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Theoretical Aspects regarding the Recognition and Execution of Court Decisions in Civil Matters in the Light of the Provisions of Regulation no. 44/2001

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Abstract: An important role in simplifying formalities regarding the recognition and enforcement of court decisions was played by the adoption at community level of EC Regulation No. 44/2001 on jurisdiction, recognition and enforcement of judgments in civil and commercial matters, which enshrines the principle of automatic recognition of court decisions handed down in the member states of the European Union. This simplification, in a first stage, will serve to eliminate the exequatur procedure. The goal is, in fact, the creation of a unitary European legal space in which the free movement of decisions is also integrated.

Keywords: regulation; execution of decisions; simplification; European Union

1. Introduction

As stated in the preamble of the Maastricht Treaty, the twelve member states decided to complete a new stage in the European integration process initiated by the establishment of the European Communities.

Among the objectives they proposed, we mention the promotion of a balanced and sustainable economic and social progress, especially by creating a space without internal borders, the affirmation of its identity on an international scale, especially by implementing a common foreign and security policy, strengthening the protection of the rights and interests of the nationals of the member states by establishing a Citizenship of the Union, as well as the development of a close cooperation in the field of justice and internal affairs.

For the correct development and development of international legal relations, it was necessary to adopt uniform legal regulations at the European level, including in the

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matter of the recognition of foreign judicial and arbitral decisions pronounced in different states of the European Union. Only by eliminating the existing formalities in this matter can full respect of the rights gained through court decisions issued by courts in other states than those on the territory of which the recognition and application of the effects that the pronounced decisions produce be ensured.

2. Achievements and Consequences

One of the primary goals of the European Community was to create a common market between the member states through the gradual appropriation of the economic policies of the member states (Ştefan & Andreşan-Grigoriu, 2007, pp. 6-9), an important condition for this unitary economic space is to ensure sufficient legal protection in cross-border cases.

Therefore, we conclude that the development of the economic market determines the spectacular evolution of the legal relations between the states, as well as between the citizens of the different member states of the European Union.

The Treaty on the European Union signed on 07.02.1992 in Maastricht, J.OF.C. no. 191, 1992, often referred to as the Maastricht Treaty and entered into force on 01.11.1993, represented the act of birth of a new entity and unlike the other 3 original treaties, TUE Maastricht was numbered using letters and not numbers.

In order to regulate the legal framework governing Romanian private international law relations, in addition to the ratification of some international agreements, the Government of Romania abrogated through GEO no. 138/2000 art. 375 of the Civil Procedure Code, which regulated the recognition and enforcement of foreign judgments, Law no. 105/1992 regarding the regulation of private international law relations (Zilberstein, 2001, pp. 98-103) which achieves for the first time in Romanian legislation an overall regulation within private international law.

With the help of this normative act, on the one hand, the law applicable to a legal relationship with an element of foreignness and the court competent to resolve disputes arising from such relationships are determined, and, on the other hand, the procedure that must be completed in order to give effect in Romania to a foreign judgments.

Law no. 105/1992 has the character of common law in the matter, in the relations between our country and states that are not members of the EU and to the extent that no other conventional solutions have been regulated.

Law no. 105/1992 was harmonized largely with the provisions of the Brussels and Lugano Conventions that regulate the recognition and enforcement of court

decisions in the acquis communautaire. The law also complies with the provisions of the Convention on the Law Applicable to Contractual Obligations, Rome, 1980.

This will be achieved when all decisions will circulate without the need for their prior recognition in the executing state. The total abandonment of the exequatur procedure will constitute the realization of the "principle of the country of origin" in the circulation of decisions. On the other hand, we cannot concretely abandon the verification of minimum material and process standards, as well as the control of international competence until they are carried out, respectively standardized, in all member states, which implies a harmonization of private and procedural law.

The provisions of the Community normative act that replaces the Brussels I Convention, respectively Regulation no. 44/2001, were taken into account when supplementing and modernizing the regulations regarding the recognition and enforcement of foreign judgments in civil and commercial matters, through the adoption of Law no. 187/2003 regarding jurisdiction, recognition and enforcement in Romania of court judgments in civil matters and commercial, pronounced in the member states of the European Union3. Law no. 187/2003 which transposed until Romania's accession to the EU Regulation no. 44/2001 was repealed by O. U. G. no. 119/2006 regarding some measures necessary for the application of some community regulations from the date of Romania's accession to the European Union.

3. The Situation after Romania's Accession to the European Union

According to Law no. 191/2007 for the approval of O.U.G. no. 119/2006 regarding some measures necessary for the application of some community regulations from the date of Romania's accession to the European Union, in order to apply Regulation no. 44/2001 the requests for the recognition, as well as those for the approval of the enforced execution on the territory of Romania of the judgments in civil and commercial matters, pronounced in another member state of the European Union, under the provisions of Regulation no. 44/2001, are within the jurisdiction of the court. The judgment pronounced in this way can only be challenged by appeal. In accordance with the provisions of Law no. 191/2007 in the case of court decisions pronounced in Romania and for which the recognition or approval of execution in another member state of the European Union is requested, the power to issue, according to art. 54 of Regulation no. 44/2001, the certificate provided for in Annex V of the same regulation belongs to the first instance. If, according to art. 57 of Regulation no. 44/2001, the recognition or approval of the execution on the territory of another member state of the European Union of an authentic act, enforceable according to Romanian law, is requested, the competence to issue the certificate provided for in Annex VI of the same regulation belongs to the court in whose jurisdiction the issuer is located the act. If the recognition or approval of the

execution on the territory of another member state of the European Union of a decision pronounced by the Romanian court is requested, under the law, for the approval of a judicial transaction, the power to issue, according to art. 58 of Regulation no. 44/2001, the certificate provided for in Annex V of the same regulation belongs to that court. Denmark, the United Kingdom and Ireland have a special status regarding judicial cooperation, as well as in other areas. These states benefit from the options to refuse, respectively to accept the applicability of new community acts that increase the degree of integration in the EU. In a recent decision of the Federal Court of Justice in Germany (05.06.2004) this aspect was expressly noted and as a result, the case, which concerned a request for enforcement in Germany of a court decision issued in Denmark, was judged through the lens of the Brussels Convention and the Hague Convention of 1965.

