

1 What does the legal term "service of documents" mean in practical terms? Why are there specific rules regarding the "service of documents"?*Service of documents*

According to the interpretation of judicial practice, 'service of documents' is understood as a procedural step taken by a court to notify a party in proceedings, or a third party whose cooperation in the proceedings is required, of the progress of these judicial proceedings. Keeping parties fully and effectively informed of the progress of proceedings is an essential precondition for the proper conducting and conclusion of court proceedings – a court may only act and take decisions on the condition that the parties have been given all documents of which receipt and knowledge is a precondition for the next step in the proceedings, the application of a remedy, procedural defences or protection, and other acts that are only admissible within a time limit laid down by the law or the court. In particular the service of court rulings on the merits is an essential precondition for the final closure of the case and for the enforceability of the court's ruling. It is important to understand that Section 105 et seq. of Act No 160/2015, the Contentious Civil Procedure Code (Zákon č. 160/2015 Z.z., Civilný sporový poriadok) only defines the procedural aspects of serving (judicial) documents; the service of an act under substantive law, i.e. including an expression of will in the form of a document, is governed by Section 45 of Act No 40/1964, the Civil Code (Zákon č. 40/1964 Zb., Občiansky zákonník). There is a substantial difference between service under the substantive and the procedural regulations, especially concerning the effect of service, the completing of the process of serving, and the initiating of legal consequences.

The existence of specific rules for the service of documents

The purpose of the specific rules for the service of documents in the Contentious Civil Procedure Code is an attempt by the legislature to uphold the principle of equality of arms and the adversarial system in judicial proceedings. No-one in judicial proceedings may be disadvantaged, and each party must be equally informed of the progress of judicial proceedings. The parties must have an opportunity to provide the necessary cooperation in the proceedings, and to familiarise themselves with the other party's statements and evidence, any procedural acts by the court relating to the proceedings, and the substance of the case. The principle of equality of arms and the adversarial system in proceedings is a fundamental and defining element of the right to a fair trial, which in the Slovak Republic is a constitutional right (Articles 46-48 of the Constitution or Ústava Slovenskej republiky) based on Article 6 of the Convention for the Protection of Human Rights and Fundamental Freedoms.

2 Which documents need to be served formally?

Broadly speaking, all service effected in accordance with the Contentious Civil Procedure Code can be considered formal service, i.e. service to an electronic mailbox (preferred), service to an electronic address (only at the party's request), personal service by a legitimate server (a postal service company, process server) or otherwise than a personal service, service in the form of a public notice or a special form of service by other legitimate servers (the relevant department of the Police, the municipal police, a bailiff, the Prison and Court Guard Service (*Zbor väzenskej a justičnej stráže*), a facility for institutional or protective care, the Ministry of Foreign and European Affairs, the Ministry of Defence). In the narrower sense, formal or official service only refers to the personal service of judicial process.

A court uses the procedure laid down for ordinary service for documents for which the law does not require personal service.

The various provisions of the Contentious Civil Procedure Code set out which documents require personal service. In addition, personal service is also used in cases where the court orders personal service in accordance with the circumstances of a specific case (courts normally use personal service e.g. for a summons to a hearing for reason of procedural certainty). The fact that the legislature has specified this privileged service for the various documents testifies to the importance of these documents and the need for the party to be familiar with their content, and so that the right to a fair trial is exercised. By law, personal service is required for the following documents: an order in which the court allowed an amendment of the action if the parties were not present at the hearing that amended the action (Section 142(2) of the Contentious Civil Procedure Code); an action with annexes (Section 167(1) of the Contentious Civil Procedure Code); a statement of defence (reply) if the defendant does not acknowledge the full extent of the claim made (Section 167(3) of the Contentious Civil Procedure Code); a statement by the claimant on the reply under Section 167(3) (rejoinder) (Section 167(4) of the Contentious Civil Procedure Code); a summons to a preliminary hearing (Section 169(2) of the Contentious Civil Procedure Code); a judgment (Section 223(1) of the Contentious Civil Procedure Code); an order for payment with an action under Section 266(1) of the Contentious Civil Procedure Code; an order to annul an order for payment under Section 267(4) of the Contentious Civil Procedure Code; an order under Section 273(c) of the Contentious Civil Procedure Code on the obligation to make a written statement on the action within a set time limit, and to set out in the statement the key facts in the party's defence, to append any documents to which reference is made, and to indicate the evidence to prove these claims within the meaning of Section 273(a) of the Contentious Civil Procedure Code.

