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THE CONCEPT OF "WORKPLACE" UNDER THE POLISH CIVIL PROCEDURE CODE AS A PLACE OF SERVICE OF CIVIL CASE PLEADINGS/COURT PAPERS ON A NATURAL PERSON. REMARKS ON THE LAW AS IT STANDS AND AS IT SHOULD STAND

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Summary. The correctness and effectiveness of service of documents in civil procedure depends on a number of requirements, which also include a correctly defined place of delivery. Pursuant to Art. 135, para. 1 of the Polish Code of Civil Procedure (CCP), the service of procedural documents in civil cases on the addressee who is a natural person shall be effected at the place of addressee's residence, work or where the addressee is found in person. The deliberations on this institution presented herein lead to the conclusion that this term is both autonomous and vague, because after the once the wording of Art. 126, para. 2 CCP was changed by the amendment of 2 July 2004, it has lost the value of addressee's identification. The introduction of an appropriate statutory provision to define this place as the place of service of a pleading/court paper could raise doubts as to the compliance of such a regulation with the constitutional principle of equality, of the parties to civil proceedings before the law (Art. 32 of the Constitution of the Republic of Poland).
As part of a proposal for the law as it should stand, it is worth considering to preserve the requirement of specification of the workplace as the place for the service of the pleading/court paper, since the adjudication authority does not know *ex officio* the occupation and workplace of the party concerned, and the party itself is not obliged to specify such address in the pleading. The admissibility of imposing on the adjudicating authority an obligation to determine the place of residence of the addressee of a pleading should also be excluded. On the other hand, it would be a more appropriate solution to introduce an obligation for a procedural party to precisely specify the address for service in the contents of the first pleading filed, otherwise subsequent pleadings will remain in the case file with the effect as if actually served.
It should also be considered to introduce a specific notion grid for the purposes of document service, which would ensure the effectiveness of such delivery by means of widely defined designations of the proper place of service. The carelessness and inconsistency of the legislature in the use of vague concepts with different scopes of application does not contribute to the precise determination of the place of service.

Key words: workplace, service of a procedural document, place of service, civil procedure, document addressee, natural person, elements of the process document

The principle of procedural formalism in relation to the institution of document service is manifested in the fact of granting it, under mandatory provisions of procedural law, a specific form, which directly determines its procedural existence and effectiveness in a given civil proceeding and also guarantees the proper course of all the civil proceeding. As regards the service of documents, the legis-

lature precisely defined its formal requirements, both in general provisions and in specific regulations. First of all, the procedural statute specifies in detail the requirements regarding the form (Art. 131–135 of the Code of Civil Procedure),[1] time (Art. 134 CCP) or place (Art. 135 CCP) of document service.

According to Art. 135, para. 1 CCP, service shall be effected at home, in the workplace or where the addressee is actually found. Presumably, this provision refers to specifying the place of service of a pleading/court paper only to a natural person, regardless of the procedural function in which he occurs or will appear in civil proceedings. This is so because only a natural person, due to the personal nature of life activities, including the provision of work, can have specific places attributed only to that person, referred to as "home" or "workplace." The provision in question seems to indicate the places where the documents may be served, it does not specify the exact hierarchy of places of service. It cannot be deduced from the literal wording of this provision that a document service at the workplace can only be made if delivery is not possible at home, and the service at the place where the addressee is found is allowed only when the previous two service methods fail. It is argued in the literature that if the legislature wanted to make the service of documents at home a rule, the remaining cases being allowed where the basic method proved to be ineffective or impossible, the legislature would clearly indicate this in the content of the provision [Julke 2004, 46].[2] On the other hand, in the light of the position taken by the judicature, it is being assumed that Art. 135, para. 1 CCP indicates the place of the so-called proper service (to the addressee),[3] the first two of them ("at home," "in the workplace") being decided by the court by placing the appropriate address in the court paper. The priority is the service effected at addressee's home (in the place of residence – Art. 126, para. 2 CCP) and only if this proves to be difficult, in the workplace. The mail carrier is not required to look for the addressee's workplace if not indicated in the address provided by the court. The delivery can take place "wherever the addressee is found" when it cannot be made either "at home" or "in the workplace." This may take place, in particular, where the addressee is met by the mail carrier on the street, and the mail carrier is not obliged to look for the addressee if the latter's whereabouts is not known.[4]

The views presented by scholars in the field and the judicature cannot be fully accepted.

Art. 135, para. 1 CCP lists several places where documents may be served, without closing this catalogue in an enumerative manner. The legislature, mentioning the potential places of service of documents in civil proceedings, does so

[1] Act of 17 November 1964, the Code of Civil Procedure, Journal of Laws of 2019, item 1460 as amended [henceforth cited as: CCP].

