

Characteristics of service by a court enforcement officer in Polish civil proceedings in the context of Article 139 (1) of the Code of Civil Procedure

Charakterystyka doręczeń dokonywanych przez komornika sądowego w polskim postępowaniu cywilnym w kontekście art. 139 § 1 Kodeksu postępowania cywilnego
Характеристика вручения, осуществляемого судебным исполнителем в польском гражданском производстве в контексте статьи 139 § 1 Гражданско-процессуального кодекса

Характеристика вручення, які реалізуються судовим виконавцем у польському цивільному процесі в контексті статті 139 § 1 Цивільного процесуального кодексу

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Summary: The institution of service by a court enforcement officer has significantly impacted 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 recognised 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, and often, due to the correct (fictitious) service of payment orders, they were obliged to pay the fees 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 enforcement officer if 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 under Articles 131–139 of the Code of Civil Procedure. Thus, contrary to the principle of routine service, the legislator 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 court enforcement officer in Polish civil proceedings and discuss its advantages and disadvantages. It is particularly relevant in light of the changes introduced by the amendment of the CCP of 9 March 2023, effective from 1 July 2023, which are designed to improve this type of service.

Key words: civil proceedings, court enforcement officer, service by a court enforcement officer

Streszczenie: Doręczenia komornicze istotnie wpłynęły na prawidłowość dokonanych doręczeń pism sądowych. Wprowadzone przepisy położyły kres tzw. fikcji doręczenia osobom fizycznym, która oznaczała, że po dwóch próbach doręczenia sąd mógł przyjąć, iż dokument został skutecznie doręczony. Uznano, że zbyt często prowadziło to do uszczerbku w prawach pozwanych, w szczególności tych, którzy od dłuższego czasu nie zamieszkiwali pod adresami wskazanymi przez powodów – często, z uwagi na prawidłowe (fikcyjne) doręczenie nakazów zapłaty, byli oni zobowiązani do zapłaty kwot wynikających z prawomocnych orzeczeń sądowych. Niestety, pod rządami poprzednio obowiązujących przepisów zdarzały się przypadki podawania przez powodów niezaweryfikowanych lub wręcz nieprawdziwych adresów. Ustawodawca obligatoryjnie w art. 139¹ Kodeksu postępowania cywilnego wprowadził do polskiego porządku prawnego doręczanie pism za pośrednictwem komornika sądowego w przypadku, gdy pozew lub inne pismo wywołujące potrzebę obrony praw pozwanego

nie zostało skutecznie doręczone pozwanemu zgodnie z art. 131–139 K.p.c. Tym samym ustawodawca, wbrew zasadzie doręczeń rutynowych, nałożył wynikające z nich obowiązki nie na organ procesowy, lecz na inicjatora postępowania w sprawie. Niniejsze opracowanie ma na celu przedstawienie instytucji komornika sądowego w polskim postępowaniu cywilnym oraz omówienie jej zalet i wad. Jest to szczególnie istotne w świetle zmian wprowadzonych nowelizacją Kodeksu postępowania cywilnego z dnia 9 marca 2023 r., obowiązującą od dnia 1 lipca 2023 r., które mają usprawnić ten rodzaj służby.

Słowa kluczowe: postępowanie cywilne, komornik, doręczenie komornicze

Резюме: Вручения через судебного исполнителя существенно повлияли на надлежащий порядок осуществления вручений судебных писем. Введенные правила положили конец так называемой фикции вручения физическим лицам, которая означала, что после двух попыток вручения суд мог считать, что документ был вручен надлежащим образом. Было признано, что это слишком часто приводило к ущемлению прав ответчиков, в частности тех, кто долгое время не проживал по указанным истцами адресам, зачастую благодаря правильному (фиктивному) вручению платежных поручений они были обязаны выплатить суммы, вытекающие из вступивших в законную силу судебных решений. К сожалению, при прежнем законодательстве были случаи, когда истцы указывали непроверенные или даже ложные адреса. Законодатель в обязательном порядке ввел в польский правопорядок в статье 139¹ Гражданско-процессуального кодекса вручение писем через судебного исполнителя в случае, если исковое заявление или иное письмо, вызывающее необходимость защиты прав ответчика, не было вручено надлежащим образом ответчику в соответствии со статьями 131–139 Гражданско-процессуального кодекса. Таким образом, законодатель, вопреки принципу обычного вручения, возложил возникающие обязанности не на процессуальный орган, а на инициатора производства по делу. Цель данного исследования – представить институт судебного исполнителя в польском гражданском производстве и обсудить его преимущества и недостатки. Это особенно важно в свете изменений, внесенных поправками к Гражданско-процессуальному кодексу от 9 марта 2023 года, вступившими в силу с 1 июля 2023 года, которые призваны усовершенствовать данный вид службы.

