



Reports of Cases

Case C-70/15

Emmanuel Lebek
v
Janusz Domino

(Request for a preliminary ruling from the Sąd Najwyższy)

(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))

Summary — Judgment of the Court (Second Chamber), 7 July 2016

1. *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 — Grounds for refusing enforcement — Document instituting proceedings not served on the defendant in sufficient time — Concept of ‘proceedings’ that may be brought against the judgment for which recognition is sought — Application for relief — Included — Conditions*

(European Parliament and Council Regulation No 1393/2007, Art. 19(4); Council Regulation No 44/2001, Art. 34(2))

2. *Judicial cooperation in civil matters — Service of judicial and extrajudicial documents — Regulation No 1393/2007 — Defendant who has failed to enter an appearance — Application for relief submitted after expiry of the period for filing that application — Not permissible — Inapplicability of broader provisions of national law*

(European Parliament and Council Regulation No 1393/2007, Art. 19(4))

1. The concept of ‘proceedings to challenge a judgment’ referred to in Article 34(2) of Regulation No 44/2001 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.

Article 34(2) of that 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. Regarding, more specifically, an application for relief, it aims to ensure proper respect for the rights of the defence of defendants who have failed to enter an appearance. In that context, in so far as the defendant, without any fault on his part, did not have knowledge of the document concerned in sufficient time to bring a challenge, has disclosed a prima facie defence to the action on the merits, and has filed his application for relief

within a reasonable time, in other words, in so far as the conditions set out in Article 19(4) of Regulation No 1393/2007 on the service in the Member States of judicial and extrajudicial documents in civil or commercial matters (service of documents), and repealing Regulation No 1348/2000 are met, 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.

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 set out in Article 19(4) of Regulation No 1393/2007 having been met, recognition of a judgment in default given against him cannot be refused on the basis of Article 34(2) of Regulation No 44/2001.

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.

(see paras 40, 42-47, 49, operative part 1)

2. The last sentence of Article 19(4) of Regulation No 1393/2007 on the service in the Member States of judicial and extrajudicial documents in civil or commercial matters (service of documents), and repealing Regulation No 1348/2000 must be interpreted as excluding the application of provisions of national law concerning applications 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.

It would be contrary to the principle of legal certainty and the binding force associated with EU regulations to provide an interpretation of that provision according to which such an application 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.

(see paras 57, 58, operative part 2)