

**Czech Yearbook
of International Law[®]**

Czech Yearbook of International Law®

Volume XIII

2022

**International Justice and International
Enforcement**



Editors

Alexander J. Bělohlávek
Professor
at the VŠB TU
in Ostrava
Czech Republic

Naděžda Rozehnalová
Professor
at the Masaryk University
in Brno
Czech Republic

Questions About This Publication

www.czechyearbook.org; www.lexlata.pro; editor@lexlata.pro



LEX LATA

COPYRIGHT © 2022

By Lex Lata B.V.

All rights reserved. No part of this publication may be reproduced in any form or by any electronic or mechanical means including information storage and retrieval systems without permission in writing from the publisher.

Printed in the EU.
ISBN/EAN: 978-90-829824-6-6
ISSN: 2157-2976

Lex Lata B.V.
Mauritskade 45-B
2514 HG – THE HAGUE
The Netherlands

The title *Czech Yearbook of International Law*® as well as the logo appearing on the cover are protected by EU trademark law.

Typeset by Lex Lata B.V.

Advisory Board

- Helena Barancová
Trnava, Slovakia
- Jaroslav Fenyk
Brno, Czech Republic
- Karel Klíma
Prague, Czech Republic
- Ján Klučka
Košice, Slovakia
- Hon. Rajko Knez
Ljubljana, Slovenia
- Peter Mankowski†
Hamburg, Germany
- Andrzej Mączyński
Krakow, Poland
- Maksymilian Pazdan
Katowice, Poland
- August Reinisch
Vienna, Austria
- Michal Tomášek
Prague, Czech Republic
- Vladimír Týč
Brno, Czech Republic

Editorial Board

- Filip Černý
Prague, Czech Republic
- Paweł Czarnecki
Warsaw, Poland
- Marcin Czepelak
Krakow, Poland
- Hon. Ludvík David
Brno, Czech Republic
- Jan Kněžínek
Prague, Czech Republic
- Oskar Krejčí
Prague, Czech Republic
- Olexander Merezhko
Kiev, Ukraine
- Petr Mlsna
Prague, Czech Republic
- Robert Neruda
Brno, Czech Republic
- Monika Pauknerová
Prague, Czech Republic
- František Poredoš
Bratislava, Slovakia
- Matthias Scherer
Geneva, Switzerland
- Vít Alexander Schorm
Prague, Czech Republic
- Miroslav Slašťan
Bratislava, Slovakia
- Václav Stehlík
Olomouc, Czech Republic
- Jiří Valdhans
Brno, Czech Republic

„We regret to announce the death of our most reputable colleague Professor Peter Mankowski from Germany. We are thankful for his efforts invested in our common project. His personality and wisdom will be deeply missed by the whole editorial team.“

Address for communication & manuscripts

Czech Yearbook of International Law®

Jana Zajíce 32, Praha 7, 170 00, Czech Republic

editor@lexlata.pro

Editorial support:

Jan Šamlot, DrTF. Lenka Němečková,
Dipl. Ing. Karel Nohava, Anna Dušková

Impressum

Institutions Participating in the CYIL Project

Academic Institutions within Czech Republic

Masaryk University (Brno)

Faculty of Law, Department of International and European Law
*[Masarykova univerzita v Brně, Právnická fakulta,
 Katedra mezinárodního a evropského práva]*

University of West Bohemia in Pilsen

Faculty of Law, Department of Constitutional Law & Department
 of International Law
*[Západočeská univerzita v Plzni, Právnická fakulta,
 Katedra ústavního práva & Katedra mezinárodního práva]*

VŠB – TU Ostrava

Faculty of Economics, Department of Law
[VŠB – TU Ostrava, Ekonomická fakulta, Katedra práva]

Charles University in Prague

Faculty of Law, Department of Commercial Law, Department of
 European Law & Centre for Comparative Law
*[Univerzita Karlova v Praze, Právnická fakulta,
 Katedra obchodního práva, katedra evropského práva & Centrum
 právní komparatistiky, PrF UK]*

University College of International and Public Relations Prague

[Vysoká škola mezinárodních a veřejných vztahů Praha]

Institute of State and Law of the Academy of Sciences of the Czech Republic, v.v.i.

[Ústav státu a práva Akademie věd ČR, v.v.i.]

University of Finance and Administration, Czech Republic

[Vysoká škola finanční a správní, a.s., Praha, Česká republika]

Non-academic Institutions in the Czech Republic

Office of the Government of the Czech Republic

Department of Legislation, Prague
[Úřad vlády ČR, Legislativní odbor, Praha]

Arbitration Court attached to the Economic Chamber of the Czech Republic and Agricultural Chamber of the Czech Republic, Prague

[*Rozhodčí soud při Hospodářské komoře České republiky
a Agrární komoře České republiky*]

International Arbitration Court of the Czech Commodity Exchange, Prague

[*Mezinárodní rozhodčí soud při Českomoravské komoditní burze, Praha*]

ICC National Committee Czech Republic, Prague

[*ICC Národní výbor Česká republika, Praha*]

Institutions outside the Czech Republic Participating in the CYIL Project

Austria

University of Vienna [*Universität Wien*]

Department of European, International and Comparative Law,
Section for International Law and International Relations

Poland

Jagiellonian University in Krakow [*Uniwersytet Jagielloński w Krakowie*]

Faculty of Law and Administration,
Department of Private International Law

Slovakia

Slovak Academy of Sciences, Institute of State and Law

[*Slovenská akadémia vied, Ústav štátu a práva*], Bratislava

University of Matej Bel in Banská Bystrica

[*Univerzita Mateja Bela v Banskej Bystrici*],
Faculty of Political Sciences and International Relations,
Department of International Affairs and Diplomacy

Trnava University in Trnava [*Trnavská Univerzita v Trnave*],

Faculty of Law, Department of Labour Law and Social Security
Law



*Proofreading and translation support provided by:
SPĚVÁČEK překladatelská agentura s.r.o., Prague, Czech
Republic and Pamela Lewis, USA.*

Contents

List of Abbreviations xi

ARTICLES

Martin Jarrett
Implicit Legality Requirements in Investment Treaty Arbitration: A Doctrinal Critique of Current Jurisprudence3

Alexander J. Bělohávek
Scope of Jurisdiction of Tribunals and International Authorities in Interpretation of International Law23

Maria Elvira Méndez-Pinedo
Principle of Effectiveness in EU Law: Case-law of European Court of Justice over the Course of Decade 2010-2020.....75

Massimiliano Pastore
***Res Judicata* and the Brussels Regulation (Recast).....99**

Tereza Profeldová
Relationship between the EU Law and Constitutional System of Member States - Did EU Cross the Line?.....111

Albertas Šekštelis
Jurisdictional Challenges Related to Investor-State Counterclaims Based on Breach of Human Rights.....137

Guangjian Tu | Zeyu Huang
Inter-Regional Judicial Assistance: Achievements, Problems and Suggestions.....173

Julia Cirne Lima Weston
The International Tribunal for the Law of the Sea: Its Wide Jurisdiction and Potential to Analyse Current Law of the Sea Topics211

CASE LAW

Alexander J. Bělohávek

Selected Case Law of Czech Courts and of Constitutional Court of Czech Republic Concerning Jurisdiction of Courts and Enforceability of Judicial Decisions on Basis of International Treaties and EU Law	235
---	------------

BIBLIOGRAPHY, CURRENT EVENTS, IMPORTANT WEB SITES

Alexander J. Bělohávek

Selected Bibliography for 2021	289
Current Events	309
Important Web Sites	311
Index.....	315

All contributions in this book are subject to academic review.

Neither the editorial board nor the publisher collects any fees or other performance for publishing contributions from the authors and distances itself from such practices. Authors do not receive any royalty or other remuneration for their contributions.

Case Law

Alexander J. Bělohávek
**Selected Case Law of Czech Courts and of Constitutional Court
of Czech Republic Concerning Jurisdiction of Courts and
Enforceability of Judicial Decisions on Basis of International
Treaties and EU Law235**

Selected Case Law of Czech Courts and of Constitutional Court of Czech Republic Concerning Jurisdiction of Courts and Enforceability of Judicial Decisions on Basis of International Treaties and EU Law

Alexander J. Bělohlávek

ORCID iD 0000-0001-5310-5269

<https://orcid.org/0000-0001-5310-5269>



[Unless stipulated otherwise or unless the context clearly indicates otherwise, all references to specific national laws constitute references to the laws of the Czech Republic]

- 9.01. Judgment of the Constitutional Court of the Czech Republic, Case No. I. ÚS 1964/19 of 01 June 2021:¹ [prejudging the procedure; binding interpretation of EU law; power to interpret EU law; *acte clair*; competences of the Constitutional Court; right to be heard; preliminary reference] (1) The competences of the Constitutional Court do not include a binding interpretation of EU law. Consequently, if the Constitutional Court sets aside a decision of a lower court, the former cannot prejudge further steps that the latter shall take in the case based on the need to interpret EU law. Hence, the Constitutional Court of the Czech Republic cannot interfere with the lower court's independent decisions. Should the opinion of the lower court expressed during the new hearing of the case differ from the opinion of the Constitutional Court, the case could not be deemed *acte clair*. In this case, the lower court would be obliged to make a preliminary reference to the EU Court of Justice in order to prevent any conflict between the court's decision and EU law and, in turn, a breach of obligations binding on the Czech Republic as a result of its membership in the EU. (2) If the appellate court applies a legal assessment of the case that differs from the legal assessment performed by the first-instance court, as well as the legal reasoning outlined

¹ Preceding decisions in the case: (i) Instruction of the District Court in Znojmo [Czech Republic], Case No. 8 EXE 120/2018-15 of 05 September 2018, and (ii) Resolution of the Regional Court in Brno [Czech Republic], Case No. 20 Co 329/2018 of 02 April 2019.

by the parties, and if the appellate court denies the parties the opportunity to express their opinion on the appellate court's standpoint, the appellate court breaches the right to be heard under Article 38(2) of the Charter of Fundamental Rights and Freedoms. This shall not apply if the reasons for the court's decision indicate sufficiently clearly the reasons why the arguments presented in the constitutional complaint cannot stand, i.e. if they are merely an expression of the party's disagreement with the relevant conclusions made by the court that introduces no "new" elements in the assessment of the case.

9.02. Resolution of the Supreme Court of the Czech Republic, Case No. 30 Cdo 2784/2016 of 28 February 2017:² [payment order; parties to court proceedings; Brussels Ia Regulation; enter an appearance; first pleading on the merits; radio broadcasting; admissibility] An appeal against a payment order cannot be deemed to constitute the respondent's appearance in the proceedings in terms of **Article 26(1) of the Brussels Ia Regulation**, whether or not the respondent puts forth any defence on the merits. [*From the factual and legal findings*] The claimant has claimed payment of an amount corresponding to the paid purchase price for heating systems, which the respondent should refund to the claimant as a result of the claimant's rescission of their contract. The court has issued a payment order, which was challenged by the respondent's appeal. The respondent has filed a pleading arguing that the court lacks **international jurisdiction**. The respondent claims that the respondent's business terms and conditions are a part of the contract and that they stipulate that the jurisdiction to hear and resolve the case rests with the Commercial Court in Mechelen [Belgium].

9.03. Resolution of the Constitutional Court of the Czech Republic, Case No. I ÚS 1744/20 of 28 July 2020:³ [P.O. BOX; jurisdiction; admissibility of a cassation appeal; client centre]⁴ (1) As concerns the objection to the extent that "the location of the appellant's P.O. BOX in Hodonín [Czech Republic], which is not the appellant's property or any personal representation, but only a mailbox for delivery, cannot constitute grounds for the transfer of the territorial jurisdiction

² Preceding decisions in the case: (i) Resolution of the District Court in Vsetín [Czech Republic], Case No. 8 C 69/2015-156 of 10 December 2015, and (ii) Resolution of the Regional Court in Ostrava [Czech Republic], Case No. 8 Co 54/2016 of 26 February 2016.

³ The *ratio decidendi* has been adopted from: www.aspi.cz; JUD451814CZ.

⁴ Preceding decisions in the case: (i) Resolution of the Supreme Court of the Czech Republic, Case No. 27 Cdo 3363/2018 of 26 March 2020, (ii) Resolution of the High Court in Olomouc [Czech Republic], Case No. 4 Co 5/2018-129 of 26 April 2018, and (iii) Resolution of the Regional Court in Brno [Czech Republic], Case No. 23 C 3/2017 of 26 January 2018.

from the Municipal Court in Prague [Czech Republic] to the Regional Court in Brno [Czech Republic]”, the Cassation Court has argued that the applicant has fails to mention and explain whether the requirements for the admissibility of the cassation appeal are fulfilled. Having perused the cassation appeal, the Constitutional Court has no reason to question the assessment performed by the Supreme Court. The applicant’s objection concerning the establishment of territorial jurisdiction of the first-instance court in consequence of the application of **Article 7(5) of the Brussels Ia Regulation** actually contests the appellate court’s finding of fact that the applicant has its client centre in the district of the first-instance court and meets the hypothesis of the said provision. As concerns its interpretation, however, the applicant indeed presents no premise of the admissibility of the cassation appeal in terms of Sections 241a and 237 of the Code of Civil Procedure – i.e. a question of substantive or procedural law, the resolution of which is necessary for the contested decision of the appellate court and (a) in the resolution of which, the appellate court has departed from the consistent case-law of the Cassation Court, or (b) which has not yet been resolved in the case-law of the Cassation Court, or (c) in respect of which the case-law of the Cassation Court is not consistent, or (d) if the legal issue resolved by the Cassation Court ought to be assessed differently.

- 9.04. Resolution of the Constitutional Court of the Czech Republic, Case No. II. ÚS 2356/2019 of 30 July 2019:⁵ [interpretation of EU law; fair trial; (absence of a) request for a preliminary reference; principles of EU law; forum selection (choice of court)]⁶ (1) The Constitutional Court respects **the discretion of the courts of general jurisdiction in the interpretation of EU law**, and only imposes on them such requirements that are based on constitutional laws, i.e. primarily the respect for the rights of the parties to a fair trial in terms of Article 36(1) of the Charter of Fundamental Rights and Freedoms.⁷ **The absence of a request for a preliminary ruling from the Court of Justice** shall only constitute a breach of the rights guaranteed by the constitutional laws if the court fails to provide an explanation in instances in which a party requests such explanation or in which**

⁵ The *ratio decidendi* has been adopted from: Aspi.cz; JUD429060CZ, title: Preliminary reference – ECJ; business.

