The Greek Supreme Court on the date of service of documents abroad: The end of a contemporary Greek tragedy

The Greek Supreme Court of Cassation (Areios Pagos) rendered a very important decision at the end of June, which is giving the final blow to a period of procedural insanity. A provision in force since the 1st of January 2016 is forcing claimants to serve the document instituting proceedings abroad within 60 days following filing. Failure to abide by the rule results to the deletion of the claim as non-existent. As a consequence, the claimant is obliged to file a new claim, most probably being confronted with the same problem.

[Supreme Court of Cassation (Areios Pagos) nr. 1182/2022, available **here.**

Facts and judgment in first instance

The dispute concerns two actions filed on 31.01.2017 and 31.03.2017 against defendants living in Monaco and Cyprus respectively. The claimant served copies of the action by using the main channels provided for by the 1965 Hague Service Convention (for Monaco; entry into force: 1-XI-2007) and the Service of Process Regulation nr. 1393/2007. Service to the defendant in Monaco was effected on 08.05.2017, whereas service to the defendant in Cyprus on 19.06.2017. Both actions were dismissed as non-existent (a verbatim translation would be: non-filed) due to the belated service to the countries of destination [Thessaloniki Court of 1st Instance 2013/2019, unreported]. The claimant filed a second (final) appeal, challenging the judgment's findings.

The overall picture before the decision of the Supreme Court

So far, the vast majority of Greek courts was following the rule in exactly the

same fashion as the first instance court. Article 215 Para 2 of the Greek Code of Civil Procedure reads as follows: *… the claim is served to the defendant within a term of 30 days after filing; if the defendant resides abroad or is of unknown residence, the claim is served within 60 days after filing*. The rule applies exclusively to ordinary proceedings, i.e., mostly civil and commercial matters, with the exception of some pertinent disputes, which are regulated under a special Book of the Code of Civil Procedure [Book 4, Articles 591-465: Special Proceedings]

A countless number of motions were dismissed as a result of this rule since 2016. Courts were refusing claims even when the defendants were appearing before the court, submitting pleadings and raising their defense. Only claims addressed to defendants living in countries which are neither EU member states nor Hague Convention signatories, are 'saved'. Article 134, in connection with Article 136 Greek of Code of Civil Procedure has established half a century ago the notorious system of fictitious service, akin to the French system of remis au parquet (Article 683 Code de Procédure Civile). This system still applies for countries such as the United Arab Emirates or Madagascar, however not for Cyprus or Monaco, due to the prevalence of the EU Regulation and the Hague Convention, anchored in the Constitution (Article 28). Hence, the non- production of a service certificate is no obstacle for the former, whereas any service certificate dated after the 60 days term is not considered good service for the latter, leading to the dismissal of the claim.

The decision of the Supreme Court

Against this background, the Supreme Court was called to address the matter for the first time after nearly six years since the introduction of the new provision.

The Supreme Court began with an extensive analysis of the law in force (Article 134 Code of Civil Procedure; EU Service Regulation; Hague Service Convention, and Article 215 Para 2 Code of Civil Procedure). It then pointed out the repercussions of the latter rule in the system of cross-border service, and interpreted the provision in a fashion persistently suggested by legal scholarship: The 60 days term should be related with the notification of the claim to the Transmitting Authority, i.e., the competent Prosecutor's office pursuant to Article

134 Code of Civil Procedure and the declarations of the Hellenic Republic in regards to the EU Service Regulation and the Hague Service Convention.

The date of actual service should be disconnected from the system initiated by Article 215 Para 2 Code of Civil Procedure. The Supreme Court provided an abundance of arguments towards this direction, which may be summarized as follows: Violation of Article 9 Para 2 Service Regulation 1393/2007 (meanwhile Article 13 Para 2 Service Regulation 2020/1784); contradiction with the spirit of Article 15 of the Hague Service Convention, despite the lack of a provision similar to the one featured in the EU Regulation; violation of the right to judicial protection of the claimant, enshrined in the Greek Constitution under Article 20; violation of Article 6 (1) of the European Convention of Human Rights, because it burdens the claimant with the completion of a task which goes beyond her/his sphere of influence.

For all reasons above, the Supreme Court overturned the findings of the Thessaloniki 1st Instance court, and considered that service to the defendants in Monaco and Cyprus was good and in line with the pertinent provisions aforementioned.

The takeaways and the return to normality

The judgment of the Supreme Court has been expected with much anticipation. It comes to the rescue of the claimants, who were unjustly burdened with an obligation which was and still is not under their controlling powers. The judgment returns us back to the days before the infamous provision of Article 215 Para 2, where the domestic procedural system was impeccably finetuned with the EU Regulation and the Hague Service Convention.