Reports of Cases

JUDGMENT OF THE COURT (First Chamber)

19 December 2012*

(Regulation (EC) No 1393/2007 — Service of documents — Party domiciled in the territory of another Member State — Representative domiciled in national territory — None — Procedural documents placed in the case file — Presumption of knowledge)

In Case C-325/11,

REFERENCE for a preliminary ruling under Article 267 TFEU from the Sąd Rejonowy w Koszalinie (Poland), made by decision of 15 June 2011, received at the Court on 28 June 2011, in the proceedings

Krystyna Alder,

Ewald Alder,

v

Sabina Orłowska,

Czeslaw Orłowski,

THE COURT (First Chamber),

composed of A. Tizzano (Rapporteur), President of the Chamber, A. Borg Barthet, E. Levits, J.-J. Kasel and M. Berger, Judges,

Advocate General: Y. Bot,

Registrar: K. Malacek, Administrator,

having regard to the written procedure and further to the hearing on 6 September 2012,

after considering the observations submitted on behalf of:

— Mr and Mrs Alder, by K. Góralska, adwokat,

— Mrs Orłowska and Mr Orłowski, by F. Pniewska, Legal Adviser,

— the Polish Government, by B. Czech, M. Arciszewski and M. Szpunar, acting as Agents,

— the Italian Government, by G. Palmieri, acting as Agent, assisted by S. Varone, avvocato dello Stato,

— the Portuguese Government, by R. Chambel Margarido and L. Inez Fernandes, acting as Agents,

* Language of the case: Polish.

— the European Commission, by A.-M. Rouchaud-Joët and A. Stobiecka-Kuik, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 20 September 2012,

gives the following

Judgment

1 This reference for a preliminary ruling concerns the interpretation of Article 1(1) of Regulation (EC) No 1393/2007 of the European Parliament and of the Council of 13 November 2007 on the service in the Member States of judicial and extrajudicial documents in civil or commercial matters (service of documents), and repealing Council Regulation (EC) No 1348/2000 (OJ 2007 L 324, p. 79) and of Article 18 TFEU.

2 The reference has been made in the context of proceedings between, on the one hand, Mrs Alder and Mr Alder ('Mr and Mrs Alder') and, on the other, Mrs Orłowska and Mr Orłowski ('Mr and Mrs Orłowski') in relation to the application, introduced by Mr and Mrs Alder, to have proceedings resumed in the case of a claim for debt that they had brought against Mr and Mrs Orłowski.

Legal context

European Union law

3 Recitals 6 to 8 and 12 in the preamble to Regulation No 1393/2007 state:

'(6) Efficiency and speed in judicial procedures in civil matters require that judicial and extrajudicial documents be transmitted directly and by rapid means between local bodies designated by the Member States. Member States may indicate their intention to designate only one transmitting or receiving agency or one agency to perform both functions, for a period of five years. This designation may, however, be renewed every five years.

(7) Speed in transmission warrants the use of all appropriate means, provided that certain conditions as to the legibility and reliability of the document received are observed. Security in transmission requires that the document to be transmitted be accompanied by a standard form, to be completed in the official language or one of the official languages of the place where service is to be effected, or in another language accepted by the Member State in question.

(8) This Regulation should not apply to service of a document on the party's authorised representative in the Member State where the proceedings are taking place regardless of the place of residence of that party.

…

(12) The receiving agency should inform the addressee in writing using the standard form that he may refuse to accept the document to be served at the time of service or by returning the document to the receiving agency within one week if it is not either in a language which he understands or in the official language or one of the official languages of the place of service. This rule should also apply to the subsequent service once the addressee has exercised his right of refusal. These rules on refusal should also apply to service by diplomatic or consular agents, service by postal services and direct service. It should be established that the service of the refused document can be remedied through the service on the addressee of a translation of the document.'

