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SUBSTITUTED SERVICE IN POLISH CIVIL PROCEEDINGS: SELECTED ISSUES

INTRODUCTION

The service of correspondence in civil proceedings is fundamental to the proper conduct of a court case. Its importance goes beyond mere formality, directly affecting the rights of the parties and the efficiency of the judicial system. Irregularities in this respect may lead to serious consequences, including the invalidation of the entire proceedings if a party has been deprived of the possibility to defend their rights due to defective service. Moreover, errors in service generate unnecessary delay, an example of which is the upholding of an allegation of defective service in appeal proceedings, which leads to the prolongation of the case. Therefore, ensuring proper and effective service of court documents is crucial for the maintainance of fair trial standards and avoiding procedural complications.¹

Service of court and procedural documents on their addressees is therefore fundamental for the ensurance of the proper conduct of proceedings. Although the best and basic method of delivery is personal

¹ J. Świczkowski, *Doręczenie zastępcze w postępowaniu cywilnym*, Gdańskie Studia Prawnicze 36/2016, p. 465.

service, which involves serving notice on the addressee in person (i.e. delivery of the document directly to him), sometimes everyday realities preclude this form of service. Accordingly, the Polish legislator has provided for the use of special methods of service, referred to as substituted service, which are intended to protect the interests of litigants and all the addressees of official documents.²

Substituted service means that it is effected without the direct participation of the addressee. The Polish Code of Civil Procedure³ prescribes that the impossibility of serving a document directly on its addressee is a generally accepted and, in practice, the sole fundamental premise authorizing the use of substituted service. Polish law does not make the use of substituted service conditional on the nature of the document being served, the subject matter of the case, the stage of the proceedings (except for the situation stipulated in CCP Art. 472) or whether it is the first or a subsequent document in the given case. Moreover, in principle, the use of substituted service is not dependent on the specific characteristics of the parties to the proceedings. A different course of action is taken in cases when both personal and substituted service of documents addressed to natural persons, requiring them to defend their case, has been ineffective. In that situation, documents are served by a court bailiff under CCP Article 139¹.⁴

The concept of substituted service is not uniformly defined although it is in common use. There are two basic approaches to the term: a narrow one⁵ and a broad one.⁶ Substituted service can only be resorted to when

² K. Weitz, [in:] *Doręczenia w postępowaniu cywilnym. Komentarz do art. 131-147 k.p.c.*, ed. M. Dziurda, T. Ereciński, Warszawa 2024, p. 90.

³ Ustawa z dnia 17 listopada 1964 r. - Kodeks postępowania cywilnego, *Dziennik Ustaw* 2024 Item 1568, consolidated text, hereinafter referred to as CCP.

⁴ E. Kowalik, *Charakterystyka doręczeń dokonywanych przez komornika sądowego w polskim postępowaniu cywilnym w kontekście art. 139 § 1 Kodeksu postępowania cywilnego*, *Studia Prawnicze KUL* 4/2024, pp. 21-37.

⁵ Cf. M. Waligórski, *Polskie prawo procesowe cywilne. Funkcja i struktura procesu*, Warszawa 1947, pp. 362-363; J. Jodłowski, [in:] J. Jodłowski, W. Siedlecki, *Postępowanie cywilne. Część ogólna*, Warszawa 1958, p. 38.

⁶ Cf. W. Piasecki, J. Korzonek, *Kodeks postępowania cywilnego z komentarzem*, Miejsce Piastowe 1931, Art. 153, note 1, p. 453; W. Miszewski, *Proces cywilny w zarysie*.

personal service is not feasible. Substituted service has been established and regulated by law as an expression of a compromise between the interest of a party to the proceedings who seeks to effectively pursue his rights and the interest of the addressee of the document who has the right to defend his case.

1. THE CONCEPT AND SIGNIFICANCE OF SUBSTITUTED SERVICE

Substituted service is a special form of delivering documents to their addressee used when personal service cannot be effected. Broadly speaking, substituted service embraces all methods of service other than personal service. Although CCP Art. 133 § 1 establishes a general rule that service on a natural person shall be effected in person, there are exceptions to this rule. In a situation where it is not possible to serve notice in this manner, it is permissible to serve it by substitute means, for example, as provided for in CCP Art. 138. According to this approach, substituted service includes not only deliveries provided for by Art. 138, but also service effected under Art. 139 § 1, and even Arts. 136 § 2 and 139 § 3. A narrower understanding of substituted service limits it down to the methods of service provided for in CCP Art. 138, in which substituted service is defined as the delivery of the document for service to a person other than the addressee, on the presumption that such delivery produces a legal effect on the addressee.⁷

Despite this discrepancy, substituted service is an important component of the delivery system, allowing proceedings to be continued despite obstacles to service directly on the addressee. The Polish legal system has provided courts with tools for a compromise that ensures a balance between the rights of the parties and the efficient conduct of proceedings.

Część pierwsza, Warszawa-Łódź 1946, p. 110; P. Grzegorzcyk, *Doręczenie zastępcze w postępowaniu cywilnym*, [in:] *Prawo wobec wyzwań współczesności. Materiały z sesji naukowej* (Poznań, 19–21 May 2003), Poznań 2004, p. 158.

⁷ In K. Weitz's opinion, it is correct to assume that only the service provided for in Art. 138 constitutes substituted service, although he admits that one can concede that this issue is merely a matter of convention – K. Weitz, [in:] *op. cit.*, p. 91.

