



CROSS BORDER ENFORCEMENT OF MONETARY CLAIMS - INTERPLAY OF BRUSSELS I A REGULATION AND NATIONAL RULES

NATIONAL REPORT: CZECH REPUBLIC

Authors

Jiří Valdhans & Tereza Kyselovská



University of Maribor Press



University of Maribor

Faculty of Law

Cross border Enforcement of Monetary Claims - Interplay of Brussels I A Regulation and National Rules

National report: Czech Republic

Authors:

JUDr. Jiří Valdhans, Ph.D.

JUDr. Tereza Kyselovská, Ph.D.

August 2018

Title Cross border Enforcement of Monetary Claims - Interplay of Brussels I A Regulation and National Rules

Subtitle National report: Czech Republic

Authors assist. prof. JUDr. Jiří Valdhans, Ph.D.
(Masaryk University, Faculty of Law)

assist. prof. JUDr. Tereza Kyselovská, Ph.D.
(Masaryk University, Faculty of Law)

Review assoc. prof. Tjaša Ivanc, Ph.D.
(University of Maribor, Faculty of Law)

Technical editor Jan Perša, M.D. (University of Maribor Press)

Cover designer Jan Perša, M.D. (University of Maribor Press)

Cover graphics Czech R. flag (CC0 pixabay)

Co-published by / Izdajateljica:

University of Maribor, Faculty of Law
Mladinska ulica 9, 2000 Maribor, Slovenia
<http://pf.um.si>, pf@um.si

Published by / Založnik:

University of Maribor Press
Slomškov trg 15, 2000 Maribor, Slovenia
<http://press.um.si>, zalozba@um.si

Edition 1st

Publication type e-publication

Available at <http://press.um.si/index.php/ump/catalog/book/347>

Published Maribor, August 2018

© University of Maribor, University Press

All rights reserved. No part of this book may be reprinted or reproduced or utilized in any form or by any electronic, mechanical, or other means, now known or hereafter invented, including photocopying and recording, or in any information storage or retrieval system, without permission in writing from the publisher.

This publication has been produced with the financial support of the **Justice Programme of the European Union**. The contents of this publication are the sole responsibility of authors and can in no way be taken to reflect the views of the European Commission.



With the support of
the Civil Justice Programme
of the European Union

CIP - Kataložni zapis o publikaciji
Univerzitetna knjižnica Maribor

341.9:347.73/.76(437.1/.2)(0.034.2)

VALDHANS, Jiří

Cross border enforcement of monetary claims - interplay of Brussels I A regulation and national rules [Elektronski vir] : national report. Czech Republic / authors Jiří Valdhans, Tereza Kyselovská. - 1st ed. - El. knjiga. - Maribor : University of Maribor Press, 2018

Način dostopa (URL): <http://press.um.si/index.php/ump/catalog/book/347>

ISBN 978-961-286-184-1 (pdf)

doi: 10.18690/978-961-286-184-1

1. Kyselovská, Tereza

COBISS.SI-ID [95107585](https://www.cobiss.si/id/95107585)

ISBN 978-961-286-184-1 (PDF)

DOI <https://doi.org/10.18690/978-961-286-184-1>

Price Free copy

For publisher full prof. Zdravko Kačič, Ph.D., Rector (University of Maribor)

Cross border Enforcement of Monetary Claims - Interplay of Brussels I A Regulation and National Rules

National report: Czech Republic

JIŘÍ VALDHANS & TEREZA KYSELOVSKÁ

Abstract The "National Report: Czech Republic" systematically and comprehensively addresses the main features of the enforcement of monetary claims in the German legal system, focusing in particular on the analysis of legal remedies in the enforcement procedure. Said issues are approached from both national and cross-border perspectives. The issues discussed are profoundly typical in light of the recent coming into effect of the Brussels IA Regulation (Recast) and its more or less successful implementation in the national systems of the Member States, which has raised a number of issues. The report critically reflects some of the controversial solutions covered by the Recast Regulation regarding the effectiveness and appropriateness of the Regulation's application in the legal system in question and related problems. It also deals with national specificities in the enforcement procedure, which still constitute an obstacle to cross-border procedures. The report was created as part of a study conducted under the auspices of the EU project BIARE ("Remedies on the Enforcement of Foreign Judgments according to Brussels I Recast") under the coordination of the Faculty of Law University of Maribor.

Keywords: • Brussels IA Regulation • cross-border enforcement procedure • enforcement of monetary receivables • legal remedies • Czech Republic •

CORRESPONDENCE ADDRESS: JUDr. Jiří Valdhans, Ph.D., Assistant Professor, Masaryk University, Faculty of Law, Department of International and European Law, Veveří 158/70, 611 80 Brno, Czech Republic, e-mail: Jiri.Valdhans@law.muni.cz. JUDr. Tereza Kyselovská, Ph.D., Assistant Professor, Masaryk University, Faculty of Law, Department of International and European Law, Veveří 158/70, 611 80 Brno, Czech Republic, e-mail: Tereza.Kyselovska@law.muni.cz.

DOI <https://doi.org/10.18690/978-961-286-184-1>

ISBN 978-961-286-184-1

© 2018 University of Maribor Press

Available at: <http://press.um.si>

Table of Contents

Part 1: Main features of the Czech enforcement procedures for recovery of monetary claims (general overview)	1
1.1 Brief presentation of Czech legal sources on enforcement	1
1.2 Types and means of enforcement procedures in the Czech Republic	3
1.3 Principles governing the enforcement procedure in the Czech Republic	4
1.4 Stages of enforcement procedure.....	5
1.5 Jurisdiction in enforcement proceedings	6
1.5.1 Subject-matter jurisdiction.....	6
1.5.2 Territorial jurisdiction.....	6
1.6 Legal succession after the enforcement title was obtained.....	6
1.7 Types of enforcement titles.....	7
1.8 Service of documents and decisions	8
Part 2: National procedure for recognition and enforcement of foreign judgements 9	
2.1 Introduction	9
2.2 Concept of “recognition” and “enforcement” of foreign judgements in the Czech Republic	11
2.3 Jurisdiction in matters of recognition and enforcement (substantive and territorial)	16
Part 3: Recognition and Enforcement in Brussels Ibis Regulation	19
3.1 Certification or declaration of enforceability in Member States of origin	19
3.1.1 In general	19
3.1.2 Possibility to challenge the certificate of enforceability in the Member State of origin.....	20
3.1.3 Unlawfully issued certificate of enforceability	21
3.1.4 Service of the certificate of enforceability	23
3.1.5 Protective measures according to Art. 40 Brussels Ibis Regulation	24
3.1.6 Certifying the amount of interests	24
3.1.7 Succession in respect to the certificate of enforceability	25
3.2 Recognition and Enforcement in the Member State of enforcement	25
3.2.1 The concept of “recognition”	25
3.2.2 Doctrine of spreading effects.....	26
Part 4: Remedies	29
4.1 Remedies in the Czech civil procedural law – general overview	29
4.2 Remedies in enforcement procedure.....	30
4.3 Opposition in enforcement.....	31
4.4 Remedies in international private procedure.....	31

4.5	Remedies in the Member State of origin regarding the enforcement title	33
4.6	Grounds for refusal of recognition	35
4.7	Refusal of enforcement	36
4.8	Service of documents	37
4.9	Opposition by the defendant (objection against recognition and enforcement of foreign judgement)	37
4.10	Second appeal as a remedy.....	38
4.11	Subject entitled to apply for a refusal of recognition or enforcement	38
4.12	Protective and interim measures.	39
Part 5: Final critical evaluation of the Brussels Ibis Regulation - what necessary adaptations to national legislations need to be done?		
5.1	Evaluation of the Brussels Ibis Regulation	41
5.2	Alternatives for the cross-border collection of debts in the EU.....	43
5.3	Language and translation issues	43
5.4	Costs of enforcement proceedings.....	44
5.5	Brussels Ibis Regulation and its impact on the principle of national procedural autonomy	44

Part 1: Main features of the Czech enforcement procedures for recovery of monetary claims (general overview)

1.1 Brief presentation of Czech legal sources on enforcement

In the Czech procedural law, there are two ways for enforcement of judgments in civil and commercial matters: 1. judicial enforcement by courts (“vykonávací řízení soudní”); 2. and (non-judicial) enforcement (“exekuční řízení”) by executors (“exekutoři”).

Judicial enforcement is regulated by the Act No. 99/1963 Coll., Civil Procedural Code (“Občanský soudní řád”), from § 251 to § 351, Part Six.

The (non-judicial) enforcement is regulated by the Act No. 120/2001 Coll., on Judicial Executors and Enforcements, Enforcement Code (“Exekuční řád”). The executor according to this Code carries out enforcement activities independently. Enforcement is performed by the executor nominated by the entitled party in the action for execution and authorised to perform execution by the court decision. Acts by the executor are considered as acts of the court.

As to the enforcement in civil and commercial matters, the Civil Procedural Code is *lex generalis*, and the Enforcement Code is *lex specialis*;¹ unless otherwise provided by the Enforcement Code, the provisions of the Civil Procedural Code apply *mutatis mutandis* in the enforcement proceedings (§ 52 Para 1 Enforcement Code).

The general provisions in the Civil Procedural Code do not apply to decisions on the upbringing of minors, given the different (non-property) nature of the obligation enforced; some relevant provisions can be found in other legal acts, such as the Act No. 292/2013 Coll., Special Judicial Proceedings.

Apart from judicial and non-judicial enforcement, there are other types of specialized enforcements of judgements, i.e. administrative enforcement, criminal enforcement and financial and tax enforcement.² These enforcement procedures are regulated by respective public law enforcement codes (Administrative Procedural Code, Criminal Procedural Code and Tax Code). The relationship between these special types of public law proceedings and the judicial and (non-judicial) enforcement is regulated by Act No. 119/2001 Coll.³

The Czech Civil Procedural Code dates back to the year 1963 and has remained in force in large parts up until today. After the year 1989, several novelizations and reforms were adopted (e.g. service of documents).

