COMMENTARY ON THE JUDGMENT OF THE PROVINCIAL AUDIENCE OF BARCELONA OF 21 NOVEMBER 2019 [NOTIFICATION OF NON-TRANSLATED JUDICIAL DOCUMENT] [ECLI: ES: APB: 2019: 9450A]

COMENTARIO A LA SENTENCIA DE LA AUDIENCIA PROVINCIAL DE BARCELONA DE 21 NOVIEMBRE 2019 [NOTIFICACIÓN DE DOCUMENTO JUDICIAL NO TRADUCIDO] [ECLI:ES:APB:2019:9450A]

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Abstract: The commentary on the judgment of 21 November 2019 of the Provincial Audience of Barcelona on the appeal filed against the Order of 20 February 2019 analyses the need for translating judicial and extrajudicial documents delivered by the judicial authority of a European Union (EU) Member State to an addressee located in another EU Member State. The judgment sets out the views of the Spanish court by analysing relevant case-law of the Court of Justice of the European Union (CJEU) and agreeing with the most recent doctrine of the European court. However, the Spanish court cannot compel a court of another EU Member State to comply with Regulation 1393/2007.

Keywords: notification judicial documents by mail, translation of judicial documents, civil and commercial matters, Regulation 1348/2000, Regulation 1393/2007, Court of Justice of the European Union.

Resumen: El comentario a la sentencia de 21 de noviembre de 2019 de la Audiencia Provincial de Barcelona sobre la apelación presentada contra de la Orden de 20 de febrero de 2019, analiza la necesidad de traducir los documentos judiciales y extrajudiciales enviados por la autoridad judicial de un Estado miembro de la Unión Europea (UE) a un destinatario ubicado en otro Estado miembro de la UE. La sentencia expone las opiniones del tribunal español analizando la jurisprudencia pertinente del Tribunal de Justicia de la Unión Europea (TJUE) y de acuerdo con la doctrina más reciente del Tribunal europeo. Sin embargo, el tribunal español no puede obligar a un tribunal de otro Estado miembro de la UE a cumplir con el Reglamento 1393/2007.

Palabras clave: notificación de documentos judiciales por correo, asuntos civiles y comerciales, Reglamento 1348/2000, Reglamento 1393/2007, Tribunal de Justicia de la Unión Europea.

Sumario: I. Introduction. II. The facts of the case. 1. The concept of judicial document. 2. Acceptance of the document by the addressee in the language or one of the languages of the EU Member State of its residence. III. The lex fori regit processum rule in Spain and the need for judicial cooperation between European Union Member State courts in the service of judicial documents. IV. Least cost avoider in the service of judicial documents. V. The legal grounds of the decision and final remarks.

I. Introduction

1. The following analysis of the judgment provides an insight on the requirement to translate a judicial document into the official language or languages of the European Union (EU) Member State of residence of an addressee. The requirements laid down in Regulation 1393/2007,[1] that repeals Regulation 1348/2000[2] are explained in the following sections. The Regulation is applicable among all EU Member States. Recital 23 and Article 20 of Regulation 1393/2007 establish that it "shall, in relation to matters to which it applies, prevail over other provisions contained in bilateral or multilateral agreements or arrangements concluded by the Member States, and in particular [sic] the Hague Convention of 15 November 1965"[3] that most of the EU Member States have ratified among the 76 signatory parties worldwide. Moreover, the Brussels recast Regulation[4] sets out in its Article 28(4) that:

> "Where Regulation (EC) No 1393/2007 is not applicable, Article 15 of the Hague Convention of 15 November 1965 on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters shall apply if the document instituting the proceedings or an equivalent document had to be transmitted abroad pursuant to that Convention".

II. The facts of the case

2. This section sets out the facts regarding the judgment of 21 November 2019 of the Provincial Audience of Barcelona on the appeal filed by the Attorney General Luis Samarra Gallach, on behalf of and in representation of Juan María against the Order of 20 February 2019,[5] the appellee being the Prosecutor's Office on behalf and in representation of the Court of Stuttgart. The Order stated that the Court of First Instance no 44 of Barcelona had no jurisdiction to hear the lawsuit filed by Juan María and refrained from knowing that claim. The appellant's claim against the Court of Stuttgart (*Landgericht Stuttgart*) was barred on the basis that the Spanish courts lacked jurisdiction to hear the case.