In conclusion, with the integration of Romania into the European Union, Regulation no. 44/2001, whose provisions are directly applicable in legal relations international private, between Romania and the member states of the European Union, in the matters limited and expressly provided for in the European instrument mentioned above.

At the European level, a first step in the development of judicial cooperation was the signing, in 1968, of the Brussels Convention on Jurisdiction and the Execution of Judgments in the Civil and Commercial Fields of September 27, 1968. The system established by this convention was later extended to by the countries of the European Free Trade Association, through the Lugano Convention. Following the Amsterdam Treaty of 1999, the Council of the European Union adopted, in 2000, Regulation no. 44, in force since 2002 regarding judicial competence, recognition and enforcement of judgments in civil and commercial matters, Regulation which practically assimilates the provisions of the Brussels Convention, which is why it is called the Brussels Regulation.

The ratification of the Treaty of Amsterdam allowed the adoption of a regulation instead of a convention, an act with superior legal force, namely Regulation no. 44/2001, currently applicable to EU member states, except for Denmark, which chose not to participate. Thus, in the relations between Denmark and the other member states, the provisions of the Brussels Convention will be applied.

The reason for the adoption of this community act remains the same as the former Brussels Convention of 1968, namely the establishment of uniform rules of procedure for the courts belonging to the member states, as well as ensuring the recognition and enforcement of foreign judgments. The Regulation has the same scope as the Convention and includes the same exceptions, but starting with art. 7, the numbering of the articles no longer corresponds. This Regulation, however, replaced and modified the content of the Brussels Convention on Jurisdiction and

the Execution of Judgments in Civil and Commercial Matters, concluded by the Member States in 1968.

Regulation no. 44/2001, in force since 01.04.2002, applies in civil and commercial matters, regardless of the nature of the court. This Regulation entered into force on 01.03.2002

As regards the "old" Member States, the Regulation entered into force on 1 March 2002, as regards Estonia, Latvia, Lithuania, Malta, Latvia, Poland, Slovakia, Slovenia, the Czech Republic, Hungary and Cyprus, the Regulation entered into force on May 1, 2004, as regards Romania and Bulgaria, the Regulation entered into force on January 1, 2007.

Regulation no. 44/2001 includes rules regarding the competence to settle disputes arising from a private international law relationship in civil and commercial matters, as well as rules regarding the recognition and execution of court decisions pronounced in the European Union states. The regulation contains the answer to two legal problems in the event of a dispute between persons who belong to two different member states, namely: establishing the jurisdiction of the court that will resolve the case in the case and the procedure for recognizing and executing the enforceable title obtained against the opposing party.

The provisions of the Brussels I Regulation are interpreted according to article 68 of the Treaty establishing the European Community (consolidated version), as follows: According to this provision, a court of a Member State "whose decisions can no longer be challenged through an appeal provided in domestic law" must be addressed to the European Court of Justice, in order for it to issue a preliminary ruling, regarding the validity or interpretation of the respective legal acts.

Unlike the Luxembourg Protocol to the Brussels Convention, not all national courts, but only the courts of last resort, can refer to the European Court of Justice.

The most important aspect, however, is the fact that, by virtue of the principle of the direct effect of Community law on the legal systems of the member states, in the matter of recognition and execution of judgments pronounced by the courts of these states, Regulation no. 44/2001 of the Council of the European Union regarding the competence, recognition and execution of judgments in civil and commercial matters.

In the preamble of Regulation no. 44/2001, the principles of recognition and enforcement of judgments issued by a court from one member state in another member state are set forth.

To achieve the objective of the free movement of judgments in civil and commercial matters, it is necessary and appropriate that the rules governing the jurisdiction,

recognition and execution of judgments be regulated by a binding and directly applicable Community legal instrument.

This being so, it is stated that in purpose l the free movement of judgments, judgments pronounced in a member state related to this regulation must be recognized and enforced in another member state related to this regulation, even if the debtor against whom the judgment was pronounced is domiciled in the territory of a third state.

In the interest of the harmonious administration of justice, it is necessary to minimize the possibility of concurrent actions and to avoid the pronouncement of irreconcilable judgments in two member states. There must be a clear and effective mechanism for resolving lis pendens and related actions, as well as for removing problems arising from national differences in determining the date on which an action is pending. For the purposes of this regulation, it is necessary that the date in question be defined independently.

The mutual trust in the administration of justice at the community level justifies the full legal recognition of judgments pronounced in a member state without the need to resort to any other procedure, except in cases of litigation.

By virtue of the same principle of mutual trust, the procedure under which a judgment pronounced in one member state becomes enforceable in another member state must be efficient and fast. For this purpose, the declaration regarding the enforceable title of a decision must be made practically automatically following purely formal checks of the documents provided, without the court having the possibility to invoke ex officio one of the grounds for non-enforcement provided by this Regulation.

However, compliance with the right to defence requires that the defendant have the possibility to file an appeal in an adversarial procedure against the enforceable title, if he considers that there is one of the grounds for non-enforcement. Also, the claimant must have available appeals in case his request for a declaration of enforceable title is rejected.

The main chapters of the Regulation are the regulation of international jurisdiction in civil and commercial matters - in individual cases territorial jurisdiction is also regulated, even jurisdiction by subject matter, as well as the recognition and execution of court decisions given in the member states.

The regulation of international competence goes beyond the formulation of the power of attorney rule in the EU Treaty. Within its scope, EC Regulation no. 44 of 2001 removes the national regulations regarding international competence. In addition, the C.E. Regulation no. 44 of 2001 includes, in individual cases, provisions regarding territorial jurisdiction by subject matter. First, it is about the regulation of

the international competence of the member states. In the scope of the Regulation, the member states concerned - when they have international jurisdiction - are obliged to ensure access to a court. About the recognition and enforcement of court decisions given in the member states - in the framework of the procedure for the recognition and enforcement of court decisions, the international competence to judge the case cannot be verified, except in exceptional cases. In this way, a freedom of decisions is promoted, and Recitals 6-10 of the Preamble enshrine "free movement of decisions". Thus, a unitary international order of competence is an irremovable condition for an international enforcement of the judgment. Subsequent verification of the international jurisdiction of the court of the state where the case was tried is excluded, with a few express and limiting exceptions specified in art. 35 paragraph 1 of C. E. Regulation no. 44 /2001.

