ECLI:EU:C:2016:524

JUDGMENT OF THE COURT (Second Chamber)

7 July 2016 (*)

(Judicial cooperation in civil matters — Regulation (EC) No 44/2001 — Article 34(2) — Defendant not entering an appearance — Recognition and enforcement of judgments — Grounds for refusing enforcement — Document instituting proceedings not served on the defendant in sufficient time — Concept of 'proceedings to challenge a judgment' — Application for relief — Regulation (EC) No 1393/2007 — Article 19(4) — Service of judicial and extrajudicial documents — Period within which an application for relief may be submitted)

In Case C-70/15,

REQUEST for a preliminary ruling under Article 267 TFEU from the Sąd Najwyższy (Supreme Court, Poland), made by decision of 27 November 2014, received at the Court on 17 February 2015, in the proceedings

Emmanuel Lebek

v

Janusz Domino,

THE COURT (Second Chamber),

composed of M. Ilešič, President of the Chamber, C. Toader (Rapporteur), A. Rosas, A. Prechal and E. Jarašiūnas, Judges,

Advocate General: J. Kokott,

Registrar: A. Calot Escobar,

having regard to the written procedure,

after considering the observations submitted on behalf of:

– the Polish Government, by B. Majczyna, acting as Agent,

– the German Government, by T. Henze and J. Kemper, acting as Agents,

– the Spanish Government, by M.J. García-Valdecasas Dorrego, acting as Agent,

– the Portuguese Government, by L. Inez Fernandes and R. Chambel Margarido, acting as Agents,

– the European Commission, by M. Owsiany-Hornung and M. Wilderspin, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 7 April 2016,

gives the following

Judgment

1 This request for a preliminary ruling concerns the interpretation of Article 34(2) of Council Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (OJ 2001 L 12, p. 1) ('the Brussels I Regulation') and of Article 19(4) 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 (OJ 2007 L 324, p. 79).

2 The request has been made in proceedings between Mr Emmanuel Lebek and Mr Janusz Domino concerning the recognition, in Poland, of the enforceability of a judgment delivered by a French court.

Legal context

EU law

The Brussels I Regulation

3 Recitals 2, 6 and 16 to 18 of the Brussels I Regulation state:

'(2) Certain differences between national rules governing jurisdiction and recognition of judgments hamper the sound operation of the internal market. Provisions to unify the rules of conflict of jurisdiction in civil and commercial matters and to simplify the formalities with a view to rapid and simple recognition and enforcement of judgments from Member States bound by this Regulation are essential.

...

(6) In order to attain the objective of free movement of judgments in civil and commercial matters, it is necessary and appropriate that the rules governing jurisdiction and the recognition and enforcement of judgments be governed by a Community legal instrument which is binding and directly applicable.

...

(16) Mutual trust in the administration of justice in the Community justifies judgments given in a Member State being recognised automatically without the need for any procedure except in cases of dispute.

(17) By virtue of the same principle of mutual trust, the procedure for making enforceable in one Member State a judgment given in another must be efficient and rapid. To that end, the declaration that a judgment is enforceable should be issued virtually automatically after purely formal checks of the documents supplied, without there being any possibility for the court to raise of its own motion any of the grounds for non-enforcement provided for by this Regulation.

(18) However, respect for the rights of the defence means that the defendant should be able to appeal in an adversarial procedure, against the declaration of enforceability, if he considers one of the grounds for non-enforcement to be present. Redress procedures should also be available to the claimant where his application for a declaration of enforceability has been rejected.'

4 Under Article 26(1) and (2) of the Brussels I Regulation:

'1. Where a defendant domiciled in one Member State is sued in a court of another Member State and does not enter an appearance, the court shall declare of its own motion that it has no jurisdiction unless its jurisdiction is derived from the provisions of this Regulation.

2. The court shall stay the proceedings so long as it is not shown that the defendant has been able to receive the document instituting the proceedings or an equivalent document in sufficient time to enable him to arrange for his defence, or that all necessary steps have been taken to this end.'

5 Under Article 26(3) of that regulation, Article 19 of 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) is to apply instead of Article 26(2) of the Brussels I Regulation if the document instituting the proceedings or an equivalent document has had to be transmitted from one Member State to another pursuant to Regulation No 1348/2000.

6 Pursuant to Article 33(1) of the Brussels I Regulation, ‘a judgment given in a Member State shall be recognised in the other Member States without any special procedure being required’.

