

Pravna sredstva v čezmejni izvršbi

Rechtsbehelfe in der grenzüberschreitenden
Vollstreckung

Legal Remedies in Cross-Border Enforcement

Dr. Andrej Ekart, LL.M.

Maribor, 18. November 2011

Cross-border enforcement in EU in Civil matters
– legal sources

- Brussels I Regulation - 44/2001
- European Enforcement Order– Reg. 805/2004
- European Enforcement Order- Reg. 1896/2006
- EU Small Claims Procedure – Reg. 861/2007
- Proposal for new Brussels I Regulation
- As to procedural issues subsidiary applies lex fori

CROSS-BORDER ENFORCEMENT ACCORDING TO BRUSSELS I REGULATION

| State of origin | | State of enforcement | |
|----------------------------|---|---|-----------------------------------|
| 1. Enforceable title | 2. Certificate of enforceability (Art. 45) | 3. Declaration of enforceability (exequatur) (Art. 38 et seq) | 4. Exekution of judgment |

Brussels I Reg. – legal remedies

STATE OF ORIGIN

1. Against enforceable title
2. Against certificate of enforceability

STATE OF ENFORCEMENT

1. Against enforceable title – exequatur:
 - Public policy – ordre public
 - Default judgments – right to be heard
- Particular jurisdictions
- Irreconcilability of judgments
- 2. Legal remedies of domestic law (Art. 22/5 Brussels I)

CONNECTION BETWEEN LEGAL REMEDIES

STATE OF ORIGIN

- Legal remedy against judgment →→→
- Annulment or change of enforceable title →→

STATE OF ENFORCEMENT

- Stay of exequatur proceedings (Art. 46)
- refusal or revocation or repeal of a declaration of enforceability (§ 27 AVAG, § 84c EO) ; stay of execution (ZIZ)

LEGAL REMEDIES AGAINST THE CERTIFICATE OF ENFORCEABILITY

STATE OF ORIGIN

- Rectification or withdrawal of certificate of enforceability
→→→

STATE OF ENFORCEMENT

- Refusal or repeal of exequatur
- or
- Stay of enforcement

PAYMENT OF A DEBT OR SET OFF - INCONSISTENT CASE LAW IN MEMBER STATES!

STATE OF ORIGIN

- Negative declaratory action (subsequentl y motion to stay the execution in state of enforcement?)

STATE OF ENFORCEMENT

- Objection in exequatur proceedings (§ 12 AVAG)?
- Only undisputed objections (BGH 14.3.2007 – XII ZB 174/04, AG Kokott)?
- NOT in exequatur, with legal remedies of domestic law: C-139/10 (Art 22 Brussels I?)

ABOLITION OF EXEQUATUR – EUROPEAN ENFORCEABLE TITLES

- Brussels IIa Reg – return of children
- European Enforcement Order– Reg. 805/2004
- European Enforcement Order- Reg. 1896/2006
- EU Small Claims Procedure – Reg. 861/2007
- EU Maintenance Reg – 4/2009
- Proposal for new Brussels I Regulation

EUROPEAN ENFORCEMENT ORDER – MODEL
PROJECT OF ABOLITION OF EXEQUATUR

| STATE OF ORIGIN | | STATE OF ENFORCEMENT |
|----------------------------|---|-----------------------------|
| 1. Enforceable title | 2. Certification as European enforcement order | 3. Execution of judgment |

COMMON CHARACTERISTICS

- **STATE OF ENFORCEMENT**
 - Grants exequatur which has effect in all Member States– certificate of enforceability
 - All legal remedies against the title and certificate
 - Limited control - minimum standards: (right to be heard+ some jurisdictional issues)
- **STATE OF ENFORCEMENT:** objection of irreconcilability or motion to limit or stay the execution
- NO ordre public control (except new Brussels I –ECJ cases Krombach and Gambazzi?)

ABOLITION OF EXEQUATUR – LEGAL REMEDIES

STATE OF ORIGIN

- Against judgment
- Rectification or withdrawal of certificate
- Certificate of ceased enforceability
- Substitute certificate

STATE OF ENFORCEMENT

- Refusal of enforcement - irreconcilability
- motion to limit or stay the execution
- Lodging of certificate of ceased enforceability
- Legal remedies of domestic execution law (Art 22/5 Bruss.)

EXEQUATUR AS PROTECTION OF DEBTOR – PROTECTION OF BASIC HUMAN RIGHTS?

- Procedural ordre public – appeal to ECHR? Problem: Slovenian Civil Procedure Code does not provide for reopening of proceeding in such case
- Stay of execution and preliminary ruling of ECJ?
- Effective protection of procedural ordre public in state of enforcement according to new Brussels I Reg.

PAYMENT OF DEBT OR SET OFF

- Art 22/2 Reg 1896/2006: “Enforcement shall, upon application, also be refused if and to the extent that the defendant has paid the claimant the amount...”
- International jurisdiction: Art. 22/5 Brussels I Reg.
- Objection of set off against court settlement certified as EEO: OGH 14.12.2010, 3Ob231/10g
- Germany: motion to stay the execution or Vollstreckungsgegenklage (§ 1086 ZPO)

OUTLOOK

- Plenty of EU civil procedure regulations
- Inconsistency of regulations
- Implementation in Slovenia: minimalistic approach
- Unharmonised rules of execution law

Hvala za Vašo pozornost!

Danke für Ihre Aufmerksamkeit!

Thank you for your attention!

andrej.ekart@sodisce.si