Ficticious service still active outside Europe

With the EU Service Regulation being active for more than 20 years, and the Hague Service Convention being ratified by almost all European countries, there is little space for practicing fictitious service of proceedings in Europe. However, for service to third countries outside Europe, and especially to continents, such as Africa, Asia, and the Middle East, remise au parquet is still the ground rule for many European countries. A recent judgment issued by the Piraeus Court of Appeal provides a clear picture of how the mechanism operates in Greece [Piraeus Court of Appeal, judgment nr. 142/2024, available here].

I. THE FACTS:

The parties are two companies active in the international maritime sector. The claimant, a Greek company with its seat in Piraeus, filed an action before the Piraeus Court of First Instance, seeking the award of the total sum of $29,163,200. The defendant, an Iranian company with its seat in Tehran, did not appear in the hearing. The action was upheld as being well founded in substance by the Piraeus Court of 1st Instance. The defendant was ordered to pay the equivalent of $28. 663,200.

Both the action and the first instance judgment were duly served on the Piraeus District Attorney, in accordance with the provisions of Articles 134 §§ 1 and 2, and 136 § 1 Code of Greek Civil Procedure (henceforth CCP), due to the defendant's domicile in a non-member state of the European Union, thus excluding the application of EU law, and because Iran has not acceded to the Hague Convention of 15 November 1965, which requires actual service of documents by one of the methods provided for therein. Finally, the court underlined the absence of a bilateral agreement between Iran and Greece, which would possibly regulate the issues of service in a different manner.

The defendant lodged an appeal. The appeal was however untimely filed, because it was brought after the expiry of the sixty [60] days period following service of the judgment, provided for in Article 518 § 1 CCP, which began with the fictitious service of the judgment on the Public Prosecutor, to be sent to the Minister of

Foreign Affairs, in order to be transmitted through diplomatic channels to the addressee, as provided for by Article 134 §§ 1 and 3 CCP.

The Iranian company acknowledged that the time-limit had expired without effect. For this reason, it filed a request for restitutio in integrum in accordance with Article 152 CCP, requesting that the appeal be considered as timely lodged, claiming that the delay in lodging the appeal was due to force majeure. In particular, it is asserted that the Iranian company did not receive notification of both the claim, which resulted in a default judgment without its participation in the trial at first instance, and of the judgment given in default of appearance, due to the service method selected, i.e., ficticious service to the Public Prosecutor, which sets the time-limit for the appeal. Secondly, the appellant asserts that that it acted within the time-limit laid down in Article 153 CCP, that is to say, immediately after real service.

The appellant invokes the delay caused by the Piraeus Prosecutor's Office and the diplomatic services of the Country, which did not take care to complete service within two months. In other words, it relies on the omission of third parties, which it could not prevent, and which prevented the appellant from being aware of the fictitious service and the commencement of the time-limit for lodging an appeal in Greece.

II.THE JUDGMENT OF THE PIRAEUS COURT OF APPEAL

The appellate court ruled as follows: The lawsuit was forwarded by the Piraeus Prosecutor's Office to the Minister of Foreign Affairs, in order to be served at the defendant's headquarters in Tehran. The diplomatic authorities of Greece did indeed send and their counterparts in Iran did receive and forward the statement of claim to its addressee. However, the Iranian company's agents, namely the secretariat and the clerk in the Legal Affairs Department, refused to receive it. This is evident from the "Letter of confirmation for declaration of received documents from foreign countries" issued by the International Affairs Department of the Judiciary of the Islamic Republic of Iran. This document states that the defendant, through its aforementioned nominees, refused to receive the disputed "document".

The reason for that refusal is not specified. However, from the document of the Consular Office of the Embassy of Greece in Iran, and the attached document of

the Ministry of Foreign Affairs of the Islamic Republic of Iran, it can be inferred that the refusal was made because the document to be served was not accompanied by an official translation into Farsi. Iranian law does indeed appear to permit refusal to accept service of a foreigner's statement of claim against an Iranian national on that ground (a legal opinion of Mr., a lawyer at the Central Iranian Bar Association was submitted to the CoA by the appellant). Still, domestic Greek law does not make the validity of service of an action dependent on the attachment of a translated copy of the action in the language of the State of destination. Therefore, service of the action, if it had been completed, would always be valid under Greek law.

In addition, the mere attempt to serve the action made it clear to the defendant in any event, irrespective of whether it had been aware of its content from the outset, that a claim has being brought against it in a Greek court and triggered its obligation under Article 116 CCP to monitor the progress of the proceedings from that time onwards, even if it chose not to participate in the proceedings, which the defendant was able to do, by behaving in a prudent and diligent manner, and by following the fate of the action brought in Greece.

To that end, it was sufficient simply to appoint a lawyer in Greece, who would arrange for the translation of the documents, and would attend the ongoing proceedings at first instance. Such an action was made by the appellant only after actual service of the judgment.

Similarly, the applicant does not explain the reason why it did not act by appointing a lawyer in Greece, after the refusal to receive the summons of the claimant, even though it was also sent to it accompanied by a translation of the summons in English. That omission gives the impression that the refusal to receive the summons was made in order to prolong the proceedings, and to prepare for the lodging of the appeal and the application for restitutio in integrum, which on the whole is considered to be abusive.

Consequently, the application for restitutio in integrum was dismissed as unfounded and the appeal, which was nevertheless brought out of time, was dismissed as inadmissible.

III. COMMENT

The judgment of the Piraeus CoA is interesting because it goes a step further in

the examination of fictitious service: It did not simply reiterate the wording of the domestic rules; moreover, it scrutinized the facts, and avoided a stringent application of Article 134 CCP. Due process and right to be heard were included in the court's analysis. Finally, the court dismissed the legal remedies of the appellant due to its reluctance to demonstrate proactivity, and its intention to bring the Greek proceedings to a stalemate.