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Judgment of the Court of Justice in Case C-14/08

Roda Golf & Beach Resort SL

EXTRAJUDICIAL DOCUMENTS ISSUED WHERE THERE ARE NO LEGAL PROCEEDINGS, SUCH AS NOTARIAL ACTS, ARE COVERED BY THE INTRA-COMMUNITY SYSTEM FOR THE SERVICE OF DOCUMENTS

The judicial cooperation which this system is intended to achieve may take place both in connection with and in the absence of legal proceedings.

The aim of the Regulation on service of documents¹ is to improve and expedite the transmission of judicial and extrajudicial documents in civil or commercial matters for the service of documents.

In October 2007, Roda Golf & Beach Resort SL, a company incorporated under Spanish law, had executed before a notary in San Javier, a document for the purpose of transmitting, in accordance with the Regulation on service of documents, sixteen letters to addressees with an address for service in the United Kingdom and Ireland through the registry of the Juzgado de Primera Instancia de Instrucción de San Javier (Spain). Those letters were intended to terminate unilaterally contracts for the sale of immovable property which had been concluded between that company and those addressees. The content of those letters does not reveal any connection with legal proceedings in progress.

The court clerk refused to transmit the document concerned to the competent authorities in the United Kingdom and Ireland on the ground that service of that document would not take place in the context of legal proceedings and therefore did not fall within the scope of the Regulation on service of documents. Roda Golf appealed against that decision. The Juzgado de Primera Instancia de Instrucción No 5 de San Javier, which is hearing the appeal, wishes to know whether the service of extrajudicial documents where there are no legal proceedings, where that service is effected between private individuals, falls within the scope of that regulation.

As far as concerns the jurisdiction of the Court to answer the questions referred for a preliminary ruling, the Court recalls, first of all, that, inasmuch as the Regulation on service of

¹ Council Regulation (EC) No 1348/2000 of 29 May 2000 on the service in the Member States of judicial and extrajudicial documents in civil or commercial matters (OJ 2000 L 160, p. 37). That regulation was replaced by Regulation (EC) No 1393/2007 of the European Parliament and of the Council of 13 November 2007 on the service in the Member States of judicial and extrajudicial documents in civil or commercial matters (service of documents), and repealing Council Regulation (EC) No 1348/2000 (OJ 2007 L 324, p. 79).

documents was adopted on the basis of Title IV of the EC Treaty on visas, asylum, immigration and other policies related to free movement of persons, only a national court or tribunal against whose decisions there is no judicial remedy under national law may ask the Court to adjudicate on a question of interpretation of that regulation. The Court considers that that criterion is fulfilled in this case as the referring court indicated, in its reference for a preliminary ruling, that the decision it will deliver in the main proceedings will be final. The Court holds that it is not for it to decide all disputes which may exist as to whether it is possible, according to the rules of national law, to bring an appeal against such a decision.

Furthermore, since the purpose of the action in the main proceedings is to annul the refusal of a court clerk to effect service of the documents requested, which allegedly adversely affect the rights of the applicant, the Court finds that the referring court is called on to adjudicate on a dispute and therefore exercises judicial functions. Therefore, the Court holds that it has jurisdiction to answer the questions referred for a preliminary ruling.

Next, **as to the substance**, the Court declares, first of all, that the Regulation on service of documents does not define in a precise and uniform manner the notion of extrajudicial documents. Moreover, in spite of the glossary drawn up by the Commission together with the Member States mentioning the documents which may be served, the Court concludes that **the definition of 'extrajudicial document' for the purposes of the Regulation on service of documents must be regarded as a Community law concept and not as a national law concept.**

Therefore, the Court holds that the Regulation on service of documents is intended to establish a system for intra-Community service the purpose of which is the proper functioning of the internal market. Taking account of that purpose, the Court considers that the judicial cooperation referred to by the regulation may take place both in the context of and in the absence of legal proceedings if that cooperation has cross-border implications and is necessary for the proper functioning of the internal market.

Furthermore, the Court observes that the document concerned, transmitted to the clerk of the referring court in order to be served, was drawn up by a notary and constitutes, as such, an extrajudicial document within the meaning of the Regulation on service of documents.

Finally, as regards the concerns expressed by certain governments, that a broad definition of the concept of extrajudicial document would place an excessive burden on the resources of the national courts, the Court states that the obligations with regard to service which derive from the Regulation on service of documents are not necessarily the responsibility of the national courts and that the Member States are free to designate for that purpose bodies other than the national courts. The Court observes that service through receiving and transmitting agencies is not the only means of service provided for by that regulation.

Accordingly, the Court concludes that service, in the absence of legal proceedings, of a notarial act such as that at issue in the main proceedings falls within the scope of the Regulation on service of documents.

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Languages available: ES, CS, DE, EL, EN, FR, IT, HU, NL, PL, RO, SK

The full text of the judgment may be found on the Court's internet site
<http://curia.europa.eu/jurisp/cgi-bin/form.pl?lang=EN&Submit=rechercher&numaff=C-14/08>

It can usually be consulted after midday (CET) on the day judgment is delivered.

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