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General Characteristics of Service of Procedural Documents in Polish Civil Proceedings Compared to Selected European Countries

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Abstract: The institution of service by a court enforcement officer has had a significant impact on the regularity of the service of court letters. The provisions introduced put an end to the so-called fiction of service on individuals, which meant that after two attempts at service, the court could assume that the document had been effectively served. It was recognized that this too often led to prejudice to the rights of defendants, in particular those who had not lived at the addresses indicated by the plaintiffs for a long time – often, due to the correct (fictitious) service of payment orders, they were obliged to pay the amounts resulting from final court decisions. Unfortunately, under the previous legislation, there were cases of claimants giving unverified or even false information. The legislator obligatorily introduced into the Polish legal order, in Article 1391 of the Code of Civil Procedure, the service of letters through a court bailiff in the event that a statement of claim or any other writ of summons that gives rise to the need to defend the rights of the defendant has not been effectively served on the defendant in accordance with 131–139 of the Code of Civil Procedure. Thus, the legislator, contrary to the principle of routine service, imposed the resulting obligations not on the procedural authority, but on the initiator of the proceedings in the case. This study aims to present the institution of the bailiff in Polish civil proceedings and discuss its advantages and disadvantages.

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It is particularly relevant in light of the changes introduced by the amendment of the CPC of 9 March 2023, effective from 1 July 2023, which are designed to improve this type of service.

1. Introduction

Issues relating to service in civil proceedings[1] are crucial to the proper conduct of court proceedings. Indeed, the institution of service is a manifestation of the constitutional principle of the right to trial,[2] which in this aspect amounts to ensuring the gathering of evidence and the rights of the parties in civil proceedings. The provisions concerning service are therefore intended to enable the addressee of a procedural document to read its contents. They thus fulfil an important function of a guarantee, conditioning the observance of fair trial standards.[3]

The main purpose of this study is to demonstrate the essential role of the institution of service in the proper conduct of civil proceedings. This is because it constitutes an important intermediate goal that conditions the achievement of the end goal, which is the proper conclusion of civil proceedings. The main part of the article provides a systemic and dogmatic analysis of service in the Polish legal system and presents it against the background of regulations in selected European countries.

The study will first outline the role and importance of service for the proper conduct of civil proceedings. In the next step, it will present the general characteristics of the Polish service system in civil proceedings. Then, it will characterize the regulations on service in selected European countries. Finally, it will present findings and conclusions concerning legal solutions to remedy the shortcomings in this area and create a proposal for an optimal procedural model for the institution of service.

1 Act of 17 November 1964 – Code of Civil Procedure, Journal of Laws 2023, item 1550, consolidated text, hereinafter referred to as the CCP.

2 Article 45 of the Constitution of the Republic of Poland of 2 April 1997, Journal of Laws, no. 78, item 483, as amended, hereinafter referred to as the Polish Constitution.

3 Paweł Grzegorczyk, "Doręczenie na podstawie art. 139 § 1 k.p.c. a pierwsze pismo w sprawie," *Monitor Prawniczy*, no. 23 (2011): 1284.

2. Role and Significance of the Institution of Service in Polish Civil Proceedings

The active participation of a party or a participant in pending civil proceedings is one of the fundamental manifestations of the constitutional principle of the right to trial[4] which is one of the basic rights of an individual and one of the fundamental guarantees of the rule of law in a democratic state. The right to active participation under the Code of Civil Procedure is fully implemented by the institution of service, regulated in Part One, Book One, Title VI, Section I, Chapter 2 of the CCP. The institution in question secures the procedural interests of both parties to civil proceedings by ensuring a certain order of the actions performed and, consequently, guarantees the procedural effectiveness of such actions.[5]

The above institution influences the effectiveness of court proceedings and guarantees the parties' rights by obtaining real notice of the court's actions. Service is strongly functionally linked to the individual principles of civil proceedings, which is also of considerable importance for the direction of the systemic interpretation of the norms of procedural law that govern this institution. All this means that the proper manner of service often determines the proper conclusion of pending proceedings.[6]

The correctness of service of a document guarantees the correctness of the court proceedings and serves as an instrument for the protection of the procedural rights of its participants. Therefore, the legislator is obliged to shape the notification procedure – including its technical aspect – in a way that will reduce the risk of infringing a party's right to trial. While a properly functioning service system is intended to streamline civil proceedings, it is important that the regulations introduced in this area are precisely formulated. Vague and imprecise regulation of this area may lead

4 Article 45 of the Polish Constitution "Everyone shall have the right to a fair and public hearing of his case, without undue delay, before a competent, impartial and independent court."