The person delivering a court document may deliver it to an adult member of the household only if the addressee is not present. This concept covers various methods of service other than personal service, including the forms provided for in CCP Arts. 138 and 139, and in Arts. 136 § 2 and 139 § 3, which highlights the broad scope of this concept.⁸

Art. 138 provides for the substituted service of a court paper by its delivery to specific persons other than the addressee, which, in accordance with case law⁹ and the position of the doctrine,¹⁰ presupposes that such delivery is effective despite the fact that it differs from the common understanding of the concept of “serving notice by hand delivery.” Importantly, acknowledgement of receipt of a copy of the notice of the date of a hearing by a person who is not a member of the addressee’s household cannot be considered effective service within the meaning of Art. 138 § 1. Service may be effected by depositing the document in a post office or a local government office, as provided for under Art. 139 § 1 and 1¹; this is an example of substituted service *sensu largo*, which is based on the legal presumption that the document has reached the addressee or that he has been duly notified of its deposition, while the collection of the document, in and of itself, is only relevant for the determination

⁸ Cf. D. Markiewicz, [in:] *Kodeks Postępowania Cywilnego. Tom I. Komentarz Art. 1-458*¹⁶, pp. 656-665; J. Parafianowicz, [in:] *Kodeks Postępowania Cywilnego. Komentarz Art. 1-505*³⁹. *Tom I*, ed. O.M. Piaskowska, Warszawa 2024, pp. 394-398; A. Zieliński, [in:] K. Flaga Gieruszyńska, A. Zieliński, *Kodeks Postępowania Cywilnego. Komentarz*, Warszawa 2024, pp. 359-366; K. Weitz, [in:] *op.cit.*, pp. 90-91; for more on the delivery of court documents to an adult member of the addressee’s household, see the article (in Polish) on the decision of the Warsaw Regional Court of January 9, 2018, XXIII Gz 1452/17 Lex no. 2453902.

⁹ Cf. Decision of the Supreme Court of 6 September 1935, III C 301/35, Court Reports 1936/4, item 149; Decision of the Supreme Court of 21 January 1958, I CZ 238/57, OSN 1960/2, item 35; Resolution of the Supreme Court of 22 April 1994, III CZP 53/94, OSNCP 1994/11, item 214; more on the subject of rebutting the presumption of effective delivery of court correspondence via an adult member of the household Judgment of the Gdańsk Court of Appeal of 17 October 2018 V AGa 119/18, Lex no. 2634958.

¹⁰ Cf. W. Piasecki, J. Korzonek, *op.cit.*, Art. 151, note 2, p. 451; P. Grzegorzcyk, *Doręczenia...*, p. 116.

of the time when service is deemed effective.¹¹ An important component of this form of service is the requirement that an advice slip be placed twice at the location designated for the addressee's collection of the document, with the reservation that the first advice must be preceded by an attempt to serve the document personally and the second advice must be delivered after the expiry of the time given the addressee to collect the document as indicated in the first advice.¹²

Substituted service plays an important role in ensuring the proper course of court proceedings, protecting the interests of the parties and preventing situations in which the conduct of the case would be dependent on the will of the addressee, which could result in obstructing the rights of other participants in the proceedings. Case law also emphasizes that as such, the deposition of a document at a post office or the office of a local authority does not necessarily mean the document has been validly served unless an appropriate advice slip is sent to the addressee twice, which points to the essence of the formal requirements of this method of service.¹³

Finally, pursuant to Art. 138, substituted service is not subject to a decision made at the discretion of the person performing the service; instead, it is an obligation arising from legal provisions, which ensures the consistency and predictability of service even if the court does not know the addressee's place of residence. In this way, substituted service is a key legal mechanism that enables the effective conduct of legal proceedings despite difficulties associated with delivering documents directly to the addressee.¹⁴

¹¹ This solution does not violate a party's right to a court hearing (Art. 45 section 1 of the Constitution of the Republic of Poland); cf. Judgement of the Constitutional Tribunal of 15 October 2002, SK 6/02, OTK-A 2002/5, item 65 – cf. K. Weitz, [in:] *op.cit.*, pp. 107-108.

¹² Cf. K. Weitz, [in:] *Doręczenia...*, p. 115.

¹³ Cf. Decisions of the Supreme Court of: 7 January 1969, II CZ 208/68, OSNCP 1969/9, item 164; 21 June 1988, III CRN 172/88, Lex no. 8890; 15 November 2000, IV CKN 1390/00, Lex no. 536881; Judgement of the Supreme Court of 4 July 2002, I CKN 861/00, Lex no. 568.

¹⁴ Cf. P. Grzegorzczak, *Doręczenia...*, pp. 163–169; K. Weitz, [in:] *Doręczenia...*, pp. 93-94.

2. LEGAL PROVISIONS ON SUBSTITUTED SERVICE

The legal regulations concerning substituted service are based primarily on the provisions of CCP Arts 138 and 139, which specify the special methods for the delivery of court notices and documents in situations where personal service is not feasible. Documents in civil proceedings are served in a hierarchical sequence. Substituted service, as regulated in Art. 138, can only be used when personal service is objectively not feasible. In turn, the legal fiction of service stipulated in Art. 139 § 1 constitutes the *ultima ratio*, which can be resorted to only when both personal and substituted service have been ineffective. Thus, the effectiveness of service pursuant to Art. 139 § 1 depends logically and legally on demonstrating that service could not be effected using the two preferred modes. In this situation, a letter is sent by post directly to the addressee, or delivered to a place where he may collect it.¹⁵

Particular attention should be paid to Arts. 138 § 1 and 2, which provide for the possibility (under certain conditions) of delivering court documents to third parties, e.g., an adult member of the addressee's household or a post office employee. Such service is treated as service "by hand delivery to the addressee" even though the document is not delivered in person. The legislator has assumed that handing a document to persons stipulated in Article 138 § 1 or 2 is equivalent to serving notice on the addressee directly, even though the procedure is not strictly in line with the colloquial meaning of the Polish expression for "hand delivery."¹⁶

Service *sensu stricto*¹⁷ can only occur when the addressee is a natural person. For legal persons or other organisational entities, substituted

¹⁵ D. Markiewicz, [in:] *Kodeks Postępowania Cywilnego...*, pp. 656-665; J. Parafianowicz, [in:] *Kodeks Postępowania Cywilnego...*, pp. 394-398; A. Zieliński, [in:] *Kodeks Postępowania Cywilnego...*, pp. 359-366; K. Weitz, [in:] *Doręczenia...*, p. 91; cf. Judgment of the Regional Court in Kielce of August 26, 2025. II Ca 934/25, Lex no. 3930235.