As regards the application in time, as a principle, the provisions of the Regulation on recognition and enforcement are applicable only in the situation where, at the time of the introduction of the action, it was in force not only in the Member State of origin, but also in the Member State of enforcement - art. 66 para. 1.

This aspect is regulated in article 66 of the Regulation. In principle, it applies only to those requests and official documents that were submitted, respectively started, after the Regulation entered into force, according to the provisions of art. 66 paragraph 1. Article 66 para. 2 provides for a transitional rule for judgments that were given after the entry into force of the Regulation, but which were filed before the entry into force of the Regulation. This being so, we note that if the action was brought in the Member State of origin, before the entry into force of the Regulation, the judgments pronounced after this moment, will be able to be recognized and executed, in accordance with the provisions of Chapter III, when the action was introduced, after the Convention of Brussels, or the Lugano Convention, had entered into force both in the Member State of origin and in the Member State in which the judgment must be recognized, or when the court was competent, based on provisions that were consistent with the provisions on jurisdiction , provided in Chapter II or in a convention between the two Member States, which was in force at the time the action was introduced. The latter provision is important from the point of view of the recognition and execution of Romanian decisions, considering Law no. 187/2003, because the provisions of this law are in accordance with the provisions of chapter II of the Regulation, regarding competence.

4. Case Studies

The regulation is retroactive to a limited extent because the European Court of Justice decided on 28.10.2004 in the litigation C-265/02, Nurnberger Versicherung/ Portbridge that the priority of special agreements also applies when the defendant -

due to the competent court based on the special agreement - opposes the process. Second, the preliminary issues can be assessed according to public law, without excluding the application of the Regulation.

In essence, we must remember that the provisions of the Regulation apply only to those applications and official documents that were submitted or started after the entry into force of the Regulation and if the application was submitted in the original member state before the entry into force of this order, the decisions pronounced after this moment will be recognized and enforced according to chapter III. At the same time, we note that the scope of application of the Regulation, namely, civil and commercial matters, is regulated by article 1. It can be limited by special community regulations, according to the provisions of art. 67 and through agreements in special fields according to art. 712. In this case the Regulation is subsidiary. The limitation to civil and commercial matters excludes public law cases.

In the jurisdiction of the European Convention regarding the competence of the courts and the execution of court decisions in civil and commercial matters, the European Court of Justice is based in the interpretation of this notion not on the law of the member state in question, but extracts from the totality of these legal orders, by comparing the law and the purposes of the Convention European rules regarding the competence of the courts and the execution of court decisions in civil and commercial matters, a European notion of civil and commercial matters. This is more difficult to achieve in practice, as the boundary between public and private law differs in the Member States.

This being so, we must emphasize that with regard to the definition of the notion of "civil and commercial matter", the C. E. J. ordered the interpretation autonomously from the point of view of the Regulation, which means that it must not be interpreted in relation to the internal law of to each Member State, in part, but to the objectives and structure of the Regulation, and after that to the general principles that derive from the corpus of national legislative systems.

The behaviour of a teacher of a public school, regarding the supervision of students on a trip organized by the school is not considered, by the legislation of the majority of Member States, as an exercise of state authority, because he does not exercise powers that derogate from the applicable rules persons under private law. The same principles were applied to the pronouncement of the C. E. J. sentence of February 15, 2007 (Lechouritou et al.)[1] The criteria of substantive law are exclusively used for

[1] The litigation concerned the massacre of the civilian population, committed by the soldiers of the German military forces, on December 13, 1943, to which 676 inhabitants of the town of Kalavrita (Greece) fell victim. In 1995, the plaintiffs brought an action at Polymeles Protodikeio Kalavriton (Court of First Instance Kalavrita), by which they requested the condemnation of the Federal Republic of Germany to reparation of the material damage and

delimitation. The type of court (civil, commercial or labor law) is not important. This being so, the Regulation also applies if civil claims are brought before a criminal court or, in exceptional cases, before an administrative court. The type of procedure is not important either. Therefore, in principle, the objects of voluntary judgment (in Austria – Extrajudicial Procedure) are included in the scope of application, although many areas of voluntary judgment, respectively of extrajudicial law, are excluded by the provisions of art. 1 paragraph 2 from the field of material competence of the Regulation. Also, for the application of the regulation, it does not make any difference if it is a matter of definitive or provisional measures.

Within Regulation no. 44/2001, the recognition and enforcement of court decisions pronounced in EU member states, of authentic acts, of those assimilated to them, as well as of judicial transactions in the matters expressly and limitedly provided for by this community act is regulated in Chapters III and IV.

The regulation interprets art. 32 from its content the meaning of the notion of "decision" that can be recognized in Romania.

As in the case of Law no. 187/2003 the term decision includes in its content lato sensu a decision, a sentence, an ordinance or an execution mandate, as well as the determination by a clerk of court costs.

Decisions are acts pronounced in the exercise of state authority and produce effects only on the territory of the state whose courts pronounced them. Outside the state they produce only the effects admitted by the other state. Otherwise, they only use as evidence. In the latter case, the claimant should introduce a new procedure in the second state on the same object, to enforce his claims in the other state. The court of the other state would have a choice whether to trust the decision issued by the first instance or whether to initiate its own procedure to obtain evidence. This would make the circulation of court decisions between states very complicated. The institution of recognition of a foreign judgment simplifies the circulation of court judgments between states, in that a judgment is not viewed in the foreign state as evidence, but as a judgment. The purpose of the Regulation is to simplify the formalities established for the recognition and execution of judgments in another member state than the one in which they were pronounced, by applying a simple and uniform procedure. Thus, two basic principles are established, namely: the principle of automatic recognition, without any other special procedure, of judgments pronounced in the member states; if the party against whom the

to the financial reparation of the moral damage and mental suffering, which were caused to them due to the attitude of the German military forces. The operations undertaken by the military forces are considered a clear expression of state sovereignty, especially because they are decided unilaterally by the competent state authorities and are presented as inseparably linked to the states' foreign and defense policy.

judgment was pronounced challenges the recognition, a special procedure is applied for obtaining a recognition decision in another member state than the one in which the decision was pronounced.

