

# Anonymised version

Translation

C-196/21 – 1

Case C-196/21

## Request for a preliminary ruling

**Date lodged:**

26 March 2021

**Referring court:**

Tribunalul Ilfov (Romania)

**Date of the decision to refer:**

4 February 2021

**Appellant-applicant:**

SR

**Appellant-defendant:**

EW

EW

**Interveners:**

FB

CX

IK

[...]  
TRIBUNALUL ILFOV  
Civil Division

[...]

### REQUEST FOR A PRELIMINARY RULING

The Tribunalul Ilfov (Regional Court, Ilfov, Romania), at the request of the appellant and defendant at first instance, EW [...], and on the basis of Article 267 of the Treaty on the Functioning of the European Union (TFEU), requests from the

### COURT OF JUSTICE OF THE EUROPEAN UNION

an answer to the following request for a preliminary ruling on the interpretation of Article 5(2) of 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 [...]:

*‘Where a court decides to summon interveners in civil proceedings, is the ‘applicant’, within the meaning of Article 5 of Regulation (EC) No 1393/2007, the court in the Member State which decides to summon the interveners or the litigant in the proceedings pending before that court?’*

#### Subject matter of the dispute. Relevant facts

- 1 By civil judgment [...] of 4 July 2016 delivered in the case [...] before the Judecătoria Buftea (Court of First Instance, Buftea, Romania), that court partly upheld the main application, brought by the applicant-defendant SR against the defendant-applicant EW, partly upheld the counterclaim brought by the defendant-applicant EW against the applicant-defendant SR and ordered: the dissolution of the marriage by consent; the reacquisition by the applicant of her surname prior to marriage; the determination of the habitual place of residence of the minor child [...] as being with the mother; the joint exercise of parental authority; the maintenance of personal links between the defendant and the minor child, by agreement, in accordance with the following schedule: the first and third weekend of each month, from Friday, at 2:00 p.m. (or at the end of the school day), to 7:00 p.m. on Sunday, the father having the right to collect the child and the obligation to return her to her mother’s home; half of the school holidays: in the first holiday week of October, in the first holiday week of December, in the first holiday week of [OR. 2] February, in the first holiday week of April and one month of the summer holidays, from 1 to 31 July, the father having the right to collect the child and the obligation to return her to the mother’s home; maintenance of the minor

child to be paid by the defendant in the sum of 600 Romanian lei (RON) per month, commencing on the date of delivery of the judgment and continuing until the child reaches the age of majority, such sum to be indexed each quarter by reference to the rate of inflation.

- 2 On 7 April 2017, an appeal was brought before the Tribunalul Ilfov (Regional Court, Ilfov, ‘the Tribunalul’) [...] by which the appellant-defendant EW sought an order against the respondent-applicant SR setting aside the civil judgment [...] of 4 July 2016, delivered in the case [...] by the Judecătoria Buftea (Court of First Instance, Buftea), on the ground that that court lacked jurisdiction or, in the alternative, for the partial variation of the judgment under appeal to the following effect: the determination of the habitual place of residence of the minor child [...] at the father’s residence in France or, in the alternative, the determination of the minor child’s habitual residence alternately, for one week each month at the residence of the father in Romania and for one week each month at the residence of the mother, or for two weeks with the father and two weeks with the mother; the ‘non-resident’ parent to pay maintenance for the minor child in the sum of one quarter of his or her monthly income until the child reaches the age of majority or, in the alternative, compensation of the parents’ maintenance payments for the child, with each parent continuing to contribute equally during the time when the child has her habitual residence with one or other of the parents, including for the child’s educational expenses.
- 3 An appeal against the same civil judgment [...] of 4 July 2016, delivered in the case [...] by the Judecătoria Buftea (Court of First Instance, Buftea), was also brought by the appellant-applicant SR, who asks the court to uphold her appeal and partly vary the civil judgment under appeal so as to uphold the claim set out in her summons, as amended, in its entirety, which is to say, ordering that parental authority be exercised solely by the mother, cancelling the visiting schedule established for the father’s benefit, varying the amount of maintenance which the father is liable to pay for the child and varying the costs order.
- 4 On 5 July 2018, applications to intervene in the proceedings made by FB (the brother of the minor child), CX (the sister of the minor child) and IK (the grandfather of the minor child) were registered in the case file, in support of the forms of order sought by the appellant-defendant EW.
- 5 For the purposes of assessing the admissibility, in principle, of the applications to intervene, the Regional Court decided at a hearing on 15 September 2020 that the two parties should be required to produce translations of the summonses/orders issued by the court with a view to service upon the interveners in accordance with the provisions of Regulation (EC) No 1393/2007 [...].
- 6 The parties to the proceedings refuse to advance the cost of translating into French the summonses/orders issued by the court with a view to service upon the interveners, taking the view that, on a correct interpretation of Article 5(2) of Regulation (EC) No 1393/2007 [...], the ‘applicant’ is the court, and it is

consequently the court that should bear the costs occasioned by the service of procedural documents. [OR. 3]

### **Applicable provisions of national law**

*Legea nr. 134 din 1 iulie 2010 privind Codul de procedură civilă* (Law No 134/2010 of 1 July 2010 establishing the Code of Civil Procedure)

Article 61 ‘Forms’

‘1. Any person having an interest may intervene in proceedings between the original parties.

...