¹⁶ Cf. P. Grzegorzczuk, *Doręczenia...*, pp. 163-169; K. Weitz, [in:] *Doręczenia...*, pp. 93-94.

¹⁷ On the 'narrow' understanding of substituted service, see M. Waligórski, *Polskie prawo procesowe cywilne. Funkcja i struktura procesu*, Warszawa 1947, pp. 362-363;

service involves document delivery to the authorized representative bodies. For service on legal persons or other organisational units, the Polish legislator considers delivery to an employee authorized to receive correspondence fully effective service on an authorized representative body. This legal provision means that in this particular situation the institution of classic substituted service normally used when personal service is not feasible is so to speak “covered” by the two preferred forms of substituted service. In other words, substituted service in the standard sense is not applicable to institutional entities, because delivery to an authorized employee is treated as equivalent to service on the legal representative.¹⁸

Service pursuant to Art. 138 must be obligatorily used when the specified conditions are met. The person performing service has no margin for a discretionary decision but is obliged to attempt service under these rules, e.g., if he encounters an adult member of the addressee’s household at the place of residence. This regulation provides for substituted service by handing the document to persons other than the addressee, e.g., household members or court employees, making such service mandatory if the statutory requirements are met, regardless of the server’s discretion.¹⁹

A special form of service entails leaving the court’s document due to be served at a post office or at the office of a local government authority, as stipulated in CCP Arts. 139 § 1 and § 1¹, where service is deemed effective when the addressee has been notified twice when and where he may collect the letter, which satisfies the condition that the addressee must be provided with the means to access and read the document.²⁰

J. Jodłowski, [in:] J. Jodłowski, W. Siedlecki, *Postępowanie cywilne. Część ogólna*, Warszawa 1958, p. 380; W. Siedlecki, [in:] *Kodeks postępowania cywilnego. Komentarz*, I, ed. Z. Resich, W. Siedlecki, Warszawa 1975, Art. 138, p. 253, and Art. 139, p. 254; G. Julke, *Doręczenia w sądowym postępowaniu egzekucyjnym*, PPE 5-6/2004, p. 61.

¹⁸ K. Weitz, [in:] *Doręczenia...*, p. 92.

¹⁹ W. Siedlecki, [in:] *Kodeks Postępowania Cywilnego...*, p. 253; Cf. D. Markiewicz, [in:] *Kodeks Postępowania Cywilnego...*, p. 656; J. Parafianowicz, [in:] *Kodeks Postępowania Cywilnego...*, p. 394; A. Zieliński, [in:] *Kodeks Postępowania Cywilnego...*, p. 359.

²⁰ Cf. I. Wolwiak, *Doręczenie pism sądowych na podstawie art. 139 § 1 k.p.c. Glosa do wyroku SN z 4.08.2009 r., I UK 71/09, PPC 1/2010*, pp. 133-135; The main purpose of delivery is to ensure that the recipient actually receives the letter and reads its

In circumstances where service cannot be effected in the manner stipulated in Arts. 133 § 2 or 138 due to the addressee's failure to submit a declaration of a change of address for service, the provisions allow for the document to be left in the case files and considered effectively served, particularly when the addressees are entities entered in the National Court Register, liquidators, commercial proxies or members of bodies of these entities. However, this requires that the parties be appropriately instructed on the effects of such a course of action. In addition, the registering court is obliged to inform claimants of the consequences of failure to give their new address when they make their first entry announcing their decision.²¹

These regulations constitute a compromise between the interests of the parties to the proceedings and the addressees of service, ensuring efficiency and correctness of service while avoiding overcomplicated procedures. The server is obliged to use the methods of substituted service prescribed by law, as well as to keep appropriate records documenting that a letter could not be served in person and that service were undertaken in compliance with Arts. 138 and 139.²²

contents. The point is therefore for the addressee to collect the correspondence from the post office within the specified time, which allows him to actually read the contents of the statement. The possibility of using so-called substituted delivery, within the meaning of CCP, for the submission and acceptance of declarations of will in the sphere of substantive law has been allowed. The legislator has adopted a qualified theory of delivery, referring to the need to determine the possibility for the addressee to access and read the document due to be served in the normal course of events. This means that if the person delivering the letter leaves it at the recipient's place of residence or place of permanent activity, the time when the letter was delivered to that place is considered decisive for considering it delivered. The effectiveness of delivery is presumed. This was ruled in the judgment of the Poznań Court of Appeal of April 17, 2024. I AGa 236/22, Lex no. 3742577.

²¹ K. Weitz, [in:] *Doręczenia...*, pp. 121-122.

²² Cf. D. Markiewicz, [in:] *Kodeks Postępowania Cywilnego...*, pp. 656-665; J. Parafianowicz, [in:] *Kodeks Postępowania Cywilnego...*, pp. 394-398; A. Zieliński, [in:] *Kodeks Postępowania Cywilnego...*, pp. 359-366.