5 Arkadiusz Wudarski, "Doręczanie pism procesowych w ujęciu prawnoporównawczym," *Kwartalnik Prawa Prywatnego*, no. 4 (2003): 877.

6 Paweł Grzegorczyk, "Doręczenie zastępcze w postępowaniu cywilnym," in *Prawo wobec wyzwań współczesności. Materiały z sesji naukowej (Poznań 19–21 maja 2003 r.)*, ed. Paweł Wiliński (Poznań: Biuro Usługowo-Handlowe "PRINTER", 2004), 157.

to negative consequences not only for the work of courts and attorneys but, above all, for parties to proceedings.[7]

It is worth emphasizing that, contrary to appearances, the service of letters in civil proceedings is not always a simple task. This is because, in practice, the interpretation of service provisions often causes many problems not only for parties without a professional attorney at law but sometimes also for professionals representing parties or participants in the proceedings.

In recent years, there have been significant changes to the provisions in the Code of Civil Procedure concerning the service of documents. Above all, the computerization of the judiciary has necessitated the introduction of modern solutions enabling the electronic service of documents.[8] This is primarily reflected in proceedings which are, by definition, conducted exclusively in electronic form. Electronic service is also being increasingly introduced into proceedings hitherto conducted in traditional form.

In addition, the list of entities mediating court service was changed by the introduction into the Polish legal order, through the amendment of the CCP of 7 November 2019, the institution of substituted service through a court enforcement officer (pursuant to Article 139[1] of the CCP) in place of the so-called fiction of service. It is applicable when a statement of claim or other procedural document cannot be properly served on a person.[9] The institution in question was further strengthened by the amendment to the CCP of 9 March 2023 introducing several additional changes to streamline the process of court enforcement service.[10]

All these elements come together to ensure that the parties or participants in the proceedings have wide access to knowledge of the measures taken in the pending case. This is important because the lack of effective

7 Ibid.

8 See, decision: Decision of the Supreme Court of 25 January 2022, III CZ 58/22, OSNC 2022/9/91.

9 Henryka Bednorz-Godyń, "Doręczenia za pośrednictwem komornika sądowego," *Monitor Prawniczy*, no. 8 (2023): 499–501.

10 Por. Łukasz Zamojski, "Doręczenie pozwanemu pierwszego pisma procesowego wywołującego potrzebę obrony na podstawie art. 139[1] KPC," *Monitor Prawa Handlowego*, no. 3 (2019): 14; however, on page 25, the same author expresses doubts as to the advisability of introducing the provision in question, pointing to the defendant's existing defense mechanisms related to incorrect delivery of court correspondence.

delivery may make it difficult to collect the due benefit.[11] This has a direct impact on the efficiency and effectiveness of the proceedings and allows the entities involved to respond in a timely manner within their right of defense.[12]

3. The Principle of Routine Service of Procedural Documents

Service in Polish civil proceedings mainly concerns copies of procedural documents and judicial documents the main task of which is to inform the parties of the course of the proceedings.[13] In discussing the indicated subject matter, one should note a crucial principle which is of key importance for the course of the proceedings. This is a reference to the principle of routine service expressed in Article 131 *in principio* of the CCP.[14] This principle is a response to the principle of disposition, which is commonly applied in Polish civil proceedings. Thus, the legislator, when regulating the powers of the court in the area of service, was of the view that the principle of disposition does not sufficiently ensure the social function of the proceedings, nor does it secure the needs of practice in terms of the certainty of service.[15]

This means that service is the responsibility of the court and the court should serve the parties with copies of the statement of claim or statement of defense without the parties having to make a request. The court is responsible for the correctness and timeliness of the service. As a rule,

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11 More information on problems with pursuing claims based on the correct delivery of procedural documents: Aleksandra Sikorska-Lewandowska, "Problemy z dochodzeniem roszczeń po nowelizacji przepisów KPC o doręczeniach," *Nieruchomości*, no. 9 (2020): 4–6.

12 It may be very difficult to determine what types of documents, apart from the lawsuit, trigger the need to defend one's rights. This applies primarily to letters that may be served on the defendant before the lawsuit is served, such as an application to secure evidence or an application to secure a claim; Zamojski, "Doręczenie pozwanemu pierwszego pisma," 15.

13 Cf. Article 140 of the CCP and Witold Broniewicz, *Postępowanie cywilne w zarysie* (Warsaw: Wydawnictwo Prawnicze LexisNexis, 2008), 88.

