Persistent and Reasonable Efforts in the Field of Cross-Border Service of Documents. Continuation or Stay of Proceedings?

A. The Impetus for Presenting the Issue

In light of the publication of three judgments of the Thessaloniki First Instance Court concerning the service of documents in Contracting States to the 1965 Hague Convention on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters [hereinafter: HSC], the issue examined was whether proceedings may continue despite the absence of a certificate of service from the State addressed. In this context, a decisive role for the judge is played by the answer to the question whether "persistent efforts" within the meaning of the Greek version of Article 15(2)(c) HSC, or "reasonable efforts" (in the English-language formulation), were undertaken by the competent authorities of the State addressed in order to obtain a certificate. The same issue arises under the relevant EU Regulation (Article 22 Regulation 2020/1784), concerning cross-border service within the EU. Finally, the very recent amendment of the Greek Code of Civil Procedure, introducing new Article 134A GCCP, is also of particular interest.

The discussion will begin with the case law referred to above, examined in the light of the HSC (B). This will be followed by a reference to the corresponding provision of the EU Regulations (C). Next, a preliminary account will be given of the recent provision of Article 134A GCCP and its innovative features (D). This will be followed by an analysis of the terms "persistent effort" and "reasonable effort" (E-F). The study concludes with a detailed presentation of German legal scholarship (G), followed by a brief conclusion (H).

B. Case Law under the 1965 Hague Convention

The three judgments published examine the application of the 1965 Hague Convention on the Service Abroad of Judicial and Extrajudicial Documents

(ratified by Law 1334/1983). More specifically, the question is whether, under Article 15 HSC, proceedings may continue when the defendant resides in another Contracting State, and no certificate of service has been produced at the hearing.

1. In the first judgment, the court held that actual service of the statement of claim and summons on a defendant residing in Northern Ireland had not been established. Although the documents had been transmitted through the Prosecutor of the Thessaloniki Court of First Instance to the competent foreign authorities, and those authorities had informally confirmed receipt of the documents, no certificate of service had been returned by the time of the hearing. The court held that it could not render a final judgment in default of the defendant because the requirements of Article 15(2) of the Convention had not been satisfied, in particular because it had not been established that the authorities of the State addressed had undertaken persistent efforts to complete service and obtain the relevant certificate. For that reason, the Greek Court stayed the delivery of a judgment until service had been established in the manner described above.

2. In the second judgment (concerning a divorce action against a defendant residing in the United Kingdom), the court adopted a different approach. Although no proof of actual service of the summons on the defendant had been produced, it was established that the documents had been duly transmitted to the competent UK authorities, that more than six months had elapsed, and that the failure to complete service was attributable to mishandling by the British authorities, which had unjustifiably returned the documents to the Greek Agency, making a new transmission necessary. The court held that the claimant should not bear the consequences of that error and that the requirements of Article 15(2) of the Convention had been satisfied. It therefore held that the hearing could proceed in the defendant’s absence.

3. In the third judgment, the court considered an application for revocation of an interlocutory decision which had stayed the delivery of a final judgment until service on the first defendant, who resided in India, had been established.

The claimant sought revocation of the previous decision, but produced neither the certificate referred to in Article 6 HSC, nor any other document establishing that the document had been transmitted to the competent Indian authority and that, despite the relevant reminders or persistent efforts, it had not been possible to obtain a certificate of service. The court held that actual service had not been established and that the condition laid down in Article 15(2)(c) HSC, namely, the inability to obtain a certificate despite persistent efforts by the competent

authorities, had not been satisfied. For that reason, it dismissed the application.
4. Taken together, the three judgments demonstrate that the mere transmission of judicial documents through the Prosecutor to the foreign authorities is not, in itself, sufficient. What is decisive is either that actual service on the foreign party be established or, by way of exception, that it be shown that the cumulative conditions of Article 15(2) HSC have been satisfied, so that the proceedings may continue without the relevant certificate. Nevertheless, the judgments differ precisely as to whether the necessary efforts were established and whether the conditions for this exception were satisfied.