[2] As stated by this author, such a method of regulation was adopted e.g. in Art. 138, para. 1 CCP in defining persons authorised to receive procedural documents sent to the addressee.

[3] Of course, Art. 135, para. 1 CCP cannot be applied to substitute service. Cf. judgement of the Supreme Court of 4 February 1969, I CR 500/67, LEX no. 6450.

[4] Decision of the Supreme Court of 27 January 1998, III CKN 620/97, OSNC 1998, no. 9, item 146.

using a punctuation mark and the disjunctive conjunction "or," which *prima facie* may mean a lack of strict determination of their significance (hierarchy). However, there is doubt as to whether the order in which these places are listed is completely accidental, and how it should be assessed in the context of the manner of listing, as well as comparing the semantic scope of individual terms used to determine places of delivery.

Art. 135, para. 1 CCP determines, in appropriate order, "home" and "workplace" as the places of delivery, using the punctuation mark, which allows to assume at first sight, solely based on the result of the linguistic interpretation of this provision, that both places of possible delivery of the document are equivalent. At the same time, the definition of both places of delivery have been separated by the disjunctive conjunction "or" from the phrase "wherever the addressee is found" which is supposed to emphasize clearly the distinctiveness of the terms used. Considering the rules of using language when formulating the content of applicable legal regulations, such a measure should be considered incorrect in the discussed case, because it introduces a separation of concepts which are mutually overlapping to some extent (home or work place are also places where usually, due to the everyday or professional functions of the addressee related to the performance of work, he may be found). It should be assumed, however, that the legislature refers here, on an opposition basis, to the place where the addressee can be found, but other than his home or workplace. However, it would be more appropriate for the legislature to use a different term in the content of the provision in question, pointing to the actual semantic distinctiveness of the terms used ("service shall effected at home, in the workplace or another place where the addressee is found"). In addition, the use of the phrase "or where the addressee is found" in the content of the provision under analysis indicates that the legislature rejected the intention of enumerating all the places where the service could possibly be effected. The opposite measure should be considered as completely contrary to the nature of document service, taking into account primarily the assumed effectiveness of this activity. However, assuming the complete equivalence of all these places of delivery, the legislature's attempt to separate two specifically indicated places of delivery, i.e. "at home" and "in the workplace" from the most capacious term "where the addressee is found" may be surprising. Undoubtedly, the term "[place], where the addressee is be found" is the broadest term and encompasses the other two places listed in the Act. Moreover, the legislature could have better emphasize the principle of equivalence in listing the places of delivery by different wording of the content of the provision in question ("service shall be effected where the addressee is found, in particular at his home or in his workplace").

After all, it is not important for the procedural effectiveness of the service where the document was delivered.[5]

[5] Cf. decision of the Supreme Court of 23 March 1966, I CZ 14/66, LEX No 5953.

It is also worth noting that listing separately the places of service is also supposed to emphasise that service of documents is, in principle, a one-off operation, assuming it is effective, carried out only once and in one of the places listed, as opposed to the "attempted service," which can be repeated and does not have to be concentrated in just one place, strictly assigned for delivery.

It must therefore be accepted for further consideration that it was not the intention of the legislature to introduce, as a binding rule, the equivalence of all the places of service specified by law, and that the listing of those places is not accidental. Such a thesis is indirectly confirmed by the legal construct adopted by the legislature with respect to substitute service, expressed in Art. 138 CCP, which sets out in an appropriate hierarchy (resulting from the internal structure of the provision in question) the list of proper places of delivery: home and the workplace, excluding at the same time the last of the places of delivery under Art. 135, para. 1 *in fine* of the Code of Civil Procedure.

One of the statutory places of potential document service to an individual is his "workplace." This notion, although belonging to statutory terms (see Art. 135, para. 1; Art. 138, para. 2; Art. 1086, para. 1 second sentence CCP), is not defined in the Code of Civil Procedure. The lack of a relevant definition, also in substantive civil law, does not make it easy to precisely determine the conceptual scope of this institution. Scholars of civil procedural law widely associate this term with the term "place of employment" – a term adapted to the civil procedural law from labour law [Jędrzejewska and Weitz 2009, 432; Kołakowski 2006, 614]. However, as it results from the analysis of labour law regulations (Art. 231, para. 1; Art. 104, para. 1; Art. 128; Art. 207; Art. 283, para. 1 of the Labour Code[6]), the term in question has not been statutorily defined either, has a heterogeneous meaning and should also be distinguished from another term used by the legislator in labour law regulations – "workplace" (Art. 77^5, para. 1; Art. 94^2; Art. 178; Art. 211, point 3 LC), or its qualified form of "place of performing the work" (Art. 29, para. 1, point 2; Art. 67^{10}, para. 1, point 2; Art. 67^{14}, para. 1 and 3; Art. 140 first sentence; Art. 207^1, para. 2, point 2 LC). The term of "place of employment" based on a subjective criterion is treated in the labour law scholarly opinion and judicature as a separate organisational unit forming a certain organised whole and hiring employees; it is used interchangeably, albeit incorrectly, with the term "employer" – meaning a party to the employment relationship who hires employees (Art. 3 LC).[7] The adoption of the subjective criterion makes it possible to

[6] Act of 26 June 1974, the Labour Code, Journal of Laws of 2019, item 1040 as amended [henceforth cited as: LC].