3. SUBSTITUTED SERVICE PURSUANT TO CCP ART. 138

Substituted service as a special method of serving court documents is an important procedural instrument enabling the effective conduct of court proceedings in situations in which personal service is not feasible. The provisions of CCP Art. 138 stipulate the details of the conditions and manner of effecting substituted service, which are complementary to personal service. A key condition for serving documents in the manner provided for in Art. 138 § 1 is that the serving party has not found the addressee at his residence.²³ Such a situation usually occurs when the addressee is out temporarily – for example, he has gone to work or is out shopping, on business in town or away on holiday. Although the basic purpose of service is to personally hand the document over to the addressee, the legislator has recognized the need to provide for alternative forms of service to ensure that rights can be effectively pursued and that procedural obligations are fulfilled, while maintaining a balance between the interests of the addressee and the interests of the judicial system.²⁴

In the context of substituted service, it is crucial to determine who can act as a recipient of a court paper in the absence of the addressee. Art. 138 § 1 provides that service may be effected by the delivery of the document to an adult member of the addressee's household, on condition that this person is not his opponent in the case and has undertaken to hand the document over to him. A discussion is going on in the doctrine and case law regarding the concept of "an adult member of the addressee's household." There is no clear consensus on whether being an adult should be understood solely as having reached the statutory age of majority or whether it is enough for a person to have achieved a level of intellectual development that allows him to understand the significance

²³ Cf. ruling of the Supreme Court of 22 January 1962, II CR 123/61, OSPiKA 1962/10, item 270; decision of the Supreme Court of 2 August 2006, I UZ 13/06, OSNP 2007/15-16, item 238.

²⁴ J. Świczkowski, *op. cit.*, pp. 465-466; Cf. D. Markiewicz, [in:] *Kodeks Postępowania Cywilnego...*, pp. 656-657; J. Parafianowicz, [in:] *Kodeks Postępowania Cywilnego...*, pp. 394-395; A. Zieliński, [in:] *Kodeks Postępowania Cywilnego...*, pp. 359-360.

of receiving a court letter and undertaking to hand it over to its addressee. The prevailing position is that what is required is intellectual maturity good enough for the person to understand the importance of service, and not necessarily being of age in the legal sense. It is vital for the person receiving the letter to have a sufficient level of understanding to grasp the importance of a court serving notice and undertake to deliver the document due to be served to its addressee. The party performing service is to assess whether the member of the addressee's household, who only acts as an intermediary and not as the addressee's legal representative, has this understanding. However, as Wolińska observes, if the letter is delivered to a person who is not an "adult member of the addressee's household" in this sense, there is a risk that it will not reach the addressee, which will make the service ineffective. On the other hand, if the letter finally reaches the addressee and he reads it, the service is considered effective albeit defective and does not deprive the party of the possibility of taking further legal steps.²⁵

In special situations, it may be admissible to serve notice on the addressee's next-of-kin, housekeepers or carers who regularly stay at his place of residence, provided that they are not participants in the proceedings and actually undertake to hand over the document to the him. It is important to note that substituted service must be ruled out if the persons who are to receive the document for the addressee are his opponents in the case. In assessing the admissibility of service effected in the manner provided for in Art. 138, it has to be ascertained whether an appropriate court note of advice was attached to the letter, excluding or allowing this method of service, and whether the persons receiving the notice made a declaration that they understood they were to hand it over to the addressee and undertook to do so.²⁶

²⁵ Cf. L. Peiper, *Komentarz do kodeksu postępowania cywilnego*, I, Kraków 1934, Art. 151, note 4, pp. 359-360; S. Kruszelnicki, *Kodeks postępowania cywilnego z komentarzem*, Warszawa-Poznań-Kraków 1938, Art. 151, note 3, p. 208; G. Łaszczycza, A. Matan, *Doręczenie w postępowaniu administracyjnym ogólnym i podatkowym*, Kraków 1998, pp. 163-165; I. Wolwiak, *op.cit.*, pp. 273-275.

²⁶ K. Weitz, [in:] *Doręczenia...*, pp. 101-102.

The party performing service has no way of verifying whether the person other than the addressee, on whom he intends to serve notice for the addressee is or is not an adversary in the case. The performer of the service only has access to the details attached to the notice, such as the addressee's name and surname or business name, address, the date, reference number, type of mail of the file and the deadline, if one has been set. Therefore, he must rely on information obtained from the person on whom he is serving the notice. Practice shows that servers often fail to check such information, and even if they try to do so, the law does not prescribe liability for persons who give false information. As Zedler aptly observes, the other persons referred to in Art. 138 § 1 may be in conflict with the addressee even if they are not his opponents in the proceedings. Third parties, including the person conducting the service, have no knowledge of such conflicts, and so notice may be served on a person who will not hand it over to the addressee notwithstanding their declaration.²⁷

The doctrine says that service (including substituted service) meets all the conditions necessary for categorization as a procedural act.²⁸ Despite the presumption made in Art.138 that serving notice on persons referred to therein is equivalent to serving it on the addressee, its actual handing over to the addressee is not a constitutive component of the performance of service. If it is proven that the letter has not been handed over, the effectiveness of service is not automatically negated, although this may have an impact on decisions regarding the reinstatement of the procedural time limit – in particular in the context of fault for the addressee missing deadlines. Importantly, the principle is that the admissibility of using substituted service does not depend on the discretion of the performer of the service, but on his obligation to use appropriate methods of service in a situation where personal service is not feasible. If the addressee is not at home, but an adult member of his household happens to be in, the server is obliged to attempt service.

²⁷ F. Zedler, *Z problematyki doręczeń w postępowaniu cywilnym*, «Polski Proces Cywilny» 14.1/2014, p. 129.

²⁸ Cf. P. Grzegorzczak *Doręczenie na podstawie art. 139 § 1 k.p.c. a pierwsze pismo w sprawie*, *Monitor Prawniczy* 3/2011, p. 158.