The most significant change came in the year 2001. Because of the major political, economic and social changes in 1990's, there was significant rise of civil adjudicative and enforcement proceedings.⁴ Therefore, Act. No. 120/2001 Coll., on Judicial Executors and Enforcement (Enforcement Code) was adopted. This new legislation introduced new type of executor and established a second type of enforcement on judgments. The claimant whose claim is not satisfied can choose between judicial

¹ Winterová, Alena, Macková, Alena. *Civilní právo procesní. Část druhá, Řízení vykonávací, řízení insolvenční: vykonávací řízení obecně, soudní výkon rozhodnutí, exekuční řízení, způsoby výkonu, způsoby řízení úpadku, mezinárodní a evropské insolvenční právo*. Praha: Leges, 2015, 352 pp., p. 22.

² Zahradníková, Radka a kol. *Civilní právo procesní*. Plzeň: Aleš Čeněk, 2015. 579 pp., p. 352

³ Winterová, Alena, Macková, Alena. *Civilní právo procesní. Část druhá, Řízení vykonávací, řízení insolvenční: vykonávací řízení obecně, soudní výkon rozhodnutí, exekuční řízení, způsoby výkonu, způsoby řízení úpadku, mezinárodní a evropské insolvenční právo*. Praha: Leges, 2015, 352 pp., p. 22.

⁴ Winterová, Alena, Macková, Alena. *Civilní právo procesní. Část druhá, Řízení vykonávací, řízení insolvenční: vykonávací řízení obecně, soudní výkon rozhodnutí, exekuční řízení, způsoby výkonu, způsoby řízení úpadku, mezinárodní a evropské insolvenční právo*. Praha: Leges, 2015, 352 pp., p. 20

enforcement under the Civil Procedural Code and (non-judicial) enforcement under the Enforcement Code. Even though both codes have their advantages and disadvantages⁵ and it is up to the claimant to choose the best option for him,⁶ it is fair to say at the same time, that the judicial enforcement is almost not used in practice.

1.2 Types and means of enforcement procedures in the Czech Republic

The Czech system of enforcement is considered to be centralized. The legal framework in the Czech Republic provides for two types of enforcement procedures in civil and commercial matters: enforcement of judgments under the Civil Procedural Code and enforcement of judgments under the Enforcement Code.

These two codes differentiate various types of enforcement procedures, depending on the character of the claims: monetary claims on the one hand and non-monetary claims on the other. The list of enforcement procedures is exhaustive: decision may only be ordered and enforced in manners mentioned in the Civil Procedural Code (§ 257 Civil Procedural Code and § 59 Enforcement Code).

Enforcement of monetary claims under the Civil Procedural Code (§ 258 Para 1): deduction from wages/salary; compulsory debit; management of immovable property; sale of movable and immovable property; sale of business; creation of a judicial lien on immovable property.

Enforcement of monetary claims under the Enforcement Code (§ 59): deduction from wages/salary or other income; compulsory debit; sale of movable and immovable property; management of immovable property; sale of business; suspension of driver's license.

Enforcement of non-monetary claim under the Civil Procedural Code: eviction; seizure of assets; division of common property; compulsory performance of work and action.

⁵ Intention was to move most of the enforcement to the enforcement under the Enforcement Code – see Zahradníková, Radka a kol. *Civilní právo procesní*. Plzeň: Aleš Čeněk, 2015. 579 pp., p. 353

⁶ Winterová, Alena, Macková, Alena. *Civilní právo procesní. Část druhá, Řízení vykonávací, řízení insolvenční: vykonávací řízení obecně, soudní výkon rozhodnutí, exekuční řízení, způsoby výkonu, způsoby řízení úpadku, mezinárodní a evropské insolvenční právo*. Praha: Leges, 2015, 352 pp., p. 21.

Enforcement of non-monetary claim under the Enforcement Code: eviction; seizure of assets; division of common property; compulsory performance of work and action.

1.3 Principles governing the enforcement procedure in the Czech Republic

The governing principle for the enforcement of decisions in the Czech Republic is the **right to fair trial**.⁷

The enforcement law is characterized by the **principle of free disposition of parties**.⁸ Any enforcement procedure is started by the claimant. The claimant decides what type of proceedings he/she wants to choose (either procedure according to the Civil Procedural Code or procedure under the Enforcement Code). The conduct of the enforcement proceedings is governed by the **principle of ex officio**.

For other principles, it is necessary to underline the aim and goal of the enforcement proceedings.⁹ In the enforcement procedure, there are no proceedings as such. The right to **appeal is limited** and the appellate process is different from the initial proceedings (§ 254 Paras 4-8 Civil Procedural Code).

Enforcement may be ordered only to the extent and amount that is claimed in the enforcement claim. Judicial and (non-judicial) enforcement must be in accordance with the **principle of proportionality** (§ 263 and 264 Civil Procedural Code, § 58 Enforcement Code).

⁷ Winterová, Alena, Macková, Alena. *Civilní právo procesní. Část druhá, Řízení vykonávací, řízení insolvenční: vykonávací řízení obecně, soudní výkon rozhodnutí, exekuční řízení, způsoby výkonu, způsoby řízení úpadku, mezinárodní a evropské insolvenční právo*. Praha: Leges, 2015, 352 pp., p. 25

⁸ Winterová, Alena, Macková, Alena. *Civilní právo procesní. Část druhá, Řízení vykonávací, řízení insolvenční: vykonávací řízení obecně, soudní výkon rozhodnutí, exekuční řízení, způsoby výkonu, způsoby řízení úpadku, mezinárodní a evropské insolvenční právo*. Praha: Leges, 2015, 352 pp., p. 25.

⁹ Winterová, Alena, Macková, Alena. *Civilní právo procesní. Část druhá, Řízení vykonávací, řízení insolvenční: vykonávací řízení obecně, soudní výkon rozhodnutí, exekuční řízení, způsoby výkonu, způsoby řízení úpadku, mezinárodní a evropské insolvenční právo*. Praha: Leges, 2015, 352 pp., p. 26.

In the proceedings, the **procedural rights of the debtor has to be protected**. The debtor has right to appeal (§ 254 Para 5 Civil Procedural Code), right to file claim to postpone enforcement (§ 266 and 268 Civil Procedural Code), right to extraordinary appeal (“odporová žaloba”, § 267a Civil Procedural Code).

The list of enforcement means is exhaustive. The legislator has tried to find a balance between the rights of recovery of the creditors and the right of the debtor to a dignified existence. Some assets are protected from enforcement.

Another principles are **principle of order of claims** (§ 280 Para 3 and § 309 Civil Procedural Code); **principle of priority** (in § 280 Para 2, § 337c Para 1 or § 338 para 1 Civil Procedural Code); and **principle of proportionality** (e.g. § 280 Para 3 or § 309 Civil Procedural Code).

1.4 Stages of enforcement procedure

Any enforcement in the Czech Republic requires a previous authorization; therefore, the enforcement procedure is divided into two, parts.¹⁰

The first part is proceedings to obtain an **order for enforcement**.¹¹ The decision has to be enforceable (§ 251 Civil Procedural Code). In order for the court to issue an enforcement order, the creditor needs to produce an enforceable document (§ 261 Para 2 Civil Procedural Code and § 38 Enforcement Code); enforceability usually needs to be confirmed by the authority that issued the enforceable instrument.¹²

There are also other types of decisions that are enforceable in judicial and (non-judicial) enforcement (e.g. arbitral award or enforceable decisions of State notaries and agreements approved by them according to § 284 Para 1 Civil Procedural Code).¹³

¹⁰ Winterová, Alena, Macková, Alena. *Civilní právo procesní. Část druhá, Řízení vykonávací, řízení insolvenční: vykonávací řízení obecně, soudní výkon rozhodnutí, exekuční řízení, způsoby výkonu, způsoby řízení úpadku, mezinárodní a evropské insolvenční právo*. Praha: Leges, 2015, 352 pp., p. 17.

¹¹ Zahradníková, Radka a kol. *Civilní právo procesní*. Plzeň: Aleš Čeněk, 2015. 579 pp., p. 353

¹² Winterová, Alena, Macková, Alena. *Civilní právo procesní. Část druhá, Řízení vykonávací, řízení insolvenční: vykonávací řízení obecně, soudní výkon rozhodnutí, exekuční řízení, způsoby výkonu, způsoby řízení úpadku, mezinárodní a evropské insolvenční právo*. Praha: Leges, 2015, 352 pp., p. 28.

¹³ See Zahradníková, Radka a kol. *Civilní právo procesní*. Plzeň: Aleš Čeněk, 2015. 579 pp., p. 357-358

The second part is enforcement proceedings as such. This phase is divided into three subphases: seizure, realization of the value of the asset and satisfaction of the creditors.¹⁴

1.5 Jurisdiction in enforcement proceedings

1.5.1 Subject-matter jurisdiction

Subject-matter jurisdiction in judicial enforcement proceedings is granted only to district courts (§ 9 Civil Procedural Code), even in proceedings where the court of first instance was regional court or high court (e.g. in commercial disputes).¹⁵

Subject-matter jurisdiction in (non-judicial) enforcement is granted to district courts (§ 45 Para 1 Enforcement Code).

1.5.2 Territorial jurisdiction

The rules for territorial jurisdiction of courts in judicial enforcement proceedings are laid down in § 252 Civil Procedural Code. Unless otherwise stipulated, the court of the debtor is competent to order and enforce the decision. There are several exemptions from this rule in § 252 Para 2 Civil Procedural Code.

The rules for territorial jurisdiction in (non-judicial) enforcement proceedings are laid down in § 45 Para 2 Enforcement Code.

1.6 Legal succession after the enforcement title was obtained

According to § 256 Para 1 Civil Procedural Code, it is possible to issue an order for enforcement in favour of another person or against another person than the one named in the enforceable instrument, if the applying party can prove the legal succession. The legal succession has to be proved by producing document issued or

¹⁴ Winterová, Alena, Macková, Alena. *Civilní právo procesní. Část druhá, Řízení vykonávací, řízení insolvenční: vykonávací řízení obecně, soudní výkon rozhodnutí, exekuční řízení, způsoby výkonu, způsoby řízení úpadku, mezinárodní a evropské insolvenční právo*. Praha: Leges, 2015, 352 pp., p. 17.

