

# Enforcement of Foreign Judgments

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Fundamental Principles [Czech Republic]

2020



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## **I. RECOGNITION AND ENFORCEMENT OF A FOREIGN COURT DECISION (CIVIL AND COMMERCIAL MATTERS)**

### **A. Ability to Apply for Recognition and Enforcement of a Court Judgment**

#### **1. Is it possible to apply for enforcement of a foreign court judgment in your country?**

**Answer:** Yes.

The recognition of a foreign judgement in property matters is not announced by means of a special statement. The foreign judgement is recognised by means of the fact that a body of a Czech public authority takes it into consideration, as if it were a judgement of a Czech public authority body. Foreign judgements on other matters are recognised upon the basis of a special judgement.

### **B. Applicable Law: General Rules**

#### **1. Which laws are generally applicable to the enforcement of a foreign court judgment in your country?**

**Answer:** The procedure is set out in Chapter III of the Act governing private international law (No. 91/2012 Coll.).

<https://www.cak.cz/assets/pro-advokaty/mezinarodni-vztahy/act-governing-private-international-law.pdf>

### **C. Special Rules: European Union**

#### **1. Are there any special rules regarding the enforcement of a foreign court judgment in your country?**

**Answer:** Yes, especially the EU legislative acts that together form the Brussels Regime. These are the Recast Brussels Regulation (EU) 1215/2012 and the 2001 Brussels Regulation (EC) 44/2001.

Czech Republic is a part of multilateral agreements such as the 2007 Lugano Convention (which replaced the 1988 Lugano Convention and which is applicable to judgments from Switzerland, Norway and Iceland), the Brussels Convention and the 2005 Hague Convention on Choice of Court.

Bilateral agreements between the Czech Republic and other countries (e.g. Switzerland (1926), Portugal (1927), France (1984), etc.) are not applicable due to EU law primacy.

If none of these acts apply, the judgment will be enforced in accordance with the Act governing private international law (No. 91/2012 Coll.).

**2. Does the European Union have a special procedure to enforce court judgments coming from its member states?**

**Answer:** Yes. Any claimant with enforceable court decision from one of the member states can enforce it in any other member state without any other special proceeding.

Civil and commercial court proceedings commenced on or after 10 January 2015 in which a decision has been made, would be governed by the Recast Brussels Regulation which has direct effect in all EU member states. The Regulation orders member states to recognise judgements from other member states without requiring any previous separate procedure (unlike the exequatur procedure required by previous Brussels Regulation (2001)).

The procedure for the enforcement of judgments given in another member state shall be governed by the law of the Member State addressed (Article 41(1)).

The previous Brussels Regulation, (2001) Brussels Regulation, still applies to the proceedings that started and/or were decided prior to 10 January 2015, meaning that exequatur procedure will be required prior to the enforcement procedure itself.

There are also a number of simpler expedited procedures available in specific circumstances:

- For uncontested judgments the European Enforcement Order procedure can be followed which is found in the EEO Regulation (Council Regulation 805/2004/EC). Under this procedure, an uncontested judgment of a member state (with the exception of Denmark) is automatically enforceable in another member state. An application for an EEO certificate must be made. This option is quicker and simpler than the above-mentioned regimes.
- The European Small Claims Procedure (Regulation (EC) 861/2007) sets out a simplified procedure for civil or commercial cross-border claims with a value of up to €5,000 (previously €2,000).
- The European Order for Payment Procedure (Regulations (EC) 1896/2006 and 936/2012) can be used for cross-border uncontested money claims.