[7] Similar interpretative doubts have been still raised with regard to some provisions of the Civil Procedure Code, including the relation between the terms "place of employment" and "employer." Undoubtedly, an appropriate action was taking steps by the legislature in the form of the Act of 2 July 2004 amending the Code of Civil Procedure and certain other laws, Journal of Laws No. 172, item 1804 (effective since 5 February 2005) to systematize terminological irregularities also in this area (in particular, see Art. 460, para. 1 CCP). The analysis of the currently applicable provisions shows that this process has almost been completed due to the recent amendment of the procedural

consider as an place of employment an organised complex of tangible and intangible assets (in particular property and personal assets, a specific organisation, tasks related to the functioning of the entity) intended for the implementation of specific employer's objectives, but at the same time constituting a place of employment for the employees involved. In other words, in this sense, an place of employment may mean a place of performance of work, including the employer's premises, which, from the point of view of the presented considerations, may be important for the correct determination of the place of document service to the addressee. On the other hand, in functional terms, an place of employment means a set of specific assets and tasks performed with the use of these assets.[8] The basic structural feature of an place of employment, however, is not its internal uniformity, therefore it is considered acceptable to separate its components, referred to as a "part of the place of employment" and treated as an employee's employment institution, i.e. a set of components enabling the performance of work in it. The concept of part of an place of employment is defined by those elements, both tangible and intangible, which make it possible for employees to perform their work, and thus make it the employment institution. In the case of a part of place of employment, the objectives pursued by the part of place of employment are usually not tantamount to the general objective of the whole establishment, but are of an auxiliary nature [Sanetra 1994, 9, 12–13].[9]

It seems that in order to clarify the term "workplace," which has been used many times but which was not statutorily defined by law in the field of labour law, one can use the results of doctrinal and practical interpretation regarding the term "place of performing the work," which seems to be treated as a specific form the concept in question, clarifying its scope by complementing it with the "performance," and undoubtedly indicating the intention to perform or actual performance of work in a given place.[10] The "place of performing the work," in light of the wording of Art. 29 CCP, is subject to mutual agreement between the parties and is an important element of the content of the employment contract, which cannot be unilaterally changed. The context in which the above concept occurs indicates that this is a place where ordinary (everyday) activities falling within

legislation made under the Act of 4 July 2019 amending the Civil Procedure Code and certain other laws, Journal of Laws, item 1469 (especially, see Art. 476, para. 1, point 3 and para. 5, point 1b; Art. 477^2, para. 2; Art. 477^6, para. 1 CCP). Nonetheless, see Art. 884, para. 1; Art. 1050^1, para. 1 CCP.

[8] Cf. judgement of the Supreme Court of 29 November 2005, II PK 391/04, OSP 2008, vol. 1, item 2.

[9] Cf. judgement of the Supreme Court of 1 July 1999, I PKN 133/39, OSNAP 2000, no. 18, item 687; judgement of the Supreme Court of 1 April 2004, I PK 362/03, OSNP 2005, no. 2, item 17, judgement of the Supreme Court of 9 December 2004, I PK 103/04, OSNP 2005, no. 15, item 220; judgement of the Supreme Court of 7 February 2007, I PK 21/07, LEX no. 567352; judgement of the Supreme Court of 19 April 2010, II PK 298/09, LEX no. 602256; judgement of the Supreme Court of 8 June 2010, I PK 214/09, LEX no. 602051.

[10] It even seems that such a specification is completely unnecessary, as the very nature of employment relationship includes an obligation and actual intention of performing the activities as part of provision of work by one of the parties to this relationship.

the agreed type of work are carried out. A distinction must also be made between an employee's "workplace" and [employer's] "premises of the place of employment" [Muszalski 2000, 90].[11] The parties to the employment relationship have much freedom in determining the workplace. The workplace cannot be defined too generally (vaguely). According to the prevailing scholarly opinion and case law, the concept of "workplace" includes either a fixed point in the geographical sense, or a certain designated area, a zone defined by boundaries of an administrative division or in another sufficiently clear manner, within which work is to be performed [Tomaszewska 2012, 82; Gersdorf 2008, 111].[12] The contemporary understanding of the term "workplace" is also adequate to the diversity of the very nature of the work performed by the employee. This entails classifying such a place as permanent or variable [Liszcz 2008, 133; Taniewska 1980, 26].[13]

Where the parties have not specified the workplace in the employment contract, Art. 454, para. 1 of the Civil Code in conjunction with Art. 300 of the Labour Code shall apply *mutatis mutandis*, according to which, if the place of performance is not specified or does not result from the nature of the obligation, the performance should be fulfilled at the debtor's place of residence or office at the time the liability arose. In such a case, the employer's office should be considered the place of performance. At the same time, this is not tantamount to the presumption that the workplace is always the employer's office.

