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RECOGNITION AND ENFORCEMENT OF JUDGMENTS DELIVERED IN MEMBER STATES OF THE EUROPEAN UNION

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Abstract

Recognition is the process by which the authority of a foreign judgment is established, i.e. the effects of a foreign judgment are allowed to take effect in the territory of the State addressed. The concept of foreign judgment includes both contentious and non-contentious acts. The authority from which it emanates is irrelevant. Foreign judgments may be court judgments, authentic instruments or court settlements (which are assimilated to authentic instruments). In Romania recognition is allowed either by operation of law or by court decision, subject to certain specific conditions. The regulations contained in the Code of Civil Procedure on the recognition of foreign judgments usually apply to judgments from non-EU countries. In order to produce legal effects, the foreign judgment must be recognized and enforced, which is not automatically done through recognition.

Keywords: *recognition, procedure, decision.*

INTRODUCTION

I. RECOGNITION OF JUDGMENTS

Analysis of the institution of recognition and enforcement of judgments rendered in Member States of the European Union implies recognition of a judgment already rendered on behalf of the sovereignty of a European State.

In Romania, the provisions of the Code of Civil Procedure¹ apply to judgments delivered in non-EU countries, while Regulation No 1215/2012 of the European Parliament and of the Council of 12 December 2012 on jurisdiction and

¹ <https://legislatie.just.ro/> Code of Civil Procedure

the recognition and enforcement of judgments in civil and commercial matters applies to the recognition and enforcement of judgments delivered in EU countries. Regulation 1215/2012 applies from 10.01.2015, the date on which it repeals Regulation EC 44/2001 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters. However, Regulation (EC) No 44/2001 remains the legislative basis for judgments issued before 10.01.2015, as well as for judgments issued in actions filed before that date, which were nevertheless judged under it after 10.01.2015.

The decision to repeal Regulation 44/2001 was necessary in order to make it easier for litigants to access the procedural circuit in the Member States. The institution that created certain problems of celerity and imposed additional costs was the institution of the *exequatur* - the procedure that a creditor, who holds an enforceable title obtained in one Member State, must carry out in order to obtain enforcement of that title in another Member State, in addition to the procedure that any other creditor in the requested State is obliged to carry out in that State- (Sergiu Popovici, 2014, p.142).

According to Romanian law, the *exequatur* is the judicial procedure by which the foreign judgment is declared enforceable, through the control of a competent court in Romania. (I.P.Filipescu, A.I. Filipescu, 2008, p.451)

The area of application of Regulation 1215/2012 covers broad institutions of private law, i.e. civil law and commercial law² (Council Regulation (EC) No 4/2009 of 18 December 2008 on jurisdiction, applicable law, recognition and enforcement of decisions and cooperation in matters relating to maintenance obligations). The scope of those two Regulations has been delimited, so that the recognition of judgments relating to maintenance obligations is subject to the provisions of Regulation 4/2009³.

Arbitration awards are also excluded from the scope of Regulation 1215/2012. It is stated in the Preamble to the Regulation that when considering a decision rendered in a State of the Union on the nullity, enforceability or unenforceability of an arbitration agreement, the provisions of the Regulation are not taken into account. The arbitral award is excluded from consideration under the Rules. It is also irrelevant how the court ruled, i.e. whether it was seised of the case by way of a writ of summons or by way of ancillary proceedings.

In Romania, the basic arbitration legislation is contained in the Code of Civil Procedure. In conjunction with the rules of the Code come the provisions of Law 335 of 2007 of the Romanian Chambers of Commerce. In the field of international arbitration, rules based on the agreement of the parties to the contract, i.e. voluntary arbitration, are common law (Ioan Macovei, 2017, p.455).

²<https://eur-lex.europa.eu/legal-content> - Paragraph 10 of the Preamble to Regulation no. 1215/2012.

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As already pointed out, the scope of the Regulation is limited to the area of civil and commercial law, without going into the analysis of the jurisdiction of the court seized of the attached cases. The following areas are exempted from the Regulation: tax, customs, arbitration and administrative law. Nor does it apply in situations where the State could be held liable as a result of acts issued in the exercise of public authority.

