

RECOGNITION AND ENFORCEMENT OF JUDGEMENTS WITHIN THE EU – OR IS IT REALLY SO EASY TO ACHIEVE THEM?

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Abstract: *The content of this article is an overview of possibilities how to achieve recognition and enforcement of judgements in member states of the EU. The article is devoted mainly to the analysis of two union tools which regulate issues of recognition and enforcement of judgements in member states of the EU in the sphere of family law. The article concentrates on process conditions, terms of proposals for recognition or enforcement as well as terms of judgements of member states courts on recognition or enforcement of a judgement which was issued in another member state.*

Keywords: *recognition of judgements, enforcement of judgements, cross-border law enforcement, the European law, legal security*

The fact that the EU creates an area of freedom, safety and rights without internal borders¹, where free movement of goods, people, services and capital governs, brings with it a bigger interaction of the EU citizens. This indisputable fact leads to the necessity of increasing protection of the EU citizens and their rights for a fair trial including effective law enforcement within the entire EU. The aim of a EU law is e.g. to remove legal as well as factual obstructions which could prevent the EU citizens from their movement into another member state, cross-border business or even cross-border law enforcement sequent on private legal relations. It can't be doubt that new union regulations have the aim to create space in Europe where legal security and the right for a fair trial aren't only formal concepts. On the other hand, it is necessary to state that these union regulations cannot always help achieve an effective result. One of substances having an obvious influence on free movement of people and capital are regulations which concern the definition of international jurisdiction of the EU member states and rules for recognition and enforcement of judgements of one member state in another one.

My own professional experience from the sphere of family law led me to think of possibilities of judgements enforcement of Czech courts in countries of the European Union. Since 2010 my client, a citizen of the Czech Republic, has struggled for enforcement of judgement of the Czech court at courts in the Federal Republic of Germany. By an objective judgement, the father – German citizen living in Pirna - was placed a duty to pay maintenance for their infant son. The judgement hasn't been enforced yet. Regarding the complexity of recognition and subsequent enforcement of a foreign judgement, I devote myself mainly to the analysis of the current as well as newly introduced legislation in the sphere of family law at the level of the EU.

The European law contains many regulations which regulate recognition and enforcement of judgements in member states of the EU. The form concerns civil and business matters² with a special form included in the new regulation of succession.³ The view of a special legislation for the sphere of family law at the level of union law is subject to this

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¹ TOMÁŠEK, M., TYČ, V. a kol. *Právo Evropské unie*. Praha: Leges, 2013, p. 341 ff.

paper. Nowadays, there are two tools regulating ways of recognition and enforcement of judgements in the EU member states and concerning issues of marriage, maintenance and parental responsibility:

1. Council Regulation (EC) No 2201/2003 of 27/11/2003, concerning jurisdiction and recognition and enforcement of judgments in matrimonial matters and the matters of parental responsibility, repealing Council Regulation (EC) No 1347/2000 (hereinafter referred to as “Brussels II bis Regulation”) and
2. Council Regulation (EC) No 4/2009 of 18/12/2008 on jurisdiction, applicable law, recognition and enforcement of decisions and cooperation in matters relating to maintenance obligations (hereinafter referred to as “the maintenance regulation”)

Ad 1.) **Brussels II bis** Regulation regulating among others also recognition and enforcement of judgements⁴ in member states of the EU is like most regulations in this sphere mandatory for all member states of the EU, except for Denmark. This regulation is used from 1/3/2005⁵, except for some articles. The Brussels II bis Regulation has nowadays a firmly set framework of its operation, based mainly on jurisdiction of the Court of Justice of the EU (originally the European Court of Justice), and refers exclusively to **matrimonial relations** of just private nature and to **legal protection of children**. On behalf of ensuring the equality of all children, the regulation is used for decisions in matters of parental responsibility, including provisions of child’s protection, without any linkages to proceedings of matrimonial matters. The operation is defined in article 1 of the Brussels II bis Regulation which sets that the Brussels II bis Regulation refers, regardless the type of a court, **to civil matters** concerning

1. *divorce, cessation or declaring the marriage void;*
2. *admission, enforcement, transfer and complete or partial withdrawal of parental responsibility.*⁶

² Council Regulation (EC) No 44/2001 of 22/12/2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (hereinafter referred to as “Brussels I Regulation”), Council Regulation (EC) No 2201/2003 of 27/11/2003, concerning jurisdiction and recognition and enforcement of judgments in matrimonial matters and the matters of parental responsibility, repealing Council Regulation (EC) No 1347/2000 (hereinafter referred to as “Brussels II bis Regulation”), Regulation (EC) No 805/2004 of the European Parliament and of the Council of 21/4/2004 creating a European Enforcement Order for uncontested claims (hereinafter referred to as “Regulation on a European Enforcement Order”), Regulation (EC) No 1896/2006 of the European Parliament and of the Council of 12/12/2006 creating a European order for payment procedure (hereinafter referred to as “Regulation on a European Payment Procedure”) and Regulation (EC) No 861/2007 of the European Parliament and of the Council of 11/7/2007 establishing a European small claims procedure (hereinafter referred to as “Regulation on Small Claims”).