14 Cf. Decision of the Supreme Court of 8 September 1993, III CRN 30/93, OSNCP 1994, No. 7–8, item 160.

15 Włodzimierz Berutowicz, "Funkcja ochronna postępowania cywilnego," in *Studia z prawa postępowania cywilnego Księga Pamiątkowa ku czci Zbigniewa Resicha*, eds. Maria Jędrzejewska and Tadeusz Ereciński (Warsaw: Państwowe Wydawnictwo Naukowe, 1985), 35; Mariusz Sorysz, "Doręczenie i jego wpływ na bieg terminów w postępowaniu cywilnym," *Monitor Prawniczy*, no. 15 (2003): 687.

the court effects service by means of a public postal operator or another postal operator, within the meaning of the Act of 23 November 2023 – Postal Law,[16] persons employed by the court, a court enforcement officer, or a court service unit. In cases specified in the Act, the court may effect service through the Police or the Military Police. Service shall be effected at the addressee's home, place of work, or another place where the addressee is to be found. At the request of a party, service may also be effected through a post-office box.[17]

An exception to the principle of routine service is service effected directly between advocates, legal counsels, patent agents, and lawyers of the General Counsel to the Republic of Poland. These entities are obliged to directly serve certain documents on each other in the course of a case. They are also obliged to attach to the procedural document filed with the court following Article 132 § 1 and § 1^1 of the CCP proof of service of a copy of the document on the other party or proof of sending it by registered mail. In the case of direct service, the competent attorney is responsible for the correctness of the service, although in this case, it is also at the discretion of the court to assess the effectiveness of the service.[18]

The above regulations are subject to certain modifications in case of a situation indicated in Article 132 § 1^3 of the CCP, where procedural documents with attachments, except for the documents listed in § 1^1, shall be served directly on each other by advocates, legal counsels, patent agents, and the General Counsel to the Republic of Poland exclusively in electronic form if they make unanimous declarations to the court to this effect and provide the court with the contact details used for that purpose, in particular their e-mail address or fax number.[19]

The current wording of Article 88 of the CCP has introduced into the Polish legal system a regulation making it possible to grant the so-called power of attorney for service. Any natural person may be an attorney for

16 Act of 23 November 2023 – Postal Law, Journal of Laws 2023, item 1640).

17 Dorota Markiewicz, in *Kodeks Postępowania Cywilnego. Komentarz Art. 1–505*[39], ed. Tomasz Szanciło (Warsaw: C.H. Beck, 2019), 537.

18 Cf., i.a., Decision of the Supreme Court of 2 August 2007, V CSK 155/07, Legalis/el; Decision of the Supreme Court of 14 April 2011, II UZ 10/11, Legalis/el; Judgement of the Supreme Court of 22 October 2013, III UK 154/12, Legalis/el.

19 Markiewicz, in *Kodeks Postępowania Cywilnego*, 541–3.

service, which is expected to improve the service of court correspondence and thus accelerate the course of proceedings.

4. General Characteristics of the Service System in Civil Proceedings

4.1. Time and Place of Service

Pursuant to Article 134 § 1 of the CCP, service should take place on weekdays. Only in exceptional cases it may take place on public holidays and during night time, by prior order of the President of the court. According to Article 134 § 2 of the CCP, night-time is considered to be between 9 p.m. and 7 a.m. The provisions also regulate the place where service should be effected, which, pursuant to Article 135 of the CCP, is the addressee's home, place of work, or another place where the addressee is to be found. At the request of a party, service may be effected to the post-office box address indicated by that party. In this case, a judicial document sent through a postal operator, within the meaning of the Act of 23 November 2012 – Postal Law,[20] shall be deposited at a post office of that operator, with a notice of it placed in the addressee's post-office box. Service on the addressee may also be effected by handing them the document directly at the court registry (Article 132 § 2 of the CCP).[21]

4.2. Service on Natural Persons

Pursuant to Article 133 § 1 of the CCP, where the addressee is a natural person, documents should be served on them personally or, if they do not have procedural capacity, on their legal representative. Service on natural persons may also take the form of so-called substituted service.[22]

If the addressee is not found at home by the serving party, pursuant to Article 138 § 1 of the CCP, the latter may serve the judicial document on an adult household member or, if such is not present, on the house administrator, the house caretaker, or the municipal authority, if these persons are not the addressee's opponents in the case and have undertaken to hand over the letter to the addressee. Bearing in mind a view which is well established