4 Article 1 of that regulation states:

‘1. This Regulation shall apply in civil and commercial matters where a judicial or extrajudicial document has to be transmitted from one Member State to another for service there. It shall not extend in particular to revenue, customs or administrative matters or to liability of the State for actions or omissions in the exercise of state authority (*acta iure imperii*).

2. This Regulation shall not apply where the address of the person to be served with the document is not known.

…’

5 Article 4(3) of that regulation is worded as follows:

‘The document to be transmitted shall be accompanied by a request drawn up using the standard form set out in Annex I. The form shall be completed in the official language of the Member State addressed or, if there are several official languages in that Member State, the official language or one of the official languages of the place where service is to be effected, or in another language which that Member State has indicated it can accept. Each Member State shall indicate the official language or languages of the institutions of the European Union other than its own which is or are acceptable to it for completion of the form.’

6 Article 5(1) of Regulation No 1393/2007 states:

‘The applicant shall be advised by the transmitting agency to which he forwards the document for transmission that the addressee may refuse to accept it if it is not in one of the languages provided for in Article 8.’

7 Article 14 of that regulation states:

‘Each Member State shall be free to effect service of judicial documents directly by postal services on persons residing in another Member State by registered letter with acknowledgement of receipt or equivalent.’

8 Article 19(1) of Regulation No 1393/2007 states:

‘Where a writ of summons or an equivalent document has had to be transmitted to another Member State for the purpose of service under the provisions of this Regulation and the defendant has not appeared, judgment shall not be given until it is established that:

(a) the document was served by a method prescribed by the internal law of the Member State addressed for the service of documents in domestic actions upon persons who are within its territory; or

(b) the document was actually delivered to the defendant or to his residence by another method provided for by this Regulation;

and that in either of these cases the service or the delivery was effected in sufficient time to enable the defendant to defend [his interests].’

Polish law

9 Under Article 1135[5] of the Polish Code of Civil Procedure:

'1. A party whose place of residence or habitual abode or registered office is outside the Republic of Poland and who has not appointed, for purposes of the conduct of proceedings, an authorised representative resident in the Republic of Poland must appoint a representative who is authorised to accept service of documents in the Republic of Poland.

2. If no representative authorised to accept service is appointed, judicial documents addressed to that party shall be placed in the case file and shall be deemed to have been effectively served. The party must be notified to that effect at the time of the first service. That party must also be informed of the possibility of submitting a response to the document initiating the proceedings and written statements of position, and must also be informed of those persons who can be appointed as an authorised representative.'

10 Article 401 of the Polish Code of Civil Procedure provides as follows:

'The resumption of proceedings on grounds of invalidity may be requested:

(1) if an unauthorised person is part of the composition of the court or if the judge, having issued a decision, is recused in accordance with the law, and that party did not have the possibility to request the recusal of the judge before that judgment acquired the force of *res judicata*;

(2) if a party did not have the capacity to be a party to the proceedings or if the party has not been properly represented or has been deprived of the ability to take action due to a breach of the law; however, a request for the resumption of the proceedings cannot be made if the impossibility of bringing an action has ended before the judgment has acquired the force of *res judicata* or if the lack of representation has been pleaded in the application or if the party has given consent to proceeding with stages of the proceedings.'

The dispute in the main proceedings and the question referred for a preliminary ruling

11 On 20 November 2008, Mr and Mrs Alder, who reside in Germany, lodged a claim for payment of a debt with the Sąd Rejonowy w Koszalinie (District Court, Koszalin) against Mr and Mrs Orłowski, who are resident in Poland.

12 The Sąd Rejonowy w Koszalinie informed Mr and Mrs Alder that they were required to communicate to it, within one month, the name of a representative in Poland who was authorised to accept service of judicial documents, and that, if they failed to do so within that period, any documents addressed to them would be placed in the case file and would be deemed to have been effectively served.

