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HOF VAN JUSTITIE VAN DE EUROPESE GEMEENSCHAPPEN
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Press and Information

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Judgment of the Court of Justice in Case C-443/03

Götz Leffler v Berlin Chemie AG

REFUSAL BY THE ADDRESSEE TO ACCEPT A JUDICIAL OR EXTRAJUDICIAL DOCUMENT BECAUSE OF THE LANGUAGE IN WHICH IT IS DRAFTED DOES NOT RESULT IN NULLITY OF THE DOCUMENT

It is possible for the sender to rectify that fault by sending the translation requested.

In order to improve the efficiency and speed of judicial procedures, the Council of the European Union adopted a regulation¹ designed to establish the principle of direct transmission of judicial and extrajudicial documents in civil and commercial matters. The regulation provides that the addressee of such a document may refuse to accept it if it is not in the official language of the Member State to which it is transmitted ('the Member State addressed') or a language of the Member State of transmission which the addressee understands.

In 2001, Mr Leffler applied to a Netherlands court for interim relief against Berlin Chemie AG, a company governed by German law, in order to recover goods taken by way of seizure by that company and to obtain an order prohibiting further such seizure. When his claims were dismissed he appealed to the Gerechtshof te Arnhem, a higher court, which summoned Berlin Chemie to appear at a sitting. However, Berlin Chemie did not enter an appearance, having refused to accept the summonses because they were not in German. In this context, Mr Leffler requested the Gerechtshof to give judgment in default against Berlin Chemie. This was refused on the ground that, since the language rule laid down by the regulation had not been complied with, the summoning of the German company had no legal effect.

Mr Leffler then appealed on a point of law against the judgment refusing his request to the Hoge Raad der Nederlanden (Supreme Court of the Netherlands), which referred several questions to the Court of Justice of the European Communities for a preliminary ruling.

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).

The Court of Justice held, first of all, that the consequences of refusal of the document must be determined by an autonomous interpretation of the regulation and not by national law.

It then held that, when the addressee of a document has refused it on the ground that it is not in an official language of the Member State addressed or in a language of the Member State of transmission which the addressee understands, **it is possible for the sender to remedy that by sending a translation of the document as soon as possible and in accordance with the procedure laid down by the regulation.** In this regard, **a period of one month** from receipt by the transmitting agency of the information relating to the refusal may be regarded as appropriate but this period can be determined by the national court according to the circumstances.

As regards the effect that sending a translation has on the date of service, the Court held that **the applicant must be able to benefit from the effect of the initial service** in so far as he has displayed diligence in regularising the document by sending a translation as soon as possible. However, effective protection of the addressee entails taking into account, in his regard, only the date on which he received the translation of the document.

The Court thus concluded that if a document has been refused on the ground that it is not in accordance with the language rule and the defendant has not appeared, judgment is not to be given until it is established that the document in question has been regularised by the sending of a translation and that this took place in sufficient time to enable the defendant to prepare his defence.

Unofficial document for media use, not binding on the Court of Justice.

Languages available: DE, EN, FR, IT, NL, CS, PL, SK

The full text of the judgment may be found on the Court's internet site

<http://curia.eu.int/jurisp/cgi-bin/form.pl?lang=en>

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

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