³ Regulation (EC) No 650/2012 of the European Parliament and of the Council on jurisdiction, applicable law, recognition and enforcement of decisions and acceptance and enforcement of authentic instruments in matters of succession and on the creation of a European Certificate of Succession (hereinafter referred to as “Regulation on Succession”).

⁴ For purposes of the Brussels II bis Regulation, judgement means a decision on divorce, cessation or declaring the marriage void and decision concerning parental responsibility, issued by the court of a member state, regardless the fact how it is defined, including concepts such as “decision”, “judgement”, “order” or “regulation”.

⁵ See more in article 72 of the Brussels II bis Regulation.

⁶ In terms of the Brussels II bis Regulation, parental responsibility are all rights and duties of a physical or corporate entity, concerning a child or child’s property, which are entrusted to this entity by a decision, legislation or legally binding agreement. This concept includes mainly the right for childcare and contact with a child.

Regarding decisions on divorce, cessation or declaring the marriage void, the Brussels II bis Regulation should be applied only to marriage annulment and shouldn't concern issues such as reasons of divorce or property consequences of marriage. Concerning the fact that the result of proceedings of determination, whether marriage is or isn't, is similar to the result of proceedings of marriage nullity, the Brussels II bis Regulation refers also to this type of proceedings. **Issues concerning coexistence of people of the same gender however don't fall** within the scope of operation of the Brussels II bis Regulation. In this case a problem of European countries incurs which legislation knows marriage of people of the same gender. As compared to the Brussels I Regulation which regulated originally parental responsibility to common children of both parents in connection with the declaration of marriage void or with divorce, the Brussels II bis Regulation regulates any issue related to **enforcement of parental responsibility**, except for issues related to **maintenance** and measures related to **child's property** (if it isn't child's protection at the same time⁷), because these continue to be subjects to legislation included in the Brussels I Regulation or the Brussels II bis Regulation and also in the Maintenance Regulation.⁸ The following issues also don't fall within the scope of operation of the Brussels II bis Regulation:

1. determination and denial of parenthood because these issues are different from the determination or denial of parental responsibility;
2. decision on adoption, pre-adoption measures as well as nullity or cancellation of adoption;
3. surname and names of a child;
4. reaching a legal age;
5. succession which will be regulated by the Regulation on Succession which will be used from 2015;
6. social security;
7. statutory provisions of a common nature concerning education or health or decision on the right for asylum and immigration;
8. provisions accepted in consequence of crimes committed by children.

Recognition and enforcement of judgement is similar to the Brussels I Regulation provided that the procedure is also based on the principle of mutual trust and reasons for non-recognition were so limited to the necessary minimum. As compared to other tools regulating the recognition and enforcement, the Brussels II bis Regulation regulates not only recognition and enforcement of authoritative individual legal acts and public documents but also **enforceable agreements** which are for purposes of recognition and enforcement considered together with public documents as equal to decisions. According to the Brussels II bis Regulation, we differentiate **two ways of recognition and enforcement of judgements**:

⁷ The Brussels II bis Regulation should be used only for provisions of child protection, i.e. definition of a person, authority or other subject authorized to administration of child's property, its representation or support and assignment of tasks and administration, preservation of child's property or handling the property.

⁸ Comparison: PAUKNEROVÁ, M. *Evropské mezinárodní právo soukromé*. 1. vydání. Praha: C. H. Beck, 2008, p. 180.

1. standard recognition and enforcement of judgement and
2. special accelerated enforcement of judgement; it is used only for the range of decisions defined exactly by the Brussels II bis Regulation.

Standard recognition and enforcement of judgement consists of three phases:

1. recognition of judgement
2. enforceability of judgement (or declaration of enforceability of judgement, so-called *exequatur*) and
3. enforcement of judgement.

