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Day 2

EJTN CIVIL LAW PROJECT JUDICIAL TRAINING SERVICE OF DOCUMENTS & TAKING OF EVIDENCE ABROAD

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TASK

Exchange of experiences in service of documents

GREEK CASE LAW

THREE EXAMPLES

- **WHEN TO SERVE ABROAD ?**
- **WHEN IS TRANSLATION IMPERATIVE?**
- **JUDGMENT WITHOUT CERTIFICATE OF SERVICE ?**

WHEN TO SERVE ABROAD ?

- **THE FACTS**
- The parties are a Greek [G]and a Cypriot [C] company. C was an offshore mail box company registered in Limassol.
- G filed a claim against C before the Thessaloniki CFI.
- Prior to service of process, G tried to contact C by e-mail, fax and telephone, hoping for a last-minute settlement. However, no answer came back.

WHEN TO SERVE ABROAD ?

- Considering a service of process in Cyprus as totally useless, G opted for serving proceedings at the domicile of the CEO of C in Chania, Crete.
- A true copy of the claim was indeed served to the address stated in the company's statutes as the domicile of the CEO in Chania, received willingly by his sister.
- C did not appear in the hearing.

WHEN TO SERVE ABROAD ?

- **THE RULING**
- Claim dismissed due to lack of proper service.
- Proceedings had to be served in Cyprus, where the actual seat of C is registered.
- Claimant failed to prove that Limassol was simply a registered seat, and Chania the actual one, i.e. the place where C actually conducts its business.
- All invoices produced by G stated an address in Limassol as the place of delivery
- Hence, the procedure stipulated under the Service Regulation was not followed.

Questions / Views

- Do you agree with the court's judgment?
- Do you see any infringement of the right to be heard?
- What would have been the steps of G, if he had chosen to serve proceedings in Cyprus?
- Would you accept service in Greece as the last resort for G?

WHEN IS TRANSLATION IMPERATIVE?

- **THE FACTS:** The parties are a Greek bank (the claimant) and a Greek debtor living in Germany (the defendant).
- The claimant initiated compensation proceedings before the Thessaloniki Court of 1st Instance, in order to obtain an enforceable title covering the remaining unpaid sum out of a credit agreement. The claim was filed with the court and a hearing date was set.
- Following the above, the claimant served the claim to the Thessaloniki Prosecutor's Office, the latter being the Transmitting Agency officially declared by the Hellenic Republic.

WHEN IS TRANSLATION IMPERATIVE?

- At the hearing date, the claimant submitted three documents in this respect:
 - a) A true copy of the certificate of service to the Prosecutor's Office by a competent Greek process server.
 - b) The original of the standard form issued in accordance with Art. 4 Para 3 Service Regulation.
 - c) The standard form issued in accordance with Art. 10 Service Regulation, where it was noted that the recipient refused acceptance of the document.
- The defendant was in default of proceedings.

WHEN IS TRANSLATION IMPERATIVE?

- **THE RULING:** The court dismissed the hearing of the action as inadmissible.
- It founded its ruling on several provisions of the Service Regulation (Articles 5, 8, 10 and 19).
- It was clear that the claim was served without a translation in German, i.e. the official language of the Member State addressed.
- Hence, the court focused especially on Article 8 Para 1 (b) Service Regulation, and decided that the addressee (defendant) did not understand the language of the Member State of transmission (Greek).

WHEN IS TRANSLATION IMPERATIVE?

- The foundation upon which the court based its judgment was the following:
 - a) The defendant's refusal to accept the document recorded in the standard form aforementioned mentioned no reason; however, it is presumably connected with the inability of the defendant to understand the Greek language.
 - b) The claimant failed to produce any correspondence between the parties related to the subject matter in the Greek language.
 - c) The loan contract was not signed by the defendant; he had appointed a proxy (resident in Greece) for this cause.
- Finally, the court emphasized that the claimant could have served a fresh copy of the claim, this time with an attached translation; however, he failed to so.
- For the above reasons, the Thessaloniki Court of 1st Instance dismissed the hearing of the action as inadmissible.

Questions / Views

- Do you agree with the court's judgment?

JUDGMENT WITHOUT CERTIFICATE OF SERVICE ?

- **THE FACTS:** The litigants are two companies from Greece [G] and Italy [I] respectively. They concluded a subcontract for work in June 2002.
- According to the agreement, the Greek company would have to prepare a set of decorative constructions for a store in Athens.
- The Italian company would then cover all expenses and fees. Upon completion of the work, [I] was in default of payment for the sum of 80.381 Euros.
- [G] filed an action for the above sum before the Athens 1st Instance court. The claim was properly transmitted from the competent Greek authority to the Italian counterpart (Rome office of court bailiffs), which confirmed receipt of the documents.

JUDGMENT WITHOUT CERTIFICATE OF SERVICE ?

- Some weeks later, the latter sent back to the Greek Authority a certificate of the Vicenza Prosecutor's Office, and another of a bailiff appointed at the Vicenza 1st Instance court, stating that the claim could not be served, because [I] has changed its seat.
- Based on the facts aforementioned, the Athens 1st Instance court continued with the proceedings.
- [G] was successful in both instances [Athens First Instance Court, default Judgment Nr. 2465/2010 & Athens CoA, Judgment Nr. 3892/2014, both unreported].
- [I] appealed before the Supreme Court; one of the grounds for cassation was improper service pursuant to the Service Regulation.

JUDGMENT WITHOUT CERTIFICATE OF SERVICE ?

- **THE RULING:** The Supreme Court began its analysis by stating the prevalence of the Service Regulation over domestic law and the 1965 Hague Service Convention, whenever a document needs to be served within an EU Member State.
- Passing through Articles 6, 7 & 10 Service Regulation, it landed on Art. 19 Paras 1 & 2, stressing out that Greece has made a declaration, allowing domestic judges to proceed with the hearing upon fulfilment of the conditions set under Art. 19.2.

JUDGMENT WITHOUT CERTIFICATE OF SERVICE ?

- Departing from the factual situation described above, the Supreme Court endorsed the reasoning of the Athens CoA: All conditions set under Art. 19.2 Service Regulation have been met, i.e. service by one of the methods provided by the Regulation; lapse of the 6-months period; no service made, despite the efforts of the Italian Authorities.
- In particular, so the Supreme Court, the efforts remained fruitless because of [I's] transfer of seat, and the omission of the latter to notify its new registered office, so that the Authorities could have served the claim there.
- For the reasons above, the Supreme Court dismissed the cassation.

Questions / Views

- Do you agree with the court's judgment?
- Would you require more efforts done by the claimant?
- Would you require more efforts done by the Italian authorities?



Thank you !

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