

Tieslietu ministrija

Project No JUST/2010/JCIV/AG/0011-30-CE-0421092/00-75 "Developments in the field of cross-border family matters within EU: maintenance obligations and law applicable to divorce"

Training course "Jurisdiction, applicable law, recognition and enforcement of decisions and cooperation in matters relating to maintenance obligations"

June 11, 2012

,,

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 – recognition and enforcement

0

Dr.iur. Irēna Kucina June 11 - 13, 2012

Questions to be discussed

 Recognition of decisions or declaration of enforceability ("traditional route")

 Automatic enforcement of decisions ("fast track") Recognition of decisions or declaration of enforceability ("traditional route")

"Traditional route"

- Procedure of declaration of enforceability is applicable among them as well in Latvia as regards decisions, taken by Member States, which are not bound by the 2007 Hague Protocol (as for now United Kingdom and Denmark).
- Procedure of declaration of enforceability is similar as provided in the Regulation 44/2001 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (Brussels I Regulation), therefore in general the regulation is not notion in this matter, however there do exist some differences between regulations, as particular as regards procedural terms, therefore the Civil Procedure Law has been changes accordingly.
- This Regulation shall replace, in matters relating to maintenance obligations, Regulation (EC) No 805/2004, except with regard to European Enforcement Orders on maintenance obligations issued in a Member State not bound by the 2007 Hague Protocol.

1. A decision given in a Member State not bound by the 2007 Hague Protocol shall be recognised in other Member States without any special procedure being required, however any interested party may request the decision be recognised (non recognised) (Article 23).

2. Such a decision enforceable in that State (regardless whether it could be appealed or not) shall be enforceable in another Member State when, on the application of any interested party, it has been declared enforceable there (Article 26).

3. The local jurisdiction shall be determined by reference to the place of habitual residence of the party against whom enforcement is sought, or to the place of enforcement.(Article 27 of the Regulation 4/2009, not Article 638 of the Civil Procedure Law).

4. The application for a declaration of enforceability shall be accompanied by the following documents (Article 28):

(a) a copy of the decision in a language of the state of origin. However, a translation may be required in connection with an appeal under Articles 32 or 33.

(b) an extract from the decision issued by the court of origin using the form set out in Annex II, without prejudice to Article 29, which provides what should be done if the form is not provided. Consequently the court may:

- specify a time for its production; or

- accept an equivalent document;

or, if it considers that it has sufficient information before it, dispense with its production.

(c) where necessary, a translation of the form.

5. The decision shall be declared enforceable without any review under Article 24, where grounds for non-recognition are provided, immediately on completion of the formalities in Article 28 (Article 30). This is so called "formal stage".

• The party against whom enforcement is sought shall not at this stage of the proceedings be entitled to make any submissions on the application.

• Regulation 4/2009 provides concrete terms for taking the decision on declaration of enforceability – at the latest within 30 days of the completion of those formalities, except where exceptional circumstances make this impossible.

• The question could be raised, what does it mean "completion of formalities" as the Civil Procedure Law does not provide for "explanatory" norm.

6. The decision on the application for a declaration of enforceability shall forthwith be brought to the notice of the applicant in accordance with the procedure laid down by the law of the Member State of enforcement. The declaration of enforceability shall be served on the party against whom enforcement is sought, accompanied by the decision, if not already served on that party (Article 31).

7. The decision on the application for a declaration of enforceability may be appealed against by either party (Article 32).

• The appeal shall be dealt with in accordance with the rules governing procedure in contradictory matters;

• An appeal against the declaration of enforceability shall be lodged within 30 days of service thereof. If the party against whom enforcement is sought has his habitual residence in a Member State other than that in which the declaration of enforceability was given, the time available for appeal shall be 45 days and shall run from the date of service either on him in person or at his residence. No extension may be granted on account of distance.

Article 641 of the Civil Procedure Law as "explanatory" norm of Article 32 of the Regulation
(21) In cases provided by Regulation 4/2009 a party which has his habitual residence or resides in a State other than Latvia, can

submit an ancillary complaint within 45 days of service thereof.

8. A declaration of enforceability shall be refused only on one of the grounds specified in Article 24.(Article 34).

9. Grounds for non – recognition = grounds for non – recognition of decision for declaration of enforceability

10. The Grounds for refusal of recognition

A decision shall not be recognised:

(a) if such recognition is manifestly contrary to public policy in the Member State in which recognition is sought. The test of public policy may not be applied to the rules relating to jurisdiction;

(b) where it was given in default of appearance, if the defendant was not served with the document which instituted the proceedings or with an equivalent document in sufficient time and in such a way as to enable him to arrange for his defence, unless the defendant failed to commence proceedings to challenge the decision when it was possible for him to do so;

(c) if it is irreconcilable with a decision given in a dispute between the same parties in the Member State in which recognition is sought;

(d) if it is irreconcilable with an earlier decision given in another Member State or in a third State in a dispute involving the same cause of action and between the same parties, provided that the earlier decision fulfils the conditions necessary for its recognition in the Member State in which recognition is sought.

A decision which has the effect of modifying an earlier decision on maintenance on the basis of changed circumstances shall not be considered an irreconcilable decision within the meaning of points (c) or (d).

11. An appeal court shall give its decision within 90 days from the date it was seised, except where exceptional circumstances make this impossible (Article 34).

12. A decision of the appeal could be contested. Terms for that are not provided in the Regulation, **thereforee national rules should be applied**. (Article 641 of the Civil Procedure Law - a party which has his habitual residence or resides in a State other than Latvia, can submit an ancillary complaint within 45 days of service thereof). In Finland, for example, it could be done within 60 days. The decision shall give its decision without delay (Article 34).

• Article 642 of the Civil Procedure Law as "explanatory" norm of Article 34 of the Regulation

(2¹) When applying Regulation 4/2009 an appeal should be examined by the terms provided in Article 34 of the regulation.

13. Under no circumstances may a decision given in a Member State be reviewed as to its substance in the Member State in which recognition, enforceability or enforcement is sought (Article 42).

14. If a decision in its state of origin could be appealed, then the proceedings of the declaration of enforceability could be suspended (Article 25 and 35).

15. The procedure for the enforcement of decisions given in another Member State shall be governed by the law of the Member State of enforcement (Article 41).

Automatic enforcement of decisions ("fast track")

Special rules that intend a decision given in one Member State to be automatically enforced in another Member State

The procedure of declaration of enforceability is not applicable (including towards the decisions that) where the decision is given in a Member State which is bound by the Hague 2007 Protocol (at present - except the UK and Denmark).

Italian court judgment on the recovery of child support The declaration of enforceability (exequatur) in Latvian courts The enforcement of Italian court judgment in Latvia

Automatic enforcement:

(Art.22)

For the decision to be enforced in another Member state, the claimant shall apply to the enforcing authorities:

- a) a copy of the decision in a language of the state of origin. However, a translation may be required if enforcement of a decision is appealed;
- b) the extract from the decision using the form set out in Annex I (In case of Latvia, Article 541¹ (4³) of the Civil Procedure Law by the request of a participant in the matter when the judgment or decision has come into lawful effect, but in cases where the judgment or decision has to be executed without delay immediately after the proclamation of the judgment or the taking of the decision);
- c) where appropriate, a document showing the amount of any arrears and the date such amount was calculated;
- d) where necessary, a transliteration or a translation of the content of the form referred to in point (b) into the official language of the Member State of enforcement or [other language].
- The recognition and enforcement of a decision on maintenance under this Regulation shall not in any way imply the recognition of the family relationship, parentage, marriage or affinity underlying the maintenance obligation which gave rise to the decision

Refusal or suspension of enforcement by application of debtor(Article 21) Refusal or suspension

- in if the right to enforce the decision of the court of origin is extinguished by the effect of prescription or the limitation of action, either under the law of the Member State of origin or under the law of the Member State of enforcement, whichever provides for the longer limitation period;
- if it is irreconcilable with a decision given in the Member State of enforcement or with a decision given in another Member State or in a third State which fulfils the conditions necessary for its recognition in the Member State of enforcement.

A decision which has the effect of modifying an earlier decision on maintenance on the basis of changed circumstances shall not be considered an irreconcilable decision within the meaning of the second subparagraph.

Suspension of enforcement

- if an application has been submitted to the competent court of the Member State of origin to review the case pursuant to Article 19 (right to apply for a review)
- where the enforceability of that decision is suspended in the Member State of origin.
- The grounds of refusal or of suspension laid down in national law may be applicable as well.

