

TRANSMISSION OF JUDICIAL DOCUMENTS ABROAD

Georgiana COMAN*

Abstract

Due to the multitude of legal relationships involving parties domiciled in different countries, it has been necessary to regulate the way in which summonses and procedural documents are to be transmitted in the event of disputes. Thus, in order to create the appropriate means for judicial and extrajudicial documents to be served or transmitted abroad to reach their addressees in a timely manner, at global and, later, european level, regulations and conventions have been adopted that established the way of transmitting the procedural documents to the party domiciled in a country other than the one in which the trial takes place. There are also express provisions in this regard at national level in the Code of Civil Procedure. All these steps were necessary to respect the right to free movement of persons, and procedurally, to respect the principle of adversarial proceedings and the right of defense of the parties. It is necessary to analyze the situation of summoning the parties and transmitting to them the procedural documents, in a civil litigation (in its broad sense), pending before the Romanian courts, in which at least one of the parties has established its domicile abroad, in view of the Regulation (EC) No 1393/2007 and the 1965 Hague Convention.

Keywords: *abroad, transmission, Regulation (EC) no. 1393/2007, judicial, documents.*

1. Introduction

The need to ensure the right of defense for all parties to the process also implies their legal summons, as well as the transmission of all procedural documents. At the level of the European Union, at present, there is Regulation (EC) no. 1393/2007 on the service in the Member States of judicial and extrajudicial documents in civil or commercial matters (hereinafter referred to as the Regulation). At the international level, the 1965 Hague Convention¹ (hereinafter referred to as the Convention) is the main act adopted in the field of the communication of judicial documents to parties domiciled in another country. Also, if there are no conventional links between the two countries between which the notification procedure is to take place, international legal assistance in civil and commercial matters may be granted on the basis of international courtesy, subject to the principle of reciprocity.

In Romania, the law no. 189/2003 regarding the international legal assistance in civil and commercial matters was adopted, art. 2 paragraph 2 of the normative act indicating that the provisions of this law do not prejudice the provisions of European Union law, bilateral or multilateral conventions to which Romania is a party, completing the situations not regulated by them.

2. Transmission of judicial documents according to Regulation (EC) no. 1393/2007

2.1. Field of application

Article 1, paragraph (1) of the Regulation sets out its scope, whether in civil or commercial matters, where a judicial or extrajudicial document must be transmitted from one Member State to another in order to be served. It does not apply, in particular, to tax, customs or administrative matters, nor to the State's liability for acts or omissions in the exercise of official authority (*acta iure imperii*). Also, the Regulation does not apply if the address of the person to whom the document is served is not known. This last provision is an important one, but it should not be assimilated to the situation in which the address of the addressee of the act is indicated, but it is no longer current or incomplete. In my opinion and taking into account the provisions of Article 7 (2) of the Regulation, I believe that the receiving agency should take all necessary steps to identify the addressee as soon as possible, according to the means at its disposal.

With regard to the temporal application of the Regulation, it should be mentioned that it will apply until 1 July 2022, when it will be replaced by Regulation (EU) 2020/1784.

* PhD Candidate, Faculty of Law, "Nicolae Titulescu" University of Bucharest (e-mail: georgiana_mail@yahoo.com).

¹ Signatory states: Albania, Andorra, Argentina, Armenia, Australia, Austria, Azerbaijan, Belarus, Belgium, Bosnia and Herzegovina, Brazil, Bulgaria, Burkina Faso, Canada, Chile, China, People's Republic of , Costa Rica, Croatia, Cyprus, Czech Republic, Denmark, Dominican Republic, Ecuador, Egypt, Estonia, European Union, Finland, France, Georgia, Germany, Greece, Hungary, Iceland, India, Ireland, Israel, Italy, Japan, Jordan, Kazakhstan, Korea, Republic of, Latvia, Lithuania, Luxembourg, Malaysia, Malta, Mauritius, Mexico, Monaco, Montenegro, Morocco, Namibia, Netherlands, New Zealand, Nicaragua, Norway, Panama, Paraguay, Peru, Philippines, Poland, Portugal, Republic of Moldova, Republic of North Macedonia, Romania, Russian Federation, Saudi Arabia, Serbia, Singapore, Slovakia, Slovenia, South Africa, Spain, Sri Lanka, Suriname, Sweden, Switzerland, Thailand, Tunisia, Turkey, Ukraine, United Kingdom of Great Britain and Northern Ireland, United States of America, Uruguay, Uzbekistan, Venezuela, Vietnam, Zambia.