20 Act of 23 November 2012 – Postal Law, Journal of Laws 2022, item 896, 1933 and 2042.

21 Cf. Decision of the Supreme Court of 4 February 1970, II PZ 55/69, Legalis/el.

22 Władysław Siedlecki, in *Kodeks postępowania cywilnego. Komentarz*, eds. Władysław Siedlecki and Zbigniew Resich (Warsaw: Wydawnictwo Prawnicze, 1976), 1: 253.

in numerous Supreme Court judgments, substituted service is based on the presumption that the mail has reached the addressee.[23]

Like any presumption, however, it can be rebutted by proving the contrary. A party may therefore show that, despite the mail being received by another person, they were in fact unable to read it. In the doctrine, the view is represented that in a situation where the addressee proves that service under Article 138 § 1 or 2 of the CCP took place despite the failure to fulfil the conditions indicated in these provisions, it should be assumed that service did not take place at all. However, this is not a question of rebutting the alleged presumption of the correctness of service under the above provision, but of demonstrating that the event that occurred did not comply with the conditions stemming from those provisions and therefore did not constitute service as provided for therein.[24]

If the addressee refuses to accept the letter, service shall be deemed to have taken place. In such a situation, pursuant to Article 139 § 2 of the CCP, the serving party shall return the letter to the court with a note about the refusal to accept it.[25] If the serving party does not find the addressee at their place of work, the former may, pursuant to Article 138 § 2 of the CCP, serve the letter on a person authorized to receive letters designated by the employer.[26]

The legislator has imposed an obligation on the parties and their representatives to notify the court of any change in their place of residence. If this obligation is not complied with, the judicial document shall be left in the case file as effectively served, unless the new address is known to the court. The court shall instruct the party of this obligation and the consequences of failing to comply with it at the time of first service (Article 136 § 1 and 2 of the CCP).[27]

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23 See: Judgment of the Supreme Court of 28 February 2002, III CKN 1316/00, Legalis/el; Decision of the Supreme Court of 4 September 1970, I PZ 53/70, OSCP 1971/6, item 100; Decision of the Supreme Court of 10 February 2000, II CKN 820/99, Legalis/el; Decision of the Supreme Court of 5 February 2008, II PZ 72/07, Legalis/el.

24 Piotr Rylski, "Skuteczność doręczeń w procesie cywilnym," *Prawo w działaniu. Sprawy Cywilne*, no. 15 (2013): 57.

25 Decision of the Supreme Court of 25 September 2014, II CZ 46/14, Legalis/el.

26 Markiewicz, in *Kodeks Postępowania Cywilnego*, 561–3.

27 Judgment of the Supreme Court of 18 December 2003, I PK 117/03, Legalis/el.

If service cannot be effected in the manner envisaged above, the letter shall be served by means of the so-called advice note.[28] This means that a letter sent through a postal operator within the meaning of the Postal Law shall be deposited at a post office of that operator, and a letter served in another way shall be deposited at the office of a competent municipality, with a notice thereof left in the door of the addressee's home or letter box, with an indication where and when the letter has been left and with an instruction that it should be collected within seven days of the date of the notice. If this time limit expires without effect, the notice shall be repeated in accordance with Article 139 § 1 of the CCP. In such a case, service shall be deemed to have been effected when the addressee or an entitled person collects the letter from the post office or municipal office. If the mail is not collected within the time limit, it shall be deemed to have been delivered on the date of expiry of the time limit for its collection.[29]

4.3. Service Under Article 139[1] of the CCP

In Article 139[1] of the CCP, the legislator provided for a special mode of serving documents on a defendant who is a natural person. Very importantly, this regulation cannot be applied to natural persons in cases in which they act as entrepreneurs, nor does it apply to entities other than natural persons.[30]

Section (§) 1 of the above provision indicates that if a defendant is a natural person, despite a repeated notice under Article 139, inability to serve

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[28] With the exception of letters served on a defendant who is a natural person under Article 139[1] of the CCP through a court enforcement officer, as referred to in subchapter 4.3; however, the practice of obliging the court to deliver a copy of the lawsuit through a bailiff under Article 139[1] of the CCP, and after determining that the defendant actually resides at the address indicated in the statement of claim, the copy of the payment order, which was initially served together with a copy of the statement of claim, should be deemed served after two notifications. The regulation in question is intended to prevent not only lawsuits from being sent to fictitious or unverified addresses, but also to prevent the plaintiff from benefiting from knowledge about, for example, the defendant's longer absence from the place of residence.