⁶ Preceding decisions in the case: (i) Resolution of the High Court in Prague, Case No. 5 Cmo 310/2016-135 of 08 February 2017, and (ii) Resolution of the Municipal Court in Prague, Case No. 56 Cm 182/2015 of 26 July 2016.

⁷ Article 36(1) of the Charter of Fundamental Rights and Freedoms (cit., approximate translation): “Everyone may assert, through the legally prescribed procedure, his or her rights before an independent and impartial court or, in specified cases, before a different authority.”

it is *prima facie* clear that the interpretation of EU law in the relevant case is questionable. Indeed, Czech constitutional laws only demand that the justification be sustainable (defendable and persuasively supported by arguments) and not manifestly contrary to the **fundamental principles of EU law**.⁸ (2) The Constitutional Court is not called upon to examine whether the contested judgment stands up to scrutiny from the perspective of the standards derived from EU law; but the contested decisions undoubtedly stand up to scrutiny from the perspective of the standards derived from the constitutional laws. [***From the factual and legal findings***] The claimant demanded that the applicant pay a certain amount as compensation for damage and losses caused by the applicant's breach of contractual obligations arising from trading in currency pairs. The applicant has challenged the jurisdiction of the Municipal Court in Prague [Czech Republic], arguing that the claimant and the applicant have entered into a **choice-of-court agreement (clause) whereby the parties agreed on the jurisdiction of a Danish court**.

- 9.05. **Judgment of the Constitutional Court of the Czech Republic, Case No. IV. ÚS 2042/19-1 of 08 February 2021.**⁹ [**competences of the Constitutional Court; *acte clair*; preliminary reference; right to be heard; scope of reasons; binding interpretation of EU law; authority in the interpretation of EU law; enforcement of a foreign decision**]¹⁰ (1) **The competences of the Constitutional Court do not include a binding interpretation of EU law.** Consequently, if the Constitutional Court sets aside a decision of a lower court, the former cannot prejudge further steps that the latter shall take in the case based on the need to interpret EU law. Hence, the Constitutional Court of the Czech Republic cannot interfere with the lower court's independent decisions. Should the opinion of the lower court expressed during the new hearing of the case differ from the opinion of the Constitutional Court, the case could not be deemed *acte clair*. In this case, the lower court would be obliged to make a preliminary reference to the **EU Court of Justice** in order to prevent any conflict between the court's decision and EU law and, in turn, a breach of obligations binding on the Czech Republic as a result of its

⁸ See also Judgment of the Constitutional Court of the Czech Republic, Case No. I. ÚS 1434/17 of 11 June 2018.

⁹ The *ratio decidendi* has been adopted from: Aspi.cz; JUD511626CZ.

¹⁰ The Constitutional Court invoked the following case-law in its reasoning: (i) Judgment of the Constitutional Court of the Czech Republic, Case No. I. ÚS 777/07 of 31 July 2008, and (ii) Judgment of the Constitutional Court of the Czech Republic, Case No. I. ÚS 2502/09 of 15 March 2010.

membership in the EU. (2) If the appellate court applies a legal assessment of the case that differs from the legal assessment performed by the first-instance court, as well as the legal reasoning outlined by the parties, and if the appellate court denies the parties the opportunity to express their opinion on the appellate court's standpoint, the appellate court breaches the right to be heard under Article 38(2) of the Charter of Fundamental Rights and Freedoms.¹¹ This shall not apply if the reasons for the court's decision indicate sufficiently clearly the reasons why the arguments presented in the constitutional complaint cannot stand, i.e. if they are merely an expression of the party's disagreement with the relevant conclusions made by the court that introduces no "new" elements in the assessment of the case. [*From the factual and legal findings*] The District Court in Znojmo [Czech Republic], in enforcement proceedings initiated by the applicant (as the judgment creditor) versus the intervenor (as the judgment debtor), charged a private bailiff with the enforcement of a financial claim awarded by a judgment of the Labour and Social Court in Vienna [Austria]. The District Court has also given the order to the private bailiff, subsequently challenged by the constitutional complaint, to dismiss the part of the applicant's motion for enforcement in which the applicant requests authorisation to enforce the payment of default interest, because that part of the enforceable instrument is not materially enforceable, as it lacks any indication of the day until which the intervenor is obliged to pay such interest.

- 9.06. Judgment of the Supreme Court of the Czech Republic, Case No. 20 Cdo 2302/2017 of 17 July 2018:¹² [enforcement of a foreign court's decision; recognition of foreign decisions; enforcement; translation of a document by the court; right to written communication; public policy proviso]^{13/14} (1)** The right to written communication (i.e. the translation of documents by the court that the party presents in their native language) has no basis in international human rights treaties or in Czech law. This does not exclude the possibility, though, that the statutory provisions in any particular State may guarantee a higher standard of protection. The second sentence of Section

¹¹ Article 38(2) of the Charter of Fundamental Rights and Freedoms (cit., approximate translation): *"Everyone has the right to have his or her case considered in public, without unnecessary delay, and in his or her presence, as well as to express his or her opinion on all examined evidence. The public may only be excluded in cases specified by law."*

¹² The *ratio decidendi* has been adopted from: Aspi.cz; JUD381706CZ.

¹³ Adopted from the case-law database of the Supreme Court.

¹⁴ Preceding decisions in the case: (i) Judgment of the Regional Court in Hradec Králové – Pardubice Office [Czech Republic], Case No. 27 Co 259/2016 of 07 December 2016.

18(1) of the Code of Civil Procedure¹⁵ cannot be interpreted as imposing an obligation on the court to secure a translation of its decision to the language of a party that does not speak Czech. (2) The requirement of a written communication in the native language of a party can also not be subsumed under the right to a fair trial. (3) The situation can also not become so serious as to justify the triggering of the public policy proviso in terms of Article 26 of the EC Insolvency Regulation (EC) 1346/2000.¹⁶

9.07. Resolution of the Supreme Court of the Czech Republic, Case No. 20 Cdo 1152/2020 of 16 June 2020:¹⁷ [impediments to the recognition of judgments; right to a fair trial; violation of public policy; a foreign decision on the enforcement of a third country's decision cannot be recognised]¹⁸ (1) A declaration of the enforceability of an Austrian writ of execution would result in a situation in which a foreign decision that is subject to the provisions of Section 14 of the Private International Law Act¹⁹ would be recognised without any special proceedings, and the person against whom the enforcement is targeted would have no opportunity to invoke the impediments to recognition under Section 15 of the Private International Law Act,²⁰ the

¹⁵ The second sentence of Section 18(1) of the Code of Civil Procedure (cit., approximate translation): [The parties] "*[h]ave the right to appear and state their case in court in their native language.*"

¹⁶ In the reasoning of its decision, the Constitutional Court invoked the judgment of the Constitutional Court of the Czech Republic in Case No. II. ÚS 186/05 of 08 August 2005.

¹⁷ The *ratio decidendi* has been adopted from: case-law database of the Supreme Court of the Czech Republic.

¹⁸ Preceding decisions in the case: (i) Resolution of the District Court for Prague 4 [Czech Republic] of 18 April 2019, Case No. 13 EXE 1004/2015-250, and (ii) Resolution of the Municipal Court in Prague [Czech Republic] of 29 November 2019, Case No. 12 Co 185/2019-305.

¹⁹ Section 14 of the Private International Law Act (cit., approximate translation): "*Judgments of the courts of a foreign State and rulings of the authorities of a foreign State concerning any rights and obligations whose private-law nature would, in the Czech Republic, subject them to the jurisdiction of courts, as well as foreign judicial settlements and foreign notarial or other authentic instruments concerning these matters (hereafter referred to as 'foreign judgments') will have effects in the Czech Republic, provided that they have become final according to a confirmation issued by the competent foreign authority and have been recognised by Czech public authorities.*"

²⁰ Section 15 of the Private International Law Act (cit., approximate translation):

"(1) Unless the following provisions of this Act stipulate otherwise, a final foreign judgment cannot be recognised (a) if the matter falls within the exclusive jurisdiction of Czech courts or no authority of a foreign State would have had jurisdiction to conduct the proceedings if the provisions on the jurisdiction of Czech courts had been applied to the assessment of the foreign authority's jurisdiction, unless the party to the proceedings against whom the foreign judgment is made has voluntarily submitted to the jurisdiction of the foreign authority, (b) if any proceedings are pending in a Czech court concerning the same legal relationship and those proceedings had been opened earlier than the foreign proceedings in which the judgment was issued whose recognition is sought, (c) if a Czech court has already issued a final judgment regarding the same legal relationship or if a final judgment of a third State's authority has already been recognised in the Czech Republic, (d) if a party to the proceedings against whom the recognition of the judgment is sought was deprived of the opportunity to duly enter an appearance by the acts of the foreign authority, primarily if the party was not served with a summons or a petition to open the proceedings, (e) if the recognition were clearly contrary to public policy, or (f) if no reciprocity is guaranteed; reciprocity is not required if the foreign judgment is not directed against a citizen of the Czech Republic or a Czech legal entity. (2) The impediment set out in Subsection 1(d) shall only be taken into account if invoked by the party

scope of which is broader than the scope of the impediments to recognition under Article 34 of Council Regulation (EC) No 44/2001 of 22 December 2000 (Brussels I Regulation) on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters. This would undermine the right of the judgment debtor to a fair trial and, consequently, be contrary to public policy of the Czech Republic, which constitutes grounds for a refusal to recognise the decision pursuant to Article 34(1) of the Brussels I Regulation. [*From the factual and legal findings*] The Austrian decision allowed enforcement to be conducted only in the Austrian Republic, on the basis of judgments issued by a court of the Principality of Liechtenstein. Hence, it constitutes a writ of execution in an EU Member State on the basis of a court decision issued in a third (non-EU) country.

- 9.08. Resolution of the Supreme Court of the Czech Republic, Case No. 20 Cdo 4725/2017 of 09 May 2018: [enforcement proceedings; failure to serve the judgment on the respondent; impediments to the recognition and enforcement of a decision]**²¹ The indicative list of circumstances preventing the recognition and enforcement of a foreign decision may also include other circumstances, if invoked by the parties. One such impediment may be the fact that the respondent was not served with the judgment, provided that the respondent was thereby denied the opportunity to participate properly in the proceedings. [*From the factual and legal findings*] The judgment creditor requested a writ of execution against the judgment debtor pursuant to a judgment of the Superior Court of Arizona in order to satisfy the claim of the judgment creditor for USD 100,000, whereby the judgment creditor was ordered to reimburse the judgment debtor for the costs of the proceedings, but it did not award the reimbursement of the costs of the enforcement proceedings. The judgment debtor was served with the action, the summons to a hearing, the court's notice and the attorney's statement. The judgment debtor was also served with the action and the summons to a hearing. However, the judgment debtor was not served with the enforceable instrument on the basis of which the enforcement was to be conducted.

to the proceedings against whom the recognition of the foreign judgment is sought. This also applies to the impediments set forth in Subsection 1(b) and (c), unless the authority that should make a decision on the recognition is otherwise aware that such impediments exist."

²¹ Preceding decisions in the case: (i) Resolution of the Municipal Court in Prague [Czech Republic], Case No. 18 Co 147/2017 of 23 June 2017, and (ii) Resolution of the District Court for Prague 4 [Czech Republic], Case No. 72 EXE 3449/2012-481 of 28 February 2017.

- 9.09. Resolution of the Supreme Court of the Czech Republic, Case No. 29 Cdo 3306/2018 of 27 May 2020:²² [arbitration; court jurisdiction; doubts about the formation of the contract; claim under a contract pursuant to Article 5(1)(a) of the Brussels I Regulation]²³** (1) The jurisdiction to resolve disputes concerning the existence of a contractual obligation must be determined in compliance with Article 5(1) of the Convention of 27 September 1968 on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters (“Brussels Convention”). This provision is also applicable if the formation of the contract that impelled the action is a matter of dispute between the parties. (2) The concept of “matters relating to a contract” (claims under a contract) in terms of Article 5(1)(a) of Council Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (“Brussels I Regulation”) cannot be interpreted as covering a situation in which no freely accepted commitment of one party to the other exists. (3) Hence, the application of the rule on special jurisdiction prescribed for matters relating to a contract or claims under a contract requires the finding of a legal commitment freely accepted by one person vis-à-vis another, underlying the action.
- 9.10. Resolution of the Supreme Court of the Czech Republic, Case No. 29 Nd 130/2016 of 25 August 2016: [international jurisdiction; territorial jurisdiction; failure to comment on the court’s jurisdiction]** (1) Article 26(1) of Regulation (EU) No 1215/2012 of the European Parliament and of the Council of 12 December 2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (“Brussels Ia Regulation”) sets forth rules regulating international jurisdiction, as well as the territorial jurisdiction of the court in which the action was lodged. (2) If the respondent replies to the action, but fails to challenge the jurisdiction of the said court in the reply or before filing the reply, then – unless the case concerns exclusive jurisdiction provided for in the provisions of Article 24 of the Brussels Ia Regulation – the court acquires (international and territorial) jurisdiction on or before that moment.
- 9.11. Judgment of the Regional Court in Ostrava [Czech Republic], Case No. 56 Co 190/2017-340 of 25 August 2017:**

²² The *ratio decidendi* has been adopted from: Aspi.cz; JUD451547CZ.

²³ Preceding decisions in the case: (i) Resolution of the Regional Court in Pilsen [Czech Republic], Case No. 41 Cm 43/2016 of 20 November 2017, and (ii) Resolution of the High Court in Prague [Czech Republic], Case No. 12 Cmo 5/2018 of 26 April 2018.

[international jurisdiction; residence]²⁴ (1) International jurisdiction of Czech courts to hear and resolve a case in which the respondent is a citizen of the Hellenic Republic, with his place of residence in the territory of the Czech Republic, is established under Article 2(1) of the Brussels I Regulation. Subject to this Regulation, persons domiciled in a Member State shall, whatever their nationality, be sued in the courts of that Member State, in conjunction with Article 66(1) of the Brussels Ia Regulation. **[From the factual and legal findings]** The respondent's vehicle was damaged in a traffic accident that occurred as a result of unlawful conduct caused by the acts of a third party. The parties have verbally agreed on a contract for the repairs of the damaged vehicle belonging to the respondent. The respondent handed over the vehicle to the claimant for repairs. The insurance company paid out to the aggrieved party – respondent – an indemnification of CZK 15,100 for the total damage to the vehicle. The invoice was delivered to the respondent in an annex to the letter of formal notice (before action), and the respondent has not yet paid to the claimant the amount of CZK 14,120. The claimant has failed to prove that the parties agreed on the price of the repairs to the vehicle.

9.12. Judgment of the Supreme Court of the Czech Republic, Case No. 30 Nd 27/2018 of 26 September 2018: [territorial jurisdiction; Lugano Convention; prohibition of making dispositions with shareholdings; interim measure]²⁵

Pursuant to Article 31 of the Lugano Convention, Czech courts lack the international jurisdiction to adjudicate on a motion for an interim measure that is supposed to prohibit a person residing in Switzerland from making dispositions with their shareholdings in business companies established in Switzerland and in Georgia, because there is no close connection between the subject matter of the proposed interim measure and the territorial jurisdiction of Czech courts. **[From the factual and legal findings]** The claimant extended certain loans to the respondent. The respondent, however, failed to meet their obligation. The claimant thus filed a petition with a court in Horgen (Switzerland), and the court ordered the respondent to refund to the claimant the amount of CHF 1,122,848.50. The respondent has filed an action against the judgment in compliance with Swiss law. The claimant is concerned that the enforcement of the said judgment could be jeopardised, and

²⁴ Preceding decision in the case: (i) Judgment of the District Court in Frýdek – Místek [Czech Republic], Case No. 41 C 136/2013-319 of 27 April 2017.

²⁵ Preceding decision in the case: (i) Judgment of the Court in Horgen [Switzerland], Case No. EB160015-F/UB/KH/Sta of 05 October 2016.

consequently, the claimant has filed a motion for an interim measure pursuant to Section 102 of the Code of Civil Procedure that would prohibit the respondent from making dispositions with the respondent's assets in Switzerland and in Georgia. The claimant was a citizen of the Russian Federation with a permanent residence permit in the Czech Republic, while the respondent was a citizen of Georgia permanently residing in Switzerland.

- 9.13. Judgment of the Supreme Court of the Czech Republic, Case No. 27 Cdo 3456/2019 of 15 April 2020.²⁶ [compensation for damage and losses as a result of a breach of a contractual obligation; claim from a contract; court jurisdiction; action against an Executive Officer of a company; real seat of a company]** (1) An action for compensation for damage and losses caused by a breach of a contractual obligation is an action from a contract in terms of Article 5(1) of the Brussels I Regulation / Article 7(1) of the Brussels Ia Regulation. The jurisdiction to hear the case is vested in the court in the district in which the contractual obligation was to be fulfilled, the breach of which has caused damage and losses suffered by the claimant. (2) A company's action against its former Executive Officer due to alleged non-fulfilment of the obligation to properly discharge one's office, which is binding on the person under the law of business corporations, falls within the concept of "matters relating to a contract" in terms of Article 5(1) of the Brussels I Regulation / Article 7(1) of the Brussels Ia Regulation. (3) The claim for which the action was lodged corresponds to the concept of "matters relating to a contract" in terms of Article 7(1) of the Brussels Ia Regulation, not the concept of "matters relating to tort, delict or quasi-delict" in terms of Article 7(2) of that Regulation (as the claim was classified by the appellate court). (4) Hence, the court with jurisdiction to hear and resolve the dispute over the claim (apart from the generally competent court under Article 4 of the Brussels Ia Regulation) is the court of the place in which the contractual obligation was to be fulfilled (the obligation to discharge the office of Executive Officer with due managerial care). This must be the place of the **real seat of the company**, i.e. the place in or from which the Executive Officer actually managed the company.^{27/28}

²⁶ Preceding decisions in the case: (i) Resolution of the Municipal Court in Prague, Case No. 74 Cm 162/2018 of 21 November 2018, and (ii) Resolution of the High Court in Prague, Case No. 6 Cmo 2/2019 of 27 May 2019.

²⁷ In this connection, the Supreme Court of the Czech Republic recalled Article 7(1) of the Brussels Ia Regulation and explicitly mentioned the jurisdiction of a Czech court.

²⁸ Concerning a similar matter, see also the next decision (Resolution of the Supreme Court of the Czech Republic, Case No. 27 Cdo 3456/2019 of 15 April 2020).

- 9.14. Judgment of the Supreme Court of the Czech Republic, Case No. 30 Cdo 3344/2019 of 18 May 2021:²⁹ [commercial agency; place of provision of services; residence of the commercial agent] (1)** In the case of a commercial agency contract where the agency services are to be performed in the territory of multiple States, the important factor for the purposes of the requirement of international and territorial jurisdiction pursuant to Article 7(1)(b) of the Brussels Ia Regulation is the place where the services were to be or predominantly were provided according to the contract. **(2)** It is necessary to have regard to the time spent on such places and the importance of the activity performed there. **(3)** If no such place can be determined, the relevant place is the commercial agent's place of residence.
- 9.15. Resolution of the Supreme Court of the Czech Republic, Case No. 30 Cdo 4402/2017 of 20 June 2019:³⁰ [contractual interest; compensation for damage and losses]** Claims from a breach of contract, whether compensation for damage and losses sustained in connection with the contract or an obligation to pay contractual default interest, also constitute claims in matters relating to a contract in terms of the Brussels Ia Regulation.
- 9.16. Resolution of the Supreme Court of the Czech Republic, Case No. 25 Nd 168/2016 of 22 July 2016:³¹ [court with responsibility for enforcement; assets in the territory of the Czech Republic; economy of proceedings] (1)** Whether or not the judgment debtor has any seisable assets in the territory of the Czech Republic that could be seised by the private bailiff and sold after the enforcement is opened, will only become clear after the court-appointed private bailiff embarks on their activities in the implementation of the enforcement. **(2)** Hence, the court with responsibility for enforcement does not inquire into the judgment debtor's assets (or lack thereof) before the enforcement is opened and the private bailiff is charged with the implementation thereof. If the Supreme Court proceeds pursuant to Section 11(3) of the Code of Civil Procedure,³² it determines the competent court with responsibility for enforcement in

²⁹ Preceding decisions in the case: (i) Resolution of the District Court in Liberec [Czech Republic], Case No. 23 C 92/2016 of 25 September 2018, and (ii) Resolution of the Regional Court in Ústí and Labem – Liberec Office [Czech Republic], Case No. 35 Co 183/2018 of 19 December 2018.

³⁰ Preceding decisions in the case: (i) Resolution of the District Court in Liberec [Czech Republic], Case No. 8 C 69/2015 of 10 December 2015, and (ii) Resolution of the Regional Court in Ústí and Labem – Liberec Office [Czech Republic], Case No. 8 Co 54/2016 of 26 February 2016.

³¹ Preceding decision in the case: (i) Resolution of the District Court for Prague 5 [Czech Republic], Case No. 33 EXE 584/2016 of 11 April 2016.

³² Section 11(3) of the Code of Civil Procedure (cit., approximate translation): *"If the case falls within the jurisdiction of Czech courts, but the conditions for territorial jurisdiction are absent or cannot be established, the Supreme Court shall determine which court shall hear and resolve the case."*

compliance with the principle of economy. [*From the factual and legal findings*]: The courts have established in the said case that the judgment debtor was granted a visa for a stay of over 90 days in the territory of the Czech Republic. He was registered at a particular address until 1 July 2020. The judgment debtor's assets (or lack thereof) in the territory of the Czech Republic had not been inquired into before the private bailiff was appointed.³³

- 9.17. Resolution of the High Court in Olomouc [Czech Republic], Case No. 5 Cmo 3/2017 of 17 January 2017:³⁴ [FOREX market; application of rules on consumer contracts]** (1) If a natural person traded on the international FOREX market in the form of Contracts For Difference (CFDs), the person did not act as a consumer. In such case, Article 17 of the Brussels Ia Regulation on consumer contracts shall not apply. (2) The person thus does not have the right to file an action with the court of the place where the person resides, i.e. in the Czech Republic.³⁵
- 9.18. Resolution of the Supreme Court of the Czech Republic, Case No. 30 Cdo 3918/2017 of 26 November 2019:³⁶ [FOREX contracts; consumer; court jurisdiction]**³⁷ Article 17(1) of the Brussels Ia Regulation must be interpreted as meaning that a natural person who enters into a contract with a brokerage company, such as a Contract For Difference (CFD), and performs transactions on the international FOREX (Foreign Exchange) market through the company, must be qualified as a “consumer” in terms of the said provision, unless the execution of the contract falls within the professional or business activities of the person.
- 9.19. Resolution of the Supreme Court of the Czech Republic, Case No. 25 Nd 266/2017 of 31 August 2017:³⁸ [economy of proceedings; enforcement proceedings]** (1) In view of the principles of the expeditiousness and economy of the proceedings pursuant to Section 11(3) of the Code of Civil Procedure,³⁹ the Supreme Court shall determine that the court

³³ In the reasoning supporting its decision, the court has held that, pursuant to Article 24(5) of the Brussels Ia Regulation, in proceedings concerned with the enforcement of judgments, the courts of the Member State in which the judgment has been or is to be enforced shall have exclusive jurisdiction.

³⁴ Preceding decision in the case: (i) Resolution of the Regional Court in Ostrava [Czech Republic], Case No. 42 Cm 242/2015 of 29 September 2016.

³⁵ An entirely opposite opinion was voiced by the Supreme Court in the next annotated decision (Resolution of the Supreme Court of the Czech Republic, Case No. 30 Cdo 3918/2017 of 26 November 2019).

³⁶ Preceding decision in the case: (i) Resolution of the Regional Court in Ostrava [Czech Republic], Case No. 42 Cm 242/2015 of 29 September 2016.

³⁷ Preceding decisions in the case: (i) Resolution of the High Court in Olomouc [Czech Republic], Case No. 5 Cmo 3/2017 of 17 January 2017, and (ii) Resolution of the Regional Court in Ostrava [Czech Republic], Case No. 42 Cm 242/2015 of 29 September 2016.

³⁸ The enforcement case was enrolled at the District Court in Rakovník [Czech Republic] under Case No. 28 EXE 1199/2017.

³⁹ Section 11(3) of the Code of Civil Procedure (cit., approximate translation): “If the case falls within the

with territorial jurisdiction will be the court in which the enforcement proceedings were opened.^{40/41} [*From the factual and legal findings*] As it transpired during the enforcement proceedings, the judgment debtor was a natural person with no permanent residence in the Czech Republic and no registration for residence in the databases of the Foreign National Information System. Whether or not the person had any seisable assets in the Czech Republic has not yet been inquired into.

- 9.20. Resolution of the Regional Court in Hradec Králové – Pardubice Office [Czech Republic].⁴² Case No. 18 Co 137/2016 of 29 April 2016: [request for a reply; failure to challenge the international jurisdiction of the court]** (1) The District Court (as the first-instance court) should have served the respondent with the claimant's action and a request to reply before applying Article 6 of the Brussels Ia Regulation in terms of Article 26(1) of the same Regulation. (2) Provided that the respondent presents a reply on the merits and fails to challenge the jurisdiction of the Czech court, the Czech court's jurisdiction to hear the case is thereby established. (3) The law applicable to the dispute would then be determined in compliance with the applicable bilateral international treaty.
- 9.21. Resolution of the Supreme Court of the Czech Republic, Case No. 30 Cdo 5019/2017 of 11 December 2018.^{43/44} [dependency; Isle of Man; application of EU law]** For the purposes of an assessment of international jurisdiction according to the Brussels Ia Regulation, a respondent with their place of residence on the Isle of Man must be regarded as a person with their place of residence outside the EU Member States.

jurisdiction of Czech courts, but the conditions for territorial jurisdiction are absent or cannot be established, the Supreme Court shall determine which court shall hear and resolve the case."

⁴⁰ The court has recalled in the said case that, pursuant to Article 24(5) of the Brussels Ia Regulation, in proceedings concerned with the enforcement of judgments, the courts of the Member State in which the judgment has been or is to be enforced shall have exclusive jurisdiction, regardless of the domicile of the parties.

⁴¹ The court has also noted in the reasons that the Supreme Court of the Czech Republic, sitting as the Grand Chamber of the Civil and Commercial Division, in its resolution in Case No. 31 Nd 316/2013 of 12 November 2014, published as No. 11/2015 in *Sbírka soudních rozhodnutí a stanovisek* [Court Reports], presented and substantiated a legal opinion that if the Supreme Court is requested to determine the court with territorial jurisdiction pursuant to Section 11(3) of the Code of Civil Procedure on the basis of a final decision, whereby the first-instance court had denied its territorial jurisdiction and referred the case to the Supreme Court for determination of the court with territorial jurisdiction, the Supreme Court shall make such determination without examining (without being entitled to examine) whether or not Czech courts have jurisdiction to hear and resolve the case.

⁴² Preceding decision in the case: Resolution of the District Court in Svitavy [Czech Republic], Case No. 12 C 31/2016 of 19 February 2016.

⁴³ Adopted from: *Soudní judikatura z oblasti občanského, obchodního a pracovního práva* [Court Case-Law Concerning Civil, Commercial and Labour Law], 5th edition (volume), 2020, p. 321. Published under Reg. No. 47/2020.

⁴⁴ Preceding decisions in the case: (i) Resolution of the District Court, Case No. 60 C 24/2015 of 27 December 2016.

- 9.22. Resolution of the Supreme Court of the Czech Republic, Case No. 30 Cdo 1860/2015 of 24 February 2016:**⁴⁵ [**forum selection**] Unless the agreement on court jurisdiction in a case with a foreign (cross-border) dimension clearly indicates that the parties only intended to agree on the territorial jurisdiction of a particular court, the agreement must be regarded as an agreement on the choice of the international jurisdiction of the court or courts of a particular State.
- 9.23. Resolution of the Supreme Court of the Czech Republic, Case No. 30 Cdo 3215/2016 of 28 February 2018:**⁴⁶ [**forum selection (choice of court); framework agreement; purchase contract**] An agreement on the jurisdiction of Czech courts entered into pursuant to Article 25(1) of the Brussels Ia Regulation, contained in a framework agreement and covering “disputes arising from and in connection with the agreement”, also applies to a dispute from a purchase contract that was entered into on the basis of the framework agreement. [**From the factual and legal findings**] The claimant petitioned for a European payment order, requiring the respondent to pay a particular amount due to the respondent’s failure to pay the price under a purchase contract for the delivery of goods. The District Court, as the first-instance court, discontinued the proceedings, ordered the claimant to reimburse the respondent for the costs of the proceedings, and issued a resolution on the refund of the court fee. The court argued that the respondent had appealed against the issued European payment order, arguing, *inter alia*, that the European payment order had not been properly served on the respondent. In the respondent’s subsequent reply to the action, the respondent challenged the jurisdiction of the courts of the Czech Republic under the Brussels I Regulation, because the respondent’s registered office was in the Federal Republic of Germany, with reference to Article 5(1) of the Brussels I Regulation, because the goods that were the subject matter of the purchase contract entered into by the claimant and the respondent were to be supplied and distributed in the territory of Germany.
- 9.24. Resolution of the Supreme Court of the Czech Republic, Case No. 29 Nd 359/2017 of 26 March 2018:** [**forum selection (choice of court); agreement of the parties**] (1)

⁴⁵ Adopted from: Soudní judikatura z oblasti občanského, obchodního a pracovního práva [Court Case-Law Concerning Civil, Commercial and Labour Law], 1st edition (volume), 2017, p. 15. Published under Reg. No. 4/2017.

⁴⁶ Preceding decisions in the case: (i) Resolution of the District Court in České Budějovice [Czech Republic], Case No. 15 EVC 1/2015 of 28 December 2015, and (ii) Resolution of the Regional Court in České Budějovice [Czech Republic], Case No. 22 Co 367/2016 of 22 March 2016.

Unless the case meets the criteria of the exclusive jurisdiction of courts under Article 24 of the Brussels Ia Regulation, and if the parties agreed on the international jurisdiction of Czech courts following the procedure envisaged in Article 25(1) of the Brussels Ia Regulation, the courts of the Czech Republic are vested with international jurisdiction.

- 9.25. Resolution of the Supreme Court of the Czech Republic, Case No. 29 Cdo 330/2017 of 27 June 2018:⁴⁷ [international jurisdiction clause; forum selection (choice of court); scope of the choice-of-court agreement]** The international jurisdiction clause may only cover disputes that have arisen or that arise in the future in connection with a particular legal relationship. This limits the scope of the agreement on jurisdiction to those disputes arising from the legal relationship in connection with which the court jurisdiction was agreed. This requirement aims to prevent a party from being surprised that a particular court will be seised of all disputes that arise from the party's relationships with its contract partner and that originate from other relationships than the one in connection with which the court jurisdiction was agreed.
- 9.26. Resolution of the Supreme Court of the Czech Republic, Case No. 30 Cdo 2084/2019-292 of 26 May 2020:^{48/49} [foreign professional; no branch; insurance]** (1) The interpretation of the words “directs such activities” in terms of Article 17(1)(c) of the Brussels Ia Regulation must also have regard to the fact that a foreign professional who supplied investment services to a consumer residing in the Czech Republic and has no branch in the territory of the Czech Republic launched the provision of such services after the requirements stipulated in Section 25(1) and (2) of Act No. 256/2004 Coll., the Capital Market Undertakings Act, were fulfilled.^{50/51}

⁴⁷ Preceding decisions in the case: (i) Resolution of the Regional Court in Ostrava [Czech Republic], Case No. 17 Cm 45/2015 of 14 March 2016, and (ii) Resolution of the High Court in Olomouc [Czech Republic], Case No. 7 Cmo 162/2016 of 28 July 2016.

⁴⁸ Adopted from: *Sbírka soudních rozhodnutí a stanovisek Nejvyššího soudu České republiky* [Czech Supreme Court Reports], 2021, No. 1.

⁴⁹ Preceding decision in the case: Resolution of the Regional Court in Ústí and Labem – Liberec Office [Czech Republic], Case No. 38 EVCm 1/2017 of 08 February 2018.

⁵⁰ An identical decision was made by the Supreme Court of the Czech Republic in Case No. 30 Cdo 4162/2019 of 04 September 2020.

⁵¹ Section 25(1) and (2) of Act No. 256/2004 Coll., Capital Market Undertakings Act (cit., approximate translation): “(1) A foreign person authorised by the supervisory authority of another EU Member State to provide investment services may, in compliance with EU law, provide investment service in the Czech Republic, temporarily or occasionally, without establishing a branch in the Czech Republic, provided that it has an authorisation of the supervisory authority of its home State to provide such services; this shall not apply to investment services provided to professional clients pursuant to Section 2a, to whom investment services can be provided in such manner, even permanently. The Czech National Bank shall inform this person without undue delay that it has received data from the supervisory authority of its home State concerning the intended provision of investment services by this person in the Czech Republic. (2) A foreign person authorised by the

9.27. Resolution of the Regional Court in Hradec Králové [Czech Republic], Case No. 26 Co 210/2020-145 of 14 September 2020:^{52/53} [liability for harm; traffic accident] (1)

If the proceedings concern a claim under Section 10 of Act No. 168/1999 Coll., on Liability Insurance for Damage and Losses Caused by Operation of Vehicles,⁵⁴ made by the insurance company against the respondent, who has no residence in the territory of the Czech Republic, but resides in the territory of another EU Member State, and if the traffic accident occurred in the territory of the Czech Republic, Czech courts have the

supervisory authority of another EU Member State to provide investment services may launch the provision of such investment services in the Czech Republic without establishing a branch from the date on which the Czech National Bank receives data related to the provision of services by that person in the Czech Republic from the supervisory authority of its home State or after the expiry of one month from the date when the data was received by the supervisory authority of the home State."

⁵² Adopted from: Sbíрка soudních rozhodnutí a stanovisek Nejvyššího soudu České republiky [Czech Supreme Court Reports]. 2021, No. 1.

⁵³ Preceding decision in the case: Resolution of the District Court in Jičín, Case No. 5 C 153/2019 of 18 October 2019.

⁵⁴ Section 10 of Act No. 168/1999 Coll., on Liability Insurance for Damage Caused by Operation of Vehicles (cit., approximate translation): (1) *The insurer has a claim against the insured party for compensation of the performance provided by the former on behalf of the latter if the insurer proves that the insured party (a) caused the damage wilfully, (b) without a good reason failed to fulfil the obligation stipulated by the Act Regulating Road Traffic to draw up a joint record of the traffic accident or report the traffic accident that constitutes the insured event, in consequence of which the insurer's opportunity to duly investigate pursuant to Section 9(3) of this Act or the insurer's right to assert this right for compensation of the indemnification was impaired or entirely frustrated, (c) without good reason left the place of the traffic accident or otherwise prevented the determination of the actual cause of the traffic accident, (d) caused damage by operating a vehicle that the insured party used without proper authorisation, (e) without good reason failed to meet the obligation under Section 8(1) to (3), in consequence of which the insurer's opportunity to duly investigate pursuant to Section 9(3) was impaired or entirely frustrated, (f) as a driver of the vehicle refused, without good reason, to obey a request of a police officer to submit to a test for alcohol, narcotic drugs and psychotropic substances or medication labelled as incompatible with the driving of a motor vehicle, (g) was driving the vehicle without having the required driver's license, unless the insured party is a learner driver or a person taking a driving test, always supervised by the authorised teacher or trainer during individual tuition, (h) was driving the vehicle despite and before the expiration of a prohibition to drive vehicles, (i) was driving the vehicle under the influence of alcohol, narcotic drugs and psychotropic substances or medication labelled as incompatible with the driving of a motor vehicle, or (j) allowed a person identified under (g), (h), or (i) to drive the vehicle.* (2) *The insurer has a claim against the insured party for compensation of the performance provided by the former on behalf of the latter if the insurer proves that the insured party breached a fundamental obligation concerning road traffic by operating a vehicle (a) the chassis or technical condition of which failed to meet the requirements of safe road traffic or the safety of servicing personnel, passengers and transported things, or (b) the technical operability of which was not approved, and there was a causal connection between the breach and the damage or losses that the insured party is obliged to reimburse.* (3) *The operator of the vehicle assumes joint and several liability with the person under Subsection (1) for the insurer's claim for compensation of the amount paid out pursuant to Subsection (1)(g), (h), (i), and (j), unless the operator proves that the operator could not influence the acts of the person.* (4) *The insurer has a claim against the policyholder for compensation of the amount paid out by the former as a result of the damage and losses caused by the operation of the vehicle if the cause consisted in a fact that the insurer could not discover during the negotiation of the insurance due to wilfully false or incomplete answers and which was material for the execution of the insurance contract.* (5) *If the insured party breached any of the obligations stipulated in Section 8(1) to (3), the insurer has the right to claim compensation of the costs connected with the investigation of the insured event or any other costs caused by the breach of the obligations, without prejudice to the insurer's claim for reimbursement of the amount paid out pursuant to Subsection (1)(e).* (6) *The sum total of the requested compensation under Subsections (1) to (5) may not exceed the indemnification paid out by the insurer in consequence of the insured event to which the insurer's right is related."*

international jurisdiction to hear and resolve the case in terms of Section 2 – Article 7(2) of the Brussels Ia Regulation.

9.28. Resolution of the Supreme Court of the Czech Republic, Case No. 27 Cdo 12/2019-156 of 15 April 2020: [active participation in the proceedings; guardian *ad litem*]⁵⁵ If the court appoints a guardian *ad litem* for a respondent with unknown residence pursuant to Section 29(3) of the Code of Civil Procedure,⁵⁶ the appointed guardian's reply to the claimant's action on the merits cannot be interpreted as meaning that the respondent enters an appearance in terms of Article 26(1) of the Brussels Ia Regulation.

9.29. Decision of the Supreme Court of the Czech Republic, Case No. 30 Cdo 3157/2013 of 22 August 2014.⁵⁷ [protection of personality rights; court jurisdiction; territorial jurisdiction of the court; enforcement of a foreign court's decision; *punitive damages*] (1) A dispute arising from the protection of personality rights is not subject to the exclusive jurisdiction of Czech courts. Consequently, the recognition of a judgment issued by an Arizona court could only be refused on the grounds that the court (and any other authority in the territory of Arizona) would lack the jurisdiction to hear and resolve the case if the court's jurisdiction were subject to the rules of jurisdiction applicable to Czech courts. (2) A decision on whether or not the second impediment specified in Section 64(a) of the Private International Law Act⁵⁸ prevents the recognition of the particular judgment entails the projection of Czech rules on court jurisdiction onto a foreign law.⁵⁹ (3) Hence, it is necessary

⁵⁵ Preceding decisions in the case: (i) Judgment of the Municipal Court in Prague [Czech Republic], Case No. 79 Cm 59/2015-94 of 29 January 2018, and (ii) Resolution of the High Court in Prague [Czech Republic], Case No. 12 Cmo 163/2018 of 29 August 2018.

⁵⁶ Section 29(3) of the Code of Civil Procedure (cit., approximate translation): "*Unless other measures are taken, the presiding judge may also appoint a guardian to unknown heirs of a deceased person if the deceased's heirs have not yet been identified in the inheritance proceedings, to a party whose place of residence is unknown or if an attempted delivery to a known address abroad failed, to a party suffering from a mental illness or a party who cannot participate in the proceedings for other medical reasons, unless such incapacity is merely temporary, or a party who is unable to express oneself clearly.*"

⁵⁷ Preceding decisions in the case: (i) Resolution of the Municipal Court in Prague [Czech Republic], Case No. 18 Co 49/2013-170 of 17 June 2013, (ii) Resolution of the District Court for Prague 4 [Czech Republic] of 02 January 2013, Case No. 72 EXE 3449/2012-106, and (iii) Judgment of the Superior Court of Arizona in and for Maricopa County, U.S., Case No. CV2009-092456 of 30 September 2011.

⁵⁸ Section 64(a) of Act No. 97/1963 Coll., on Private International Law and Procedure (cit., approximate translation): "*A foreign decision cannot be recognized or enforced if:*

(a) the matter falls within the exclusive jurisdiction of Czechoslovak authorities or if no authority of a foreign State would have had jurisdiction to conduct the proceedings if the provisions on the jurisdiction of Czechoslovak courts had been applied to the assessment of the foreign authority's jurisdiction" This Act was replaced by Act No. 91/2012 Coll., on Private International Law, with effect from 01 January 2014.

⁵⁹ See also ZDENĚK KUČERA, LUBOŠ TICHÝ, ZÁKON O MEZINÁRODNÍM PRÁVU SOUKROMÉM A PROCESNÍM. KOMENTÁŘ [title in translation – ACT ON PRIVATE INTERNATIONAL LAW AND PROCEDURE. A COMMENTARY], Prague: Panorama (1989), et. 309.

to assess whether any authority of a foreign State had jurisdiction to hear and resolve the case if the applicable criteria of jurisdiction were the criteria applied in the Czech Republic. These criteria include not only the rules on jurisdiction stipulated in Act No. 97/1963 Coll., on Private International Law,⁶⁰ in conjunction with the Code of Civil Procedure, but also the rules incorporated in EU laws, which form an integral part of Czech law, as well as any jurisdictional rules contained in international treaties binding on the Czech Republic.⁶¹ (4) The purpose of the rules is to prevent recognition and enforcement in those cases in which the foreign authority attracts jurisdiction to resolve matters that lack a sufficiently close connection to the authority's State. [***From the conclusions of the Supreme Court***]: (i) The concept of "*punitive damages*" represents compensation for non-material damage in U.S. law, which does not aim to indemnify the claimant (aggrieved party), but punish the wrongdoer.⁶² (ii) *Punitive damages* are usually imposed if the defendant harmed the claimant intentionally, or if the defendant manifestly, grossly and wilfully ignored the claimant's fundamental rights.⁶³ (iii) The U.S. Supreme Court has defined punitive damages as a private-law sanction imposed by civil juries as a penalty for contemptible behaviour and a deterrent to the repetition of such conduct.⁶⁴ (iv) In the said decision, however, the U.S. Supreme Court has also limited the application of *punitive damages* in freedom of speech and protection of personality rights cases to situations in which the injured party proves that the defendant acted in bad faith, in that the defendant was aware of the information disseminated by the defendant being false, or at least failed to properly verify the truthfulness of the information. *Punitive damages* can be perceived as a penal sanction imposed in civil proceedings.⁶⁵ (v) In proceedings for the protection of personality rights and freedom of speech, the defendant (respondent) may claim that the award of *punitive damages* is contrary to the defendant's freedom of speech and is

⁶⁰ This Act was applicable in the Czech Republic until 31 December 2013; it was replaced by Act No. 91/2012 Coll., on Private International Law, as a result of the recodification of Czech civil law, with effect from 01 January 2014.

⁶¹ See also PETR BRÍZA, TOMÁŠ BRÍCHÁČEK, ZUZANA FIŠEROVÁ, PAVEL HORÁK, LUBOMÍR PTÁČEK, JIŘÍ SVOBODA, ZÁKON O MEZINÁRODNÍM PRÁVU SOUKROMÉM. KOMENTÁŘ [title in translation – PRIVATE INTERNATIONAL LAW ACT. A COMMENTARY], Prague: C. H. Beck (2014), et. 105.