3. A claim had been notified by mail to the appellant without being translated into Spanish. A notification should be translated, according to Article 8 of the Regulation 1393/2007.[6] The Spanish courts have no jurisdiction to compel the German courts to comply with Regulation (EC) 1393/2007 in relation to compliance with procedural requirements according to Article 37 of the Spanish Law on Civil Procedure (SLCP)[7] and Article 22 of the Spanish Law on the Judiciary (SLJ).[8] As it is clearly stated by Article 22 of the SLJ:

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[1] 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 L 324.

[2] 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 160/37.

[3] Hague Convention of 15 November 1965 on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters.

[4] Regulation (EU) No 1215/2012 of the European Parliament and of the Council of 12 December 2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters [2012] OJ L351/1. Also, its predecessors should be considered, Council Regulation (EC) 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters, and the Brussels Convention of 27 September 1968 on jurisdiction and the enforcement of judgments in civil and commercial matters, consolidated text of 26 January 1998 [1998] OJ C 27/1.

[5] Ordinary trial 1143/2018.

[6] 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 L 324.

[7] Spanish Law 1/2000 of 7 January on Civil Procedure [(SLCP) *´Ley de Enjuiciamiento Civil´* (LEC)] published in the Official State Gazette No 7 of 8 January 2000 and amended by Spanish Law 42/2015 of 5 October.

[8] Law 6/1985 of 1 July 1985 on the Judiciary ([*´Ley Orgánica del Poder Judicial´* (LOPJ)] published in the Official State Gazette no 157 of 2 July 1985, as amended up to Law No 16/2015 of 27 October 2015.

> "Spanish Courts will not be competent in those cases wherein the competent jurisdictional bodies outlined in Spanish laws do not envisage such competence".

4. The Court of Stuttgart had notified a claim addressed to the appellant at his domicile, i.e. the domicile of the defendant, without a Spanish translation of the document. The appellant answered the German court in German by requesting that the notification should be translated into Spanish according to Article 14 (Service by postal services) of Regulation 1393/2007:

> "Each Member State shall be free to effect service of judicial documents directly by postal services on persons residing in another Member State by registered letter with acknowledgement of receipt or equivalent".

5. According to Article 37 of the SLCP, the courts of civil jurisdiction must "refrain from knowing matters that correspond to be heard by the courts of another jurisdictional order of the ordinary jurisdiction". The appellant argued that the Spanish courts are competent based on the absence of any exclusion for the Spanish courts to know about the appeal procedure. The Spanish Prosecutor's Office had already informed the appellant that the Spanish courts have no jurisdiction to hear the case.

1. The concept of judicial document

6. "Judicial document must clearly be taken to mean documents connected with judicial proceedings. The term extrajudicial documents, however, is not amenable to precise definition" under EU Law.[9] The CJEU case-law has provided for an autonomous and broad definition of what is understood by extrajudicial documents.

7. The scope of application of Regulation 1393/2007 is summed up as follows: it is mandatorily applicable by EU Member State courts to notify judicial or extrajudicial documents in another Member State (displacing national rules) in civil or commercial matters. Tax, customs or administrative matters and the responsibility of the State for actions or omissions in the exercise of its authority are excluded (*acta iure imperii*).[10] Article 4(2) of the Regulation 1393/2007[11] provides for the different categories that fall under the definition of transmission of judicial documents in civil and commercial matters:

> "The transmission of documents, requests, confirmations, receipts, certificates and any other papers between transmitting agencies and receiving agencies may be carried out by any appropriate means, provided that the content of the document received is true and faithful to that of the document forwarded and that all information in it is easily legible".

8. Each state has the power to designate the authorities that can send or receive a notification between EU Member States. Only people and authorities linked to the judiciary are allowed to fall within the category of intervening authorities in Spain, excluding public notaries and lawyers. Autonomous territorial units or judicial authorities constitute the transmitting and receiving agencies for such documents as set out in Articles 4 to 11 of Regulation 1393/2007. Consulates and diplomatic representations can be subject to this notification procedure under Articles 12 and 13 of the Regulation. Under Article 14 the transmitting agency can also directly notify a judicial document to a person residing in

[9] According to the Explanatory Report on the Convention, drawn up on the basis of Article K.3 of the Treaty on European Union, on the service in the Member States of the European Union of judicial and extrajudicial documents in civil or commercial matters (Text approved by the Council on 26 June 1999), OJ 1997 C 261.

