

ANALYSIS OF THE INSTITUTION FOR RECOGNITION AND ENFORCEMENT OF FOREIGN JUDGMENTS IN DOMESTIC AND COMMUNITY LEGAL SYSTEM, IN THE CONTEXT OF ASSOCIATION OF MOLDOVA TO THE EUROPEAN UNION

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Abstract

Judgments are instruments rendered in the exercise of state authority and shall take effect only in the State whose courts have rendered them. Outside the state they produce effects only admitted by the other state. Otherwise they are used only as evidence means. In the latter case the plaintiff should introduce a new procedure in the second state on the same object in order to enforce his/her claims. The court of other state would have choice whether it trusts the judgment passed by first instance or whether it initiates its own proceedings to obtain evidence. This would make movement of judgments between states very complicated.

The institution for recognition of a foreign judgment simplifies the movement of judgments between states, in that a judgment shall not be regarded in a foreign state as evidence, but also as a judgment.

The paper below is a study of the institution for recognition and enforcement of foreign judgments within Moldova by parallel analysis of Community rules governing the institution concerned within the European Union. Thus, one of the main goals of this paper is to familiarize the local doctrinarians with European civil law rules on this legal instrument.

This article contains a description of the procedure for recognition and enforcement of foreign judgments (including submission of an application, court referral, examination of an application, reasons for refusal etc.) and foreign arbitral awards in the territory of the Republic of Moldova.

In the context of European integration aspirations of Moldova, references are made in paragraph three to the Community rules on recognition and enforcement of judgments in civil and commercial matters set out in the Regulation no. 44/2001 of the European Council of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters.

Keywords: Foreign judgment, foreign arbitral award, recognition, enforcement, court referral, examination of the application, reasons for refusal, Code of Civil Procedure, Republic of Moldova, European Union

INTRODUCTION

In the current state of development of the modern society, a international cooperation in various fields between sovereign states and equal in rights becomes a reality imposed by objective necessities.

The principle of cooperation is now widely accepted in the relations between states, contributing to mutual understanding among nations, to ensure progress and development in building a lasting state of peace and legal harmony.

Moldova is not outside these concerns and processes, but rather, over the years, managed to create a certain image on the international arena, becoming a member of

numerous organizations such as the United Nations, Council of Europe, the Organization for security and Cooperation in Europe, the Organization of the Black Sea Economic Cooperation, Southeastern Cooperation Process in Europe, Commonwealth of Independent States.

Interested in harmonizing the legislation and law enforcement to European standards, Moldova clearly has directed its vector towards European integration, expressing its consent to be bound by almost all international instruments on international legal assistance. This fact has increased its range strengthening the development of collaborative relationships with all countries, along with the promotion of a peaceful and secure climate, to suppress all forms of crime and fraud of laws. Our conventional contribution to general practice in the field of legal assistance reflects and emphasizes once again Moldova's desire to gradually develop legal cooperation relations with other states, and the desire to help develop mutual exchange between states and in protecting the human rights and fundamental freedoms.

Currently the European integration is an irreversible strategic objective of foreign and national policy of the Republic of Moldova. In this context, the harmonization of national legislation with community norms of the EU, along with ensuring its applicability of the legal framework as approved, is actually the driving force of integration itself.

The harmonization process of legislation is the instrument of transforming the legal system of a state in a "European" one. Clearly, this transformation is one of the main goals of the Republic of Moldova and the near future will demonstrate the capacities of our state as an associated state to the European Union.

The newly EU member states' experience, particularly the one of Romania, has proven without any doubts that you being ready to join the EU means not only a political and economic issue but also, inter alias, a legal matter too. The legislation and harmonization of national legislation have not been underestimated prior to the joining process.

The association with the European Union is a process of transition and modernization, taking into account that it implies:

- Accelerating the transition through improving the order and stability in economy and society;
- Support in overcoming the barriers such as economic monopolies and political interests;
- Improving the competitiveness of all business agents.