2.2. Purpose of the Regulation

An important objective considered in the adoption of the Regulation and resulting from it is that the service of documents must be effected as soon as possible from the moment of the receipt of the request by the receiving agency (for example, the art. 7 of the Regulation²). Also in connection with the need to ensure the communication of judicial documents as soon as possible, Article 6 paragraph (1) of the Regulation provides that on receipt of the document, the receiving agency shall send an acknowledgment of receipt to the transmitting agency as soon as possible, within seven days of receipt, by the fastest means of transmission, using the standard form set out in Annex I. Therefore, the speedy communication of judicial documents, but also the knowledge as soon as possible of the situation and stage of communication of documents by the transmitting agency is vital for the functioning of this form of cooperation between Member States.

2.3. How to apply the Regulation

The Regulation provides for several means of communication between Member States. Thus, a first way of communication, and which will be emphasized in this paper, is through transmission agencies and receiving agencies (art. 4-11). According to art. 2 paragraphs 1 and 2 of the Regulation, each state has the obligation to designate the transmitting and receiving agencies involved in the procedure for transmitting / receiving the documents to be notified³. In the case of Romania, the courts of first instance are the receiving agencies, and the transmitting agencies can be any court. Identification of the competent receiving agencies can be done by accessing the portal <https://e-justice.europa.eu/home.do>.

Other means of communication provided for in the Regulation are the following:

- by consular or diplomatic route (art. 12);
- through diplomatic or consular agents (art. 13);
- through courier services (art. 14);

- notification or direct communication (art. 15).

Considering the hypothesis in which, in a litigation pending before the Romanian courts, one of the parties is domiciled in another state of the European Union and it is necessary to communicate the summons and the procedural documents to this party (request for summons, documents filed in evidence by the other party), the court has several possibilities. According to the Code of Civil Procedure⁴, persons who are abroad, if they have their domicile or residence known, will be summoned by a written summons sent by registered letter with declared content and acknowledgment of receipt, receipt of delivery of the letter to the Romanian Post, in the content of which will be mentioned the documents to be sent, taking the place of proof of fulfillment of the procedure, unless otherwise provided by international treaties or conventions to which Romania is a party or by special normative acts. If the domicile or residence of those abroad is not known, the summons is made according to art. 167⁵. In all cases, if those abroad have a known representative in the country, only the latter will be summoned. Article 14 of the Regulation also provides that each Member State is free to serve documents directly by courier to persons residing in another Member State, by registered letter with acknowledgment of receipt or equivalent. Therefore, the manner of communication of summonses and procedural documents is left to the discretion of each court.

Specifically, in the event that the court, as the transmitting agency, wishes to communicate the procedural documents through the receiving agency of the country in whose territory the addressee resides, it will transmit the documents, accompanied by a request drafted using the standard form provided in Annex I to the Regulation (art. 4). The form shall be completed in the official language of the Member State of destination or, if there are several official languages in the Member State concerned, in the official language or one of the official languages of the place where the notification or communication is to be made, or in another language which the Member State concerned has indicated that it

² 1. The receiving agency shall itself serve the document or have it served, either in accordance with the law of the Member State addressed or by a particular method requested by the transmitting agency, unless that method is incompatible with the law of that Member State. 2. The receiving agency shall take all necessary steps to effect the service of the document as soon as possible, and in any event within one month of receipt. If it has not been possible to effect service within one month of receipt, the receiving agency shall: (a) immediately inform the transmitting agency by means of the certificate in the standard form set out in Annex I, which shall be drawn up under the conditions referred to in Article 10(2); and (b) continue to take all necessary steps to effect the service of the document, unless indicated otherwise by the transmitting agency, where service seems to be possible within a reasonable period of time.

³ 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.

⁴ Article 155 (1), point 13.