Art.644² Issues of Enforcement associated with European Union Enforcement Documents

(1) A district (city) court in the territory of which the decision given by a foreign court shall be enforced, according to Article 23 of Regulation 4/2009 on the basis of the application from the debtor, may:

1) replace the enforcement of the decision with the measures for ensuring the enforcement of the decision provided for in Article 138 of this Law;

2) amend the way or procedures for the enforcement of the decision; or

3) suspend the enforcement of the decision.

The application shall be reviewed in a court sitting, previously notifying the parties involved. The non-attendance of such persons shall not be an obstacle to review the application. An ancillary complaint may be submitted in respect of the court decision.

Consequences: Art. 559 Postponement of enforcement activities

Arti.560 Duty of a bailiff to stay enforcement proceedings

Art.644³ Refusal of the enforcement of a decision given by a foreign court

A district (city) court in the territory of which the decision given by a foreign court is enforceable and for which the extract mentioned in Art.20(1) b) of the Regulation 4/2009 has been issued, may refuse the enforcement on the basis of the application from the debtor in accordance with the Art 21(2) of the Regulation mentioned.

The application shall be reviewed in a court sitting, previously notifying the parties involved. The non-attendance of such persons shall not be an obstacle to review the application. An ancillary complaint may be submitted in respect of a decision by the court. **Consequences: Art.563 Termination of enforcement proceedings**

• Article 644⁴

Application regarding the staying, division into time periods, amendment of the type or procedure of the enforcement, refusal of the enforcement of a decision given by a foreign court or an enforceable document of the EU.

Requirements of the application, documents attached to the application

Rights of apply for a review of the <u>defendant who did not enter an</u> <u>appearance</u> in the Member State of the origin (Art. 19)

- he was not served with the document instituting the proceedings or an equivalent document in sufficient time and in such a way as to enable him to arrange for his defence; or
- he was prevented from contesting the maintenance claim by reason of *force majeure* or due to extraordinary circumstances without any fault on his part;

except the cases when the defendant did not appeal the decision when it was possible for him to do so;

Rights of to apply for a review of the <u>defendant who did not enter an</u> <u>appearance</u> in the Member State of the origin (Art. 19)

- The time limit for applying for a review shall run from the day the defendant was effectively acquainted with the contents of the decision and was able to react, at the latest from the date of the first enforcement measure having the effect of making his property non-disposable in whole or in part. The defendant shall react promptly, in any event within 45 days. No extension may be granted on account of distance.
- If the court rejects the application, the decision shall remain in force.
- If the court decides that a review is justified, the decision shall be null and void.

However, the creditor shall not lose the benefits of the interruption of prescription or limitation periods, or the right to claim retroactive maintenance acquired in the initial proceedings.

"Introduction" of Art. 19 in the Civil Procedure Law

Section 60.¹

Review of the case in connection with the review of the decision, covered by the law of the European Union

Submission of the application

1) to review a decision or judgment made by a District (city) court — to the appropriate Regional court

2) to review a decision or judgment made by a Regional court— to the Chamber of Civil Cases of the Supreme court;

3) to review a decision or judgment made by a Chamber of the Supreme court— to the Department of Civil Cases of the Supreme court;

"Introduction" of Art. 19 in the Civil Procodure Law Obstacles for submitting the application

Application cannot be submitted if the perscription period of the submission for the the enforcement has passed.

An application that does not contain such reasons which could be recognised as the reasons to review the decision, is rejected and returned to the applicant.

A judge shall reject the application to review the case where the decision is reviewed, including where the application has been submitted repeatedly and it does not contain any grounds that the reasons which could be recognised as the reasons to review the decision. An ancillary complaint may be submitted in respect of the court decision.

"Introduction" of Art. 19 in the Civil Procedure Law

Review of the application

 The application for the review of the decision shall be viewed in a written procedure.

Court decision

If the court finds appropriate reasons to review the decision it will set aside the challenged decision in full and will refer the case for a repeated hearing to a court of the first instance.

If the court finds that the application that does not contain such reasons which could be recognised as the reasons to review the decision, it rejects the application.

Appealing the court decision

An ancillary complaint may be submitted in respect of the court decision.

Thank you!