

# Cross-border service of documents and taking of evidence

[jana.vnukova@mzv.sk](mailto:jana.vnukova@mzv.sk)

Head of EU Law Unit

Ministry of Foreign and European Affairs  
of the Slovak Republic

# Scope of Application

- Civil and commercial matters (autonomous interpretation)
- the address of the person to be served with the document must be known (limited possibility to use evidence regulation to find out address of defendant)
- Use of evidence in judicial proceedings
- Service of judicial and extra judicial documents (case Roda Golf C-14/2008)

# Service and Taking of Evidence Regulations

- Obligatory use of forms in annexes (7 in service regulation and 10 in taking of evidence reg.)
- Translation by certified interpreter - §15 of the Law on Expert Witnesses and Interpreters 382/2004 Coll.
- Service of documents is free of charge in Slovakia (unlike in BE, FR, LU) if not performed by bailiff
- Taking of evidence – free of charge (except for fees for expert witnesses and interpreters)
- Reimbursement of costs governed by the law of requesting state

# Service of documents and taking of evidence

- Direct contacts
- Without involvement of central authority (Ministry of Justice)
- Both requests cannot be combined
- Simple, quick, reduction of translation costs

# Role of central authority

- supplying information to the courts
- seeking solutions to any difficulties which may arise in respect of a request
- forwarding, in exceptional cases, at the request of a requesting court, a request to the competent court
- supplying information to Commission

# Providing information to courts seeking solutions to any difficulties

- Publishing guidelines on the website of the Ministry of Justice  
<http://wwwold.justice.sk/wfn.aspx?pg=l5&htm=l7/smpmenu.htm>
- Providing ad hoc information at:  
Tel.: (421) 259 353 347  
Fax: (421) 259 353 604  
E-mail: [civil.inter.coop@justice.sk](mailto:civil.inter.coop@justice.sk)  
languages: SK, CZ, EN, FR, DE

# Publishing information by the central authority on web site of MoJ

- Service regulation: guidelines
- Taking of evidence regulation:
  - manual
  - guidelines for district and regional courts when transmitting request
  - guidelines for district and regional courts when receiving authority taking the evidence
  - instructions how to fill the forms

# Forwarding the request by the central authority

- Exemptional
- At the request of transmitting authority



# Providing and updating information

- Responsibility of the central authority to provide updated data on:
  - Receiving authorities
  - Transmitting authorities
  - Central body
  - Judicial officers and other competent bodies for service of documents

# Providing and updating information by central authority – communication

- Transmission of documents: languages
- Refusal to accept a document
- Date of service
- Certificate of service and copy of the documents served: languages
- Costs of service
- Service by diplomatic or consular agents
- Direct service
- Defendant non entering an appearance
- Agreements or arrangements to which Member States are Parties
- Means of receipt of documents

# Preliminary question to the CJ EU

- Where a question on the interpretation of acts of the institutions of the EU is raised in a case pending before a national court against whose decisions there is no judicial remedy under national law, that court must, if it considers that a decision on the question is necessary to enable it to give judgment request the Court of Justice to give a ruling

# Practical cases

## case law of the Court of Justice

Preliminary ruling concerning service regulation:

- **Case C-443/03 Götz Leffler v. Berlin Chemie AG** (Reference for a preliminary ruling from the Hoge Raad der Nederlanden)
- Consequences of no translation of the document

# Practical cases

## case law of the Court of Justice

Preliminary ruling concerning service regulation:

- **Case C-292/10 G v. Cornelius de Visser**
- reference for a preliminary ruling from the Landgericht Regensburg (Germany)
- Public notification of legal documents – Lack of known domicile or place of abode of the defendant in the territory of a Member State

# Practical cases

## case law of the Court of Justice

Preliminary ruling concerning service regulation:

- **Case C-325/11 Krystyna Alder, Ewald Alder v. Sabina Orłowska, Czesław Orłowski**
- reference for a preliminary ruling from the Sąd Rejonowy w Koszalinie (Poland)
- judicial documents addressed to a party whose place of residence or habitual abode is in another Member State are placed in the case file, cannot be deemed to have been effectively served, if that party has failed to appoint a representative authorised to accept service resident in Member State, in which the judicial proceedings are taking place.