However, the said adult is not obliged to accept service, and if he refuses to do so, service cannot be effected.²⁹

If the party performing service does not find the addressee or an adult member of the household at the addressee's place of residence, notice can be served on the administrator or caretaker of the building or on the chairperson of the local authority. This option is a second choice to serving notice on an adult member of the addressee's household. In other words, notice cannot be served on, say, a caretaker if an adult member of the addressee's household was present at home and no attempt was made to serve notice on him. Of course, a letter can be served on the house administrator or caretaker, but only if he happens to be in. A caretaker is a person expressly entrusted with the task of supervising and looking after a building on a permanent and continuous basis. Pursuant to Art. 138 § 1, the performer of service does not leave an advice slip in the addressee's front door or postbox informing him that notice has been served on the administrator or caretaker or on a local authority. This arrangement raises doubts, especially in the last case.³⁰

Substituted service can only be effected on natural persons. In the case of legal persons or organisational units, notice is served on an entity authorized to represent them. Interestingly, Polish law treats service directly on an entity authorized to represent a legal person or another organisational unit before a court on a par with service on an employee authorized to receive correspondence. In practice, this means that this regulation eliminates the possibility of serving notice on these entities in the manner provided for in Art. 138 § 2.³¹

In situations where neither the addressee nor an adult member of his household or another authorized person is in, Polish law allows service on the administrator of the building or caretaker if there are no other means of delivering the letter within a reasonable time. If the party performing service does not find the addressee or a member of his household at the place of residence, he may not serve notice on a member

²⁹ K. Weitz, [in:] *Doręczenia...*, p. 102.

³⁰ *Ibidem*, p. 101.

³¹ W. Siedlecki, [in:] *Kodeks Postępowania Cywilnego...*, p. 253.

of the household at the latter's workplace or any other place.³² Another important aspect is the exclusion of the use of substituted service under Art. 138 §1 in non-contentious or enforcement proceedings with respect to persons who are participants in such proceedings along with the addressee. This restriction has been imposed to avoid conflicts of interest and ensure transparency of service.³³

Moreover, publications on the issue emphasize that the meaning of serving notice (handing over the letter or document) under Art. 138 is not identical with the colloquial understanding of the term, because it is considered effective under procedural law despite the fact that notice has not been served on the addressee in person, which is an expression of a compromise between ensuring efficient conduct of the proceedings and protecting the rights of the parties. Doctrine and case law point out that when the conditions for substituted service are demonstrated not to have been met, service is considered not to have taken place at all, and therefore the procedural activities dependent on service are stalled. Defectiveness of substituted service, demonstrated by evidence that the recipient has failed to hand the document over to the addressee, may be important when the premise of fault is assessed in proceedings for reinstatement of the deadline.³⁴

Pursuant to Art.138 § 2, if the place of service indicated on the document due to be delivered is the addressee's workplace, and the party conducting service does not find the addressee there, notice may be served on a person authorized to receive letters. This provision refers to the addressee's workplace and not the workplace of another person, such as a member of the addressee's household. The concept of a workplace

³² Cf. Decision of the Supreme Court of 20 August 1969, I PZ 22/69, OSNCP 1970/6, item 110; Judgement of the Lublin Administrative Court of 12 January 1994, I ACz 13/94, OSA 1994/7, item 35.

³³ Cf. G. Julke, *op.cit.*, p. 59.

³⁴ See Decisions of the Supreme Court of: 4 September 1970, I PZ 53/70, OSNCP 1971/6, item 100; 12 January 1973, I CZ 157/72, OSNCP 1973/12, item 215; 10 February 1999, II KKN 1081/98, Lex no. 521800; 6 November 2002, III CZ 99/02, Lex no. 577482; 8 March 2005, IV CZ 6/05, Lex no. 603429; 2 August 2006, I UZ 13/06, OSNP 2007/15-16, item 238; 5 February 2008, II PZ 72/07, Lex no. 817527.

should be understood in terms of Art. 135 § 1 as a place where the addressee is employed or a place where he conducts his own business or professional affairs.³⁵

Substituted service under Art. 138 is very precisely defined, and its correct use is key to the effectiveness of court proceedings and the protection of the rights of the parties participating in them. The provision in question emphasizes the importance of meeting the formal and material requirements regarding substituted service and the entities authorized to receive court notices and correspondence, as well as the importance of written records and declarations proving that another person has undertaken to hand the document over to the addressee.³⁶

4. ROLE OF AND PROCEDURES FOR SERVICE BY LEAVING THE DOCUMENT WITH A POST OFFICE OR IN THE OFFICE OF A LOCAL AUTHORITY AND NOTIFICATION OF ATTEMPTED DELIVERY

If service cannot be accomplished by entities stipulated in Art. 138, the legislator has provided for the possibility of serving notice by leaving the document with a postal service provider or in the office of a local authority. Art. 139 § 1 can be applied provided the recipient's address on the notice, i.e. the address to which delivery is attempted, is correct. For natural persons, it must be their actual home address or the address of their place of work, and for legal persons and other organisational units, it must be the address of their registered office or principal place of business. An exception is the situation described in Art. 133 § 2a, second sentence, where the relevant address is the one provided in

³⁵ Cf. Ruling of the Supreme Court of 6 September 1935, III C 301/35, Court Reports 1936/4, item 149; Ruling of the Supreme Court of 21 January 1958, I CZ 238/57, OSN 1960/2, item 35; Resolution of the Supreme Court of 22 April 1994, III CZP 53/94, OSNCP 1994/11, item 21.