13 As Mr and Mrs Alder failed to indicate a representative authorised to accept service in Poland, the notice addressed to them relating to the time of a hearing scheduled for 5 June 2009 and a copy of the defendants' response to the claim submitted were placed in the case file and deemed to have been served on the claimants by virtue of the rule in Article 1135[5] of the Code of Civil Procedure. Mr and Mrs Alder did not appear at the scheduled hearing, at which the Sąd Rejonowy w Koszalinie examined the evidence adduced and closed the hearing. On the same day, a judgment was delivered dismissing their claim. That judgment was not challenged and has therefore acquired the force of *res judicata*.

14 On 29 October 2009, Mr and Mrs Alder introduced an application to the Sąd Rejonowy in Koszalin, requesting that the proceedings in the dispute concerning payment be resumed, that the judgment be set aside and that the case be considered afresh. They argued, inter alia, that they had been deprived of the opportunity to participate in the proceedings for payment because the notice relating to the scheduled time of the hearing had not in fact been served on them. Accordingly, the failure actually to serve the judicial documents on them at their address in Germany amounted to an infringement by the Sąd Rejonowy of the principle of non-discrimination on grounds of nationality and of the provisions of Regulation No 1393/2007.

15 By a judgment of 23 June 2010, the Sąd Rejonowy w Koszalinie rejected the request for resumption of proceedings, ruling that Polish civil procedure was compatible with European Union law. Following an appeal brought by Mr and Mrs Alder against that judgment, the Sąd Okręgowy w Koszalinie (Regional Court, Koszalin) set that judgment aside, ruling that the legal fiction allowing service to be deemed to have taken place was at variance with the provisions of Regulation No 1393/2007, and referred the case back to the Sąd Rejonowy w Koszalinie for reconsideration.

16 The Sąd Rejonowy w Koszalinie, however, held that it did not share that analysis. It found, first of all, that Regulation No 1393/2007 could not apply in the case in the main proceedings, in so far as it governs only situations in which judicial documents must be served in another Member State pursuant to national procedural law. Second, taking into account Article 18 TFEU, it considered that the rule that the documents are deemed to have been served could not give rise to direct discrimination and that, even if it were to constitute indirect discrimination, it would in any event be justified by its objective of ensuring that proceedings run smoothly, given the difficulties and the costs link to the service of documents abroad, not to mention its impracticality.

17 In those circumstances, the Sąd Rejonowy w Koszalinie decided to stay the proceedings and to refer the following question to the Court for a preliminary ruling:

‘Are Article 1(1) of Regulation … No 1393/2007 … and Article 18 TFEU to be interpreted as meaning that it is permissible to place in the case file, deeming them to have been effectively served, judicial documents which are addressed to a party whose place of residence or habitual abode is in another Member State, if that party has failed to appoint a representative who is authorised to accept service and is resident in the Member State in which the court proceedings are being conducted?’

The question referred for a preliminary ruling

18 By its question, the Sąd Rejonowy w Koszalinie asks, in essence, whether Article 1(1) of Regulation No 1393/2007 and, if necessary, Article 18 TFEU must be interpreted as precluding legislation of a Member State, such as that at issue in the main proceedings, which provides that judicial documents addressed to a party whose place of residence or habitual abode is in another Member State are placed in the case file, and deemed to have been effectively served, if that party has failed to appoint a representative who is authorised to accept service and is resident in the first Member State in which the court proceedings are taking place.

19 In order to answer that question, the scope of Regulation No 1393/2007 must, at the outset, be defined, so as to verify whether it covers the service of judicial documents in the circumstances set out in that regulation, including, inter alia, those referred to by the national legislation at issue in the main proceedings, or whether, as the Polish Government claims, that regulation applies only where such documents have to be served in another Member State pursuant to the procedural rules in force in the State in which the proceedings take place.

20 In that regard, it must be pointed out that the wording of Article 1(1) of Regulation No 1393/2007 makes it clear that that regulation is to apply in civil and commercial matters 'where a judicial … document has to be transmitted from one Member State to another for service there.'