However, the European legislator's attention to the exclusion from the rules of certain institutions which are the subject of a separate act is noteworthy. Thus, maintenance obligations between parents and children are regulated separately, as well as those relating to other spheres of family life such as matrimonial property regimes, adoption and kinship. Also excluded from the scope of the regulation are matters relating to the property of natural persons, including those relating to death: wills, succession or pecuniary (maintenance) obligations arising from death. With regard to legal persons, the Regulation does not cover the field of re-organisation, winding-up of companies, bankruptcy or other similar proceedings⁴.

As expressly provided, judgments given in the Member States concerning the capacity of natural persons are not subject to recognition under the Regulation (Ana Luisa Chelaru, Ioan Chelaru, 2022, p.152). Based on the same reasons of unitary application of the criteria for the recognition of personal status, the European Union and implicitly Romania do not subject to recognition judgments that have been pronounced outside the EU and concern the personal status of the applicant. A double condition that must however be met under Romanian law governing private international law is that the judgment must not be contrary to the rule of law and the right of defence must have been respected⁵. The effects of the foreign judgment take effect from the moment of its pronouncement. Recognition is automatic and does not require a judicial procedure.

In the case of judgments given in the Member States whose effects fall within the jurisdiction laid down by the Regulation, recognition shall be effected without any special formality being required. There are a number of conditions that a judgment given in a Member State must fulfil in order to take effect. Among the requirements is the possession of a document issued on the basis of the judgment, containing elements allowing verification of authenticity, as an alternative to the possession of a certificate drawn up in accordance with Annex I of the Regulation. The court or authority before which the judgment given in another Member State is invoked may require the party to produce a translation or transcript of the contents of the certificate (Elena Alina Oprea, Dan Andrei Popescu, 2023, p.211). You can even request a translation of the judgment. As it

3.http://revista.universuljuridic.ro/recunoasterea-hotararilor-straine-romania/oana_tanasica, ISSN 2393-3445

4.Art 1095-Code of Civil Procedure

has always been done to facilitate access to justice and to simplify procedures, the form contained in Annex I is also drafted in the national languages of the Member States and in the languages of the EU. It is therefore easy for the court that has to complete the Annex to complete the form in both the national language and a language of the EU.

The main effect of recognition of a judgment given in another Member State is to confer the power of *res judicata* in the country where the judgment is sought to have effect. In terms of time, the effect is retroactive, from the date on which it became final in the country of origin (Flavius Baias, Eugen Chelaru, R. Constantinovici, I. Macovei, 2014, p.2672).

II. REFUSAL OF RECOGNITION

It should be noted that the Regulation provides for situations in which recognition of a foreign judgment is excluded (Claudiu Paul Buglea, 2021, p213). Refusal shall be made at the request of the person against whom the judgment was given, either as a principal claim or as an incidental claim, if it falls within one of the grounds for exclusion expressly provided for by the Regulation.

As already indicated, enforcement of the foreign judgment may be refused if recognition is contrary to public policy in the State in which recognition is sought.

Another ground for refusing recognition of the judgment is failure to comply with the procedure for service of documents, either because service was not effected and the judgment was given in default, or because service was effected but the time-limits were not complied with and the party was not given an opportunity to present his defence, but on condition that the defendant brought an action against the judgment given without recognition of the rights of the defence.

A refusal of the application for recognition will be received by the applicant who submits a judgment given in a manner irreconcilable with another judgment given in the State in which recognition is sought and which was given with identity of parties;

A fourth case of non-recognition occurs in the case of an application based on a judgment that is irreconcilable with another judgment that was issued before the judgment to be recognised was adopted. The condition is that the first judgment was given in a Member State and that the parties are identical and that the judgment relates to the same subject-matter or the same cause of action. Of course, the first judgment must itself meet the legal conditions for recognition. Recognition of the judgment given in breach of the rules of exclusive jurisdiction will also be refused⁶.

