UNIVERSITÀ DEGLI STUDI DI MILANO
DIPARTIMENTO DI STUDI INTERNAZIONALI, GIURIDICI E STORICO-POLITICI

Towards more EFfective enFORcemenT of claimS in civil and commercial matters within the EU EFFORTS

https://efforts.unimi.it

Project JUST-JCOO-AG-2019-881802

With financial support from the Civil Justice Programme of the European Union

In partnership with:

Dipartimento di Studi Internazionali, Giuridici e Storico - Politici
Via Conservatorio, n°7 – CAP 20122 Milano, Italy
Tel +39-02-50321058 – Fax +39-02-50321050

UNIVERSITÀ DEGLI STUDI DI MILANO
DIPARTIMENTO DI STUDI INTERNAZIONALI, GIURIDICI E STORICO-POLITICI

Report on Lithuanian Case Law

Lithuania

Drafted by: Assoc. prof. Rimantas Simaitis, assoc. prof. Vigita Vebraite, researcher Milda Markeviciute

I. Pre-selection

Under the Lithuanian law, only the Supreme Court and the Court of Appeals are considered as forming precedents. Therefore, in this report only the cases of these two courts were reviewed. In order to pre-select the cases, the time span of the cases was not limited. Although there were a large number of cases discussing Brussels I bis Regulation, almost none of the publicly available case law concerns Chapter 3.

In cases where there were a lot of cases of discussing the respective regulation in similar context, newer cases were referred to as an example. Only the cases that are public (analysed not in a closed hearing in order to protect sensitive personal, family, commercial or state information) were reviewed using the publicly available search engine Infolex.

II. Brussels I bis Regulation and its predecessor Brussels I Regulation

Although there were a large number of cases discussing Brussels I bis Regulation, none of the publicly available case law concerns Chapter 3. It is noteworthy that it is the Court of Appeals that decides on issues regarding Chapter 3 of the Brussels I bis regulation, therefore, it is not possible that cases of such nature would have been decided at the courts of lower instance.

III. European Enforcement Order Regulation (EEOR)

In Lithuanian case-law the EEOR is applied more frequently in comparison with the EPOR, ESCPR and EAPOR. However, in majority of cases the regulation is discussed not thoroughly, limiting to quoting of the EEOR clauses. However, there were a few more interesting cases.

In one of the cases, the court ruled that although legal fiction rules on service of procedural documents are sufficient in order to adopt a decision *in absentia* under national rules, they are not sufficient to issue a European Enforcement Order (Clause 13 of the preamble of EEOR).[1] In another case the court also ruled that a pre-emptive notice of the respondent that it will not appear in the hearing also indicating the reasons thereof cannot be equated to unchallenging the claim and silent consent with the claim.[2]

Another frequent issue – the question whether the enforcement proceedings of the European Enforcement Order have to be conducted additionally in order to enforce the respective order. The answer provided by the court is negative (Art. 20(1) of the EEOR).[3]

Lithuanian courts also noted that the notary public cannot issue a European Enforcement Order regarding bill of exchange (*vekselis*) if the initial note challenges the enforcement record.[4] The courts also ruled that in case the notary public issues respective European Enforcement Order, applications regarding cancellation or correction of the order fall into the jurisdiction of the court in which territory the respective notary-public practices.[5]

In the case-law it is also stated that in cases where only a part of the decision complied with the conditions required, a European Enforcement Order may be issue only in this part.[6]

The courts also stated that the decision to issue the European Enforcement Order is to subject to appeal: such procedural decision cannot be reviewed using usual rules and steps

