Reports of Cases

JUDGMENT OF THE COURT (Seventh Chamber)

2 June 2022 *

(Reference for a preliminary ruling – Judicial cooperation in civil matters – Service of judicial and extrajudicial documents – Regulation (EC) No 1393/2007 – Article 5 – Translation of the document – Translation costs borne by the applicant – Concept of 'applicant' – Service, by the court before which proceedings have been brought, of judicial documents on interveners in the proceedings)

In Case C-196/21,

REQUEST for a preliminary ruling under Article 267 TFEU from the Tribunalul Ilfov (Regional Court, Ilfov, Romania), made by decision of 4 February 2021, received at the Court on 26 March 2021, in the proceedings

SR

v

EW,

interveners:

FB,

CX,

IK,

THE COURT (Seventh Chamber),

composed of J. Passer, President of the Chamber, N. Wahl and M.L. Arastey Sahún (Rapporteur), Judges,

Advocate General: M. Szpunar,

Registrar: A. Calot Escobar,

having regard to the written procedure,

* Language of the case: Romanian.

after considering the observations submitted on behalf of:

– EW, by S. Dumitrescu, avocată,

– the Romanian Government, by E. Gane, L.-E. Baţagoi and A. Wellman, acting as Agents,

– the French Government, by A.-L. Desjonquères and N. Vincent, acting as Agents,

– The Hungarian Government, by Z. Biró-Tóth and M.Z. Fehér, acting as Agents,

– the European Commission, by A. Biolan and S. Noë, acting as Agents,

having decided, after hearing the Advocate General, to proceed to judgment without an Opinion,

gives the following

Judgment

1 This request for a preliminary ruling concerns the interpretation of Article 5 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).

2 The request has been made in proceedings between SR and EW concerning the dissolution of their marriage by mutual consent and the attribution and exercise of parental responsibility over their minor child.

Legal context

European Union law

3 Recitals 2 to 4 of Regulation No 1393/2007 state:

‘(2) The proper functioning of the internal market entails the need to improve and expedite the transmission of judicial and extrajudicial documents in civil or commercial matters for service between the Member States.

(3) The Council, by an Act dated 26 May 1997, drew up a Convention on the service in the Member States of the European Union of judicial and extrajudicial documents in civil or commercial matters and recommended it for adoption by the Member States in accordance with their respective constitutional rules. That Convention has not entered into force. Continuity in the results of the negotiations for conclusion of the Convention should be ensured.

(4) On 29 May 2000[,] the Council adopted Regulation (EC) No 1348/2000 on the service in the Member States of judicial and extrajudicial documents in civil or commercial matters [OJ 2000 L 160, p. 37]. The main content of that Regulation is based on the Convention.’

4 Article 2 of that regulation provides:

‘1. Each Member State shall designate the public officers, authorities or other persons, hereinafter referred to as ‘transmitting agencies’, competent for the transmission of judicial or extrajudicial documents to be served in another Member State.

2. Each Member State shall designate the public officers, authorities or other persons, hereinafter referred to as ‘receiving agencies’, competent for the receipt of judicial or extrajudicial documents from another Member State.

…’

5 Article 5 of that regulation provides:

‘1. 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.

2. The applicant shall bear any costs of translation prior to the transmission of the document, without prejudice to any possible subsequent decision by the court or competent authority on liability for such costs.’

6 Article 8(1) of that regulation provides:

‘The receiving agency shall inform the addressee, using the standard form set out in Annex II, 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 written in, or accompanied by a translation into, either of the following languages:

(a) a language which the addressee understands;

or

(b) 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.’

Romanian law

7 Article 61 of the Legea nr. 134/2010 privind Codul de procedură civilă (Law No 134/2010 establishing the Code of Civil Procedure) of 1 July 2010 (*Monitorul Oficial al României*, Part I, No 247 of 10 April 2015) provides:

‘1. Any person having an interest may intervene in proceedings between the original parties.

…

3. The intervention is ancillary when it is solely in support of the case of one of the parties.’

8 Article 64 of that law provides:

‘1. The court shall transmit the application for leave to intervene and copies of any accompanying documents to the parties.

2. After hearing the intervener and the parties, the court shall give a ruling, by reasoned order, on the admissibility of the intervention.

…’

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

9 SR and EW are, respectively, the mother and father of a minor child.

10 On a date not specified in the order for reference, SR and EW each made an application to the Judecătoria Buftea (Court of First Instance, Buftea, Romania) for the dissolution of their marriage, for the attribution of parental responsibility over their child, and for the practical arrangements for the exercise of that parental responsibility to be defined.

