Emil Kowalik

Doctor of Law, Civil Proceedings Department, Faculty of Law, Canon Law and Administration, The John Paul II Catholic University of Lublin
ORCID: https://orcid.org/0000-0003-1839-3925

Invalidity of civil proceedings before the Polish court as a result of the defective service of process as a defect depriving the defendant of the opportunity to defend its rights

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1. Introduction

Matters of the service of process in civil proceedings[1] are fundamental to the proper conduct of court proceedings. The institution of service embodies the constitutional principle of the right to a court hearing,[2] which, in this context, manifests itself through the need to ensure the concentration of evidence and protection of the rights of the parties to the civil proceedings. The provisions on the service of process have the objective of ensuring that the addressee of the court document is able to read their content. Similarly, they guarantee that the standards of fair court proceedings are properly maintained.[3]

One of the key rights of a person in a democratic state governed by the rule of law is the right to a court hearing. In positive law, this constitutes the basis for all activities performed by public authorities, including those targeted at citizens. It guarantees access

[1] Act of 17 November 1964 – Polish Civil Procedures Code, Journal of Laws 2024, item 1568, as amended, consolidated text, hereinafter referred to as the CPC.

[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 Constitution.

[3] P. Grzegorczyk, *Doręczenie na podstawie art. 139 § 1 k.p.c. a pierwsze pismo w sprawie*, „Monitor Prawniczy" 2011/23, p. 1284; E. Kowalik, *General characteristics of service of procedural documents in Polish civil proceedings compared to selected European countries*, „Review of European and Comparative Law" 2024/59 (4), https://doi.org/10.31743/recl.17167.

to courts established in accordance with the Constitution and ensures the fair and just conduct of court proceedings, ruling out the possibility of denying access to a heating in court for a person seeking legal redress for breached freedoms or rights. Proper relationships between state bodies and citizens, as well as between citizens, are key to the efficient functioning of the state as a whole. A vital role here is played by the state itself, which is responsible for creating an appropriate institutional and legal framework that is necessary for the effective protection of individuals' rights and freedoms.[4]

This article analyses how the right to a trial by a a court, as stipulated in the Constitution and in the European Convention for the Protection of Human Rights and Fundamental Freedoms of 4 November 1950,[5] is exercised with regard to the procedural provisions regarding service in civil proceedings. The aim of this article study is to examine selected practical problems related to the service of process in the context of giving parties or participants the opportunity to actively participate in civil proceedings. First, it analyses the methods of serving court documents in Polish civil proceedings. It then describes the constitutional right to a trail by a court, including the right to a defence. Next, it discusses the invalidation of proceedings for a breach of the right to a court hearing. Finally, it considers defective service as a result of which a party or participant in non-contentious proceedings does not raise a defence as a reason for invalidating proceedings.

2. General characterisation of service in Polish civil proceedings

One of the key manifestations of the constitutional principle of the right to a court hearing, which is a fundamental right of an individual and the foundation of the rule of law in a democratic state, is a party's or participant's ability to actively participate in civil proceedings. Under the CPC, this right is primarily exercised through the institution of service of process. Service plays a vital role in ensuring the effectiveness of court proceedings, enabling the parties to stay informed about the court's activities, thus guaranteeing them their procedural rights, including the right to a defence. This institution is closely functionally associated with the particular rules of civil procedure, which is also of great importance to the systemic interpretation of the procedural provisions regulating service. Consequently, the manner in which court documents are served often determines the proper conduct and completion of the entire proceedings. The legislator is therefore obliged to establish the procedure for service in such a way as to minimize the risk to the greatest possible extent that a party's right to a court hearing is breached.[6]

[4] P. Grzegorczyk, K. Weitz [in:] *Konstytucja RP*, t. I, *Komentarz. Art. 1–86*, eds. M. Safjan, L. Bosek, Warszawa 2016, pp. 217–218 and pp. 1776–1780; P. Tuleja [in:] *Konstytucja Rzeczypospolitej Polskiej. Komentarz*, ed. P. Tuleja, Warszawa 2019, pp. 160–163; M. Florczak-Wątor [in:] *Konstytucja Rzeczypospolitej Polskiej. Komentarz*, ed. P. Tuleja, Warszawa 2019, pp. 256–257.

[5] The European Convention for the Protection of Human Rights and Fundamental Freedoms of 4 November 1950, Journal of Laws 1993, No. 61, item 284, hereinafter referred to as the Convention.

[6] A. Wudarski, *Doręczanie pism procesowych w ujęciu prawnoporównawczym*, „Kwartalnik Prawa Prywatnego" 2003/4, p. 877; P. Grzegorczyk, *Doręczenie zastępcze w postępowaniu cywilnym* [in:] *Prawo*

The progressing digitalization of the justice system is forcing courts to introduce modern solutions enabling the electronic service of documents. These changes are particularly noticeable in proceedings that are, by definition, exclusively electronic. Simultaneously, electronic service is increasingly being used in traditional court proceedings. Furthermore, recent legislation has changed the list of entities acting as intermediaries in the service of process, introducing the institution of substituted service by a court bailiff into the Polish legal system (Article 139[1] CPC) in place of the previous so-called 'fiction of service'. This new solution is applied when a complaint or another procedural document cannot be served in the traditional manner.[7]

The principle of officiality in civil proceedings makes the court responsible for serving copies of the complaint, the statement of defence and other procedural documents on parties without the need for the parties to submit appropriate applications. The court is responsible for both the correctness and timeliness of service. In principle, service is made through the public postal operator or another postal operator under the Postal Law of 23 November 2012,[8] as well as by court employees, bailiffs or a court courier service. The court may also call on the assistance of the Police or Military Police to serve documents in the cases stipulated by law. Court documents are served at the addressee's home address, workplace or any other place where the addressee can be found. Court documents can also be delivered to a post office box at a party's request.[9]

One exception to the principle of the officiality of service is that of service directly between attorneys, legal counsels, patent attorneys and counsellors of the General Prosecutor's Office of the Republic of Poland. These entities are obliged to deliver certain documents directly to each other during proceedings. According to Articles 132 § 1 and § 1[1] CPC, they are required to enclose proof of service of a copy of the document on the other party or proof of having sent such a copy by registered post in a procedural document filed with the court. In the case of direct service, the responsibility for the correctness of service lies with the respective legal representative, although it is again up to the court to assess the effectiveness of service.[10]

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wobec wyzwań współczesności. Materiały z sesji naukowej (Poznań 19–21.05.2003 r.), ed. P. Wiliński, Poznań 2004, p. 157.