⁵ Art.167 Code of Civil Procedure-Summons by advertising:

(1) Where the plaintiff considers, with reasons, that, although he did everything in his power, he was unable to find the defendant's domicile or other place where he could be summoned according to law, the court may approve his summons by publicity. 2) The summons by publicity is made by displaying the summons at the door of the court, on the portal of the competent court and at the last known address of the summoned person. In cases where it deems it necessary, the court shall also order the publication of the summons in the Official Gazette of Romania or in a widely circulated central newspaper. (3) Once the summons is approved by publicity, the court shall appoint a curator from among the bar's lawyers. art. 58, which will be summoned to the debates for the representation of the defendant's interests. (4) The procedure is considered fulfilled on the 15th day from the publication of the summons, according to the provisions of par. (5) If the summoned person appears and proves that he was summoned by publicity in bad faith, all procedural documents that followed the approval of this summons shall be annulled and the plaintiff who requested the summons by publicity shall be sanctioned. according to the provisions of art. 187 para. (1) pt. 1 lit. c).

accepts. It should be noted that the documents and all documents submitted are exempt from legalization, as well as from any other equivalent formality.

If the transmitting agency wishes a copy of the document to be returned to it, together with the certificate provided for in Article 10, it shall send the document to be served in duplicate.

Regarding the advantages of communication through the Regulation, they cannot be ignored because they aim at the certainty of receipt of the documents by the addressee. Unlike the transmission of documents by postal / courier services, the transmission of documents with the help of the receiving agency should ensure either the transmission of documents or the reasons why transmission was not possible, in any case being necessary to complete the form annexed to the Regulation. On the other hand, in the form for carrying out the transmission procedure, the receiving agency will have to complete the way in which the procedure for transmitting the documents was carried out. In this connection, it should be noted that in turn, the transmitting agency, when issuing a request for transmission of documents to the receiving agency, will have to indicate how it wishes to transmit with the choice between several variants: according to the legal provisions in force in the state in which the documents are to be transmitted, according to the legal provisions in the state of origin or according to another modality, this being to be specified (art. 7).

With regard to the disadvantages of transmitting legal acts through the Regulation, the costs of such a procedure could be included, with each Member State to which the Regulation applies having the possibility to charge its own costs. These costs are obviously borne by the interested party, in particular the applicant. Although, according to art. 11 paragraph 1 of the Regulation, the service of judicial documents from a Member State may not result in the payment or reimbursement of taxes or expenses incurred for the services provided for this purpose by the receiving Member State, according to the second paragraph the claimant shall pay / reimburse other costs occasioned by:

- recourse to a judicial officer or a competent person in accordance with the law of the Member State addressed;

- the use of a particular method of service.

Therefore, in countries where the receiving agency are certain judicial officials (such as France, Belgium, the Netherlands), there is a possibility for them to charge certain costs for carrying out the procedure for transmitting the documents, costs which will have to be advanced with the service request. A possibility to sanction the plaintiffs who do not understand to cover the costs generated by the transmission to the defendant of the procedural documents, is contained by the provisions of art. 242 paragraph 1 of the Code of Civil Procedure, according to which the court may order the suspension of the trial.

If the case is still in the preliminary proceedings, a trial date may be established for which the applicant shall be ordered to pay these costs, and if not, the trial shall be suspended. I consider that the summons could not be annulled accordingly to the provisions of art. 200 of the Code of Civil Procedure, not being an irregularity of the summons. It should also be mentioned that the choice of the method of transmission of the procedural documents to the party located on the territory of another country, belongs to the court, the plaintiff cannot dispute this aspect and imposes another method.

Another disadvantage could be that, although the receiving agencies have at their disposal the possibility of automatically translating the forms (receiving the application or performing / not performing the procedure) into one of the official languages of the State from which the transmitting agency originates, it often happens that they do not translate those forms and thus make it difficult for the transmitting agency to use translation services to see if the documents have been communicated or, on the contrary, to find out why the documents were not communicated.