¹⁵ Zahradníková, Radka et al. *Civilní právo procesní*. 2. vyd. Plzeň: Aleš Čeněk, 2015, 579 pp., p. 354.

certified by a State authority or notary, unless it is directly provided for in law (§ 256 Para 2 Civil Procedural Code).¹⁶

1.7 Types of enforcement titles

The exhaustive list of enforcement titles in judicial enforcement is provided for in § 274 Civil Procedural Code. The enforcement titles are:

- enforceable court decisions granting a right, imposing an obligation or affecting property (§251 and § 261 Para 2 Civil Procedural Code);
- enforceable decisions by the courts or other law enforcement agencies in criminal proceedings, granting a right, imposing an obligation or affecting property;
- enforceable court decisions in administrative proceedings;
- enforceable decisions by arbitration commissions and settlements approved by them;
- enforceable decisions by State notaries and agreements approved by them;
- notarial and executorial deeds with consent to enforceability drawn up in accordance with specific Acts;
- enforceable decisions by public administrative authorities, including payment notices, Statements of arrears in respect of taxation and duty, and other decisions and enforceable settlements;
- decisions by institutions of the European Communities;
- other enforceable decisions, approved settlements and documents whose judicial enforcement is permitted by law.

The exhaustive list of enforcement titles in (non-judicial) enforcement is provided for in § 40 Enforcement Code:

- enforceable court decisions granting a right or affecting property”
- enforceable decisions by the courts or other law enforcement agencies in criminal proceedings, granting a right, or affecting property

¹⁶ Zahradníková, Radka et al. *Civilní právo procesní*. 2. vyd. Plzeň: Aleš Čeněk, 2015, 579 pp., p. 357. See also Decision of Supreme Court of the Czech Republic, 18 January 2005, 21 Cdo 2053/2004.

- enforceable arbitral award
- notarial and executorial deeds with consent to enforceability drawn up in accordance with specific Acts
- enforceable decisions by public administrative authorities
- other enforceable decisions, approved settlements and documents whose enforcement is permitted by law

Both of these lists are exhaustive. They are similar, nevertheless differ in some aspects. Under the Enforcement Code, it is not possible to enforce enforceable decisions:

- Issued by State notaries and agreements approved by them.
- Decisions issued by institutions of the European Communities and foreign judgments. However, according to § 37 Para 2 Enforcement Code, it is possible to enforce decision on maintenance for minors; or decision for which declaration of enforceability was issued based on EU regulation or international convention or such decision was recognized.
- Special types of enforcement proceedings regulated by Act on special court proceedings in §§ 492 – 510 (e.g. decisions concerning minors).

1.8 Service of documents and decisions

The service of documents and decisions in enforcement law generally follows the respective rules in civil procedure in §§ 45 – 58 Civil Procedural Code.

Part 2: National procedure for recognition and enforcement of foreign judgements

2.1 Introduction

Every State has usually its own rules for recognition and enforcement of foreign judgments. It stems from the principle of territoriality and sovereignty. Since the area of recognition and enforcement of foreign judgments is nowadays regulated by international conventions (bilateral or multilateral) and EU regulations, the national rules have to cede wherever international convention or EU regulation claims precedence.

System of limited control of foreign judgment has a long tradition in the Czech doctrine of private international law and national legal regulation. Present legal regulation in Act. No. 91/2012 Coll., Private International Law Act (hereinafter referred to as PILA) represents the mechanism only slightly amended in comparison with previous Act No. 97/1963 Coll., Private International Law Act. National legal regulation on recognition and enforcement.

Grounds for refusal of enforcement are introduced by § 15 of Czech PILA:

- a) the matter falls under the exclusive jurisdiction of the Czech courts or if the proceedings could not have been undertaken by an authority in a foreign State, if the provisions pertaining to the jurisdiction of the Czech courts had been applied when assessing the jurisdiction of the foreign authority, unless the participant in the proceedings, against whom the judgement is made, has voluntarily submitted to the jurisdiction of the foreign authority,
- b) if proceedings are underway before a Czech court with regard to the same legal relations and if said proceedings commenced prior to the proceedings abroad, in which the judgement whose recognition has been proposed was issued,
- c) if a Czech court has already issued a valid judgement about the same legal relations or if the valid judgement of the body of a third State has already been recognized in the Czech Republic,
- d) if a participant in the proceedings, with regard to whom the judgement is to be recognized, has been deprived of the ability to duly participate in the proceedings by means of a procedure adopted by a foreign authority, especially if said participant has not been delivered a summons or the motion to commence the proceedings,
- e) any such recognition would clearly contravene public order, or
- f) reciprocity has not been guaranteed; reciprocity is not required if the foreign judgement is not aimed at a citizen of the Czech Republic or a Czech legal entity.¹⁷

Above-mentioned grounds are applicable against all types of foreign judgments in civil matters as will be discussed hereinafter.

¹⁷ The impediment set out in subsection 1, letter d) is only taken into account, if the participant in the proceedings against whom the foreign judgement should be recognized so requests. This also applies in the case of the impediments set out in subsection 1, letters b) and c), unless the body deciding on the recognition is otherwise aware of their existence.

2.2 Concept of “recognition” and “enforcement” of foreign judgements in the Czech Republic

Recognition and enforcement of foreign judgments. Why are these two legal institutes so important, both for the theory of private international law and legal practice? The answer lies back in the theory of private international law. Decision of a court represents an act of official authority endowed by a State power, which provides protection to rights and duties of subjects of law. It demonstrates the sovereignty of an issuing State, and represents the combination¹⁸ of both substantive and procedural rules.¹⁹ As such, it can hold its effects only on the territory of an issuing State²⁰ which means, that its effects are territorially limited. In layman's terms - to obtain a favorable judgment is one thing. To be able to enforce it in place (country) where debtor's assets are is a completely different issue.²¹

Instruments of recognition and enforcement are often mixed together. At least, when the desired result of the whole process of dealing with the foreign judgment is taken into account, this simplification can be understood. Nevertheless, merging these two legal instruments, or legal procedures behind them, represents an error and misunderstanding. On the background of these two legal instruments, we will also address briefly the law applicable and area of this law in particular.

Term “recognition” may be perceived in two senses. It can represent the process of recognition, i.e. legal procedure when usually court examines the conditions established by the *lex fori*, which are necessary to grant foreign judgment legal effects in the State of recognition. The second meaning represents the result of the whole process, i.e. the situation when foreign judgment is granted by legal effects in the State of recognition and can be subject to enforcement. When taken into account the first meaning, i.e. the legal procedure, it is with no doubt covered by *lex fori* of

¹⁸ For the decision to be issued many conditions has to be fulfilled which may differ in many ways from State to State.

¹⁹ Steiner, Vilém *Některé teoretické koncepce řešení otázky uznání a výkonu cizího rozhodnutí*, Časopis pro mezinárodní právo, 1970, p. 244

²⁰ Basedow, Jürgen, Hopt, Klaus J., Zimmermann, Reinhard, and Stier, Andreas, *Max Planck Encyclopedia of European Private Law*, Oxford: Oxford University Press, 2012, p. 1424 (); Cheshire, North & Fawcett, *Private International Law*, 14th edition, Oxford: Oxford University Press, 2008, p. 611 (); Vilém Steiner, *Některé teoretické koncepce řešení otázky uznání a výkonu cizího rozhodnutí*, Časopis pro mezinárodní právo, 1970, p. 241 and Heyer, Jiří *Výkon cizozemských rozsudků*, Zprávy advokacie, 1963, p. 112).

²¹ See also Briggs, Adrian *Civil jurisdiction and judgments*, 4th edition, London: Norton Rose, 2005, p. 1008

the State of recognition²², in particular by its private international law. In order to avoid any doubt what can be considered *lex fori* – not only the national laws but also international treaties both bilateral and multilateral and, from the perspective of EU countries, also EU law have to be taken into account. In general, all relevant legal rules effective on the territory of the State of recognition. The issue of applicable legal rules, levels of their origin and solution of possible conflicts is addressed in next part of this paper. For the moment, we would like to emphasize only the logical divergence in the level of favorability in national law in comparison with international treaties and EU law. National laws are most strict (restrictive) while they display those territorial concepts addressed above. International treaties represent typical mean of cooperation between States and are used to establish a better regime of dealing with judgments issued by a court from another Member State. Finally, European Union represents a closely co-operating entity with coercive powers towards the Member States and the possibility to adopt its own legal regulations. It is thus obvious that the Regulation could have been designed more flexibly, or in a way that allows for a stronger ingress into State sovereignty; for example so called automatic recognition (we have some reservations about this label that will be mentioned later) which can be appealed only to the proposal of the debtor and from exhaustively defined and restrictively interpreted reasons.

Concerning the extent of recognition the reasoning represents a separate unchallengeable integral part of the judgment. If the statement is recognized, then also the reasoning will be recognized. There is no discussion in the Czech Republic whether either statement and reasoning, or the statement only is the subject of recognition. Obiter dicta is also unchallengeable but still part of the decision – the above mentioned applies.

To sum up the above-mentioned theoretical background, regarding effects of recognition **B IA follows the theory of extension of effects** (Wirkungserstreckung) and not the theory of adjustment with domestic judgement (Gleichstellung). Both Brussels I Regulation and Brussels Ibis Regulation are based on the theory of extension of effects from the state of origin. See Recital 28, which

²² The use of *lex fori* for procedural proposes represents one of the main doctrines of private international law. In case of procedural rules no question of the law applicable arises – see Kučera, Zdeněk, Pauknerová, Monika, Růžička, Květoslav et. al., *Mezinárodní právo soukromé*, 8th edition, Plzeň: Aleš Čeněk, 2015), p. 352

refers to the (procedural) adaptation of original effects to the effects known by the law of the state of enforcement.

Member states have to notify the Commission about the way and the authority competent to decide on the motion to refuse the recognition or to recognize the foreign title in separate procedure.

How to deal with all grounds against enforcement in the same procedure? It was questionable which grounds within the meaning of preclusions may be asserted by the debtor in the procedure of exequatur, whether he may request the set off against his claim.