[7] H. Bednorz-Godyń, *Doręczenia za pośrednictwem komornika sądowego*, „Monitor Prawniczy" 2023/8, pp. 499–501; E. Kowalik, *Charakterystyka doręczeń dokonywanych przez komornika sądowego w polskim postępowaniu cywilnym w kontekście art. 139 § 1 Kodeksu postępowania cywilnego*, „Studia Prawnicze KUL" 2024/4, pp. 21–37, https://doi.org/10.31743/sp.17169.

[8] Act of 23 November 2012 – Postal Law, Journal of Laws 2025, item 366, as amended, consolidated text.

[9] W. Berutowicz, *Funkcja ochronna postępowania cywilnego* [in:] *Studia z prawa postępowania cywilnego. Księga pamiątkowa ku czci Zbigniewa Resicha*, eds. M. Jędrzejewska, T. Ereciński, Warszawa 1985, p. 35; M. Sorysz, *Doręczenie i jego wpływ na bieg terminów w postępowaniu cywilnym*, „Monitor Prawniczy" 2003/15, p. 687.

[10] Cf., among others, Order of the Supreme Court of 2 August 2007, V CSK 155/07, LEX no. 485892; Order of the Supreme Court of 14 April 2011, II UZ 10/11, LEX no. 901616; Ruling of the Supreme Court of 22 October 2013, III UK 154/12, LEX no. 1463908.

As presented above, the Polish CPC provides for a number of methods of serving procedural documents, which are all intended to ensure that they actually reach their addressees. According to the provisions of Articles 131–138 CPC, the main method of service is delivery by a postal operator. Pursuant to Article 134 § 1 CPC, court documents are to be served on weekdays. Service may only take place on public holidays and at night in exceptional situations, following a prior order by the president of the court. Article 134 § 2 CPC defines night time as the time from 9 p.m. to 7 a.m. The provisions also specify the places of service – according to Article 135 CPC, court documents are to be served at the addressee's home address, workplace or wherever the addressee can be found. Documents can also be served to the post office box address specified by a given party at that party's request. In such a case, the court document is handed over to the postal operator and notice of service is placed in the addressee's post office box. Article 132 § 2 CPC[11] stipulates that a document may also be served by handing it directly to the addressee at the court registration office.

Pursuant to Article 133 § 1 CPC, if a party to the proceedings is a natural person, documents are to be served on them in person, or on their legal representative if they do not have the capacity to sue or be sued. Documents can also be served on natural persons by way of so-called substituted service. Article 138 § 1 CPC provides that if the server does not find the addressee at his or her place of residence, the server may serve the court document on an adult member of the household and, if such a person is not present, on the building administrator, caretaker or a competent municipal authority, provided that these persons are not the addressee's opponents in the case and have undertaken to hand over the document to the addressee. As indicated by the consolidated line of rulings of the Supreme Court, substituted service is based on the presumption that the document actually reaches the addressee.[12]

If a document cannot be served in the manner described above, service is effected by an advice note. This means that a court document sent via a postal operator must be left with that operator's office, whereas a consignment served by other means must be deposited at the competent municipal office. In both cases, an advice note stating where and when the letter was left is left in the door of the addressee's flat or in their mailbox, instructing them to collect it within 7 days from the date of service of the advice note. If the addressee does not collect the consignment within this period, according to Article 139 § 1 CPC, the server is required to repeat the notification procedure. Service is deemed effective

[11] Cf. Order of the Supreme Court of 4 February 1970, II PZ 55/69, LEX no. 6669.

[12] See Ruling of the Supreme Court of 28 February 2002, III CKN 1316/00, LEX no. 55137; Order of the Supreme Court of 4 September 1970, I PZ 53/70, OSCP 1971/6, item 100; Order of the Supreme Court of 10 February 2000, II CKN 820/99, LEX no. 530734; Order of the Supreme Court of 5 February 2008, II PZ 72/07, LEX no. 817527; D. Markiewicz [in:] *Kodeks postępowania cywilnego*, t. I, *Komentarz. Art. 1–458[16]*, ed. T. Szanciło, Warszawa 2023, pp. 656–665; J. Parafianowicz [in:] *Kodeks postępowania cywilnego. Komentarz*, t. I, *Art. 1–505[39]*, ed. O.M. Piaskowska, Warszawa 2024, pp. 394–398; A. Zieliński [in:] *Kodeks postępowania cywilnego. Komentarz*, eds. K. Flaga-Gieruszyńska, A. Zieliński, Warszawa 2024, pp. 359–366; K. Weitz [in:] *Doręczenia w postępowaniu cywilnym. Komentarz do art. 131–147 k.p.c.*, eds. M. Dziurda, T. Ereciński, Warszawa 2024, pp. 90–91.

when the letter is collected by the addressee or an authorized person at the post office or the municipal office. If it is not collected within the said deadline, the letter is deemed to have been served on the last day of the time limit for its collection.[13]

