



## Serving Greek Proceedings to US defendants

### A case law survey

#### *Apostolos Anthimos*

Attorney at Law, Thessaloniki, Greece.

Editor for Civil Procedure & International Civil Litigation, Armenopoulos [Thessaloniki Bar Review]. Editor of the blog 'International Civil Litigation in Greece' [<http://icl-in-greece.blogspot.com>]

**Abstract:** The paper deals with the problem of service in the international level of legal relations and how should service take place when defendants are U.S. residents.

**Keywords:** Service. Greek Civil Procedure. U.S. resident defendants.

#### Introduction

Greece and the USA have longstanding commercial, social and cultural ties. According to the 2007 U.S. Census Bureau estimation, there were 1.380.088 people of Greek ancestry in the United States, while the State Department mentions that around 3.000.000 Americans claim to be of Greek descent<sup>1</sup>. Compared to the population of Greeks within the Hellenic Republic, it is more than a quarter of the overall inhabitants in the country<sup>2</sup>. The USA is the 6<sup>th</sup> export target for Greece, reaching on an average the overall amount of 1 billion € per year.

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<sup>1</sup> [http://en.wikipedia.org/wiki/Greek\\_American](http://en.wikipedia.org/wiki/Greek_American).

<sup>2</sup> The General Population Census was conducted in 2011. The final results of the census were announced on 28 December 2012. According to final results, the total population of Greece is 10.815.197, see [http://en.wikipedia.org/wiki/Greek\\_census\\_2011](http://en.wikipedia.org/wiki/Greek_census_2011).



In spite of the figures above, Greece and the USA have not signed a bilateral agreement on judicial assistance<sup>3</sup>. With regard to the service of documents, the countries are bound by the 1965 Hague Convention on Service of Documents abroad<sup>4</sup>. Although the Greek act has been published back in 1983<sup>5</sup>, its actual implementation in Greece began only 6 years later, i.e. sometime in 1989. Meanwhile the Convention constitutes an instrument well known in disputes with foreign elements<sup>6</sup>. A recent search on Greece's most reliable legal database has returned nearly 200 hits. My report will focus on the existing reported case law<sup>7</sup>, dealing specifically with service of process to the USA.

## I. Legal Framework

Greece applies the Hague Service Convention in conjunction with domestic law<sup>8</sup>. Mention needs to be made here to the fact that Greece has adopted the French model of

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<sup>3</sup> Unlike the USA, Greece has a voluminous record of bilateral treaties in the field, see *Yessiou-Faltsi*, Hellas, in: *Blanpain*, International Encyclopedia of Laws - Civil Procedure, 2004, Kluwer Law International, pp. 39 et seq.

<sup>4</sup> Signed by the USA on 24.8.1967, in force since 10.2.1969. Greece signed the convention on 20.7.1983, in force since 18.9.1983.

<sup>5</sup> Law Nr. 1334/1983, Official Gazette Vol. A 31/1983.

<sup>6</sup> Most notably *Prof. Yessiou-Faltsi* provided valuable insight on the convention in the early stages by publishing her monograph on "The Service of Documents Abroad in the Light of Article 20 of the Greek Constitution and the Hague Convention" (1989, in Greek).

<sup>7</sup> The law reviews mentioned thereon are the following: Armenopoulos [in Greek: Αρμενόπουλος, Thessaloniki Bar Review]; Commercial Law Survey [in Greek: Επισκόπηση Εμπορικού Δικαίου]; Hellenic Jurists Review [in Greek: Εφημερίς Ελλήνων Νομικών]; Chronicles of Private Law [in Greek: Χρονικά Ιδιωτικού Δικαίου]; Hellenic Justice [in Greek: Ελληνική Δικαιοσύνη]; Legal Tribune [in Greek: Νομικό Βήμα]; Civil Procedure Review [in Greek: Επιθεώρηση Πολιτικής Δικονομίας]; Achaian Law Reports [in Greek: Αχαϊκή Νομολογία]; Piraeus Law Reports [in Greek: Πειραιϊκή Νομολογία]; Dike [in Greek: ΔΙΚΗ]; Theory and Practice of Private Law [in Greek: Εφαρμογές Αστικού & Αστικού Δικονομικού Δικαίου]; Case File [in Greek: ΔΙΚΟΓΡΑΦΙΑ, Larissa Bar Review]; Maritime Law Review [in Greek: Επιθεώρηση Ναυτιλιακού Δικαίου]. Information on some of the above reviews can be found in: *Yessiou-Faltsi*, Hellas, in: *Blanpain*, International Encyclopedia of Laws - Civil Procedure, pp. 62 et seq. In addition, reference is made to the following legal data bases: 1) ISOCRATES, i.e. the data base of the Athens Bar, and 2) NOMOS, a privately owned data base, which has been the pioneer in the field.