Unlike the way in which the procedure for the recognition and execution of court decisions pronounced in EU member states is regulated in the light of the provisions of Regulation no. 44/2001, Law no. 105/1992, in art. 166-168 establish two regimes, namely - the legal recognition of foreign judicial decisions without the fulfilment of any other formality that intervenes if the decisions refer to the civil status of the citizens where they were pronounced or if, being pronounced in a third country, they were recognized first in the state of citizenship of each party (Ungureanu, 1995, pp. 20-22). For judgments pronounced in other fields, however, judicial recognition is necessary, in compliance with certain requirements expressly provided by the Romanian legislator, formalities which in the situations mentioned by the Regulation are eliminated to remove the excessive formalism required for valuing a judicial decision. We make it clear that the regulations contained in Law no. 105/1992 are applicable for the recognition of foreign court decisions, pronounced in the states that are not members of the EU and between which there are no special regulations stipulated by international conventions. The procedure for the recognition of a court decision, in the regulation of the Regulation, is initially unilateral and is appreciated as efficient and fast.

According to Article 33 of the Community act, judgments from one Member State are recognized by full law in another Member State, without the need for special procedures. Therefore, the court or the competent authority in each state to resolve the requests (Babiuc, 2007, pp. 53-73) formally verify the documents attached to the application. To ensure the efficiency of this procedure, a certificate model containing all the information necessary to pronounce a decision on recognition or enforcement is presented by the Regulation and Annexes 5 and 6 to the Regulation. This certificate must be completed and issued by the court or authority that pronounced the judgment or drew up or registered the authentic document and submitted to the court or authority in another member state requesting recognition or enforcement.

It is very important to remember the principle according to which the foreign judgment cannot be verified regarding the findings of fact in any situation, not even when these findings of fact are the basis for establishing the jurisdiction of the court that pronounced the judgment.

Article 33 of the Regulation mentions the two forms of recognition, main and incidental, the latter intervening in the situation where this aspect is invoked in an action in a court of a member state that depends on the determination of an incidental matter of recognition.

Only if the recognition itself is the object of the procedure, each of the parties can request according to Art. 33 par. (2) a judicial finding of recognition. The stand-alone discovery procedure is important in the case of declaratory judgments, because these judgments cannot be enforced.

In case of litigation, any interested party who invokes the recognition of a judgment as the main title may, in accordance with the procedures laid down, request a decision for the purpose of the recognition of the judgment. Article 36 of the Regulation expressly provides that the decision of the foreign state must not be verified in any way as regards the substance. The second instance only verifies the existence or non-existence of compliance with the formal conditions. The second court does not have the right to verify the correctness of the fund. If the decision whose recognition is requested has been challenged with an ordinary appeal, the recognition court may suspend the action until the appeal is resolved.

The foreign judgment then produces the same effects in the state of execution as in the state of origin, even if these legal effects are unknown in the state of execution. According to the Regulation, all court sentences in civil and commercial cases in the member states are recognized and enforced, even if the sentence is based on a purely internal situation. A decision cannot be recognized, for the following reasons listed expressly and limitedly in articles 34 and 35 para. (1) of the Regulation, namely in six cases, as follows:

The public order exception is regulated in article 34 para. (1). It appears in the situation where the considerations of the decision and the content of the procedure on which it was based are clearly contrary to the fundamental values of the state in which it must be recognized and executed. As it is assumed that all EU Member States are based on the same system of values, the contradiction with public order cannot be invoked as a reason for refusing recognition except in exceptional cases. At the same time, we must emphasize that the standards of the European Convention on Human Rights must be seen as an integral part of our public order of private international law, which is why they must be imposed even if foreign laws or judgments belong to non-contracting states. The "technical" method by which a Romanian authority avoids violating the rights or fundamental freedoms guaranteed by the C.E.D.O. is of little practical importance. One can just as well invoke the primacy of the European Convention on Human Rights, as, more rigorously, it could be argued that the provisions and standards of the Convention were integrated into the concept of international public order of the forum. Consequently, the public order of private international law is the one that opposes the application in Romania of a foreign law, which, through its content, would produce "embarrassing effects", affecting some fundamental rights or freedoms of

the nature of those guaranteed by the Constitution or by international documents to which Romania is a party.

European Court of Justice[1] admitted the refusal of recognition due to the exception of public order in the following case:

An investigation procedure was started against Mr. Krombach in Germany, for the death of the 14-year-old French citizen girl. Subsequently, the procedure was suspended.

As a result of a criminal complaint filed by Mr. Bamberski, the young girl's father, an investigation procedure was also started in France, the French courts considering that they were competent by the victim was a French citizen, and the criminal action was brought before the Court of Jury in Paris. The criminal action and the civil action filed by the victim's father (hereinafter referred to as the accession procedure), were communicated to Mr. Krombach. Although it was decided that Mr. Krombach to appear before the court, he did not appear at the merits debate. Therefore, the Cour d'Assises in Paris applied the trial in absentia procedure, regulated in Art. 627 et seq. of the French Code of Criminal Procedure. According to Art. 630 of the respective Code, no defense lawyer can appear on behalf of the absent accused, and the Cour d'Assises ruled without hearing the defense lawyer, mandated by Mr. Krombach to represent him and pronounced a sentence, on 9.3.1995, by which he was sentenced to 15 years in prison, after being found guilty of committing the crime of bodily harm which resulted in the death of the victim, without the intention of killing her. By the judgment of March 13, 1995, the Cour d'Assises ruled on the civil action and ordered, also in absentia, that Mr. Krombach to pay Mr. Bamberski damages in the amount of FRF 350,000.