7 Article 34(2) of that regulation provides that a judgment is not to be recognised where ‘it was given in default of appearance, if the defendant was not served with the document which instituted the proceedings or with an equivalent document in sufficient time and in such a way as to enable him to arrange for his defence, unless the defendant failed to commence proceedings to challenge the judgment when it was possible for him to do so’.

8 Article 35 of that regulation is worded as follows:

‘1. Moreover, a judgment shall not be recognised if it conflicts with Sections 3, 4 or 6 of Chapter II, or in a case provided for in Article 72.

2. In its examination of the grounds of jurisdiction referred to in the foregoing paragraph, the court or authority applied to shall be bound by the findings of fact on which the court of the Member State of origin based its jurisdiction.

3. Subject to the paragraph 1, the jurisdiction of the court of the Member State of origin may not be reviewed. The test of public policy referred to in point 1 of Article 34 may not be applied to the rules relating to jurisdiction.’

9 Article 38(1) of the Brussels I Regulation provides:

‘A judgment given in a Member State and enforceable in that State shall be enforced in another Member State when, on the application of any interested party, it has been declared enforceable there.’

10 Article 45 of that regulation provides:

‘1. The court with which an appeal is lodged under Article 43 or Article 44 shall refuse or revoke a declaration of enforceability only on one of the grounds specified in Articles 34 and 35. It shall give its decision without delay.

2. Under no circumstances may the foreign judgment be reviewed as to its substance.’

Regulation No 1393/2007

11 Under recitals 6, 7 and 12 of Regulation No 1393/2007:

‘(6) Efficiency and speed in judicial procedures in civil matters require that judicial and extrajudicial documents be transmitted directly and by rapid means between local bodies designated by the Member States. Member States may indicate their intention to designate only one transmitting or receiving agency or one agency to perform both

functions, for a period of five years. This designation may, however, be renewed every five years.

(7) Speed in transmission warrants the use of all appropriate means, provided that certain conditions as to the legibility and reliability of the document received are observed. Security in transmission requires that the document to be transmitted be accompanied by a standard form, to be completed in the official language or one of the official languages of the place where service is to be effected, or in another language accepted by the Member State in question.

...

(12) The receiving agency should inform the addressee in writing using the standard form 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 either in a language which he understands or in the official language or one of the official languages of the place of service. This rule should also apply to the subsequent service once the addressee has exercised his right of refusal. These rules on refusal should also apply to service by diplomatic or consular agents, service by postal services and direct service. It should be established that the service of the refused document can be remedied through the service on the addressee of a translation of the document.'

12 Article 1 of that regulation states:

'1. This Regulation shall apply in civil and commercial matters where a judicial or extrajudicial document has to be transmitted from one Member State to another for service there. It shall not extend in particular to revenue, customs or administrative matters or to liability of the State for actions or omissions in the exercise of state authority (acta iure imperii).

2. This Regulation shall not apply where the address of the person to be served with the document is not known.

...'

13 Article 19(4) of that regulation provides:

'When a writ of summons or an equivalent document has had to be transmitted to another Member State for the purpose of service under the provisions of this Regulation and a judgment has been entered against a defendant who has not appeared, the judge shall have the power to relieve the defendant from the effects of the expiry of the time for appeal from the judgment if the following conditions are fulfilled:

(a) the defendant, without any fault on his part, did not have knowledge of the document in sufficient time to defend, or knowledge of the judgment in sufficient time to appeal; and

(b) the defendant has disclosed a prima facie defence to the action on the merits.

An application for relief may be filed only within a reasonable time after the defendant has knowledge of the judgment.

Each Member State may make it known, in accordance with Article 23(1), that such application will not be entertained if it is filed after the expiry of a time to be stated by it in that communication, but which shall in no case be less than one year following the date of the judgment.'

14 Under Article 23(1) of Regulation No 1393/2007 'Member States shall communicate to the Commission the information referred to in Articles 2, 3, 4, 10, 11, 13, 15 and 19. ...'

15 The French Republic, in accordance with Article 23(1) of that regulation, stated in its communication that the period allowed for the filing by a defendant of an application for relief is one year following the date of the judgment.