<sup>8</sup> For details regarding the Greek landscape on the matter, see *Yessiou-Faltsi*, Civil Procedure in Hellas (1997), (Kluwer Law International / Ant. N. Sakkoulas Publishers, 1997), pp. 218-219; *Yessiou-Faltsi*, Hellas, in: *Blanpain*, International Encyclopedia of Laws - Civil Procedure, pp. 139-140; *Yessiou-Faltsi*, Greek Law on Service Abroad of Judicial and Extrajudicial Documents, in: *Yessiou-Faltsi*, Procedural Legal Order (= Η δικονομική έννομη τάξη), Studies and opinions on national and European law on Civil Procedure, Vol. III (2009), 311 et seq.; *Yessiou-Faltsi*, Die Auslandszustellung durch «rémise au parquet» - Auslegungsfragen aus griechischer Sicht, in: *Recht in Europa*, Festschrift für Hilmar Fenge (1996), 159 ff.; *Kerameus/Kozyris*, Introduction to Greek Law<sup>3</sup> (Kluwer Law International / Ant. N. Sakkoulas Publishers, 2008), pp. 353 et seq.



*remise au parquet*, in other words the so-called fictional or deemed service (Art. 134 & 136 CCivP). Article 134 of the Greek Code on Civil Procedure [henceforth: CCivP] regulates the service of process abroad<sup>9</sup>. In addition, Article 135 CCivP applies also in regards to foreign defendants, in case that the latter are of unknown residence<sup>10</sup>. This provision is crucial in light of the non-application of the Hague Service Convention in respect to recipients of unknown residence [Art. 1 Para. 2]. Finally, it is important to underline that the domestic limits for the appearance of the defendant is regulated under Art. 229 CCivP<sup>11</sup>, which constitutes a pre-requisite for the timeliness of service.

## II. Case Law Analysis

I will now focus on reported case law regarding service of Greek proceedings to defendants / litigants living or having their seat in the USA. There are two groups of decisions concerning the matter: The first group consists of those regarding service of documents instituting proceedings<sup>12</sup>, whereas the second group deals with the issue of application of the 1965 Convention on other documents beyond the claim (summons for sworn statements, court decisions, writs of attachment, etc).

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<sup>9</sup> According to Article 134 Greek CCivP, for the purposes of serving foreign defendants, documents are to be served to the Public Prosecutor of the competent court, who is entrusted with forwarding the document to the Ministry of Foreign Affairs. From there, the document will be transmitted to the Receiving Agency of the respective country, in order to be delivered to its actual recipient.

<sup>10</sup> According to Article 135 Greek CCivP, persons of unknown residence are to be served in a fashion similar to the particulars of Article 134 Greek CCivP, plus its publication in two newspapers (one in Athens, the capital, the second in the venue of the court).

<sup>11</sup> According to Article 229 Greek CCivP, the claim has to be served 90 days before the hearing. For so called "special proceedings", the claim has to be served 60 days prior to the hearing, Art. 591 Para. 1 a CCivP.

<sup>12</sup> Claim, appeal or writ of certiorari.



**A. First Group: Documents instituting proceedings**

Greek courts are proceeding with the hearing of the case, when a US certificate of service is produced by the claimant<sup>13</sup>, or when the requirements set under Art. 15 Para 2 (b) & (c) Hague Service Convention are met<sup>14</sup>. The use of US methods of service is also fully compliant with Greek law, given that Art. 137 CCivP<sup>15</sup> clearly provides for such a method of service<sup>16</sup>. In all cases above, the burden of proof lies with the claimant<sup>17</sup>.

Courts proceed also with the hearing when the claimant opts for service to a legally appointed proxy in Greece, thus, avoiding service of process to the US, as long as domestic Civil Procedure rules on the proper appointment of the proxy have been respected. If the above requirement is not fulfilled, the court orders the stay of proceedings<sup>18</sup>.

On the other side, courts refused to render a default judgment under the following circumstances:

a) When the claimant omits to furnish a certificate of service from the USA (Art. 15 Hague Service Convention), and produces to the court solely the certificate of service to the

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<sup>13</sup> This is the rule in most of the cases; see for instance Athens 1<sup>st</sup> Instance Court (Chamber) 13218/2010, ISOCRATES.