[10] A.-L. Calvo Caravaca and J. Carrascosa González, *Derecho internacional privado*, vol. II, Comares, 2016, pp. 525-572.

[11] Regulation (EC) No 1393/2007 (Service) 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 [2007], OJ L324/79.

another EU Member State by postal services. Direct service is enshrined in Article 15 "through the judicial officers, officials or other competent persons of the Member State addressed, where such direct service is permitted under the law of that Member State". There is no ranking set up between the different means of transmission of documents and the *prior in tempore potior in jure* principle applies when several notification routes are served by the transmitting agency.[12]

2. Acceptance of the document by the addressee in the language or one of the languages of the EU Member State of its residence

9. The judicial document can only be served when the following conditions set out in Article 8(1), dealing with the refusal to accept a document, are met:

> "The receiving agency shall inform the addressee, using the standard form set out in Annex II, that he may refuse to accept the document to be served at the time of service or by returning the document to the receiving agency within one week if it is not written in, or accompanied by a translation into, either of the following languages:
> a language which the addressee understands; or
> the official language of the Member State addressed or, if there are several official languages in that Member State, the official language or one of the official languages of the place where service is to be effected".

10. As it has been mentioned above, the Spanish addressee has one week to refuse the original untranslated document in writing and return it to the Court of Stuttgart. Paragraph 2 of the referred Article is applicable when the addressee refuses to accept that the document is necessary to inform them of their non-compliance with the requirements set out in Article 4(1) of the Regulation. The addressee notified the Court of Stuttgart in German of this mistake. Paragraph 3 enables the lack of translation to be remedied by applying the particular period provided by the domestic laws (German ones in this case) from the date the document was served with the accompanying translation as stated in Article 9(2) of the Regulation. Paragraph 4 extends the application of the previous paragraphs to the means of transmission and service of judicial documents. The reason for not effecting the service "in accordance with the law will be invalid, since the person concerned may be left without a proper defence".[13]

11. In the current case, Article 14 is applicable since there is no intermediary between the transmitting agency (the Court of Stuttgart) and the recipient (the Spanish resident). The obligation to adequately inform the recipient corresponds to the transmitting agency through the form provided in Annex II. Any refusal of the judicial document delivered to the addressee that does not comply with Annex II can be rejected according to the doctrine set out in the *Alpha Bank Cyprus* case[14] and later judgments of the CJEU in the light of Article 8 of Regulation 1393/2007:

> "In the light of all the foregoing considerations, the answer to the three questions referred is that Regulation No 1393/2007 must be interpreted to the effect that, when serving a document on its addressee residing in the territory of another Member State, in a situation where the document has not been drafted in or accompanied by a translation in either a language which the person concerned understands, or the official langua-

[12] A. Gutiérrez Cardenete, "Aplicación del Reglamento (CE) 1393/2007 del Parlamento Europeo y del Consejo, de 13 de noviembre de 2007, relativo a la notificación y al traslado en los Estados miembros de documentos judiciales y extrajudiciales en materia civil o mercantil (notificación y traslado de documentos) y por el que se deroga el Reglamento (CE) nº 1348/2000 del Consejo", *Boletín del Ministerio de Justicia* 70, No 2194 (2016), pp. 1-44, at pp. 20-21; A-L. Calvo Caravaca and J. Carrascosa González (note 10), pp. 525-572.

[13] European Judicial Network (in civil and commercial matters) available at: <https://e-justice.europa.eu/content_service_of_documents-371-es-en.do?init=true&member=1> accessed on 13 March 2020.

[14] Judgment of 16 September 2015, *Alpha Bank Cyprus Ltd v Dau Si Senh and Others*, C-519/13, ECLI:EU:C:2015:603, at paragraph [89].