In Article 139[1] § 1 CPC, the legislator has provided for a special procedure for serving documents through a court bailiff on a defendant who is a natural person. Importantly, this regulation does not apply to sole proprietors who are parties to an action or to entities other than natural persons. Service by bailiff is particularly important in cases where there is a risk that a party will not fulfil its obligation, e.g. in situations where service is being avoided, or when the addressee is in hiding or has fled the country. A bailiff acts on court orders, taking advantage of extensive powers arising from the provisions of the law, including the procedures for service at the home address. This manner of service is highly effective, especially when the documents are of key importance for the correct conduct of proceedings.[14]

With the development of technology and the growing need to streamline the exchange of court documents, electronic service has started to play an increasingly important role as a modern means of fulfilling the obligation to notify the parties to proceedings. Electronic service, as provided for in Articles 131[1], 131[1a] and 131[2] CPC, can be used as either a fully-fledged, official method of sending documents or a substitute form, especially in an emergency situation or a situation in which regular procedures are difficult to apply. In practice, this means that a document can be sent to an e-mail address specified by a party, provided that the parties have agreed to this form of service and have reported this to the court. An important aspect of electronic service is the use of information portals for courts of general jurisdiction, which enable the parties to access documents and messages in real time. The parties can use platforms containing copies of writs, decisions or summonses and, by logging into the system, confirm that service has been effective.[15]

A particular facilitation in the service of process in civil proceedings is introduced by Article 88 of the Civil Procedures Code. This provision regulates issues regarding powers of attorney, in particular the appointment of an attorney for service of process. According to § 2 of this provision, any natural person may be appointed attorney for service, which simplifies the general rules on attorneys and is primarily intended to streamline the service of court correspondence, especially in situations where a party to the proceedings does not

[13] Cf. Order of the Supreme Court of 10 May 1971, III CZP 10/71, OSNCP 1971/11, item 187; Order of the Supreme Court of 25 January 1995, III CRN 71/94, LEX no. 333127; Order of the Supreme Court of 20 June 2000, III CZ 59/00, LEX no. 533119; Order of the Supreme Court of 30 November 2007, IV CZ 89/07, LEX no. 623831; Order of the Supreme Court of 5 June 2009, I CZ 26/09, LEX no. 577154, and, in particular, cf. Ruling of the Constitutional Tribunal of 17 September 2002, SK 35/01, OTK-A 2002/5, item 60; Ruling of the Constitutional Tribunal of 15 October 2002, SK 6/02, OTK-A 2002/5, item 65; Ruling of the Constitutional Tribunal of 28 February 2006, P 13/05, OTK-A 2006/2, item 20.

[14] Cf. Ł. Zamojski, *Doręczenie pozwanemu pierwszego pisma procesowego wywołującego potrzebę obrony na podstawie art. 139[1] KPC*, „Monitor Prawa Handlowego" 2019/3, p. 14; H. Bednorz-Godyń, *Doręczenia*…, pp. 499–501; E. Kowalik, *Charakterystyka*…, pp. 21–37.

[15] K. Weitz [in:] *Doręczenia*…, pp. 25–27; J. Parafianowicz [in:] *Kodeks*…, ed. O.M. Piaskowska, pp. 379–381; A. Zieliński [in:] *Kodeks*…, eds. K. Flaga-Gieruszyńska, A. Zieliński, p. 346.

have a place of residence or registered office in Poland. This provision therefore introduces an important technical and organizational function ensuring the efficiency and effectiveness of court proceedings.[16]

3. Right to a court hearing

The right to a court hearing is one of the fundamental personal rights of an individual, which serves as a guarantee for other rights and freedoms. It has the rank of a constitutional principle because it is provided for in the Constitution, which is the supreme act with the highest legal force, which means that all other individual rights must adhere to it. It is an autonomous right, encompassing a set of guarantee mechanisms implemented through specific legal and procedural institutions. These mechanisms are directly applicable, unless the Constitution expressly provides otherwise.[17]

In the Constitution, the right to a court hearing is stated *expressis verbis* with regard to two dimensions – substantive (positive) and procedural (negative). The substantive aspect is embodied in Article 45, para. 1 of the Constitution, according to which: 'Everyone shall have the right to a fair and public hearing of their case, without undue delay, before a competent, impartial and independent court.' On the other hand, the procedural aspect is expressed in Article 77, para. 2 of the Constitution, which prohibits closing off the judicial path to anyone – 'Statutes shall not bar the recourse by any person to the courts in pursuit of claims alleging infringement of freedoms or rights.'[18]

In the European Convention on Human Rights, the right to a court hearing is expressed in Article 6(1), according to which: 'In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law. Judgment shall be pronounced publicly but the press and public may be excluded from all or part of the trial in the interests of morals, public order or national security in a democratic society, where the interests of juveniles or the protection of the private life of the parties so require, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice.'

When analysing the right to a court hearing, it should be noted that, in accordance with established line of judgments and the position of the legal doctrine, this right has multiple

[16] A. Olaś, *Reforma, deforma czy zwykłe majsterkowanie? – uwagi na tle zmian w przepisach o pełnomocnictwie procesowym na mocy nowelizacji Kodeksu postępowania cywilnego z 9.03.2023 r.*, „Palestra" 2023/8, pp. 81–84.

[17] M. Żak, *Prawo do sądu jako element zasady dobrego rządzenia w świetle orzecznictwa z zakresu praw człowieka*, „Palestra" 2020/2, p. 74; P. Grzegorczyk, K. Weitz [in:] *Konstytucja*…, eds. M. Safjan, L. Bosek, pp. 217–218 and pp. 1776–1780; P. Tuleja [in:] *Konstytucja*…, ed. P. Tuleja, pp. 160–163; M. Florczak-Wątor [in:] *Konstytucja*…, ed. P. Tuleja, pp. 256–257.