In case of the recognition of judgement, the fact which was already introduced by regulations and the fact that judgements issued in some member state are recognized in other member states without requiring special proceedings are applied, i.e. judgement has automatically the same effects in the state of origin as well as in the state of enforcement.⁹ In case that any of the parties insists on the review of judgement in the state of enforcement, the party can ask for the issue of a **decision on recognition or non-recognition of judgement**.¹⁰ In principle, neither jurisdiction of a member state nor objective accuracy of individual decisions is however reviewed. The party which asks for recognition of a decision or attacks it¹¹ has to present the execution of a decision and the certificate of decisions concerning matrimonial matters or certificate of decisions on parental responsibility¹² or other documents defined by the Brussels II bis Regulation. It is possible to deny the recognition of judgement only by reasons exactly defined in the Brussels II bis Regulation. These reasons are regulated separately for matters related to:

1. divorce, cessation or marriage nullity and separately to
2. matters of parental responsibility.

In both cases **the reason for denial of recognition of judgement** means a **contradiction with public order** whereas in case of parental responsibility it is necessary to consider child's interests. Another common reason for non-recognition of judgement is an obstruction of judged case, so-called **res iudicata**, provided that in case of parental responsibility it has to be a decision which was issued in a member state where the recognition is asked for or in another member state or in the third country where a child has its common address.¹³ The

⁹ No special proceedings is required according to article 21, section 2, the Brussels II bis Regulation even in a case when records of personal status should be actualized in one member state based on judgement on divorce, cessation or declaring the marriage void.

¹⁰ See enforceability clause in article 21, section 3, the Brussels II bis Regulation.

¹¹ The same documents have to be presented also in a case that a party proposes the issue of a declaration of enforceability of judgement.

¹² The certificate is issued by the appropriate court or authority of the member state of origin, based on request of the involved party, in a unified form included in attachment I (decision concerning matrimonial matters) or in attachment II (decision on matters of parental responsibility) of the Brussels II bis Regulation.

¹³ Note: as regards a suckling baby, a place showing a certain level of integration of the child in terms of the social and family environment is considered as its common address. Term, regularity, terms and reasons of a stay in a member state and mother's moving into this state, mother's geographical and family origin, family and social linkages which the mother and child keep in this member state. If the citizenship can't be defined in this way, it is necessary to define jurisdiction according to presence of the child. Compare judgement of the Court of Justice in case *Mercredi v. Chaff*, C-523/07 or C-497/10.

last reason of non-recognition of judgement on divorce, cessation or marriage nullity is a proper non-notification of an opponent in advance. Regarding parental responsibility there are more reasons for denial of recognition of judgement. According to article 23 of the Brussels II bis Regulation, except for reasons mentioned above, the reasons are also the following ones:

1. infringement of procedural principles, mainly non-hearing of a child, except for urgent cases;
2. absence and proper non-notification of the party in advance;
3. on request of any person who declares that the judgement intervenes in his/her parental responsibility if the judgement was issued without exercising the right to be heard out – by this reason it is possible not to recognize the judgement based only on person's proposal;
4. if the procedure wasn't followed, i.e. if the appropriate authority of a member state didn't give a consent with placing a child in institutional care.

Circumstance, that the right of a state where it is asked for recognition doesn't admit under the same circumstances divorce, cessation or declaring of the marriage void, **doesn't belong among reasons** for denial of the recognition of judgement. Also the fact that judgement didn't become effective¹⁴ in the state of origin, because its enforceability is essential, isn't any reason for denial. In case that one party lodges a proper legal remedy in the state of origin against the judgement which should be recognized and enforced in another member state, the court dealing with the proposal for recognition of judgement can stop proceedings until the court appropriate for the discussion of a proper legal remedy decides on the matter. If proceeding isn't stopped and the court appropriate for the discussion of a proper legal remedy decides on a change or cancellation of the judgement of first instance, the court which conducts the proceeding for recognition has to decide again on recognition or non-recognition of the judgement issued by the court of second instance.

The second phase is the **proceeding of declaration of enforceability** because it is necessary that judgement has to be declared as enforceable in a special proceeding conducted by the court in the state of enforcement to be able to enforce the judgement in another member state.¹⁵ The proceeding of enforceability is initiated based on a proposal¹⁶ whereas the procedure of proposal's presentation follows the law of the member state of enforcement. When proposing the issue of declaration of enforceability, the party has to present the court the same documents as in case of a proposal for recognition. The court, where

¹⁴ An exception is however a decision on divorce, cessation or declaring the marriage void because the condition of recognition and subsequently enforcement of such a judgement, according to article 21, section 2, the Brussels II bis Regulation, is the fact that it isn't possible to lodge a legal remedy against judgement on divorce, cessation or declaring the marriage void, according to law in the state of origin.

¹⁵ Enforcement of judgements on enforcement of parental responsibility in relation to a child, issued in a member state where these judgements are enforceable and were delivered, is ordered in another member state according to article 28, the Brussels II bis Regulation, if these judgements were declared there as enforceable, on proposal of any involved party.