C. E. J. considered that: "The application of the public order exception provided for in Art. 27, para. (1) of the Convention (now: 34 par. (1) of the Regulation) can only be considered in the situation where the recognition or enforcement of the judgment pronounced in another contracting state (now: Member) could be contrary to the legal order from the State in which enforcement is sought to an unacceptable extent because it violates a fundamental principle. For the prohibition of any re-examination of the substance of a foreign judgment to be respected, the respective violation should have constituted a manifest disregard either of the rule of law, conceptualized as essential within the legal order of the state in which enforcement is requested, or of a right recognized as fundamental within the respective legal order".

The right to defense has a fundamental character according to the common constitutional traditions of the member states and is among the fundamental

[1] https://curia.europa.eu/jcms/jcms/p1_3874044/ro/ accessed on 01.04.2024

elements of a fair trial, according to art. 6 C. E. D. O. (paragraphs 38 and 39 of the decision). Enriching the content of the international public order of the member states, community law thus contributes to the delimitation of the exception considered until now a purely national concept.

Also, every time an essential material provision of Community law is in question, the public order exception is "appropriated" by the Community legal system.

The appropriate non-communication of the act of referral to the court is regulated by article 34 para. (2), namely it refers to the situation in which if the act of referral to the court or another equivalent act was not communicated to the defendant, who did not appear in a timely manner and in a manner that would allow him to prepare his defense, if the defendant did not file an action against the decision when he had the opportunity to do so.

The foreign judgments pronounced without Mr. Krombach, the defendant could have defended himself are not recognized. If a decision has been made and the defendant was not informed at all or was not informed in time, then he can invoke this reason in the recognition procedure, if he could not have done so by means of an appeal (of for example through an appeal against the decision) already during the initial procedure.

The fact whether the defendant was notified of the court notification in good time or not depends on the time he had to prepare his defense. A civil trial abroad requires a longer period of preparation - a lawyer may need to be sought abroad or translations made.

The defendant must be notified of the act of referral to the court and in such a way that he can organize his defense. The communication of the act of referral to the court in a language that the defendant does not know, is considered not to have been done in a way that would allow him to defend himself.

It may constitute a reason for non-recognition if the act of referral to the court was not made available to him at all, because in this way Art. 6 C. E. D. O. was also violated. The fact if the defendant became aware of the act communicated, in due time and properly, is not decisive - June 16, 1981, Klomps/Michel. The defendant invokes this reason for refusal only if he could not raise this reason in the initial procedure. If he neglects this aspect, he can no longer invoke this reason regarding the communication even in the recognition procedure. Usually, the title debtor capitalizes in the second state on two reasons for rejecting the enforcement procedure, namely: rejection of judicial hearing in the first state and violation of public order in the second state. Regarding the violation of his legal defense, art. 34 point 2 of the Regulation compared with art. 27 point 2 of the European Convention on the Jurisdiction of Courts and the Execution of Court Decisions in Civil and

Commercial Matters essential restrictions on the title debtor. If the debtor does not avail himself of the possibility of using a legal remedy in the first state, even though he had this chance, he cannot prevail in the second state for the violation of his right to be heard.

Irreconcilable decisions, as a reason for refusal of recognition and enforcement, are regulated by article 34 para. 3. If the judgment to be recognized and a judgment of the state where it is to be recognized produce contradictory effects, the judgment cannot be recognized. It is not essential, which of the decisions was pronounced first. This case may arise if the judgment is irreconcilable with a judgment pronounced in a dispute between the same parties in the member state where recognition is requested or if it is irreconcilable with a judgment previously pronounced in another member state or in a third state if the actions concern the same cause and are brought between the same parties, provided that the previous judgment meets the necessary conditions to be recognized in the member state to which recognition is requested. Refusal in the matter of the recognition and execution of a court decision can also intervene in other situations, for example if the provisions relating to the competence of private international law in the matter of insurance, consumer law and labor law are disregarded. At the same time, a case of refusal in this field is that if the judgment in the state party to a previous convention was based on (based on art. 72 of the Brussels I Regulation) internal (residual) jurisdiction rules of private international law, which do not can be invoked in the EU.

The reasons for the refusal to recognize, respectively the enforcement of a foreign court decision is not verified ex officio in the first instance, but depend on the objections of a party in an appeal as it results from the provisions of art. 41, 46. If a creditor wants to enforce a claim ascertained by a court judgment pronounced in another state, then he formulates a request for exequatur regarding the foreign judgment, in the Member State of enforcement. Jurisdiction is determined by the domicile of the party against whom enforcement is sought or by the place of enforcement. (Ciobanu-Dordea, 2007, pp. 113 – 114).

The regulation provides procedural conditions regarding the request for execution made by the creditor, in the sense that in accordance with the provisions of art. 40 of the regulation, the creditor will be required to hand over to the competent authorities in the executing state a series of documents, namely a copy of the judgment that meets the necessary conditions in order to establish its authenticity, the certificate referred to in art. 54, without prejudice to art. 55. The court or the competent authority in the member state where the decision was issued issues, at the request of any of the interested parties, a certificate according to the model in Annex V to this Regulation. In case of non-presentation of the certificate provided for in art. 54, the court or the competent authority can set a deadline for its

presentation or accept an equivalent document or, if it considers that it has sufficient information, dispense with the presentation of this document. At the request of the court or the competent authority, the translation of the documents is presented. The translation is certified by a person authorized in this regard in one of the member states. No legalization or other equivalent formality is required for the mentioned documents. The court of the executing Member State will decide on this request, by means of a decision. We mention that enforcement procedures are regulated by the legislation of the enforcement state. The court verifies the conditions of recognition and enforcement, which are the same, and pronounces a decision by which it declares the decision in question enforceable, a decision by which, implicitly, the decision is also recognized. The declaration as enforceable constitutes the recognition of the decision. Once declared enforceable, then the judgment can be executed in the Member State, just like a judgment pronounced in that state.