The place of fulfilment of some or even most of the employee's duties may be the premises chosen by the employee, including the employee's home (distance work, teleworking). The Labour Code does not prohibit the parties from choosing such a place of performing the work, specifying in Art. 29, para. 1, point 2 LC without any limitations, that the parties shall specify the workplace in the contract. Moreover, the employee does not have to be at the disposal of the employer in the place of employment. In the light of Art. 128 LC, the working time includes also the time during which the employee stays at that disposal in another place designated for performing the work. The parties may agree that it will be a place

[11] Cf. judgement of the Supreme Court of 1 April 1985, I PR 19/85, OSPiKA 1986, vol. 3, item 46, with a commentary by M. Piekarski.

[12] See the resolution of seen judges of the Supreme Court of 19 November 2008, II PZP 11/08, OSNP 2009, no. 13–14, item 166. On the other hand, it is not considered correct to define the place of providing the work as a certain geographical area using geographical coordinates or the territory of a whole country, or many countries. Cf. W. Masewicz, Commentary on the judgement of the Supreme Court of 2 March 1993, I PRN 35/83, OSPiKA 1984, vol. 3, item 44; judgement of the Supreme Court of 16 November 2009, II UK 114/09, LEX no. 558591.

[13] When a variable workplace is concerned, its performance primarily involves permanent moving from one place (locality) to another in order to perform activities covered by the employee's obligation. See the grounds for the judgement of the Supreme Court of 3 December 2009, II PK 138/09, LEX no. 580138. It is also beyond any doubt that the scope of the term "workplace" ["place of performing the work"] (Art. 29, para. 1, point 2 LC is broader than the scope of the term "permanent workplace", Art. 77^5, para. 1 LC). Judgement of the Supreme Court of 19 March 2008, I PK 230/07, OSP 2009, vol. 13–14, item 176, with a commentary by A. Drozd, OSP 2010, vol. 2, item 21.

designated not to perform work at all, but to perform work by a specific employee.

Thus, an operation of a scholarly interpretation, consisting in accepting in civil procedural law the term "place of employment" as tantamount to "workplace" in order to properly determine the place of document service, pursuant to Art. 135, para. 1 CCP, seems inappropriate. Assuming the legislature's rationality and the fact that it uses independently in the Code of Civil Procedure the terms: "workplace" (Art. 135, para. 1; Art. 138, para. 2; Art. 1086, para. 1 second sentence CCP) and "place of employment" (Art. 884, para. 1; Art. 1050, para. 11 CCP), the interchangeable use of these expressions an their semantic similarity should be ruled out. Therefore, it should be assumed that in the light of Art. 135, para. 1 CCP, the place of document service is the "workplace" in a peculiar sense. However, unlike the expression "workplace," the term in question seems to be vague, as it potentially covers not only a specific locality, building or premises, but also a certain area where the work is or should be provided by the individual obliged to do so under the employment relationship.[14] Moreover, the workplace may be the same as the addressee's home. Also, the absence of a statutory obligation of a party to specify the workplace in the first pleading in the case is not a factor which should affect the indication of that workplace as appropriate for document service. It seems that the wording of Art. 135, para. 1 CCP defining the "workplace" as the place to serve documents was correlated, at least indirectly, with the content of Art. 126, para. 2 CCP in its original wording[15] which listed among the requirements relating to the content of the first pleading in the case, also the specification of occupations/professions of the parties to the proceedings. Such an element was supposed to additionally identify the parties. However, it was an anachronistic requirement, not corresponding to contemporary socio-political realities, closely related to the ideological assumptions of the socialist system. The usefulness of this requirement has rightly been questioned by judicial practice. The failure to clarify whether the term refers to a learned profession or occupation (vocational education) or a job actually performed, the possibility of having many professional skills at the same time, as well as no obstacles in the scope of changing the profession already possessed, made obsolete its function as an identifying element. It is also important that the party formulating such a pleading may find it difficult to determine data on the profession/occupation of the procedural opponent. This requirement could not be met also due to circumstances be-

[14] Undoubtedly, this restricts the application of Art. 135, para. 1 only to natural persons who provide work under labour law. Therefore, *a priori*, not only does this exclude those who do not provide work (unemployed) but also employers, which in the context of the principle of equality before law seems wrong (cf. Art. 32 of the Polish Constitution). This is so, because the profession/occupation of a party to the proceedings should not be relevant for the court when hearing the case, as this information could unconsciously result in a biased decision.