21 While it is true that, as the Polish Government maintains, the actual text of that provision does not contain any express indication regarding the circumstances in which such a document 'has to be' transmitted from one Member State to another, the fact remains that reading it together with other provisions of Regulation No 1393/2007 provides useful clarifications in that regard.

22 Specifically, in the first place, Article 1(2) of Regulation No 1393/2007 expressly provides that the regulation does not apply where the address of the person to be served with the document is not known.

23 In the second place, recital 8 in the preamble to the regulation states that the latter should not apply to service of a document on the party's authorised representative in the Member State where the proceedings are taking place, regardless of the place of residence of that party.

24 It thus follows from a systematic interpretation of the regulation in question that that regulation provides for only two circumstances in which the service of a judicial document between Member States falls outside its scope, namely (i) where the permanent or habitual residence of the addressee is unknown and (ii) where that person has appointed an authorised representative in the Member State where the judicial proceedings are taking place.

25 In other situations, as the Advocate General has noted in point 49 of his Opinion, where the person to be served with the judicial document resides abroad, the service of that document necessarily comes within the scope of Regulation No 1393/2007 and must, therefore, be carried out by the means put in place by the regulation to that end, as provided for by Article 1(1) thereof.

26 Such an outcome, since it stems directly from the context of that regulation, also removes any foundation for the Polish Government's argument that the identification of the circumstances in which a judicial document 'has to be' served in another Member State should be conducted by reference to the national law of the Member State in which the proceedings take place, in accordance with Regulation No 1393/2007.

27 To leave the national legislature with the task of determining in which cases such a requirement is present would prevent any uniform application of Regulation No 1393/2007, since it is possible for the Member States to provide for different solutions in this respect (see, in this sense, Case C-443/03 *Leffler* [2005] ECR I-9611, paragraph 44).

28 That said, it must be noted that, in so far as the service of judicial documents in circumstances such as those referred to by the national legislation at issue in the main proceedings falls within the scope of Regulation No 1393/2007, it is by reference to the scheme and objectives of that regulation that the compatibility of such legislation with European Union law must be examined, as that legislation puts in place a rule according to which service is deemed to have been effected by the placing of judicial documents in the case file where a party who resides abroad has not appointed a representative who is authorised to accept service in Poland of relevant documents.

29 In that regard, concerning, first, the scheme of Regulation No 1393/2007, it must be borne in mind that that regulation, which was adopted on the basis of Article 61(c) EC, seeks, as stated in recital 2 in the preamble thereto, to establish a system for intra-Community service the purpose of which is the proper functioning of the internal market (see, in this sense, Case C-14/08 *Roda Golf & Beach Resort* [2009] ECR I-5439, paragraphs 53 to 55).

30 In this context, in order to guarantee efficiency and speed in judicial procedures, Article 2 of that regulation, read in the light of recital 6 in the preamble thereto, provides that the service of judicial documents is, in principle, to be effected between the 'transmitting agencies' and the 'receiving agencies' designated by the Member States.

31 In addition, Regulation No 1393/2007 itself provides, in its Section 2, for other possible means of transmission, but without establishing a hierarchy between them (Case C-473/04 *Plumex* [2006] ECR I-1417, paragraphs 19 to 22), such as the transmission by consular or diplomatic channels, as well as service by diplomatic or consular agents, service by postal services, or even directly through the judicial officers, officials or other competent persons of the Member State addressed.

32 However, as those means of transmission of the judicial documents were the only ones laid down in an exhaustive manner in the scheme established by that regulation, it is clear that it does not provide any place for, and therefore precludes, a procedure for notional service such as that in force in Poland by virtue of Article 1135^5 of the Code of Civil Procedure.