[29] Cf. Resolution of the Supreme Court of 10 May 1971, III CZP 10/71, OSNCP 1971/11, item 187; Decision of the Supreme Court of 25 January 1995, III CRN 71/94, Legalis/el; Decision of the Supreme Court of 20 June 2000, III CZ 59/00, Legalis/el; Decision of the Supreme Court of 30 November 2007, IV CZ 89/07, Legalis/el; Decision of the Supreme Court of 5 June 2009, I CZ 26/09, Legalis/el.

[30] H. Bednorz-Godyń, *Doręczenia*, 499–501.

a judicial document or refusal to accept it, § 1, second sentence, has not received a statement of claim, another procedural document, or a judgment giving rise to the need to defend their rights sent to the address indicated, and they have not previously been served with any document in the case in the manner provided for in the preceding Articles, or if Article 139, inability to serve a judicial document or refusal to accept it, § 2 or any other special provision providing for the effect of service does not apply, the presiding judge shall inform the plaintiff accordingly, sending them a copy of the judicial document for the defendant and obliging them to serve that document copy on the defendant through a court enforcement officer.[31]

Then, in § 2, the legislator specifies the conditions for service. The plaintiff shall, within two months from the date of service on them of the obligation referred to in § 1, either file an acknowledgement of service of the correspondence on the defendant through the court enforcement officer or return the correspondence with written proof that the defendant resides at the address indicated in the statement of claim.[32] After this time limit expires without effect, the provision of Article 77, optional suspension of proceedings ex officio, § 1(6), shall apply. If the plaintiff demonstrates with written proof that the defendant resides at the address indicated in the statement of claim, correspondence that is sent in the manner provided for in Article 139, inability to serve a judicial document or refusal to accept it, § 1, shall be deemed served. The subsequent service of this correspondence by a court enforcement officer to the same address shall not restart the running of the time limits that the Act stipulates for service, of which the defendant shall be instructed while this action is taken (Article 139[1] § 3 of the CCP).[33]

The lack of effective bailiff service justifies an application to appoint a guardian for the defendant pursuant to Article 143 CCP. It is rightly said

[31] Marcin Uliasz, in *Kodeks postępowania cywilnego. Komentarz do ustawy z dnia 4 lipca 2019 r. o zmianie ustawy – Kodeks postępowania cywilnego oraz niektórych innych ustaw*, eds. Jacek Gołaczyński and Dariusz Szostek (Warsaw: C.H. Beck, 2019), 99; Markiewicz, in *Kodeks Postępowania Cywilnego*, 570; Joanna Bodio, in *Kodeks postępowania cywilnego. Koszty sądowe w sprawach cywilnych. Dochodzenie roszczeń w postępowaniu grupowym. Przepisy przejściowe. Komentarz do zmian*, ed. Tadeusz Zembrzuski (Warsaw: Wolters Kluwer, 2019): 1: 338–43.

[32] Zamojski, "Doręczenie pozwanemu pierwszego pisma," 13.

[33] Uliasz, in *Kodeks postępowania cywilnego*, 99.

that these are separate institutions, although it would be more appropriate to use the term "complementary." The need for first service so that the defendant has the opportunity to defend himself in the trial will facilitate the more frequent appointment of guardians ad litem.[34] Significant doubts may only be raised if the submission of an application for the appointment of a guardian was not preceded by an attempt to deliver the letter through the bailiff. It seems that such a request can be accepted, but it should be particularly carefully justified.[35]

4.4. Service on Other Entities

In the case of legal persons and organizations without legal personality, procedural documents or judgments shall be served in accordance with Article 133 § 2 of the CCP on the body authorized to represent them before the court or personally on an employee authorized to receive letters. In turn, § 2^1 of the above provision indicates that procedural documents or judgments for an entrepreneur entered in the Central Register and Information on Economic Activity shall be served to the service address made available in that register unless the entrepreneur has indicated a different service address.

The next section, § 2^2, refers to entrepreneurs entered in the court register, for whom procedural documents or judgments shall be served to the address made available in that register unless the entrepreneur has indicated a different service address. If the last address made available has been deleted as being inconsistent with the facts and no request has been made to enter a new address to be made available, the deleted address shall be deemed to be the address made available in the register.[36]

Procedural documents or judgments for persons representing an entity entered in the National Court Register, liquidators, commercial proxies, members of bodies, or persons entitled to appoint the management board

34 Zamojski, "Doręczenie pozwanemu pierwszego pisma," 14.

35 Marcin Borodziuk, *Doręczenie komornicze w praktyce sądowej po zmianach procedury cywilnej dokonanych 7 listopada 2019 roku*, *Prokuratura i Prawo*, no. 3 (2021): 119.