III. ENFORCEMENT OF THE JUDGMENT

⁶ <https://eur-lex.europa.eu/legal-content> See Article 54(1) of Regulation EC1215/2012

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The next stage of recognition of the judgment is its enforcement. Under the provisions of the European Regulation, it is no longer necessary to issue a declaration of enforceability in a Member State in whose territory it is to have effect, if that judgment fulfils the conditions for enforcement in the Member State in which it was issued⁷. The attribute of enforceability implies, by virtue of the law, the ability to use recognised legal means and institutions (such as protective measures), characteristic of the law of the State in which enforcement is sought.

As in the case of recognition of a judgment, a document issued on the basis of the judgment or the judgment itself is required for the enforcement of the judgment, provided the requirements for establishing authenticity are met. A certificate drawn up in accordance with the requirements of Annex I is required cumulatively and not alternatively. The certificate certifies that the judgment is enforceable. It shall be a summary of the judgment, but shall also contain particulars of the costs and expenses of the proceedings and the method of calculating interest (Șerban-Alexandru Stănescu, 2020, p.114).

There are situations where the judgment contains provisions on certain provisional or even conservation measures. And for the enforcement of provisions of this type, a copy of the judgment, with all the elements of identification for authenticity purposes, together with the certificate containing a summary of the judgment issued in accordance with the Annex indicated, is required. Information on the jurisdiction of the court, the enforceability of the document, the procedure for summoning the defendant and the fulfilment of the conditions for service of the judgment shall be provided. In order to comply accurately with the provisions contained in the judgment to be enforced, it may be necessary to translate the judgment or in certain cases the certificate or both documents. In view of the fact that under the Annex it is also possible to issue the certificate in an international language, the obligation to translate is less used and may be imposed in the event that the procedure is blocked because of translation.

It follows from the above that the enforcement of a judgment in a Member State does not require another judgment requiring a declaration of enforceability, as was also provided for in the Brussels I bis Regulation⁸. The fact that the judgment is enforceable by operation of law also automatically implies that the court in the State where enforcement is sought has jurisdiction to take protective measures.

For the enforcement of judgments containing penalty payments, the exact amount must be provided for in order to be collected by the creditor⁹. There have been cases in the practice of Romanian courts where they have ordered the award of percentage amounts of money, which makes it difficult to interpret the exact

⁷ <https://eur-lex.europa.eu/legal-content> Art 39 of Regulation 1215/2012

⁸ <https://eur-lex.europa.eu/legal-content> Regulation 44/2001

⁹ <https://eur-lex.europa.eu/legal-content> Art 55 of Regulation 1215/2012

amount of the debt to be paid¹⁰. The Regulation prohibits the request for a bond or a guarantee by the State on whose territory the judgment is to be enforced if the criteria for requesting the guarantee concern the nationality or the domicile of the applicant.

It also takes into account the situation of inconsistency of content or the absence of a legal institution in the Member State where the judgment is enforced or in the State which delivered the judgment. In the absence of an equivalent concept, consideration will be given to a measure which is adapted to the requirements of the judgment subject to enforcement so that the effects are in balance (Gheorghe L. Zidaru, 2017, p.231) An application may be made to the competent courts against the interpretation by adaptation, challenging the adaptation or the order, in order not to go beyond the framework in which the decisions of the court of the requesting State were taken, and a translation of the decision may be required if necessary.

CONCLUSION

The procedure for the recognition and enforcement of foreign judgments delivered in the Member States of the European Union is intended to be a simplified and rapid procedure, which will make it easier for the creditor to enforce his claim and provide fluidity and efficiency to the civil circuit. In a society that is primarily focused on dynamics, with an exponential flow of information and the desire to carry out any procedure almost instantaneously, it is necessary, as a legislator, to facilitate the functioning of all mechanisms that support the needs of society and the individual, by rethinking social, economic and even legislative policies. Thus, the procedure for recognition of judgments significantly reduces the legal costs incurred in cross-border proceedings, ensures speedy commercial relations and, last but not least, removes a number of cross-border risks by shortening the time taken to implement judgments.

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