



Reports of Cases

Case C-292/10

G

v

Cornelius de Visser

(Reference for a preliminary ruling from the Landgericht Regensburg)

(Jurisdiction and the enforcement of judgments in civil and commercial matters — Public notification of legal documents — Lack of known domicile or place of abode of the defendant in the territory of a Member State — Jurisdiction ‘in matters relating to tort, delict or quasi-delict’ — Infringement of the right to protection of personality liable to have been committed by the publication of photographs on the Internet — Place where the harmful event occurred or may occur)

Summary of the Judgment

1. *Judicial cooperation in civil matters — Jurisdiction and the enforcement of judgments in civil and commercial matters — Regulation No 44/2001 — Special jurisdiction — Jurisdiction in tort, delict or quasi-delict*

(Council Regulation No 44/2001, Arts 4(1) and 5(3))

2. *Judicial cooperation in civil matters — Jurisdiction and the enforcement of judgments in civil and commercial matters — Regulation No 44/2001 — Recognition and enforcement of judgments — Stay of proceedings on the recognition or enforcement — Failure to serve timeously on the defendant the document instituting the proceedings — Implications*

(Hague Convention of 15 November 1965, Art. 15; European Parliament and Council Regulation No 1393/2007, Art. 19; Council Regulation No 44/2001, Art. 26(2) to (4))

3. *Judicial cooperation in civil matters — Jurisdiction and the enforcement of judgments in civil and commercial matters — Regulation No 44/2001 — Judgment by default — Service of the document instituting the proceedings on the defendant by way of public notice under national law — Whether permissible — Condition*

(Council Regulation No 44/2001)

4. *Judicial cooperation in civil matters — Creation of a European Enforcement Order for the uncontested claims — Regulation No 805/2004 — Enforceable instruments capable of certification*

(European Parliament and Council Regulation No 805/2004, Art. 14(2); Council Regulation No 44/2001, Art. 34(2))

5. *Approximation of laws — Electronic commerce — Directive 2000/31 — Provisions concerning the internal market*

(European Parliament and Council Directive 2000/31, Art. 3(1) and (2))

1. Article 4(1) of Regulation No 44/2001 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters must be interpreted as not precluding the application of Article 5(3) of that regulation to an action for liability arising from the operation of an Internet site against a defendant who is probably a citizen of the Union citizen, but whose whereabouts are unknown, if the court seised of the case does not hold firm evidence to support the conclusion that the defendant is in fact domiciled outside the European Union.

(see para. 42, operative part 1)

2. Where a judgment in default is given against a defendant whose address is unknown, the rule in Article 26(2) of Regulation No 44/2001 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters, pursuant to which a court must stay the proceedings so long as it has not been established that that defendant has been able to receive the document instituting 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, is not precluded by the rules referred to in Article 26(3) and (4) of that regulation, namely, Article 19 of Regulation No 1393/2007 on the service in the Member States of judicial and extrajudicial documents in civil or commercial matters and repealing Regulation No 1348/2000 or Article 15 of the Hague Convention of 1965.

Although it is true that the question whether the document instituting proceedings was duly served on a defendant in default of appearance must be determined in the light of the provisions of that convention and, *a fortiori*, in the light of the provisions of that regulation, that rule applies only in so far as those provisions are applicable. Both Article 1(2) of Regulation No 1393/2007 and the second paragraph of Article 1 of the Hague Convention of 1965 specify that those instruments do not apply where the address of the person to be served with the document is not known.

(see paras 51-54)

3. Union law must be interpreted as not precluding the issue of judgment by default against a defendant on whom, given that it is impossible to find him, the document instituting proceedings has been served by public notice under national law, provided that the court seised of the matter has first satisfied itself that all investigations required by the principles of diligence and good faith have been undertaken to trace the defendant.

It is true that the possibility of taking further steps in the proceedings without the defendant's knowledge by means of 'service by public notice' constitutes a restriction of the defendant's rights of defence. That restriction is, however, justified in the light of an applicant's right to effective protection, given that, failing such service, that right would be meaningless.

(see paras 56, 59, operative part 2)

4. Union law must be interpreted as precluding certification as a European Enforcement Order, within the meaning of Regulation No 805/2004 creating a European Enforcement Order for uncontested claims, of a judgment by default issued against a defendant whose address is unknown.

It is apparent from an analysis of the objectives and scheme of that regulation that it institutes a derogation from the common system of recognition of judgments, the conditions of which are, as a matter of principle, to be interpreted strictly.

The defendant, by opposing, in accordance with Article 34(2) of Regulation No 44/2001 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters, recognition of the judgment issued against him, will have the opportunity of ensuring respect for his rights of defence. That guarantee would, however, be wanting if a judgment by default issued against a defendant who was unaware of the proceedings were to be certified as a European Enforcement Order.

(see paras 64, 66, 68, operative part 3)

5. Article 3(1) and (2) of Directive 2000/31 on certain legal aspects of information society services, in particular electronic commerce, in the internal market does not apply to a situation in which the place of establishment of the information society services provider is unknown, since application of that provision is subject to identification of the Member State in whose territory the service provider in question is actually established.

(see para. 72, operative part 4)