> ge of the Member State addressed, or, if there are a number of official languages in that Member State, the official language or one of the official languages of the place where service is to be effected:
> the court seised in the transmitting Member State must ensure that the addressee has been properly informed, by means of the standard form in Annex II to that regulation, of his right to refuse to accept that document;
> where that procedural requirement has not been complied with, it falls to that court to return the proceedings to a lawful footing in accordance with the provisions of that regulation;
> it is not for the court seised to prevent the addressee from exercising his right to refuse to accept that document;
> it is only after the addressee has effectively exercised his right to refuse to accept the document that the court seised may verify whether that refusal was well founded; for that purpose, that court must take into account all the relevant information on the court file in order to determine whether or not the party concerned understands the language in which the document was drafted; and
> where that court finds that the refusal by the addressee of the document was not justified, it may in principle apply the consequences under its national law in such a case, provided that the effectiveness of Regulation No 1393/2007 is preserved".[15]

12. The *Alpha Bank Cyprus* judgment in its paragraph 33 furthermore points out that the rejection of a document by the addressee is based on the "need to protect the rights of defence of the addressee of that document, in accordance with the requirements of a fair hearing, enshrined in the second paragraph of Article 47 of the Charter of Fundamental Rights of the European Union and Article 6(1) of the European Convention for the Protection of Human Rights and Fundamental Freedoms, signed in Rome on 4 November 1950.

13. The already cited Article 4(3) of Regulation 1393/2007 establishes that the period that the addressee has to ask the Court of Stuttgart to provide for a notification containing the translation is prescribed by German laws as the CJEU has already expressed in different judgments[16] by relying on Article 9(2) of the Regulation. The annexes accompanying the document should be translated in case of containing essential elements.[17] As Calvo Caravaca and Carrascosa González point out, the failure to reject a document not translated into an understandable language by the addressee constitutes a loss of any subsequent right to do it at a later stage by opposing the instituted proceedings.[18] The judgment of 5 September 2018 of the Provincial Court of Barcelona[19] confirms that non-compliance with the requirement set out in Article 1393/2007 of Regulation 1393/2007 means that once the defendant accepts being summoned by the court, appears at court and makes allegations (declinatory of jurisdiction), "this [sic] supposes the acceptance of the location, by not having denounced lack of translation of the documents, as established in Article 8 of the aforementioned Regulation".

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[15] *Alpha Bank Cyprus Ltd* judgment at paragraph [89]. The refusal is stated in paragraph [49] of the judgment; the Order of 28 April 2016, *Alta Realitat SL v Erlock Film ApS and Ulrich Thomsen*, C-384/14, EU:C:2016:316, at paragraph [61], the judgment of 2 March 2017, *Andrew Marcus Henderson v Novo Banco SA*, C-354/15, EU:C:2017:157, at paragraph [50] the judgment of September 2018, *Catlin Europe SE v O. K. Trans Praha spol. s r. o.*, C-21/17, ECLI:EU:C:2018:675, at paragraph [32]; and the judgment of the Spanish Provincial Court of Valencia of 4 December 2019.

[16] E.g. *Henderson* case, at paragraph [51], and judgment of 8 November 2005, *Götz Leffler v Berlin Chemie AG*, Case C-443/03, ECLI:EU:C:2005:665, at paragraphs [50] and [51]; Caravaca

[17] Judgment of 8 May 2008, *Ingenieurbüro Michael Weiss und Partner GbR v Industrie- und Handelskammer Berlin*,

Case C-14/07, ECLI:EU:C:2008:264, at paragraph [65]: "[sic] …under some national legal systems there is no requirement for the documentary evidence in a case to be annexed to what is defined as a document instituting the proceedings and they may be communicated separately. Such documents are not therefore regarded as intrinsically linked to the document instituting the proceedings, in that they are essential to enable the defendant to understand the claim brought against him and to be aware of the existence of the legal proceedings, but have a probative function which is distinct from the purpose of service itself".

[18] A-L. Calvo Caravaca and J. Carrascosa González (note 10), pp. 525-572.

[19] Judgment of 5 September 2018 of the Provincial Audience of Barcelona, ECLI: ES:APB:2018:7934, as detailed in the second point of the grounds of the decision.

III. The *lex fori regit processum* rule in Spain and the need for judicial cooperation between European Union Member State courts in the service of judicial documents

14. The *lex fori regit processum* rule or the law of the forum governing the procedure is enshrined in Article 3 (Territorial scope of civil procedural rules) of the Spanish Civil Procedure Act (SCPA):[20]

> "With the sole exceptions which may be stipulated in international treaties and conventions, civil procedure taking place in Spain shall only be regulated by Spanish procedural rules".