36 See: Decision of the Supreme Court of 14 February 2000, II CKN 1152/99, Legalis/el.

shall be served, under Article 133 § 2^3 of the CCP, to the service address indicated under separate provisions.[37]

Where an attorney ad litem or a person authorized to receive judicial documents has been appointed, service shall be made on such persons pursuant to Article 133 § 3 of the CCP. The above regulation does not apply to letters summoning a party to appear in person, which shall always be served only directly to the party summoned to appear (Article 133 § 3 sentence 2 of the CCP).[38]

Of particular importance is the sanction concerning entities subject to registration in the National Court Register or Central Register and Information on Economic Activity, if service cannot be effected in the manner provided for in the preceding articles due to the failure to disclose a change of address in the register. In such a case, the mail shall be left in the case file as effectively served, unless the new place of residence and address are known to the court (Article 139 § 3 of the CCP).[39]

It should be emphasized that in case law[40] it is rightly argued that the evidence that the defendant resides at the address specified in the complaint is subject to the rules of evidence contained therein in Article 227 et seq. of the Code of Civil Procedure. At the same time, nothing prevents the court from determining this fact, based on the evidence attached to the lawsuit, referred to the facts commonly known (Article 228 § 1 of the Code of Civil Procedure) or to facts known to the court *ex officio*.[41]

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37 Article 19a of the Declaration of consent to be appointed to represent the entity sec. 5–5b and 5d of the Act of 20 August 1997 on the National Court Register, Journal of Laws 2023, items 685 and 825.

38 See: Decision of the Supreme Court of 29 August 1995, I PRN 39/95, Prok. i Pr. 1995, no. 11–12, item 40.

39 Similarly, in Article 133 § 3^1 of the CCP: "Letters to persons representing an entity entered in the National Court Register, liquidators, commercial proxies, members of bodies or persons entitled to appoint the management board, if they cannot be served in the manner provided for in the preceding articles due to failure to submit a declaration of a change of the service address, shall be left in the case file as effectively served, unless another service address or place of residence and address are known to the court."

40 Decision of the Court of Appeal in Rzeszów of 23 February 2021, I ACz 254/20, Lex nr 3126763.

41 Michał Ptaszek, "Doręczenie pozwu lub pierwszego pisma wymagającego podjęcia obrony praw pozwanemu wpisanemu do rejestru lub ewidencji. Uwagi na tle art. 139^1 k.p.c.," *Kwartalnik Krajowej Szkoły Sądownictwa i Prokuratury* 48, no. 4 (2022): 54.

5. General Characteristics of Service in Selected European Countries

5.1. Service in Germany

In Germany, the act of service is regulated by the Act of 30 January 1877 – *Zivilprozessordnung*.[42] As in Poland, service in the German procedure is a strictly formalized act.[43] The German legislator identifies two basic modes of service of documents during civil proceedings: routine (§ 166-190 of the GCCP) and at the request of a party (§ 191-195 of the GCCP), with clear primacy given to the former mode of service. Under German civil procedural law, pursuant to §168 of the GCCP, the court may entrust service to a postal operator or a court clerk, or, where the effectiveness of the service so requires, also to a court enforcement officer or another official.

Direct service between the parties' professional attorneys at law, which is also effected in a deformalized manner by fax or e-mail, is also admissible under § 195 in conjunction with § 175 of the GCCP. In addition, service by electronic means is also admissible for other participants in civil proceedings, provided that they have the technical means to receive an electronic document and have previously made an express declaration of consent to this method of service.

In German civil procedural law, the rule is personal service, whereby, pursuant to § 177 of the GCCP, a document may be handed over to the addressee at any location at which the person is found. Documents addressed to a legal person or to an organizational unit without legal personality admitted to legal transactions, shall be served on the body authorized to represent it before the court or on an employee authorized to receive letters. However, if such service proves impossible, the institution of substituted service shall apply (§ 178-181 of the GCCP).

In Germany, when a person's whereabouts are unknown and service on a representative or attorney for service is not possible, service by

[42] Zivilprozessordnung (German Code of Civil Procedure) of 30 January 1877, consolidated text BGBl. 2005 I p. 3202, 2006 I p. 431, 2007 I p. 1781, as amended, hereinafter referred to as GCCP.