[15] Effective until 5 February 2005 i.e. until the entry into force of the Act of 2 July 2004 amending the Code of Civil Procedure and certain other laws, Journal of Laws No. 172, item 1804, which amended the wording of Art. 126, para. 2 CCP by repealing the requirement in question.

yond the control of the author of the pleading, if the opposing party does not have a learned profession/occupation and has not practised any profession/occupation at the same time. There was also no provision in the procedural statute to impose a sanction on the party who wrongly specified the profession/occupation, or who failed to update such information, if that profession/occupation changed during the civil proceeding. The requirement to specify the profession/occupation was also limited in proceedings in which pleadings were to be filed using official forms. These forms were to meet all the requirements of pleadings filed in the traditional form, but they did not contain a field to enter the profession/occupation of the parties. Such differentiation in the requirements for pleadings could have not be justified under the applicable legislation [Rudkowska–Ząbczyk 2008, 110].

The application of this criterion also raised many doubts as to its compliance with the Polish Constitution. Art. 51, sect. 2 of the Constitution of the Republic of Poland stipulates that public authorities may not acquire, collect nor make accessible information on citizens other than that which is necessary in a democratic state ruled by law. Imposing on the parties the obligation to specify the profession/occupation in a situation where these details could not be verified or used by the court in any way, at least at the stage of filing the first pleading in the case, rendered it unnecessary to acquire by the court [ibid., 110–11].

Although in the grounds for the judgement of 12 March 2002, the Constitutional Tribunal did not find the non-compliance of the provision in question with the Constitution of the Republic of Poland, but it acknowledged that the request for data on the profession/occupation of the parties is unnecessary as this information had lost its identifying value.[16]

Negative assessment of the rationality and accuracy of the statutory solutions led to a change in the wording of Art. 126, para. 2 CCP. After the amendment made by the Act of 2 July 2004 amending the Act – Code of Civil Procedure and certain other acts,[17] the first pleading in the case should additionally contain an indication of the place of residence or office of the parties, their statutory representatives and attorneys and the subject matter of the dispute.

Undoubtedly, also the specification of the "workplace" as a possible place of document service to an addressee who is a natural person, at least currently, by the lack of correlation of the content of the provisions of Art. 126, para 2 and Art. 135, para. 1 CCP also seems to be incorrect. Of course, apart from the very fact of the lack of obligation of the party to specify the workplace in the first pleading, it should be noted that the "workplace," as a very imprecise term,[18] has lost, above

[16] See the judgement of the Polish Constitutional Tribunal of 12 March 2002, P 9/01, OTK-A 2002, no. 2, item 14.

[17] Journal of Laws No. 172, item 1804.

[18] For example, due to the broader understanding of this term, not always as a specific locality but also a strictly defined geographical area, or associating this place with employee's "home" where the work may also be provided.

all, its value of identification of a natural person. It is also important to say that even the introduction of an appropriate statutory requirement to define this place as the place of service of the pleading could raise doubts as to the compatibility of such a regulation with the constitutional principle of equality, in this case, of the subjects of civil proceedings before the law (Art. 32 of the Polish Constitution).

Definitely, the hierarchy of places of service is to be determined by the author of the content of the first pleading in the case. Of course, he is not bound in this respect by Art. 135, para. 1 CCP, which means that the hierarchy of delivery to the listed places specified by the legislature does not have to be maintained, and in particular a party to the proceedings may demand that the documents be served in his workplace and not at home. As a proposal for the law as it should stand, it is worth considering to preserve the requirement of specification of the workplace as the place for the service of the pleading/court paper, since the adjudication authority does not know *ex officio* the occupation and workplace of the party concerned, and the party itself is not obliged to specify such address in the pleading. The admissibility of imposing on the adjudicating authority an obligation to determine the place of residence of the addressee of a pleading should also be excluded. On the other hand, it would be a more appropriate solution to introduce an obligation for a procedural party to precisely specify the address for service in the contents of the first pleading, otherwise subsequent pleadings will remain in the case file with the effect as if actually served.

The place where service should be effected is determined by the court by specifying an appropriate address in the document, but also by the mail carrier specified by the court, taking into account the circumstances of the specific case. The choice of the place of service will therefore be determined by the facts of the case, i.e. the fact of submitting a request to determine the place of service by the parties, but also the impossibility or difficulty related to previous unsuccessful attempts of delivery.

It should be stressed, however, that the mere effectiveness of service of documents does not depend on attempted service in all places defined by law.

