



10.1.2024

NOTICE TO MEMBERS

Subject: Petition No 0437/2016 by R.N. (Italian) on a potential violation by Austria and Germany of Regulation 1393/2007/EC on the service in the Member States of judicial and extrajudicial documents in civil or commercial matters

1. Summary of petition

The petitioner claims that the courts in Germany and Austria are systematically violating Regulation 1393/2007/EC by failing to serve judicial and extrajudicial documents in a language which the addressee understands or in the official language of the Member State in which they are being served, with this being the case particularly frequently with binational minors.

2. Admissibility

Declared admissible on 15 September 2016. Information requested from Commission under Rule 227(6) (former Rule 216(6)).

3. Commission reply, received on 10 January 2024

The petitioner alleges that Austrian (and German) courts do not comply with Regulation (EC) No 1393/2007 on the service of documents, because a) they systematically serve documents on foreign recipients in another Member State in German language even when the recipient is not German and does not understand German and because b) they require from the recipient to pay the costs incurred in translating the documents.

Regarding the language of the documents to be served

The translation into a specific language of the document to be served does not constitute a precondition for transmitting the documents under the Service of Documents Regulation¹. The

¹ Regulation (EC) No 1393/2007 of the European Parliament and of the Council of 13 November 2007 on the

documents can be sent to the addressee through any of the channels provided for in the Regulation irrespective of the language they were written in or translated into. On the other hand, Article 8 of the Regulation grants a right of refusal to the addressee if the document (or its translation) is in a language which is neither the official language of the Member State addressed, nor a language which the addressee understands. Consequently, Austrian (and German) courts do not violate the provisions of the Regulation just because they serve documents in German to recipients in another Member State.

Article 8(3) of the Service of Documents Regulation determines the consequences for the court of origin of a refusal to accept service by the recipient. According to this provision, "*if the addressee has refused to accept the document..., the service of the document can be remedied through the service on the addressee... of the document accompanied by a translation into a language provided for in paragraph (1)*". A practice of having the documents translated into the language of the addressee only after the recipient has exercised his/her right of refusal under Article 8 of the Regulation is in compliance with the requirements of the Regulation.

On 1 July 2022, the Service of Documents Regulation was replaced by the Service of Documents Recast Regulation². Article 12 of the latter regulation extends the right of recipients of judicial and extrajudicial documents to refuse their service when they are not drafted in or translated into a language which the recipient understands or the official language of the Member State where the service is taking place from 1 week to 2 weeks of the time of service. When documents are served on an addressee in another Member State, the person should be informed of this right where the documents are not written in or not accompanied by a translation into the official language or the Member State where the service is taking place by enclosing with the document to be served Form L of the above-named Regulation. Form L should be enclosed 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;
- the official language or one of the official languages of the Member State where the proceedings are taking place; and
- the official language of another Member State if there is an indication that the addressee understands that language.

In addition, Article 19(4) of the Service of Documents Regulation and Article 22(4) of the Service of Documents Recast Regulation give a judge the possibility to grant relief, that is to say relieve the effects of the expiry of the time of appeal from the judgment, where the defendant:

- without any fault on his part, did not have knowledge of the document in sufficient time to defend, or knowledge of the judgment in sufficient time to appeal, and
- has submitted a defence to the action on the merits.

Regarding the costs of translation

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 L 324, 10.12.2007, p. 79.

² Regulation (EU) 2020/1784 of the European Parliament and of the Council of 25 November 2020 on the service in the Member States of judicial and extrajudicial documents in civil or commercial matters (service of documents) (recast), OJ L 405, 2.12.2020, p. 40.

According to Article 5(2) of the Service of Documents Regulation and Article 9(2) of the Service of Documents Recast Regulation, the applicant shall bear any costs of translation prior to the transmission of the document, without prejudice to any possible subsequent decisions by the court or competent authority on liability for such costs. Therefore the Service of Documents and the Service of Documents Recast Regulation do not regulate the final allocation of the costs of translations which become necessary following the refusal by the recipients to accept the documents. This question is left to the national law of the Member States (it being understood that the Member State should comply with the general principles of Union law, including the principle of non-discrimination).

Article 11 of the Service of Documents Regulation and Article 15 of the Service of Documents Recast Regulation refer to the "*costs of service*", but these provisions are dealing only with the costs occasioned by the services rendered by the authorities and officers in the Member State addressed with the purpose of delivering the document to the recipient. These Articles, therefore, do not address the costs which arose in the proceedings in the Member State of origin due to the translation of the documents to be served abroad.

Conclusions

In light of this, and on the basis of the information to us, the Commission has no indications that the Austrian (or German) courts violate the Service of Documents or the Service of Documents Recast Regulation where they order a party to pay for the costs of translation in accordance with their national law. Council Directive 2003/8/EC on legal aid³ may provide support in that regards.

³ Council Directive 2003/8/EC of 27 January 2003 to improve access to justice in cross-border disputes by establishing minimum common rules relating to legal aid for such disputes, OJ L 26, 31.1.2003, p. 41.