C. The Corresponding Provision of the EU Regulations

It is universally acknowledged, and beyond dispute, that the Regulation governing cross-border service within the EU almost reproduces the substance of the HSC. In particular, with regard to the functional equivalent of Article 15(2)(c) HSC, the wording of the European Regulations leads, in virtually identical terms, to the same legal result. To illustrate:
1. Regulation 1348/2000 [Article 19(2)(c)]: “no certificate of any kind has been received, even though every reasonable effort has been made through the competent authorities or bodies of the Member State addressed.”
2. Regulation 1393/2007 [Article 19(2)(c)]: “no certificate of any kind has been received, even though every reasonable effort has been made through the competent authorities or bodies of the Member State addressed.”
3. Regulation 2020/1784 [Article 22(2)(c)]: “no certificate of any kind has been received, even though every reasonable effort has been made to obtain one through the competent authorities or bodies of the Member State addressed.”
4. In contrast to the earlier versions of the EU Regulation (1348/2000 and 1393/2007), the explanatory material accompanying the Regulation currently in force (2020/1784) contains a much more extensive reference to the issue. In particular, Recital 35 states as follows:
Where national law and this Regulation allow the court to give judgment even if no certificate of service or delivery of the document instituting the proceedings or its equivalent has been received, every reasonable effort should be made to obtain the certificate through the competent authorities or bodies of the Member State addressed before any judgment is given, in compliance with any other requirements safeguarding the interests of the defendant. Unless incompatible with national law, all reasonable efforts should be made to inform the defendant that court proceedings have been instituted using any available channels of communication, including modern communications technology, for which an

address or an account is known to the court seised of the proceedings.

D. The New Greek Provision on (Article 134A GCCP)

The new provision, entitled "Procedure for the Service of a Judicial Document Abroad," provides in its second paragraph as follows: The court may, even if no certificate of service of the document or other equivalent document on the addressee residing abroad has been received, immediately render judgment if:

(a) the document was transmitted in accordance with the international rules applicable to the particular service or paragraph 3 of Article 134;

(b) a period of at least six (6) months has elapsed between the transmission of the document and the hearing; and

(c) it is established that the document was transmitted to the State addressed in sufficient time, so that further service on the addressee has been possible.

A reading of the above provision makes it clear that persistent or reasonable efforts are no longer required. It is therefore sufficient that the timely transmission be established and that the possibility of service upon the addressee in the State addressed be confirmed. It remains for the courts to interpret and define the possibilities embodied in the formal wording of the provision, namely, in the direction of expeditious service resulting from the timely transmission of the document from Greece to the State of destination.

E. Persistent & Reasonable Efforts

The assessments of the Hague Conference on Private International Law concerning this issue are, of course, of particular interest, namely, with regard to the third condition of the provision (failure to obtain the certificate). The type of certificate depends on the channel used to transmit the document. If the principal channel (Article 5 HSC) was used, the certificate is the one required under Article 6 HSC. However, a United States court has held that a police report documenting attempts to effect service constitutes a certificate within the meaning of Article 15(2)(c) HSC. In the case of alternative channels, any evidence of service could qualify as a certificate. The Special Commission of the Hague Conference has expressly noted that receipt of a certificate stating that service could not be effected does not constitute an obstacle to the rendering of a judgment in accordance with the domestic law of the Requesting State, where that State has made the relevant declaration.

The requirement that every reasonable effort be made to obtain the Certificate has been considered by a number of United States courts. In one case, a federal district court held that making a single telephone call to the Central Authority in order to obtain oral confirmation of service was insufficient to satisfy that

requirement.

In another case, an appellate court held that, in proceedings against the Consulate General of a Contracting State, notification of the defendant's attorney amounted to "every persistent effort," given that the rules of professional conduct under the law of the forum prohibited the claimant's attorney from communicating with the defendant except through the defendant's attorney. The court's decision was based on the premise that the legal personality of the defendant extended to all officials of the foreign State. By contacting the defendant's attorney, the claimant had accomplished "the only step ethically permitted."