[43] Gudrung Trauner, "Die elektronische Zustellung behördlicher Dokumente," in *Effizienz von e-Lösungen in Staat und Gesellschaft. Aktuelle Fragen der Rechtsinformatik. Tagungsband des 8. Internationalen Rechtsinformatik Symposions*, ed. Erich Schweighofer (Stuttgard, Verlag: Boorberg, 2005), 107; Bartosz Sujecki, *Mahnverfahren: mit elektronischem und europäischen Mahnverfahren* (Heidelberg: Müller, C F in Hüthig Jehle Rehm, 2007), 46.

publication becomes necessary (§ 185-188 of the GCCP). Pursuant to § 186 of the GCCP, the decision on whether or not to approve service by publication shall be made by the court. Service by publication shall be implemented by posting a notification on the court's bulletin board or by publishing the notification in an electronic information and communication technology system. As a general rule, a document shall be deemed served if a period of one month has elapsed since the notification has been posted on the bulletin board unless a longer period is specified by the court (§ 188 of the GCCP).

5.2. Service in Austria

In Austrian civil proceedings, court service is regulated in § 88-121 of the Austrian Code of Civil Procedure of 1 August 1895 (Zivilprozessordnung).[44] Judicial documents are most often served through a post office, court clerk, or municipality. In the Austrian law, as in the Polish and German law, a distinction is also made between personal service, which is the rule, and substituted service, which is an exception to it.[45] If the addressee fails to receive a letter, another letter shall be sent to them with a time limit for the second attempt at personal service of the letter. If the second attempt to serve the letter also fails, the letter shall be deposited at the post office in the case of service by post, or at the office of a relevant municipal authority in the case of service by another entity (§ 17 of the SOD Act). Such a letter shall be kept for a minimum period of two weeks and the addressee of the letter shall be notified of its being deposited, giving details of the place of collection and the time limit for collection, as well as the consequences of not collecting the letter in time.

Where both litigants are represented by professional attorneys at law, Austrian civil procedural law allows, in § 112 of the ACCP, for direct

[44] Austrian Code of Civil Procedure of 1 August 1895 (Zivilprozessordnung), Federal Law Gazette RGBl.1895, no. 113, as amended, hereinafter referred to as the ACCP. However, the Code regulation does not completely regulate the issue of service and refers one to special provisions. These are contained in the Federal Act of 1 April 1982 on the Service of Official Documents, Federal Law Gazette RGBl. 1982, no. 201, as amended, hereinafter referred to as the SOD Act.

[45] Hans W. Fasching, *Lehrbich des Österreichischen Zivilprozessrechts: Lehr- und Handbuch für Studium und Praxis* (Vienna: Manz, 1990), 535.

service of documents between them during the course of the case, after the court has served a copy of the statement of claim on the defendant also electronically.

In Austrian law, there is the institution of "forwarding a letter," as provided for in § 18 of the SOD Act. Forwarding a letter is possible when the addressee does not regularly reside at the service address they indicated. In such a case, the letter served by post or by the municipal authorities shall be deposited at another place of service indicated by the addressee, provided that the new address can be easily established. Other letters, which are less relevant to the pending civil proceedings, may be served vicariously through an adult household member.[46]

Also, as is the case in Polish and German procedures, in the Austrian law, the recipient of a letter may not be an opposing party of the addressee (§ 16(2) of the SOD Act). A copy of the judicial document may be served through a court clerk at the addressee's place of residence or place of work. Both direct and substituted services are possible. Service through a court clerk or municipal authority may be effected in the following cases: if service through a post office is obstructed, if there is no post office in the place, or if a letter served through the post office could arrive too late.

The Austrian law allows for the electronic service of the types of documents specified by the Minister of Justice. They may be served electronically on the subject of the proceedings, provided that the subject participates in electronic legal transactions or has given their prior consent to such service. Electronic service of judicial documents is only possible during the office hours of the court. It shall be effected by the competent service unit or private entities duly authorized to effect electronic service. The document to be served shall bear an official electronic signature, a specimen of which shall be published in advance by the court on its website to enable verification by the addressee. A document served by electronic means shall be deemed served at the moment the addressee is able to read it.[47]

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46 Walter H. Rechberger, *Kommentar zur ZPO* (Vienna: Springer-Verlag, 2000), 560.