11 By judgment of 4 July 2016, that court dissolved the marriage of SR and EW by mutual consent. It also determined that the child’s place of residence would be at the mother’s home and decided that parental responsibility would be exercised jointly by both parents, ensuring that the personal links between the father and the child would be maintained in accordance with a visitation schedule. In addition, that court ordered EW to pay maintenance for the child.

12 EW and SR each brought an appeal against that judgment before the referring court, the Tribunalul Ilfov (Regional Court, Ilfov, Romania).

13 EW seeks, principally, to have that judgment set aside on the ground that the court lacked jurisdiction and, in the alternative, to have that judgment varied in part as regards the child’s place of residence and the payment of maintenance for that child.

14 SR seeks exclusive exercise of parental authority, removal of the visitation schedule established for EW, an amendment of the amount of maintenance that EW is required to pay, and a new allocation of costs.

15 On 5 July 2018, FB, CX and IK, who are, respectively, the child’s brother, sister and paternal grandfather, applied for leave to intervene in support of EW. Those interveners reside in France.

16 By order of 15 September 2020, the referring court decided, in order to rule on the admissibility of those applications for leave to intervene, that SR and EW were required to provide a translation into French of the summons issued by that court with a view to them being served on FB, CX and IK, in accordance with the provisions of Regulation No 1393/2007.

17 SR and EW refused to pay the costs associated with the translation into French of those procedural documents, taking the view that it was for the referring court to bear that cost. Those parties submit that the referring court must be regarded as the ‘applicant’ for the purposes of the application of Article 5(2) of Regulation No 1393/2007.

18 In that regard, the referring court states that the concept of 'applicant', within the meaning of Article 5 of Regulation No 1393/2007, cannot refer to a court. A court can act only as a transmitting agency, within the meaning of Article 2(1) of that regulation, or as a receiving agency, within the meaning of Article 2(2) of that regulation. In the present case, the referring court acts as the transmitting agency responsible for transmitting the judicial documents in question for the purposes of service in another Member State, namely France.

19 In the referring court's view, it is apparent from Article 5(1) of that regulation that the concept of 'applicant' and the concept of 'addressee' are clearly excluded from the respective scopes of the concepts of 'transmitting agency' and 'receiving agency'. Since, in the main proceedings, the referring court is the transmitting agency, it cannot therefore be regarded as the applicant.

20 According to that court, the applicant, within the meaning of Regulation No 1393/2007, is the person who made the application and who has an interest in service being effected in accordance with that regulation, so that the judicial proceedings can be completed. In the present case, it is SR and EW, in so far as each of those parties brought an appeal before the referring court and therefore, in principle, has an interest in the appeal proceedings being completed.

21 In those circumstances, the Tribunalul Ilfov (Regional Court, Ilfov) decided to stay the proceedings and to refer the following question to the Court of Justice for a preliminary ruling:

'Where a court decides to summon interveners in civil proceedings, is the "applicant", within the meaning of Article 5 of [Regulation No 1393/2007], the court in the Member State which decides to summon the interveners or the litigant in the proceedings pending before that court?'

Consideration of the question referred for a preliminary ruling

Admissibility

22 The Romanian Government considers that the request for a preliminary ruling is inadmissible, in so far as the referring court's description of the factual context does not make it possible to ascertain whether the issue of the need to translate the procedural document and, consequently, the issue of the related costs, actually arises in the main proceedings.

23 More specifically, the referring court does not state whether the service of the summons on the interveners has already taken place and whether they refused to accept the summons on the ground that they were not drafted in a language which they understand or which they are supposed to understand. If that is not the case, the question referred by the referring court is hypothetical and, consequently, is inadmissible.

24 That government observes that the Court of Justice has already had occasion to state that, in accordance with Article 5(1) of Regulation No 1393/2007, it is for the transmitting agency to inform the applicant that the addressee may refuse to accept it if it is not in one of the languages provided for in Article 8 of that regulation. Nevertheless, in accordance with the judgment of 16 September 2015, *Alpha Bank Cyprus* (C-519/13, EU:C:2015:603, paragraph 35), it is for the applicant to decide whether the document at issue must be translated, the cost of which he or she must also bear, in accordance with Article 5(2) of that regulation.

25 In that regard, it should be noted that, according to settled case-law of the Court of Justice, questions on the interpretation of EU law referred by a national court in the factual and legislative context which that national court is responsible for defining, the accuracy of which is not a matter for the Court to determine, enjoy a presumption of relevance. The Court may refuse to rule on a question referred by a national court only where it is quite obvious that the interpretation of EU law that is sought bears no relation to the actual facts of the main action or its object, where the problem is hypothetical, or where the Court does not have before it the factual or legal material necessary to give a useful answer to the questions submitted to it (judgment of 21 December 2021, *Euro Box Promotion and Others*, C-357/19, C-379/19, C-547/19, C-811/19 and C-840/19, EU:C:2021:1034, paragraph 139 and the case-law cited).