[18] P. Grzegorczyk, K. Weitz [in:] *Konstytucja*…, eds. M. Safjan, L. Bosek, pp. 1776–1777 and pp. 1092–1093; M. Florczak-Wątor [in:] *Konstytucja*…, ed. P. Tuleja, p. 256; P. Tuleja [in:] *Konstytucja*…, ed. P. Tuleja, pp. 160–163.

components. In its Judgment of 9 June 1998,[19] the Constitutional Tribunal stated that 'The constitutional right to a court hearing comprises: 1) the right of access to a court, i.e. the right to institute proceedings before a court – a state body with particular characteristics (impartiality and independence); 2) the right to a proper court procedure in accordance with the requirements of a fair and public hearing; 3) the right to a court ruling, i.e. the right to have a given case settled with a binding decision by a court.'[20]

The fourth element of the right to a court hearing is the right to the effective execution of a judicial decision.[21] Additionally, from the point of view of the constitutional right of access to a court, one of the key elements of the right to a court hearing is the standard of proportionality of court fees and costs.[22]

The legal doctrine assumes that the right to a court hearing can be viewed in two ways: as a constitutional principle and as a subjective right.[23] The right to a court hearing as a constitutional principle involves a legal norm addressed to the public authorities, which imposes an obligation on them to establish an independent and impartial judiciary and an independent and impartial process for examining complaints.[24] In turn, the right to a court hearing as a subjective constitutional right is defined as an individual's interest protected by law, which constitutes the basis for raising a claim against the state and its bodies.[25]

Such an interpretation of the right to a court hearing primarily points to its protective nature. An individual enjoys various guarantees and may demand that state authorities make them effective. In this respect, reference should be made to the position expressed by the Constitutional Tribunal in is ruling of 10 July 2000,[26] in which it emphasized that: 'The position of Article 45 in the systematics of the Constitution signifies the autonomous nature of the right to a court hearing. It is not merely an instrument enabling the exercise of other constitutional rights and freedoms, but has a self-standing existence and shall be protected irrespective of the breach of other personal rights.'

A breach of the right to a court hearing may be direct, in the broad sense, or indirect, in the narrow sense. In the broad sense, the right to a fair trial and a competent examination of the case is treated as something to be protected in its own right. In such a case, a breach

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[19] Ruling of the Constitutional Tribunal of 9 June 1998, K 28/97, OTK 1998/4, item 50.

[20] See also Ruling of the Constitutional Tribunal of 10 July 2000, SK 12/99, OTK 2000/5, item 143; Ruling of the Constitutional Tribunal of 7 July 2004, P 4/04, OTK-A 2004/8, item 81; Ruling of the Constitutional Tribunal of 16 December 2008, P 17/07, Journal of Laws, No. 228, item 1524; cf. H. Pietrzkowski, *Prawo do sądu (wybrane zagadnienia)*, „Przegląd Sądowy" 1999/11–12, p. 5.

[21] This was pointed out, among others, by M. Jabłoński, S. Jarosz-Żukowska, *Prawa człowieka i systemy ich ochrony. Zarys wykładu*, Warszawa 2010, p. 133.

[22] Ruling of the Constitutional Tribunal of 2 February 2003, K 28/02, OTK ZU 2003/2, item 13.

[23] Z. Czeszejko-Sochacki, *Prawo do sądu w świetle Konstytucji Rzeczypospolitej Polskiej (Ogólna charakterystyka)*, „Państwo i Prawo" 1997/11–12, p. 89.

[24] D. Lis-Staranowicz, *Konstytucyjne środki ochrony wolności i praw* [in:] *Wolności i prawa człowieka w Konstytucji Rzeczypospolitej Polskiej*, ed. M. Chmaj, Warszawa 2016, p. 240; M. Żak, *Prawo do sądu*…, p. 75.

[25] D. Lis-Staranowicz, *Konstytucyjne środki*…, p. 241; M. Żak, *Prawo do sądu*…, p. 75, as well as Ruling of the Constitutional Tribunal of 13 January 2015, SK 34/12, OTK-A 2015/1, item 9.

[26] Ruling of the Constitutional Tribunal of 10 July 2000, SK 12/99, OTK 2000/5, item 143.

of the right to a court hearing is seen as a breach of the fundamental procedural guarantees and is assessed from the point of view of the criteria of procedural fairness. According to the established line of judgments, procedural fairness, at its core, is founded on closely interconnected rights, such as the right to be heard and the right to be informed. It should also be emphasized that the court has a duty to examine all the relevant aspects of a case, i.e. to determine its essence. Another important element is the requirement that judicial reasoning be clearly, factually and comprehensibly set out in the grounds of the court decision to allow the addressee of the legal decision to verify the arguments provided in the legal basis for that decision. Furthermore, a court must provide a clear and fair statement of reasons for its decision and avoid arbitrariness, including by observing the principle of openness of proceedings and equality of the parties, as well as ensuring that the interested entities are able to participate in the court proceedings. Finally, predictability of court decisions and the coherence of the functioning of the justice system must be ensured.[27]

The issues raised above point to the extremely important role of the right to a court hearing. Whether or not this right is properly observed has a direct impact on the functioning of the state and is reflected in legislation and in the process of applying the law. A narrowly understood breach of the right to a court hearing is indirect, or reflexive, in nature and is considered in the context of a breach of other personal rights. The interpretation of the right to a court hearing depends on the specific situation, including the party's procedural position and the specific procedural defect in question.