3. The intervention is ancillary when it is solely in support of the case of one of the parties.

Article 63 ‘Ancillary intervention’

1. An application for ancillary intervention shall be made in writing and shall contain the information referred to in Article 148(1), which shall apply *mutatis mutandis*.

2. An ancillary intervention shall be permitted up to the closure of the oral part of the procedure, at any time during the main hearing and in the context of extraordinary remedies.

Article 64 ‘Procedure. Remedies’

**1. The court shall transmit the application to intervene and copies of any accompanying documents to the parties.**

2. After hearing the intervener and the parties, the court shall give a ruling, by reasoned order, on the admissibility, in principle, of the intervention.

3. The order may be challenged only in conjunction with the merits.

4. In the event that an appeal is upheld against an order by which the court has dismissed an application to intervene as inadmissible, the decision shall be set aside by operation of law and the case shall be re-examined by the court before which the application to intervene was made from the point at which the admissibility in principle of the application was debated.

### **Relevant provisions of EU law**

The Tribunalul considers to be applicable to the present case the provisions of Article 5(2) of Regulation (EC) No 1393/2007 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, pursuant to which ‘the applicant shall bear any costs of translation prior to the transmission of the document, without prejudice to any possible subsequent decision by the court or competent authority on liability for such costs.’

### **The reasons for which the court has made the request for a preliminary ruling**

Since the question raised specifically calls for interpretation of Regulation (EC) No 1393/2007 [...], which applies to the pending proceedings in light of the international aspects relating to the nationality and place of residence of the interveners, given that different opinions have been expressed in the course of the proceedings as regards who is to advance the costs associated with performance of the summons procedure (‘service of documents’) which will have an effect on the outcome of the case, in light of the differing interpretations of that regulation, and given that the question has been raised in a case before a national court against whose decisions there is no judicial remedy under national law, which renders a request for a preliminary ruling mandatory, in accordance with Article 267 TFEU, the Tribunalul acknowledges that it must refer to the Court of Justice of the European Union the question for a preliminary ruling formulated herein. [OR. 4].

### **The reasons for which the resolution of the dispute depends on the answer to the question of law**

The outcome of the dispute depends on the answer to this question of law because the interested party’s refusal to advance the costs associated with translating into French the procedural documents which must compulsorily be served on the interveners means that the proceedings could be suspended and judgment prevented from being given in the case. That could result in the parties being deprived of the [possibility of obtaining a decision] on the merits regarding the legal relationships between them, if appeals were to become time-barred.

### **Case-law of the Court of Justice of the European Union**

The Tribunalul has investigated but has been unable to find any relevant EU case-law on the point. As regards specifically the provisions of Article 5 of Regulation (EC) No 1393/2007 [...], three cases have been identified [...] (C-384/14, *Alta Realitat*, C-519/13, *Alpha Bank Cyprus*, and C-325/11, *Aider*). However, in those cases the Court provided interpretation in relation to issues other than that which is the subject of the present dispute.

### **Opinion of the national court**

The Tribunalul cannot share the view expressed by the appellant-defendant regarding who should bear the cost of translating the summonses into French for the purposes of service in accordance with Regulation No 1393/2007.

The autonomous concepts that are relevant to the question under analysis are defined unequivocally in Regulation No 1393/2007. They are: transmitting agency, receiving agency, applicant and addressee.

As is clearly stated in Article 2(1) and (2) of Regulation No 1393/2007, a ‘transmitting agency’ consists in public officers, authorities or other persons competent for the transmission of judicial or extrajudicial documents to be served in [another] Member State, or in other words, the national authority which sends communication/documents to be served, which in this case is the Tribunalul.

‘Receiving agency’ is defined in Article 2(2) of Regulation No 1393/2007. It includes the same sort of individuals/authorities as mentioned in paragraph 1, but receives served documents/communications from the transmitting agency. That is to say, it is the national authority which receives the communications/documents to be served. In the present case the receiving agency is to be identified from among the competent French authorities/institutions on the basis [of the] place of residence of the interveners.

As regards the concept of ‘applicant’, it is clear from the provisions of Article 5(1) and (2) of Regulation No 1393/2007 properly interpreted that the applicant cannot be [...] the court (which is the transmitting agency).

As is clear from the provisions of Article 5(1) of Regulation No 1393/2007, the applicant is to be advised by the transmitting agency to which he forwards the document [OR. 5] for transmission that the addressee may refuse to accept the document if it is not in one of the languages provided for in Article 8. This provision therefore clarifies the concepts of applicant and addressee, clearly excluding them from the scope of ‘transmitting agency’ and ‘receiving agency’.

An ‘applicant’ is an individual petitioner, the author of an action, who has an interest in service being effected in accordance with Regulation No 1393/2007 in connection with the conduct and conclusion of a legal action. An ‘addressee’, is the individual upon whom service is effected, the person receiving the documents served. Both the applicant and the addressee are parties to the proceedings, whereas the court, which, as mentioned, is either the transmitting agency or the receiving agency, is not.

In conclusion, the Tribunalul considers that the concept of ‘applicant’, within the meaning of Regulation No 1393/2007 is confined to the persons who have an interest in the conduct and conclusion of the appeal proceedings, which is to say the appellant-applicant and the appellant-defendant, [...]; they are parties to the dispute, they have brought appeals against the judgment on the merits and [each of them has], in principle, an interest in the conclusion of the appeal proceedings and the delivery of a judgment on the merits of the appeal.

[...] **4 February 2021**

[...]