¹⁶ According to the Brussels II bis Regulation, the local jurisdiction is defined according to common address of the person against whom the enforcement of judgement is proposed or according to common address of any child to which the proposal is related.

the proposal for issue of the declaration of enforceability is presented, mustn't review the judgement objectively, as in case of proceedings of recognition, and it is obligated to decide on it immediately. In terms of proceedings of the declaration of enforceability, neither a person nor a child, against whom the enforcement is proposed, is entitled to make any **comments** to the proposal. The proposal for declaration of enforceability can be rejected by the court, as compared to the procedure defined in the Brussels I Regulation, by the same reasons by which the recognition of judgement can be denied.

Any party can lodge a legal remedy against the judgement on a proposal for issue of the declaration of enforceability, which is delivered¹⁷ according to conditions set by the legal order of the state of enforcement, within one month¹⁸ after delivery of the judgement. Regarding the fact that a legal remedy is discussed according to regulations regulating the procedure in disputable proceedings, the parties have the possibility to comment on the matter not only in writing but also in a verbal form and so can be summoned for verbal hearing. If the legal remedy was lodged by a person who also proposed the declaration of enforceability, the court is obligated to summon the party against which the enforcement is proposed.¹⁹

The second way of recognizing and enforcing the judgement which is regulated by the Brussels II bis Regulation is so-called **special accelerated enforcement of judgement** which concerns the right for contact with a child²⁰ and return of a child which was taken away or held without justification. The principle of these shortened proceedings is protection of child's interests and rights. According to article 40, section 1 et seq. of the Brussels II bis Regulation, the judgement issued in a member state is automatically recognized without the necessity of declaring the enforceability of judgement whereas it is applied that it isn't possible to apply objections and at the same time the lodgement of a legal remedy isn't considered. This advantageous regime for exactly defined decisions is however facultative, i.e. that a justified person can choose whether he/she lets certify the judgement and consequently presents a proposal for enforcement or insists on the declaration of enforceability.

As indicated by the above mentioned facts, the certificate elaborated by the court in a pre-defined form²¹ and in the language of judgement is attached to the judgement in terms of a special accelerated regime. It isn't possible to lodge any legal remedy against the certificate issued for simplification of the enforcement of judgement. A legal remedy should be acceptable only in cases of an objective fault, i.e. if the certificate doesn't express the exact content of judgement whereas it is applied that in case of the necessity of corrections of the certificate, the law of the member state of origin is followed.²² Issue of a certificate

¹⁷ The proposer is obligated to provide the delivery address in court's district to which he/she presents the proposal, according to the Brussels I Regulation as well as the Brussels II bis Regulation. In case that the legal order of the state of enforcement doesn't set this obligation, the proposer is obligated to define a special representative.

¹⁸ In case that the opponent has his common address in another member state than in the state where the judgement was issued, he/she has a two-month period for the lodgement of a legal remedy.

¹⁹ VAŠKE, V. *Uznání a výkon cizích rozhodnutí v České republice*. 1. vyd. Praha: C. H. Beck, 2007, 491 p.

²⁰ According to article 2, section 10, the Brussels II bis Regulation, "Right for contact with a child" includes mainly the right to take the child to a place different from the place of its common address for a limited period.

²¹ Form in attachment III, the Brussels II bis Regulation (certificate concerning the right for contact with a child) and form in attachment IV, the Brussels II bis Regulation (certificate concerning child's return).

²² Compare article 43, section 1, the Brussels II bis Regulation and point 24, preamble of the Brussels II bis Regulation.

declares the accuracy of judgement as regards its procedure as well as content, i.e. that there are no inaccuracies which could lead to denial of the recognition of judgement.

The Brussels II bis Regulation sets **conditions for issue of a certificate**²³, separately for judgements on the right for contact with a child and for judgement on child's return. At the moment of legal force of **judgement on the right for contact with a child**, the court issues automatically a certificate (if it is a relation with an international principle) provided that:

1. in case of issue of an judgement because of default if the person who didn't appear in proceedings was notified about proceedings initiation in writing in advance and in a way which would enable this person preparation for legal proceedings, or if the document was delivered to the person but not in compliance with these conditions but it is ensured that this person accepted the judgement definitely;
2. all involved parties got the opportunity to be heard out;
3. the child got the opportunity to be heard out if the hearing wasn't considered as unsuitable with regards to the age and level of child's maturity.

