

Case C-78/95

Bernardus Hendrikman and Maria Feyen

v

Magenta Druck & Verlag GmbH

(Reference for a preliminary ruling  
from the Hoge Raad der Nederlanden)

(Brussels Convention — Interpretation of Article 27(2) — Recognition  
of a judgment — Definition of a defendant in default of appearance)

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| Opinion of Advocate General Jacobs delivered on 4 July 1996 ..... | I - 4945 |
| Judgment of the Court (Fifth Chamber), 10 October 1996 .....      | I - 4960 |

Summary of the Judgment

*Convention on jurisdiction and the enforcement of judgments — Recognition and enforcement — Grounds for refusal — Defendant who is not properly served with or notified of the document instituting proceedings in sufficient time and who fails to appear — Definition of ‘in default of appearance’ — Defendant unaware of proceedings initiated against him and represented by a lawyer without his authority — Included — Remedy available in the State in which judgment was given, allowing it to be contested on the ground of lack of representation — Not material (Convention of 27 September 1968, Art. 27(2))*

Where proceedings are initiated against a person without his knowledge and a lawyer appears before the court first seised on his behalf but without his authority, such a person is quite powerless to defend himself and must be regarded as a defendant in default of appearance, within the meaning of Article 27(2) of the Convention of 27 September 1968 on jurisdiction and the enforcement of judgments in civil and commercial matters, even if the proceedings before the court first seised became, in point of form, proceedings *inter partes*. That conclusion is not affected by the fact that the defendant may apply to have the judgment in question annulled on the ground of lack of representation, since the proper time for a defendant

to have an opportunity to defend himself is the time at which proceedings are commenced.

Article 27(2) of the Convention therefore applies to judgments given against a defendant who was not duly served with, or notified of, the document instituting proceedings in sufficient time and who was not validly represented during those proceedings, albeit the judgments given were not given in default of appearance because someone purporting to represent the defendant appeared before the court first seised.