³⁶ Cf. D. Markiewicz, [in:] *Kodeks Postępowania Cywilnego...*, pp. 656-665; J. Parafianowicz, [in:] *Kodeks Postępowania Cywilnego...*, pp. 394-398; A. Zieliński, [in:] *Kodeks Postępowania Cywilnego...*, pp. 359-366.

the National Court Register (KRS) or the Central Register and Information on Economic Activity (CEIDG).³⁷

Pursuant to Art. 139 § 1, for service to be effective, two conditions must be met jointly. The first is that the document has been deposited at a post office as defined by the provisions of the Postal Law Act or at a local government office authorized to receive court correspondence. The second condition is that an advice note of attempted delivery has been left at the addressee's address on a form specified by the relevant provisions, which should inform the addressee where and when the document has been deposited and instruct him to collect it within 7 days. The obligation to notify the addressee twice was introduced on the grounds of a ruling issued by the Constitutional Tribunal, which recognized that the previous one-time notification violated the right of addressees to a court hearing and constitutional guarantees.³⁸ The procedure for this type of service involves depositing the document due to be served in a designated place and placing an advice slip in an appropriate and visible manner, informing the addressee that delivery was attempted twice. This is to provide the addressee with a real opportunity to collect the document within the specified time and read it.³⁹

Doctrine and case law show that deposition of the notice due to be served is not sufficient for service to be deemed effective. To avoid allegations of defective delivery, the addressee must be properly notified twice of the place designated for the receipt of the document subject to service. These requirements must also be obligatorily met in procedural practice, and failure to notify the addressee may result in the service being deemed ineffective. Thus, this method ensures both the addressee's

³⁷ Cf. Judgement of the Supreme Court of 23 March 1976, IV PRN 2/76, Lex no. 14302; Decisions of the Supreme Court of: 1 July 1967, III PRN 47/67, Lex no. 6188; 22 March 1995, II CRN 4/95, Lex no. 50590; 27 September 2000, V CKN 1494/00, Lex no. 5323.

³⁸ Cf. the Judgment of the Constitutional Tribunal of 17 September 2002, SK 35/01, OTK-A 2002/5, item 60; Cf. D. Markiewicz, [in:] *Kodeks Postępowania Cywilnego...*, pp. 656-665; J. Parafianowicz, [in:] *Kodeks Postępowania Cywilnego...*, pp. 394-398; A. Zieliński, *op.cit.*, pp. 359-366.

³⁹ K. Weitz, [in:] *Doręczenia...*, pp. 115-116.

accessibility to the letter and the economic and organisational efficiency of the proceedings, enabling the addressee to take effective procedural action in a relatively short time, even when notice cannot be served on him directly. This manner of serving notice represents a compromise between the interests of the parties, since, on the one hand, it streamlines the course of the proceedings, and, on the other hand, requires addressees to play an active part in receiving documents, especially if they have changed their address for service. Postal proof of delivery to the addressee is an official document confirming the fact and date of delivery, in accordance with the information contained on the document served. Therefore, on this basis, the fact of delivery to a specific person on a specific date is assumed truthful and accurate, i.e. credible. As a result, in principle, a tax authority assessing the circumstances related to delivery cannot dismiss the fact that the notice due for service was delivered as stated in such a return receipt.⁴⁰

5. CONDITIONS FOR THE EFFECTIVENESS OF SUBSTITUTED SERVICE AND DEFECTIVE SERVICE

For effective substituted service, it must meet strictly defined statutory conditions. In particular, if the addressee proves that service pursuant to Art. 138 § 1 or 2 was effected without meeting the statutory requirements, no service should be deemed to have been effected at all. In practice, substituted service provides an optional supplement to the delivery system, assuming that it is the last service channel a court can resort to before applying further measures provided for in Art. 139, which

⁴⁰ Cf. Decisions of the Supreme Court of: 7 January 1969, II CZ 208/68, OSNCP 1969/9, item 164; 21 June 1988, III CRN 172/88, Lex no. 8890; 15 November 2000, IV CKN 1390/00, Lex no. 536881; 21 November 2001, I CKN 197/01, I CKN 197/01, Lex no. 558260; 3 July 2008, IV CZ 51/08, Lex no. 447673; Judgement of the Supreme Court of 4 July 2002, I CKN 861/00, Lex no. 56892; Decision of the Szczecin Administrative Court of 26 May 2008, III APa 19/07, Lex no. 468589; Decision of the Szczecin Administrative Court of 26 July 2023 I SA/Gd 407/23, Lex no. 3598351; and also P. Grzegorzcyk, *Doręczenie zastępcze w postępowaniu...*, p. 171;

requires that all the forms of service provided for in Ar. 138 have been exhausted.⁴¹

The effectiveness of substituted service in civil proceedings depends on the fulfilment of strictly defined formal and procedural conditions intended to ensure that the addressee has a real opportunity to read the document served by the court. The key requirement for service effected under Art. 139 § 1 is that the letter must be physically deposited at a post office or a local government office and that an appropriate advice slip containing the necessary information where and when the document can be collected must be placed twice in an appropriate manner in a visible place at the addressee's address for service.

The resolutions of the Polish Supreme Court⁴² and the doctrine⁴³ say that the deposition of a document without proper notification does not, in and of itself, mean service may be deemed effective. However, failure to leave two notifications may render service defective and thus subject to challenge. In addition, the legal presumption of the effectiveness of substituted service refers to the belief that the notification has reached the addressee, which is not irrevocable and may be challenged if a party proves the factual state is different. In cases where notice cannot be served in a manner stipulated in Art. 138 § 1 or 2 due to the addressee's failure to inform the court of his current address for service, the document is left in the court's files and considered to have been served, provided that the court informed the party of this possibility on first entry, which is done to motivate parties to exercise care to update details of their address for service.⁴⁴

⁴¹ K. Weitz, [in:] *Doręczenia...*, p. 94.