There are no doubts what may be applied as a ground to challenge the recognition (only those grounds listed in Brussels I A) and as a ground to challenge the enforcement (grounds according to national law).²³

Enforcement refers to the mechanism of execution in the State of recognition. By the mechanism of execution the authority(ies) providing execution, means of execution or objections against execution are meant. Recognition is “*sine non quā*” for enforcement. In different words – one cannot enforce something that does not exist. This Statement cannot be revoked by the fact that in certain legal regulations, the recognition is automatic in the first stage. In fact it is written in these regulations that the judgment shall be recognised in the other Member States without any special procedure being required.²⁴ The judgment is pronounced enforceable and then the debtor may appeal against the enforceability of the judgment claiming the reasons against recognition.²⁵ As in the case of recognition, the only possible law applicable to the enforcement is *lex fori* and its area of civil law procedure. Enforcement is not covered by private international law and it is not a subject to unification in any international treaty neither bilateral nor multilateral or EU regulations. Even today, it is an issue regulated exclusively by national rules.

²³ See *C-139/10 Prism Investments BV v Jaap Anne van der Meer*.

²⁴ Art. 33 of Brussels I Regulation and Art. 36 of Brussels I bis Regulation

²⁵ Council Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters and in partially modified form also Regulation (EU) No 1215/2012 of the European Parliament and of the Council of 12 December 2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters.

In the Czech Republic, the recognition and enforcement of foreign judgments is regulated by the Act No. 91/12 Coll., on private international law (PILA). Application of PILA is limited because of the EU legislation and international conventions, which take precedence over Czech law in relationships between EU Member States. The regulation of recognition and enforcement of foreign judgments in PILA is complex; it deals with all aspects of recognition and enforcement as well as with all types of decisions (judgments, arbitral awards, notarial deeds and public deeds).²⁶ The rules for recognition and enforcement of foreign judgments are in accordance with international and European standards. It is safe to say that the regulation in PILA is stricter, because is based, *inter alia*, on the principle of (material) reciprocity.²⁷

Recognition under PILA gives the foreign judgment same legal effect as for the Czech judgments in the Czech Republic. It is not, as in the case of recognition of a decision from a Member State according to unified EU standards, the extension of effects from one country of origin to the territory of the Czech Republic, but the recognition of effects as if it was a Czech decision (the foreign judgment is equated to a Czech decision and is adapted to the Czech procedural conditions²⁸).

The effects of the recognition create the same legal situation that would have arisen if the subject matter was decided by a Czech authority.²⁹ These legal effects are *ex tunc*.³⁰ Recognized decision constitutes *res iudicata*.

A positive condition for recognition of foreign judgment under PILA is its “legal force” (“právní moc”). Therefore, is it not possible to recognize provisional decisions. The concept of “legal force” shall be interpreted according to the Czech

²⁶ Rozehnalová, Naděžda, Drličková, Klára et. al., *Czech Private International Law*. Publications of the Masaryk University, theoretical series, edition Scientia, Brno: Masaryk University, 2015, p. 68

²⁷ Pauknerová, Monika, Rozehnalová, Naděžda, Zavadilová, Marta et. al., *Zákon o mezinárodním právu soukromém. Komentář*, Praha: Wolters Kluwer, 2013, 928 pp., p. 113. For more information on recognition and enforcement of judgments in the Czech Republic, see Rozehnalová, Naděžda, Drličková, Klára et. al., *Czech Private International Law*. Publications of the Masaryk University, theoretical series, edition Scientia, Brno: Masaryk University, 2015, p. 59 et seq.

²⁸ Vaške, Václav. *Uznání a výkon cizích rozhodnutí v České republice*. Praha: C. H. Beck, 2007, pp. 491, p. 428. Decision by the Supreme Court of the Czech Republic, 27.8.1987, Cpjf 27/86.

²⁹ Kučera, Zdeněk, Pauknerová, Monika, Růžička, Květoslav et. al., *Mezinárodní právo soukromé*, 8th edition, Plzeň: Aleš Čeněk, 2015), p. 338

³⁰ Vaške, Václav. *Uznání a výkon cizích rozhodnutí v České republice*. Praha: C. H. Beck, 2007, pp. 491, p. 428.

law: it is the irreversibility of the decision (it is impossible to challenge such decision by an ordinary legal remedy), and, therefore, it is legally binding for the parties. Legal force must be proven by a certificate issued by the relevant foreign authority (other means are not allowed). It can be both an individual document, or it can be in the form of a special clause on the foreign decision. However, the certificate of enforceability itself does not confirm the legal force of a decision.

Besides, it is obvious (although not expressly stated in PILA), that the decision must be enforceable in the State of origin. Fulfilment of this condition is checked according to the law of the country of origin.

Negative conditions are expressed in the form of grounds for refusal of recognition.

The process of recognition differs according to the type of decision. Czech law, according to PILA, distinguishes between decisions in property (monetary) matters; and decision in other (non-monetary) matters (special decisions).³¹ In property

³¹ § 51 PILA:

“(1) Final and conclusive foreign judgements concerning matters of the dissolution of marriage, legal separation, the declaration of a marriage as invalid and the designation of whether or not a marriage exists where at least one of the participants in the proceedings is a citizen of the Czech Republic are recognized in the Czech Republic on the basis of a special judgement, provided this is not prevented by the provisions of section 15, subsection 1, letters a) to e). (2) The Statement as to the fact that a judgement pertaining to the matters set out in subsection 1 has been recognized is to be issued by the Supreme Court. A motion may be submitted by the participants in the proceedings, as well as any party, which substantiates its legal interest in doing so. The Supreme Public Prosecutor’s Office may enter the commenced proceedings. The Supreme Court will reach its decision in a judgement and it need not call a hearing. (3) The judgements set out in subsection 1 can only be recognized, if the facts on which the judgement has been based have been ascertained in a manner that essentially conforms to the appropriate provisions of Czech law.

(2) The Statement as to the fact that a judgement pertaining to the matters set out in subsection 1 has been recognized is to be issued by the Supreme Court. A motion may be submitted by the participants in the proceedings, as well as any party which substantiates its legal interest in doing so. The Supreme Public Prosecutor’s Office may enter the commenced proceedings. The Supreme Court will reach its decision in a judgement and it need not call a hearing.

(3) The judgements set out in subsection 1 can only be recognized, if the facts on which the judgement has been based have been ascertained in a manner which essentially conforms to the appropriate provisions of Czech law.”

§ 52 PILA

“If all of the participants in the proceedings were citizens of the State which issued the judgement, foreign judgements pertaining to the matters set out in section 51 will have the same legal effects in the Czech Republic as final and conclusive judgements of the Czech courts without the need for any further proceedings. This also applies in the case of final and conclusive judgements pertaining to these matters issued by the bodies of other foreign States, if such judgements are recognized in the home States of all the participants in the proceedings who are foreigners.”

§ 55 PILA

“(1) The provisions of Section 51 are used analogously for the recognition of foreign judgements pertaining to the matters of the designation and denial of parenthood, if at least one of the participants in the proceedings is a citizen of the Czech Republic.

(2) If all of the participants in the proceedings were citizens of the State whose jurisdiction is involved in the decisive period, or if any such judgements by the bodies of foreign States are recognized in the home States of all the participants in the

(monetary) matters, decision is not recognized by a special decision in a separate proceeding; decision is recognized by consideration during another proceedings (enforcement). In other matters (non-monetary claims), decision is recognized in a separate proceeding and is based on a decision about recognition of said decision.³²

The process of recognition of judgments can also be used for the purposes of international conventions, which refer to national law and do not require declaration of enforceability. From the procedural part of recognition, it is important to strictly distinguish substantive (positive and negative) conditions for recognition – these are comprehensively addressed in the relevant international conventions and therefore cannot be combined with national or EU rules.

2.3 Jurisdiction in matters of recognition and enforcement (substantive and territorial)

For monetary decisions, recognition is not initiated by a separate proposal; it is carried by the competent court hearing the case for which recognition is relevant. No specific rules of jurisdiction are prescribed. If the purpose is enforcement of the decision, the jurisdiction is for the district court in the place of the domicile of the defendant.

Since recognition in these cases is not subject of a separate decision, nor is the declaration of enforceability, it is not possible to file the application for recognition through executor.³³

proceedings who are foreigners, the provisions of Section 52 are used analogously for the recognition of foreign judgements pertaining to the matters of the designation and denial of parenthood.

§ 63

(1) If the adoptive parent, either of the adopting spouses or the adopted child was a citizen of the Czech Republic at the time of the adoption, any foreign adoption judgements will be recognized in the Czech Republic, if to do so does not contravene public order, if this is not prevented by the exclusive jurisdiction of the Czech courts and if the adoption would also be permissible according to the substantive law provisions of Czech law. The provisions of Section 16, subsection 2 apply for the recognition proceedings.

(2) If all of the participants in the proceedings were foreigners in the decisive period, any foreign adoption judgements are recognized in the Czech Republic without any further proceedings, if to do so does not contravene public order and provided any such judgements are recognized in the home States of all of the participants.”

³² Pauknerová, Monika, Rozehnalová, Naděžda, Zavadilová, Marta et. al., *Zákon o mezinárodním právu soukromém. Komentář*, Praha: Wolters Kluwer, 2013, 928 pp., p. 115-121

³³ Judgment of the Supreme Court NS 30 Cdo 1349/2016.

In other matters, recognition is initiated by a separate claim, and it is proclaimed by a special decision (issued in a separate proceeding), unless the law prescribes that the foreign decision is recognized without a special decision (in which case the process would be the same as in a)). The declaration of any such recognition pertains to the locally appropriate court, i.e. the general court of the party, which proposes the recognition or otherwise to the district court, in whose district any fact, which is significant for the act of recognition, has occurred or could occur, unless PILA states otherwise. PILA states otherwise in matters of the dissolution of marriage, legal separation, the declaration of a marriage as invalid and the designation of whether or not a marriage exists where at least one of the participants in the proceedings is a citizen of the Czech Republic, which are under the jurisdiction of the Supreme Court.

Part 3: Recognition and Enforcement in Brussels Ibis Regulation

3.1 Certification or declaration of enforceability in Member States of origin

3.1.1 In general

Article 53 of the Brussels Ibis Regulation states that the court of origin shall, at the request of any interested party, issue the certificate using the form set out in the Annex of the Regulation.

No major critical comments have been made in the Czech doctrine regarding that certificate. The certificate of enforceability has no legal effects in the State of origin. It is a document certifying (declaring) the enforceability of judgment in the State of origin as an information necessary for enforcement of judgment in other Member States. Its legal effects exist under the regime of Brussels Ibis Regulation only. Judgment becomes enforceable under the conditions of the State of origin.