Ключевые слова: гражданское производство, судебный исполнитель, вручение через судебного исполнителя

Резюме: Вручення судовим виконавцем суттєво вплинуло на вірність вручення судових листів. Зaproваджені правила поклали край так званій фікції вручення фізичним особам, яка означала, що після двох спроб вручення суд міг вважати, що документ був ефективно вручений. Було визнано, що це надто часто призводило до порушення прав відповідачів, зокрема тих, хто тривалий час не проживав за вказаною позивачами адресою – часто через належне (фіктивне) вручення платіжних доручень їх зобов'язували сплатити суми, що випливають з остаточних судових рішень. На жаль, за попереднім законодавством траплялися випадки, коли позивачі вказували неперевірені або навіть фальшиві адреси. Законодавець у ст. 139¹ Цпк ввів у польський правопорядок обов'язкове вручення листів через судового виконавця у випадку, якщо позовна заява або інший лист, що викликає необхідність захисту прав відповідача, не був ефективно вручений відповідачу відповідно до ст. 131–139 ЦПК. Таким чином, законодавець, всупереч принципу рутинного вручення, поклав обов'язки, що випливають з нього, не на процесуальний орган, а на ініціатора провадження у справі. Це дослідження має на меті представити інститут судового виконавця в польському цивільному процесі та обговорити його переваги та недоліки. Це питання є особливо актуальним у світлі змін, внесених поправкою до Цивільного процесуального кодексу від 9 березня 2023 року, яка набула чинності 1 липня 2023 року, що мають на меті вдосконалити цей вид служби.

Ключові слова: цивільне провадження, судовий виконавець, вручення судовим виконавцем

Introduction

By the Act of 4 July 2019 amending the Act – Code of Civil Procedure and certain other acts,¹ in Articles 139¹ § 1 and 2 of the Act of 17 November 1964 – Code of Civil Procedure,² the legislator has provided for a special mode of serving documents on a defendant who is a natural person. The institution of the so-called court enforcement officer service should be viewed holistically by interpreting Article 139¹ of the CCP and the provisions contained in the Act of 22 March 2018 on Court Enforcement Officers.³ This is because the introduced provision prescribes mandatory service of documents through a court enforcement officer where a statement of claim or another letter giving rise to a need to defend the rights of the defendant has not been effectively served on the defendant under Articles 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 body but on the initiator of the case proceedings.

The introduced provisions ended the so-called fiction of service on natural persons, which meant that after two attempts at service, the court could assume that the document had been effectively served. It was believed to lead to too frequent harm to the rights of defendants, in particular of those who had not resided at the addresses indicated by the plaintiffs for a long time, and often, due to the correct (fictitious) service of the payment orders, they were required to pay the fees arising from final court decisions. Unfortunately, under the previous legislation, there were cases of plaintiffs providing unverified or even false addresses of defendants, to which the court judgments were addressed, which, once final, would become enforcement titles.

This study aims to present the institution of service by a court enforcement officer in Polish civil proceedings and discuss its advantages and disadvantages. This is particularly important in view of the changes introduced by the CCP amendment of 9 March 2023,⁴ in force from 1 July 2023, intended to improve this service. First, the paper will present service by a court enforcement officer introduced in 2019 and

¹ Act of 4 July 2019 amending the Act – Code of Civil Procedure and certain other acts, Journal of Laws [Dziennik Ustaw] 2023 item 614.

² Act of 17 November 1964 – Code of Civil Procedure, consolidated text: Journal of Laws 2024 item 1237 (hereinafter: CCP).

³ Act of 22 March 2018 on Court Enforcement Officers, consolidated text: Journal of Laws 2024 item 1458 as amended (hereinafter: the CEO Act).

⁴ Act of 9 March 2023 amending the Act – Code of Civil Procedure and certain other acts, Journal of Laws 2023 item 614.

the legal situation concerning the service of legal documents before its introduction. Finally, the advantages and disadvantages of this institution will be discussed, taking into account the amendment of 9 March 2023 and its impact on improving the entire service process.

1. Reasons for introducing the regulation of Article 139¹ of the CCP

The problems of fictitious service highlighted in the introduction and, above all, a significant increase in the number of civil cases considered by courts made it necessary to regulate the issues related to effective service of statements of claim and first letters in a case. Failure to receive these documents often led to court decisions being challenged, even years later, often during ongoing enforcement. Therefore, there were situations where the defendant resided at an address other than the one indicated in the statement of claim, and the documents were deemed to have been delivered under Article 139 § 1–3 of the CCP.⁵

Before changing the provisions concerning service in this area, the legal situation undermined the seriousness of the administration of justice by the courts, often leading to the legalisation of fictitious trials.⁶ This issue was also raised by the Supreme Court, which approved in its ruling the substituted service of the first letters in a case⁷ under Article 139¹ § 1 of the CCP. The legislator rightly pointed out that the meaning of the service of the document initiating the proceedings is crucial for the course of all further proceedings since, by definition, it causes all subsequent judicial documents to be deemed served.⁸

While it is true that the court is obliged to verify the defendant's address,⁹ this verification was often only done after the service and, due to the limited possibilities (PESEL-SAD), usually without producing the intended results. Undeniably, the above risk was inherent in the essence of the hitherto existing regulation but,

⁵ J. Bodio, in: *Kodeks postępowania cywilnego. Koszty sądowe w sprawach cywilnych. Dochodzenie roszczeń w postępowaniu grupowym. Przepisy przejściowe. Komentarz do zmian*, vol. 1, ed. T. Zembrzusi, Warszawa 2020, pp. 338–339.