If the necessary formal conditions are met, the court must declare the judgment enforceable without further checks and without the conclusions of the party against whom enforcement is requested. Any of the parties can appeal, but only against the decision on the enforcement request, within one month or 2 months[1] from the delivery of the enforceable title. Annex 4 provides exhaustively the appeals allowed in the member states against the decision pronounced on appeal.

The same reasons provided in the case of the refusal of recognition are also valid for the rejection of the investment request with an enforceable formula. The enforceable title can be pronounced partially for certain parts of the judgment. If a judgment is to be recognized in accordance with this Regulation, nothing prevents the claimant from requesting the application of provisional measures, including preservation, in accordance with the law of the requested Member State, without a request for an enforceable title pursuant to art. 41. The enforceable title authorizes the taking of any conservation measures. During the term provided for the appeal against the enforceable title and until a decision is pronounced in the case of this appeal, no enforcement measures other than those to preserve the properties of the party against whom enforcement is sought may be applied. In the Regulation there is a special provision that has as its object the judgment pronounced abroad that orders the performance of a periodic payment as a penalty. In this case, this sentence is enforceable in the Member State where enforcement is sought only if the amount to be paid has been definitively established by the courts of the Member State of origin.

No guarantee, surety or deposit, regardless of form, can be imposed on a citizen who requests in a member state the enforcement of a judgment pronounced in another

[1] Depending on the member state in which the person against whom the judgment was pronounced resides, the same or different from the member state in which the said judgment was pronounced.

member state, on the grounds that he is a foreign citizen or that he does not have his domicile or residence in the state where enforcement is requested. In accordance with the provisions of article 52, in the action brought for the issuance of an enforceable title, no expense, fee or fee calculated in proportion to the value of the litigation in question may be levied in the member state where enforcement is sought.

The regulation includes in annexes standardized forms that are intended to limit the need for translations. The forms are an integral part of the Regulation. When verifying the grounds of jurisdiction, the Romanian court is bound by the findings of fact based on which the court in the Member State of origin based its jurisdiction. The jurisdiction of the court in the Member State of origin cannot be reviewed. The criterion of public order in point 1 of art. 34 cannot be applied to the competence rules. The trial court judge must only verify the fulfilment of the formal conditions of an enforcement declaration. He does not have the right to verify the decision from a material point of view regarding the reasons for refusal. The debtor who is called only in the appeal procedure through legal means can object with a legal remedy and in it can submit evidence, leading to an adversarial procedure. When exercising the right of appeal, the court that judges the right of appeal has the right to check other conditions and reasons for rejection, which were not exploited in the legal way. A subsequent verification of the judgment pronounced in the first state is in principle excluded, namely both regarding the case itself and with regard to international jurisdiction, namely even when the court in the first state violated, for example, the provisions of art. 26 paragraph 2 regarding the ex officio verification of competence in case the defendant does not adhere. What can be the object of a subsequent verification is the violation of an exclusive competence, according to art. 22 and the competence of the courts regarding the protection of insured persons and consumers (art. 35). In favor of the employees, the possibility of a subsequent verification is not foreseen, which is motivated by the fact that, as a rule, the employee has the procedural position of the plaintiff. The judgment pronounced abroad cannot be reviewed on its merits under any circumstances. We also find this provision in the regulation of Law no. 105, namely in article 169. According to Article 41, the second court is not allowed to check if there are reasons for the refusal of recognition, but must automatically declare the enforceability. In accordance with the provisions of art. 57 of the Regulation documents drawn up or officially registered as authentic documents and which are enforceable in a member state are, upon request, declared enforceable in another member state, in accordance with the procedure provided by art. 38 and the following. The court to which an appeal is filed pursuant to art. 43 or 44 refuse or revoke the enforceable title only if the execution of the act is clearly contrary to public order in the requested member state. They are considered as "authentic acts" in the sense mentioned above the

agreements related to the maintenance obligations concluded with the administrative authorities or authenticated by them.

Just like the court decisions presented by the creditor and authentic documents, they must meet the conditions necessary to establish their authenticity in the Member State of origin. The competent authority of a member state in which an authentic act was drawn up or registered issues, at the request of any of the interested parties, a certificate according to the model in Annex VI to this Regulation.

In accordance with the provisions of Article 58, judicial transactions which have been approved by a court during a trial and which are enforceable in the member state in which they were concluded are enforceable in the requested member state under the same conditions as authentic documents. The court or the competent authority of a member state in which a judicial transaction has been approved shall issue, at the request of any of the interested parties, a certificate according to the model in Annex V to this Regulation. From the texts of the Regulation, it follows that recognition is provided only for court decisions, while for judicial transactions and authentic documents it is only about their execution (Rechberger, 2013, p. 178). The legal force of the internal, community and international instruments that Romania has ratified in the field of recognition and execution of court decisions must be respected both in the solution of internal law problems and in the settlement of disputes on a European and international level. The hierarchy of internal, community and international instruments is mandatory in the matter of the recognition and enforcement of judicial decisions, the applicability of each category of provisions being dependent on the circumstance whether the decision whose recognition or enforcement is requested in Romania was pronounced by the court of a member state of the EU or a non-member state.

After the moment when our country joined the European Union in relations with the member states of the European Union, in the matter of the recognition and execution of court decisions pronounced in a member state of the EU and which are invoked in our country, the provisions of the C. E. Regulation are to be applied. no. 44/2001 in the matters strictly and expressly developed by this community act. Regulation no. 44/2001 includes provisions regulating the legal relationship between the Regulation and other community and international instruments that cover the same matters as the Regulation. Therefore, the hierarchy of the various regulations in the field that interests us and which aim at the same scope is precisely divided into the content of the Regulation.