The certificate form is in the annex to the Regulation. Its submission to the competent court is sufficient to express what the claimant expects. The court will examine the conditions of enforceability under national law; if the enforceability is confirmed, this conclusion is subsequently binding for enforcement authorities in

other EU Member States. The court of country of origin certifies that the decision is enforceable, or, in what part or against which person. It is inappropriate to require the court of the State of origin to confirm the enforceability based on other conditions. In such a case, the conditions would be transferred to the court of the State of enforcement, which is directly contrary to the objectives of the Regulation.

Enforceability clause according to the national law has to be indicated on the judgment in case the judgment does not indicate the term for voluntary fulfilment of the judgment by the debtor. In case the judgment indicate the term for voluntary fulfilment, the clause of legal force is sufficient to assess whether the judgment has become enforceable. In all other cases, the enforceability clause has to be indicated on judgment by the authority, which issued the decision.

If there are conditions to be met, the judgment simply is not enforceable at the moment of issuance of the certificate. Court in the State of recognition and enforcement cannot be forced to examine any other requirements except formal requirements.

3.1.2 Possibility to challenge the certificate of enforceability in the Member State of origin

Certificate of enforceability is not a judicial decision, it has no legal effect on the territory of the Czech Republic and does not constitute an obstacle *res rei iudicata* while it is not a judgment - decision on merits of the case (decision regarding the rights and liabilities of parties). It only declares one particular attribute of the judgment – its enforceability. However, certificate is not a decision which changes the legal status of the judgment (it does not change the status of the attribute of enforceability) but only declares whether the judgment has this attribute. One can compare it with the commission of executor (according to § 43a (5) the commission is not a judicial decision).³⁴

³⁴ Kasíková, Martina a kol. *Exekuční řád. Komentář*. 4th edition, Praha: C.H.Beck, 2017, 1167 pp., p. 289-290

3.1.3 Unlawfully issued certificate of enforceability

It is important to point out that from the point of incorrect certificate issuance there is no parallel between certificate of enforceability according to Brussels Ibis Regulation and European Enforcement Order Certificate. The nature of the certificates is different. Certificate of enforceability according to the Brussels Ibis Regulation is a document with declaratory effect which only declares the attribute of the judgment (enforceability) which is gained under the legal conditions of the domestic State (State of origin) while the European Enforcement Order Certificate is a court decision which admits the effects the national judgment did not have before. It enables the judgment to be enforced in another Member State under more liberal conditions. Before a national judgment is certified as a European Enforcement Order court in the State of origin has to examine several conditions, e.g. national judgment is a judgment on an uncontested claim, enforceability in the State of origin, compliance with the rules on jurisdiction according to Brussels I(bis) Regulation, fulfilment of minimum standards (regarding service of documents and knowledge of debtor). Therefore, the usage of analogy between withdrawal of the certificate of enforceability according to Brussels Ibis Regulation and European Enforcement Order Certificate is not possible and would cause unwanted effects.

Certificate of enforceability once issued by the court in the State of origin is binding for authorities in other Member States. Czech court is not entitled to examine the material aspects of certificate or to question it. The only requirements, which are examined, are formal requirements (conditions necessary to establish the authenticity).

Court in the State of recognition and enforcement is bound by the judgment and the certificate of enforceability fulfilling the conditions necessary to establish the authenticity and has no right to consider whether to recognise and enforce this judgment or not.

There is no reason to refuse the recognition and enforcement procedure under the Brussels Ibis Regulation. The reasons both for refusal of recognition and refusal of enforcement are stated in art. 45 and the list is exhaustive in nature. We would like to bring attention to ECJ decision *Prism Investments BV v Jaap Anne van der Meer*, in his capacity as receiver in the liquidation of *Arilco Holland BV*:

Article 45 of Council Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters must be interpreted as precluding the court with which an appeal is lodged under Article 43 or Article 44 of that regulation from refusing or revoking a declaration of enforceability of a judgment on a ground other than those set out in Articles 34 and 35 thereof, such as compliance with that judgment in the Member State of origin.

Prism Investments then brought an action for annulment of that order for enforcement and maintained, *inter alia*, that the judgment of the Belgian court had already been complied with in Belgium by means of a financial settlement. The fact that the judgment is unenforceable in the Member State of origin prevents enforcement in the Member State in which enforcement is sought. The enforceability of the judgment in question in the Member State of origin is a precondition for its enforcement in the Member State in which enforcement is sought (see *Case C-267/97 Coursier* [1999] ECR I-2543, paragraph 23). Recognition of the effects of such a judgment in the Member State in which enforcement is sought, which is precisely the subject of the enforcement procedure, concerns the specific characteristics of the judgment in question, without reference to the elements of fact and law in respect of compliance with the obligations arising from it. Such a ground may, in contrast, be brought before the court or tribunal responsible for enforcement in the Member State in which enforcement is sought. In accordance with settled case-law, once that judgment is incorporated into the legal order of the Member State in which enforcement is sought, national legislation of that Member State relating to enforcement applies in the same way as to judgments delivered by national courts (see *Case 148/84 Deutsche Genossenschaftsbank* [1985] ECR 1981, paragraph 18; *Case 119/84 Capelloni and Aquilini* [1985] ECR 3147, paragraph 16; and *Hoffmann*, paragraph 27). Procedure according Brussels I(bis) Regulation consists of a formal review of the documents submitted by the appellant, a plea raised in support of an appeal based on compliance with the judgment in question in the Member State of origin, would affect the characteristics

of that procedure and would lengthen its duration, contrary to the objectives of efficiency and rapidity.

Even though the reason in ECJ 139/2010 was based on the existence of financial settlement, the nature of the reason is the same with the reason of unlawfully issued certificate of enforceability – creditor seeks the enforcement of judgment, which should not be enforced. It does not matter whether due to the financial settlement or lack of conditions of enforceability. Therefore, in the State of recognition and enforcement the debtor may claim the suspension of execution according to national law. Enforcement of a judgment with unlawfully issued certificate of enforceability represents the typical reason for suspension of execution due to the non-existence of enforceable legal title. This solution is, as we strongly believe, in consistency with the explicit requirement of Art. 41(2) Brussels Ibis Regulation:

Notwithstanding paragraph 1, the grounds for refusal or of suspension of enforcement under the law of the Member State addressed shall apply as far as they are not incompatible with the grounds referred to in Article 45.

There also is a possible correction mechanism in the State of origin in case of unlawfully issued certificate represented by the debtor's claim on compensation for maladministration against the State of origin (if judgment has been already enforced in the State of enforcement).

In case of enforcement of judgment in more than one different Member State and therefore need of more than one certificate the creditor may request a copy(ies) of the certificate. Czech court issues additional copies on request that are charged according to Act No. 549/1991 Coll., on court fees (item 30, 70,- CZK).

3.1.4 Service of the certificate of enforceability

Certificate does not need to be served to the defendant. There is no rational reason for doing so. Defendant must to be served with the judgment, which usually indicate the moment of its enforceability, or the enforceability results from *lex fori* of the State of origin. Defendant is fully aware of these facts. Therefore, there is no need for the defendant to be served with the certificate. It would be contrary to the objectives of efficiency and rapidity.

Certificate of enforceability is served to the creditor as an „other document“ according to § 50 Civil Procedural Code.³⁵ Certificate is served by regular delivery (no need of personal service attested by an acknowledgement of receipt), if addressee is not reached, the certificate is fired into the addressee mailbox. The date of the delivery is indicated on the delivery note and on the envelope with the certificate. If above mentioned ways of service cannot be realized, the certificate is delivered back to the court and the note of this fact is left on the place of delivery. Court serve the certificate to the creditor by posting of the official board of the court.

3.1.5 Protective measures according to Art. 40 Brussels Ibis Regulation

Under Art. 40 Brussels Ibis Regulation: *“An enforceable judgment shall carry with it by operation of law the power to proceed to any protective measures which exist under the law of the Member State addressed.”*

There are no critical remarks in the Czech doctrine to this provision. The creditor has right to apply for and interim measure even if the proceedings on merit takes place in another Member State. After the decision is rendered, the practical situation is unlikely to change – in another Member State will be enforcement; although, according to the previous Regulation, it is necessary to obtain declaration of enforceability first, but it is possible to associate the two proceedings, and the declaration of enforceability is issued without the knowledge of the debtor.

The additional costs are not matter for the Brussels Ibis Regulation, but for the national rules on enforcement. It is not logical, that the interim measure issued for the purposes of the enforcement under the Brussels Ibis Regulation would not be charged, whereas for the purposes of national enforcement would be so. This treatment would represent unequal treatment of domestic and foreign creditors.

3.1.6 Certifying the amount of interests

The amount of interest must be indicated in the application for enforcement. This amount should be calculated by the creditor, his legal representative (and the costs

³⁵ For more detailed information see Svoboda, Karel, Smolík, Petr, Levý, Jiří, Šínová, Renáta, a kol, *Občanský soudní řád. Komentář*. Praha: C.H.Beck, 2013, 1422 pp., p. 191-192

of this calculation represent the legitimate expense of the enforcement) or it may be calculated by the executor when processing the application for enforcement (costs of this calculation represent the legitimate expense of the enforcement).

Problems may arise in case of statutory interest according to 4.6.1.5.2. when only the relevant statute, not the relevant provision(s) of the law of the State of origin should be specified. On the other hand, it is in the interest of the creditor to submit a proposal with all necessary requisites and therefore it is the creditor who should provide court of enforcement or executor by all necessary information. In case the enforcement authority consider the application for enforcement as indefinite, it calls the creditor for completion.

3.1.7 Succession in respect to the certificate of enforceability

Party succession does not affect the content of the certificate and the overall procedure in any way. Given that the judgment is issued on a matter, not on a subject, the succession on the side of one of the parties to the proceedings does not have any impact on obligations arising from the judgment.

3.2 Recognition and Enforcement in the Member State of enforcement

3.2.1 The concept of “recognition”

Although Member States cooperate very closely in judicial issues, the concept of sovereignty is still very important, indicating that judicial decision is a manifest of the said principle of one State and does not have automatically any legal effects on the territory of another Member State. Therefore, it is still necessary to recognize this decision in order to be enforceable on the territory of another State. The advantage of close cooperation between Member States is the fact that the recognition step does not require separate proceedings.