4. Invalidation of proceedings due to the deprival of the right to a defence

One of the key principles of civil procedure is the obligation of the courts to consider the invalidity of the proceedings at every stage of the proceedings, including appeal, cassation and complaint proceedings. The declaration of invalidity of the proceedings is the court's duty. It reverses the contested decision. The finding that proceedings 'are invalid' expresses an assessment that requires verification by the court. In turn, the determination of the cause of invalidity in review proceedings automatically affects their further course. The appearance of one of the statutory causes of invalidity requires the court to apply the appropriate effects of invalidity provided for in the Act, which not only involve the overturning of the decision, but also the decision to terminate the proceedings or to continue them after the proceedings affected by invalidity have been discontinued and the case has been referred back for reconsideration, i.e. in conditions that are free of the irregularities found and their effects.[28]

The invalidity of civil proceedings is a situation in which the defectiveness of the proceedings is so serious that it results in all procedural actions being deemed invalid, as

[27] See, e.g., Ruling of the Constitutional Tribunal of 20 July 2004, SK 19/02, OTK-A 2004/7, item 67; Ruling of the Constitutional Tribunal of 31 January 2005, SK 27/03, OTK-A ZU 2005/1, item 8; Ruling of the Constitutional Tribunal of 16 January 2006, SK 30/05, OTK-A ZU 2006/1, item 2; Ruling of the Constitutional Tribunal of 26 February 2008, SK 89/06, OTK-A ZU 2008/1, item 7.

[28] Cf. T. Zembrzuski, *Nieważność postępowania w procesie cywilnym*, Warszawa 2017, pp. 13–16.

if they had never taken place. In other words, proceedings found to be invalid are treated as non-existent from the very beginning. This takes place if a breach of procedural law is so significant that it prevents the proceedings from being conducted properly. Civil proceedings can be declared invalid if at least one of the conditions listed in Articles 379, items 1–6, 1099, and 1113 CPC emerge. If such a condition is found to exist, the contested judgment is obligatorily set aside, the proceedings are nullified to the extent to which they are found to be defective and the case is referred back to the first instance court – unless there are grounds for rejecting the action or discontinuing the proceedings (Article 386 § 2 CPC). Consequently, a claim of invalidity is the strongest remedy that a party can use even when the reason for the claim is the breach of the opposing party's rights.[29]

In court practice, the basis most frequently used for invalidating proceedings is the deprival of a party of the opportunity to defend their rights (Article 379, item 5 CPC). This type of defect unequivocally leads to the contested judgment being set aside and the case being referred back for reconsideration. Even if this reason for invalidity is not recognized by the court of appeal, and the case is resolved in a final judgment, this premise may still constitute grounds for re-opening the proceedings if the circumstance preventing the participant from taking action (under Article 401, item 2 CPC) continues to exist after the judgment becomes final.[30]

In this context, it is worth drawing attention to the differences in wording between Article 379, item 5 CPC and Article 401, item 2 *in fine* CPC. The first of these provisions has been formulated as follows: '…the party has been deprived of the opportunity to defend its rights', while the second indicates that the party '… has been deprived of the opportunity to act because of a breach of the provisions of the law …' The prevailing view in the literature on the subject and in the decisions of the Supreme Court is that these differences are only terminological and do not justify a different understanding of these regulations. Therefore, a declaration of invalidity of proceedings pursuant to Article 379, item 5 CPC is tantamount to recognizing that there are grounds for re-opening the proceedings under Article 401, item 2 CPC, which opens the way for the re-consideration of the case under Article 412 § 1 CPC.[31]

Depriving a party of the opportunity to present a defence is neither abstract nor general in nature. Therefore, the position expressed in the legal doctrine that the Supreme Court's judgments should not be interpreted in isolation of the specific circumstances in which they were issued seems to be sound.[32] The basis for invalidity only applies in situations where the party was actually excluded from participating in the proceedings and was unable to take any procedural steps. However, it does not apply when, despite the breach of procedural rules, the party actually participated in the proceedings. Furthermore, if a party

[29] Cf. W. Siedlecki, *Nieważność procesu cywilnego*, Warszawa 1965, p. 81; T. Zembrzuski, *Nieważność postępowania*…, p. 202.

[30] Cf. also M. Manowska, *Wznowienie postępowania cywilnego*, Warszawa 2013, p. 117.

[31] Cf. Ruling of the Supreme Court of 28 March 2019, I PK 5/18, LEX no. 2644610.

[32] Cf. also, in this regard, T. Ereciński, *Apelacja w postępowaniu cywilnym*, Warszawa 2009, p. 88.

notices irregularities in the conduct of the proceedings, that party should take appropriate action to defend its rights.[33]

In the Decision of 26 April 2018 (IV CSK 590/17),[34] the Supreme Court once again pointed out that a party is deemed to have been deprived of the opportunity to defend its rights under Article 379, item 5 CPC when the party did not participate in the entire proceedings or a significant part thereof as a result of procedural irregularities on the part of the court or the opposing party and the effects of these irregularities could not be eliminated at subsequent hearings before the judgment was issued at a given instance. In this context, it is also worth citing the Ruling of the Supreme Court of 23 June 2004 (V CK 607/03),[35] in which it was emphasized that, in order to accept that proceedings were invalid because a party was deprived of the opportunity to defend itself, a causal link between the breach of the law and this deprival must be proved, with the reservation that it is irrelevant whether the breach was culpable and who committed it.

According to the established position of the Supreme Court, the premise that a party was deprived of the opportunity to act should be examined in three stages: first, the court should establish whether procedural provisions were breached; second, it should assess whether this defect affected the party's ability to act in the proceedings and; third, it should examine whether, despite these circumstances, the party had the opportunity to actually defend its rights. Only when all three conditions are met, can it be assumed that the party was indeed deprived of the opportunity to act. However, it should be emphasized that, for proceedings to be declared invalid, a party's deprival of the opportunity to defend itself does not need to have had an impact on the content of the judgment.[36]

In the context of the requirement that a party was deprived of the opportunity to defend itself in whole or to a significant extent, it is worth drawing attention to the situation in which this defect took place before the first instance court but did not re-occur before the court of appeal. If the party had a real opportunity to act during the appeal proceedings and the second instance court did not declare the proceedings to be invalid, then, the Supreme Court may only take the invalidity for this reason into consideration in a cassation appeal if the party files a complaint to that effect. Furthermore, for such a complaint to be effective, it would be necessary to demonstrate that the irregularity in question had an impact on the decision of the second instance court. This follows from the fact that a cassation appeal is not a remedy against a first instance court judgment.