F. Persistent Efforts vs. Reasonable Efforts?

Is there a difference between the persistent efforts required under the Greek version of the HSC, and the reasonable efforts contemplated by the Regulations? Attempting a preliminary comparison, it could be argued that the "treaty-based" version perhaps indirectly emphasizes the temporal dimension of the efforts. In other words, repeated attempts to locate the addressee are required and expected. From the EU perspective, the center of gravity is not linked to the temporal dimension, but rather to a somewhat indeterminate prerequisite, namely, the

Returning to the "duel" between the Greek version of the HSC and the EU and multilateral treaty legislative frameworks, we arrive at the following conclusion: even assuming that the above distinction offers some useful clarification, in practice everything will depend on the court's discretion in assessing each individual case. Delay attributable to an error by the foreign authority of the State of destination; inability to locate the addressee, even where the addressee is a legal person; an oral assurance that service has taken place, without the certificate of service nevertheless being produced before the Greek courts; complete silence on the part of the foreign authority, whether or not following a request or reminder from the Greek side, all of the foregoing constitute a mixture of circumstances requiring classification.

G. The Discussion in the German Legal Order

Without intending to diminish the importance of other legal systems, the scholarly debate originating in German legal thought has historically been of considerable value and is, for that reason, indispensable. At the outset, it is understood and expected by legal scholarship that the competent authorities of the State of destination have taken the necessary measures to obtain a certificate of service. General assumptions and conjecture that the defendant received the document do

not render the production of proof of service unnecessary. Quite the contrary: Schlosser interprets the critical provision by formulating the rule of the threshold of reasonableness (Zumutbarkeitsgrenze). Within this framework, he considers it sufficient, both on the part of the competent authority and on the part of the claimant, to submit an inquiry concerning the stage reached in the service procedure, in the form of a good-faith effort. In general terms, his position leans toward limited involvement by the competent authorities of the State of origin, apparently in order to avoid slowing down the system as a whole.

Much more detailed is Ulrici's analysis in Rauscher's article-by-article commentary on Regulation 2020/1784. First, in contrast to the Greek focus on the basic model of judicial cooperation (Transmitting and Receiving Agencies), German legal scholarship approaches the problem from other perspectives as well. Thus, what efforts have been undertaken by the Receiving Authorities is not decisive. This already follows empirically: The Authority cannot become involved in every cross-border service.

It is emphasised that the authority ordering service abroad and bearing the obligation to take all reasonable measures is the court seised of the dispute. In the case of direct service, that role is assumed by the person designated pursuant to Article 20 Regulation 2020/1784.

The purpose of the efforts, contrary to the relatively vague wording of paragraph 2(c), is to obtain a certificate concerning service that has already been effected, as well as confirmation that the procedure has been effectively carried out and completed. The purpose of the efforts is also to make a possible new attempt at transmission feasible, either at the initiative of the party seeking to expedite the proceedings or as an expression of the effort to make a new attempt in order to obtain a certificate. This is required equally by the defendant's right to a fair trial and by the claimant's right to effective judicial protection.

If no certificate within the meaning of Article 10(1) of Regulation 2020/1784 is received, the matter requires immediate reconsideration and intervention by the Central Authority after the expiry of a further reasonable period. The same applies where no certificate is received in cases of direct service. If the Receiving Agency indicates that a request for service is deficient or does not fall within the scope of the Regulation, an appropriate response must be provided (Article 10(2) and (3) Regulation 2020/1784).

The competent authority may also have an obligation to order a new attempt at service by another procedure provided for by the Regulation, for example, where no acknowledgement of receipt has been received, by using direct service, or by

service through judicial assistance. Where there are indications concerning the possibility of locating the address, it is recommended that they be pursued, provided that the law of the State of origin does not preclude an attempt at informal notification by any means recognisable to the authority ordering service, provided that such means permits notification exclusively to the addressee and therefore not publicly. It may be necessary to notify the defendant through a known email address, mobile telephone number, etc., and then allow a reasonable period of time for the defendant to respond.

H. Conclusion

I conclude my reflections by assessing the ruling of the First Instance Court in Judgment No. 3118/2025. The judge held that "the claimant should not bear the consequences of the error of others" and, for the aforementioned reason, considered that the hearing could proceed in the absence of the defendant. Prima facie, there does not appear to be, at least within Greece, a reported case corresponding to this situation under Article 22(2)(c) of the Regulation and Article 15(2)(c) HSC. Nevertheless, beyond safeguarding the right of the addressee-defendant to be heard, this interpretative approach also highlights the intention to safeguard the claimant's right to effective judicial protection. It is to this potentially balanced position of the parties that we look for the sober and harmonising approach of the country's judges, so that a common line may be developed and secured within the Greek legal order.