Nevertheless, the debtor is given the opportunity to appeal the process of recognition and enforcement in the State of recognition and enforcement. This assertion does not alter the fact that this appeal is possible either after recognition and declaration of enforceability (old Brussels I Regulation), or in the process of enforcement, resp. through grounds for refusal of enforcement (new Brussels Ibis

Regulation). However under the Brussels Ibis Regulation, the enforcement itself cannot be challenged (it is possible to challenge the enforcement only based on national procedural rules), but the recognition itself is challenged as *conditio sine qua non* for the enforcement.

Contrary to the Czech law, according to which the recognition of foreign decision is the effect of a domestic decision, in the EU the concept of spreading of effects of a judgment from the Member State of origin to the Member State of recognition and enforcement is applicable.

Recognition of foreign judgment is done without any special procedure being required. However, it doesn't mean that foreign judgments are (without recognition) treated like domestic. Brussels Ibis clearly expresses change in procedural steps in comparison with the former Brussels I. This is visible in how the abolishment of exequatur is expressed. It shows that no process of granting enforceability to the foreign judgment is needed and that this procedural step is realized behind the background of the next step, which is the enforcement itself. The meaning is not to express that the recognition is not needed, that the enforcement may be proceed without any step, but to express that the procedural step of granting enforceability is needed any more.

Foreign decision is recognized according to the Czech national legal regulation with *ex tunc* legal effects (i.e. according to the time the judgment gained legal effect in the state of origin). Therefore, the decision on recognition is a declaratory decision. There is no new legal right granted by the recognition of foreign judgment. Consequently, it cannot hold constitutive effects. In addition, according to the Brussels I (44/2001) the exequatur means **nothing more** than the foreign decision is enforceable "also" on the territory of the state of enforcement – there are no new legal rights granted to the foreign judgment. Exequatur is the procedural decision only and therefore it has **NO constitutive effects** in the state of enforcement.

3.2.2 Doctrine of spreading effects

There are no doctrinal problems regarding the concept of spreading the effects of a judgment from the Member State of Origin to the Member State of Enforcement connected with the process of recognition. The subject of recognition is the foreign

judgment deciding the merits of the case, not the decision on enforcement containing the method of enforcement in the State of origin. Therefore, while the enforcement itself is governed by the law of the State of enforcement, in case the methods of enforcement in the State of origin differs from the possible methods of the State of enforcement, the effects from the State of origin has to be adopted to the methods of enforcement in the State of enforcement during the enforcement procedure.³⁶

There can be another question regarding the main proceedings for invoking grounds against foreign judgment: *If the debtor in the opposition within enforcement procedure expressly limits the challenge just to the recognition of foreign enforcement title and excludes the enforcement, can the court in the execution procedure decide on this challenge itself in incidental way?*

Recognition is *sine non qua* of enforcement. If the debtor challenges the recognition on the grounds stated in Brussels I A (and has no right to challenge the recognition on other grounds than those listed in Art. 45) and is successful, the foreign judgment is not recognized and therefore cannot be enforced. There is no need to extend the reasons also for the enforcement. The grounds listed in Brussels I A are the grounds to challenge the recognition only. Of course, the debtor has right to challenge the enforcement on the grounds stated by the national law of the state of enforcement. In this case, the enforcement itself is challenged, not the recognition. It means that the decision is recognized – has the legal effects in the state of enforcement, but may not be enforced if the enforcement is successfully challenged on the grounds stated by the national law of the state of enforcement.

3.2.3 Enforcement of interim measures

The aim of the interim measure is the interim adjustment of the relations of the parties or protection of enforcement of judicial decision. An interim measure may be issued even before the commencement of the proceedings itself, the outcome of which is to be a decision on merits (§ 74 Civil Procedural Code). It follows, that it is possible to issue an interim measure before the decision becomes enforceable, resp. before the creditor is served with the declaration of enforceability. It is irrelevant

³⁶ Schramm, Dorothee. *Yearbook of Private International Law, Vol. 15*. Germany: Sellier European Law Publishers & Swiss Institute of Comparative Law, 2013/2014, p. 143-174, p. 157.

whether the interim provision is issued in light of a later domestic decision or recognizable foreign decision (Art. 35 Brussels Ibis).

From the point of law of a typical way of enforcement of judgments in the Czech Republic via court executor, the certificate of enforceability will be served to the debtor after the executor has been instructed by the court, together with the order for enforcement that is together with the executor's decision to commence the enforcement. At this point, the debtor learns about the enforcement against him and is entitled to file a petition to refuse enforcement according to Art. 46 Brussels Ibis Regulation (based on grounds the judgment should not have been recognized under Art. 45 Brussels Ibis Regulation); and at the same time the debtor is entitled to file to stop the enforcement according to national law (§ 55 Enforcement Code and § 268 Civil Procedural Code – e.g. the obligation was already fulfilled; the certificate of enforceability was wrongly issued; decision is not yet enforceable in the State of origin; there is no enforceable title).

Part 4: Remedies

4.1 Remedies in the Czech civil procedural law – general overview

In the Czech civil law, there are two groups of remedies, ordinary and extraordinary. Ordinary remedies can be used against decisions which are not in legal force; extraordinary remedies can be used against decisions which came into legal force.

Ordinary legal remedy is appeal (§ 201 et seq. Civil Procedural Code).³⁷ In appeal, it is possible to present new evidence. Hence, appealed decision can be revised both on law and on merits.³⁸

Extraordinary legal remedies are:

- 1) Extraordinary appeal (“dovolání”, § 236 et seq. Civil Procedural Code).³⁹ By extraordinary appeal is possible to contest a final decision of the court of appeal, if permitted by law.

³⁷ Svoboda, Karel, Smolík, Petr, Levý, Jiří, Šínová, Renáta, a kol, *Občanský soudní řád. Komentář*. Praha: C.H.Beck, 2013, 1422 pp., p. 617-689

³⁸ Zahradníková, Radka et al. *Civilní právo procesní*. 2. vyd. Plzeň: Aleš Čeněk, 2015, 579 pp., p. 312.

³⁹ Svoboda, Karel, Smolík, Petr, Levý, Jiří, Šínová, Renáta, a kol, *Občanský soudní řád. Komentář*. Praha: C.H.Beck, 2013, 1422 pp., p. 730-782

- 2) Action for retrial (“žaloba na obnovu řízení”) and action for nullity (“žaloba na zmatečnost”), §§ 228 – 235 Civil Procedural Code.⁴⁰

According to legal theory, there are three types of remedial systems: appellation, cassation and revision. In appellation system, it is possible to revise decision on both merits and law. Appeal is based on the appellation system. Cassation system means, that the competent court can only to confirm or abolish a decision, if there was breach of substantive or procedural law. The competent court cannot decide the case. On cassation system is based action for nullity. Revision system is based of premise that the competent court can only decide on the law, not merits. On the revision system is based the extraordinary appeal.⁴¹

4.2 Remedies in enforcement procedure

The main purpose of the enforcement proceedings is to enforce fulfilment of the obligation imposed by a court decision that has legal effects, against debtor, who refuses to fulfil his obligation. Nevertheless, the rights of the debtor, i.e. person, who refuses to fulfil his/her obligation, have to be protected. The debtor has the right of fair trial.⁴²

In enforcement procedure, it is possible to file an appeal. The appeal may include new facts and evidence (§ 254 Para 6 Civil Procedural Code). On the other hand, it is not possible to suspend the proceedings and to waive to miss a deadline (§ 254 Para 2 Civil Procedural Code). In addition, it is not possible to file action for retrial. Action for nullity is limited (§ 254 Para 2 and § 229 Para 4 Civil Procedural Code), as well as the application of extraordinary remedy (§ 237 Civil Procedural Code).

⁴⁰ Svoboda, Karel, Smolík, Petr, Levý, Jiří, Šínová, Renáta, a kol, *Občanský soudní řád. Komentář*. Praha: C.H.Beck, 2013, 1422 pp., p. 690-728

⁴¹ Zahradníková, Radka et al. *Civilní právo procesní*. 2. vyd. Plzeň: Aleš Čeněk, 2015, 579 pp., p. 311 – 312.

⁴² Winterová, Alena, Macková, Alena. *Civilní právo procesní. Část druhá, Řízení vykonávací, řízení insolvenční: vykonávací řízení obecně, soudní výkon rozhodnutí, exekuční řízení, způsoby výkonu, způsoby řízení úpadku, mezinárodní a evropské insolvenční právo*. Praha: Leges, 2015, 352 pp., p. 26.

4.3 Opposition in enforcement.

The debtor is a party in the enforcement proceedings. As such, he has several options:

- Right to appeal (§ 254 Civil Procedural Code);
- Right to request postponement of the enforcement of judgment (§ 266 Civil Procedural Code); upon a petition, the court is authorized to defer implementing the decision if the obliged party, not at fault, has momentarily found itself in such a position that the immediate enforcement of the decision could bring very adverse effects for the obliged party or members of it family, and the entitled party (creditor) would not experience any serious harm by the suspension of the decision enforcement;
- Right to stop the enforcement for reasons prescribed by the law (§ 268 Civil Procedural Code).
- Right to actions under § 267a Civil Procedural Code (“odporová žaloba”).

All these actions are in disposition of the debtor and it is up to him whether he will use them.⁴³

4.4 Remedies in international private procedure

As stated previously, the Czech private international law is regulated by the Act No. 91/2012 Coll., on Private International Law (PILA).

PILA applies only if other EU regulation or international convention is not directly applicable (§ 2 PILA). PILA is applicable for recognition and enforcement of judgments from Non-EU Member States. It regulates all aspects of recognition and enforcement for all types of decisions (judgments, arbitral awards, notarial deeds and public deeds).⁴⁴ PILA contains both a general rule and special provisions for recognition and enforcement of foreign judgments.

⁴³ Winterová, Alena, Macková, Alena. *Civilní právo procesní. Část druhá, Řízení vykonávací, řízení insolvenční: vykonávací řízení obecně, soudní výkon rozhodnutí, exekuční řízení, způsoby výkonu, způsoby řízení úpadku, mezinárodní a evropské insolvenční právo*. Praha: Leges, 2015, 352 pp., p. 26

⁴⁴ Pauknerová, Monika, Rozehnalová, Naděžda, Zavadilová, Marta et. al., *Zákon o mezinárodním právu soukromém. Komentář*, Praha: Wolters Kluwer, 2013, 928 pp., p. 105 – 106.