26 Furthermore, under the spirit of judicial cooperation which governs relations between national courts and the Court of Justice in the context of preliminary-ruling proceedings, the fact that the referring court did not make certain initial findings does not necessarily mean that the request for a preliminary ruling is inadmissible if, in spite of those deficiencies, the Court, in the light of the information contained in the case file, considers that it is in a position to provide a useful answer to the referring court (judgment of 2 April 2020, *Reliantco Investments and Reliantco Investments Limassol Sucursala Bucureşti*, C-500/18, EU:C:2020:264, paragraph 42 and the case-law cited).

27 In the present case, it should be noted that the Court has sufficient information to enable it to provide a useful answer to the referring court. It must be noted that it is apparent from the written observations submitted to the Court by EW that the referring court already served procedural documents on the interveners, in 2019, which those interveners, in accordance with Regulation No 1393/2007, refused to accept on the ground that those documents were drafted in Romanian. Since they did not have a command of that language, they asked to receive those procedural documents translated into French.

28 Those facts set out by EW thus make it possible to supplement, so far as necessary, the factual context presented by the referring court, and thus support the presumption of relevance enjoyed by the question referred, by ruling out the possibility that that question may be regarded as hypothetical.

29 In those circumstances, the request for a preliminary ruling is admissible.

Substance

30 By its question, the referring court asks, in essence, whether Article 5(2) of Regulation No 1393/2007 must be interpreted as meaning that a court which orders the transmission of judicial documents to third parties that have applied for leave to intervene in the proceedings must be regarded as the 'applicant' within the meaning of that provision.

31 It should be noted at the outset that, under that provision, the applicant is to bear any costs of translation prior to the transmission of the document, without prejudice to any possible subsequent decision by the court or competent authority on liability for such costs.

32 In that regard, it must be stated that Regulation No 1393/2007 does not contain any definition of the concept of 'applicant'.

33 In the absence of such a definition, Article 5(2) of Regulation No 1393/2007 must be interpreted in the light of its context and of the objectives pursued by Regulation No 1393/2007 (see, to that effect, judgment of 16 September 2015, *Alpha Bank Cyprus*, C-519/13, EU:C:2015:603, paragraph 28, and, by analogy, as regards Regulation No 1348/2000, judgment of 8 May 2008, *Weiss und Partner*, C-14/07, EU:C:2008:264, paragraph 45). The origins of a provision of EU law may also provide information relevant to its interpretation (judgment of 10 December 2018, *Wightman and Others*, C-621/18, EU:C:2018:999, paragraph 47 and the case-law cited).

34 As regards, in the first place, the contextual and historical interpretation of Article 5(2) of that regulation, it should be noted that the very wording of that provision draws a distinction between the applicant, which bears any translation costs prior to the transmission of the document, and the court or competent authority seised in the Member State of origin, which may adopt a possible subsequent decision on liability for those costs.

35 That distinction between the applicant and the national court seised is also apparent from the case-law of the Court of Justice relating to Regulation No 1393/2007, in particular the judgment of 16 September 2015, *Alpha Bank Cyprus* (C-519/13, EU:C:2015:603, paragraphs 41 to 43), in which the Court stated, first, that it is for the court before which proceedings are brought in the Member State of origin to rule on questions of a substantive nature, since they oppose the applicant and the addressee of the document and, second, to ensure that the respective rights of the parties concerned, namely the applicant and the addressee, are upheld in a balanced manner.

36 A similar distinction follows from the order of 28 April 2016, *Alta Realitat* (C-384/14, EU:C:2016:316, paragraph 75), in which the Court envisaged the possibility that, before initiating the procedure for serving the document, the court hearing the matter may be required to conduct a preliminary interim assessment of the addressee's linguistic knowledge for the purposes of determining, with the applicant's agreement, whether or not a translation of the document is necessary.

37 It should also be noted that Article 5(1) of Regulation No 1393/2007 draws a distinction equivalent to that referred to in paragraph 34 of the present judgment, where it provides that the applicant is to be advised by the transmitting agency that the addressee may refuse to accept the transmitted document if it is not in one of the languages provided for in Article 8 of that regulation. Under Article 2(1) of that regulation, transmitting agencies are public officers, authorities or other persons competent for the transmission of judicial or extrajudicial documents to be served in another Member State. It is apparent from the order for reference that, in the present case, the referring court acts as a transmitting agency.

38 Furthermore, it is apparent from recital 4 of Regulation No 1393/2007 that Regulation No 1348/2000, which it repealed, was essentially based on the Convention, drawn up on the basis of Article K.3 of the Treaty on European Union, on the service in the Member States of the European Union of judicial and extrajudicial documents in civil or commercial matters, adopted by an Act of the Council of the European Union of 26 May 1997 (OJ 1997 C 261, p. 1).

