

CJEU on the time limits for refusal of acceptance of a document/for lodging an objection against a decision on enforcement, in the context of the Service Regulation, in the case LKW Walter, C-7/21

This Thursday, the Court of Justice handed down its judgment in the case LKW Walter, C-7/21. In this case, the request for a preliminary ruling originates in the proceedings on a litigation malpractice action, between a company established under Austrian law and the lawyers established in that Member State, who represented the said company in the proceedings before Slovenian courts, in which it acted as a defendant.

In essence, the Austrian lawyers who in the context of the proceedings before Slovenian courts failed to timely lodge the reasoned objection against a decision on enforcement on the behalf of their client, now the defendant lawyers within the proceedings initiated by the said client against them, argue that the time limit set by the Slovenian legislator is not compatible with EU law.

By its request, the referring court seeks the interpretation of the Brussels I bis Regulation, of the Regulation No 1393/2007 ('Service Regulation') and of the Article 18(1) TFUE (interdiction of discrimination on the grounds of nationality).

Back in March, we reported on the Opinion presented in this case by AG Pikamäe. To avoid unnecessary repetitions, I allow myself to refer our readers to the previous post where more details about the factual background of the case can be found. As the English version of the Opinion is not yet available, I can also refer the readers to the post on EAPIL blog by Marta Requejo Isidro who provided a translation of the proposed answer.

Preliminary question(s)

The referring court asked three questions, with only one of them (second question) being addressed by the Court in its judgment. The answer to the two other questions was considered unnecessary, in the light of the answer to the second question (paragraph 50).

The second preliminary question reads as follows:

“Is Article 8 of [the Service Regulation], read in conjunction with the principles of effectiveness and equivalence, to be interpreted as precluding a national measure which provides that, upon service of the standard form set out in Annex II informing the addressee of his or her right to refuse to accept the document within a period of one week, the period also begins to run in respect of bringing the appeal provided for against the decision on enforcement served at the same time, for which a period of eight days is laid down?”

Court’s answer and its reasoning

To put into context the findings of the Court:

On the one hand, Article 8(1) of the Service Regulation provides that it is possible to 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 the official language of the Member State addressed.

The decision on enforcement, drafted in Slovenian, has been served to the Austrian company. The company did not, however, refuse to accept this decision on the basis of Article 8(1) of the Regulation.

On the other hand, the Slovenian provision contested by the defending lawyers establishes a time limit of eight days within which an objection has to be introduced against a decision on enforcement. According to the interpretation of this provision that the Court relied on (point 42 paragraph of the judgment), this time limit starts to run when the decision on enforcement is served to the defending party.

Thus, the time limit for refusal, provided for in Article 8(1) of the Service Regulation, and the time limit to lodge an opposition against a decision on enforcement, provided for in Slovenian law, start to run the same day and virtually coincide.

As a reminder, in his Opinion, AG Pikamäe took the view that the Service Regulation, read in conjunction with Article 47 of the Charter, **does not preclude** a provision of a Member State under which the time limit for lodging an objection against a decision embodied in a judicial document served in accordance with Service Regulation begins to run from the time of service of the document in question, and not only after the expiry of the one-week time limit provided for in Article 8(1) for refusing to accept the document (point 56 of the Opinion).

AG Pikamäe argued in his Opinion, in particular, that the Austrian company 'deliberately waived its crucial right', conferred on that party by Article 8(1) of the Service Regulation, to refuse the acceptance of document not translated into the language this party understands/the language of the Member State addressed. Thus, in line with the principle of estoppel, that party could not claim that its right of defence has been violated by the sole fact that the time limit to lodge an objection against the decision on enforcement started to run when this decision has been notified to that party (point 55 of the Opinion).

By contrast, the Court came to a different conclusion. It ruled that Article 8(1) of the Service Regulation, read in conjunction with Article 47 of the Charter, has to be interpreted to the effect that **it precludes** a legislation of a Member State according to which the time limit to refuse the acceptance of an act provided for in Article 8(1) of the Regulation starts to run concurrently to a time limit to lodge an objection against that act, provided for in the said legislation (paragraph 49).

The reasoning of the Court relies mainly on the following arguments.

First, a party served with a document drafted in a language it does not understand/language other than the one of the Member State addressed enjoys the right to make a decision as to whether it refuses to accept that document,

within one-week time limit provided for in Article 8(1) of the Service Regulation. If a time limit to contest the decision embodied in this document starts to run simultaneously with the one-week time limit to refuse the acceptance of the document, **the party cannot enjoy the full one-week time limit to evaluate whether it desires to accept the document or not** (paragraph 42).

Next, and maybe even more interestingly, the Court indicates that, in such situation, **the defending party cannot fully enjoy the eight-day time limit provided for under Slovenian law** and seems to hint that this outcome is incompatible with Article 47 of the Charter. The Court seems to reason in the following manner : an 'act' served to the defendant falls within the scope of application of the Service Regulation [probably due to the fact that it constitutes a 'document [...] transmitted from one Member State to another for service there' within the meaning of Article 1(1) of the Regulation and/or due to the fact the the 'document' is not drafted in the language that the addressee understands/not in the language of the Member State addressed]. The 'situation' falls within the ambit of the right to effective judicial protection, enshrined in Article 47 of the Charter, and, in such situations, the Charter requires that the party served with this 'act' can use the time limit provided for under national law to its full extent (paragraph 43). [On a side note: it can be a question of debate whether those findings hint that, in similar configurations, it is possible to benchmark national time limits against the requirements stemming from the Charter (implying that such time limits fall within its scope of application, provided that they are applicable to an 'act' falling within the scope of application of the Regulation) or those findings just set the ground for the argument presented below.]

Finally, such a scenario, in which two time limits run concurrently, **leads to discriminatory treatment of the party served with the document drafted in the language it does not understand**, as it cannot enjoy the full time limit set to contest the decision issued against the said party, irrespective of the length of that time limit ('indépendamment de la durée du délai pour exercer un recours contre cet acte', paragraph 44; I digress again: it may be a hint that, for the Court, the argument remains valid also where the time limit provided for in national law would be shorter than one-week period provided for in Article 8 of the Service Regulation).

Against this background, the Regulation aims to eliminate such difference in treatment, to the detriment of the party that does not understand the language of

the document (paragraph 45). Therefore, the time limit to contest the decision should, in principle, run after the time limit from Article 8(1) of the Service Regulation (paragraph 46).

If not, in practical terms, the concurrence of time limits can potentially incite the party to refuse, by default, the acceptance of the document, without properly considering whether to do so or not; thus, such solution contradicts the objectives of the Regulation (paragraph 47).

The judgment can be consulted [here](#).