15. The Spanish procedural laws are not applicable to notifications carried out by a foreign judge by request of Spanish judicial authorities. The requirement to follow Spanish procedural laws when a process takes places in Spain is clear. However, the notifications carried out by a foreign judge or by a Spanish judge in the context of foreign judicial proceedings do not contravene Article 3 of the SCPA. All in all, the only exceptions curtailing the applicability of this rule in order to follow foreign laws by the Spanish courts fall within the scope of foreign-led procedures.

16. The much-vaunted collaboration between judges from different EU Member States does not appear in this case: the Spanish judge cannot communicate with the deciding German judge. For instance, Article 15(1) (Transfer to a court better placed to hear the case) of the Brussels II-bis Regulation on the recognition and enforcement of judgments in matrimonial matters and the matters of parental responsibility,[21] enacted in 2003, offers a solution that is not replicated under Regulation 1393/2007:

> "By way of exception, the courts of a Member State having jurisdiction as to the substance of the matter may, if they consider that a court of another Member State, with which the child has a particular connection, would be better placed to hear the case, or a specific part thereof, and where this is in the best interests of the child: (a) stay the case or the part thereof in question and invite the parties to introduce a request before the court of that other Member State in accordance with paragraph 4; or (b) *request a court of another Member State to assume jurisdiction in accordance with paragraph 5*".

17. The procedure to request to assume jurisdiction from an EU Member State court to another is described in Article 15(5) of the Brussels II-bis Regulation:

> "The courts of that other Member State may, where due to the specific circumstances of the case this is in the best interests of the child, accept jurisdiction within six weeks of their seisure [sic]. In this case, the court first seised shall decline jurisdiction. Otherwise, the court first seised shall continue to exercise jurisdiction in accordance with Articles 8 to 14".

18. Article 15(6) of the Regulation sets out the following cooperation mechanism between EU Member State courts:

> "The courts shall cooperate for the purposes of this Article, either directly or through the central authorities designated pursuant to Article 53".

19. The EU Member State judges can communicate with each other in the European Judicial Area. The appellant seeks the Spanish judge to ask its German counterpart to correctly apply Regulation 1393/2007. However, the Spanish judge is constrained by the limitations imposed by the SCPA.

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[20] Spanish Law 1/2000 of 7 January on Civil Procedure [(SLCP) *´Ley de Enjuiciamiento Civil´* (LEC)] published in the Official State Gazette No 7 of 8 January 2000 and amended by Spanish Law 42/2015 of 5 October.

[21] Council Regulation (EC) 2201/2003 of 27 November 2003 concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and the matters of parental responsibility, repealing Regulation (EC) 1347/2000 ("Brussels II-bis Regulation"), OJ 2003 L338/1.

IV. Least cost avoider in the service of judicial documents

20. From a Law & Economics perspective, the translation of documents is justified by the two main theories. Firstly, the German judge may consider the neo-classical theory "based on the belief in markets and cherishing efficiency"[22] by reducing the transaction costs.[23] Secondly, the Court of Stuttgart should observe the "International Stream-Of-Commerce" theory based on the assumption that that court acknowledges the "territorial links of the case to the different States", Spain in this case, according to the initial claim brought at the Court of Stuttgart.[24]

21. The global cost of applying the law of the country where the claimant has its habitual residence, i.e. German procedural law under which a translation into Spanish is not required, is not the most efficient in comparison to the law of the country of the habitual residence of the notified party, i.e. Spain, where the judicial document is delivered.[25] This is considered the most efficient and cheapest cost avoider. The efficiency is calculated in a holistic manner considering the procedural law that distributes the global costs of conflict in a balanced way and the law that implies lower overall cost for the parties.[26] The costs incurred in waiting for the Spanish appellant to notify the Court of Stuttgart of its refusal to accept the judicial notification in German within the one-week period may have several consequences. The period set out by German procedural laws to answer the claim may be halted and the delay may cause further delays and additional costs in respect of the judicial proceedings carried out by the Court of Stuttgart.

22. According to Article 11(2) (Costs of service) of Regulation 1393/2007, "the applicant shall pay or reimburse the costs occasioned by [sic] (b) the use of a particular method of service". The date of service under Article 9(1) is "the date on which it is served in accordance with the law of the Member State addressed". Furthermore, Article 9(2) of the Regulation stipulates that "where according to the law of a Member State a document has to be served within a particular period, the date to be taken into account with respect to the applicant shall be that determined by the law of that Member State".