French law

16 Article 540 of the French Code of Civil Procedure, in the version resulting from Decree No 2011-1043 of 1 September 2011 concerning precautionary measures taken after the instituting of a succession procedure and the interlocutory procedure (Journal officiel de la République française of 2 September 2011, p. 14884) ('the CCP'), provides:

'If judgment has been given in default of appearance or if the parties are deemed to have been heard, it shall be open to the court to relieve the defendant from the effects of the expiry of the relevant period if the defendant, without any fault on his part, did not have any knowledge of the judgment in sufficient time to commence proceedings or if it was not possible for him to act.

An application for relief from the effects of the expiry of the period for commencing proceedings shall be made to the president of the court having jurisdiction to rule on the objection or the appeal. The application to the president shall be made in the same way as in interlocutory proceedings.

The application may be made within two months from the date of service of the first document on the person concerned, or, failing that, following the first implementation measure which has the effect of rendering unavailable, in whole or in part, the assets of the debtor.

...'

The dispute in the main proceedings and the questions referred for a preliminary ruling

17 In a first set of proceedings before the competent Polish courts, Mr Lebek applied for recognition and enforcement of the judgment of the Tribunal de Grande Instance de Paris (Regional Court, Paris, France) of 8 April 2010, by which Mr Domino was ordered to make maintenance payments to him of EUR 300 per month.

18 According to the order for reference, the document instituting proceedings before the Tribunal de Grande Instance de Paris (Regional Court, Paris) had not been served on the defendant, Mr Domino, because his address in Paris as indicated by the applicant, Mr Lebek, was not correct, as the defendant had been resident in Poland since 1996. Thus, as he had not been made aware of the ongoing proceedings, Mr Domino had been unable to defend himself.

19 Mr Domino was not made aware of the judgment delivered by that French court until July 2011 — that is, more than a year after the date of that judgment –, when the Sąd Okręgowy w Jeleniej Górze (Regional Court, Jelenia Góra, Poland), in connection with the proceedings instituted before it, served certified copies of the judgment of the Tribunal de Grande Instance de Paris (Regional Court, Paris) on him, together with Mr Lebek's application seeking recognition of the enforceability of that judgment.

20 By orders made on 23 November 2011 by the Sąd Okręgowy w Jeleniej Górze (Regional Court, Jelenia Góra) and 31 January 2012 by the Sąd Apelacyjny we Wrocławiu (Court of Appeal, Wroclaw, Poland), those courts rejected Mr Lebek's application, on the ground that Mr Domino's right to defend himself had not been respected, as the latter had been made aware of the judgment of the Tribunal de Grande Instance de Paris (Regional Court, Paris) on a date when it was no longer possible for him to bring an ordinary challenge.

21 Subsequently, Mr Lebek submitted a second application to the Sąd Okręgowy w Jeleniej Górze (Regional Court, Jelenia Góra) with an aim identical to that of the application rejected previously, raising new facts, namely, that the judgment of the Tribunal de Grande Instance de Paris (Regional Court, Paris) had been served on the defendant on 17 and 31 May 2012, in accordance with Regulation No 1393/2007. That service concerned the judgment and instructions to the defendant reproducing, inter alia, Article 540 of the CCP. According to those instructions, the defendant was entitled to submit an application for relief from the effects of the expiry of the period for commencing proceedings within two months of service of the judgment.

22 By a judgment of 14 December 2012, noting that the defendant had not submitted such an application within the period thus prescribed, the Sąd Okręgowy w Jeleniej Górze (Regional Court, Jelenia Góra) upheld Mr Lebek's second application, considering that respect for Mr Domino's right to defend himself had been guaranteed, and declared that the judgment of the Tribunal de Grande Instance de Paris (Regional Court, Paris) was enforceable in Poland.

23 By a judgment of 27 May 2013, following an appeal lodged by Mr Domino, the Sąd Apelacyjny we Wrocławiu (Court of Appeal, Wroclaw) amended the judgment under

appeal and rejected the application for recognition, on the ground that Article 34(2) of the Brussels I Regulation had to be interpreted as meaning that the mere fact that it was possible to submit an application for relief did not mean that there were actual opportunities to bring a challenge against the judgment of the Tribunal de Grande Instance de Paris (Regional Court, Paris), as such a challenge was dependant on a positive decision being given beforehand by the French court regarding that application for relief.

24 Mr Lebek lodged an appeal in cassation against that judgment of the Sąd Apelacyjny we Wrocławiu (Court of Appeal, Wroclaw) with the Sąd Najwyższy (Supreme Court, Poland).

25 According to the Sąd Najwyższy (Supreme Court), if it were possible for a defendant to apply, in the State of origin of the judgment concerned, for an extension of the period for bringing a challenge against that judgment, that defendant would not be able to rely on the grounds for refusing a declaration of the enforceability of that judgment set out in Article 34(2) of the Brussels I Regulation.

26 That court considers that the concept of 'proceedings to challenge a judgment' referred to in Article 34(2) of the Brussels I Regulation should be given a broad interpretation, given that the *ratio legis* of that provision consists in protecting a defendant when a judgment has been given against him even though the document instituting proceedings has not been served on him. Such protection is ensured where it is possible to apply for an extension of the period for bringing a challenge against that judgment.

27 It also recalls that, under Article 19(4) and Article 23(1) of Regulation No 1393/2007, in France, the period within which an application for relief may be submitted is one year following the date of the judgment concerned.

28 It follows that, were it to be found that Article 19(4) of that regulation had to be interpreted as meaning that it excludes the application of provisions of national legislation governing the issue of extending the period for bringing a challenge, such as Article 540 of the CCP, that would mean that the defendant is no longer entitled to apply for relief, as the period of one year has expired and, accordingly, that it is no longer possible for the defendant to commence proceedings to challenge the judgment for the purposes of the last clause of Article 34(2) of the Brussels I Regulation.

29 However, the Sąd Najwyższy (Supreme Court) considers that Article 19(4) of Regulation No 1393/2007 is not of such an exclusive nature and that it does not preclude the application of provisions of national legislation governing the extension of that period. That provision merely defines the minimum standards of protection of a defendant on whom an application has not been served, and leaves the Member States with the possibility of applying more favourable measures.

30 In those circumstances the Sąd Najwyższy (Supreme Court) decided to stay the proceedings and to refer the following questions to the Court of Justice for a preliminary ruling:

‘1. Must Article 34(2) of the Brussels I Regulation be interpreted as meaning that the possibility of commencing proceedings to challenge a judgment laid down therein covers both the situation in which such a challenge can be brought within the time limit laid down in national law and the situation in which that time limit has already passed but it is possible to submit an application for relief from the effects of its passing and then — following the grant of such relief — actually to commence such proceedings?

2. Must Article 19(4) of Regulation No 1393/2007 be interpreted as excluding the application of provisions of national law concerning the possibility of relief from the effects of the expiry of the time for appeal or as meaning that the defendant has the choice of availing himself of either the application for relief provided for in that provision or the relevant set of provisions under national law?’

Consideration of the questions referred

The first question

31 By its first question, the referring court asks, in essence, whether the concept of ‘proceedings to challenge a judgment’ referred to in Article 34(2) of the Brussels I Regulation is to be interpreted as also including applications for relief when the period for bringing an ordinary challenge has expired.

32 In that regard, it should be borne in mind that, in order to ensure, as far as possible, that the rights and obligations which derive from the Brussels I Regulation for the Member States and the persons to whom it applies are equal and uniform, the concept of ‘proceedings to challenge a judgment’ referred to in Article 34(2) of the Brussels I Regulation should not be interpreted as a mere reference to the internal law of one or other of the States concerned. That concept must be regarded as an independent concept to be interpreted by referring, inter alia, to the objectives of that regulation (see, to that effect, judgment of 28 April 2009 in *Apostolides*, C-420/07, EU:C:2009:271, paragraph 41 and the case-law cited).

33 As regards the objectives of that regulation, it is clear from recitals 2, 6, 16 and 17 thereof that it seeks to ensure the free movement of judgments from Member States in civil and commercial matters by simplifying the formalities with a view to their rapid and simple recognition and enforcement (judgment of 14 December 2006 in *ASML*, C-283/05, EU:C:2006:787, paragraph 23).

34 However, that objective cannot be attained by undermining in any way the rights of the defence, as was found by the Court concerning Article 27(2) of the Convention of 27 September 1968 on jurisdiction and the enforcement of judgments in civil and commercial matters (OJ 1972 L 299, p. 32) (‘the Brussels Convention’) (judgment of

14 December 2006 in *ASML*, C-283/05, EU:C:2006:787, paragraph 24 and the case-law cited).

35 Furthermore, it follows from recital 18 to the Brussels I Regulation that respect for the rights of the defence means that the defendant should be able to appeal in an adversarial procedure against the declaration of enforceability if he considers one of the grounds for non-enforcement to be present.