**D. Average Duration of Enforcement Procedure**

1. What is the average length of time for this kind of procedure?

**Answer:** Usually around 6 months. If the decision is challenged, the procedure can last even longer than a year.

**II. Denial of Recognition and Enforcement of a Foreign Court Judgment: Reasons**

**A. Can a Court in your country deny recognition and enforcement of a foreign court judgment? If YES: what kind of reasons may justify denial?**

**Answer:** Yes.

Section 15 of the Act governing private international law, No. 91/2012 Coll., provides:

(1) Unless otherwise stated in the further provisions of this Act, it is not possible to recognise a final and conclusive foreign judgement, if

a) the matter falls under the exclusive jurisdiction of Czech courts or if the proceedings could not have been undertaken by an authority in a foreign state, if the provisions pertaining to the jurisdiction of the Czech courts had been applied when assessing the jurisdiction of the foreign authority, unless the participant in the proceedings against whom the judgement is made has voluntarily submitted to the jurisdiction of the foreign authority;

b) if proceedings are underway before a Czech court with regard to the same legal relations and if said proceedings commenced prior to the proceedings abroad, in which the judgement whose recognition has been proposed was issued;

c) if a Czech court has already issued a valid judgement about the same legal relations or if the valid judgement of the body of a third state has already been recognised in the Czech Republic;

d) if a participant in the proceedings with regard to whom the judgement is to be recognised, has been deprived of the ability to duly participate in the proceedings by means of a procedure adopted by a foreign authority, especially if said participant has not been delivered a summons or the motion to commence the proceedings;

e) any such recognition would clearly contravene public order; or

f) reciprocity has not been guaranteed; reciprocity is not required if the foreign judgement is not aimed at a citizen of the Czech Republic or a Czech legal entity.

(2) The impediment set out in subsection 1, letter d) is only taken into account, if the participant in the proceedings against whom the foreign judgement should be recognised requests so. This also applies in the case of the impediments set out in subsection 1, letters b) and c), unless the body deciding on the recognition is otherwise aware of their existence.

Where the Recast Brussels Regulation applies, reasons to refuse recognition and enforcement of a judgment are as set out in Articles 45 and 46:

Article 45 stipulates as follows:

1. On the application of any interested party, the recognition of a judgment shall be refused:

(a) if such recognition is manifestly contrary to public policy (*ordre public*) in the Member State addressed;

(b) where the judgment 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 judgment when it was possible for him to do so;

(c) if the judgment is irreconcilable with a judgment given between the same parties in the Member State addressed;

(d) if the judgment is irreconcilable with an earlier judgment given in another Member State or in a third State involving the same cause of action and between the same parties, provided that the earlier judgment fulfils the conditions necessary for its recognition in the Member State addressed; or

(e) if the judgment conflicts with:

(i) Sections 3, 4 or 5 of Chapter II where the policyholder, the insured, a beneficiary of the insurance contract, the injured party, the consumer or the employee was the defendant; or

(ii) Section 6 of Chapter II.

2. In its examination of the grounds of jurisdiction referred to in point (e) of paragraph 1, the court to which the application was submitted shall be bound by the findings of fact on which the court of origin based its jurisdiction.

3. Without prejudice to point (e) of paragraph 1, the jurisdiction of the court of origin may not be reviewed. The test of public policy referred to in point (a) of paragraph 1 may not be applied to the rules relating to jurisdiction.

4. The application for refusal of recognition shall be made in accordance with the procedures provided for in Subsection 2 and, where appropriate, Section 4.



Article 46 stipulates as follows:

On the application of the person against whom enforcement is sought, the enforcement of a judgment shall be refused where one of the grounds referred to in Article 45 is found to exist.

Where the 2001 Brussels Regulation applies, reasons to deny enforcement include:

- Failure to comply with the formalities as set out in Articles 53-54 of the 2001 Brussels Regulation.
- One of the grounds set out in Articles 34 and 35 of the 2001 Brussels Regulation (which largely correlate with Article 45 of the Recast Brussels Regulation).

Where the Hague Convention applies (currently to judgments from Mexico and Singapore):

- The enforcing court must be satisfied that the original court was designated in an exclusive choice of court agreement.
- The foreign judgment must be enforceable in its country of origin.
- The enforcing court cannot review the merits of the judgment.