As a side note, however, one should accept the view commonly expressed in literature and case-law that pursuant to the wording of Art. 133, para. 2a CCP, the service of pleadings to addressees who are natural persons with the status of an entrepreneur should be carried out under general principles provided for the service to a natural person, i.e. in the places as set out in Art. 135 CCP [Wolińska 2003, 48; Kołakowski 2006, 596; Żyznowski 2013a, 487].[19]

[19] Cf. judgement of the Supreme Court of 26 January 1993, II CRN 74/92, OSP 1993, vol. 10, item 193. This rule should also be extended to the service of court papers, regardless of the literal wording of Art. 133, para. 2a CCP, as well as other provisions of Art. 133 CCP which reflect the legislature's terminological carelessness. There are no other provisions in the Code of Civil Procedure regulating the institution of document service, when the addressee is an entrepreneur. In view of the purpose of this legal construct, it seems unreasonable to limit such service to pleadings only. Thus,

Workplace remains the appropriate place of service, also where such an act is of a substitute nature and is effected to the hands of persons other than the proper addressee of the pleading (cf. Art. 138, para. 1 and 2 CCP).[20]

Also indirectly, the place of substitute service is specified Art. 137 CCP. According to its wording, the service of documents on soldiers in compulsory military service, officers of the Police and Prison Service shall be carried out by their directly superior bodies. Therefore, by default, it is about an address in the locality which is the seat of the bodies listed in this provision (which in the case of service on the public officers referred to in Art. 137, para. 1 CCP[21] may coincide with the concept of "workplace" used by the legislature in Art. 135, para. 1 CCP).

However, these remarks do not apply to the specification of the place of service of a pleading or court paper on a natural person deprived of liberty who, pursuant to a decision on criminal punishment, disciplinary penalty or coercive measures resulting in deprivation of liberty, has been deprived of freedom of movement for a specific period of time (usually measured in longer time units, such as months or years), by detention in an appropriate prison or detention centre and whose correspondence, as a rule, is subject to censorship and supervision (cf. Art. 8a and Art. 242, para. 7 § 8 of the Executive Penal Code[22]).

To sum up, the correct determination of the place of direct service of the pleading on the addressee who is a natural person is the responsibility of the party who files in the first pleading in the case and the procedural body which, on the basis of the information provided by the party, decides where the service of documents is to be effected. The basic regulation in this matter contained in Art. 135,

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the solution adopted in Art. 133, para. 2a CCP should be regarded as a manifestation of the legislature's carelessness and not an intentional measure.

[20] It should be noted that pursuant to para. 3, sect. 2 of the Ordinance of the Minister of Justice of 12 October 2010 on the detailed procedure and method of service of court papers in civil proceedings, Journal of Laws of 2015, item 1222 as amended [henceforth cited as: DPMS], the service on the addressee by an adult household member, house administration, housekeeper or mayor may not be applied with regard to court papers if the dispatching court has placed on the address page of the document a text excluding such method of service at all or in relation to designated persons (para. 3, sect. 2 DPMS). On the other hand, in the light of para. 3, sect. 3 DPMS, a delivery to the addressee by a person authorized to receive documents at the addressee's workplace shall be effected if it has been placed on the mailing as the place of service. It should be noted that the ordinance in question, by clear limitation of the scope of application of the procedural law on the free choice of method and place of substitute service of court papers, breaches one of the main principles of the legal order defining the relationship between legal acts of various rank. It seems that the legislature, when regulating this matter, should have make an appropriate amendment within the Code of Civil Procedure or, possibly, create a separate regulation to specifically govern the hierarchy of service of court papers in civil proceedings, using a form of legal act other than secondary legislation.

[21] It seems that the whole group of persons listed as addressees in Art. 137, para. 1 CCP meets the criteria of public officials, hence the use of such collective term in this study. Cf. Art. 115, para. 13, point 7 and 8 of the Act of 6 June 1997, the Penal Code, Journal of Laws of 2019, item 1950 as amended. It should be noted that the legislature defined in the Penal Code the group of persons enjoying the status of public officer with the use of various criteria (some of these persons were listed by name, others by specifying their functions or positions held).

[22] Act of 6 June 1997, the Executive Penal Code, Journal of Laws of 2020, item 523 as amended.

para. 1 CCP, should be correctly correlated with the provisions of Art. 126, para. 2 CCP and Art. 177, para. 1, point 6 CCP. It seems that an optimal solution would be to include in the content of Art. 126, para. 2 CCP the requirement for a party to specify in the first pleading in the case, apart from the elements already listed by law, also the address for service, treated as a formal requirement, the absence of which would make it impossible to further process the pleading within the meaning of Art. 130 CCP et seq. Therefore, it is necessary to consider as a proposal for the law as it should stand the introduction of terminology specific for the purposes of service, which would ensure the effectiveness of such an action by means of broadly defined places of service. The carelessness and inconsistency of the legislature in the use of vague concepts with different scopes of application does not contribute to the precise determination of the place of service.