[1] The Court of Appeals of the RoL 10.06.2021, No. e2-519-464/2021 https://www.infolex.lt/tp/2001579.
[2] The Court of Appeals of the RoL 22.08.2019, No. e2-639-943/2019 https://www.infolex.lt/tp/1755285.
[3] The Court of Appeals of the RoL 28.02.2019, No. 2T-37-823/2019 https://www.infolex.lt/tp/1702715.
[4] The Supreme Cour of the RoL 28.06.2018, No. e3K-3-277-469/2018 https://www.infolex.lt/tp/1605176.
[5] The Court of Appeals of the RoL 09.08.2018, No. 2-1708/2011 https://www.infolex.lt/tp/217170.
[6] The Court of Appeals of the RoL 01.03.2018, No. e2-281-516/2018 https://www.infolex.lt/tp/1572985.

of appeal. Instead, the EEOR provides option to cancel the decision to issue the order if it is proven that the order was issued evidently illegally.[7]

IV. European Payment Order Regulation (EPOR)

8 cases of the higher instance courts (the Supreme Court and the Court of Appeals) can be found in which the EPOR is mentioned. In majority of them the EPOR is only briefly referred to as a part of general context, no issues of application are analysed.

In one of the cases the court was asked to grant the enforcement to the form G issued under the EPOR. The court ruled that the sole issue of form G does not establish that no exequatur is needed: other issues shall be also evaluated. The Court of Appeals established that the case was analysed on the merits following not the EPOR, but the applicable national rules of another member state (Italy). The court therefore ruled that issue at question falls into the scope of Regulation 44/2001.[8]

The Supreme Court has also referred to the EPOR as a part of comparative analysis of EPOR and national regulation on consumer credit, evaluating the rules that enable the court that analyses the application to ask for additional information supporting the claim on the merits (Arts. 7(1) and 9(1)).[9]

V. European Small Claims Procedure Regulation (ESCPR)

3 cases of the higher instance courts (the Supreme Court and the Court of Appeals) can be found in which the ESCPR is mentioned.

One case concerned situation in which the applicant asked the Court of Appeals to enforce the decision of the respective UK court under the ESCPR. The Court of Appeals ruled that

[7] The Supreme Cour of the RoL 10.10.2014 No. 3K-3-127/2014 https://www.infolex.lt/tp/797154.
[8] The Court of Appeals of the RoL 11.11.2014, No. 2T-74/2014 https://www.infolex.lt/tp/923372.
[9] The Supreme Court of the RoL 01.07.2020, Review No.AC-52-1, Case-Law No. 52, 2020 https://www.infolex.lt/tp/1951812.

no enforcement proceedings is necessary because the applicant has the right to apply to the bailiff submitting the standard form D and its translation alongside the copy of the decision itself and therefore terminated the case.[10]

In the other 2 cases the ESCPR was not directly applied.

VI. European Account Preservation Order Regulation (EAPOR)

20 cases of the higher instance courts (the Supreme Court and the Court of Appeals) can be found in which the EAPOR is mentioned.

In absolute majority of these cases the courts discuss clauses 5 and 14 of the preamble, establishing, respectively:

- national procedures for obtaining protective measures such as account preservation orders exist in all Member States, but the conditions for the grant of such measures and the efficiency of their implementation vary considerably;
- the conditions for issuing the Preservation Order should strike an appropriate balance between the interest of the creditor in obtaining an Order and the interest of the debtor in preventing abuse of the Order;
- the creditor should be required in all situations, to demonstrate to the satisfaction of the court that his claim is in urgent need of judicial protection and that, without the Order, the enforcement of the existing or a future judgment may be impeded or made substantially more difficult because there is a real risk that, by the time the creditor is able to have the existing or a future judgment enforced, the debtor may have dissipated, concealed or destroyed his assets or have disposed of them under value, to an unusual extent or through unusual action;
- the mere fact that the financial circumstances of the debtor are poor or deteriorating, in itself, constitute a sufficient ground for the issuing of an Order.

[10] The Court of Appeals of the RoL 05.09.2011, No. 2T-238/2011, https://www.infolex.lt/tp/223722.