Article 9 of the Hague Convention provides that recognition or enforcement may be refused if:

a) the agreement was null and void under the law of the State of the chosen court, unless the chosen court has determined that the agreement is valid;

b) a party lacked the capacity to conclude the agreement under the law of the requested State;

c) the document which instituted the proceedings or an equivalent document, including the essential elements of the claim,

i) was not notified to the defendant in sufficient time and in such a way as to enable him to arrange for his defence, unless the defendant entered an appearance and presented his case without contesting notification in the court of origin, provided that the law of the State of origin permitted notification to be contested; or

ii) was notified to the defendant in the requested State in a manner that is incompatible with fundamental principles of the requested State concerning service of documents;

d) the judgment was obtained by fraud in connection with a matter of procedure;

e) recognition or enforcement would be manifestly incompatible with the public policy of the requested State, including situations where the specific proceedings leading to the judgment were incompatible with fundamental principles of procedural fairness of that State;

f) the judgment is inconsistent with a judgment given in the requested State in a dispute between the same parties; or

g) the judgment is inconsistent with an earlier judgment given in another State between the same parties on the same cause of action, provided that the earlier judgment fulfils the conditions necessary for its recognition in the requested State.

Where bilateral arrangements apply, then the provisions of those Acts apply.

## **B. Costs and expenses**

### **1. What kind of cost and expenses can a claimant expect in this enforcement procedure?**

**Answer:** Court fees as stipulated in the Annex to the Act of Court Fees (No. 549/1991 Coll.)

Translation fees.

Lawyers' fees which will vary depending on the amount of money to be collected.

Costs of enforcement which will depend on the method of enforcement used.

## **III. FORMAL REQUIREMENTS**

### **A. Time limit**

#### **1. Is there a time limit to apply for enforcement of a foreign court judgment?**

**Answer:** There are no limitation periods under the Recast Brussels Regulation, the 2001 Brussels Regulation, the Brussels Convention or the 2007 Lugano Convention. Bilateral treaties between the Czech Republic and third country outside the EU as well as other treaties or statutes might contain their own terms.

**B. Final and Definitive Court Judgment: Provisional Enforcement**

1. **Is it mandatory for the judgment to be a final and definitive court judgment?  
If NO: Are there any special requirements to provisionally enforce a court judgment which is not final and definitive?**

**Answer:** No. The party may enforce a preliminary injunction if it was issued under the same requirements.

**C. Necessary Requirements**

1. **What necessary requirements must the foreign court judgment fulfill to be recognised and enforced?**

**Answer:**

The judgement has to be certified / declared enforceable in another member state within the EU Brussels Regime.

Any additional requirements might be set out in multilateral or bilateral treaties / statutes.

According to the Czech law:

- a) The judgment was issued by court of a foreign state or by authorities of a foreign state.
- b) The judgement have come into legal force and that has been confirmed by appropriate authority.
- c) The judgement has been recognized by the Czech public authorities.

**D. Other Formal Requirements: Court Fees**

1. **Is it mandatory to pay court fees for this kind of application?**

**Answer:** Yes. There will be a court fee payable for the application to register the judgment where the registration is necessary as stipulates the Annex to the Act No. 549/1991 Coll. There will also be further fees depending on the method of enforcement chosen.

- E. Are there any other formal requirements in your country to enforce a court judgment?**

**Answer:** No.

**IV. PROCEDURE**

**A. Competent court**

**1. Which court or courts are competent to decide an enforcement application?**

**Answer:** Where the registration of the judgment is necessary, the application must be made to the general court of the party which proposes the recognition or otherwise to the district court of the area where the fact significant for the act of recognition has occurred.

**B. Informational Requirements for the Application to Enforce a Foreign Court Judgment**

**1. What information must be contained in the enforcement application of a foreign court judgment?**

**Answer:** Generally speaking the information required includes:

- The name of the judgment creditor and their address for service within the jurisdiction.
- The name of the judgment debtor and their address or place of business, if known.
- The legal grounds on which the judgment creditor is entitled to enforce the judgment.
- In the case of a money judgment, the amount in respect of which it remains unsatisfied.
- Where interest is recoverable, both (i) the amount of interest which has accrued up to the date of the application; or (ii) the rate of interest, the date from which it is recoverable and the date on which it ceases to accrue.