In the light of the currently applicable legislation, a participant in civil proceedings who formulates the first pleading in the case has the right to specify therein an address for service. However, this right cannot be deemed a procedural burden. Therefore, the term "workplace" as the place of service in the first pleading depends exclusively on the will of the party to the proceedings.

In the context of these comments, it may raise doubts that the legislature has retained the sanction in the form provided for in, the admissibility of an optional suspension of civil proceedings by the court adjudicating *ex officio* under Art. 177, para. 1, point 6 CCP, if as a result of the failure to specify or wrongly specified address of the claimant or the claimant's failure to indicate the address of the defendant [or the claimant's failure to comply with other orders] within the prescribed time limit, the case cannot be continued. It is being noted in the literature that this provision is applicable in the situation where the erroneous indication or failure to specify the addresses becomes apparent during the proceedings, once the case has been initiated (sending a copy of the statement of claim to the defendant) [Bodio 2010, 232]. The use by the legislature of an exemplary list of address deficiencies in comparison with further general wording of Art. 177, para. 1, point 6 CCP indicates that the proceedings may be suspended on the terms set forth in the provision in question only if the claimant fails to comply with a formal order that prevents the continuation of proceeding. "Other orders" should be understood as orders referring to the deficiencies of the statement of claim of a similar nature as, for example, failure to specify the claimant's or defendant's address mentioned in the regulation mentioned above, and thus to the formal deficiencies of the statement of claim, which, however, cannot be remedied under Art. 130 CCP due to the fact that they emerged during the proceedings, or for other reasons.[23] This sanction resulting in suspension of proceedings is not directly based on the content of Art. 187 CCP in conjunction with Art. 126 CCP, but should result from the provision of Art. 208, para. 1 CCP. This is so because failure to include the address details in the first pleading may be remedied by executing the

[23] Cf. Decision of the Supreme Court of 14 April 1967, II CZ 25/67, LEX no. 6139.

order of the presiding judge imposing such an obligation on a party to the proceedings, under pain specified in Art. 177, para. 1, point 6 CCP. One should agree with the view that the suspension of proceedings does not apply where the change of address took place during the proceedings, unless it happened before instructing the party about the content of Art. 136, para. 1 CCP. If a party failed to notify the court of the party's new address, court papers addressed to the party shall be left on the case file with the effect of service [Jakubecki 2011, 624].

Nonetheless, as it seems, the hierarchy currently determined by the legislature in Art. 135, para. 1 CCP has some legal significance. Following this hierarchy, on the one hand, protects the addressee from accidental and arduous delivery, and on the other, forces him to endure document service actions carried out by the authority. The most appropriate place of service according to the Code of Civil Procedure is the addressee's home or workplace. These are the basic places of service. These are the places where the delivering entity should first attempt to serve the document. However, effecting the service at the place of residence of the addressee or his workplace is irrelevant for the procedural effectiveness of the service.[24]

REFERENCES

Bodio, Joanna. 2010. "Komentarz do art. 177 Kodeksu postępowania cywilnego." In *Kodeks postępowania cywilnego. Komentarz*, ed. Andrzej Jakubecki, ed. 4, 231–33. Warszawa: Wolters Kluwer Polska.

Gersdorf, Małgorzata. 2008. "Komentarz do art. 29 Kodeksu pracy." In *Kodeks pracy. Komentarz*, ed. Zbigniew Salwa, 110–11. Warszawa: LexisNexis.

Jakubecki, Andrzej. 2011. "Komentarz do art. 177 Kodeksu postępowania cywilnego." In *Kodeks postępowania cywilnego. Komentarz*, ed. Henryk Dolecki, and Tadeusz Wiśniewski, vol. 1, 623–24. Warszawa: Wolters Kluwer Polska.

Jędrzejewska, Maria, and Karol Weitz. 2009. "Komentarz do art. 138 Kodeksu postępowania cywilnego." In *Kodeks postępowania cywilnego. Komentarz. Część pierwsza. Postępowanie rozpoznawcze*, ed. Tadeusz Ereciński, vol. 1, ed. 3, 431–34. Warszawa: LexisNexis.

Julke, Grzegorz. 2004. "Doręczenia w sądowym postępowaniu egzekucyjnym." *Przegląd Prawa Egzekucyjnego* 5–6:35–82.

Kołakowski, Krzysztof. 2006. "Komentarz do art. 138 Kodeksu postępowania cywilnego." In *Kodeks postępowania cywilnego. Komentarz do artykułów 1–505[14]*, ed. Kazimierz Piasecki, vol. 1, ed. 4, 592–614. Warszawa: Wydawnictwo C.H. Beck.

Liszcz, Teresa. 2008. *Prawo pracy*. Warszawa: LexisNexis.