⁶ Ł. Zamojski, *Doręczenie pozwanemu pierwszego pisma procesowego wywołującego potrzebę obrony na podstawie art. 139¹ KPC*, *Monitor Prawa Handlowego* 2019, no. 3, p. 14.

⁷ Decision of the Supreme Court of 8 December 2010, III CZP 105/10, *Legalis* database.

⁸ Explanatory Memorandum to Draft VIII.3137, Amendment to the Act – Code of Civil Procedure and certain other acts, point VII (49) (c); cf. K. Weitz, in: *Kodeks postępowania cywilnego. Komentarz*, vol. 1, ed. T. Ereciński, Warszawa 2016, p. 837.

⁹ Cf. Resolution of the Supreme Court of 16 February 2017, III CZP 105/16, *OSNC* 2017, no. 10, item 112.

unfortunately, encouraged abuse of procedural law by both the plaintiff and the defendant. This was because the parties initiating the civil proceedings could indicate any address for the defendant; frequently, despite knowing the actual address, a different one was given in the statement of claim.¹⁰ On the other hand, the defendants often deliberately failed to receive documents from the court, aiming to obstruct the proceedings, and then, often after many months, raised the difficult-to-verify circumstance that they actually resided at a different address and were deprived of their right of defence. One has to agree with the position expressed in the doctrine that “the concept of procedural efficiency is not confined solely to the economy of proceedings and the maximum reduction in their duration.” Efficiency is also the implementation of the guarantees covered by the right to trial. Service of a statement of claim is a fundamental procedural guarantee enabling the defendant to defend their rights.¹¹

2. Personal scope of the regulation

Under Article 139¹ § 1 of the CCP, if a defendant is a natural person, despite the repeated notice under Article 139, *inability to serve a judicial document or refusal to accept it*, § 1, second sentence, has not received a statement of claim, other procedural document or a judgment giving rise to the need to defend their rights, sent to the address indicated, and has not previously been served with any document in the case as 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 informs the plaintiff accordingly, sending them a copy of the judicial document for the defendant and obliging them to serve that copy on the defendant through a court enforcement officer. Under Article 13 § 2 of the CCP, Article 139¹ § 1 and 2 of the CCP applies to the defendant and the participants in non-litigious proceedings according to Article 510 § 1 of the CCP. Given the content of the above provision, it becomes essential to determine to which entities it should apply.¹²

¹⁰ As a rule, such practice is aimed at obtaining a default judgment, which is provided routinely with the order of immediate enforceability (Article 333 § 1 (3) of the CCP) and, in the absence of correspondence by the defendant, becomes final without hindrance.

¹¹ J. Bodio, in: *Kodeks...*, pp. 343–344.

¹² Cf. A. Sikorska-Lewandowska, *Problemy z dochodzeniem roszczeń po nowelizacji przepisów KPC o doręczeniach*, *Nieruchomości* 2020, no. 9, pp. 6 ff.

The above provision is explicitly excluded in Article 505²⁹ § 1 of the CCP concerning the defendant in electronic writ-of-payment proceedings specifying that if service cannot be effected under Articles 131–139 of the CCP, the order is deemed served upon fulfilment of the conditions specified in Article 505³⁴ § 1 of the CCP. Pursuant to the indicated provision, a payment order is deemed to have been served as long as the address at which the notices were left corresponds to the service address in these proceedings as disclosed in the PESEL register.

If the addresses do not correspond under Article 505³⁴ § 2 of the CCP, the order is revoked, and the proceedings are discontinued.¹³

The lack of applicability of court enforcement officer service to electronic writ-of-payment proceedings may be incomprehensible. According to M. Borodziuk, recognition of the fiction of the service of payment orders issued in these proceedings based on the registered address must raise objections in the absence of an administrative requirement of residence registration.¹⁴ Given that the letter is deemed served under Article 505³⁴ § 1 of the CCP, the defendant is unable to effectively collect a statement of claim for the resumption of the proceedings on the ground that they did not reside at the address indicated in the PESEL register since Article 401 (2) of the CCP refers to the deprivation of the opportunity to defend one's rights "as a result of a violation of the law."

Using the term "defendant,"¹⁵ the legislator excluded the possibility of applying the mandatory mode of service of documents through a court enforcement officer to other litigants, such as plaintiffs or applicants in non-litigious proceedings. For the same reason, Article 139¹ of the CCP does not apply to experts, interpreters or witnesses. This is understandable given the material scope of the regulation, where a letter initiating proceedings, a statement of claim or a document requiring a party to defend itself is necessarily served on the parties to the proceedings.¹⁶

An additional condition for the application of court enforcement officer service, which does not follow directly from the wording of the provision, is that the defendant must be domiciled in the Republic of Poland. This is justified by the fact that the plaintiff cannot be expected to effect service abroad, which is subject

¹³ H. Bednorz-Godyń, *Doręczenia za pośrednictwem komornika sądowego*, *Monitor Prawniczy* 2023, no. 8, pp. 499 and 501.

¹⁴ M. Borodziuk, *Doręczenie komornicze w praktyce sądowej po zmianach procedury cywilnej dokonanych 7 listopada 2019 roku*, *Prokuratura i Prawo* 2021, no. 3, p. 108; K. Markiewicz, in: *Kodeks postępowania cywilnego*, vol. 1. *Komentarz. Art. 1–505*³⁹, ed. T. Szanciło, Warszawa 2019, p. 570.