The judge can issue a **certificate concerning judgement on child's return** if:

1. the child got the opportunity to be heard out if the hearing wasn't considered as unsuitable with regards to the age and level of child's maturity;
2. parties got the opportunity to be heard out;
3. when issuing its judgement, the court had a respect to reasons and facts on which base the judgement was issued.²⁴

In an effort to make protection of child's interests and rights more effective and by that reason also to accelerate the enforcement of judgement, the demand on simplification of the process of recognition and enforcement of judgement remains in this sphere, in my opinion, because demands in the sphere of family law should be automatically recognized without the necessity of declaring enforceability in the entire European Union, without the need for another proceeding and without the possibility of denial of enforcement, based on reasons for denial of the recognition of judgement.

Ad 2.) Next and also the last tool to the present which is presented in this article is **the Maintenance Regulation** which regulates issues of child support resulting from family relations, parenthood, marriage or affinity. The Maintenance Regulation replaced the Brussels I Regulation from 18/6/2011 as regards issues of maintenance.²⁵ The Maintenance Regulation is applied on judgements as well as decisions of administrative authorities, court settlements and public documents and is valid in all countries of the European Union, except for Denmark. One of its main tasks is to enable the person justified from maintenance the recognition of judgement in matters of child support, issued in a certain member state, and to achieve so an easier debt recovery from maintenance across borders,

²³ Regarding the nature of a certificate, see more in the judgement of the Court of Justice in case *Zarragou v. Pelz*, C-491/10 of 22/12/2010.

²⁴ According to article 13, the Hague Convention of 1980, on civil aspects of international kidnaps of children.

²⁵ It is necessary to add that the Maintenance Regulation doesn't apply to Denmark and judgements coming from Denmark continue to be recognized according to the Brussels I Regulation.

mainly in situations when the person obligatory from maintenance doesn't have any property only in the member state where he/she has his/her address. It is necessary to add that the recognition of judgement (either its enforcement) in matters of maintenance doesn't mean that the concerned member state recognizes family relations, parenthood, marriage or affinity which are the basis of child support leading to the given judgement.

In case of recognition and enforcement of judgement it is necessary to consider whether the state which issued the judgement applies or doesn't apply so-called Hague Protocol of 23/11/2007 on the law applicable for child support (hereinafter referred to as "Hague Protocol")²⁶. For judgements issued in a member state which isn't bound by the Hague Protocol, a different procedure of recognition is set, which results from the Brussels I Regulation, and also the obligation to conduct proceedings of the declaration of enforceability is defined. In both cases judgements are however limited by periods which should ensure the fastest procedure on behalf of the justified person.

As compared to other tools regulating the ways of recognition and enforcement of judgements, the Maintenance Regulation doesn't place an obligation, for the person justified from maintenance and presenting a proposal for recognition and enforcement of judgement in another member state, to have a postal address or an entitled representative in this member state of enforcement, mainly because of lower costs. The court is also obligated to use modern communication technologies as most as possible to decrease costs, mainly when hearing the parties out. The proposer, i.e. the person justified from maintenance, has also the right for providing legal aid which represents complete takeover of costs related to proceedings in matters of child support in relation to children under 21 years and also in other cases specified in article 44 et seq. of the Maintenance Regulation. The Maintenance Regulation recognizes however also the right to exact costs for proceedings and costs for free legal aid in exceptional cases, mainly as regards a wealthy person who didn't act in good will. In case of exacting costs incurred by using this regulation, it doesn't however take precedence over exacting of maintenance. It isn't also possible to ask the proposer for giving security, caution, deposit, whatever its title is, for purpose of creating a guarantee for payment of costs and expenses for proceedings in matters of child support.

Because of an effective acceleration of the procedure of maintenance exacting across borders, the Maintenance Regulation regulates preliminary enforceability of judgement when the court of origin can declare the judgement as preliminarily enforceable regardless the possible legal remedy also in case that the national law doesn't define enforceability of judgement by law.

To simplify cross-border debt exacting of maintenance, the Maintenance Regulation also regulates cooperation of central bodies set by member states. These bodies should provide aid for justified as well as obligatory parties when executing their rights in another member state by presenting proposals for recognition, declaration of enforceability and for enforcement of already issued judgements, for the change of these judgements or for

²⁶ Based on this criterion, operation of individual parts of the Maintenance Regulation is defined. The third part (common provisions) is used for all judgements regardless obligatory force of the Hague Protocol. On the other hand, the first part can be used only for judgements of the state bound by the Hague Protocol and the second one only for judgements of the state not bound by the Hague Protocol.

receipt of judgements. Central bodies should exchange also information for purpose of finding out a place where the obligatory or justified person stays, or for purpose of finding out their incomes and property. The central body in the Czech Republic is the Office for International Legal Protection of Children, registered office in Brno.