<sup>14</sup> Supreme Court 910/1989, Hellenic Justice 1991, 529; Supreme Court 433/2001, Hellenic Justice 2002, 412 = Chronicles of Private Law 2001, 345; Supreme Court 851/2007, Legal Tribune 2007, 1824; Supreme Court 775/2013, NOMOS. However, if the six months period has not elapsed since the date of the transmission of the document, the court orders the stay of the hearing, CoA Athens 2410/1997, Hellenic Justice 1998, 435.

<sup>15</sup> Pursuant to Art. 137 CCivP, "service to those who have their residence or seat abroad can be also effected in accordance with the formalities of foreign law and by the organs which this law provides for".

<sup>16</sup> CoA Athens 223/2012, Theory and Practice of Private Law 2012, 760 = Civil Procedure Review 2013, 379. The issue at stake was whether an appeal could be served by virtue of the law of the U.S. Federal State addressed. In particular, the appellant, instead of making use of the service methods stipulated in the Convention, in order to notify the appeal to its recipient in the USA, he opted for serving the document pursuant to Rule 1.080 b & f Florida Rules of Civil Procedure. The Athens Court of Appeal accepted the method of service chosen on two grounds: First, because Article 137 Greek CCivP grants the right to serve documents according to the provisions and formalities of the State addressed; and secondly, because Articles 10 c & 19 of the Convention allow any person interested in a judicial proceeding to effect service of judicial documents directly through the judicial officers, officials or other competent persons of the State of destination, to the extent that the internal law of the latter State permits methods of transmission, other than those provided for in the preceding Articles. Given the fact that no indication of the contrary was evidenced in the ensuing proceedings, the court found no reason to reject the certificate of service produced by the appellant.

<sup>17</sup> Supreme Court 1689/2009, Legal Tribune 2010, 723 = Theory and Practice of Private Law 2010, 349; Tripolis 1<sup>st</sup> Instance Court 180/2001, ISOCRATES.

<sup>18</sup> Supreme Court 909/2004, NOMOS; CoA Dodecanese 200/1998, Armenopoulos 1999, 415; CoA Larissa 474/2006, Case File 2006, 539.



competent (Greek) Public Prosecutor's office<sup>19</sup>. Such an omission constitutes also a ground for appeal<sup>20</sup>. In two cases however, courts proceeded with the hearing, in spite of the above failure<sup>21</sup>.

b) When the claimant does not produce a certified translation of the US certificate of service, i.e. (s)he only includes the original or a true copy with no Greek translation<sup>22</sup>.

c) When the document reaches the US competent authority<sup>23</sup> or the defendant<sup>24</sup> after the day of the hearing.

d) When domestic time limits for the appearance of the defendant before court [Art. 229 CCivP] have been violated. In this case, if the defendant does not appear in the proceedings, the hearing will be adjourned, and fresh service is required, even if the claimant produces the US certificate of service and a Greek translation attached<sup>25</sup>.

e) When the claimant surreptitiously opts for fictional service or service by publication [Art. 135 CCivP], without scrutinizing the possibilities for using conventional methods of service<sup>26</sup>. However, if the claimant exhausts the latter with no result, he's allowed to proceed to the former<sup>27</sup>. Hence, a successive option is legitimate if it has been proven that

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<sup>19</sup> Supreme Court 298/1988, Hellenic Justice 1988, 1663; Supreme Court 250/1993, Hellenic Justice 1994, 1306 = Legal Tribune 1994, 817; Supreme Court 657/1995, Hellenic Jurists Review 1996, 566; Supreme Court 835/2007, Civil Procedure Review 2008, 381; CoA Athens 734/1992, Legal Tribune 1992, 588; CoA Larissa 740/2008, ISOCRATES; CoA Patras 453/1993, Achaian Law Reports 1994, 165; Athens 1<sup>st</sup> Instance Court (Chamber) 3615/1985, Hellenic Justice 1988, 1445; 3939/2005, ISOCRATES; 7606/2007, ISOCRATES, Thessaloniki 1<sup>st</sup> Instance Court 9071/2010, ISOCRATES.

<sup>20</sup> Athens 1<sup>st</sup> Instance Court (Chamber) 4430/1991, Armenopoulos 1992, 259 [quashing the 1<sup>st</sup> instance ruling].

<sup>21</sup> Athens 1<sup>st</sup> Instance Court (Chamber) 258/2008 & 8360/2008, ISOCRATES.