¹⁵ However, based on Article 13 § 2 of the CCP, 13 § 2 CCP, the provision also applies to participants in non-litigious proceedings and, until the entry into force of the amendment of 9 March 2023, also applies to debtors in enforcement proceedings.

¹⁶ J. Bodio, in: *Kodeks...*, pp. 338–339.

to separate rules. The basis for service abroad is Regulation (EC) No 1393/2007 of the European Parliament and of the Council of 13 November 2007 on the service in the Member States of judicial and extrajudicial documents in civil or commercial matters (service of documents), and repealing Council Regulation (EC) No 1348/2000.¹⁷

Moreover, it follows from the wording of the provision that court enforcement officer service may only apply to a “defendant” who is a natural person. Therefore, the above provisions do not apply to legal persons, organisational units without legal personality but having legal capacity under separate provisions, or entrepreneurs entered in the National Court Register of Poland. Only Article 139 of the CCP applies to these entities, where the lack of effective service to the address disclosed in the relevant register makes it possible to declare the effect of service.¹⁸

3. Material scope of the regulation

Court enforcement officer service applies only to the documents specified in Article 139¹ § of the CCP, i.e. to a statement of claim (an application in non-litigious proceedings and, until 1 July 2023, pleadings in enforcement proceedings – Article 13 § 2 of the CCP) and to procedural documents giving rise to the need to defend a party’s rights. The term “procedural documents” is meant by the legislator as the parties’ letters, which include applications and declarations made outside a hearing (Article 125 § 1 of the CCP), which does not raise any interpretation doubts. On the other hand, the phrase “documents giving rise to the need for defence” generally refers to documents that may be served on the defendant even before the statement of claim is served on them, such as a request to secure evidence or a request to secure a claim.¹⁹

It is clear that not all documents from the plaintiff that affect the course of the proceedings give rise to the need to defend the defendant’s rights. In each case, it is for the court to assess whether merely accepting that a given document has been served after issuing two advice notes does not infringe the defendant’s rights in this case. In particular, the plaintiff’s requests for a suspension of proceedings or

¹⁷ M. Borodziuk, *Doręczenie...*, p. 109.

¹⁸ M. Michalska-Marciniak, in: *Kodeks postępowania cywilnego*, vol. 1. *Komentarz. Art. 1–205*, ed. A. Marciniak, Warszawa 2019, p. 890; Ł. Zamojski, *Doręczenie...*, p. 17; K. Markiewicz, in: *Kodeks...*, p. 570.

¹⁹ J. Bodio, in: *Kodeks...*, pp. 343–344.

requests for an adjournment of the hearing do not harm these rights, as it is usually in the interest of the plaintiff and not the defendant that the court proceedings run smoothly.²⁰

It follows from the juxtaposition of Article 139¹ § 1 of the CCP with Article 133 § 2, § 21 and § 22 of the CCP that this does not apply to court judgments. The legislator has explicitly narrowed its provisions to “procedural documents,” while judgments are a separate category of a strictly official nature (Article 244 § 1 of the CCP). Hence, under Article 139 § 1–3 of the CCP, it is not defective to deem served an order to transfer a case according to jurisdiction or grant security for a claim delivered together with a statement of claim, for example. In the latter case, the regulation concerning service effectiveness should expressly state that the service is effective only with respect to the court judgment.

It should be emphasised that the legislator associates the service of the judgment with the effect of the running of the time limit for lodging an appeal and, once this limit expires, also of making a judgment final. The defendant has the option of subsequently contesting the effectiveness of that service by lodging an appeal on the ground that the time limit for doing so has not started to run.

A significant problem for the regulation in question is the case of payment orders issued under writ-of-payment and payment-order proceedings. Although a payment order is a judgment, since it is subject to service with the statement of claim and is a judgment closing the proceedings, it is not subject to service under Article 139 § 1–3 of the CCP. Apart from electronic writ-of-payment proceedings, the legislator has not provided for the consequences of the inability to serve a statement of claim in a case if a payment order is served along with it. Therefore, in case of failure to successfully serve the payment order with a copy of the statement of claim, the court letters should be served on the defendant through a court enforcement officer.²¹

Indeed, it should be stressed that Article 480² § 3 of the CCP implies the essence of the payment order, i.e. it should be served on the defendant with instructions concerning objection, the consequences of not appealing against the order and a copy of the statement of claim with instructions (Article 205² of the CCP). The cited provision applies only to the first attempt at service. At the same time, for the plaintiff’s obligation to serve the documents through a court enforcement officer, Article 139¹ § 1 of the CCP should be treated as a *lex specialis*. This is because the plaintiff might serve the documents through a court enforcement officer but fails to

²⁰ K. Markiewicz, in: *Kodeks...*, p. 570; J. Bodio, in: *Kodeks...*, p. 344.