Let's come back to both ways of recognition and enforcement of judgements regulated by the Maintenance Regulation, in more detail. **Recognition and enforcement of judgements coming from member states of the EU which apply the Hague Protocol** is less formal than in case of judgements coming from member state of the EU which don't apply the Hague Protocol. Judgements issued in a member state are recognized by another member state without the necessity of special proceedings, issue of the declaration of enforceability and without the possibility to attack this judgement.

Because of ensuring the observance of rights for a fair trial, the Maintenance Regulation sets opponent's possibility to present a proposal for the review of judgements at the appropriate court of a member state during the phase of the enforcement of judgement but the right for review should be an extraordinary legal remedy provided only when meeting several conditions.²⁷ The right to present a proposal for review belongs to the opponent who didn't take part in proceedings in the member state of origin if he meets one of two following conditions:

1. if the proposal for initiation of proceedings or other equal document wasn't delivered to the opponent in advance and in a way which enables him preparation for a judicial process;
2. if the opponent couldn't express himself to the outstanding from maintenance because of force majeure or because of extraordinary circumstances without any mistake from his/her side.

The above mentioned facts aren't however applied in case that the opponent didn't use any legal remedy against the judgement though he had the possibility to defend himself against the judgement in this way. The proposal for review has to be presented within 45 days²⁸ after the opponent really acquainted with the content of judgements and could reply to them. The latest term is after receipt of the first provision in terms of an enforcement leading to the fact that the opponent can't dispose of his property, completely or partially. If the court decides on justification of the review based on meeting the above mentioned conditions, the judgement is invalid *ex tunc*, otherwise the judgement remains valid and the court denies the proposal for review. However, the verdict of emptiness of the judgement doesn't have effects on the right for reverse lodgement of claims on maintenance, gained in the original proceedings, nor on advantages of interruption of a limitation period or preclusion.

An important acceleration of the entire process as well as decrease of its costs represents the fact that the judgement issued in the member state bound by the Hague Protocol and enforceable in this state is enforceable in another member state without the necessity of

²⁷ The right for review shouldn't affect utilization of other extraordinary legal remedies set by the law of the member state of origin if these legal remedies aren't incompatible with the right for review.

²⁸ In this case it is applied that the period can't be prolonged because of distance.

declaration of its enforceability (*exequatur*). It is the same procedure of recognition and enforcement of judgement like the procedure regulated by the Brussels II bis Regulation or the Regulation on a European Payment Procedure. Because of removal of formalities and acceleration of maintenance exacting, it is enough for the bodies appropriate for enforcement that the proposer presents the following documents for enforcement of a judgement in another member state:

1. one copy of the judgement which meets conditions necessary for the recognition of its authenticity;
2. abstract of the judgement, issued by the court of origin in a sample form which is mentioned in attachment I of this regulation;
3. or a document which confirms the status of arrears and mentions the date of calculation;
4. or transcription or translation of the content of the above mentioned sample form into the official language of the member state of enforcement but the translation can't be required from the proposer.²⁹

Enforcement of judgement can be also postponed based on the proposal of the obligatory person, partially or completely refused in case that the right for enforcement of judgement became null and void in consequence of limitation or according to law of the member state of origin. Another reason for refusal of enforcement of judgement, in case that the obligatory person proposes it, is incompatibility³⁰ of enforcement

1. with judgement issued in the member state of enforcement;
2. with judgement issued in another member state;
3. with judgement issued in the third state and meeting conditions necessary for the recognition in the member state of origin.

On the proposal of the obligatory person the appropriate authority in the member state of enforcement can completely or partially postpone the enforcement of judgement of the court of origin under the condition that the proposal for review of a judgement of the court of origin was presented to the appropriate court in the member state of origin. Except for the above mentioned facts, the appropriate authority of the member state of enforcement postpones enforcement of judgement if its enforceability is postponed in the member state of origin but based again only on the proposal of the obligatory person.

The second way of recognition and enforcement of judgement in member states, regulated by the Maintenance Regulation, concerns **judgements coming from member states of the EU which don't apply the Hague Protocol**.³¹ In this case the judgements are also recognized in other member states without any special proceedings. The process of recognition and enforcement of judgement consists of three phases, as compared to judgements coming from member states of the EU which apply the Hague Protocol:

²⁹ Translation can be however required in case that the enforcement of judgement is attacked.

³⁰ Judgement, by which the previous judgement in matters of child support changes because of the change of circumstances, isn't however considered as incompatible.

³¹ This procedure of recognition and enforcement of judgement is applied on judgements coming from Great Britain.