**C. What documents must be included with/attached to the application to enforce a foreign court judgment?**

**Answer:** There is no need to register a foreign judgment under the Recast Brussels Regulation. For a judgment to be enforced under the Recast Brussels Regulation:

- The judgment creditor must provide:
  - a) a copy of the judgment which satisfies the conditions necessary to establish its authenticity; and
  - b) a certificate from the court of origin issued in the form set out at Annex 1 to the Recast Brussels Regulation certifying that the judgment is enforceable and containing an extract of the judgment

as well as relevant information on the recoverable costs of the proceedings and the calculation of interest.

- c) In some cases, a translation or transliteration may be necessary.
- d) Where the measure was ordered without the judgment debtor being summoned to appear, proof of service of the judgment.
- The certificate must be served on the judgment debtor prior to the first enforcement measure. The certificate shall be accompanied by the judgment, if not already served on that person.

Greater detail can be found in Articles 39 – 44 of the Recast Brussels Regulation.

For enforcement under the 2001 Brussels Regulation, the following documents will be required: form N244 application notice, supporting witness statement, authenticated copy of judgment, translation (if necessary) certificate in form of Annex V to the 2001 Brussels Regulation, written statement regarding interest, court fee.

Bilateral treaties / statutes and the Hague Convention – the requirements are set out differently. In the Hague Convention the documents to be produced are specified in Article 13.

#### **D. Phases of the Procedure**

##### **1. What are the phases of the procedure to enforce a foreign court judgment?**

- Answer:
- 1. Registration where necessary
  - 2. Period for challenge
  - 3. Enforcement proceedings, e.g. seizure of goods, charging order, third party debt order etc.

#### **E. Opposition of the Defendant**

##### **1. Can a defendant oppose to this enforcement application?**

Answer: Yes.

##### **2. Are there a limited number of reasons for the defendant to oppose to the enforcement of the court judgment? If YES: what are those reasons?**

Answer: See answer to II A above.

## **F. Appeal and its Consequences in this Procedure**

### **1. Is it possible to appeal a court decision to recognise and enforce a foreign court decision?**

**Answer:** Yes.

### **2. Can this appeal suspend the enforcement?**

**Answer:** Under the Recast Brussels Regulation, no declaration of enforceability is required from the Czech court to enforce the foreign judgment.

Under Article 49 of the Recast Brussels Regulation, the decision on an application for refusal of enforcement may be appealed against by either party. Under Article 51, the court to which an application for refusal of enforcement is submitted or the court which hears an appeal lodged under Article 49 or Article 50 may stay the proceedings if an ordinary appeal has been lodged against the judgment in the EU member state of origin or if the time for such an appeal has not yet expired. In the latter case, the court may specify the time within which such an appeal is to be lodged.

Under Article 43 of the 2001 Brussels Regulation, the decision on the application for a declaration of enforceability may be appealed against by either party. Under Article 46.1, the court with which an appeal is lodged under Articles 43 or 44 may, on the application of the party against whom enforcement is sought, stay the proceedings if an ordinary appeal has been lodged against the judgment in the EU member state of origin or if the time for such an appeal has not yet expired; in the latter case, the court may specify the time within which such an appeal is to be lodged.

Bilateral treaties between the Czech Republic and third country outside the EU as well as other treaties or statutes might contain their own terms.

According to the Czech law the enforcement of a foreign judgment is suspended until the appellate court renders a judgment.

## **G. Recovery of judicial costs and expenses**

### **1. Are there any rules concerning recovery of the judicial costs incurred as a result of the enforcement application?**

**Answer:** Generally the starting point is that the court will order that the judgment debtor pays the judgment creditor's costs. However, the court will also take into account the previous conduct of the parties when deciding who should pay the costs of the application.

## **V. RECOVERY OF THE DEBT**

### **A. Means of Enforcement**

**1. What types of assets are subject to enforcement of the court's judgment?**

**Answer:** All available assets of the debtor are:

Charging order over land / property / shares, potentially with an order for sale

Seizing of debtor's property by court officer or bailiff for sale to raise funds to satisfy the debt

Earnings by an attachment of earnings order

Third party debt order

Other assets (except those essential for the debtor to work / live) by insolvency

**VI. OTHER ISSUES OF INTEREST IN YOUR JURISDICTION**

**A. Any other issues of interest in your jurisdiction**

**Answer:** N/A

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