²¹ M. Michalska-Marciniak, in: *Kodeks...*, p. 890; Ł. Zamojski, *Doręczenie...*, p. 16.

notify the court. Then, due to the expiry of the two-month time limit provided for in Article 1391 § 2 of the CCP, the court suspends the proceedings. The payment order may already become final by the time this decision is made.²²

There was also a practice in the courts to oblige the plaintiff to serve through the court enforcement officer a copy of the statement of claim itself, together with the instructions specified in Article 205² of the CCP, while at the same time sending a copy of the document and the instructions. Only after the court obtains confirmation that the court enforcement officer has served the documents does it become reasonable to serve the copy of the payment order itself and instructions on the objection and the consequences of not appealing against the order. However, this practice does not increase the speed of the proceedings and may create difficulties when the defendant files a statement of defence. Moreover, this clashes with the previously indicated general provisions requiring the payment order to be served on the defendant with instructions concerning lodging an appeal and a copy of the statement of claim.

4. Suspension and discontinuance of proceedings due to lack of effective service

Under Article 139¹ § 2 of the CCP, the court requests the plaintiff to provide proof of service of the documents within two months, under pain of suspending the proceedings. This requirement does not apply when the court has the defendant's current address, provided in the course of other proceedings, or an address from the PESEL-SAD database disclosed relatively recently. If the court has an address from the PESEL-SAD database that differs from the address indicated in the statement of claim, it may try to serve documents to that address.²³

To enable service through a court enforcement officer, a copy of the statement of claim with instructions should be sent to the plaintiff, together with an obligation to file a statement of defence within the set time limit (Article 205¹ § 1 and 2 of the CCP) when no payment order has been issued. Although this last proviso does not follow directly from the provisions in question, it is intended to streamline the proceedings. The simultaneous service of an obligation to file a statement of defence

²² P. Sławicki, P. Sławicki, *Doręczenia pism za pośrednictwem komornika sądowego w postępowaniu zabezpieczającym, klauzulowym i egzekucyjnym*, Przegląd Sądowy 2020, no. 11–12, p. 77–78.

²³ *Ibidem*, p. 78.

sets a procedural time limit for the defendant. The lack of service of such an obligation in the light of Article 339 § 1 of the CCP makes it impossible to issue a default judgment, as the defendant is not served with an obligation setting a time limit for taking a position on the case, as required. This is not the case with a payment order, as the instruction on the time limit for lodging an appeal should be apparent from the wording of the order itself.

The view that “so-called court enforcement officer service calls into question the basis for the appointment of a guardian for a person whose residence is unknown given the inability to establish the defendant’s residence, including following the failure of service of a document by a court enforcement officer” seems unfounded. The lack of effective court enforcement officer service should be regarded as a positive prerequisite for requesting the appointment of a guardian for the defendant under the invoked provisions of the Act. The necessity for the first service so that the defendant can mount a defence at trial will contribute to the more frequent appointment of guardians *ad litem*.²⁴

The legislator explicitly orders the ineffective expiry of the two-month period to be treated as a positive prerequisite for suspending proceedings under Article 177 § 1 (6) of the CCP, and such legal basis should be included in the provision itself. The cited provision stipulates that the court may suspend the proceedings *ex officio* if, due to the plaintiff’s missing or wrong address or the plaintiff’s failure to provide the address of the defendant or data allowing the court to determine the numbers referred to in Article 208¹ of the CCP within the prescribed time limit, or the plaintiff’s failure to comply with other orders, the case cannot be continued.²⁵

It should be emphasised that the three possible actions of the plaintiff indicated in Article 139¹ § 2 of the CCP, as well as the filing of an application for the appointment of a guardian *ad litem* for the defendant whose residence is unknown (the application must be particularly motivated), are negative prerequisites for suspending the proceedings. At the same time, they are positive prerequisites for the resumption of the suspended proceedings. Moreover, it should be borne in mind that the court, under Article 182 § 1 (1) of the CCP, will resume proceedings only if a party requests resumption within three months from the date of the order to suspend the proceedings. Importantly, it should be noted that any actions listed in Article 139¹ § 2 of the CCP taken after the expiry of the statutory period specified therein will be ineffective under Article 169 § 1 of the CCP. However, the court should consider

²⁴ Ł. Zamojski, *Doręczenie...*, p. 14.

²⁵ M. Kaczyński, in: *Kodeks postępowania cywilnego*, vol. IA. *Komentarz. Art. 1–424*¹², ed. A. Górabłażczykowska, Warszawa 2020, p. 592.

such action if it is combined with a request to resume the proceedings submitted within the statutory three months from the date of issuing the order to suspend the proceedings.²⁶

5. Costs of court enforcement officer service

It is argued in legal studies that the catalogue of expenses in Article 5 of the Act of 28 July 2005 on Court Costs in Civil Cases is non-exhaustive.²⁷ It is also pointed out that the amending Act of 4 July 2019 includes the costs of service through a court enforcement officer and additional costs of service abroad, including translation costs, among the expenses chargeable to the parties.²⁸

Service costs incurred by a party are included in the court costs. They constitute an element of the expenses necessary for the purposeful pursuit of rights and purposeful defence, which the unsuccessful party is obliged to reimburse the opponent upon request under Article 98 of the CCP. Under Article 108 of the CCP, it is accepted that the claims for reimbursement of legal costs remain definitively settled in the proceedings in which they arose and to which they are connected and cannot be asserted in a separate trial. However, no regulation expressly regulates cases in which service costs arise after the issuance of the judgment, closing the proceedings in the instance.²⁹

Therefore, the issue of deciding on the costs of court enforcement officer service when the defendant does not file an objection or charges against the payment order remains problematic. Under Article 108 § 1 of the CCP, the court decides the costs in each judgment, closing the case in the instance. However, this judgment is a payment order, which is issued at a stage when it is not yet known whether there will be a need to incur the costs of court enforcement officer service.

