

Marital law

Recognition and enforcement of foreign judgments

Lecture 5-6

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Marital law (law of marriage)

- Brussels II Regulation
- Rome III Regulation: adopted in enhanced cooperation, applicable in Austria, Belgium, Bulgaria, France, Germany, Hungary, Italy, Latvia, Luxembourg, Malta, Portugal, Romania, Slovenia and Spain.
- Draft Regulation on Matrimonial Property.
- Maintenance Regulation:
 - jurisdiction;
 - applicable law: in principle the law of the maintenance creditor's habitual residence.

Recognition and enforcement

- Recognition:
 - accepting the foreign judgment's legal effects;
 - recognition is, legally speaking, automatic.
- Enforcement:
 - attaching enforcement measures in order to carry out the judgment's command;
 - enforcement usually necessitates an approval (declaration of enforceability) from the court of enforcement (*exequatur*, registration).
- Is declaration of enforceability required if the judgment awards monetary relief, is a declaratory judgment, changes legal status (establishes fatherhood, dissolves the marriage?)

Sources of law

- EU MS judgments are governed by EU regulations (if come under the scope of one of them)
 - Note: once it comes to the recognition and enforcement of judgments, the identity of the defendant becomes irrelevant!
- Non-EU MS judgments: national provisions.
- The Brussels I Regulation applies to court decisions, as well as to authentic instruments and court settlements.
- In respect of judgments, it is not a requirement that it be final and conclusive (*res judicata*). The principle is that Member State judgments shall have the same effects throughout the Union.

Refusal of recognition/enforcement due to lack of jurisdiction (Brussels I)

- The court of recognition must not examine whether the court of origin had jurisdiction, except the court of origin violated the rules on
 - exclusive jurisdiction,
 - insurance contracts,
 - consumer contracts, or
- it exercised exorbitant jurisdiction against non-EU defendants in cases where the Member State of recognition and enforcement concluded, on the basis of Article 59 of the Brussels Convention, a treaty with the country where the defendant is domiciled or habitually resident and committed itself to refuse the recognition and enforcement of such judgments.
- Even in cases where jurisdiction can be reviewed the court of recognition and enforcement is bound by the facts established by the court of origin.

Grounds of refusal related to substance

- The Brussels I Regulation seriously interdicts the *revision au fond*: the court of recognition and enforcement can under no circumstances review the foreign judgment as to its substance.
- *'We are not so provincial as to say that every solution of a problem is wrong because we deal with it otherwise at home.'* ↔ *'Any customer can have a car painted any colour that he wants so long as it is black.'*
- Grounds of refusal:
 - public policy,
 - violation of the right of defence (the judgment was given in default of appearance and the defendant was not properly notified),
 - irreconcilability with a domestic judgment,
 - irreconcilability with a prior foreign judgment that is to be recognized in the Member State addressed.

Procedure

- Recognition: automatic
- Enforceability: *exequatur* / registration
 - No *exequatur* e.g.: EEO Regulation (uncontested claims), in Brussels II Regulation: access right and return of the child
- Procedure of declaration of enforceability
 - first phase: *ex parte* and documentary proceeding
 - second phase: ordinary appeal
 - third phase: extraordinary appeal

Punitive damages: the American cowboy in Europe

- What are punitive damages?
- Why are punitive damages contrary to public policy in Europe?
- Why are punitive damages not contrary to public policy in Europe?

The Italian case

- In *Fimez* the Italian court faced a 'pain and suffering' judgment, where the money awarded seemed to be excessive in civil-law terms.
- The plaintiff's son passed away in a motor accident; his death was allegedly due to the defective design of the motorcycle helmet. The father sued the producer of the helmet and was awarded 1,000,000 USD.
- The Italian Supreme Court (*Suprema Corte di Cassazione*) held that the idea of punishment embedded in punitive damages is so alien to Italian law that it is contrary to public policy and refused enforcement.

1992 BGH judgement

- The controversy emerged from a sexual crime committed against the plaintiff, who was at the relevant time a 14-year-old minor. The wrongdoer was sentenced and left for Germany subsequent to having done his time in a US prison. Afterwards, the Superior Court of the State of California (Country of San Joaquin) awarded the plaintiff 750,260 USD under the following heads of damages: 350,260 USD compensatory damages (past medical damages, future medical damages and cost of placement) and 400,000 USD punitive damages. The judgment expressly provided that the plaintiff's attorney is entitled to 40 % of all moneys collected.
- The BGH recognized the compensatory part and refused the enforcement of the punitive part.

The French case

- In *Fontaine Pajot* the plaintiffs were a US couple, who purchased a catamaran manufactured by a French company; they sued because the ship turned out to have serious defects.
- The Superior Court of California (County of Alameda) decided for the plaintiffs and awarded them actual damages (reconditioning of the ship: 1,391,650.12 USD), attorney's fee (402,084.33 USD) and punitive damages (1,460,000 USD).
- The *Cour de Cassation* held that punitive damages if they are excessive cannot be recognized. It considered the above figure to be excessive.

Thank You for your attention!

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