V. The legal grounds of the decision and final remarks

23. The Spanish judge has raised awareness about the existing controversy regarding the translation of judicial and extrajudicial documents into the official language of the country where the notification is made. The court provides as an example the doctrine set out in the judgment of 19 December 2012 of the Spanish Provincial Court of Alicante[27] that follows the *Michael Weiss* case where the translation of the judicial documents, notified by mail under Article 14 of Regulation 1393/2007, did not fall within

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[22] M. Klausner, "Corporations, corporate law, and networks of contracts." *Virginia Law Review*, vol. 81, 1995, No 3, pp. 757-852, at p. 785; S. Vogenauer, "Regulatory competition through choice of contract law and choice of forum in Europe: theory and evidence", in Horst Eidenmüller (ed.), *Regulatory Competition in Contract Law and Dispute Resolution*, Verlag C.H. Beck and Hart Publishing, 2013, pp. 227–286, at p. 235); G. Rühl, "Wettbewerb der Rechtsordnungen im Vertragsrecht - Wunsch oder Wirklichkeit?", in U. Ehricke, W. Kaal, M. Schmidt and A. Schwartze (eds.), *Festschrift für Christian Kirchner*, Mohr Siebeck, 2014, pp. 975-994, at p. 978.

[23] D. Bureau and H. Muir Watt, *Droit international privé*, 2nd ed., Puf, vol. 1, 2010, p. 532; M.-P. Weller, "Anknüpfungsprinzipien im Europäischen Kollisionsrecht: Abschied von der" klassischen, IPR-Dogmatik?",*IPRax: Praxis des Internationalen Privat-und Verfahrensrechts*, vol. 31, 2011, No 5, pp. 429-437, at p. 433; *Vid ad ex*, H.-B. Schäfer and K. Lantermann, "Choice of law from an economic perspective", in Jürgen Basedow and Toshiyuki Kono (eds.), *An economic analysis of private international law*, Mohr Siebeck, 2006, pp. 87-120, at p. 188; in P. Mankowski, "Article 3", in U. Magnus and P. Mankowski, *Rome I Regulation - Commentary, European Commentaries on Private International Law (ECPIL)*, Otto Schmidt, 2017, pp. 120-121.

[24] J. Carrascosa González, *Conflicto de leyes y teoría económica*, Colex, 2011, pp. 226-229.

[25] *Ibid.* pp. 230.

[26] J. Echebarría Fernández, "Jurisdiction and applicable law to contracts for the sale of goods and the provision of services including the carriage of goods by sea and other means of transport in the European Union = Jurisdicción y derecho aplicable a los contratos de compraventa de mercaderías y de prestación de servicios incluyendo el transporte de mercancías por vía marítima y otros medios de transporte en la Unión Europea", *CDT*, Vol. 11, No 2, 2019, pp. 58-84, at pp. 78-81.

[27] ECLI: ES:APA:2012:4075.

the requirements set out in Article 8 of Regulation 1393/2007 and thus was not considered essential by the CJEU. Contrariwise, the Spanish court agrees with the CJEU's *Andrew Marcus Henderson v Novo Banco SA* case on this occasion and with the requirement of translation of judicial and extrajudicial documents delivered to the addressee by mail. Moreover, the Spanish court stresses that the addressee must be informed of the possibility of rejection of the notification not written in Spanish in the current case.[28]

24. The current case offers an example of the gaps in Regulation 1393/2007 that should be filled by the CJEU or any new Regulation that supersedes it. The European legislator should consider that the judicial authorities of an EU Member State have no discretion to oblige a judicial authority to comply with the requirement to translate an essential judicial or extrajudicial document to guarantee the right to a fair process for the addressee. The appellant in the current judgment issued by the Provincial Court of Barcelona cannot oppose the German proceedings by relying on the Spanish judge to make the German judge comply with the requirements set out in Regulation 1393/2007. In the opinion of this author, the sound administration of justice is the principle that should guide the European legislator to make the necessary legal changes to the Regulation in order to comply with the prevailing view expressed by the CJEU in its recent judgments. The appellant's right to a proper defence should be respected by resorting in the appropriate mechanisms to receive the judicial notification in one of the official languages accepted in Spain or in a language that the party understands.

[28] A-L. Calvo Caravaca and J. Carrascosa González (note 10), pp. 525-572.