36 In that connection, it is apparent from recitals 16 to 18 to the Brussels I Regulation that the system of appeals for which it provides against the recognition or enforcement of a judgment aims to establish a fair balance between, on the one hand, mutual trust in the administration of justice in the Union, which justifies judgments given in a Member State being, as a rule, recognised and declared enforceable automatically in another Member State and, on the other hand, respect for the rights of the defence, which means that the defendant should, where necessary, be able to appeal in an adversarial procedure against the declaration of enforceability if he considers one of the grounds for non-enforcement to be present (judgment of 28 April 2009 in *Apostolides*, C-420/07, EU:C:2009:271, paragraph 73).

37 The Court has also held that fundamental rights, such as respect for the rights of the defence, which derive from the right to a fair hearing, do not constitute unfettered prerogatives and may be subject to restrictions. Such restrictions must, however, in fact correspond to the objectives of public interest pursued by the measure in question and must not constitute, with regard to the aim pursued, a disproportionate interference with the rights thus guaranteed (see, to that effect, judgment of 17 November 2011 in *Hypoteční banka*, C-327/10, EU:C:2011:745, paragraph 50).

38 Regarding Article 34(2) of the Brussels I Regulation, it should be borne in mind that, unlike Article 27(2) of the Brussels Convention, it does not necessarily require the document which instituted the proceedings to be duly served, but rather requires that the rights of the defence are effectively respected (see judgment of 14 December 2006 in *ASML*, C-283/05, EU:C:2006:787, paragraph 20).

39 Article 34(2) of the Brussels I Regulation, to which Article 45(1) thereof refers, aims to ensure, by a double review, observance of the rights of the defence of a defendant in default of appearance in the original proceedings in the State in which the judgment was given. Under that system, where an appeal is lodged, the court of the Member State in which enforcement is sought must refuse or cancel the enforcement of a foreign judgment given in default of appearance if the defendant was not served with the document which instituted the proceedings or with an equivalent document in sufficient time and in such a way as to enable him to arrange for his defence, unless the defendant failed to commence proceedings to challenge the judgment when it was possible for him to do so (judgment of 6 September 2012 in *Trade Agency*, C-619/10, EU:C:2012:531, paragraph 32 and the case-law cited).

40 However, Article 34(2) of the Brussels I Regulation does not mean that the defendant is required to take additional steps going beyond normal diligence in the defence of his rights, such as steps to inform himself of the contents of a judgment delivered in another Member State (judgment of 14 December 2006 in *ASML*, C-283/05, EU:C:2006:787, paragraph 39).

41 Consequently, in order to justify the conclusion that it was possible for a defendant to commence proceedings to challenge a default judgment against him, within the meaning of Article 34(2) of the Brussels I Regulation, he must have been aware of the contents of that judgment, which presupposes that it was served on him (judgment of 14 December 2006 in *ASML*, C-283/05, EU:C:2006:787, paragraph 40).

42 Regarding, more specifically, an application for relief, it should be explained that the aim of such an application is to restore the right of a defendant who has failed to enter an appearance to bring proceedings after the expiry of the period prescribed by law for exercising that right.

43 Thus, in the same way as the opportunity to bring an ordinary challenge, it aims to ensure proper respect for the rights of the defence of defendants who have failed to enter an appearance.

44 However, pursuant to Article 19(4) of Regulation No 1393/2007, the submission of an application for relief requires that the defendant, without any fault on his part, did not have knowledge of the document concerned in sufficient time to bring a challenge and that he has disclosed a prima facie defence to the action on the merits. In addition, that application must be filed within a reasonable time.

45 In so far as the conditions thus set out in Article 19(4) of Regulation No 1393/2007 are met, as the defendant still has an opportunity to request that his right to bring an ordinary challenge be restored, it cannot be held that he is no longer in a position effectively to exercise his rights of the defence. In those circumstances, the submission of an application for relief cannot be regarded as an additional step going beyond normal diligence in the defence of the rights of a defendant who has failed to enter an appearance.

46 If that defendant has not made use of his right to apply for relief when it was possible for him to do so, the conditions mentioned in paragraph 44 above having been met, recognition of a judgment in default given against him cannot be refused on the basis of Article 34(2) of the Brussels I Regulation.