Indeed, when the case is decided, under Article 394^{1a} § 1 (9) of the CCP, the court should include in the payment order the entirety of the decision on legal costs incurred up to the time of its issue. It is impossible to apply the procedure of

²⁶ Ł. Zamojski, *Doręczenie...*, p. 18.

²⁷ See: M. Manowska, A. Rafalska, *Koszty procesu i koszty sądowe w postępowaniu cywilnym*, Warszawa 2017, pp. 148 ff.; Act of 28 July 2005 on Court Costs in Civil Cases, consolidated text: Journal of Laws 2024 item 1237 (hereinafter: CC Act).

²⁸ A. Mendrek, *Nowe unormowania kosztów sądowych w sprawach cywilnych wynikające z nowelizacji z 4.07.2019*, *Paestra* 2019, no. 11–12, pp. 226–227.

²⁹ H. Bednorz-Godyń, *Doręczenia...*, pp. 501–502.

supplementing the payment order (Article 353² of the CCP in conjunction with Article 351 § 1 of the CCP), as the deadline for filing an application in this respect is two weeks from the date of service of the copy of the payment order. The statutory deadline for notifying the court about the service of the letter through a court enforcement officer is two months. One way of solving the above problem was to pay the court enforcement officer the costs of the non-enforcement proceedings they conducted from the State Treasury or from an advance paid by the plaintiff and to subsequently charge them to the parties based on Article 108¹ of the CCP, which, unlike Article 108 of the CCP, allows this to be done at any time.

The above issue was resolved in the resolution of the Supreme Court of 20 October 2022, III CZP 96/22,³⁰ which stated that the plaintiff who incurred the costs of service through a court enforcement officer will be reimbursed by the defendant regardless of whether the plaintiff incurred the costs in the course of the proceedings or after the judgment closing the case. If the costs of court enforcement officer service are incurred after the conclusion of the proceedings, the basis for awarding them from the defendant is Article 108¹ of the CCP. Thanks to this decision, there is no obstacle to subsequently awarding the costs of court enforcement officer service from the defendant to the plaintiff in a separate order.

6. Practical application of court enforcement officer service. Direction of change

As mentioned at the beginning, court enforcement officer service was introduced to streamline service processes and replace the fiction of service concerning natural persons. It aims to eliminate the situation where the party initiating the proceedings indicates the wrong address of the opposing party so that the documents are deemed served after two advice notes to accelerate the proceedings and obtain a favourable outcome. Another example is the reverse situation, where a party deliberately fails to collect documents and then triggers measures aimed at reinstating court deadlines or resuming proceedings to protract the proceedings. Unfortunately, several years of practice have shown that it is not a flawless institution, so in the amendment that entered into force on 1 July 2023,³¹ the legislator decided to

³⁰ Resolution of the Supreme Court of 20 October 2022, III CZP 96/22, Legalis database.

³¹ Act of 9 March 2023 amending the Act – Code of Civil Procedure and certain other acts, Journal of Laws 2023 item 614.

introduce certain changes aimed at eliminating practical problems associated with the service of documents arising from the execution of the instruction contained in Article 139¹ of the CCP.

As a reminder, until now, under the aforementioned provision, in case of ineffective service, after the second advice note and the impossibility of invoking the fiction of service, the court would forward the documents to be served to the plaintiff, ordering the latter to serve them through a court enforcement officer. The plaintiff, within two months from the date of service, was required to file an acknowledgement of service of the document on the defendant through the court enforcement officer or would return the document and indicate the defendant's current address or submit proof that the defendant resides at the address indicated in the statement of claim. After the ineffective expiry of the above, the court would suspend the proceedings *ex officio* and discontinue the proceedings after another three months from the order of suspension.

Following the changes introduced by the amendment of 9 March 2023, the party initiating the proceedings, which was obliged by the court to effect service through a court enforcement officer within two months from the date of being served that obligation, will either file an acknowledgement of service of the documents on the defendant through the court enforcement officer or return them with written proof that the defendant resides at the address indicated in the statement of claim. Interestingly, a party cannot indicate a different address of the defendant but can only submit proof that the defendant resides at the address provided in the statement of claim. More importantly, it was clarified that this should be written proof.³² In addition, it was specified that if the plaintiff demonstrates that the defendant resides at the address indicated in the statement of claim, documents sent in the manner concerning the service of documents in civil proceedings by a postal operator will be deemed served. The subsequent service of this documentation by a court enforcement officer to the same address will not restart the running of the time limits that the Act provides for. This is a clear effort to accelerate the service procedure. As before the amendment, the plaintiff would often send another request with new addresses, interrupting the running of the statutory time limits for suspension or discontinuance of the proceedings and forcing the court to start the whole service procedure anew in the event of another failure at effective service.