<sup>22</sup> Supreme Court 2095/2007, Legal Tribune 2008, 978; Supreme Court 1223/2009, Legal Tribune 2009, 2404; Athens 1<sup>st</sup> Instance Court (Chamber) 885/2008 & 3735/2008, ISOCRATES.

<sup>23</sup> CoA Athens 734/1992, Legal Tribune 1992, 588: The US Central Authority returned the documents in accordance with Art. 6.2 Service Convention [*if the document has not been served, the certificate shall set out the reasons which have prevented service*], because it received them almost twenty days after the hearing date set in the appeal. Being conscious of the futility of service to its recipient, the US Authority correctly refused to notify a document, which wouldn't serve the litigant's rights of audience.

<sup>24</sup> Amfissa 1<sup>st</sup> Instance Court (Chamber) 105/1992, Armenopoulos 1993, 837: Actual notice of the defendant twenty days after the hearing date.

<sup>25</sup> Supreme Court 1566/2010, Legal Tribune 2011, 989 = Theory and Practice of Private Law 2011, 541.

<sup>26</sup> Supreme Court 503/2011, Civil Procedure Review 2011, 510; CoA Piraeus 730/2008, Civil Procedure Review 2009, 77, granting the reopening against a judgment rendered in default of appearance.

<sup>27</sup> The claimant has the onus of proof in this respect; see Athens 1<sup>st</sup> Instance Court (chamber) 449/2004, ISOCRATES. Accepting the aforementioned, the CoA Piraeus excluded the application of the Hague Service



notice of the proceedings to an address which was the residence of the recipient is no longer possible<sup>28</sup>.

Finally, even if service of process is considered insufficient for the purposes of a proper appearance of the respondent, it is still producing procedural and substantial effects<sup>29</sup>, such as *lis pendens* and interruption of the running of prescription<sup>30</sup>.

## **B. Second Group: Subsequent documents**

As it has been demonstrated above, serving documents instituting proceedings in first and second instance, or even to the Supreme Court, are within the field of application of the Service Convention. Still, Greek case law takes distance from the Hague Service Convention with regard to other documents beyond the claim (e.g. judgments, writs of attachment, etc). In this case, domestic law prevails (Art. 136 CCivP)<sup>31</sup>.

In particular, in the early stages of its application, there was some confusion as to the distinction between the *writ of summons or an equivalent document* and other documents, following the initial stage of proceedings. First instance courts for example have rendered rulings, according to which, personal service was imperative even for judgments or writs of

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Convention, CoA Piraeus 44/2006, Piraeus Law Reports 2006, 222. The decision was however reversed by the Supreme Court [decision Nr. 1719/2007, Hellenic Justice 2009, 1035].

<sup>28</sup> Thessaloniki 1<sup>st</sup> Instance Court 38292/2009 & 20721/2010, ISOCRATES.

<sup>29</sup> See in detail *Yessiou-Faltsi*, Civil Procedure in Hellas, pp. 220 et seq.

<sup>30</sup> CoA Piraeus 371/2010, Maritime Law Review 2011, 110.

<sup>31</sup> Supreme Court 1447/1988, Legal Tribune 1990, 810; Supreme Court 1658/2009, Legal Tribune 2010, 720 = Theory and Practice of Private Law 2010, 344; Supreme Court 266/2004, Legal Tribune 2005, 273; CoA Dodecanese 81/2008 & 234/2005, NOMOS; CoA Piraeus 44/2006, Piraeus Law Reports 2006, 222. In favor of the application of Art. 15-16 Hague Convention: CoA Athens 12435/1988, Hellenic Justice 1989, 153 = Dike 1989, 42 [concerning the service of a default judgment]. In one reported case [Supreme Court 482/2004, Legal Tribune 2005, 876] the court applied falsely Art. 503 Para 2 CCivP with regard to the notification of a judgment. This provision applies to defendants of unknown residence, and allows fictional service by publication, pursuant to Art. 135 CCivP. The court should have selected Art. 503 Para. 3 CCivP, which refers to Para. 2. On the whole this becomes a rather delicate matter, in light of contradicting judgments on the same issue: For instance, courts referred to the Hague Convention regarding judgments served to Australia and Cyprus, see Supreme Court 220/2006, Legal Tribune 2006, 1059; OLG Dodecanese 337/2006, NOMOS for the former, and CoA Thessaloniki 157/2008, Commercial Law Survey 2008, 751 for the latter. On the other side, an appellate court opted for the application of domestic rules concerning the service of a judgment to Germany, see CoA Thessaloniki 1954/2003, Armenopoulos 2004, 1722.