39 The Explanatory Report on that convention (OJ 1997 C 261, p. 26), which is relevant for the interpretation of Regulation No 1393/2007 (see, to that effect, judgment of 11 November 2015, *Tecom Mican and Arias Domínguez*, C-223/14, EU:C:2015:744, paragraph 40, and, by analogy, as regards Regulation No 1348/2000, judgment of 8 May 2008, *Weiss und Partner*, C-14/07,

EU:C:2008:264, paragraph 53), supports the interpretation of Article 5(2) of Regulation No 1393/2007 to the effect that the court before which proceedings are brought is not liable for the costs of translation of a document.

40 The commentary on Article 5(2) of that convention, the wording of which is, in essence, identical to that of Article 5(2) of Regulation No 1393/2007, in that explanatory report, states that '"applicant" means in all cases the party interested in transmission of the document. It therefore cannot refer to the courts'.

41 In those circumstances, it follows from the contextual and historical interpretation of Article 5(2) of Regulation No 1393/2007 that, where a court orders the transmission of judicial documents to third parties that apply for leave to intervene in the proceedings, that court cannot be regarded as being the 'applicant', within the meaning of that provision, for the purposes of liability for any translation costs prior to the transmission of those documents.

42 In the second place, that finding is supported by a teleological interpretation of Regulation No 1393/2007.

43 The Court has already had occasion to state, with regard to the objectives of Regulation No 1393/2007, that that regulation seeks, as is apparent from recital 2 thereof, to establish a system for the service, within the European Union, of judicial and extrajudicial documents in civil or commercial matters, for the purpose of the proper functioning of the internal market. Therefore, with the aim of improving the efficiency and speed of judicial procedures and ensuring proper administration of justice, that regulation establishes the principle of direct transmission of judicial and extrajudicial documents between the Member States, which has the effect of simplifying and accelerating the procedures (judgment of 16 September 2015, *Alpha Bank Cyprus*, C-519/13, EU:C:2015:603, paragraphs 29 and 30 and the case-law cited, and order of 28 April 2016, *Alta Realitat*, C-384/14, EU:C:2016:316, paragraphs 47 and 48).

44 That said, the Court has also ruled that Regulation No 1393/2007 must be interpreted so as, in each specific case, to guarantee a fair balance between the interests of the applicant and those of the addressee of the document, by reconciling the objectives of efficiency and speed of the service of the procedural documents with the need to ensure that the rights of the defence of the addressee of those documents are adequately protected (judgment of 16 September 2015, *Alpha Bank Cyprus*, C-519/13, EU:C:2015:603, paragraph 33 and the case-law cited, and order of 28 April 2016, *Alta Realitat*, C-384/14, EU:C:2016:316, paragraph 51).

45 Furthermore, the Court has stated that although it is essential, on the one hand, so that the addressee is able to exercise his or her right to defend himself or herself effectively, that the document concerned is drafted in a language he or she understands, on the other hand, the applicant must not suffer the adverse consequences of a refusal to accept an untranslated document which purely seeks to delay matters and manifestly constitutes an abuse, where it is established that the addressee of that document understands the language in which it is written. It is therefore for the court before which the action is pending in the Member State of origin to preserve the interests of each party as well as possible, in particular by examining all the conclusive facts and evidence specifically demonstrating the linguistic knowledge of the addressee (see, to that effect, order of 28 April 2016, *Alta Realitat*, C-384/14, EU:C:2016:316, paragraphs 78 and 79).

46 An interpretation to the effect that the court before which proceedings have been brought in the Member State of origin should be regarded as the applicant, within the meaning of Article 5(2) of Regulation No 1393/2007, would run counter to the obligation on that court to ensure a fair balance between the interests of the applicant and those of the addressee of the document. Compliance with such an obligation necessarily means that the authority which has that obligation must be in a position of impartiality in relation to the interests of the applicant and those of the addressee. It follows that that authority cannot be confused with one of those interested parties, namely the applicant.

47 In the light of all the foregoing considerations, the answer to the question referred is that Article 5(2) of Regulation No 1393/2007 must be interpreted as meaning that, where a court orders the transmission of judicial documents to third parties that apply for leave to intervene in the proceedings, that court cannot be regarded as being the 'applicant' within the meaning of that provision.

Costs

48 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 (Seventh Chamber) hereby rules:

Article 5(2) 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 meaning that, where a court orders the transmission of judicial documents to third parties that apply for leave to intervene in the proceedings, that court cannot be regarded as being the 'applicant' within the meaning of that provision.

[Signatures]