

## Language Issues in Cross-border Service of Judicial Documents

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## A paradigm shift

- *From the focus on the Protection of national sovereignty ....*
- *....to the focus on Constitutional procedural guarantees – rights of defence (right to be heard) for a defendant and a right to effective access to court for a claimant*
- *Compare provisions concerning postal service in the Hague 1965 Convention and in the Regulation No. 1393/2007).*
- *The 1393/2007 Regulation: states cannot object direct postal service, however extensive safeguards for the addressee concerning language are provided for*
- *The Hague convention: states can object the possibility of direct postal cross border service. If they do not object, the Convention does not provide for any safeguards concerning language (those concerning service through central bodies do not apply for postal service)*

**An outline of guarantees concerning language in the Regulation**

- *No hierarchy of different modes of service*
- *Decentralized system of transmitting and receiving agencies*
- *Postal service*
- **A language which the addressee understands (or an official language of the state addressed)**

- If the applicant insists, the service without proper translation must be attempted even if it is clear that the addressee has a right to refuse it
- The applicant shall bear Initial costs
- If the addressee refused acceptance, new attempt in proper language; no risk of lapsing of time-limits
- Guarantees in regard to service via transmitting and receiving agencies are applied also in case of postal and direct service

## **When does a natural person understand a language?**

- Subjective test
- Presumptions? Objective criteria?
- Language of a contract (or general contract terms?)
- What degree of proficiency is sufficient?

## **When does a legal entity understand a language?**

- Location of a subsidiary or an unit in a state, where certain language is spoken?
- Does a legal representative speak the language?
- Person(s) who dealt with the case within the company?
- Commercial correspondence and tender documentation?
- Explicit agreement concerning the language for commercial correspondence (see Ingenierenburo Weiss Judgment)
- English as a lingua franca in international trade?

## Party autonomy?

- Can parties agree on the language, in which the documents may be served pursuant to the Regulation
- This does not concern an agreement as to the language of correspondence and the contract and it was not the issue in the *Ingenieurbüro Weiss* Judgment of the ECJ)
- Neither does it concern the language of the court proceedings
- If considered valid: extremely dangerous – especially for weaker parties

### **Burden of proof and mode of determination whether the party understands the language**

- *Negativa non sunt probanda??*
- Evidence (witnesses, documents...)?
- Risky also for an addressee in good faith who is not sure whether his degree of knowledge of the language of documents served is sufficient

- **Consequences of an unjustified refusal of acceptance ...**
- ...and of an improper information concerning the right of refusal**

## Kvoluti of translejšen

Pozdravljamo Vas!

Evropska družba, katera se hitro razvija, je pripravna sprejeti v svoje redove nove sodelovalce iz Slovenije, Italije in Avstrije.

Mi smo radi Vam predlagati zaposlitev, kakor z polno zavzetistjo, tudi tako s deljno.

Ce ste ze napolnili 21 leto in se Vi zanimate za dopolnitev place, a tudi za mogocim napredivanjem v karjeri v velikoj Druzbi, poslite nam svoje CV na korporativni E-mail naslov, kateri je naveden nize: [ann@spi-career.com](mailto:ann@spi-career.com)

Podrobna informacija, katera vsebuje v sebi pogoje zaposlitve, delavni ugovor, konkretne stevilke, bo poslana poslej spreijema Vasega odgovora.

Prosimo, upostevajte, da vsa naslednja informacija bo podana na Angleskem jezuku.

Mi smo radi Vam odgovoriti na vsa Vasa vprasanja. Zahvaljujemo Vam za Vas cas in pozornost!

### **How to exercise the right to refuse service if the language requirements are not met**

- Right to refuse within 7 days
- even after the addressee “opened” the document
- also if a person, authorized or obliged under national law (e.g. a close relative who lives on the same address) to receive service did not object)

### **Annexes to the document**

- ECJ C-14/07 z dne 8.5.2008 Ingenieurbüro Michael Weiss und Partner GbR v. Industrie- und Handelskammer Berlin
- no right to refuse to accept that document, provided that it enables the addressee to assert his rights ..., where annexes are attached ... documentary evidence which is not in the language ...but which has a purely evidential function and is not necessary for understanding the subject-matter of the claim and the cause of action