In cases in which a party was deprived of the possibility of defending its rights, unlike other grounds for invalidating proceedings, the legislator leaves it to the court to decide *ex post* whether the particular situation in which the party was placed merits being classified as rendering the proceedings invalid. In practice, it may be necessary to conduct an

[33] Cf. T. Zembrzuski, *Pozbawienie możności obrony praw strony w orzecznictwie Sądu Najwyższego* [in:] *Ius est a iustitia appellatum. Księga jubileuszowa dedykowana Profesorowi Tadeuszowi Wiśniewskiemu*, ed. M. Tomalak, Warszawa 2017, p. 605.

[34] Decision of the Supreme Court of 26 April 2018, IV CSK 590/17, LEX no. 2498003.

[35] Ruling of the Supreme Court of 23 June 2004, V CK 607/03, LEX no. 194103.

[36] Ruling of the Supreme Court of 28 January 2004, IV CK 418/02, LEX no. 602392; in this regard, cf. also T. Zembrzuski, *Nieważność postępowania*…, p. 237.

in-depth analysis of the factual circumstances of a given case in order to determine whether the party was actually deprived of the opportunity to defend its rights or whether – despite the irregularities – it could have taken up an effective defence, and the plea of invalidity is merely an abuse of procedural law.[37]

The interpretation of Article 379, item 5 CPC also requires that consideration is given to the fact that the premise of having been deprived of the opportunity to defend oneself only applies to an entity that has the formal status of a party in the legal sense. It therefore applies to a person who has acquired the attribute of a party in a manner that is appropriate to a given mode of proceeding, namely a person against whom a civil action has been brought, a person who has been summoned to participate in a case or a person who has effectively entered into the dispute. In practice, however, there are situations in which an entity which, under both procedural and substantive law, should be recognized as a party does not participate in the case for various reasons. This problem is particularly salient in non-contentious proceedings, where, for a long time, the prevailing view was that failure to summon an interested party by the court invalidated the proceedings as a result of the party being deprived of the opportunity to defend itself (Article 379, item 5 in connection with Article 13 § 2 CPC).

It was not until the Resolution of 20 April 2010 (III CZP 112/09),[38] which was passed by a panel of seven judges of the Supreme Court (which has the force of a legal principle), that it was ruled that non-participation of an interested party in non-contentious proceedings does not render the proceedings invalid. The Court justified its position by stating that only persons who are formally parties to proceedings can be deprived of the opportunity to defend themselves. This view has been subsequently consolidated in case law. For example, in the Decision of 10 March 2015 (II PZ 29/14),[39] the Supreme Court confirmed that proceedings could be invalidated on the grounds that a party was deprived of the opportunity to defend itself only in relation to a party in the juridical sense, and not to an entity that has not formally received such a status, even if the proceedings directly concerned the said party. In other words, there cannot be talk of depriving a party of the opportunity to defend its rights if such a party does not formally have the status of a party.[40]

In summary, the said rulings of the Supreme Court have developed precise criteria for determining whether a party has indeed been deprived of the ability to act. The premise of depriving a party of the ability to defend its rights, albeit expressed in general terms in the provision, has thus been precisely clarified. Its application requires an analysis of the specific factual and procedural circumstances in each case and cannot be equated with

[37] Z. Strus, *Przegląd orzecznictwa Sądu Najwyższego – Izba Cywilna*, „Palestra" 2002/11–12, p. 178.

[38] Resolution of the Supreme Court of 20 April 2010, III CZP 112/09, OSNC 2010/7–8, item 98.

[39] Decision of the Supreme Court of 10 March 2015, II PZ 29/14, LEX no. 1665588.

[40] Cf. also Decisions of the Supreme Court of: 13 April 2000, III CKN 737/98, LEX no. 51541; 25 February 2015, II UZ 78/14, OSNP 2016/11, item 145; Ruling of the Supreme Court of 1 March 2018, I UK 128/17, LEX no. 2495972. Cf. also J. Jagieła, *Skutki niewzięcia przez zainteresowanego udziału w postępowaniu nieprocesowym*, „Państwo i Prawo" 2014/3, pp. 44–57, who, however, believes that proceedings can be declared invalid if the person who does not participate in the case is a participant by law.

every formal breach committed in the course of the proceedings. Its systemic significance is simultaneously important, as it is an expression of the constitutional right to a court hearing and the implementation of the principle of a fair trial. The analysis of this condition requires a three-step approach in each case: first, the determination of whether procedural rules have been breached; second, the assessment of whether this breach affected the party's ability to take procedural steps; and finally, the examination by the court of whether, despite these circumstances, the party had a real opportunity to defend its rights. Only the joint appearance of these three elements justifies a finding of invalidity of the proceedings.

Depriving a party of the opportunity to defend its rights cannot therefore be general or abstract in nature; it must refer to specific, actual circumstances that prevented the party from participating in the proceedings or in a significant part of such proceedings. Furthermore, there must be a causal link between the breaches of the provisions and the deprival of the opportunity to act. The question of fault is irrelevant. The only important issue is whether the breach, regardless of who committed it, actually prevented the party from exercising its right of defence. It draws attention to the need for the court to assess *ex post* whether a specific procedural breach actually deprived the party of the ability to act, or whether the party, despite the appearance of breaches, could have defended itself effectively, but consciously chose not to do so. In such situations, the court could consider the plea of invalidity to be an abuse of procedural law, which is not available to a party acting in good faith.

On the other hand, in cassation proceedings, the allegation of deprival of the right to present a defence can only be effectively raised if the breach affected the content of the second instance court's decision. The Supreme Court does not examine the defects of the first instance proceedings as such in this mode, as the cassation appeal does not serve to review the correctness of that decision, but assesses the correctness of the proceedings concluded by the decision of the second instance court.