³² Written proof may include, but is not limited to: information from the court enforcement officer who established the defendant's address; acknowledgement of receipt of other mail; or acknowledgement of receipt of a remittance.

There is a special solution concerning court enforcement officer service in non-litigious proceedings. It is used if, in the event of failure to receive the documents by a participant in the proceedings, the presiding judge considers service through a court enforcement officer necessary. Therefore, the court must decide whether to use court enforcement officer service in these proceedings. On the other hand, the regulations concerning court enforcement officer service in the event of failure to collect mail do not apply to letters sent by court enforcement officers in enforcement proceedings, which were rare in any case.

Another effort to assist the courts is the solution allowing the courts, under certain circumstances, to dispense with court enforcement officer service. Thus, the court does not apply court enforcement officer service in the above case if the validity of the defendant's address indicated in the statement of claim is not in doubt. This solution is particularly relevant in cases where the defendant's address is known to the court from other ongoing proceedings or where the plaintiff includes relevant proof in the statement of claim to confirm that the defendant will not receive the court letters sent to them.

In addition, the amendment also introduced a solution concerning court enforcement officer service in cases where the plaintiff resides or is established abroad and is not represented by an advocate, legal counsel or patent agent practising in the Republic of Poland, requiring the court *ex officio* to order the service of documents on the defendant through a court enforcement officer. Thus, there is no need to direct correspondence intended for court enforcement officer service to the plaintiff abroad.

The described amendment also introduced significant changes to the Act on Court Enforcement Officers.³³ A court enforcement officer, upon an order of the court or a request of a plaintiff obliged by the court, personally serves judicial notices, procedural documents and other judicial documents directly on the addressee against acknowledgement of receipt and date indication or establishes that the addressee does not reside at the address given. The court enforcement officer does so within 14 days of receiving the order. An obligation to effect service is submitted to the court enforcement officer with the service request. Submitting the obligation addressed to the guardian *ad litem* is tantamount to the guardian *ad litem* demonstrating their authority to request service. Following the changes, if the court enforcement officer finds an adult member of the addressee's household at the address given, they may serve the letter on them unless the information available indicates

³³ R. Reiwer, in: *Ustawa o komornikach sądowych. Ustawa o kosztach komorniczych. Komentarz*, ed. R. Reiwer, Warszawa 2021, p. 22.

that the letter should be served on the addressee personally. If the court enforcement officer has information that shows the address given is no longer valid before attempting service, they serve the letter on the addressee at the address known to them, provided that this court enforcement officer is competent to effect service.³⁴

The court enforcement officer's role is to establish whether the addressee resides at the address indicated. Therefore, they may request the necessary information from other institutions and persons not involved in the proceedings under pain of a fine. The court enforcement officer includes their findings in the report they draw up. If the addressee resides at the address given and the attempt at service proves unsuccessful, the court enforcement officer leaves a notice in the addressee's mailbox, door or other appropriate place of the attempted service, together with information that the letter can be collected at the court enforcement officer's office and instructions that it must be collected within 14 days of the date on which the notice was left. After the expiry of the period for collection of the letter, it is deemed to have been served on the last day of that period, and the court enforcement officer returns it to the entity ordering service, stating the findings made and indicating the date of service.

Having taken the steps related to court enforcement officer service, the court enforcement officer shares the findings with the ordering entity by sending them a copy of the report.³⁵ If the court enforcement officer returns a letter after an unsuccessful attempt at service and establishes that the addressee does not reside at the address indicated, the ordering entity may request that the court enforcement officer take steps to establish the addressee's current address.³⁶ In addition, the court enforcement officer may also use information held *ex officio* if the current address of the addressee is known to them.³⁷

³⁴ B. Falkowski, in: *Ustawa o komornikach sądowych. Ustawa o kosztach komorniczych. Komentarz*, eds. M. Siembierowicz, M. Świtkowski, Warszawa 2018, Commentary on Article KomSądU, Article 3a, Nb.

³⁵ P. Czyszkowski, *Doręczenie komornicze jako nieegzekucyjna czynność komorników sądowych*, Przegląd Prawa Egzekucyjnego 2022, no. 4, p. 70.

³⁶ For this purpose, the court enforcement officer may request the necessary information from the following entities: tax authorities, pension authorities, banks, cooperative savings and credit unions. Controversy concerning the exclusion of housing associations from the above catalogue, J. Szachta, *Doręczenie korespondencji pozwanemu przez komornika sądowego. Zagadnienia wybrane. Problemy praktyczne*, Forum Prawnicze 2019, no. 6, p. 49.

³⁷ J. Lipińska, *Poszukiwanie przez komornika sądowego aktualnego adresu zamieszkania pozwanego na podstawie art. 3b ustawy o komornikach sądowych*, Przegląd Prawa Egzekucyjnego 2022, no. 4, p. 35; Ł. Zamojski, *Doręczenie...*, p. 16.