⁴² Cf. Decisions of the Supreme Court of: 7 January 1969, II CZ 208/68, OSNCP 1969/9, item 164; 21 June 1988, III CRN 172/88, Lex no. 8890; 15 November 2000, IV CKN 1390/00, Lex no. 536881; 21 November 2001, I CKN 197/01, I CKN 197/01, Lex no. 558260; 3 July 2008, IV CZ 51/08, Lex no. 447673; Judgement of the Supreme Court of 4 July 2002, I CKN 861/00, Lex no. 56892;

⁴³ P. Grzegorzcyk, *Doręczenie zastępcze w postępowaniu...*, p. 171; M. Michalska-Marciniak, *op.cit.*, p. 138.

⁴⁴ K. Weitz, [in:] *Doręczenia...*, pp. 122-123.

A different procedure is used for businesses registered in the CEIDG. In their case an immediate change is not required to service at addressees' residence if they have failed to collect the documents due to be served after being notified twice at the address entered in the CEIDG. Consequently, the correct completion of substituted service is a fundamental element that ensures the parties' right to a court hearing and fair proceedings, while at the same time preventing situations in which the hearing depends on the addressee's will, which could make it impossible for the opposing party to exercise his procedural rights. Defective service may result in the need to reinstate the time limit for lodging a remedy or to make another procedural intervention (e.g. serve the document again to the correct address), which emphasizes how important it is in substituted service to adhere strictly to the formal requirements.⁴⁵

CONCLUSION

Substituted service in Polish civil proceedings is a complex but necessary mechanism which enables effective delivery of court documents in situations where personal service cannot be effected. The provisions of Art.138 and related regulations create a legal framework that ensures a balance between the rights of the addressee and the needs of court proceedings. This paper discusses the system of legal regulations regarding service, with particular focus on the provisions of Arts. 138 and 139 of the CCP, which stipulate the conditions and procedures for effecting substituted service in situations where personal service is not feasible.

The article shows the diversity of interpretations of the concept of substituted service, which can be considered in the publications and case law both in a narrow and a broad sense. Especially in the context of modern arrangements for service, such as service by a bailiff or service using IT

⁴⁵ Cf. W. Piasecki, J. Korzonek, *Kodeks postępowania cywilnego z komentarzem*, Miejsce Piastowe 1931, Art. 153, note 4, p. 454; J.P. Naworski, *Doręczanie przez sąd pism dla przedsiębiorców*, Przegląd Prawa Handlowego 3/1998.

systems, substituted service operates as a tool to ensure effective and efficient delivery of a court's documents, regardless of the difficulties specific for the addressee's location or the circumstances of the delivery. The article emphasizes that the correct use of substituted service is one of the foundations of an efficient judicial system, ensuring a balance between the efficiency of proceedings on the one hand and the protection of the rights of the parties and procedural guarantees on the other.

The effectiveness of service is contingent on rigorous compliance with formal and procedural requirements. For example, notice must be served on an adult member of the addressee's household, who must be notified twice of attempted service, and an appropriate advice slip must be placed in a publicly accessible place informing the addressee of the location and deadline for him to collect the correspondence subject to service. The deposition of the court's correspondence subject to service in the manner provided for in Art. 139 at a post office or in a local government office need not necessarily imply that service has been effective, unless it was preceded by two properly delivered advice slips and the notification deadlines have been met.

A characteristic feature of this type of service is that its effectiveness is based on the legal presumption that the notice has reached the addressee. Like any presumption, it may be challenged if a party proves that the factual situation is different. Ineffective service hinders the rights of the parties and curtails the efficiency of the judicial system, and errors in this matter may result in invalidation of procedural acts, serious delays or the need to repeat procedures, which generates additional costs and prolongs the hearing of the case. In particular, defective service may lead to a situation in which a party does not have a real opportunity to defend his rights, which is an infringement of constitutional guarantees and procedural standards.

Court practice and case law underline that the use of substituted service is not a matter of discretion, but an obligation resulting from legal provisions, which ensures the coherence and predictability of the legal system. In this way, the interests of the parties and the public interest are protected, and the proper course of proceedings is maintained despite difficulties in reaching the addressee. It is also worth stressing the role

of the rulings of the Polish Constitutional Tribunal, which has found it necessary to introduce the obligation to notify the addressee twice in order to ensure equal rights for the parties and guarantee access to justice. The essence of the institution of substituted service is therefore not only its formality, but also its effectiveness and certainty that the document subject to service has reached the addressee, providing him with the possibility to defend his rights and participate in the proceedings.

The effective and correct use of substituted service is essential for the proper operation of the judicial system, and any deficiencies in this respect may lead to serious procedural consequences. Deficiencies in the service of court documents demonstrate how important it is to comply with procedural requirements in order to ensure equal access to a court hearing for all parties concerned and the fairness and effectiveness of the judicial process.

SUBSTITUTED SERVICE IN POLISH CIVIL PROCEEDINGS: SELECTED ISSUES

Summary

The delivery of correspondence in civil proceedings is one of the key elements in the proper course of the judicial process. Defective delivery can lead to serious procedural consequences, even including the invalidity of the proceedings, if, in outcome of a violation of the provisions for delivery, a party has been deprived of the opportunity to defend his rights. That is why ensuring the effective and lawful service of court documents is an important condition which must be met to maintain the standards required for a fair trial and avoid procedural complications. Service of court and procedural documents is therefore a fundamental instrument to ensure the proper course of civil proceedings. Although the preferred and basic form of service is the traditional form of service, consisting in the delivery of the document directly to the addressee, sometimes everyday practice prevents its implementation. In response to such difficulties, the Polish legislator has provided for the application of special forms of called substituted delivery, intended to protect the interests both of litigants and other recipients of court correspondence. This article discusses selected issues concerning substituted delivery in Polish civil proceedings. Aspects concerning potential recipients covered in the discussion include adult members of the addressee's household, an employee authorized to receive correspondence, and delivery to the administrator or caretaker