According to the general rule in § 14 PILA, foreign judgments and rulings from foreign authorities concerning any rights and obligations, whose private law nature would mean that they would be subject to the jurisdiction of Czech courts, as well as foreign judicial settlements and foreign notary or other instruments, will be effective in the Czech Republic, if they came into legal force according to the confirmation of the appropriate foreign authority and if they have been recognized by the Czech public authorities.

Grounds for refusal of recognition and enforcement of foreign final judgments are listed in § 15 PILA. The list is exhaustive. It is not possible to recognize foreign judgments based on these grounds:

- a) Matter falls under the exclusive jurisdiction of the Czech courts. This rule applies to declaration of death or missing of a Czech citizen, judgments in rem and real property judgments.⁴⁵
- b) Proceedings are underway before a Czech court with regard the same legal relations (*lis pendens rule*). The pending proceedings were commenced prior to that of the foreign proceedings.
- c) Czech court has already issues a valid judgment about the same legal relations or if valid judgment issued by courts of a third State has already been recognized in the Czech Republic.
- d) Participant in the proceedings was deprived of the ability to duly participate in the proceedings; especially if the party was not informed about the initiation of the proceedings.
- e) Recognition would be clearly contrary public policy of the Czech Republic; i.e. it would be contrary to the basic principles of the Czech legal order.⁴⁶
- f) Reciprocity has not been guaranteed; reciprocity is not required if the foreign judgment is not aimed at a Czech citizen or a Czech legal entity.

All the above mentioned grounds have to be examined *ex officio*; the only exemptions from this rule is letter d) (it is only taken into account if the participant in the proceedings against whom the foreign judgment should be recognized, so requests);

⁴⁵ Rozehnalová, Naděžda, Drličková, Klára et. al., *Czech Private International Law*. Publications of the Masaryk University, theoretical series, edition Scientia, Brno: Masaryk University, 2015, p. 68

⁴⁶ Pauknerová, Monika, Rozehnalová, Naděžda, Zavadilová, Marta et. al., *Zákon o mezinárodním právu soukromém. Komentář*, Praha: Wolters Kluwer, 2013, 928 pp., p. 112

furthermore, letters b) and c) must be objected in court proceedings by the interested party only if the court is not familiar with the necessary facts (§ 15 Para 2 PILA).

The recognition of a foreign judgment in property matters does not require any special proceedings or Statements; the foreign judgment is recognized in a way that a Czech public authority takes it into consideration as if it was a Czech judgment by a Czech public authority (§ 16 Para 1 PILA). A property judgment will be recognized automatically.⁴⁷ Foreign judgments in other than property matters are recognized on the basis of a special judgment, unless otherwise Stated in PILA (§ 16 Para 2 PILA).

As general rule, PILA does not require declaration of enforceability; nevertheless, it is required under special provisions in Chapter 4 of PILA. These are cases when the declaration of enforceability is required by certain EU regulations and international conventions.

The enforcement of judgments in the Czech Republic is governed by the Czech procedural law.

Special provisions for recognition and enforcement foreign judgments are governed by §§ 17 – 19 PILA. These special provisions apply to the status law, family law, and succession law. All these areas have their own regulations on recognition and enforcement.

The main difference between PILA and Brussels Ibis Regulation is in the reciprocity; the principle of reciprocity is not expressly stated in the Brussels Ibis Regulation. Nevertheless, the cooperation in judicial matters among Member States of the EU is based on the principle of mutual trust.

4.5 Remedies in the Member State of origin regarding the enforcement title

The type and conditions for remedies in the Member State of origin regarding the enforcement title depend on the type of legal remedy and on the *lex fori*. If the legal remedy suspends the legal effects of the judgment (this is typical for ordinary legal remedies) and at the same time *lex fori* combines the enforceability with the

⁴⁷ Naděžda Rozehnalová, Klára Drličková et. al., *Czech Private International Law*, p. 68. (Publications of the Masaryk University, theoretical series, edition Scientia, Brno: Masaryk University, 2015).

immutability rising from the legal effectiveness, such a judgment does not represent the enforceable title in the State of origin. Therefore, the certificate of enforceability cannot be issued by the court of the State of origin and the judgment cannot be the subject of enforcement in the State of recognition and enforcement while the requirements of Art. 39 of Brussels Ibis Regulation are not fulfilled yet.

The second possible situation is represented by both enforceable judgment in the State of origin and challenged in the State of origin by the ordinary legal remedy (the same applies to judgment not challenged yet but which has not expired at the end of the period of bringing an ordinary legal remedy). The court to which an application for refusal of enforcement is submitted or the court which hears an appeal lodged under Article 49 or Article 50 Brussels Ibis Regulation, may stay the proceedings if an ordinary appeal has been filed against the judgment in the Member State of origin or if the time for such an appeal has not yet expired. In the latter case, the court may specify the time within which such an appeal is to be filed. It is important to note that court “may”, not “shall” stay the proceedings.

This procedure needs to be understood as a part of the whole process of recognition and enforcement of foreign judgment. In the event of an application for refusal of enforcement of a judgment pursuant to Art. 46 of Brussels Ibis Regulation, the court in the Member State addressed may, on the application of the person against whom enforcement is sought:

- a) limit the enforcement proceedings to protective measures;
- b) make enforcement conditional on the provision of such security as it shall determine; or
- c) suspend, either wholly or in part, the enforcement proceedings.

Before the court in the State of enforcement decides on the application for refusal of enforcement,⁴⁸ the proceedings on enforcement within which the judgment is automatically recognized cannot be terminated and the enforcement cannot be ordered.

4.6 Grounds for refusal of recognition

Grounds for refusal of recognition in Brussels Ibis Regulation remain almost the same as in Brussels I Regulation. The only differences are:

- extension of reasons based on infringement of the jurisdiction rules on jurisdiction over individual contracts of employment and
- formulation precision concerning the possibility to apply infringement of jurisdiction only by the weaker party in case of jurisdiction in matters relating to insurance, jurisdiction over consumer contract and over individual contracts of employment).

According to the Report from the Commission to the European Parliament, the Council and the European Economic and Social Committee on the application of Council Regulation (EC) No 44/2001 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters the most frequent ground for refusal of recognition lays in defectiveness or lack of service of documents (Art. 45(1)(b)).

The grounds for refusal in the Brussels I Regulation (44/2001) apply in Brussels Ibis Regulation as well.

Both extensive case law of the ECJ regarding grounds for refusal of recognition according to Brussels I Regulation together with case law of International Court on Human Rights show without any doubt that possibility to challenge the recognition/enforcement by creditor is still necessary even between the Member States. The mutual trust is sufficiently secured by automatic recognition but like national procedural laws contain „safety guards“ in cases of violation of the right to a fair trial, also uniform private international rules on recognition need them.

⁴⁸ Court shall decide without delay according to Art. 48 Brussels Ibis regulation.

4.7 Refusal of enforcement

There are both Brussels Ibis Regulation reasons and national reasons for which the creditor may challenge the enforcement.

Brussels Ibis Regulation indicates the grounds for refusal of recognition in Art. 46 in combination with Art. 45; these are the reasons for which the recognition shall be refused. Recognition is *sine qua non* for enforcement. As Stated above, one cannot enforce something that does not exist and therefore have no legal effects. Moreover, the foreign judgment does not exist in the State of enforcement without successful recognition. The list of grounds against recognition in Art. 45 is exhaustive and cannot be combined with grounds arising out of national law.

Only the procedure for refusal of enforcement, in so far as it is not covered by the Brussels Ibis Regulation (Art. 39 – 44), is governed by the law of the State of recognition and enforcement. National law therefore determine time limits, type of procedure or court jurisdiction.⁴⁹

Not the recognition but the enforcement itself may be challenged by the creditor on grounds arising from national law of the State of enforcement. From the perspective of Czech law, two main ways are possible:

The first one is application for refusal of enforcement (§ 268 of the Czech Civil Procedural Code), if enforcement is realized by executor § 268 of Civil Procedural Code is applicable via §52 (1) of Act. No. 120/2001 Coll., Enforcement Code, for example:

- Enforcement was ordered even though the judgment has not become enforceable yet;
- Judgment was suspended or lost legal effectivity;
- Obligation granted by the judgment ceased after the judgment was issued.

⁴⁹ Schramm, Dorothee. *Yearbook of Private International Law, Vol. 15*. Germany: Sellier European Law Publishers & Swiss Institute of Comparative Law, 2013/2014, p. 143-174.

Application for refusal may be claimed by the creditor and his/her spouse.

The second possibility is application for suspension of enforcement (§ 54 of Code of Enforcement Procedure). According to Art. 41(2) the grounds for refusal or suspension of enforcement under the national law of the Member State addressed shall apply as far as they are not incompatible with the grounds referred to in Article 45.

Applications submitted to the Czech authorities have to fulfil the requirements as any other application according to § 79 and 42(4) of the Czech Civil Procedural Code when the application is submitted to court and § 38 when application for enforcement is submitted to the executor. There are no other specific regarding proceedings regulated by Brussels Ibis Regulation.

4.8 Service of documents

There are no specific regarding service of documents pursuant to Brussels Ibis Regulation. Czech authorities use the means provided by national law; if parties are domiciled abroad also the means provided for in the Regulation (EC) No 1393/2007 of the European Parliament and of the Council of 13 November 2007 on the service in the Member States of judicial and extrajudicial documents in civil or commercial matters (service of documents) may be used.

4.9 Opposition by the defendant (objection against recognition and enforcement of foreign judgement)

Basic mechanism of challenging the recognition and enforcement is described above. The decision on the application for refusal of enforcement may be appealed against by either party. According to Art. 75(b) in the Czech Republic, before the regional court (“krajský soud”) through the district court (“okresní soud”) whose decision is being appealed. The regional court within whose jurisdiction the district court that ruled at first instance on the application for refusal of enforcement (or proceedings for recognition or refusal of recognition) is located has territorial jurisdiction.

4.10 Second appeal as a remedy

According to Art. 75(c) the Czech Republic notified the Commission on details regarding further appeal according to Art. 50 Brussels Ibis Regulation.