This being so, it is stated in article 67 of the Regulation that it does not affect the application of the provisions regulating the competence, as well as the recognition and execution of decisions in specific matters contained in the community instruments or in the national legislations harmonized in accordance with these

instruments. Article 68 specifies that this Regulation replaces, in the relations between the member states, the Brussels Convention, except for the territories of the member states that fall within the territorial scope of that convention and which are excluded from this Regulation in accordance with art. 299 of the Treaty. To the extent that this regulation replaces the provisions of the Brussels Convention in relations between member states, any reference to this convention is understood as a reference to this Regulation. According to Art. 1 para. (3), the notion of "Member State" is defined as each Member State, apart from the Kingdom of Denmark.

Regarding the legal relationship between the Lugano Convention, the Brussels Convention and the Brussels I Regulation, the regulations that become applicable are those contained in Article 54 b of the Lugano Convention. In accordance with the provisions of this article, the relationship between the Lugano Convention and the Brussels Convention is established.

As we have seen, according to Art. 68 para. (2) of the Brussels I Regulation, any reference to the Brussels Convention must be understood as a reference to the Brussels I Regulation. Thus, the conclusion is that the provisions of art. 54 b also applies in the relationship between the states party to the Brussels I Regulation and the states party to the Lugano Convention[1] In article 54 letter b it is stated that this Convention must not affect the application by the Member States of the European Communities of the Convention on Jurisdiction and Enforcement of Judgments in Civil and Commercial Matters, signed in Brussels on September 27, 1968, as well as the Protocol on the interpretation of this Convention by

European Court of Justice, signed in Luxembourg on June 3, 1971, as amended by the Conventions of accession to that Convention and by the Protocol, signed by the states in the process of accession to the European Communities, all these Conventions and Protocols being hereinafter referred to as the "Brussels Convention".

However, this Convention must be applied in any case, in matters of judicial competence, when the defendant is domiciled in the territory of a contracting state that is not a member of the European Communities, or when by art. 16 or art. 17 of this Convention, the courts of this contracting state are given such jurisdiction, in case of lis pendens or connection, as provided for in art. 21 and art. 22, when the procedures are instituted in a contracting state that is not a member of the European Communities and in a contracting state that is a member of the European Communities, in matters of recognition and enforcement, when either the state of

[1] Bentea, O., The fundamental principles of international law between evolution and actuality, character and importance, in http://dspace.uasm.md:8080/bitstream/handle/123456789/2820/vol_47_3843.pdf?sequence=1&isAllowed=y accessed on 15.08.2023.

origin or the requested state are not members of the European Communities (Lupaşcu & Ungureanu, 2012, pp. 104-106). Regarding the legal relations of Regulation no. 44/2001 with community law, we must remember the provisions of art. 67, according to which the Regulation must not affect the application of the provisions regarding the competence, recognition and execution of decisions in special matters, provided for in the existing and future regulations of Community law (for example: the C.E. Regulation regarding the Community trademark).

Regarding the relationship of Regulation no. 44/2001 with bilateral and multilateral treaties, we specify that to the extent that bilateral and multilateral Conventions have been concluded between Member States, they are replaced in principle by the provisions of the Regulation.

In accordance with the provisions of art. 71 of the Regulation, this community act does not affect the bilateral and multilateral conventions concluded between the Member States and which regulate the competence, recognition or execution of judgments in certain special fields. The regulation expressly and restrictively specifies the conventions concluded between different member states that are to cease their applicability from the moment the Regulation enters into force, in article 70 it is specified that these conventions continue to produce their effects in matters where the Regulation is not applicable.

They continue to have effect in the case of decisions issued and documents drawn up or officially registered as authentic documents before the entry into force of this Regulation. The content of Article 71 of the Regulation states that it does not affect the conventions to which the member states are parties and which regulate the competence, recognition or execution of judgments in certain specific matters. Therefore, in the situation where between Romania and states that are members of the EU there are bilateral or multilateral conventions concluded in the field of recognition and enforcement of court decisions that regulate other areas than those expressly and limitedly covered by the Regulation, those conventions will be applied. For a uniform interpretation, it has been established by the Regulation that judgments pronounced in a member state by a court exercising its jurisdiction under a convention relating to a certain matter are recognized and enforced in the other member states in accordance with this Regulation.

If a convention relating to a certain matter, to which both the Member State of origin and the requested Member State are parties, stipulates conditions for the recognition or enforcement of judgments, those conditions shall apply. In any case, the provisions of this Regulation regarding the procedure for recognition and enforcement of judgments may be applied. The regulation does not affect the agreements by which the member states committed themselves, before the entry into force of this regulation, in accordance with art. 59 of the Brussels Convention, not to

recognize the judgments pronounced, especially in other contracting states parties to that Convention, against the defendants who have their domicile or habitual residence in a third country if, in the cases provided for by art. 4 of the Convention, the decision could only be based on a consideration of jurisdiction mentioned in the second paragraph of art. 3 of that Convention. As I mentioned above, to the extent that in this matter, there are special regulations contained in international conventions in areas that are not covered by Regulation no. 44/2001, the respective conventional provisions will apply. We remind you that under art. 11 paragraph 2 of the Romanian Constitution, the international conventions to which Romania is a party are immediately applicable.

In the same way as Regulation no. 44/2001 and the multilateral and bilateral conventions specify the application in time of their provisions regarding the recognition and execution of judgments issued by courts in other states. In the relations between Romania and states that are not members of the EU, in the matter of the recognition and execution of foreign court decisions, the provisions of the bilateral and multilateral conventions to which our country and the requesting state are contracting parties are to be applied. In the event that between our country and another state that is not a member of the EU, there is no international instrument that regulates the procedure for the recognition and execution of court decisions, the provisions of Law no. 105/1992, this law including the rules for determining the applicable law in the case of legal relations with an element of foreignness, as well as the rules of procedure in disputes regarding relations of private international law.

The provisions of Law no. 105/1992 updated applies in this matter and in relations with the member states of the European Union in those matters that are not regulated by the Regulation no. 44/2001 (Bobei, 2020, pp. 23-29) Regulation (EC) no. 1215/2012 on judicial jurisdiction, recognition and enforcement of judgments in civil and commercial matters, called "reformation of the Brussels I Regulation", repealed Regulation (EC) no. 44/2001. However, Regulation (EC) no. 44/2001 continues to apply to judgments rendered in legal actions filed, authentic documents drawn up or officially registered and legal transactions approved or concluded before January 10, 2015, that fall within the scope of that regulation.