It is also necessary to pay attention to the provisions of Article 19 of the Regulation⁶, so that if the court orders the transmission of documents in accordance with the provisions of the Regulation, if the

⁶ 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; L 324/84 EN Official Journal of the European Union 10.12.2007 and that in either of these cases the service or the delivery was effected in sufficient time to enable the defendant to defend. 2. Each Member State may make it known, in accordance with Article 23(1), that the judge, notwithstanding the provisions of paragraph 1, may give judgment even if no certificate of service or delivery has been received, if all the following conditions are fulfilled: (a) the document was transmitted by one of the methods provided for in this Regulation; (b) a period of time of not less than six months, considered adequate by the judge in the particular case, has elapsed since the date of the transmission of the document; (c) no certificate of any kind has been received, even though every reasonable effort has been made to obtain it through the competent authorities or bodies of the Member State addressed. 3. Notwithstanding paragraphs 1 and 2, the judge may order, in case of urgency, any provisional or protective measures. 4. When 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 a judgment has been entered against a defendant who has not appeared, the judge shall have the power to relieve the defendant from the effects of the expiry of the time for appeal from the judgment if the following conditions are fulfilled: (a) 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 (b) the defendant has disclosed a prima facie defence to the action on the merits. An application for relief may be filed only within a reasonable time after the defendant has knowledge of the judgment. Each Member State may make it known, in accordance with Article 23(1), that such application will not be entertained if it is filed after the expiry of a time to be stated by it in that communication, but which shall in no case be less than one year following the date of the judgment. 5. Paragraph 4 shall not apply to judgments concerning the status or capacity of persons.

defendant summoned in this manner does not appear, the case may be delayed.

If the domicile of the party is not known, then the court will proceed within the meaning of the provisions of art. 167 Code of Civil Procedure, in the sense of appointing a curator according to the provisions of art. 58 Code of Civil Procedure and summoning the party by posting at the court door, on the court portal and possibly by publishing the summons in the Official Gazette of Romania or in a widely circulated central newspaper. If the last address is known, then the party is to be cited at that place as well. Although the summons is intended to make known to the defendant the existence of the dispute, if he has an unknown domicile in another country, the question arises as to how effective those measures are.

However, the provisions of art. 156 of the Code of Civil Procedure, according to which the persons who are abroad, cited according to art. 155 para. (1) points 12 and 13, for the first trial term, will be notified by summons that they have the obligation to choose a domicile in Romania where all the communications regarding the process will be made to them. If they do not comply, the communications will be made to them by registered letter, the delivery note to the Romanian post of the letter, in which the documents to be sent will be mentioned, taking the place of proof of fulfillment of the procedure. I thus consider that, regardless of the manner of communication of the first summons to the party abroad, through the Regulation or directly according to the provisions of art. 155 paragraph 1 point 13 of the Code of Civil Procedure, if the provisions of art. 156 of the Code of Civil Procedure, then, the following summons may be sent by registered letter, the delivery note to the Romanian Post of the letter, in which the documents to be sent will be mentioned, taking the place of proof of fulfillment of the procedure. Therefore, any costs determined by transmission the summons or procedural documents to the foreign party may be limited. Also in connection with the eventual costs generated by the summoning and transmission of the procedural documents according to the Regulation, taking into account the provisions of art. 451 paragraph 1 of the Code of Civil Procedure⁷, they may be included in the category of court costs, and in the event of finding the procedural fault of the party abroad, it may be ordered to pay these costs.

On the other hand, as regards the transmission of judicial documents through the Regulation, it also provides protection for the addressee. Thus, according to Article 8 of the Regulation, the receiving agency informs 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 a language which the addressee understands or into an official language of the Member State of destination. When the receiving agency is informed that the addressee refuses to receive the document, it shall immediately inform the transmitting agency by means of the certificate referred to in Article 10 and return the application and the documents whose translation is requested. It should be noted that the receiving agency cannot refuse to send the documents to the addressee taking into account the reason that they are not translated into one of the languages indicated in Article 8 of the Regulation, but has the obligation to inform the addressee about the possibility of refusing receipt thereof.

If the service of documents has been effected or, on the contrary, could not be effected, the receiving agency shall draw up a certificate of completion of these formalities using the standard form set out in Annex I, which shall be sent to the transmitting agency together with a copy of the act notified or communicated, where Article 4 (5) applies.