Those goals could not be achieved without a new amended legislation. In these circumstances, Moldova's integration enthusiasm has to be supported both by the government branch and the local ideologists, by initiating studies of European Community law regulating the adequate course of cooperation between the Member States of the European Union.

The article concerned is an analysis of the recognition and enforcement of foreign judgments in Moldova institution and a projection of community norms guiding this institution within European Union.

In contrast to Moldova, which currently is only an aspirant in joining the European Union, the present Member States of the community, are taking part of a functional and

viable unions, and have set the goal to maintain and develop this area of freedom, security and justice in which the free movement of persons is guaranteed. To establish such an area, the Community adopted, among other things, measures in the field of judicial cooperation in various domains, including the civil one, that are necessary for a proper functioning internal market. Some of the relevant Community legal instruments will be reflected in the present study.

§ 1. Recognition and enforcement of foreign decisions in Moldova

1. The method of providing recognition and enforcement request of foreign decisions abroad and of foreign ones in Moldova

Republic of Moldova Constitution, adopted on July 29, 1994, effective from 27 August 1994, namely Article 8, confirms the fact that Moldova is obliged to respect the United Nations Charter and the treaties it is a party, to build relationships with other states the generally based on recognized principles and norms of international law. In this context, we note that the procedure for recognition and enforcement of foreign judgments and foreign arbitral decisions in the Republic of Moldova is regulated by the Moldovan legislation and the international treaties and conventions to which the Republic of Moldova is a party.

The way of transmitting of the application for recognition and enforcement of judgments abroad depends on the international instrument referred to in this application.

Therefore there can be identified three practices of filing the implementation and recognition of judgments provided in bilateral agreements to which Moldova is a party.

The first way can be noticed in legal assistance treaties concluded with Azerbaijan [18], Russian Federation [16], Lithuania [10] and Latvia [11]. Under these treaties the request for recognition and enforcement of the judgment is to be submitted to judicial body which examined the case in the first instance. That court in turn forwards the application with all the materials attached to the central authority, which in Republic of Moldova is the Ministry of Justice. The Ministry of Justice examines the set of materials related to its compliance with the relevant international instruments and, where appropriate, shall submit to the central authority of the State in which enforcement is claimed or returns it to the initiating court for making the necessary corrections.

The second way is provided in the Minsk Convention of 22 January 1993 [2] and treaties concluded with Romania [14] and Ukraine [17]. The method in question involves the right of the person concerned to address the demand both to the first instance and the court of foreign jurisdiction to rule on the recognition and enforcement of judgment. Also, we'd like to underline the provisions indicated in the treaties concluded by the USSR People's Republic of Hungary [13] and the Czechoslovak Socialist Republic [12], which provides the possibility to apply directly to the competent court of the foreign state only if that person is domiciled in its territory. The methods mentioned above assume mandatory submission of applications through Central Authorities.

The third situation is specific to the agreement between Moldova and Turkey on legal assistance in civil, commercial and criminal matters, signed in Ankara on 22 May 1996. Based on this instrument the request is addressed to the organ that issued the judgment, which shall be forwarded to the central authority. The Ministry of Justice as

the central authority transmits the request, using diplomatic channels, the central authority of the other Party, the latter sending the request body directly to the responsible to examine its admissibility.

If the judgment is sought based on the principle of reciprocity, which implies the absence of an instrument to which both countries are parties, the request is sent through diplomatic channels, to reduce the risk of addressing by an inappropriate organ. [24, page 16]

From what we observed, the principle that is currently governing interstate legal assistance in this field, is that the foreign state, the courts of which have issued a judgment which is required to be recognized and nodded for execution in Moldova must be party to a treaty that provides the recognition and forced execution, to which Moldova is party, or, if no treaty between the foreign state of origin and the Republic of Moldova is signed, there should exist a reciprocity in terms of the effects of foreign judgments. Thus, a foreign judgment may be recognized in Moldova only if there is reciprocity between the two states of recognition. A foreign judgment may be permitted to be enforced in Moldova, if there is reciprocity between the two states on the forced consent of the other state court decisions. Accordingly, the existence of reciprocity of recognition does not automatically imply the existence of reciprocity on the approval of forced enforcement.

The extent of the reciprocity needs to be established precisely. Similarly, among the foreign state where it was issued a foreign arbitral sentence or under the laws of which the foreign arbitral sentence was issued, on the one hand, and the Republic of Moldova, on the other hand, there must be mutual recognition and reciprocity of declaration of enforcement. Reciprocity must be provided in a bilateral or multilateral international treaty to which both countries are party, or the domestic laws of each of the two states. [26, page 269] In the modern era, the so-called reciprocity is actually not applied or has been applied only rarely in the recognition and enforcement of foreign judgments and foreign arbitral decisions. [26, page 269]

2. The recognition and enforcement procedure of foreign decisions

2.1. Referral to the competent court to hear cases of recognition and declaration of enforcement

As stated in the previously, the legal basis for granting legal aid in matters of recognition and enforcement of judicial decisions is the multilateral and bilateral international conventions to which Moldova is a party, as well as the relevant national legislation.

The national legislation of the Republic of Moldova in civil procedure regulates the recognition of the effects of foreign judgments and foreign arbitral awards and declaration of enforcement of foreign judgments and arbitral decisions in the Republic of Moldova, the conditions under which the recognition and declaration of enforceability is allowed, as and the grounds for refusal of recognition and declaration of enforceability.

International conventions usually contain conditions for recognition and declaration of enforcement, and the reasons for refusal of recognition and allowing the enforcement of foreign decisions and foreign arbitral awards, by rule, reference to domestic

procedural rules of the state where requested recognition and declaration of enforceability.

Under constitutional provisions, Chapter XLII of the Code of Civil Procedure of the Republic of Moldova [21] regulates the procedure of recognition of foreign judgments and arbitral awards and declaration of enforcement of foreign judgments and arbitral awards in civil procedures, as well as the conditions under which recognition and declaration of enforceability is admitted and the reasons for refusal of recognition and declaration of enforceability.

The term "judicial foreign decision" is defined in art.467 par. (2) CCP as civil judicial decision pronounced in a civil case by a common law court or a specialized court in another state. The decision bears the character of an act of disposal, whereby the matter has been examined in substance. However, the provisions of par. (1) art.467 CCP provides that are to be recognized and executed not only judicial decisions but also transactions, if so provided in an international treaty to which the Republic of Moldova is party. Foreign judicial transactions can be confirmed by the foreign court.

To be recognized and enforced in the Republic of Moldova a judicial decision (transaction) the foreign court must be issued by a state court, however described, including the specialized courts. They must be defined in the law of that foreign country as courts, which are part of the judiciary system. [23, page 4]

Foreign judgment may be filed for enforcement in the Republic of Moldova within three years from the date it becomes final, according to the law of the state where it was issued. Restoring the omitted term can be decided by the court based on justified reasons according to the art.116 CCP of Republic of Moldova. The foreign judgment is enforceable in the territory of Moldova after it becomes final.

Foreign judicial decisions through which were taken assuring measures and those with temporary execution cannot be enforced in the Republic of Moldova. Furthermore, the court orders cannot be recognized and submitted to the enforcement of foreign judicial decisions, if it is not expressly provided so in an international treaty. As well, are unrecognizable and cannot be enforced the notarial acts regarding pecuniary obligations, if it is not expressly provided so for those notarial acts. [23, page 4]

According to art.468 CCP, if the foreign decision was not executed voluntarily it may be enforced in the Republic of Moldova, at the request of the creditor under a declaration given by the court in whose jurisdiction the execution is to take place. If the debtor has no domicile or registered office in the Republic of Moldova or when the debtor's residence is not known, the decision is enforced at the place of the goods.

Resulting from the article mentioned above, it appears that the courts that have jurisdiction to hear cases concerning the recognition and enforcement of forced execution decisions and of foreign arbitral decisions are the courts under Law 155 of 05/07/2012 amending and supplementing the Code of Civil Procedure, into force 30.11.2012.

From the provisions of art.468 CCP we understand that when the debtor has no domicile or registered office in Moldova or when the debtor's residence is not known, the decision is enforced at the place of the goods. However, if the debtor has no domicile or registered office in the Republic of Moldova or when no assets of the debtor are in the Republic of Moldova, the court shall not be competent to receive the application for recognition and enforcement of foreign judicial decision or foreign arbitral decision. Therefore, the court will refuse to accept the application and issue a ruling under art. 169

par. 2 CCP on the refusal of the request. However, if during the examination of the case in the State of origin, the debtor had home/office, or was registered in Moldova, or dispose of goods in Moldova and at the time of the examination of the application process for recognition and declaration of the foreign judicial decision or ruling foreign arbitral decision has no home/office in Moldova, or no longer has assets in the Republic of Moldova, the court in whose jurisdiction the debtor had the last home/office or place of registration or had goods will review the application for recognition and declaration of enforceability. [23, page 5]

2.2. The examining the application for recognition and declaration of enforcement

Application for recognition of the foreign decision must contain: [21, art. 469]

- a) the name of the creditor, and the representative if the application is submitted by the creditor, domicile (residence) or registered office;
- b) the name of the debtor's domicile (residence) or registered office;
- c) request of declaration of enforcement of the judicial decision, the term in which the decision is required.

Enclosing documents must be attached as stipulated by international treaty to which the Republic of Moldova is party. If the international treaty does not indicate such acts on request are attached the following acts: [21, art. 469]

- a) a copy of the foreign judicial decision, of which enforceability is required, certified court established;
- b) the official document confirming a final foreign judicial decision under state law that was issued, if it does not result from the judicial decision;
- c) document confirming that the party against whom judicial decision has been issued, although it was legally notified, did not attend the trial;
- d) document confirming previous execution of the judgment in that state.

From documents listed above in letter a), b) and d) the acts will be accompanied by translations into state language licensed and certified over, in compliance with art.466 CCP. Legalization is not required if the parties agree to submit the documents in certified copies.

To the application for recognition and enforcement of foreign decisions or foreign arbitral decisions are attached and acts mentioned in international treaty to which Moldova is a party, which will be accompanied by certified and legalized translations in accordance with art.466 CCP. If the requirements specified aren't the request will not be examined, the court will grant to the person a reasonable time to remove the deficiencies in the application.

According to art.470 CCP, the demand for recognition of the foreign judicial decisions is examined with the legal notice of the debtor, regarding the time, date and place of the examination. The debtor's groundless failure to be present does not foreclose the examination. The court that examines the application for recognition of the foreign judicial decisions necessarily and immediately informs about it the Ministry of Justice and, where appropriate, the National Bank of Moldova, where it concerns a financial institution licensed by it, with remission of the request and other related documents. The presence of the representative of the Ministry of Justice and, where appropriate, the National Bank at the hearing in which it is examined the application for recognition of

the foreign judicial decision is required. The absence of the representative of the Ministry of Justice and, where appropriate, the National Bank, duly summoned, does not foreclose the examination of the case.

The court, after hearing the explanations of the debtor and examines the presented evidence, gives a concluding declaration of enforcement of the foreign judicial decision or refusal of enforcement authorization. A copy of the court order is shipped to the creditor and debtor within three days from the date of delivery. The conclusion can be challenged in a higher court in the order and within the time provided by the Code of Civil Procedure. [21, art. 471]

Under the foreign judicial decision and court order, remained irrevocable, concerning the approval of enforceability shall be issued an enforcement order, which is sent to the judicial executor appointed by the creditor. If the judicial executor has not been designated, the provisions of Articles 15 and 30 of the Execution Code are applicable. [23, page 6]

According to art. 14 (4) of the Execution Code, if the foreign court decision or international arbitration has been recognized and availing for execution in the Republic of Moldova, the enforcement order shall indicate both the name of the foreign court or international arbitration, and the name of the court in the Republic of Moldova which recognized and declared enforceable that decision.

Under art.156 of the Execution Code, the foreign judicial decisions and arbitral awards are received for execution and executed only if their performance has been recognized and approved according to the procedure laid down in Chapter XLII of the Code of Civil Procedure.

If the execution of judicial decisions and foreign arbitral decisions, the court competent to examine the judicial executor's demarches on explaining the decision, changing the way and order of execution, postponement or rescheduling of its execution will be the court who declared enforceable the judicial decision. [23, page 6]

It is noteworthy that the provisions of art.470 CCP do not contain expressly the legal notice of the creditor, regarding the place, date and time of assessing the application for a declaration of recognition and enforcement of foreign decision. The provisions of article provide only that legal court must notice the debtor about the place, date and time of the examination of the case. However, parts of the procedure for recognition and enforcement of the declaration are to be treated legally. The creditor may file an application in court requesting notice of the place, date and time of hearings, the court in this case is required to give notice as provided. Failure to be present at the hearings based on unfounded reasons of the creditor or his legal representative shall not prevent the examination of request. [23, page 7]

The principle underlying the procedure for recognition and declaration of enforceability of foreign judicial decisions is that the court, which is required for recognition, will not examine (correct review) the content of the foreign judicial decision nor in terms of the legal system of the Republic of Moldova nor from the point of view of the law of another state. Thus, foreign judicial decisions are recognized even when a national court would consider the solution of the case differently. [23, page 7]

Recognition of foreign judgments not susceptible of enforcement occurs when the person concerned has not submitted objections to recognition. [21, art. 472]

However, the person concerned has the right, within one month after receipt of the foreign judicial decision, to submit to the court at the place of residence of his objections to the recognition of that judicial decision. Objections against the recognition of the foreign judicial decisions of the person concerned shall be examined in open court, with notice of its legal place, date and time of the examination. Failure to attend the hearings without a relevant ground of the person concerned legally cited does not foreclose the examination. After considering objections against recognition of the foreign decision, the court shall issue a ruling. A copy of the court order is shipped within 5 days after delivery, to the person at whose request the foreign judicial decision was issued or its representative and the person who submitted objections to the recognition of the foreign judicial decision. The conclusion can be challenged in a higher court in the order and within the time limits established by the Code of Civil Procedure. [21, art. 472]

2.3. Grounds for refusal of recognition and allowing the enforcement of foreign judicial decision

The refusal to approve the enforcement of foreign judicial decision along with the refusal to recognize the judicial decision is governed by art.471 CCP and is admitted in one of the following cases:

a) foreign judicial decision under the law of the State on whose territory was given, did not become final or enforceable;

b) the party against whom foreign judicial decision was issued did not have the possibility of attending the legal process not being legally notified of the place, date and time of the examination of the case;

c) examination of the case is within the exclusive jurisdiction of the courts of the Republic of Moldova;

d) there is a foreign judicial decision, even not final, the court issued Moldova dispute between the same parties on the same subject and on the same grounds or procedure Moldovan court judicial decision is a cause in the dispute between the same parties on the same subject and on the same grounds the date of referral foreign court;

e) the foreign judicial decision may prejudice the sovereignty, may threaten the security of the Republic of Moldova or they may be contrary to public order;

f) the prescription term has expired for submission of decision for enforcement and creditor's request for reinstatement was not satisfied by the court of the Republic of Moldova;

g) the foreign judicial decision is the result of fraud committed in the foreign proceedings;

h) through the judicial decision is disposed submission of bank shares licensed in Moldova. In this case, recognition of enforcement of the foreign judgment is permitted only on presentation of National Bank permission for holding a significant share in the share capital of the Bank or National Bank opinion on the possibility of shareholder without prior permission.

§2. The procedure for recognition and declaration of enforcement of foreign arbitral award

Recognition and enforcement of foreign arbitral decision is regulated by national law sources, as well as international ones.

The Convention on the Recognition and Enforcement of Foreign Arbitral Awards done at New York on June 10, 1958, in force for Moldova of 17 December 1998, the term "foreign arbitral award" is defined as a "foreign arbitral sentence".

According to the Moldovan Parliament Resolution on Moldova's accession to the Convention on the Recognition and Enforcement of Foreign Arbitral Awards no.87 of 10.07.1998, Moldova adheres to the Convention on the Recognition and Enforcement of Foreign Arbitral Awards, done at New York on June 10, 1958, with the following reservations:

1) Convention shall be applied by the Republic of Moldova only regarding the arbitration awards rendered after its enforcement for the Republic of Moldova;

2) Convention shall be applied by the Republic of Moldova on the basis of reciprocity only concerning arbitration awards rendered in the territory of another State Party.

Article I of the Convention provides that the Convention applies to the recognition and enforcement of arbitral awards made in the territory of a State other than that in which the recognition and enforcement of judgments is requested, arising from disputes between individuals or businesses. It applies also to arbitral awards not considered as domestic awards in the State where their recognition and enforcement is sought.

By arbitration sentences shall be understood not only sentences given by judges appointed for specific cases, but also those that are given by permanent arbitral bodies to which the parties have been subjected. [23, page 10]

At the time of signature or ratification of this Convention or accession thereto extension notification, any State may on the basis of reciprocity declare that it will apply the Convention only to the recognition and enforcement of judgments given in another Contracting State. It may also declare that it will apply the Convention only to differences arising out of legal relationships, whether contractual or not, which are considered commercial by its national law. [23, page 10]

Therefore, under the Convention, to determine "the award" is necessary for it to be issued in the territory of a foreign State Party to the Convention or not considered national sentence in Moldova.

It should be noted that there may be differences in international arbitration that even if the arbitration award was issued by an arbitral tribunal in Moldova, it will be considered a foreign arbitration award, if in order to issue the judgment was applied the law of another state. All these rules are laid by the European Convention on International Commercial Arbitration, established at Geneva on April 21, 1961, ratified by the Moldovan Parliament on September 26, 1997, in force for Moldova of 05.03.1998, which states that in his effect in judgments issued between parties who had, at the conclusion of the arbitration agreement, the seat or residence in different Contracting States. Extraneous criteria established by this Convention may be considered with criteria established by the New York Convention of 1958 to determine whether an arbitration award is considered domestic or foreign.

Thus, the court must now determine whether the arbitration award was issued in the territory of a foreign state or territory of the Republic of Moldova in accordance with foreign procedural law to be considered a foreign arbitration award. However, the court will establish that the settlement of the case was an arbitration process that the judgment is issued an arbitration award. Foreign arbitral award may be recognized and approved

enforcement only if it was given in a dispute settlement born from relations punishable by arbitration under the law of the Republic of Moldova. [26, page 267]

To be recognized an arbitral award in the Republic of Moldova has to be issued by an arbitral tribunal of an institutionalized arbitration. If the arbitration award was issued by another body, including the state body, it will not be recognized in the Republic of Moldova. However, the award must be issued by a competent arbitral tribunal. It is considered that the tribunal has jurisdiction to hear the case if the parties have agreed in writing by an agreement to assign this responsibility. [26, page 268]

The arbitral award shall decide on the concept of the dispute. But when litigants have concluded a transaction approved by a resolution of the arbitral tribunal, such termination may be subject to recognition and declaration of foreclosures, because it approves a settlement reached between the parties on the ground of the dispute. [23, page 11]

Examination of the application for recognition and declaration of enforcement of foreign arbitral award is provided by art.470 CCP.

Thus, recognition and enforcement of foreign arbitral award in the national law (art.475 CCP), Article 38 of Law No. 24 of 22.02.2008 relating to international commercial arbitration, the arbitration award states that, regardless of the country where was issued, shall be recognized as binding and, at the competent court filing a written request is executed by right, taking into account the provisions of this Article and the provisions of article 39 of the Law.