Conclusions

Service by a court enforcement officer should be assessed favourably despite the many controversies related to its introduction and subsequent practical functioning. Legitimate concerns arose from court enforcement officers and claimants, chiefly the plaintiffs. Court enforcement officers often argued that this was an additional, wholly unwarranted obligation that significantly prolonged the entire proceedings and that the regulations favoured the defendant's use of procedural obstruction. On the other hand, those ordering court enforcement officer service argued that non-enforcement proceedings in the form of court enforcement officer service were an excessively costly solution, and they considered a court enforcement officer a "very expensive postman," not consistently achieving effective service due to statutory restrictions.

This does not change that the legal situation before the introduction of Article 139¹ § 1 and 2 of the CCP, together with the generally accepted "fiction of service" regarding all entities, raised many objections and allowed both parties – the initiators of the proceedings by indicating wrong addresses of the other party and the defendants by challenging the effectiveness of fictitious service – to harm the administration of justice. Although such a risk was inherent in the essence of the regulation in force at the time (motivated by the otherwise correct assumption that, in most cases, the plaintiff knows the correct address of the defendant's residence), unfortunately, it encouraged abuse of procedural law both by the plaintiff and the defendant.

The regulation in question should be assessed favourably in terms of the stability of court judgements and partly in terms of the efficiency of the proceedings. The changes introduced by the amendment of 9 March 2023 eliminate doubts and non-uniform practice in courts. The possibility for the court to dispense with court enforcement officer service and serve documents on an adult household member, wife, or husband translates into an increase in the effectiveness of service and the dynamics of the proceedings and undoubtedly helps to accelerate proceedings in a given case. The legislator also rightly pointed out that it was unreasonable to attempt the service of documents if it was known in advance that the addressee, i.e. the plaintiff, did not reside there.

A minor disadvantage of the regulation in question appears to be the still relatively high cost of court enforcement officer service and, in certain circumstances, the long time needed to make effective service. In this situation, one could consider expanding and introducing a court service unit instead of a court enforcement

officer service, with commission remuneration for staff calculated according to the number of letters served.

Bibliography

- Bednorz-Godyń H., *Doręczenia za pośrednictwem komornika sądowego*, Monitor Prawniczy 2023, no. 8.
- Bodio J., in: *Kodeks postępowania cywilnego. Koszty sądowe w sprawach cywilnych. Docho-
dzenie roszczeń w postępowaniu grupowym. Przepisy przejściowe. Komentarz do zmian*,
vol. 1, ed. T. Zembrzuski, Warszawa 2020.
- Borodziuk M., *Doręczenie komornicze w praktyce sądowej po zmianach procedury cywilnej
dokonanych 7 listopada 2019 roku*, Prokuratura i Prawo 2021, no. 3.
- Czyszkowski P., *Doręczenie komornicze jako nieegzekucyjna czynność komorników sądowych*,
Przegląd Prawa Egzekucyjnego 2022, no. 4.
- Falkowski B., in: *Ustawa o komornikach sądowych. Ustawa o kosztach komorniczych. Komen-
taryz*, eds. M. Siembierowicz, M. Świtkowski, Warszawa 2018.
- Kaczyński M., in: *Kodeks postępowania cywilnego*, vol. IA. *Komentarz. Art. 1–424¹²*,
ed. A. Góra-Błaszczkowska, Warszawa 2020.
- Lipińska J., *Poszukiwanie przez komornika sądowego aktualnego adresu zamieszkania pozwa-
nego na podstawie art. 3b ustawy o komornikach sądowych*, Przegląd Prawa Egzekucyj-
nego 2022, no. 4.
- Manowska M., Rafalska A., *Koszty procesu i koszty sądowe w postępowaniu cywilnym*,
Warszawa 2017.
- Markiewicz K., in: *Kodeks postępowania cywilnego*, vol. 1. *Komentarz. Art. 1–505³⁹*, ed.
T. Szanciło, Warszawa 2019.
- Mendrek A., *Nowe unormowania kosztów sądowych w sprawach cywilnych wynikające z nowel-
lizacji z 4.07.2019*, Palestra 2019, no. 11–12.
- Michalska-Marciniak M., in: *Kodeks postępowania cywilnego*, vol. 1. *Komentarz. Art. 1–205*,
ed. A. Marciniak, Warszawa 2019.
- Reiwer R., in: *Ustawa o komornikach sądowych. Ustawa o kosztach komorniczych. Komentarz*,
ed. R. Reiwer, Warszawa 2021.
- Sikorska-Lewandowska A., *Problemy z dochodzeniem roszczeń po nowelizacji przepisów KPC
o doręczeniach*, Nieruchomości 2020, no. 9.
- Sławicki P., Sławicki P., *Doręczenia pism za pośrednictwem komornika sądowego w postępowa-
niu zabezpieczającym, klauzulowym i egzekucyjnym*, Przegląd Sądowy 2020, no. 11–12.
- Szachta J., *Doręczenie korespondencji pozwanemu przez komornika sądowego. Zagadnienia
wybrane. Problemy praktyczne*, Forum Prawnicze 2019, no. 6.
- Weitz K., in: *Kodeks postępowania cywilnego. Komentarz*, vol. 1, ed. T. Ereciński, Warszawa
2016.
- Zamojski Ł., *Doręczenie pozwanemu pierwszego pisma procesowego wywołującego potrzebę
obrony na podstawie art. 139¹ KPC*, Monitor Prawa Handlowego 2019, no. 3.