purely technically, exclusively by artificial intelligence seems very far-fetched, although undoubtedly the automatic analysis of enormous amount of content already improves the work of the attorney-at-law. But lawyers should have the necessary awareness of IT risks in the realities of benefits from this technology in the times of the information society³³. Therefore, supervision of ensuring due diligence, security and ethics in digitising the attorney's professional activities is an essential element in the due exercise of legal professional activities. More attention should also be paid to the need to divide the making of appropriate regulations between the legislature and bar authorities. With amounts of legislation dramatically growing, it is worth applying the distribution of lawmaking responsibilities and in some ways shaping the process of „decentralisation of the law”.

Emerging ethical and security challenges generate the space for necessary legislative changes and systematic monitoring of security of the information flow and of the systems used by attorneys. Complex technical issues should not take place in legal transactions without guarantees of security and ethical standards concerning the recipient of legal services. With dynamic trends in the process of digitisation of the State (creating models of e-state and e-citizen), the digitisation of the activities of professional legal representatives seems to be forgotten in legislative terms both at the statutory and professional self-government levels. However, it is the quality of legal regulations that determines the degree of their application in practice and guarantees security in legal transactions.

The problems identified in the practical activity of attorneys are broadly reflected in the literature on the subject, in which the gaps concerning the strengthening of the role of the whole field of IT law are still topical and shape the image also on the area of electronic activity of attorneys-at-law. The lack of uniform legislative direction and favourable law will result in inappropriate development or inhibition of computerisation of law³⁴. The significant reasons for the above-mentioned issues include the growing requirements for satisfying information needs in the field of law, inconsistencies in the making

32 J. Petzel, op. cit.

33 J. Janowski, *Informatyka prawa. Zadania i znaczenie w związku z kształtowaniem się elektronicznego obrotu prawnego*, Lublin 2011, p. 31.

34 Cf. idem, *Informatyka prawnicza. Wykłady specjalizacyjne*, Warszawa 2011, p. 6–7.

of legal regulations concerning the use of new technologies, the existence of the possibility of even greater and mobile automation of the application or enforcement of law, as well as a very important issue in the current realities of the work of lawyers, namely the need to ensure electronic, digital, automated and mobile security of legal transactions through the use of cryptography³⁵.

The right direction of changes in the field of electronic security is the idea of creating „advocate’s mailboxes”. The problem of ensuring the security of professional secrecy in electronic correspondence may be solved by the location of e-mail boxes on professional self-government servers. This is the response of the advocates bar community to the needs of systemic computerisation of self-governments of professional attorneys and ensuring appropriate cybersecurity standards³⁶. The natural proposal for the law as it should stand (*de lege ferenda*) is therefore the implementation of similar instruments also in the self-government of attorneys-at-law.

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³⁵ See idem, *Informatyka prawa...*, p. 61–62.

³⁶ See K. Chałubińska-Jentkiewicz, M. Karpiuk, J. Kostrubiec, *The legal status of public entities in the field of cybersecurity in Poland*, Maribor 2021, p. 1.

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Cyfryzacja w zawodzie radcy prawnego a bezpieczeństwo e-obługi klienta

Streszczenie

W niniejszym artykule zaprezentowano problematykę elektronicznego obrotu prawnego na rynku usług prawnych. Celem opracowania było przedstawienie zjawiska cyfryzacji w działalności radcy prawnego oraz wiążących się z nim zagrożeń i potrzeb dotyczących gwarancji bezpieczeństwa w elektronicznym obrocie prawnym. Przedstawione zostały postępujące zmiany w zarządzaniu informacją oraz wykorzystywanie technologii elektronicznych i systemów opartych na *artificial intelligence* w czynnościach dokonywanych przez profesjonalnych pełnomocników. Artykuł koncentruje się na cyfryzacji w działalności zawodowej radcy prawnego, która motywuje rozważania dotyczące dotychczasowej ochrony legislacyjnej w zakresie e-obługi klienta. Autorka zwraca uwagę, że nadzór nad należytą starannością, bezpieczeństwem i etyką w cyfryzacji działalności zawodowej radcy prawnego jest niezbędnym elementem rzetelnego wykonywania prawniczych czynności zawodowych.

Słowa kluczowe: zarządzanie informacją, cyfryzacja, radca prawny, elektroniczny obrót prawny, bezpieczeństwo elektroniczne