The Party seeking recognition or enforcement of foreign arbitral award shall submit to the court the original arbitral award or certified copy. If the arbitral award and the arbitration agreement is exposed in a foreign language, the party is required to submit the translation in the national language, certified as provided by law. [21, art. 472]

Article 476 CCP and Article 39 of the Law provide the refusal to recognize and enforce the award.

According to the provisions mentioned, recognition or enforcement of the arbitral award, no matter of the country where it was issued, may be refused only if:

a) at the request of the party against whom judgment is invoked if the court presents evidence that:

- Part of the arbitration agreement, is unable or arbitration agreement is not valid under the law to which the parties have subordinated it or, in absence of any indication in this respect under the law of the country where the judgment was rendered;

- Was not properly informed about the appointment of the arbitrators or of the arbitral proceedings or for any other valid reason, failed to provide explanations;

- The judgment was pronounced on a dispute not covered by the arbitration agreement or not within the provisions of the Convention, or contains decisions on matters beyond the provisions of the arbitration agreement.

If the terms of the arbitration award on matters submitted to arbitration can be separated from those not included in it, the judgment which contains provisions on matters submitted to arbitration may be recognized and enforced;

- Constitution of the arbitral tribunal or the arbitral procedure does not correspond to the convention parties or, aren't in correspondence with such agreement, are not in conformity with the laws of the state where the arbitration took place;

- Decision did not become binding on the parties or has been set aside or its execution was delayed by a competent court of the country in which or under the law of which the judgment was rendered;

b) if the court learns that:

- Under Moldavian law, the dispute is not capable of settlement by arbitration;
- The recognition or enforcement of the arbitral award is contrary to public policy in the Republic of Moldova.

In addition to the grounds for refusal set in art.471 and art.476 CCP there are general reasons for refusal of recognition and declaration of the foreign judgment and foreign arbitral award such as violation of fundamental human rights (ECHR provisions), international law .

§3. Community rules on the recognition and enforcement of judgments in civil and commercial matters

As mentioned in the introduction to this paper, the European Community has set itself the objective of maintaining and developing an area of freedom, security and justice, in which the free movement of persons is guaranteed. To establish such an area, the Community is to adopt, inter alia, measures in the field of judicial cooperation in civil matters which are necessary for the proper functioning of the internal market.

Certain differences between national rules governing jurisdiction and recognition of judgments prevented the proper functioning of the internal market. The necessity to adopt provisions to unify the rules of conflict of jurisdiction in civil and commercial matters and to simplify the formalities with a view to rapid and simple recognition and enforcement of judgments from Member States has proved to be crucial and indispensable. [27]

In this regard, on 27 September 1968, Member States under Article 293 of the Treaty establishing the European Community have concluded the Brussels Convention on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters, as amended by the Accession Conventions the new Member States to that Convention. On 16 September 1988, Member States and EFTA (European Free Trade Association) concluded the Lugano Convention on jurisdiction and enforcement of judgments in civil and commercial matters, parallel Convention to the 1968 Brussels.

Given the strategic goal of ensuring continuity of the results from the application of the Brussels Convention along with the achievement of the objective of free movement of judgments in civil and commercial matters was necessary and appropriate that the rules governing jurisdiction and the recognition and enforcement of judgments to be governed by a Community legal instrument imperative and direct application. [9]

This legal instrument has been approved and is Regulation (EC) No. 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters.

The Regulation replaced the Brussels Convention of 1968, which was applied between Member States before the enforcement of the Regulation. However, the Convention continues to apply in respect of the territories of the Member States which fall within its territorial application and are excluded from this Regulation pursuant to

Article 299 of the Treaty establishing the European Community (now Article 355 of the Treaty on the Functioning of the European Union).

This Regulation lays down rules governing the jurisdiction of courts in civil and commercial matters. It provides that a judgment given in a Member State of the European Union has to be recognized without the need to resort to any special procedure, unless the recognition is contested. A declaration of enforceability of a foreign judgment to be taken after purely formal checks of the documents supplied. Also, the regulation lists for failure, but the courts don't have the possibility of invoking the matter ex officio.

However, the Regulation does not apply to revenue, customs or administrative matters. It also does not apply to: the status or legal capacity of natural persons, matrimonial relationship, wills and succession; bankruptcies; social security; arbitration. [9, art. 1]

Regulation NO. 44/2001 art.33 establishes that a judgment given in a Member State of the European Union is recognized in other Member States without the need to resort to any special procedure. "Judgment" as defined in Regulation given, means any judgment given by a court or tribunal of a Member State of the European Union, regardless of its name, such as decision, ruling, order or writ of execution.

According to art.36 the foreign judgment cannot in any circumstances be reviewed on the content/concept of the trial.

Moreover, a judgment shall not be recognized if:

- Recognition is manifestly contrary to public policy of the Member State of the European Union it is requested;
- The document instituting the proceedings was not communicated to the defendant in sufficient time and in a manner that would enable him to prepare his defense;
- It is irreconcilable with a judgment given in a dispute between the same parties in the Member State in which recognition is sought;
- It is irreconcilable with an earlier judgment given in another Member State or in a third country, between the same parties in a case on the same subject and the same cause.

Follow mention that the court before which recognition is sought of a judgment given in another Member State of the European Union may stop the proceedings where judgment subject to ordinary appeal. [9, art. 37]

As for enforcement, a judgment shall be enforced in another Member State when, request of any interested party, has been declared enforceable there. In turn parties are entitled to appeal against a decision on the application for a declaration of enforceability. [9, art. 38]

As seen, the European Community has developed and, respectively, implemented a legal instrument granting citizen facilities in the recognition and enforcement of foreign judgments and the free movement of judgments in civil and commercial matters.

Unlike the Moldovan legal system that establishes a preliminary procedure more complex of transmission of foreign judgments and of recognizing them. Community legislation provides that a judgment given in a Member State of the European Union have recognized without the need to resort to any special procedure.

For EU countries, a declaration of enforceability of a foreign judgment has to be taken after purely formal checks of the documents supplied, requiring only a certificate after the model set out in Regulation No. 44/2001 of 22 December 2000, without being

requested legalization or equivalent formality. Unlike imperative Moldovan law governing the procedure for examining an application for recognition and declaration of enforcement and ask that the request contains attached more necessary documents translated and legalized under the law. If those requirements are not met, the request is not followed. However, Regulation No. 44/2001 establishes a wider freedom in action and provides that If the certificate under Art. 54 court or competent authority 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.

We conclude that the Community legal norms, unlike that Moldovan is more accessible and practical, ensuring a high level of freedom of movement of European citizens. So, are made in a more sustainable fundamental human rights enshrined in the Convention for the Protection of Human Rights and Fundamental Freedoms. Individuals and economic operators should not be discouraged to defend their rights due to the complexity of a state judiciary. Because they have the right to live and to operate wherever they want in the European Union, it is their right to have access to a fair judicial treatment. It is therefore necessary to adopt common procedural rules for recognition and enforcement of judgments in civil, commercial, family and our country. In this respect, Moldova established and the direction of development – European vector, sooner or later will have to establish a new legal instrument to govern the recognition and enforcement of foreign judgments in accordance with EU requirements for the well-being and interest of the ordinary citizen.

In this situation it is notable and should be studied the experience of Romania, where in 2007, the year of Romania's integration in the European Union have become applicable two procedures on the recognition of foreign judgments. This is the procedure to apply foreign judgments rendered in EU Member States and a procedure that applies non-members based on general principles of private international law. The procedure for the recognition and enforcement of judgments in the EU Member States is required by Community legislation directly applicable in the Member States, namely Regulation No. 44/2001 on jurisdiction, recognition and enforcement of judgments in civil and Trading and Regulation No. 805/2004 establishing a European Enforcement Order for uncontested claims. Judgments in countries outside the EU remain subject to the provisions of Law no. 105/1992 on the regulation of private international law.

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