The consolidation of this mutual trust made it possible, with the application of the new Regulation (EU) no. 1215/2012 which replaced among the member states Regulation (EC) no. 44/2001, the removal of another obstacle to international judicial cooperation in the matter – the exequatur procedure. Reminiscent of a classic concept, according to which the granting of enforcement is a sovereign prerogative of the state on whose territory the enforcement is to be exercised, the exequatur procedure was preserved both by the Brussels Convention and by Regulation (EC) no. 44/2001. Applying once again the principle of mutual trust, Regulation (EU) no.

1215/2012 is the one that postulates the enforceable effect of foreign judgments, unconditionally by the existence of any decision approving the execution. In order to extend the application of the principles contained in Regulation (EC) no. 44/2001 on the territory of the member states of the European Free Trade Association, the provisions of the regulation were incorporated into the Convention on Jurisdiction, Recognition and Enforcement of Judgments in Civil and Commercial Matters, concluded in Lugano on October 30, 2007, which had the role of passing from Regulation 44/2001 to the application of Regulation 1215/2012. On January 10, 2015, Regulation (EU) no. 1215/2012, replacing, among the member states, the provisions of Regulation (EC) no. 44/2001. Extending the application of Regulation (EU) no. 1215/2012 regarding Denmark was notified by the latter to the Commission on 20 December 2012.

Interpretation of the Brussels Convention[1] of Regulation (EC) no. 44/2001 and Regulation (EU) no. 1215/2012 by the Court of Justice of the European Union

As it follows from the Preamble of Regulation (EU) no. 1215/2012, "The Union has established as its objective to maintain and develop an area of freedom, security and justice, which facilitates, among other things, access to justice" - consideration 1. Achieving this objective required the adoption, through the aforementioned regulation and in continuation of the results obtained under the Brussels Convention and Regulation (EC) no. 44/2001, of some measures in the field of judicial cooperation in civil matters necessary for the proper functioning of the internal market, namely the unification of the rules relating to conflicts of jurisdiction in civil and commercial matters. These rules must present a high degree of predictability and be based on the principle that jurisdiction is determined, in general, by the domicile of the defendant. Exceptions must concern well-defined situations justified by the subject matter of the litigation or by the will of the parties. Also, the establishment of additional jurisdiction criteria (outside the defendant's domicile) is required based on a close connection between the court and the litigation or for the purpose of the good administration of justice (considerations 4, 15 and 16) as well as the simplification of formalities to recognize and execute fast and simple of the decisions coming from the member states. In this sense and in consideration of the mutual trust in the administration of justice at the level of the European Union, the recognition and execution of judgments pronounced in another member state must operate with full law, without going through special procedures, but, at the same time, without putting in danger respecting the right to defence under the conditions provided by the regulation (recitals 26 and 29). The efficiency of the measures established by the regulation is conditioned by the uniform application of its provisions, and uniform application essentially requires a unitary interpretation.

[1] https://e-justice.europa.eu/64/RO/mediation_in_eu_countries accessed on 23.08.2023.

Two levers serve the latter desired: 1) the existence of autonomous criteria for the interpretation of the texts of the regulation (which do not refer to the legal system of a member state) and 2) the existence of a forum, distinct from the national court referred to the settlement of the dispute, which makes necessary interpretation, to whom the autonomous interpretation is entrusted and to which the national court can/will be required to resort in order to carry out such an interpretation.

5. Conclusions

The need for an autonomous interpretation was postulated by the Court of Justice of the European Union both under the Brussels Convention and under Regulation (EC) no. 44/2001. Such an interpretation must consider not the legal system of one of the member states, but, on the one hand, the objectives and system of the Brussels Convention [respectively of Regulation (EC) no. 44/2001 (n.n.)] and, on the other hand, the general principles that emerge from the whole of the national legal systems of the member states. As for the forum empowered to carry out the autonomous interpretation of the notions contained in the provisions of the Brussels Convention, respectively of Regulation (EC) no. 44/2001, and currently of Regulation (EU) no. 1215/2012, it could not be other than the Court of Justice of the European Union. However, the basis of the Court's competence is not the same every time, as the legal nature of the normative acts susceptible to interpretation is not the same either. Thus, in the first situation, being about an international convention, and not about an act adopted by the institutions of the European Union, the competence of the Court to interpret the notions contained in the Brussels Convention could not originate from the Treaty establishing the European Economic Community (in present the Treaty on the Functioning of the European Union), with the express consecration of this competence being necessary in a separate legal instrument, namely the Protocol on its interpretation by the Court of Justice of the European Communities, signed in Luxembourg on June 3, 1971. Instead, in that of - the second situation, the basis of the interpretation of Regulation (EC) no. 44/2001 was constituted by the provisions of art. 68 TCE (repealed by the Treaty of Lisbon), of art. 234 TCE (art. 267 TFEU). The mentioned texts provide for the faculty of the national court, notified with the settlement of the dispute, to request the Court to rule, as a preliminary, on the interpretation of a provision of the Brussels Convention, of Regulation (EC) no. 44/2001, respectively from Regulation (EU) no. 1215/2012, if it deems it necessary for the judgment to be pronounced. The same texts establish, however, the obligation of the national court to notify the Court in the following situations: the national court is the supreme court and it considers that the presentation is necessary for the judgment to be pronounced (art. 3 of the

Protocol), respectively the national court is to pronounce a judgment that is not subject to any appeal in domestic law (art. 267 TFEU).

Finally, the need for continuity between the Brussels Convention, Regulation (EC) no. 44/2001 and Regulation (EU) no. 1215/2012, including the interpretation of the two regulations. Respecting the hierarchy of these internal and international instruments is mandatory for establishing the provisions that apply in the matter of recognition and execution of foreign court decisions, having particularly important consequences not only from a theoretical point of view, but especially in the practice of the courts.

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