of the property; with a presentation of the conditions that must be met for such a form to be effective. Special conditions must be met for delivery to a person other than the addressee, e.g. a caretaker or family member, especially if the addressee is not available. In addition, there is an obligation to first attempt service in the traditional manner, and only if that proves impossible to use appropriate methods of substituted delivery. The article analyzes the conditions for effective delivery, including the importance of submitting the letter to the appropriate post office or office of the local authority. If the addressee is not at the address appointed for delivery when the notice is served, the person handling the service is obliged to issue a note advising him in writing that an official letter or notice has been served on him. If there is no response within the specified time limit, a second advice slip must be issued, and this is regarded as the final condition which must be met for the letter or notice to be considered effectively delivered. The mere submission of the letter to the office of the postal operator or local authority will not produce the effects of delivery if the addressee has not been properly notified, in compliance with Polish case law and doctrine. The article emphasizes the importance of observing the procedural requirements of substituted service of court documents, showing that service providers must keep to the applicable regulations and the guidelines of case law and doctrine. It also discusses deadlines and methods of submitting a document, as well as the consequences of ineffective service, which is of key importance for the proper course of court proceedings. It indicates that improperly performed service, e.g. without double notification, may result in its invalidity and the need for repeated service, which may delay the entire court process. Effective service is crucial to the ensurance of the proper course of proceedings and protection of the rights of the parties, and its proper implementation requires not only the formal submission of the document, but also proof that the addressee has been properly notified of its submission and has been given the due conditions to receive it.

Doręczenie zastępcze w polskim postępowaniu cywilnym – zagadnienia wybrane

Streszczenie

Doręczenie korespondencji w postępowaniu cywilnym stanowi jeden z kluczowych elementów prawidłowego przebiegu procesu sądowego. Wadliwe doręczenie może prowadzić do poważnych konsekwencji proceduralnych, w tym nawet do nieważności postępowania, jeżeli skutek naruszenia reguł doręczenia strona została pozbawiona możliwości obrony swoich praw. Z tego względu zapewnienie

skutecznego i zgodnego z prawem doręczania pism sądowych stanowi istotny warunek zachowania standardów rzetelnego procesu oraz uniknięcia komplikacji proceduralnych. Doręczenie pism sądowych i procesowych stanowi zatem fundamentalny instrument zapewnienia prawidłowego toku postępowania cywilnego. Chociaż preferowaną i podstawową formą doręczenia jest doręczenie właściwe, polegające na osobistym przekazaniu pisma adresatowi, praktyka życia codziennego niejednokrotnie uniemożliwia zastosowanie tej formy. W odpowiedzi na te trudności ustawodawca przewidział istnienie szczególnych form doręczeń, tzw. doręczeń zastępczych, które mają na celu zabezpieczenie interesów zarówno osób dochodzących swoich praw, jak i adresatów korespondencji sądowej. Artykuł przedstawia omówienie wybranych zagadnień dotyczących doręczenia zastępczego pism sądowych w polskim postępowaniu cywilnym. Omówione są aspekty dotyczące możliwych adresatów doręczenia, takich jak dorosły domownik, pracownik upoważniony do odbioru korespondencji, a także doręczenia do administracji domu czy dozorczy, przedstawiając warunki, które muszą być spełnione, aby taka forma była skuteczna. Podkreśla się, że doręczenie do osoby innej niż adresat, np. dozorczy lub członka rodziny, wymaga spełnienia szczególnych przesłanek, zwłaszcza jeśli adresat nie jest dostępny. Poza tym, zwrócono uwagę na obowiązek podjęcia w pierwszej kolejności próby doręczenia osobistego, a w przypadku niemożności – zastosowania odpowiednich metod doręczenia zastępczego. Analizowane są warunki skutecznego doręczenia, w tym znaczenie złożenia pisma w właściwej placówce pocztowej lub urzędzie gminy oraz obowiązek dwukrotnego zawiadomienia adresata o złożeniu pisma w formie awizo, co jest granicznym warunkiem uznania pisma za skutecznie doręczonego. Należy podkreślić, że samo złożenie pisma w placówce operatora pocztowego lub urzędzie nie wywoła skutków doręczenia, jeśli nie zostanie odpowiednio zawiadomiony adresat, co jest zgodne z orzecznictwem sądowym i doktryną. Artykuł podkreśla znaczenie przestrzegania proceduralnych wymogów doręczenia zastępczego pism sądowych, wskazując na konieczność dostosowania działań doręczycieli do obowiązujących regulacji, orzecznictwa i wytycznych doktryny. Poruszona jest również kwestia terminów i metod złożenia pisma, jak również konsekwencje nieskutecznego doręczenia, co ma kluczowe znaczenie dla prawidłowego przebiegu postępowania sądowego. Wskazuje, że niewłaściwie dokonane doręczenie, np. bez dwukrotnego zawiadomienia, może skutkować nieważnością czynności prawnej i koniecznością powtórnego doręczenia, co może opóźniać cały proces sądowy. Skuteczne doręczenie jest kluczowe dla zapewnienia prawidłowego toku postępowania i ochrony praw stron, a jego prawidłowa realizacja wymaga nie tylko formalnego złożenia

pisma, lecz także wykazania, że adresat został odpowiednio powiadomiony o jego złożeniu i możliwości odebrania.

Keywords: civil proceedings; court service; substitute service; defective substitute service.

Słowa kluczowe: postępowanie cywilne; doręczenia sądowe; doręczenia zastępcze; wadliwość doręczenia zastępczego.

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