3 Who is responsible for serving a document?

The court itself is responsible for serving judicial process, and it is authorised to serve written documents via the legitimate servers when necessary. A systematic interpretation of the Contentious Civil Procedure Code reveals the following order of priority for serving written documents:

by the court at a hearing or another act;

to an electronic mailbox under Act No 305/2013 on the electronic form of governance by public authorities and amending certain acts (the e-Government Act) (*zákon č. 305/2013 Z.z. o elektronickej podobe výkonu pôsobnosti orgánov verejnej moci a o zmene a doplnení niektorých zákonov, zákon o e-Governmente*);

service to an electronic address at the party's request, if the documents do not require personal service;

service by a legitimate server:

- normally a postal service company or process server;
- if the court considers it necessary, it can order service by the relevant department of the Police, a bailiff or the municipal police;
- in special cases the court serves documents via: the Prison and Court Guard Service (service on natural persons serving custodial sentences or in custody), facilities for institutional and protective care (service on natural persons placed in such facilities), the Ministry of Foreign and European Affairs

(service on natural persons enjoying diplomatic privileges and immunity, or persons in the household of someone who enjoys diplomatic privileges and immunity, or persons on whom documents are to be served on premises protected by diplomatic immunity), and the Ministry of Defence (service on professional soldiers and documents that cannot be served in another way);

- a special instance is service by a public notice if set out in the Contentious Civil Procedure Code (for instance if a natural person's address is not known) or in other legislation (e.g. Section 199 of the Non-Contentious Civil Procedure Code (*Civilný mimosporový poriadok*)).

4 Address inquiries

4.1 Under Regulation (EC) No 1393/2007 of the European Parliament and of the Council of 13 November 2007 on the service in the Member States of judicial and extrajudicial documents in civil or commercial matters, does the requested authority in this Member State on its own initiative, try and establish the whereabouts of the addressee of the documents to be served if the addressee no longer resides at the address known to the requesting authority?

In such cases the Slovak courts always actively try to establish the addressee's present whereabouts, primarily by referring to the Register of Inhabitants of the Slovak Republic (*Register obyvateľov Slovenskej republiky*), which is connected electronically to courts' information systems. The court can promptly establish the place of permanent or temporary residence listed in this register (if such an address exists). The Social Insurance Agency (*Sociálna poisťovňa*) also currently cooperates electronically with Slovak courts via the court register, and a court may request certain information recorded by the Social Insurance Agency, in particular the address of a party to the proceedings as listed in the Social Insurance Agency and the name of the party's present or former employer (via whom in some cases the party's present whereabouts can be established, or a document can be served directly at the workplace if the circumstances of the case permit). The court is also authorised by law to request the cooperation of the tax office, the municipality, a prison, etc., and if possible the court also asks other persons (e.g. relatives) who may know the addressee's whereabouts.

4.2 Do foreign judicial authorities and/or parties to judicial proceedings have access to registers or services in this Member State enabling the establishment of the person's current address? If yes, which registers or services exist and what procedure must be followed? What fee, if any, should be paid?

As stated above, via the court register the Slovak courts have direct access to the data listed in the Register of Inhabitants of the Slovak Republic. Parties to judicial proceedings have the option of requesting data from the Register of Inhabitants of the Slovak Republic (the issuing of confirmation or written notification of a person's whereabouts) for an administrative fee of five euros.

4.3 How do the authorities in this Member State deal with a request sent under the Council Regulation (EC) No. 1206/2001 of 28 May 2001 on cooperation between the courts of the Member States in the taking of evidence in civil or commercial matters aimed at discovering a person's current address?

According to the information available to the Ministry of Justice of the Slovak Republic, the Slovak courts generally accept such requests and take steps to establish such a person's current address and thereby satisfy the request. To this end they use the procedures described in the preceding points.

5 How is the document normally served in practice? Are there alternative methods which may be used (other than substituted service referred to in point 7 below)?

As stated in point 3, courts prioritise personal service at a hearing or during another act. It may also use:

- service to an electronic mailbox under the e-Government Act;
- service to an electronic address at the party's request, if the documents do not require personal service;
- via the legitimate servers (the post office, a process server; if necessary the relevant department of the Police, a bailiff or the municipal police; in special cases the Prison and Court Guard Service, a facility for institutional or protective care, the Ministry of Foreign and European Affairs and the Ministry of Defence);
- by a public notice.

The court specifies the procedure for serving documents depending on the type of document, and besides personal service it prefers service to an electronic mailbox, where documents that require personal service can also be served (unlike service to an electronic address, i.e. email, which cannot be used to serve documents that require personal service). As noted above, for certain persons the law requires special service by one of the legitimate servers listed, and service to electronic mailboxes cannot be used here (the Prison and Court Guard Service, a facility for institutional or protective care, the Ministry of Foreign and European Affairs and the Ministry of Defence), and the legislation also sets out cases where service must be by public notice (to notify an indefinite group of persons of a decision). Likewise, as noted above, for practical reasons a court may opt for service by the relevant department of the Police, a bailiff or the municipal police.