The Supreme Court has jurisdiction for extraordinary appeal/redress proceedings (“řízení o dovolání”) in accordance with the Civil Procedural Code, § 236 et seq. Only legal assessment may be reviewed.

The court which ruled at first instance has jurisdiction for actions to re-open proceedings/action for retrial (“řízení na obnovu řízení”) in accordance with Civil Procedural Code, § 228 et seq. New evidence that could not be carried out in the previous proceedings are taken into account.

The court which ruled at first instance has jurisdiction for actions for nullity (“řízení o žalobě pro zmatečnost”) in certain cases in accordance with Civil Procedural Code, § 229 et seq., as well as in certain cases, the Court of Appeal (cf. Civil Procedural Code, § 235a). Action for annulment represents the review of procedural misconduct during the previous proceedings.

All these **extraordinary** remedial measures are brought before the court that ruled at first instance on the application for refusal of enforcement (or proceedings for recognition or refusal of recognition).

4.11 Subject entitled to apply for a refusal of recognition or enforcement

There has not yet been a broader discussion on this topic. According to the Art. 46 Brussels Ibis Regulation, person against whom enforcement is (already) sought may apply for refusal of the enforcement. It seems that debtor is not enabled to fill such an application before the enforcement is sought by the creditor. On the other hand according to Art. 45 „any interested party“ is entitled to apply for refusal of recognition of a judgment⁵⁰. Debtor has to be considered interested party while

⁵⁰ Schramm, Dorothee. *Yearbook of Private International Law, Vol. 15*. Germany: Sellier European Law Publishers & Swiss Institute of Comparative Law, 2013/2014, p. 143-174, p., p. 168

having legitimate interest in applying for refusal of recognition. If debtor is successful, it would prevent any protective measures against him⁵¹.

The creditor may apply for protective measures. Together with the application for protective measures also the security has to be provided according to § 75 Civil Procedure Code.

Czech court would suspend the enforcement proceedings according to Art. 44(1)(c).

4.12 Protective and interim measures.

Generally, there are two types of provisional measures in the Czech Civil Procedural Code: Interim measures and evidence safeguarding (§§ 74 et seq.). Provisional measures may be ordered before enforcement proceedings (§ 74 Para 1, § 254 Para 1) or after commencement of the enforcement proceedings (§ 102 Para 1, § 254 Para 1).⁵²

Interim measure may be ordered by the court to provisionally modify or regulate the relation of the participants or if there is possibility the enforcement of the decision would be jeopardized (§ 74 Para 1).

The interim measure shall be ordered by the judge upon a petition by the party (§ 75 Civil Procedural Code). The competent court for provisional measure shall be the court that has/had jurisdiction for the initial proceedings, unless otherwise provided by the law. The decision on interim measure is enforceable by the decision itself. If not declared, it is enforceable as soon as it is delivered to the person on whom the obligation in the interim measure is imposed (§ 76d Civil Procedural Code).

To cover any compensation for damages or any other loss that could be caused by the interim measure, the claimant is obliged to give security amounting to 10.000 CZK and 50.000 CZK in matters regarding relations between entrepreneurs, no later than on the day the petition for interim measure for filed (§ 75b).

⁵¹ Ibid p. 168

⁵² Vaške, Václav. *Uznání a výkon cizích rozhodnutí v České republice*. Praha: C. H. Beck, 2007, pp. 491, p. 73.

Under § 76 Civil Procedural Code, the obligation imposed by an interim measure may be i.a.: to pay a financial amount or to deposit specific item within the competent court; not to dispose with some items or rights; to perform something, refrain from something, or to permit something.

Part 5: Final critical evaluation of the Brussels Ibis Regulation - what necessary adaptations to national legislations need to be done?

5.1 Evaluation of the Brussels Ibis Regulation

For now, there are no official statistic on the effectiveness of the Brussels Ibis Regulation. On one hand, the amended Regulation seems more efficient due to abolishment of the exequatur procedure. However, in the Czech law according to § 19 PILA,⁵³ it is possible to combine the process for obtaining the declaration of enforceability together with enforcement itself; it is also possible to apply for the declaration of enforceability together with enforcement through executor according to § 37 Para 2 letter b) Enforcement Code. Thus, from the Czech perspective, this change is not seen as significant.

According to the former Brussels I Regulation, single court proceedings takes place, first instance in form of “uncontested proceedings” without presence of the debtor. The debtor is delivered the exequatur and has right to appeal against the exequatur

⁵³ “A motion for the enforcement of a decision according to another legal regulation must be submitted simultaneously with the motion for the declaration of the ability to enforce the judgement. In such a case, the court will rule on both motions with independent Statements in a single judgement; each such Statement must be suitably substantiated. The judgement must also be justified, even if only one of the motions is ruled on.”

within the period⁵⁴ of one or two months depending on his habitual residence. However, the debtors file the appeals in a minimum of cases only.⁵⁵ In addition, second appeal is possible. Nonetheless, this is not the typical way of conduct that is used in practice. In the most cases, the creditor applies for the declaration of enforceability together with enforcement via executor. The executor is the person who claims the declaration of enforceability in court. When decision on enforceability is delivered to the debtor, he may appeal against it.

According to the Brussels Ibis Regulation, the creditor applies for the enforcement of the judgment through court or through executor (the creditor chooses the most favorable way for him; in the most cases the executors are chosen).

Extensive interpretation of § 37 Para 2 letter b) of Enforcement Code is used. According to this legal provision, the creditor may apply for the enforcement of foreign judgment through the executor if the enforceability of the judgment is declared according to the EU provisions. On the contrary, according to Brussels Ibis Regulation, no declaration of enforceability is needed. Nevertheless, if it is possible to use executors in cases of foreign judgment with the requirement of declaration of enforceability (Brussels I Regulation), it should be also possible in cases of foreign judgment for which the declaration of enforceability is revoked (Brussels Ibis Regulation).⁵⁶

The debtor may apply for refusal of enforcement on grounds of Art. 45 Brussels Ibis Regulation (refusal of recognition). Proceedings for refusal of enforcement suspend the proceedings for enforcement. The decision on the application for refusal of enforcement may be appealed against by either party. Again, second appeal is applicable.

Even though there are no statistic date in the Czech Republic, we do not consider the amended text in Brussels Ibis Regulation simpler and faster. It is also important to take into account that if two contradictory proceedings take place, costs on the side of the State are higher.

⁵⁴ Time limits are regulated by Brussels I Regulation, national law does not apply.

⁵⁵ See http://ec.europa.eu/justice/civil/files/study_cses_brussels_i_final_17_12_10_en.pdf.

⁵⁶ For the same conclusion, see also Bříza, Petr, Břicháček, Tomáš a kol. *Zákon o mezinárodním právu soukromém. Komentář*. Praha: C. H. Beck, 2014, pp. 768, p. 119.

5.2 Alternatives for the cross-border collection of debts in the EU

Within the EU, we can find other alternatives for the cross-border collection of debts. There are three alternative Regulations (the European Enforcement Order for Uncontested Claims, the European Payment Order and the European Small Claims Procedure). Nevertheless, each of them has different material scope. In addition, these Regulations were intended as alternatives to the former Brussels I Regulation (44/2001); the important difference was the abolishing of the *exequatur*. Now, if the Brussels Ibis Regulation is applicable, the relevance of these three Regulations is probably not as important. However, two important differences remain:

- These Regulations contain fewer reasons for challenging the enforceable decision in the State of enforcement. However, this is balanced by the need to comply with minimum standards.
- The European Payment Order and the European Small Claims use forms for the proceedings, which may be easier for non-lawyers.

5.3 Language and translation issues

If any translation is required under Brussels Ibis Regulation, such translation shall be, according to Art. 57, the official language of the Member State concerned. Forms according to Art. 53 and 60 may also be into other languages that the Member State has indicated. Therefore, Czech and Slovak may be used in the Czech Republic.

For comparison with alternative Regulations (see previous chapter 5.2.), English and German is applicable under the regime of the European Enforcement Order for Uncontested Claims and English (not German) under the regime the European Payment Order and the European Small Claims Procedure.⁵⁷

If the certificate of enforceability is issued by a Czech court, official language of the Czech Republic is used; therefore, it is issued in Czech only. Even though there is no explicit provision forbidding it to be issued in foreign language, no Czech court will do so.

⁵⁷ See European Judicial Atlas in civil matters (<https://e-justice.europa.eu/home.do>).

5.4 Costs of enforcement proceedings

For judicial enforcement, the costs of enforcement are regulated by Act No. 549/1991 Coll., on court fees and its Attachment, Item 21 (minimum 1.000 CZK/percent of the amount). There is no need to pay this fee when the enforcement is performed by the executor. On the contrary, reward to the executor is paid but it is enforced during the enforcement as percent of the amount according to the Decree of the Ministry of Justice 330/2001 Coll.

According to the Brussels Ibis Regulation, no fee for the application for exequatur is paid. Further cost reduction is represented by the requirement to translate the certificate of enforceability only (not the judgment itself) which contains information both on the judgment and proceedings in the State of origin. The competent enforcement authority is not entitled to require the creditor to provide the translation of the whole judgment unless it is unable to proceed without such a translation.

According to Para 30 Preamble of the Regulation: “*A party challenging the enforcement of a judgment given in another Member State should, to the extent possible and in accordance with the legal system of the Member State addressed, be able to invoke, in the same procedure, in addition to the grounds for refusal provided for in this Regulation, the grounds for refusal available under national law and within the time-limits laid down in that law.*” It depends on national law whether it is possible to challenge both recognition (grounds in art. 45 Brussels Ibis Regulation) and enforcement (grounds according to national law) in the same procedure. Czech law is not compatible with this requirement yet.

5.5 Brussels Ibis Regulation and its impact on the principle of national procedural autonomy

Brussels I Regulation (44/2001) required the amendment of the Private International Law Act⁵⁸ and of the Enforcement Code in the Czech Republic. Both amendments were connected to the process of exequatur while it was unknown to the Czech private international law. New Brussels Ibis Regulation regime without exequatur corresponds with the Czech standard of dealing with foreign judgments.

⁵⁸ § 19 PILA mentioned above.

No amendments of the Czech law have been made yet and we do not have any information to indicate the opposite.



University of Maribor

Faculty of Law

MARIBOR, AUGUST 2018