5. Invalidity of proceedings as a sanction for defective service (Article 379, item 5 CPC)

The constitutionally guaranteed right to a court hearing includes having a case heard in a fair manner by an independent, competent and impartial court, which also applies to the assessment of the effectiveness of service and the claimant's obligation to provide evidence of the defendant's actual place of residence (Article 45 of the Constitution). The right to a court hearing is correlated with the right to a fair trial as stipulated in Article 6 of the Convention for the Protection of Human Rights and Fundamental Freedoms.[41]

In order to ensure real, and not merely apparent, legal protection for the participants in the proceedings and to uphold the authority of the justice system, the court must exercise

[41] Convention for the Protection of Human Rights and Fundamental Freedoms, signed in Rome on 4 November 1950, subsequently amended by Protocols nos. 3, 5 and 8 and supplemented by Protocol no. 2, Journal of Laws 1993, No. 61, item 284, as amended.

diligence and perspicacity in making procedural decisions. Simultaneously, in view of the principle of a fair trial, which includes the examination of the case without undue delay, each decision should be assessed in terms of its impact on the duration of the proceedings. However, in the context of the problem in question – i.e. the inability to serve a copy of the statement of claim on the defendant, which prevents the defendant from effectively defending himself/herself – the matter of speed of proceedings seems to be of secondary importance. Every infringement of the right to a defence results in the invalidation of proceedings and their termination to the extent to which they are invalid.[42]

The right of access to a court should not be identified solely with the claimant's right to bring an action before a court. It should be viewed as a right vested in every party to the proceedings, including the defendant, who should receive a copy of the statement of claim, together with clear instructions on the procedure and way in which the statement of defence is to be filed. The fulfilment of this requirement is of vital importance for determining the state of *lis pendens* of a dispute, which precludes, *inter alia*, the opening of new proceedings regarding the same subject-matter and between the same parties, and determines whether the defendant can bring a counterclaim and whether the transfer of the property or rights in dispute affects the subsequent course of the proceedings. The date a dispute becomes 'pending' is not the date when the statement of claim is filed, but the date when a copy of the statement of claim is served on the defendant.[43] It is important to note the wide range of procedural effects that follow the moment a copy of the statement of claim is served on the defendant. These include the obligatory joinder of claims and parties, as well as the absence of procedural consequences associated with the transfer of a debt claim constituting the subject-matter of the lawsuit, for example by way of assignment. Also, with regard to substantive law, the proper service of a claim has significant consequences, including primarily the effect of interrupting the limitation period for the claim being asserted.[44]

An action before a court interrupts the limitation period when it is 'undertaken directly to investigate or establish, or satisfy or secure a claim.'[45] For the initiator of the proceedings, the premature termination of the case will result in the complete nullification of the procedural effects that the law associates with filing a lawsuit, which can lead to the loss of the effect of interruption of the limitation period.[46] Moving on to the essence of the problem of the defendant's home address *ab initio*, the necessary condition for ensuring access to the court, which is the first step in guaranteeing the right to a court hearing, is the filing of a lawsuit that meets all formal requirements. The pleading should include the defendant's home address.

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[42] Cf. W. Siedlecki, *Zarys postępowania cywilnego*, Warszawa 1968, p. 607; W. Siedlecki, *Nieważność*…, pp. 65–66.

[43] Decision of the Supreme Court of 3 March 1971, II CZ 162/70, LEX no. 6887.

[44] A. Wudarski, *Doręczanie pism*…, p. 877.

[45] See Ruling of the Supreme Court of 4 October 2006, II CSK 202/06, LEX no. 196513.

[46] N. Rycko [in:] *Kodeks cywilny. Komentarz*, t. I, *Część ogólna*, cz. 2 (art. 56–125), ed. J. Gudowski, Warszawa 2021, Article 123.

The obligation to ensure that service is effective rests with both the courts and the parties to the proceedings. The parties are required to provide their accurate current addresses and inform the court of any changes of address in order to prevent situations in which documents do not reach the addressee. In turn, the court is required to take all possible steps – including service by postal operators, bailiffs and, if necessary, electronic or substituted service – to ensure that all parties have been effectively notified of all procedural activities. The court is also responsible for taking steps to ensure delivery of documents is confirmed, by drawing attention to the need to comply with the deadlines or to take care in particularly difficult cases, when documents are served at the workplace or other locations, such as post office boxes.[47]

While failure to properly serve a notice of a hearing date to a party, in principle, results in the invalidity of the proceedings, failure to serve other court documents does not always lead to such an effect. However, invalidity may also be declared if documents are not served because of the court's or opposing party's negligence, as a result of which the party was completely deprived of the real opportunity to defend its rights in court.[48]

Depriving a party of the opportunity to defend its rights can be used as a basis for invalidity if a hearing is held and a judgment is issued despite the summons (notification of the hearing date) being defectively served. According to Article 214 § 1 CPC, improper service of a summons should result in the mandatory adjournment of the hearing, unless, despite the defect, the party appears before the court and requests that the hearing be held. In principle, holding a hearing and passing judgment when the notification of the hearing date is defectively served deprives the party of the opportunity to defend its rights, which means that the proceedings are invalid. Therefore, the failure to notify the party (or its attorney) of the date of the hearing at which the judgment is passed should be considered a gross procedural defect resulting in invalidity.