⁶² See also Clarence Morris, *Punitive Damages in Tort Cases*, 44 HARRVARD LAW REVIEW 1184 (1931).

⁶³ Anthony Sebok, *Punitive Damages in the United States*, in HELMUT KOZIOL, VANESSA WILCOX, PUNITIVE DAMAGES: COMMON LAW AND CIVIL LAW PERSPECTIVES, Springer: Vienna (2009), et. 155.

⁶⁴ *Gertz v. Robert Welch*, 421 U. S. 323 (1974).

⁶⁵ See also *Kelite Prods., Inc. v. Binzel*, 224 F.2d 131, 5th Cir. 1955.

prohibited in consequence of its paralysing (deterrent) effect (*chilling effect*). (vi) Recently, the general trend in the United States is to limit the discretion of the individual States in awarding *punitive damages*. Compliance of the concept as such with the constitutional laws has been subject to review by the Federal Supreme Court in six cases; one of the most important cases was *State Farm Mutual Automobile Insurance Co. v. Campbell*, in which the Supreme Court has held that *punitive damages* can only be constitutional if a balance is struck between the element of satisfaction and the element of repression.⁶⁶ (vii) The Supreme Court has held that an excessive amount of *punitive damages* violates the Due Process Clause of the Fourteenth Amendment. (viii) The award of aggravated (but not punitive) damages for non-material harm was thus construed by the Court as a justified exception applicable to the protection against interference in the most intimate sphere of a publicly-known person's private life, which makes his or her situation comparable to a private person, where such interference is, moreover, committed by entities whose business is based on, or frequently accompanied by, clearly provable, wilful and serious interference in the fundamental rights of individuals, even undermining their human dignity.⁶⁷ (ix) Indeed, as the Constitutional Court of the Czech Republic has held, the degree of protection must be necessarily diminished, if not entirely eliminated, if the purpose of the subject's existence, their activity and marketing strategy are based predominantly on the publishing of defamatory and slanderous information that debases human dignity about publicly active or well-known people in order to reap property benefits and increase the publicity of the employed media.⁶⁸ (x) The courts of the Member States may, in exceptional circumstances, invoke the public policy proviso and overriding mandatory provisions on grounds of public interest. The violation of public policy in the place of the court seized of the dispute could primarily occur should the application of the law determined according to this Regulation result in the award of non-compensatory excessive damages of an exemplary or repressive nature, depending on the circumstances of the case and the law of the Member State whose court is seized of the dispute.⁶⁹ (xi) The case-law of the Court of Justice of the European Union concerning

⁶⁶ *State Farm Mut. Auto. Is.*, 538 U.S. 422.

⁶⁷ Judgment of the Constitutional Court of the Czech Republic, Case No. I. ÚS 1586/09 of 06 March 2012.

⁶⁸ Judgment of the Constitutional Court of the Czech Republic, Case No. I. ÚS 1586/09 of 06 March 2012.

⁶⁹ See Helmut Koziol, Vanessa Wilcox, *Punitive Damages: Common Law and Civil Law Perspectives. Tort and Insurance Law*, 25 SPRINGER 198–199 (2009).

discrimination in employment relationships is based on the principle that the system of sanctions applicable to infringements of the national provisions adopted pursuant to Directives concerning the implementation of the principle of equal opportunities and equal treatment for men and women in employment and occupation, must be effective, proportional and dissuasive.⁷⁰ (xii) European courts usually refuse the enforcement of U.S. decisions awarding *punitive damages* for being contrary to public policy, for violating the prohibition of unjust enrichment and for the fact that damages in private law do not have the nature of a sanction.⁷¹ (xiii) The Federal Court of Justice (*Bundesgerichtshof*) refused to recognize the judgment of a U.S. court concerning punitive damages, which awarded the claimant damages for the sexual abuse of a fourteen-year-old boy, arguing that the modern concept of German private law dictates that damages may only serve to restore the situation before the damage occurred, but may not punish the wrongdoer or enrich the victim. The enforcement of the decision was denied for a violation of public policy in terms of Article 328(1) of the *Zivilprozessordnung* [Germany]. The Federal Court of Justice [Germany] based the refusal of recognition and enforcement on the violation of public policy and of the constitutional principles of the State (disproportionate amount of the awarded damages). In the said case, the perpetrator was imprisoned in the United States and, on top of that, was ordered to pay to the victim USD 750,260, consisting of USD 350,260 in compensation and USD 400,000 in *punitive damages*. The German Federal Court of Justice only recognised the part of the judgment awarding compensatory damages.⁷² (xiv) Italian courts also refuse the enforcement of decisions awarding *punitive damages* as violating public policy, arguing that the aim of civil-law compensation for damage and losses is to compensate the damage or losses sustained by the injured party.⁷³ (xv) In proceedings for the recognition and enforcement of a decision issued by the Superior Court of California (County of Alameda), which awarded damages in the amount of USD 3,253,734.45, consisting of USD 1,391,650.12 as compensatory damages, USD 402,084.33 as legal fees and USD 1,460,000 as *punitive damages*, the French Supreme Court has held that foreign decisions

⁷⁰ See also Judgment of the Court of Justice of the EU, Case C-81/12, *Asociatia Accept v. Consiliul National pentru Combaterea Discriminarii*.

⁷¹ See Csongor István Nagy, *Recognition and enforcement of U.S. judgments involving punitive damages in continental Europe*, 30(1) *NEDERLANDS INTERNATIONAAL PRIVAATRECHT* 4–11 (2012).

⁷² Judgment of the German Federal Court of Justice (BGH) 118, 312, of 04 June 1992.

⁷³ Judgment of the Italian Supreme Court No. 1183/2007 of 19 January 2007.

awarding *punitive damages* are not principally contrary to public policy and, as such, are enforceable in France. However, the awarded amount of the *punitive damages* must be proportionate to the breached commitment and the actual damage. In the said case, the Court has held that the *punitive damages* exceeded the limit of reasonability. (xvi) The recognition of a foreign decision awarding *punitive damages* cannot be *eo ipso* refused under Czech law as violating public policy, despite the fact that Czech law is unfamiliar with the concept of private-law *punitive damages*. In this regard, the case-law of the Constitutional Court⁷⁴ must be interpreted as meaning that a higher degree of fault always increases the unlawfulness of the interference in personality rights (increases the injustice that requires satisfaction) and the form and amount of the awarded satisfaction must be determined accordingly; see also Paragraph 37 of the Constitutional Court's reasoning. Hence, the aim is to determine satisfaction, the form and amount of which will be proportionate to the harm suffered by the injured party, exacerbated by exceptional circumstances, not to allow private-law punishments. (xvii) Indeed, the currently applicable Civil Code is based on the same concept. Section 2957 of the Civil Code⁷⁵ lists circumstances that increase the intensity and seriousness of the harm sustained by the injured party and that must be reflected in the determination of the damages, such as causing intentional harm, including, without limitation, causing harm by trickery, threat, abuse of the victim's dependence on the tortfeasor, multiplying the effects of the interference by making it publicly known or as a result of discriminating against the victim with regard to the victim's sex, health condition, ethnicity, creed, or other similarly serious reasons. Account is also taken of the victim's concerns of loss of life or serious damage to health if such concerns were caused by threat or other causes. (xviii) Indeed, the violation of public policy does not occur merely for the fact that Czech law is unfamiliar with any particular concept of a foreign law underlying the foreign decision whose recognition is sought. The violation of public policy only occurs if the recognition of

⁷⁴ Especially Judgment of the Constitutional Court of the Czech Republic, Case No. I. ÚS 1586/09 of 06 March 2012.

⁷⁵ Section 2957 of Act No. 89/2012 Coll., Civil Code (cit., approximate translation): "The manner and amount of adequate satisfaction must be determined so as to include compensation for circumstances deserving special consideration. Such circumstances shall include wilfully caused harm, especially, without limitation, harm by trickery, threat, abuse of the victim's dependence on the tortfeasor, multiplying the effects of the interference by making it publicly known, or harm resulting from discrimination against the victim with regard to the victim's sex, health condition, ethnicity, creed, or other similarly serious reasons. Account is also taken of the victim's concerns of loss of life or serious injury if such concerns were caused by the threat or other causes."

the foreign decision were contrary to the overriding mandatory principles of the social and State system of the Czech Republic and its legal system, to which no exceptions are permitted.⁷⁶ (xix) Hence, the effects of the decision would have to be contrary to any of the fundamental principles underlying the Czech legal system. The principle must be a specific and existing principle.⁷⁷ (xx) Consequently, when the recognition of a decision awarding *punitive damages* is sought, the violation of Czech public policy can only be invoked if the amount of the punitive damages is clearly disproportionate to the harm that is to be indemnified. In such case, the decision conflicts with Article 11(1) of the Charter of Fundamental Rights and Freedoms,⁷⁸ because it constitutes a disproportionate interference in the right to property.⁷⁹ (xxi) The assessment of whether or not the underlying decision awarding *punitive damages* constitutes a disproportionate interference in the right to property thus requires a diligent examination of the seriousness of the harm that is to be compensated by the underlying decision, as greater (more intensive) harm justifies higher damages, and an examination of whether or not the compensatory component of the damages is disproportionately suppressed by the punitive component (i.e. whether or not the compensatory component of the damages is clearly smaller than the punitive component), and whether or not the amount of the damages constitutes an impermissible interference in the judgment debtor's property rights (i.e. does or does not entail complete elimination, have stifling effects). An assessment of whether or not the recognition of such a decision complies with public policy can only be made after these criteria are weighed.

9.30. Resolution of the Supreme Court of the Czech Republic, Case No. 20 Cdo 665/2010 of 26 October 2011:⁸⁰ [enforcement proceedings, enforcement of a foreign court's

⁷⁶ See Section 36 of Act No. 97/1963 Coll., on Private International Law and Procedure (cit., approximate translation): "*Laws and regulations of a foreign State cannot be applied where the effects of such application would be contrary to the overriding mandatory principles of the social and State system of the Czechoslovak Socialist Republic and its legal system to which no exceptions are permitted.*" This Act was replaced by Act No. 91/2012 Coll., on Private International Law, with effect from 01 January 2014.

⁷⁷ See also *per analogiam*, Judgment of the Court of Justice of the EU, Case C-420/907, *Meletis Apostolides v. David Charles Orams, Linda Elizabeth Orams*.

⁷⁸ Constitutional Act No. 2/1993 Coll., as amended by Constitutional Act No. 162/1998 Coll., Charter of Fundamental Rights and Freedoms.

⁷⁹ See also Article 4(4) of the Charter of Fundamental Rights and Freedoms.

⁸⁰ Preceding decisions in the case: (i) Resolution of the Regional Court in Brno [Czech Republic] of 25 September 2009, Case No. 20 Co 876/2008, 20 Co 877/2008–128, (ii) Resolution of the Municipal Court in Brno [Czech Republic] of 26 May 2008, Case No. 96 Nc 3139/2008–7, and (iii) Resolution of the Regional Court in Bratislava [Slovak Republic], Case No. 38 Cb 83/01–286 of 07 December 2004, and Case No. 38 Cb 83/01–299 of 18 January 2005, in conjunction with judgment of the Supreme Court of the Slovak Republic, Case No. 2 Obo 259/2007 of 19 March 2008, and a supplemental judgment of the Supreme Court of the Slovak Republic, Case No. 2 Obo 259/2007 of 16 April 2008.

decision, enforcement of decisions] (1) Section 238a(1) of the Code of Civil Procedure stipulates that a cassation appeal (as an exceptional remedy submitted to the Supreme Court of the Czech Republic) shall be admissible against a resolution of the appellate court upholding or overruling a resolution of the first-instance court that was rendered (a) in insolvency proceedings; (b) on an action for annulment; (c) in a case in which the discontinuation of enforcement proceedings is sought, unless the enforcement proceedings concern the return of a child in matters of international child abduction pursuant to an international treaty that forms a part of the legal system, or pursuant to a directly applicable law of the European Communities; (d) on approval of a sale at auction in enforcement proceedings; (e) on the distribution of an estate in enforcement proceedings; (f) on the duties of the bidder referred to in Section 336m(2) (Section 336n) and in Section 338za(2). Section 237(1) and (3) of the Code of Civil Procedure apply *per analogiam* (Subsection 2). (2) Section 68a(1) of Act No. 97/1963 Coll., on Private International Law,⁸¹ stipulates that the provisions of this Part apply in proceedings for the recognition and enforcement of foreign decisions, other authentic instruments and court settlements that are governed by the law of the European Communities or a promulgated international treaty, the ratification of which has been approved by the Parliament and which is binding on the Czech Republic. (3) Section 68c(1) of the Private International Law Act⁸² stipulates that a petition for the declaration of enforceability may be accompanied by a petition for the enforcement of a decision in enforcement proceedings conducted by the court enforcement officer or in enforcement proceedings conducted by a private bailiff under special legislation. In such case, the court shall issue a single resolution on both petitions with separate operative parts that must be properly reasoned. The resolution must contain reasons even if the court's ruling concerns only one of the petitions. **Subsection 4 hereof stipulates that the operative part of a decision that orders the enforcement of a decision in enforcement proceedings conducted by the court enforcement officer or enforcement proceedings conducted by a private bailiff cannot become final earlier than the operative part that**

⁸¹ Act No. 97/1963 Coll., Act on Private International Law and Procedure. This Act was replaced by Act No. 91/2012 Coll., on Private International Law, as a result of the recodification of Czech civil law, with effect from 01 January 2014.