As regards the possibility for courts to choose how to communicate judicial acts, the Court of Justice of the European Union has ruled, with reference to Regulation (EC) No 1348/2000, that, in view of its purpose, in order to ensure the effective communication of documents, one or more of the means of communication provided for in this Regulation (repealed by Regulation (EC) No 1393/2007) may be used⁸. It was also noted that there is no hierarchy between the means of communication provided by the Regulation

3. Service of judicial documents in accordance with the 1965 Hague Convention

3.1. Field of application

According to Article 1 of the Convention, it applies in civil or commercial matters, in all cases where a judicial or extrajudicial document must be transmitted for service abroad. The Convention does not apply if the address of the addressee of the document is not known. In the case of States which are, at the same time, both signatories to the Hague Convention and also to which the Regulation applies, in accordance with Article 20 (1) of the Regulation, in matters falling within its scope, it shall prevail.

Romania acceded to the Convention by adopting Law no. 124/2003.

3.2. How to apply the Convention

Unlike the Regulation, in the case of the Convention each state has the obligation to designate a

⁷ The court costs consist of the judicial stamp duties and the judicial stamp, the fees of the lawyers, of the experts and of the specialists appointed under the conditions of art. 330 para. (3), the amounts due to witnesses for travel and losses caused by the need to be present at the trial, the costs of transport and, where appropriate, accommodation, as well as any other expenses necessary for the proper conduct of the proceedings.

⁸ Case C-473/04 Plumex v Young Sports NV.

central authority to deal with the receipt of requests for notification and transmission and to proceed with their execution. At national level, according to art. 2 of Law 124/2003, the Ministry of Justice is the central authority designated to receive and transmit requests for notification or communication abroad of judicial or extrajudicial acts in civil or commercial matters. Therefore, if it is desired to transmit certain judicial documents to a party located in the territory of a Member State to the Convention, the court will request the Ministry of Justice to transmit the documents to the central authority of the other Member State. In this case, the requesting agencies and the requested agencies do not have a direct interaction, as in the case of notification made under Regulation (EC) No 1393/2007.

If the court orders the transmission of judicial documents according to the Hague Convention, then it will send to the Ministry of Justice a request in accordance with the model form annexed to the convention, without the need to over-legalize the documents or any other equivalent formality. The request must be accompanied by the document to be served or a copy thereof. The request and the document shall both be furnished in duplicate.

According to Article 5 of the Convention, the central authority of the requested State shall itself serve the document or shall arrange to have it served by an appropriate agency, either – a) by a method prescribed by its internal law for the service of documents in domestic actions upon persons who are within its territory, or b) by a particular method requested by the applicant, unless such a method is incompatible with the law of the State addressed. It is also provided that

the document may at any time be handed over to the addressee who voluntarily accepts it.

In connection with the language in which the document to be communicated is to be drafted, the central authority may request that the document be drafted or translated into the language or one of the official languages of its country.

Once the document has been communicated to the addressee, the requested authority shall complete a certificate in the form of the model annexed to the Convention, which it will send to the requesting authority and indicate the form, place and date of fulfillment and the person to whom it was delivered, the reasons which have prevented service (art. 6).

4. Conclusions

Summoning the parties and transmitting the procedural documents to them is a vital component of a process. Therefore, regardless of the legal way of transmission that the court chooses, it must be an effective one, in order to ensure the parties the right to defense and the settlement of the process in an optimal and predictable term. To this end, in order to meet the current needs of European justice systems, Regulation (EU) 2020/1784, which will repeal Regulation (EC) No 1393/2007, will establish a framework for judicial cooperation aligned with the digital strategy of the single market. of the EU, the documents to be transmitted between the receiving and transmitting agencies through a secure and reliable decentralized IT system.

References

- Gabriel Boroï, Mona-Maria Pivniceru, Carla Alexandra Anghelescu, Bogdan Nazat, Ioana Nicolae, Tudor -Vlad Rădulescu, *Civil Law Files*, 3rd Edition, Hamangiu Publishing House 2018, Bucharest;
- Gabriel Boroï, Mirela Stancu, *Civil procedural law*, 5th Edition, Hamangiu Publishing House, 2020, Bucharest;
- Regulation (EC) No 1393/2007;
- Convention of 15 November 1965 on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters.