

Stellingen behorende bij het proefschrift

Free movement of civil judgments in the European Union and the right to a fair trial

door Monique Hazelhorst

1. Within the European Union, a mechanism to refuse the recognition and enforcement of civil judgments in the Member State addressed should be retained to secure the effective protection of the right to a fair trial.
2. Although in its *Povse* decision the European Court of Human Rights sanctioned the abolition of exequatur and refusal grounds, it did so on the basis of a presumption that the European Union protects fundamental rights effectively, which places on the European Union a responsibility to take its role as a fundamental rights organisation seriously.
3. Refusal of recognition or enforcement cannot be replaced with a check prior to enforcement in the Member State of origin of the judgment, because practice shows that courts are not always sufficiently capable of critically evaluating their own state's procedural law and culture.
4. The public policy exception within the EU should be retained as a ground for refusal of recognition or enforcement. Public policy is not a vestige of obsolete nationalism, but a valuable emergency remedy against exceptional and inevitable failures of the legal system, provided it is applied proportionately.
5. The legal vacuum concerning the remedies available to the defendant who was not served with a European Order for Payment, as identified in the *eco cosmetics* case, creates not only uncertainty for the litigants, but also a heavy responsibility for Member State courts to find an adequate solution that does not diminish the Regulation's effectiveness.
6. Mutual trust within the European Union can only ever be a strong working presumption that decisions from other Member States conform to fundamental rights; it should always be capable of being rebutted in a concrete case.
7. Harmonisation of procedural standards or the identification of common minimum principles are useful tools for building mutual trust, but they cannot replace adequate checks in the Member State of enforcement.
8. EU Regulations, though directly applicable in the domestic legal order, need careful embedding into their legal surroundings if they are to be truly effective.
9. In judicial cooperation in civil matters, evaluation, consolidation, coherence, and effective implementation are now more important than innovation.
10. The right to a fair trial serves to achieve both a fair outcome as well as a process that respects the parties' human dignity.
11. "What is wanted is not the will-to-believe, but the wish to find out, which is the exact opposite". Bertrand Russell, *Free thought and official propaganda*, 1922.