attachment. In the late '90s, the Supreme Court drew a clear-cut line between documents instituting proceedings and subsequent judicial or extrajudicial documents in the course of the same proceedings: For the former, the requirements stated under Article 15-16 are to be respected under any circumstances, whereas for the latter, there is no obligation to follow the prerequisites of the Service Convention. Hence, service can take place according to the Greek Code of Civil Procedure. The above case law has been constantly enriched over the past 15 years, and constitutes nowadays the prevailing view both in theory and practice, especially after the ruling of the Supreme Court's Plenum in 2009<sup>32</sup>, which marked the following line: The starting point of enforcement proceedings, i.e. the formal notice by the creditor to the debtor, inviting the latter to voluntary performance<sup>33</sup>, must be served to the debtor in accordance with the Hague Convention rules. All subsequent documents within the execution stage are to be served pursuant to domestic rules [Art. 134 & 136 CCivP].

The above stance can be illustrated by giving two particular examples:

1. In the first case<sup>34</sup>, the issue was whether Articles 15-16 of the Convention should be applied in regards to a notice for a sworn statement to be given before a Greek notary public<sup>35</sup>. The novelty of this ruling lies in the fact that it is the first judgment expanding the application of Articles 15-16 of the Convention to affidavits. The court was adamant that actual notice is imperative. For this reason it refrained from evaluating the affidavits submitted.

2. In the second case<sup>36</sup>, the issue was whether Articles 15-16 of the Convention should apply for a notice to appear following the non appearance of both parties in the initial hearing. Pursuant to Art. 260 CCivP, if all parties fail to enter an appearance or duly participate in a hearing, the latter is cancelled. It lies with the parties to reopen the trial. In the case at hand, a new hearing date was set and a summons was sent to the respondent upon initiative of the

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<sup>32</sup> Supreme Court 22/2009, Civil Procedure Review 2009, 776 et seq., regarding a writ of attachment against a debtor living in Switzerland.

<sup>33</sup> For details see *Kerameus/Kozyris*, Introduction to Greek Law<sup>3</sup>, p. 373.

<sup>34</sup> Samos 1<sup>st</sup> Instance Court (Chamber) 25/2012, *Chronicles of Private Law* 2012, 528 et seq.

<sup>35</sup> For the notion of "sworn attestation" or "statement" from the Greek point of view, see *Yessiou-Faltsi*, Civil Procedure in Hellas, p. 354 et seq., and *Yessiou-Faltsi*, Hellas, in: *Blanpain*, International Encyclopedia of Laws - Civil Procedure, p. 221

<sup>36</sup> Supreme Court 221/2012, *Hellenic Justice* 2012, 395.



claimant. The defendant did not appear in the hearing. He then lodged an appeal against the default judgment<sup>37</sup>. Upon dismissal of the appeal grounds, the appellant filed a writ of certiorari, invoking the insufficiency of service of the summons in the first instance proceedings. The Supreme Court dismissed the appeal: The party should have filed an opposition to the default judgment; instead, it opted for lodging an appeal. Hence, putting forward the service of process issue before the Supreme Court for the first time is not admissible. In conclusion, the Supreme Court did not examine the question.

### Epilogue

Thirty years after the entry into force of the Hague Service Convention, the general impression of Greek – USA judicial assistance in the field of service of proceedings is a positive one. Greek courts have developed specific principles, which could be summarized as follows:

a. All documents instituting proceedings are to be served in accordance with the Convention.

b. Regarding subsequent documents, the following must be underlined: There is contradicting case law with respect to the service of judgments. Within the Greek-US ambit the rule is that domestic rules apply. However, recent Supreme Court rulings have opted for the application of the Hague Convention. This is a rather confusing discrepancy, which must be surpassed as soon as possible. After all, the Convention should apply on the same terms for all contracting states.

c. In regards to documents in the enforcement stage, the rule is that domestic rules apply, with the sole exception being the formal notice to the debtor according to Art. 924 CCivP. The latter is considered to be a document instituting the enforcement stage; hence, conventional rules are to be applied here too, so as to safeguard the debtor's rights of audience.

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<sup>37</sup> According to Art. 528 CCivP, if the default party lodges an appeal, the judgment of the lower court is reversed, and the appellant (who was in default in the first instance proceedings) is allowed to submit all allegations he could have filed in the lower court proceedings. The case is examined de novo from the appellate court (Art. 535 CCivP).