1. recognition of judgement;
2. declaration of enforceability of judgement;
3. enforcement of judgement.

Proceedings of recognition are initiated on a proposal which can be presented by either party which enforces recognition of judgement as a main point in the given dispute. The Maintenance Regulation in article 24 as well as the Brussels I Regulation or the above mentioned Brussels II bis Regulation sets reasons by which the court is obligated to **refuse recognition of judgement**. Such reasons are again a conflict with public order, obstruction res iudicata and other reasons which are common for most other tools regulating recognition and enforcement of judgement. Proceedings of recognition can be also interrupted by the court in case that a legal remedy, to which the postponement of enforceability of judgement is related, was lodged in the state of origin. The question of recognition of judgement can be solved also as a preliminary question at the court of a member state.

Next phase is the declaration of judgement as enforceable because it is applied that the judgement which was issued in a member state, which isn't bound by the Hague Protocol, and which is enforceable in this state will be enforced in another member state after it was declared as enforceable on the proposal of any involved party. **The proposal for declaration of enforceability** is presented at the court or appropriate authority of the member state of enforcement according to common address of the party, against which the enforcement is proposed, or according to the place of enforcement of judgement. The same documents which have to be attached for the enforcement of judgements coming from member states of the EU, which apply the Hague Protocol, will be attached to the proposal. However, in this case the Maintenance Regulation sets that the court or appropriate authority can:

1. define the period for presenting an abstract from judgement if it isn't presented;
2. accept an equal document;
3. or remit presenting of an abstract if the court doesn't consider further clarification as necessary.

Judgement is declared as enforceable³² within 30 days after fulfilment of formal requirements at the latest, i.e. after presenting documents which have to be attached to the judgement. The court is obligated to announce this judgement to the proposer without delay and according to legislation of the member state of enforcement. Either party is entitled to lodge a legal remedy against the judgement on the proposal for declaration of enforceability at the appropriate court within 30 days³³ after delivery of the declaration. Within the period of 30 days for the lodgement of a legal remedy, it is possible to take only

³² In case that a judgement with more claims is issued and the declaration of enforceability can't be fulfilled to the full extent, the court or appropriate authority issues the declaration of enforceability for one or more claims.

³³ However in case that the party against which the enforcement is proposed has common address in another member state than in the state where the declaration of enforceability was issued, this period is 45 days and begins on the day of delivery of the declaration of enforceability to the party, against which the enforcement is proposed, personally or to his/her address. In other cases the court at which a legal remedy was lodged issues the judgement within 90 days after this lodgement, except for cases when it isn't possible because of extraordinary circumstances.

measures for security of property of the party against which the enforcement is proposed. The court at which the legal remedy was lodged denies or cancels the declaration of enforceability only by reasons which are also reasons of refusal of its recognition. Proceedings of the enforcement of judgement issued in another member state follow the law of the member state of enforcement but exclusively of questions regulated by the Maintenance Regulation.³⁴ The prohibition of discrimination is applied in this case too because the judgement issued in another member state will be enforced under the same circumstances as judgement issued in the member state of enforcement.

In the following provisions, the Maintenance Regulation offers a summary of proposals which are at disposal of the justified as well as obligatory person in terms of recognition and enforcement of judgements whereas it defines content terms of proposals as well as terms of their presentation, acceptance and handling via central bodies. The Maintenance Regulation represents so an important tool of protection of weaker individuals and possibilities of fast and effective right's exacting on the European scale whereby crosses borders of individual countries.

In a nutshell it is possible to define the process in which each common citizen of the European Union has to enforce his/her civil interests in terms of the EU law³⁵ if he/she intends to achieve enforcement of a judgement in another EU state. It is obvious that from a normative viewpoint, difficult regulations are mentioned; they include many various exceptions which make the orientation in a system less clear. I would take the liberty to submit that the achievement of enforcement of a judgement in another EU country is hardly available for a common citizen without minimal professional aid.

If I defended my article with a reflection on the fact that my own professional experience inspired me to write this article, it would be suitable to insert details of a real story into this legal framework to manifest that the Czech courts face up to conditions, set by quoted regulations, in a complicated way.