At present courts serve the greatest quantity of documents by post, in the form of registered letters (ordinary service) or official letters (personal service). We anticipate that after 1 July 2017 (by which date all electronic mailboxes should be activated in accordance with the e-Government Act), a large part of service will be effected to electronic mailboxes, which will be mandatory for all legal persons (courts will no longer send physical documents other than in the exemptions permitted by law), while for natural persons service will only be effected to electronic mailboxes at their request.

When sending documents to the addressee's postal address (if service cannot be effected to an electronic mailbox), for ordinary service and personal service the court serves the documents at the address that the addressee specified. If service is not successfully effected, the court then serves the documents:

- a) on a natural person at the address listed in the Register of Inhabitants of the Slovak Republic or the address for a foreign national in Slovakia according to his or her residence status;
- b) on a legal person at the address of the legal person's registered office listed in the Business Register (*Obchodný register*), which can be found at www.orrsr.sk, or another public register (e.g. the Trade Licensing Register, *Živnostenský register*).

Alternative methods other than substituted service

The new Contentious Civil Procedure Code does not provide for any alternative methods other than substituted service, and with the introduction of parties' strict objective responsibility for the data recorded in public registers, substituted service in this sense has in fact ceased to exist.

6 Is electronic service of documents (service of judicial or extrajudicial documents through remote means of electronic communication, such as e-mail, internet based secured application, fax, sms etc.) permitted in civil proceedings? If so, for which types of proceedings is this method foreseen? Are there restrictions with regard to the availability/access of this method of service of documents depending on who the addressee is (legal professional, legal person, company or other business actor, etc.)?

A court may serve documents electronically (by email) if a party to the proceedings requests this in writing and notifies the court of the address for sending documents electronically. A document is deemed to have been served three days after it was dispatched, even if the addressee has not read it. Such service is proscribed for documents that are served personally. This method is therefore not restricted by the type of proceedings or who the addressee may be, but by the type of document served. Nor may this form of service be used if the court can use personal service or service to an electronic mailbox.

As is clear from the preceding explanation, Slovak courts must prefer service to electronic mailboxes, which are mandatory for legal persons and accessible for natural persons. By 30 June 2017 every (Slovak) legal person must have activated an electronic mailbox, and from then on service on legal persons will be effected solely to electronic mailboxes, unless separate legislation proscribes such service – at present this mainly concerns documents that can only be served as physical documents or by public notice (incidentally, the eGovernment Act also governs 'electronic noticeboards'). At present courts are also

obliged to prefer service to electronic mailboxes, but some legal persons have yet to activate their electronic mailboxes and therefore documents must still be served on these persons using the classic methods. Electronic mailboxes have also been set up for natural persons, but are only activated at their request, which means that if natural persons do not request the activation of their electronic mailboxes, documents will continue to be served using the classic methods. However, if natural persons do request the activation of their electronic mailboxes, courts will only serve documents on them using this method (unless the law proscribes electronic service for a specific type of document), unless the Contentious Civil Procedure Code requires a special form of service via the Prison and Court Guard Service, a facility for institutional or protective care, the Ministry of Foreign and European Affairs or the Ministry of Defence (see point 3, paragraph 4).

7 'Substituted' service

7.1 Does the law of this Member State allow for other methods of service in cases where it has not been possible to serve the documents to the addressee (e.g. notification to the home address, to the bailiff office, by postal service, or by poster advertising)?

The Contentious Civil Procedure Code covers substituted service for serving physical documents, while the e-Government Act covers service to electronic mailboxes.

With the e-Government Act we cannot speak of substituted service in the true sense of the word, for the very activation of an electronic mailbox (whether automatically for legal persons or optionally for natural persons) means that the addressee's address cannot be 'unknown', nor is it possible that 'the document cannot be delivered'. The very depositing of an electronic official message (court correspondence) in the electronic mailbox means that the addressee has possession of it. An electronic official message is deemed to have been served the day after it was deposited in the electronic mailbox. However, if this is a document that under the Contentious Civil Procedure Code requires personal service, then if the addressee does not collect it in the system (and therefore does not read it), it is deemed to have been served at the end of a 15-day time limit commencing the day after the electronic official message was deposited. This method cannot be used when serving an order for payment, where substituted service is proscribed.

