CENTRE DE DROIT
BANCAIRE ET FINANCIER

Foreign judgments

Failure to recognize due to an improper citation

Par Frédéric Ding le 12 June 2026

Can a foreign judgment be recognized in Switzerland if the defendant was never actually aware of the proceedings brought against him ? This question arises in particular when the court, unable to serve the person, resorts to service by publication. In its decision 4A_157/2025 of March 13, 2026, the Federal Supreme Court clarifies that service is compatible with Art. 27(2)(a) of the Swiss International Private Law Act (LDIP) only if it offers the defendant a genuine opportunity to participate in the proceedings. In such cases, recognition of a foreign judgment remains possible, provided that the default proceedings guarantee the rights of the defense.

In the present case, a company based in Dubai obtained a *Payment Order* from the Dubai Court of First Instance against a company domiciled in Switzerland. After an attempt to serve the Swiss company failed, the Dubai authorities published the *Payment Order* in the press. The claimant (the Dubai-based company) subsequently sought enforcement of this decision in Switzerland.

The dispute brought before the Federal Supreme Court fell within the scope of Art. 25(c) *cum* Art. 27(2)(a) of the Swiss Private International Law Act (and not that of the Lugano Convention). These provisions do not permit the recognition of a judgment rendered against a defaulting party who has not been duly summoned ("*gehörig geladen*").

The Federal Supreme Court reiterates the essence of these provisions, which protect fundamental procedural guarantees under Swiss public policy. They are intended, in particular, to prevent a party domiciled in Switzerland from being adjudicated against abroad without having had a genuine opportunity to participate in the proceedings.

Thus, the regularity of service is not to be confused with its formal validity under the law of the State of origin. Service may comply with foreign law while remaining insufficient from a Swiss perspective if it does not guarantee the rights of the defense. Art. 27(2)(a) of the LDIP sets forth a minimum substantive requirement : proceedings conducted by a foreign state must guarantee a defendant residing in Switzerland the opportunity to prepare their defense.

In the absence of sufficient guarantees, particularly in the case of fictitious service by publication, the Federal Supreme Court acknowledges that such service may satisfy the requirements of Art. 27(2)(a) of the LDIP if it is followed by a default proceeding offering judicial review of the facts and the law, thereby preventing a decision from being rendered solely on the basis of the plaintiff's allegations.

However, according to the Federal Supreme Court, this is precisely not the case here. The judge conducts only a formal review of the documents submitted by the plaintiff before issuing the *Payment Order*. The decision is thus rendered based solely on the plaintiff's allegations, without a default proceeding intended to protect the defendant. A genuine adversarial hearing takes place only if the defendant files an objection.

Consequently, when the defendant has never actually been aware of the initiation of proceedings due to a fictitious service, he is deprived of any possibility of obtaining a full judicial review. The decision then rests exclusively on the plaintiff's unilateral presentation of the facts. For the Federal Supreme Court, such a situation is not compatible with the protective function of Art. 27(2)(a) of the LDIP.

The judgment thus highlights the close link between the validity of service and the procedural safeguards offered by the foreign proceedings. A deemed service of the document instituting the proceedings cannot be assessed in the abstract, and its admissibility depends in particular on the defendant's ability to actually participate in the proceedings, and failing that, on the role played by the court. The more the foreign proceedings rely on the defendant's initiative to trigger a full judicial review, the higher the requirements regarding notification of the commencement of such proceedings will be.

The solution adopted is consistent with the general logic of Swiss law on the recognition of foreign judgments. Exequatur must not transform Switzerland into a mere registry for decisions obtained without genuine judicial review or effective participation by the defendant. Where the defendant has likely never been aware of the proceedings and no full judicial review has taken place ex officio, the fundamental guarantees of a fair trial take precedence over the deference due to the foreign judgment.

The ruling does not, however, mean that service by official publication would, in principle, be incompatible with Art. 27(2)(a) of the Swiss Private International Law Act (LDIP). Such service could remain admissible when it occurs on a subsidiary basis within the framework of proceedings that, despite the defendant's default, provide for effective judicial review of the facts and the law.

In banking practice, Swiss institutions are sometimes confronted with applications for exequatur based on foreign judgments rendered by default or following service by publication in states not bound by the Lugano Convention. The judgment confirms in this regard that a banking institution subject to such an application for enforcement may invoke the inadequacy of the procedural safeguards offered by the foreign proceedings and rely on Art. 27(2)(a) of the LDIP to oppose the recognition of the judgment.
