

C- 619/10: Art. 34 (1) and (2) Brussels I Regulation

One of the first cases to be addressed by the ECJ after the holiday will be the so-called *Trade Agency*, concerning grounds for refusing recognition and the power of the enforcing court to determine whether the application initiating proceedings had been served on the defendant in default, when service is accompanied by a certificate as provided for by Article 54 of the regulation. Quoting AG Kokott, this are the items to be solved:

“Article 34(2) permits the withholding of recognition or enforcement of a default judgment that has been pronounced against a defendant who was not served with the document which instituted the proceedings in sufficient time and in such a way as to enable him to arrange for his defence. Article 54 of the regulation provides for the issue by the State in which judgment was given (‘State of origin’) of a certificate showing the various underlying procedural data. This certificate has to be submitted together with the application for enforcement of a judgment. The information to be stated there also includes the date of service of the claim form. In light of this, the question in this case concerns the extent to which the court in the State where enforcement is sought should examine service of the claim form: Is it still entitled, despite the date of service being stated in the certificate, to examine whether the document instituting the proceedings was served or does the certificate have binding legal effect in this respect?

The ground for withholding recognition under Article 34(2) does not apply if the defendant failed to commence proceedings in the State of origin to challenge the default judgment when it was possible for him to do so. This case provides the Court with an opportunity of further clarifying

its case-law on the question of when it is incumbent upon the defendant to lodge an appeal in the State of origin. It is necessary to make clear whether the defendant is obliged to do so even if the decision pronounced against it was served on it for the first time in exequatur proceedings.

Finally, the dispute in this case also relates to the public-policy clause in Article 34(1) of Regulation No 44/2001. The referring court would like to know in this connection whether it is compatible with the defendant's right to fair legal process embodied in Article 47 of the Charter of Fundamental Rights of the European Union for the court of the State of origin to neither examine the substance of a claim before pronouncing judgment in default nor to give further reasons for the default judgment."

Judgment is expected next Thursday.