Muszalski, Wojciech. 2000. "Komentarz do art. 29 Kodeksu pracy." In *Kodeks pracy. Komentarz*, ed. Wojciech Muszalski, 89–91. Warszawa: Wydawnictwo C.H. Beck.

Rudkowska–Ząbczyk, Ewa. 2008. *Pisemne czynności procesowe w postępowaniu cywilnym*. Ed. 1. Warszawa: LexisNexis.

Sanetra, Walerian. 1994. "O pojęciu części zakładu pracy." *Przegląd Sądowy* 1:8–21.

Taniewska, Maria. 1980. "Przestrzenne granice wykonywania pracy." *Praca i Zabezpieczenie Społeczne* 3:15–29.

Tomaszewska, Monika. 2012. "Komentarz do art. 29 Kodeksu pracy." In *Kodeks pracy. Komentarz*, ed. Krzysztof W. Baran, 81–82. Warszawa: Wolters Kluwer Polska.

[24] Cf. Order of the Supreme Court of 23 March 1966, I CZ 14/66, LEX No 5953.

Wolińska, Agata. 2003. "Zasady doręczania pism sądowych przedsiębiorcom." *Prawo Spółek* 2:36–49.
Żyznowski, Tadeusz. 2013a. "Komentarz do art. 135 Kodeksu postępowania cywilnego." In *Kodeks postępowania cywilnego. Komentarz*, red. Henryk Dolecki, and Tadeusz Wiśniewski, vol. 1, ed. 2, 486–87. Warszawa: Wolters Kluwer Polska.
Żyznowski, Tadeusz. 2013b. "Komentarz do art. 138 Kodeksu postępowania cywilnego." In *Kodeks postępowania cywilnego. Komentarz*, ed. Henryk Dolecki, and Tomasz Wiśniewski, vol. 1, ed. 2, 501. Warszawa: Wolters Kluwer Polska.

POJĘCIE „MIEJSCA PRACY" NA GRUNCIE *KODEKSU POSTĘPOWANIA CYWILNEGO* JAKO MIEJSCA DORĘCZENIA W SPRAWIE CYWILNEJ PISMA PROCESOWEGO OSOBIE FIZYCZNEJ. UWAGI *DE LEGE LATA* I *DE LEGE FERENDA*

Streszczenie. Prawidłowość i skuteczność czynności doręczenia w postępowaniu cywilnym zależy od wielu wymogów, do których zalicza się także poprawnie określone miejsce tej czynności. W świetle art. 135 § 1 k.p.c. doręczeń pism w sprawach cywilnych adresatowi – osobie fizycznej dokonuje się w mieszkaniu, w miejscu pracy lub tam, gdzie się adresata zastanie. Rozważania poświęcone w niniejszym opracowaniu wskazanej instytucji prowadzą do wniosku, że jest to określenie autonomiczne i zarazem nieostre, bowiem po zmianie brzmienia art. 126 § 2 k.p.c. nowelą z 2 lipca 2004 r., zatraciło walor identyfikujący adresata. Wprowadzenie zaś aktualnie odpowiedniego nawet nakazu ustawowego określenia tego miejsca jako miejsca doręczenia pisma procesowego, mogłoby wywoływać wątpliwości co do zgodności takiej regulacji z konstytucyjną zasadą równości, w tym wypadku, podmiotów postępowania cywilnego wobec prawa (art. 32 Konstytucji RP). *De lege ferenda* należy zastanowić się nad zachowaniem wymogu wskazywania miejsca pracy jako miejsca właściwego do dokonania doręczenia, skoro organowi rozstrzygającemu nie jest znany z urzędu zawód i miejsce wykonywania pracy przez stronę, a i sama strona nie jest przecież obowiązana do wskazywania takiego adresu w piśmie procesowym. Wykluczyć należy także dopuszczalność nałożenia na organ rozstrzygający obowiązku ustalania miejsca przebywania adresata pisma. Właściwszym rozwiązaniem wydaje się natomiast wprowadzenie obowiązku precyzyjnego określenia przez stronę procesową adresu do doręczeń w treści wnoszonego pierwszego pisma procesowego pod rygorem pozostawienia kolejnych pism w aktach sprawy ze skutkiem doręczenia. Rozważyć należy także wprowadzenie swoistej dla potrzeb obrotu doręczeniowego siatki pojęciowej, zapewniającej poprzez szeroko zakreślone desygnaty oznaczenia właściwego miejsca doręczenia, skuteczność takiej czynności. Niedbałość i niekonsekwencja ustawodawcy w posługiwaniu się nieostrymi pojęciami o różnych dodatkowo zakresach zastosowania nie sprzyja bowiem precyzyjnemu określeniu miejsca doręczenia.

Słowa kluczowe: miejsce pracy, doręczenie pisma procesowego, miejsce doręczenia, postępowanie cywilne, adresat pisma, osoba fizyczna, elementy pisma procesowego

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