# Practical cases

## case law of the Court of Justice

Preliminary ruling concerning service regulation:

- **Case C-14/07 Ingenieurbüro Michael Weiss und Partner GbR v. Industrie- und Handelskammer Berlin**
- reference for a preliminary ruling from the Bundesgerichtshof (DE Const. Court)
- consequences of annexes to the document not translated

# Practical cases

## case law of the Court of Justice

Preliminary ruling concerning service regulation:

- **Case C-14/08 Roda Golf & Beach Resort SL**
- reference for a preliminary ruling from the Juzgado de Primera Instancia e Instrucción nº 5 de San Javier (ES)
- service of a notarial act, in the absence of legal proceedings, falls within the scope of regulation



# Practical cases

## case law of the Court of Justice

Preliminary ruling concerning service regulation:

- **Case C-473/04 Plumex v. Young Sports NV**
- reference for a preliminary ruling from the Hof van Cassatie (BE Const. Court)
- it does not establish any hierarchy between the method of transmission and service (service through agencies or by post)
- vis-à-vis the person on whom service is effected the point from which time starts to run for the purposes of a procedural time-limit linked to effecting service, reference must be made to the date of the first service validly effected

# Practical cases

## case law of the Court of Justice

Preliminary ruling concerning the taking of evidence regulation:

- **Case C-104/03 St. Paul Dairy Industries NV v. Unibel Exser BVBA**
- reference for a preliminary ruling from the Gerechtshof te Amsterdam (NL Const. Court)
- measure ordering the hearing of a witness (for the purpose of enabling the applicant to decide whether to bring a case, determine whether it would be well founded and assess the relevance of evidence which might be adduced) is not covered by the notion of 'provisional, including protective, measures'

# Practical cases

## case law of the Court of Justice

Preliminary ruling concerning the taking of evidence regulation:

- **Case C-170/11 Lippens v. Kortekaas** (Maurice Robert Josse Marie Ghislain Lippens, Gilbert Georges Henri Mittler, Jean Paul François Caroline Votron v. Hendrikus Cornelis Kortekaas, Kortekaas Entertainment Marketing BV, Kortekaas Pensioen BV, Dirk Robbard De Kat, Johannes Hendrikus Visch, Euphemia Joanna Bökkerink, Laminco GLD N-A, Ageas NV)
- reference for a preliminary ruling under Article 267 TFEU from the Hoge Raad der Nederlanden (Netherlands)
- competent court of a Member State wanting to hear as a witness a party residing in another Member State has the option, in order to perform such a hearing, to summon that party before it and hear him in accordance with the law of its Member State

# Practical cases

## case law of the Court of Justice

- Preliminary ruling concerning the taking of evidence regulation:
- **Case C-283/09 Artur Weryński v. Mediatel 4B spółka z o.o.**
- reference for a preliminary ruling from the Sąd Rejonowy dla Warszawy Śródmieścia (Poland)
- requesting court is not obliged to pay an advance to the requested court for the expenses of a witness or to reimburse the expenses paid to the witness examined

# Practical cases

## case law of the Court of Justice

Preliminary ruling concerning the taking of evidence regulation:

- **Case C-332/11, ProRail BV v. Xpedys NV** (Xpedys NV, FAG Kugelfischer GmbH, DB Schenker Rail Nederland NV, Nationale Maatschappij der Belgische Spoorwegen NV)
- request for a preliminary ruling from the Hof van Cassatie (Belgium)
- court of one Member State, which wishes the task of taking of evidence entrusted to an expert to be carried out in another Member State, is not necessarily required to use the method of taking evidence laid down by those provisions to be able to order the taking of that evidence

# Principles from the case law

- autonomous interpretation
- interpretation in the light of objectives of LA
- uniform application
- full effect of EU
- improve and expedite vis a vis the rights of the defence
- common market
- legal certainty
- application of national in accordance with objectives of EU LA

Thank you for your attention!