

## SUBSTITUTED SERVICE OF PROCEEDINGS UPON FOREIGN DEFENDANTS THROUGH THEIR LAWYERS WITHIN THE CYPRUS JURISDICTION



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Service of proceedings upon foreign defendants may turn from a straightforward process into a demanding marathon race, usually challenging and questioning the dynamics of both the bilateral treaties concluded between states, concerning the service of legal proceedings, as well as the national laws of each state relating to the matter of service. Such demanding - and frequently long outstanding - proceedings inevitably assist any wrongdoers, especially fraudsters, against whom legal proceedings are initiated in Cyprus, providing the said wrongdoers or fraudsters with sufficient time for the alienation of their assets or the dissipation of the proceeds of the fraud itself.

***On the 24th of January 2022 the Supreme Court of Cyprus issued an unprecedented judgment in the case of CONTENT UNION SA v. CJSC “TV COMPANY STREAM” and others, Civil Appeals no. E96/2018 and E97/2018 on the matter of substituted service of an action upon Cypriot lawyers that used to represent various foreign defendants/respondents in the context of interlocutory proceedings for the issue of interim injunctions.***

More particularly, the plaintiffs filed an action against, inter alia, 3 Russian defendants, as well as an interim application for interlocutory injunctions against the latter. The interlocutory injunctions were issued ex-parte and the Russian defendants/respondents, who got informed about the said injunctions issued against them, appeared before the District Court via Cyprus lawyers to defend themselves in the context of the aforesaid interim proceedings.

Upon the completion of the interim proceedings, the plaintiffs filed an ex-parte application and a Court Order was issued for the service of the Cyprus action upon the defendants through the diplomatic channels, on the basis of the provisions of the Treaty between the Republic of Cyprus and the Union of Soviet Socialist Republics on Legal Assistance in Civil and Criminal Matters



that was adopted in Cyprus by Law 172/1986. Three months after the issue of the aforesaid Court Order, the plaintiffs proceeded with the filing of a new ex-parte application requesting the issue of an Order allowing the service of the action to be effected through substituted service via the service of it upon the local/Cypriot lawyers who represented the Russian defendants in the context of the interim proceedings, alleging that the service through the diplomatic channels would delay the proceedings.

The said Court Order was issued ex-parte and thereafter dismissed upon hearing. The First Instance Court found that the Treaty between the Republic of Cyprus and the Union of Soviet Socialist Republics on Legal Assistance in Civil and Criminal Matters did not allow any room for service to be effected in any other manner rather than the methods described in the aforesaid Treaty.



The plaintiffs filed an appeal with the Supreme Court of Cyprus against the above decision of the First Instance Court, alleging that substituted service upon the Russian defendants through their local lawyers was legal and proper. Despite the English authorities supporting that a defendant is not submitted to the jurisdiction of the Court if he only appears in the context of interlocutory proceedings (*Esal (commodities) Ltd v. Mahendra Pujara (1989) 2 Lloyd's Rep.479* and *Smay Investments Limited and other v. Sachdev and others (2003) EWCH 474*), which are usually of an urgent nature, and the absence of

any regulatory framework allowing such substituted service upon lawyers within the jurisdiction, the Supreme Court of Cyprus found that such substituted service upon the lawyers who represented the defendants in the interim proceedings was proper and legal and in accordance with the national laws of Cyprus.

In light of the above, the aforesaid judgment has led the way to a new era in the Cyprus litigation legal arena, allowing the service of proceedings upon lawyers within the jurisdiction who appeared in the said proceedings for the limited purpose of defending the respondents against whom an interim injunction was issued, essentially imposing further “duties” to Cyprus lawyers who appeared to defend their clients in the context of interim proceedings, namely being liable to chase their clients in order for the latter to get “officially” notified about the main proceedings.

Although disagreeing with the reasoning and conclusions of the Supreme Court in the case of *Content Union S.A.* (above), especially in light of the absence of any provision in the Civil Procedure Rules of Cyprus on the matter expressly allowing such method of substituted service, as well as the lack of imposition of any additional factors/requirements for the granting of such an order, one may argue that such an extension of substituted service upon lawyers will significantly expedite the legal proceedings in Cyprus and will operate as a deterrent to the further alienation of any fraud's proceeds and, concurrently, will increase the chances of a fraud victim to enjoy the fruits of any judgment may be issued in his favour at a later stage.

**Nevertheless, in my view, special factors should be identified and be included in the Cyprus Civil Procedure Rules, following the example of the English Civil Procedure Rules (CPR 6.7) which provide for the ability of service upon solicitors only if (i) the defendant has given in writing the business address within the jurisdiction of a solicitor as an address at which the defendant may be served with the proceedings or (ii) the solicitor acting for the defendant has notified the claimant in writing that the solicitor is instructed by the defendant to accept service of the proceedings on behalf of the defendant.**

The imposition of such requirements will certainly operate for the protection of lawyers – who will otherwise be responsible of “officially” notifying the clients that they used to represent in the interim proceedings and may not continue to represent them in the main proceedings – and will considerably contribute to the speeding up of any pending proceedings before the Cyprus Courts, depriving at the same time the continuation of any fraudulent plan or dissipation of assets effected by any wrongdoers or fraudsters.

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