47 Eberhard Schilken, *Zivilprozessrecht*, 6th ed. (Cologne: Vahlen Franz GmbH, 2006), 106; Martin Schwab, *Zivilprozessrecht*, 4th ed. (Heidelberg: C.F. Müller, 2012), 272; Sujecki, *Mahnverfahren*, 45–7.

5.3. Service in France

The institution of service in the French civil procedural law is understood as a formalized act of handing over a document, as a rule through a court clerk or electronically, to its addressee (Article 653 of the FCCP).[48] Due to the French law adopting as binding the concept of "remise au parquet" which is the basis for the national service system, the service of a document shall be deemed effective as soon as the necessary formal steps have been completed by the authorized serving entity and not as soon as the document reaches the addressee in such a way that they are able to read it.[49]

The French Code of Civil Procedure establishes the primacy of personal service over other forms of service. As a general rule, therefore, a document shall be served personally on the addressee or, if the addressee is not a natural person, on their legal representative, attorney, or another authorized person (Article 654 of the FCCP).[50] The court clerk of the court having jurisdiction over the place of residence of the document addressee shall be the serving party.

Documents may also be served on the addressee in person at the court registry against acknowledgement of receipt. The French Code Act also regulates the possibility to effect service through a public postal operator. Postal services for the service of documents are provided in smaller towns where access to a court clerk is difficult. A document shall be served by post in a sealed envelope or parcel.[51] If service is entrusted to a postal operator, they are obliged to draw up an appropriate report on the service, which is then filed in the case file (Article 661 of the FCCP).

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48 French Code of Civil Procedure (Nouveau Code de Procedure Civile) as adopted by Decree no. 75–1123 of 5 December 1975 (Journal Officiel of 9 December 1975), as amended, hereinafter referred to as the FCCP; René David, *Prawo francuskie. Podstawowe dane* (Warsaw: Państwowe Wydawnictwo Naukowe, 1965), 119.

49 Cf. Loïc Cadiet, "Introduction to French Civil Justice System and Civil Procedural Law," *Ritsumeikan Law Review*, no. 28 (2011): 355 et seq.; Roger Perrot, *Droit judiciaire privé* (Bruxelles 1980): 154; R. Thominette and G. Le Quillec, "Le régime méconnu des notifications á un État étranger," *JCP Semaine Juridique*, no. 24 (2006): 1167 et seq.

50 See: Aleksandra Machowska, "Doręczenia w postępowaniu cywilnym francuskim w kontekście regulacji unijnych," *Głos Sądownictwa*, no. 11 (2003): 15.

51 See: Loïc Cadiet and Soraya Amrani-Mekki, "Civil Procedure," in *Introduction to French Law*, eds. George A. Bermann and Etienne Picard (Alphen aan den Rijn: Kluwer Law International, 2008), 314; cf. also: Jean Vincent and Serge Guinchard, *Procédure civile*, 24th ed. (Paris: Dalloz, 1996), 194.

A separate and autonomous method of service provided for in French legislation is service by electronic means (Article 653 and Articles 662–1 et seq. of the FCCP). Service by electronic means may be effected with respect to case files, documentary evidence, notifications, notices or summonses, reports, minutes, copies, and duplicates of court judgements with an enforcement clause, provided that the addressee of the document agrees to such service in advance. Electronic service is effected by the court through the ICT system against electronic acknowledgement of receipt by the addressee of the document, including an indication of the date and, in special cases, the time of receipt of the document. The effectiveness of the service of an electronic document depends on proper identification of the court, security, and confidentiality of correspondence, proper storage of the data transmitted, inviolability and integrity of the document sent, and ability to determine the date of sending and receipt of the document.[52]

6. Conclusion

Bearing in mind the most important general provisions on service in Germany, Austria, and France cited above, it should be noted that particularly the two aforementioned generally do not differ from the regulations in the Polish civil procedure. This results, among other things, from the fact that Poland borders on these countries and from the direct influence of their legislation on Polish regulations. It is worth highlighting that there is a clear trend towards the introduction of innovative solutions in the field of electronic service. It can be seen that the Polish legislator makes extensive use of the regulations previously introduced by its Western neighbors, especially as they have already been tested in practice. It seems that the future will bring formalized electronic service, which should in time replace other forms of service of procedural documents. This is because, as in German and Austrian law, the rules governing service in the Polish procedure are strictly formalized and, as a rule, if the legally required formalities are not complied with, such service is deemed to be ineffective.

[52] Jean-Marie Coulon, *Réflexions et propositions sur la procédure civile: rapport au ministre de la justice* (Paris: Ministère de la Justice, 1997), 52.

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