⁸² Act No. 97/1963 Coll., Act on Private International Law and Procedure. This Act was replaced by Act No. 91/2012 Coll., on Private International Law, as a result of the recodification of Czech civil law, with effect from 01 January 2014.

declares the decision enforceable. (4) Article 38(1) of the Brussels I Regulation stipulates that a judgment given in a Member State and enforceable in that State shall be enforced in another Member State when, on the application of any interested party, it has been declared enforceable there. (5) Article 41 of the Brussels I Regulation stipulates that the judgment shall be declared enforceable immediately upon completion of the formalities in Article 53 of the Brussels I Regulation without any review under Articles 34 and 35 of the Brussels I Regulation. The party against whom enforcement is sought shall not at this stage of the proceedings be entitled to make any submissions on the application. (6) Article 44 of the Brussels I Regulation stipulates that the judgment given on the appeal may only be contested by the appeal referred to in Annex IV of the Brussels I Regulation. (7) Article 45(1) of the Brussels I Regulation stipulates that the court with which an appeal is lodged under Article 43 or Article 44 of the Brussels I Regulation shall refuse or revoke a declaration of enforceability only on one of the grounds specified in Articles 34 and 35 of the Brussels I Regulation. Pursuant to Subsection 2 hereof, under no circumstances may the foreign judgment be reviewed as to its substance. (8) According to Annex IV of the Brussels I Regulation, the appeals that may be lodged pursuant to Article 44 are the following: [...] – in the Czech Republic, appellate review (“dovolání”) and action for annulment (“žaloba pro zmatečnost”), [...] (9) In view of the fact that the court’s decision on the declaration of enforceability is a decision on the merits, the admissibility of the cassation appeal (appellate review) lodged against the operative part of the appellate court’s resolution upholding the resolution of the first-instance court, in which the enforceable instrument was declared enforceable in the territory of the Czech Republic, can only be assessed from the perspective of Section 238(1)(c) of the Code of Civil Procedure in conjunction with Section 238(3) of the Code of Civil Procedure.⁸³ (10) If the enforceable instrument

⁸³ Section 238(1)(c) of the Code of Civil Procedure (cit., approximate translation): “(1) A cassation appeal pursuant to Section 237 is not allowed (a) in matters set forth in Part Two of the Civil Code if the proceedings concerning such matters are conducted pursuant to this Act and if the case concerns matters other than marital property law, (b) in matters set forth in the Registered Partnership Act if the proceedings concerning such matters are conducted pursuant to this Act, (c) against judgments and resolutions issued in proceedings the subject matter of which was, at the time when the decision was made that contained the contested operative part, monetary performance not exceeding CZK 50,000, including enforcement proceedings, with the exception of relationships from consumer contracts and employment relationships; for this purpose, interest and other dues accruing to the claim shall be disregarded, (d) in matters concerning the postponement of enforcement proceedings, (e) against resolutions that can be challenged by an action for annulment pursuant to Section 229(4), (f) against resolutions on interim measures, measures against obstruction of justice, fees payable to expert witnesses or interpreters, (g) against resolutions on actions from disturbance of possession, (h) against the operative part of a decision that concerns the costs of proceedings, (i) against resolutions on petitions for an exemption from court fees or on the obligation to pay court fees, (j) against resolutions on a

is enforceable in the country of origin and if the formalities were completed that are stipulated in Article 41 in conjunction with Article 55(1) of the Brussels I Regulation, the judgment must be declared enforceable in the territory of the Czech Republic. (11) The judgment debtor may challenge the enforceability of the decision in the court that made the underlying judgment, using the remedies afforded to the judgment debtor by the national law in the country of origin.⁸⁴ (12) The judgment debtor may make a petition in the course of the enforcement proceedings to deny recognition of the decision on the grounds specified in Articles 34 and 35 of the Brussels I Regulation. (13) If, in the given case, the appellate court ruled by a single resolution upholding the first-instance court's decision on the judgment debtor's appeal (i) against the resolution, whereby the enforceable instrument is declared enforceable in the territory of the Czech Republic, and (ii) against the writ of execution, the decisions became final on the same day. (14) If, in the said case, the appellate court ruled on the appeal against the first-instance court's writ of execution by the appellate court's resolution of 25 September 2009, the cassation appeal (appellate review) of the resolution is no longer admissible. This conclusion stands, despite the fact that the appellate court has erred in its instructions to the parties contained in the contested resolution, in which the appellate court advised the parties that a cassation appeal (appellate review) against the appellate court's decision is admissible subject to the conditions stipulated in Section 237(1)(c) of the Code of Civil Procedure. Such instructions do not establish the admissibility of the cassation appeal (appellate review).⁸⁵

9.31. Resolution of the Supreme Court of the Czech Republic, Case No. 20 Cdo 776/2017 of 01 June 2017:⁸⁶ [enforcement

party's petition for the appointment of a representative, (k) against decisions whereby the appellate court set aside the first-instance court decision and the case reverted to the first-instance court for further proceedings, (l) against resolutions on a release from the obligation to deposit an advance payment or the withdrawal of the release from the obligation to deposit an advance payment pursuant to the Enforcement Code. (2) As concerns a repeated payment, the determination of whether or not a decision containing the operative part challenged by the cassation appeal was issued in proceedings the subject matter of which was, at the time when the decision was made, a monetary performance not exceeding CZK 50,000 [Subsection (1)(c)], depends on the sum total of all repeated payments; however, if the payment is to be made until a person dies, for an indefinite period of time or for a definite period of time exceeding 5 years, the relevant amount shall be merely five times the amount of the annual performance. (3) Decisions pursuant to Subsection (1)(c) shall also include decisions issued in proceedings for the determination of the existence or the amount of a claim not exceeding CZK 50,000."

⁸⁴ See also Resolution of the Supreme Court of the Czech Republic, Case No. 20 Cdo 5180/2008 of 24 March 2011.

⁸⁵ See also Resolution of the Supreme Court of the Czech Republic, Case No. 29 Odo 425/2002 of 27 June 2002, published under No. 51/2003 in *Sbírka soudních rozhodnutí a stanovisek* [Court Reports].

⁸⁶ Preceding decisions in the case: (i) Resolution of the Municipal Court in Prague [Czech Republic], Case No. 12 Co 156/2016-98 of 16 December 2016, (ii) Decision of the District Court in Floridsdorf [Austria], Case No. 12 E 1396/14g-2 of 14 November 2014, and (iii) Resolution of the District Court for Prague 4 [Czech Republic], Case No. 13 EXE 1004/2015-6 of 22 February 2016.

of a foreign court's decision; decision underlying the enforcement proceedings; territorial limitation of the effects of the declaration of enforceability; territorial effects of a decision; exequatur] (1) Article 38(1) of the Brussels I Regulation stipulates that a judgment given in a Member State and enforceable in that State shall be enforced in another Member State when, on the application of any interested party, it has been declared enforceable there. (2) A declaration of enforceability (exequatur) requires proceedings to be opened upon a motion, which may result in the declaration of the enforceability of the foreign decision or in the dismissal of the motion. If the decision is declared enforceable, it is possible to open enforcement proceedings conducted by a court or by a private bailiff. (3) At the same time, the declaration of enforceability is restricted to the State where it was issued. If the judgment creditor wishes to conduct enforcement proceedings in two or more EU Member States, the declaration of enforceability must be requested in each of the Member States separately. (4) The principle of the declaration of enforceability being restricted to the State where recognition is sought also means that any enforcement proceedings conducted subsequently may only be implemented within the territory of said State. The Brussels I Regulation does not allow enforcement proceedings opened by the court of an EU Member State to actually be implemented in the territory of another Member State, as such procedure would encroach upon the latter's sovereignty. This principle applies without question to enforcement by the sale of movable assets and real estate, but it applies just as unconditionally to attachment proceedings.⁸⁷ (5) However, recognition and the issuance of a writ of execution can only be considered in respect of those operative parts of the decision that constitute enforceable instruments for other, separate enforcement proceedings. In Czech law, this would include an operative part concerning the costs of the enforcement proceedings, provided that the judgment creditor's petition for enforcement did not include the enforcement of such costs as well. In such case, the resolution whereby the court opened the enforcement proceedings only awards the costs to the judgment creditor, and this operative part constitutes an enforceable instrument for separate enforcement proceedings. The operative part itself of the writ of execution is not subject to the Brussels I Regulation. Hence, no effects (not even substantive-law effects)

⁸⁷ VIKTOR VAŠKE, UZNÁNÍ A VÝKON CIZÍCH ROZHODNUTÍ V ČESKÉ REPUBLICE [title in translation – RECOGNITION AND ENFORCEMENT OF FOREIGN JUDGMENTS IN THE CZECH REPUBLIC], Prague: C. H. Beck (2007), et. 67.

can be recognised, for instance, of a decision whereby the court of an EU Member State ordered the judgment debtor's debtor established in the Czech Republic to pay the judgment debtor's claim (with the effects of a discharge of debt) directly to the judgment creditor, or of a decision whereby the court prohibited a bank established in the Czech Republic from paying out any funds to the judgment debtor. At the same time, a Czech resolution opening the attachment proceedings cannot be declared enforceable and subsequently enforced in any other EU Member State, because the resolution is not an enforceable instrument in terms of Article 32 of the Brussels I Regulation.⁸⁸

(6) If the judgment creditor wishes to conduct enforcement proceedings in two or more EU Member States, the declaration of enforceability of the enforceable instrument must be requested in each of the Member States separately. (7) Any subsequent enforcement proceedings can only be conducted in the territory of the State in which the writ of execution was issued. (8) If any enforcement proceedings were opened in a foreign State on the basis of a foreign decision, the operative part of the writ of execution cannot be declared enforceable in the territory of the Czech Republic. (9) Due to the fact that all operative parts of the decision presented for enforcement are acts whereby the enforcement itself is implemented and, as such, are not covered by the regime of the Brussels I Regulation under Article 32 of the Brussels I Regulation, it would be appropriate to dismiss the judgment creditor's petition for a declaration of enforceability, because the effects of the writ of execution in any EU Member State cannot be expanded to cover the territory of another EU Member State. (10) A judgment creditor who wishes to make sure that the judgment debtor's funds in accounts in the Czech Republic are seised in enforcement proceedings must bear in mind that such proceedings can only be opened by a Czech court on the basis of a foreign enforceable instrument that was declared enforceable in the Czech Republic.

9.32. Resolution of the Supreme Court of the Czech Republic, Case No. 20 Cdo 1152/2020 of 16 June 2020:⁸⁹ [enforcement proceedings; recognition of foreign decisions; enforcement of a foreign court's decision; territorial limitation of the

⁸⁸ In this regard, the Supreme Court invokes the opinions voiced in academic writings (see also VIKTOR VAŠKE, UZNÁNÍ A VÝKON CIZÍCH ROZHODNUTÍ V ČESKÉ REPUBLICE [title in translation – RECOGNITION AND ENFORCEMENT OF FOREIGN JUDGMENTS IN THE CZECH REPUBLIC], Prague: C. H. Beck (2007), et. 30-35 concerning Article 32 of the Brussels I Regulation).

⁸⁹ Preceding decisions in the case: (i) Resolution of the District Court for Prague 4, Case No. 13 EXE 1004/2015-250 of 18 April 2019, (ii) Decision of the District Court in Floridsdorf [Republic of Austria], Case No. 12 E 1396/14g-2 of 14 November 2014, and (iii) Resolution of the Municipal Court in Prague [Czech Republic], Case No. 12 Co 185/2019-305 of 29 November 2019.

effects of a declaration of enforceability; territorial effects of a judgment; exequatur; public policy; reciprocity; *acte clair*; preliminary reference; interpretation of EU law] (1) The operative part of a foreign writ of execution issued by a court of another EU Member State cannot be declared enforceable in the territory of the Czech Republic, because the effects of the opening of enforcement proceedings in an EU Member State cannot be expanded to the territory of another EU Member State.⁹⁰ (2) The operative part itself of the writ of execution does not fall within the scope of Article 32 of the Brussels I Regulation, because the latter can only apply to operative parts that serve as enforceable instruments for other, independent enforcement proceedings, such as an operative part concerning the costs of the enforcement proceedings, in which non-monetary (specific) performance is to be enforced where the judgment creditor did not propose that the enforcement proceedings also cover the enforcement of such claims. (3) If the judgment creditor wishes to conduct enforcement proceedings in two or more EU Member States, the declaration of enforceability of the enforceable instrument (exequatur) must be requested in each of the Member States separately, because the declaration of enforceability is limited to the State in which the declaration was made. Any subsequent enforcement proceedings can only be conducted in the territory of the State in which the writ of execution was issued. (4) A decision to seize the judgment debtor's funds in accounts in the Czech Republic in enforcement proceedings can only be made by a Czech court on the basis of a foreign enforceable instrument which was declared enforceable in the Czech Republic (exequatur). (5) The conclusion that it is not an enforceable instrument that could be enforced in the territory of the Czech Republic is clearly implied by the decision itself that the judgment creditor proposes to declare enforceable, because the operative part of the decision (in this case, a decision of an Austrian court) stipulates that the judgments of the Liechtenstein court were declared enforceable [only] "for enforcement proceedings in Austria", in other words, they were only declared enforceable for enforcement proceedings in the Republic of Austria. (6) Czech courts are entitled to refuse to declare a writ of execution enforceable if it was issued by a court of another EU Member State. (7) Article 38(1) of the Brussels I Regulation stipulates that a judgment given in a Member State

⁹⁰ See also Resolution of the Supreme Court of the Czech Republic, Case No. 20 Cdo 3689/2018-210 of 11 December 2018 (published under No. 108/2019 in *Sbírka soudních rozhodnutí a stanovisek* [Court Reports]), which was challenged by a constitutional complaint that was subsequently dismissed by the resolution of the Constitutional Court of the Czech Republic in Case No. IV. ÚS 902/19 of 20 March 2019.

and enforceable in that State shall be enforced in another Member State when, upon the application of any interested party, it has been declared enforceable there (*exequatur*), but Article 34(1) of the Brussels I Regulation stipulates that a judgment shall not be recognised if such recognition is manifestly contrary to public policy in the Member State in which recognition is sought. (8) The Court of Justice of the EU has consistently held that public policy may only be used in exceptional cases as a reason for not recognising a judgment when recognition of the effects of the foreign judgment were manifestly contrary to public policy of the State addressed.⁹¹ (9) Protection of the fundamental rights of individuals belongs to the central principles of the Czech legal system and represents a key element thereof. Hence, the recognition of a decision that fails to comply with the principle of protection of fundamental rights would be **contrary to public policy** and, ultimately, the constitutional laws as such. It therefore constitutes the violation of a material legal principle that exhibits the features of a fundamental right.⁹² (10) If the Austrian judgment were declared enforceable in the Czech Republic, the judgment debtor's right to a fair trial would be violated due to the reasons specified below. Indeed, if the Czech courts granted the judgment creditor's request and declared the Austrian writ of execution enforceable in the territory of the Czech Republic, and if enforcement proceedings were opened and a private bailiff appointed on the basis thereof, the actual enforceable instruments would be judgments of the Regional Court in Vaduz, but the Principality of Liechtenstein is not an EU Member State, the Czech Republic has not concluded any treaty with Liechtenstein that would provide for the recognition and enforcement of judgments, and there is no formal and material reciprocity between the two countries either. (11) Enforcement of a foreign decision that was issued in a State with which the Czech Republic has no binding international treaty on recognition and enforcement can only be ordered on the basis of a decision rendered by a Czech court and properly substantiated. As the appointment of the private bailiff does not meet the said criteria, it is necessary to conclude that it cannot serve as the basis for accepting the recognition of enforceability of the foreign decision in our territory.⁹³ (12) Enforcement of a

⁹¹ See also Judgment of the European Court of Justice in Case 145/86 of 4 February 1988, *L., M. H. v. A.K.*

⁹² See also Resolution of the Supreme Court of the Czech Republic, Case No. 20 Cdo 1877/2016 of 12 August 2016.