33 This finding is corroborated, moreover, by the objectives of the regulation in question.

34 It is necessary to point out, in this regard, that the regulation, as is apparent from recital 2 in the preamble thereto, has, admittedly, the objective of improving and expediting the transmission of judicial documents between Member States (see, in this sense, Case C-14/07 *Weiss und Partner* [2008] ECR I-3367, paragraph 46, and *Roda Golf & Beach Resort*, paragraph 54).

35 However, as the Court has already held, those objectives cannot be attained by undermining in any way the rights of the defence of the addressees, which derive from the right to a fair hearing, enshrined in the second paragraph of Article 47 of the Charter of Fundamental Rights and Article 6(1) of the European Convention for the Protection of Human Rights and Fundamental Freedoms, signed in Rome on 4 November 1950 (see, in this sense, *Weiss und Partner*, paragraph 47).

36 From that point of view, as the Advocate General has noted in points 46 and 47 of his Opinion, several provisions of Regulation No 1393/2007 expressly seek to reconcile the efficiency and speed of the transmission of judicial documents with the need to ensure that the rights of the defence of the addressees are adequately protected, through, inter alia, the guarantee of actual and effective receipt of those documents.

37 In particular, Article 4(3) and Article 5(1) of Regulation No 1393/2007, read in the light of recital 12 in the preamble thereto, lay down the requirement that the service of judicial documents be effected using a standard form and that that form be translated into a language understood by the addressee or into the official language of the Member State addressed, or, if there are several official languages in that Member State, into at least one of the official languages of the place where that service is to be effected.

38 In addition, Article 14 of Regulation No 1393/2007 obliges each Member State, having chosen to effect service directly by postal services, to serve the judicial documents by means of a registered letter with acknowledgment of receipt.

39 Similarly, Article 19(1) of Regulation No 1393/2007 requires that judgment in the Member State of origin should not be given, if the defendant has not appeared, until it is established that the document instituting the proceedings was served in sufficient time by a method prescribed by the internal law of the Member State addressed, or that the document was actually delivered to the defendant or to his residence by another method provided for by that regulation, in sufficient time to enable the defendant to present a defence.

40 However, in that respect, it is clear that a system for notional service, such as that laid down in Article 1135[5] of the Code of Civil Procedure, is incompatible with the objective of protecting the rights of the defence envisaged in Regulation No 1393/2007.

41 Indeed, as the Advocate General has noted in points 52 to 54 of his Opinion, that system deprives of all practical effect the right of the person to be served, whose place of residence or habitual abode is not in the Member State in which the proceedings take place, to benefit from actual and effective receipt of that document because it does not guarantee for that addressee, inter alia, either knowledge of the judicial act in sufficient time to prepare a defence or a translation of that document.

42 In the light of all of those considerations, the answer to the question submitted is that Article 1(1) of Regulation No 1393/2007 must be interpreted as precluding legislation of a Member State, such as that at issue in the main proceedings, which provides that judicial documents addressed to a party whose place of residence or habitual abode is in another Member State are placed in the case file, and deemed to have been effectively served, if that party has failed to appoint a representative who is authorised to accept service and is resident in the first Member State, in which the judicial proceedings are taking place.

Costs

43 Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the national court, the decision on costs is a matter for that court. Costs incurred in submitting observations to the Court, other than the costs of those parties, are not recoverable.

On those grounds, the Court (First Chamber) hereby rules:

Article 1(1) of Regulation (EC) No 1393/2007 of the European Parliament and of the Council of 13 November 2007 on the service in the Member States of judicial and extrajudicial documents in civil or commercial matters (service of documents) and repealing Council Regulation (EC) No 1348/2000 must be interpreted as precluding legislation of a Member State, such as that at issue in the main proceedings, which provides that judicial documents addressed to a party whose place of residence or habitual abode is in another Member State are placed in the case file, and deemed to have been effectively served, if that party has failed to appoint a representative who is authorised to accept service and is resident in the first Member State, in which the judicial proceedings are taking place.

[Signatures]