For classic service under the Contentious Civil Procedure Code (which will continue for natural persons), the application of the fiction of service is identical regardless of the form of service, i.e. whether in the case of ordinary service or personal service. If the addressee's address is listed in a public register (the Register of Inhabitants for natural persons and the Business Register for legal persons) and the letter is returned to the court as not served, it is deemed to have been served on the day the letter was returned to the court. If a natural person's address is not recorded in the Register of Inhabitants, service is effected by posting on the court's notice board and website, and the letter is deemed to have been served 15 days after such notification was published. This method of substituted service cannot be used when serving an order for payment.

7.2 If other methods are applied, when are the documents deemed to have been served?

See the answer to question 5 – alternative methods of service.

7.3 If another method of service is the deposit of the documents in a particular place (e.g. at a post office) how is the addressee informed of that deposit?

This is not another method, but ordinary service via a postal service company – if the addressee is not home, the postman informs the addressee that the documents (whether registered or for personal service) have been deposited at the post office by leaving written notification in the addressee's (home) letterbox.

7.4 If the addressee refuses to accept service of the documents, what are the consequences? Are the documents regarded as effectively served if the refusal wasn't legitimate?

If the addressee refuses to accept the document without good reason, the document is served as of the day its acceptance was refused; the process server must inform the addressee of this. If service was not effected legitimately (e.g. the process server did not inform the addressee of the consequences of refusing to accept the document), it has no legal effect.

8 Postal service from abroad (Article 14 of the Service Regulation)

8.1 If the postal service delivers a document sent from abroad to an addressee in this Member State in a situation where acknowledgment of receipt is required (Article 14 of the Service Regulation), does the postal service deliver the document only to the addressee himself/herself or may it, in accordance with national rules of postal delivery, deliver the document also to another person at the same address?

If acknowledgement of receipt is required, the post office (*Slovenská pošta, a.s.*, as the traditional postal services provider) only delivers the documents if the addressee or an authorised recipient (if the documents cannot be delivered to the addressee) presents proof of identity when taking delivery, allows the number of the identity document to be recorded and acknowledges receipt. Authorised recipients for documents addressed to a natural person are the addressee's spouse and any persons aged 15 or over who live with the addressee in the same house or flat. However, documents for personal service cannot be delivered to these persons.

8.2 Under the rules of postal delivery in this Member State how can the service of documents from abroad, under Article 14 of the Service Regulation No. 1393/2007, be effected if neither the addressee nor any other person authorised to receive the delivery (if possible under national rules of postal delivery – see above) has been reached at the address of delivery?

In this case the postman leaves written notification in the addressee's (home) letterbox that the documents have been deposited at the post office. The addressee or an authorised recipient may take receipt of the documents within a time limit of 18 calendar days. This time limit can be extended at the addressee's request. If the documents are not collected within the time limit they become undeliverable, and the postal service returns the undeliverable documents to the sender.

8.3 Does the post office allow a specific period of time for collection of the documents before sending the documents back as undelivered? If yes, how is the addressee informed that there is mail for him to collect at the post office?

The time limit is 18 calendar days and can be extended at the addressee's request. The addressee is informed by means of written notification in the addressee's (home) letterbox.

9 Is there any written proof that the document has been served?

Yes, under the Contentious Civil Procedure Code this is an acknowledgement of receipt, which as proof of the serving of a judicial document is a public instrument. The information in the acknowledgement of receipt is considered true unless there is evidence to the contrary. A party to the proceedings who disputes the accuracy of the information in the acknowledgement of receipt (arguing that the lawful procedure for service was not followed) is obliged to propose evidence for the court to establish these claims. If the court serves a document at a hearing or during a procedural act, a note is made of this in the transcript of the hearing.

The e-Government Act covers the electronic acknowledgement of receipt, which is confirmation of the personal service of a document (official message) – the recipient is obliged to confirm the serving of an electronic official message in the form of an electronic acknowledgement; confirmation of service is a precondition for making the content of the electronic official message accessible in the recipient's electronic mailbox. The electronic acknowledgement lists the date, hour, minute and second of the serving of the official message. As in the case of a 'physical' acknowledgement of receipt, the data it contains is deemed to be correct unless proved otherwise, and, likewise, its effects can be contested.

10 What happens if something goes wrong and the addressee does not receive the document or the service is effected in violation of the law (e.g. the document is served on a third person)? Can the service of the document nevertheless be valid (e.g. can violations of the law be remedied) or must a new effort to serve the document be made?

See points 5, 7.1 and 7.4 for options for alternative service. If service has been effected contrary to the law, the repeated serving of the document is necessary; Slovak law does not have the institution of validating invalid service. Any service of judicial documents effected by a method other than the lawful methods is not legally effective and does not initiate the legal consequences envisaged by the law.

11 Do I have to pay for service of a document, and if so, how much?

There is no charge for the service of judicial documents.

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