⁹³ Opinion of the Supreme Court of the Czech Republic articulated in the resolution in Case No. 20 Cdo 1349/2016 of 01 July 2016.

foreign decision that is subject to Sections 14 to 16 of the Private International Law Act⁹⁴ can only be implemented by enforcement proceedings conducted by the court enforcement officer. Enforcement proceedings pursuant to the Act on Private Bailiffs and Enforcement Proceedings⁹⁵ can in such case only be conducted on the basis of a foreign decision that was recognised on the basis of a special decision of a Czech court (*exequatur*) pursuant to Section 16(2) of the Private International Law Act,⁹⁶ i.e. by a judgment, which must contain reasons, whether the petition for the recognition of the foreign decision was granted or dismissed. (13) The person against whom the enforcement is targeted may invoke the impediments preventing recognition

⁹⁴ Sections 14 to 16 of Act No. 91/2012 Coll., on Private International Law (cit., approximate translation):

“Section 14

Judgments of the courts of a foreign State and rulings of the authorities of a foreign State concerning any rights and obligations whose private-law nature would, in the Czech Republic, subject them to the jurisdiction of courts, as well as foreign judicial settlements and foreign notarial or other authentic instruments concerning these matters (hereafter referred to as ‘foreign judgments’) will have effects in the Czech Republic, provided that they have become final according to a confirmation issued by the competent foreign authority and have been recognised by Czech public authorities.

Section 15

(1) Unless the following provisions of this Act stipulate otherwise, a final foreign judgment cannot be recognised (a) if the matter falls within the exclusive jurisdiction of Czech courts or no authority of a foreign State would have had jurisdiction to conduct the proceedings if the provisions on the jurisdiction of Czech courts had been applied to the assessment of the foreign authority’s jurisdiction, unless the party to the proceedings against whom the foreign judgment is made has voluntarily submitted to the jurisdiction of the foreign authority, (b) if any proceedings are pending in a Czech court concerning the same legal relationship and those proceedings had been opened earlier than the foreign proceedings in which the judgment was issued whose recognition is sought, (c) if a Czech court has already issued a final judgment regarding the same legal relationship or if a final judgment of a third State’s authority has already been recognised in the Czech Republic, (d) if a party to the proceedings against whom the recognition of the judgment is sought was deprived of the opportunity to duly enter an appearance by the acts of the foreign authority, primarily if the party was not served with a summons or a petition to open the proceedings, (e) if the recognition were clearly contrary to public policy, or (f) if no reciprocity is guaranteed; reciprocity is not required if the foreign judgment is not directed against a citizen of the Czech Republic or a Czech legal entity.

Section 16

(1) Recognition of a foreign judgment in property matters is not pronounced by any special order. The foreign judgment is recognized by being taken into consideration by a Czech public authority as if it were a decision of a Czech public authority. If the public policy proviso or any other grounds for the refusal of recognition are invoked against the recognition that could not have been taken into account without further proceedings, the proceedings shall be suspended and a deadline shall be set for opening special proceedings pursuant to Subsection 4. The suspended proceedings shall continue after the special proceedings are closed with a final decision or after the said deadline expires without the special proceedings being opened. (2) Foreign judgments in other matters are recognised in special proceedings pursuant to Subsection (4), unless this Act stipulates that foreign judgments are recognised without any further proceedings. (3) If proposed by a party, a foreign judgment can also be recognised in the special proceedings pursuant to Subsection (4) even if the judgment is normally recognised without any further proceedings. (4) Recognition of the judgment awarded by the court in the special proceedings shall take the form of a judgment; no hearing needs to be summoned. The court with territorial jurisdiction to grant the recognition of the judgment is the district court of the party who seeks the recognition or, if not applicable, the district court in whose district the fact occurred or could occur that is material for the recognition, unless this Act or any other legislation indicates otherwise. (5) A foreign judgment in property matters that meets the criteria for recognition under this Act can serve as an enforceable instrument on the basis of which enforcement proceedings will be opened by a reasoned writ of execution issued by a Czech court.”

⁹⁵ Act No. 120/2001 Coll., on Private Bailiffs and Enforcement Proceedings (Enforcement Code).

⁹⁶ Section 16(2) of Act No. 91/2012 Coll., on Private International Law (approximate translation cited above).

pursuant to Section 15 of the Private International Law Act;⁹⁷ for example, Section 15(1)(f) of the Private International Law Act⁹⁸ prohibits the recognition of a final foreign decision directed against a Czech legal entity if no **reciprocity** is guaranteed. **(14)** The declaration of the enforceability of an Austrian writ of execution would result in a situation in which a foreign decision, subject to the provisions of Section 14 to 16 of the Private International Law Act,⁹⁹ would be recognised without any special proceedings, and the person against whom the enforcement is directed would have no opportunity to invoke the impediments to recognition under Section 15 of the Private International Law Act,¹⁰⁰ the scope of which is broader than the scope of the impediments to recognition under Article 34 of the Brussels I Regulation, which would undermine the right of the judgment debtor to a fair trial and, consequently, be contrary to public policy of the Czech Republic; this constitutes grounds for the refusal to recognise the decision pursuant to Article 34(1) of the Brussels I Regulation. **(15)** The certificate pursuant to Article 54 of the Brussels I Regulation is the basis for the application of the principle of direct enforceability of a decision issued in Member States and, as such, it is an indispensable prerequisite for the free movement of decisions in the European judicial area; the issue of the certificate attests to the fact that the dispute falls within the scope of the Brussels I Regulation. **(16)** The court competent to issue the certificate is the court that rendered the decision in the case and, consequently, is best familiar with the dispute. Having said that, one cannot infer that the Court of Justice of the EU has held that after the certificate pursuant to Article 54 of the Brussels I Regulation is issued, the decision of a Member State will always and *eo ipso* be declared enforceable in another Member State; indeed, the Court of Justice of the EU has also emphasised the option open to the judgment debtor to raise objections to the recognition or enforcement of the decision pursuant to Article 34 of the Brussels I Regulation. **(17)** The material accuracy of the enforceable instrument, which cannot be reviewed by the appellate court, means accurate and complete factual findings underlying the enforceable instrument, as well as an accurate and comprehensive legal assessment of the established act, and

⁹⁷ Section 15 of Act No. 91/2012 Coll., on Private International Law (approximate translation cited above).

⁹⁸ Section 15(1)(f) of Act No. 91/2012 Coll., on Private International Law (approximate translation cited above).

⁹⁹ Sections 14 – 16 of Act No. 91/2012 Coll., on Private International Law (approximate translation cited above).

¹⁰⁰ Section 15 of Act No. 91/2012 Coll., on Private International Law (approximate translation cited above).

a reflection of the above in the operative part of the enforceable instrument.¹⁰¹ (18) The fact that it is not for the courts in the country where the decision is enforced to challenge the enforceability of the underlying decision cannot be interpreted as meaning that a Czech court should ignore the fact that the recognition of the effects of a foreign decision would be manifestly contrary to the public policy of the Czech Republic. (19) The cassation court is not obliged to make a preliminary reference to the Court of Justice of the European Union if there are no doubts about the correctness of the interpretation of the contested issue, i.e. the case is an *acte clair* and the respective issue of interpretation of the EU law is clear. This conclusion does not conflict with the fact that the first-instance court and the appellate court each resolved the case in a different manner.¹⁰² (20) From the practical perspective, the automatic obligation of the last-instance court to make a preliminary reference in the case of an inconsistent interpretation of EU law, at least within the framework of the same proceedings, is difficult to sustain, the criteria articulated in CILFIT cannot be perceived as absolute, and the degree of fulfilment of *acte clair* should be assessed in more material terms. The more effective approach is to directly remedy the error consisting in the unsustainable interpretation of the EU law by the lower court.¹⁰³ (21) In this regard, the existence itself of contradictory decisions issued by other national courts cannot be the decisive element for the imposition of the obligation stipulated in the third subparagraph of Article 267 of the Treaty on the Functioning of the European Union. Indeed, regardless of the interpretation presented by the lower courts with respect to any provision of EU law, the last-instance court may be convinced that the interpretation of the provision, proposed by the last-instance court and different from the interpretation of the lower courts, is beyond any reasonable doubt the only correct interpretation.¹⁰⁴ (22) If the courts of various Member States were each presented with and resolved a completely different matter, their decisions cannot be regarded as inconsistent. The Czech court would *de facto* adjudicate on the same matter as the Austrian court only if the

¹⁰¹ See also (i) Resolution of the Supreme Court of the Czech Republic, Case No. 20 Cdo 5769/2017 of 10 July 2018, and Resolution of the Supreme Court of the Czech Republic, Case No. 20 Cdo 3031/2019 of 06 February 2019.

¹⁰² A conclusion formulated in the resolution of the Supreme Court of the Czech Republic in Case No. 20 Cdo 3689/2018-210 of 11 December 2018.

¹⁰³ A conclusion formulated in the judgment of the Constitutional Court of the Czech Republic in Case No. II. ÚS 3432/17 of 11 September 2018.

¹⁰⁴ A conclusion formulated in the judgment of the Court of Justice of the EU in Case No. C-160/14 of 09 September 2015, *Ferreira da Silva*.

former were presented with a petition for the recognition of Liechtenstein judgments that would serve as enforceable instruments for enforcement proceedings conducted by a court or by a private bailiff; on the other hand, the Austrian court, in this particular case, issued a writ of execution for the enforcement of the foreign decision on the basis of a bilateral treaty between the Principality of Liechtenstein and the Republic of Austria on the recognition of judgments. In view of the fact that no analogous bilateral treaty between the Principality of Liechtenstein and the Czech Republic exists and the former is not an EU Member State, the Czech court would apply the Private International Law Act,¹⁰⁵ which could result in a decision different from the decision of the Austrian court, but not due to any inconsistent interpretation of EU law. (23) The operative part concerning the costs of the enforcement proceedings is enforceable within the framework of the opened enforcement proceedings and, consequently, does not constitute a new enforceable instrument, but a dependant order that merely relates to the permission of the Austrian court to conduct enforcement proceedings; hence, it cannot be declared enforceable in the territory of the Czech Republic.

- 9.33. Resolution of the Supreme Court of the Czech Republic, Case No. 20 Cdo 1349/2016 of 01 July 2016.¹⁰⁶ [enforcement proceedings; enforcement of a foreign court's decision; recognition of foreign decisions]** (1) Section 2 of the Private International Law Act¹⁰⁷ stipulates that this Act shall be applied within the limits of the provisions incorporated in international treaties that are binding on the Czech Republic and of any directly applicable provisions of European Union law. (2) An enforceable instrument issued by the Florida District Court is a decision issued by a court of a foreign State, the recognition and enforcement of which must be governed by the Private International Law Act,¹⁰⁸ because no bilateral or multilateral international treaty on cooperation in the areas of the recognition and enforcement of judgments has been concluded by and between the United States (or Florida, as applicable) and the Czech Republic. At the same time, directly applicable provisions of EU law shall not apply either, because the decision has not been issued by a court of any EU Member State. (3) Section 16(3)

¹⁰⁵ Act No. 91/2012 Coll., on Private International Law.

¹⁰⁶ Preceding decisions in the case: (i) Resolution of the Regional Court in Brno [Czech Republic], Case No. 20 Co 537/2015-449 of 11 December 2015, (ii) Resolution of the District Court in Uherské Hradiště [Czech Republic], Case No. 3 EXE 259/2014-136 of 06 January 2015, and (iii) Judgment of the Brevard County and Circuit Court, 18th Judicial Circuit, Florida [U.S.], Case No. 05-2010 CA 049934 of 15 July 2013.

¹⁰⁷ Act No. 91/2012 Coll., on Private International Law.

¹⁰⁸ Act No. 91/2012 Coll., on Private International Law.

of the Private International Law Act,¹⁰⁹ which materially copies the previously applicable rule in Section 66 of Act No. 97/1963 Coll., on Private International Law and Procedure,¹¹⁰ indicates that foreign decisions, the enforcement of which is sought in the Czech Republic, are not subject to any intermediate step, such as any special proceedings for recognition (*exequatur*) or proceedings for the declaration of enforceability, which applies within the regime established by certain EU laws and international treaties. (4) One may directly petition for the enforcement of the decision, specifically enforcement by court. The court will assess, as a preliminary issue, whether the foreign decision meets the criteria for recognition and, if so, issues a writ of execution. The writ of execution must always contain reasons. The reasons substantiating the writ of execution are necessary, because it must be clearly discernible that the court assessed the prerequisites for ordering enforcement by the court, and because the parties must have the right to invoke any potentially erroneous assessment of the criteria for enforcement in a remedial measure available to the party.¹¹¹ (5) The court shall depart from the procedure incorporated in Section 16(3) of the Private International Law Act¹¹² in the case of a foreign decision that was recognised in advance in special proceedings. Such decisions must be treated like national enforceable instruments. In other words, the criteria for recognition are not subject to a repeated review. Such cases retain the possibility of twofold enforcement. Hence, the party may petition for both enforcement proceedings conducted by the court enforcement officer and for enforcement proceedings conducted by a private bailiff. Consequently, foreign decisions may only be enforced in enforcement proceedings conducted by the court enforcement officer, not in enforcement proceedings conducted by a private bailiff, with the exception of (a) foreign decisions on maintenance for minors, (b) foreign decisions with respect to which a declaration of enforceability was issued pursuant to a directly applicable EU law or an international treaty, and (c)

¹⁰⁹ Section 16(3) of Act No. 91/2012 Coll., on Private International Law (cit., approximate translation): "(3) If proposed by a party, a foreign judgment can also be recognised in the special proceedings pursuant to Subsection (4) even if the judgment is normally recognised without any further proceedings."

¹¹⁰ Section 66 of Act No. 97/1963 Coll., on Private International Law and Procedure (cit., approximate translation): "Subject to the requirements stipulated in Sections 63 and 64, a foreign judgment on property rights can be enforced in the Czechoslovak Socialist Republic if the writ of execution is issued by a Czechoslovak court; the writ of execution must always be reasoned." This Act was replaced by Act No. 91/2012 Coll., on Private International Law, with effect from 01 January 2014.