These conditions for application of interim protective measures are generally discussed in the light of deciding whether to apply interim measures under the applicable Lithuanian law: the cases did not concern the direct application of the EAPOR.[11]

5 of the cases of the courts of higher instance concerned the application of the EAPOR itself where the applicant asked to issue a European Account Preservation Order.

In one of the cases the court of the first instance rejected the application to issue a European Account Preservation Order on the grounds that the claimant (i) did not submit evidence that there is a need to issue the order; (ii) did not submit evidence that assets exist in the country of origin of the respondent; (iiii) the court cannot decide on the validity of the claim. The Court of Appeals noted that the court of the first instance previously ruled that the claim is preliminarily valid, therefore, the court was incorrect rejecting the application on this ground. The Court of Appeals also relied on Art 14 of the EAPOR and noted that the applicant indeed asked the court to collect information on the bank accounts of the respondent in another member state (Estonia), therefore, the court of the first instance was incorrect ignoring this request and failing to discuss it. The court therefore decided that the court of the first instance ungroundedly found that there was no risk of aggravating the enforcement of the court decision on the merits.[12]

In another case the jurisdiction of application to issue a European Account Preservation Order was analysed. In the case discussed, the application was submitted with respect to the arbitral proceedings. The Court of Appeals relied on the fact that the merits of the dispute is analysed in arbitration and Art. 2(2)(e) stating that the EAPOR does not apply to arbitration. The court also referred to clauses 8 and 13 of the preamble, Arts. 4(8), 5(a), 6(1) and (2) and concluded that the court which has jurisdiction on the case on the merits should be the one that has jurisdiction on the interim measures. This conclusion is also supported by the Brussels I recast Regulation.[13]

---

[11] The Court of Appeals of the RoL, 18.03.2021, No. e2-183-407/2021, https://www.infolex.lt/tp/1978080; The Court of Appeals of the RoL, 22.10.2020, No. e2-1391-464/2020 https://www.infolex.lt/tp/1936915; The Court of Appeals of the RoL, 08.10.2020, No. e2-1295-407/2020 https://www.infolex.lt/tp/1931191; The Court of Appeals of the RoL, 01.10.2020, No. e2-1175-464/2020 https://www.infolex.lt/tp/1929180; The Court of Appeals of the RoL, 10.10.2019, No. e2-970-464/2019 https://www.infolex.lt/tp/1767443.
[12] The Court of Appeals of the RoL, 03.05.2018 No. e2-519-196/2018 https://www.infolex.lt/tp/1599036.
[13] The Court of Appeals of the RoL, 28.11.2017, No. e2-1387-178/2017 https://www.infolex.lt/tp/1548066.

One case concerned the issue whether the national court had an obligation to inform the competent court or institution of another member state (Germany) on the enforcement of the European Account Preservation Order. The Court of Appeals ruled that the court did not have an obligation to list certain institution to which the order shall be submitted in Germany.[14]

VII. Recurring issues

No recurring issues regarding different regulations were noticed.

VII. Summary and overall assessment

The existing case-law is not thorough and can be assessed as fragmented. The cases regarding regulations in question are not very frequent which results in the courts tending to shy from analysing the regulations in questions. Many of the issues discussed are of technical nature concerning jurisdiction, documents that are to be submitted etc.

The case-law collected indicates that on the one hand, there are no large-scale problems of the applicability of the regulations in question. On the other hand, the regulations discussed are applied rarely and the possibilities provided by the regulations are not exhausted.

These findings can be reasoned by the fact that, despite the direct applicability of the regulations in question, Lithuania has adopted a law regarding implementation of EU regulations related to civil procedure in order to ensure smooth applicability of the regulations in the context of the Lithuanian law and case-law. This law has been analysed in detail in the deliverable D2.7 Collection of Lithuanian implementing rules and thus are not discussed again in this deliverable.

[14] The Court of Appeals of the RoL, 13.02.2020, No. e2-91-370/2020 https://www.infolex.lt/tp/1817833.