The deprival of a party of the opportunity to defend itself is particularly obvious when a court document is served at an invalid address, even though the party effectively informed the court – through court documentation or orally – of his/her new home address. Similar consequences also arise in appeal proceedings where the failure to notify the party's attorney of the date of the appeal hearing, regardless of whether or not the second instance court conducted proceedings to review evidence, deprives the party of the opportunity to defend itself and results in the invalidity of the proceedings. However, it should be remembered that, when the discontinuation of proceedings collides with the rejection of a claim, the rejection always takes precedence.[49]

Proceedings may be invalidated not only in the event of a complete lack of proof of service, but also if the court incorrectly presumes that service had been effected. Examples include leaving a summons in the case file with the effect of being served or appointing

[47] P. Grzegorczyk, *Doręczenie zastępcze*…, p. 157.

[48] Cf. Ruling of the Constitutional Tribunal of 17 September 2002, SK 35/01, OTK-A 2002/5, item 60.

[49] W. Broniewicz, *Kognicja sądu drugiej instancji w razie nieważności postępowania przed sądem pierwszej instancji lub nierozpoznania przez ten sąd istoty sprawy*, „Przegląd Sądowy" 1997/4, p. 34.

a guardian for a person whose place of residence is unknown, when that person's address can actually be found, for instance, in accordance with Article 139[1] § 1 CPC.[50]

In addition to the failure to serve a notice of the hearing date or notify the party's representative of the appeal proceedings, the proceedings may also be invalidated by failure to serve other important documents if, as a result, the party was effectively deprived of the opportunity to defend its rights. This primarily applies to a copy of the statement of claim, the delivery of which is crucial for enabling the party to read the claim and present its position, as well as for producing procedural and substantive legal effects, such as interrupting the limitation period or creating a state of *lis pendens*. Invalidity may also arise from the failure to serve a request to remedy formal shortcomings in a document, which prevent the party from effectively making a claim or defending itself. Finally, the failure to serve other documents, such as orders or organizational notices, can lead to invalidity if it results in the complete exclusion of a party from participating in the proceedings. Ultimately, it is not the formal nature of the omitted document that is decisive, but whether its lack of service actually deprived the party of the real opportunity to act.

6. Conclusion

The proper service of process in civil proceedings is fundamental to ensuring that the parties have a genuine right of defence and to exercising the constitutional right to a court hearing. This article emphasizes that service of process cannot be treated solely as a technical step in the procedure, but constitutes a key guarantee mechanism enabling a party to stay informed of the course of the proceedings and to mount an effective defence. In practice, however, situations arise in which defects in the service of process deprive a party of the opportunity to take procedural action. Of particular importance in this context is the basis for invalidating proceedings laid down in Article 379, item 5 CPC, related to depriving a party of the opportunity to defend its rights.

The author critically assesses the current approach of jurisprudence and court practice to this regulation. He refers to the formalistic interpretation of the concept of 'party' and excessive attachment to the presumption of effective service, even in situations where there are serious doubts as to whether the addressee has actually read the document. Situations in which service to an invalid address is deemed effective, even though the party has informed the court of a change of address, or situations in which a guardian is appointed for a person whose 'whereabouts are unknown' when in fact their place of residence could be determined are particularly problematic. Such cases show that courts all too often consider service to have been effected on the basis of a presumption or fiction, instead of checking whether the consignment has actually reached the addressee. Therefore, despite formal compliance with the procedural requirements, the party may, in fact, be deprived of the right to a defence.

[50] Cf. Ruling of the Supreme Court of 16 December 1994, I PRN 33/94. W. Broniewicz, *Zniesienie postępowania w procesie cywilnym*, „Palestra" 1971/4, p. 55.

In the light of the above, the author formulates *de lege ferenda* conclusions, pointing out the need for both legislative and interpretative changes. He proposes that the application of the presumption of effective service should be limited in cases where there are doubts as to whether the document has actually been received. He also recommends expanding and tightening the provisions on electronic service so that their effectiveness depends to a greater extent on the party actually reading the document, and not merely on their formal logging into the IT system. Furthermore, he proposes that procedural protection should be extended to cover entities that are not formally parties to the proceedings, but should nevertheless be included in them because of their legal interest, especially in non-contentious matters. The importance of service through a bailiff is also emphasized as a more effective alternative to the traditional fiction of service. In conclusion, only the actual, and not merely formal, provision of the opportunity to a party to participate in proceedings can guarantee the compliance of Polish civil procedure with the constitutional standard of the right to a court hearing.

Abstrakt

Skutek wadliwego doręczenia pisma sądowego w polskim postępowaniu cywilnym w postaci nieważności postępowania ze względu na pozbawienie strony możności obrony jej praw

Dr Emil Kowalik – Katedra Postępowania Cywilnego, Wydział Prawa, Prawa Kanonicznego i Administracji, Katolicki Uniwersytet Lubelski Jana Pawła II
ORCID: https://orcid.org/0000-0003-1839-3925

Doręczenia w postępowaniu cywilnym mają podstawowe znaczenie dla zagwarantowania stronie prawa do sądu, stanowiącego fundament demokratycznego państwa prawnego. Autor analizuje instytucję doręczeń jako gwarancję realizacji prawa do rzetelnego procesu, zapewniającego możliwość obrony i udziału w postępowaniu, omawia także konstytucyjne podstawy prawa do sądu, sposoby doręczeń w polskim postępowaniu cywilnym oraz ich znaczenie praktyczne dla zapewnienia prawa do sądu. W artykule szczególną uwagę poświęcono problematyce wadliwego doręczenia pisma sądowego jako przesłance nieważności postępowania z powodu pozbawienia strony możliwości obrony jej praw. Celem opracowania jest wskazanie, jak prawidłowa realizacja obowiązków doręczeniowych wpływa na zapewnienie gwarancji procesowych i prawidłowy przebieg postępowania cywilnego. Artykuł uwzględnia również rolę państwa w tworzeniu ram prawnych sprzyjających efektywnemu dochodzeniu praw, podkreśla znaczenie praktycznej wykonalności przepisów jako warunku skutecznej ochrony jednostki.

Słowa kluczowe: *prawo do sądu, obrona praw strony, doręczenia, nieważność postępowania*

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