The basis for judgement of the Czech court was the proposal of a single mother³⁶ for payment of maintenance by the father who was a citizen of the Federal Republic of Germany where he had also his permanent address. His son, Petr, whose custody was given to the mother, citizen of the Czech Republic, by judgement of the Court of Appeal of 20/5/2010 in connection with judgement of the Court of First Instance of 30/9/2009. The obligation to pay maintenance for the infant son, Petr, in the amount of CZK 5.000 monthly from 1/9/2009 was placed to the father. The mentioned judgement of the Municipal Court in Praha set also father's debt from maintenance for the period of 1/10/2007 – 31/5/2010 in the amount of CZK 134.120. This debt should have been paid by the father till 31/8/2010. Regarding the fact that the father didn't pay the debt from maintenance even after 7 months after the judgement entered into effect, the Proposal for enforcement of judgement on payment of CZK 134.120 with accessions was presented at the court by

³⁴ These are mainly issues regulating the content and scope of legal aid as well as its providing but also issues concerning formal terms of proposals and their attachments, etc.

³⁵ ELISCHER, D., TOMÁŠEK, M. *Evropské soukromé právo*. In: DVORÁK, J., ŠVESTKA, J., ZUKLÍNOVÁ, M. a kol. *Občanské právo hmotné 1*. Praha: Wolters Kluwer ČR, 2013, pp. 99–102.

³⁶ PAUKNEROVÁ, M., RŮŽIČKA, K. a kol. *Rekodifikované mezinárodní právo soukromé*. Praha: Univerzita Karlova v Praze, Právnická fakulta, 2014, p. 98.

infant Petr represented by his mother. However, the Court of First Instance stopped the proceedings and stated the reason that the father of infant Petr doesn't have any property in the Czech Republic and that courts of the Czech Republic don't have jurisdiction to order a foreign court to issue a judgement on enforcement of judgement provided that such a proposal has to be made directly at the locally and objectively appropriate court of the Federal Republic of Germany which decides on the order of enforcement. Based on the fact that the obligatory person really didn't have any property in the Czech Republic, it was necessary to choose another way of maintenance exacting than via the Czech courts. Regarding the fact that the judgement on child support was issued before 18/6/2011 – the Maintenance Regulation is applicable from this date – it was necessary to follow the Brussels I Regulation including a very difficult, by the Regulation set, inter-step of the declaration of enforceability. According to article 53, section 2, the Brussels I Regulation, the party which presents a proposal for declaration of enforceability has to present also a certificate which is issued on request, in a standard form mentioned in attachment V of the Brussels I Regulation by the court of the member state where the judgement was issued. Only a certified translation of the above mentioned judgements was delivered, instead of a certificate, approximately after two months by the district court. Regarding the necessity of this certificate for enforcement in Germany, the single mother had to contact via her lawyer the judge who handled the given case and ask him for sending the mentioned certificates provided that she mentioned which certificates she needs and where they can be found. There was a kind of instruction from applicant's side how to elaborate necessary documents to be able to initiate proceedings of the enforcement of judgement abroad. Approximately after next two months, the required certificates of both judgements were delivered from the court in the German language. Subsequently, the mother presented a proposal for declaration of enforceability at the locally appropriate court defined according to attachment II of the Brussels I Regulation. After several next months, the declaration of enforceability of judgement of the Court of Second Instance was delivered to us. Afterwards, the mother could present a proposal for the enforcement of judgement according to legislation of the Federal Republic of Germany, together with the criminal complaint of malpractice. The entire case has continued in the Federal Republic of Germany up to the present day and the judgement concerning the achievement of maintenance for the infant boy hasn't been enforced yet.

Therefore we can state that proceedings of the declaration of enforceability slow down and complicate the entire process of recognition. It is necessary to designate also the considerable period, until the certified translations of judgements and subsequent certificates are executed by the national court, as a complicating factor. If the EU tries to remedy this lengthy process by the new Maintenance Regulation, we can already welcome the new legislation because judgements issued after 18/6/2011 will be executed faster. We can hope that the Czech jurisdiction will adapt itself to this change too.

CONCLUSION

The basic question connected with recognition and enforcement of judgments within the European Union was whether it is a simple and reasonably fast process. It is obvious that in terms of the **Brussels II bis** Regulation, there has been a simplification and accel-

eration of the enforcement of judgements proceedings especially in areas related to the child's right for contact with their parents and in the cases of return of a child which was taken away or held without justification.

From the perspective of the overall evaluation of the second legal instrument which is analysed in this article, i.e. the Maintenance Regulation, there is a double standard process of recognition and enforcement of judgements. The basic difference makes the application of the Hague Protocol. The countries that apply The Hague Protocol in the process of recognition for enforcement of judgements allow less formal judicial process, which can be more easily approached by the citizens of EU. Those countries that do not apply The Hague Protocol use procedural mechanism more complex, as it consists of three phases, which are more time consuming.

Generally speaking, the process of recognition and enforcement of judgements within the EU is not a proceeding, which an ordinary citizen could claim alone because the existing complexity of the process requires professional legal aid.