47 By contrast, a judgment in default should not be recognised if the defendant who has failed to enter an appearance, without any fault on his part, has submitted an application for relief which has subsequently been dismissed, even though the conditions set out in Article 19(4) of Regulation No 1393/2007 were met.

48 That solution guarantees respect for the right to a fair hearing and provides a fair balance between, on the one hand, the need to ensure that judgments given in a Member State are, as a rule, recognised and declared enforceable automatically in another Member State and, on the other hand, respect for the rights of the defence.

49 Having regard to all of the foregoing, the answer to the first question is that the concept of 'proceedings to challenge a judgment' referred to in Article 34(2) of the Brussels I Regulation must be interpreted as also including applications for relief when the period for bringing an ordinary challenge has expired.

The second question

50 By its second question, the referring court asks, in essence, whether the last subparagraph of Article 19(4) of Regulation No 1393/2007 is to be interpreted as excluding the application of provisions of national law concerning the system of applying for relief where the period for filing such applications, as specified in the communication of a Member State to which that provision refers, has expired.

51 As a preliminary point, it should be borne in mind that, under the second paragraph of Article 288 TFEU, regulations are legal acts of the Union having general application, are binding in their entirety and are directly applicable in all Member States. Accordingly, owing to their very nature and their place in the system of sources of EU law, regulations have immediate effect and operate to confer rights on individuals which the national courts have a duty to protect (judgments of 14 July 2011 in *Bureau national interprofessionnel du Cognac*, C-4/10 and C-27/10, EU:C:2011:484, paragraph 40, and 10 December 2013 in *Abdullahi*, C-394/12, EU:C:2013:813, paragraph 48).

52 In that regard, the choice of the form of a regulation shows the importance which the EU legislature attaches to the direct applicability of the provisions of Regulation No 1393/2007 and their uniform application (see, by analogy, judgments of 8 November 2005 in *Leffler*, C-443/03, EU:C:2005:665, paragraph 46, and 25 June 2009 in *Roda Golf & Beach Resort*, C-14/08, EU:C:2009:395, paragraph 49).

53 According to the wording of the last subparagraph of Article 19(4) of Regulation No 1393/2007, each Member State may make it known, in accordance with Article 23(1) of that regulation, that an application for relief will not be entertained if it is filed after the expiry of a time to be indicated by the Member State in that communication, but which must in no case be less than one year following the date of the judgment concerned.

54 In the present case, the French Republic made use of the opportunity provided in Article 19(4) of that regulation and stated in its communication that an application for relief will not be entertained if it is filed after the expiry of a period of one year following the date of that judgment.

55 Furthermore, according to settled case-law, in general, limitation periods fulfil the function of ensuring legal certainty (judgments of 28 October 2010 in *SGS Belgium and*

Others, C-367/09, EU:C:2010:648, paragraph 68, and 8 September 2011 in *Q-Beef and Bosschaert*, C-89/10 and C-96/10, EU:C:2011:555, paragraph 42).

56 However, in the case in the main proceedings, it is common ground that Mr Domino was not made aware of the judgment of the Tribunal de Grande Instance de Paris (Regional Court, Paris) until July 2011, when the period of one year following the date of that judgment had already expired.

57 It would therefore be contrary to the principle of legal certainty and the binding force associated with EU regulations to provide an interpretation of Article 19(4) of Regulation No 1393/2007 according to which an application for relief could still be submitted within a period laid down in national law, while no longer being admissible under a binding and directly applicable provision of that regulation.

58 Having regard to the foregoing, the answer to the second question is that the last subparagraph of Article 19(4) of Regulation No 1393/2007 must be interpreted as excluding the application of provisions of national law concerning the system of applying for relief where the period for filing such applications, as specified in the communication of a Member State to which that provision refers, has expired.

Costs

59 Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the national court, the decision on costs is a matter for that court. Costs incurred in submitting observations to the Court, other than the costs of those parties, are not recoverable.

On those grounds, the Court (Second Chamber) hereby rules:

1. **The concept of 'proceedings to challenge a judgment' referred to in Article 34(2) of Council Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters must be interpreted as also including applications for relief when the period for bringing an ordinary challenge has expired.**

2. **The last subparagraph of Article 19(4) 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 must be interpreted as excluding the application of provisions of national law concerning the system of applying for relief where the period for filing such applications, as specified in the communication of a Member State to which that provision refers, has expired.**

[Signatures]

* Language of the case: Polish.