

ECJ Rules on Deemed Service and Mandatory Appointment of Representative

On December 19th, 2012, the Court of Justice of the European Union delivered its judgment in case C-325/11 *Alder v. Orlowska*.

The issue was whether national provisions providing that defendants residing abroad are obliged to appoint a local representative for service purposes, and that will be deemed to have been served if they fail to do so, comport with EU law.

At issue was Article 1135⁵ of the Polish Code of Civil Procedure, which provides:

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, court 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.

Following Advocate General Bot's Opinion, the Court ruled that such provisions were incompatible with Regulation No 1393/2007 of 13 November 2007 on the service in the Member States of judicial and extrajudicial documents in civil or commercial matters (service of documents).

When the Regulation applies, service must be carried out by one of the means of transmission provided by the Regulation. Other means existing in national laws

are precluded.

32 (...) 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 1135⁵ of the Code of Civil Procedure.

Furthermore, the Polish provision simply does not comport with fundamental rights:

40 (...) it is clear that a system for notional service, such as that laid down in Article 1135⁵ 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.

Final ruling:

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.