¹¹¹ See Opinion of the Supreme Court of the Czechoslovak Socialist Republic, Case No. Cpjf 27/86 of 27 August 1987.

¹¹² Section 16(3) of Act No. 91/2012 Coll., on Private International Law (approximate translation cited above).

foreign decisions that were recognised in separate proceedings for recognition pursuant to the Act.¹¹³ (6) Section 130(1) of the Enforcement Code¹¹⁴ targets decisions issued in enforcement proceedings and the methods of implementing enforcement, not the commencement of the enforcement proceedings, because – as opposed to the opening of enforcement proceedings conducted by the court enforcement officer – the appointment of the private bailiff to conduct the enforcement proceedings is not a judgment, contains no reasons and cannot be appealed. (7) The enforcement of a foreign judgment that was issued in a State with which the Czech Republic has no binding international treaty on recognition and enforcement can only be ordered on the basis of a decision rendered by a Czech court that is properly substantiated. As the appointment of the private bailiff does not meet the said criteria, it is necessary to conclude that it cannot serve as the basis for accepting the recognition of the enforceability of the foreign judgment in the territory of the Czech Republic. (8) The enforcement of a foreign judgment that is subject to Sections 14 to 16 of the Private International Law Act¹¹⁵ can only be implemented by enforcement proceedings conducted by the court enforcement officer. Enforcement proceedings pursuant to the Enforcement Code can in such case only be conducted on the basis of a foreign decision that was recognised on the basis of a special decision of a Czech court pursuant to Section 16(2) of the Private International Law Act,¹¹⁶ i.e. by a judgment, which must contain reasons, whether the petition for the recognition of the foreign decision was granted or dismissed.

9.34. Resolution of the Supreme Court of the Czech Republic, Case No. 20 Cdo 1702/2017 of 07 May 2018:¹¹⁷ [enforcement proceedings, enforcement of a foreign court's decision; CMR

¹¹³ PETR BŘÍZA, TOMÁŠ BŘICHÁČEK, ZUZANA FIŠEROVÁ, PAVEL HORÁK, LUBOMÍR PTÁČEK, JIŘÍ SVOBODA, ZÁKON O MEZINÁRODNÍM PRÁVU SOUKROMÉM. KOMENTÁŘ [title in translation – PRIVATE INTERNATIONAL LAW ACT. A COMMENTARY], Prague: C. H. Beck (2014), et. 115–116.

¹¹⁴ Section 130(1) of Act No. 120/2001 Coll., on Private Bailiffs and Enforcement Proceedings (cit., approximate translation): "(1) Any reference in special legislation to court enforcement of judgments or enforcement proceedings shall also include enforcement proceedings conducted by a private bailiff under this Act. Any reference in special legislation to a writ of execution shall also include the conduct of enforcement proceedings pursuant to this Act."

¹¹⁵ Sections 14 – 16 of Act No. 91/2012 Coll., on Private International Law (approximate translation cited above).

¹¹⁶ Section 16(2) of Act No. 91/2012 Coll., on Private International Law (cit., approximate translation): "(2) Foreign judgments in other matters are recognised in special proceedings pursuant to Subsection (4), unless this Act stipulates that foreign judgments are recognised without any further proceedings."

¹¹⁷ Preceding decisions in the case: (i) Resolution of the Regional Court in Pilsen [Czech Republic], Case No. 61 Co276/2016-187 of 14 December 2016, (ii) Resolution of the District Court in Karlovy Vary [Czech Republic], Case No. 27 EXE 2732/2015-51 of 12 October 2015, (iii) Resolution of the Strasbourg Court of First Instance for commercial matters [France], Case 03/01008 of 18 December 2009, and (iv) Decision of the Appellate Court in Colmar [France], Case 1 A 10/04260 of 14 November 2012.

Convention; contract of carriage; carriage; limitation of actions; applicability of the CMR Convention] (1) The CMR Convention¹¹⁸ is an international treaty pursuant to Article 10 of the Czech Constitution; as such, it enjoys priority application over national laws, in this particular case the Commercial Code.¹¹⁹ Besides, Article 41(1) of the Czech Constitution leads to the same conclusion, meaning that the period of limitation in the CMR Convention¹²⁰ applies to all claims relating to the contract of carriage, as well as any claims materially related to the parties to the contract of carriage or the international carriage of goods.¹²¹ (2) Hence, the decisive criterion for the assessment of the duration and running of the period of limitation, the lapse of which means that a claim from carriage is barred, is whether or not the carriage falls within the scope of the CMR Convention.^{122/123} (3) Consequently, the court must in each individual case address the issue of whether the claim – albeit not explicitly provided for in the CMR Convention¹²⁴ – is materially related to international carriage or the parties thereto. If the answer is yes, the court shall apply the special rules on limitation in the CMR Convention,¹²⁵ regardless of whether or not the requested claim is also provided for in the relevant national law (in the laws of national origin). (4) But the rules on limitation incorporated in the CMR Convention¹²⁶ are not applicable to any and all claims from international contracts of carriage.¹²⁷ (5) If the rules clearly provide for the standard application of the limitation of actions, restricted to the proceedings for a declaratory judgment, this is again reflected in the consequences of a party's failure to exercise their right by the stipulated deadline, consisting in the impairment of the right,

¹¹⁸ Decree of the Ministry of Foreign Affairs No. 11/1975 Coll. on the Convention on the Contract for the International Carriage of Goods by Road (CMR).

¹¹⁹ Act No. 513/1991 Coll., the Commercial Code.

¹²⁰ Decree of the Ministry of Foreign Affairs No. 11/1975 Coll. on the Convention on the Contract for the International Carriage of Goods by Road (CMR).

¹²¹ See PAVEL SEDLÁČEK, ÚMLUVA CMR: (komentář): MEZINÁRODNÍ SILNIČNÍ NÁKLADNÍ DOPRAVA – SOUDNÍ ROZHODNUTÍ – VÝKLAD JEDNOTLIVÝCH USTANOVENÍ [title in translation – CMR CONVENTION: (A COMMENTARY): INTERNATIONAL CARRIAGE OF GOODS BY ROAD – COURT DECISIONS – INTERPRETATION OF THE INDIVIDUAL PROVISIONS], Prague: Vox (2009), et. 530 et seq.

¹²² Decree of the Ministry of Foreign Affairs No. 11/1975 Coll. on the Convention on the Contract for the International Carriage of Goods by Road (CMR).

¹²³ See also Judgment of the Supreme Court of the Czech Republic, Case No. 32 Odo 53/2002 of 23 January 2003.

¹²⁴ Decree of the Ministry of Foreign Affairs No. 11/1975 Coll. on the Convention on the Contract for the International Carriage of Goods by Road (CMR).

¹²⁵ Decree of the Ministry of Foreign Affairs No. 11/1975 Coll. on the Convention on the Contract for the International Carriage of Goods by Road (CMR).

¹²⁶ Decree of the Ministry of Foreign Affairs No. 11/1975 Coll. on the Convention on the Contract for the International Carriage of Goods by Road (CMR).

¹²⁷ Cf. also Judgment of the Supreme Court, Case No. 32 Odo 805/2002 of 28 January 2004.

i.e. the fact that the claim made in court will not be awarded by the court in these proceedings (provided that the intervenor raises the relevant objection). (6) The CMR Convention¹²⁸ does not address the issue of the time limit within which the right – not subject to such impairment – can be presented in court for enforcement if the right had already been awarded in the proceedings for a declaratory judgment. (7) If instruments such as the “suspension of the period of limitation or interruption of limitation of actions” should (could) be available in such cases, it should be noted that Article 32(3) of the CMR Convention¹²⁹ refers to the “law of the court or tribunal seised of the case”. (8) The connecting factor is a particular fact material for the given type of legal relationships or issues identified in the scope of the conflict-of-laws rule that is determinative of the subsequent choice of law that should be applied to the legal relationship. At the same time, Section 10(1) of the Private International Law Act¹³⁰ is clearly a general provision, while Section 10(2)(c) is a special provision. In other words, Section 10(2)(c) of the Private International Law Act¹³¹ represents a special connecting factor that provides the contents of the connecting factor pursuant to Section 10(1) of the Private International Law Act for certain types of legal relationships.¹³² If a fact is found that can be applied to establish the factor, the special factor is used instead of the default one, the former thus supplementing and particularising the latter. The accomplished aim is the application of the law with a closer connection to the legal relationships falling within the scope of the said conflict-of-laws rule, because the special conflict-of-laws rule has a more restrictive scope extracted from the scope of the default conflict-of-laws rule.¹³³ (9) The choice of the “appropriate” law in view of the facts of any individual case depends on the reasoned consideration of the court, respectful of the will of the legislature (explicitly

¹²⁸ Decree of the Ministry of Foreign Affairs No. 11/1975 Coll. on the Convention on the Contract for the International Carriage of Goods by Road (CMR).

¹²⁹ Decree of the Ministry of Foreign Affairs No. 11/1975 Coll. on the Convention on the Contract for the International Carriage of Goods by Road (CMR).

¹³⁰ Section 10(1) of Act No. 97/1963 Coll., on Private International Law and Procedure (cit., approximate translation): “(1) *In the absence of the parties’ choice of the applicable law, their relationships shall be governed by the law the application of which conforms with a reasonable arrangement of the relationship.*” This Act was replaced by Act No. 91/2012 Coll., on Private International Law, with effect from 01 January 2014.

¹³¹ Section 10(2)(c) of Act No. 97/1963 Coll., on Private International Law and Procedure (cit., approximate translation): “(2) *In view of the above: (c) transportation contracts (contracts of carriage, shipping contracts, etc.) are usually governed by the law of the place where the carrier or forwarder has their registered office or residence when the contract is being entered into*”

¹³² Section 10(1) of Act No. 97/1963 Coll., on Private International Law and Procedure (approximate translation cited above). This Act was replaced by Act No. 91/2012 Coll., on Private International Law, with effect from 01 January 2014.

¹³³ See ZDENĚK KUČERA, MEZINÁRODNÍ PRÁVO SOUKROMÉ [title in translation – PRIVATE INTERNATIONAL LAW], Brno: Doplněk (7th ed. 2009), et. 128.

incorporated in the wording of Section 10(1) and (2) of the Private International Law Act¹³⁴), and the applied linguistic and systematic interpretation method. (10) If the courts of general jurisdiction chose Czech law as the applicable law by reference to Section 10(2)(c) of the Private International Law Act,¹³⁵ arguing that the judgment debtor had its registered office in the territory of the Czech Republic at the time at which the contract was entered into (and throughout the duration thereof) and at the time of the court proceedings, and simultaneously found no circumstances justifying the application of the general connecting factor in Section 10(1), the courts' opinion complies with the above considerations. (11) Having said that, the enforcement of the foreign decision is unquestionably subject to the same requirements as the enforcement of a domestic decision. The key point is that such proceedings are governed by the law of the state where the enforcement is conducted. Such proceedings are governed exclusively by the domestic laws on enforcement proceedings conducted by the court enforcement officer and enforcement proceedings conducted by a private bailiff (*lex fori* principle). (12) Naturally, this must also apply to the domestic provision of Section 268(1) of the Code of Civil Procedure,¹³⁶ which provides for the discontinuation of the enforcement proceedings, including Section 268(1)(h) of the Code of Civil Procedure,¹³⁷ which requires the discontinuation of the enforcement proceedings if enforcement is prohibited due to any other grounds preventing the enforcement of the decision. According to the consistent (domestic) case-law, such "other grounds" include the situation in which the right, the enforcement of which is sought, is barred due to the limitation

¹³⁴ Section 10(1) and (2) of Act No. 97/1963 Coll., on Private International Law and Procedure (approximate translation cited above). This Act was replaced by Act No. 91/2012 Coll., on Private International Law, with effect from 01 January 2014.

¹³⁵ Section 10(2)(c) of Act No. 97/1963 Coll., on Private International Law and Procedure (approximate translation cited above).

¹³⁶ Section 268(1) of Act No. 99/1963 Coll., Code of Civil Procedure (cit., approximate translation): "(1) Enforcement proceedings shall be discontinued if (a) the writ of execution was issued despite the fact that the underlying decision has not yet become enforceable; (b) the enforceable instrument has been vacated or has become ineffective after the writ of execution was issued; (c) the discontinuation of the enforcement proceedings was proposed by the party that had lodged the petition for enforcement; (d) the enforcement proceedings affect property that is excluded from enforcement under Sections 321 and 322 or property from which the claim to be enforced cannot be satisfied; (e) the progress of the enforcement proceedings indicates that the proceeds to be generated by the enforcement will not even suffice to cover the costs thereof; (f) a final decision has been issued to the extent that the enforcement proceedings affect property to which a person has rights that prohibit enforcement (Section 267); (g) after the decision was rendered, the right awarded thereunder has been extinguished, unless the enforcement has already been completed; if the right was awarded by a default judgment, the enforcement proceedings will be discontinued even if the right had been extinguished before the judgment was rendered; (h) the enforcement is inadmissible for any other grounds prohibiting enforcement of the decision."

¹³⁷ Section 268(1)(h) of Act No. 99/1963 Coll., Code of Civil Procedure (approximate translation cited above).

of actions and the respondent's corresponding objection. (13) The discontinuation of the enforcement proceedings pursuant to Section 268(1)(h) of the Code of Civil Procedure¹³⁸ as a result of the respondent invoking the limitation requires that the argument be similarly grounded in the law of the state of the enforcement court (*lex fori*). (14) Parties to international legal relationships must inherently count on the fact that the law applied to their particular case will not be "their" law, but the law of the foreign person or entity with whom they formed the respective legal relationship, even if the latter appeared "unusual" from the perspective of "domestic" law.

- 9.35. Resolution of the Supreme Court of the Czech Republic, Case No. 20 Cdo 1722/2010 of 27 October 2011:**¹³⁹ [payment order; enforcement proceedings; remedies against an enforceable decision] (1) If a judgment issued by the Regional Court in Munich I [Germany] is enforceable in the country of origin and if the formalities stipulated in Article 41 of the Brussels I Regulation were completed, the judgment must be declared enforceable in the territory of the Czech Republic. (2) The judgment debtor may challenge the enforceability of the decision in the court that made the underlying judgment, using the remedies afforded to the judgment debtor by the national law in the country of origin.¹⁴⁰ (3) Section 254(5) of the Code of Civil Procedure¹⁴¹ further stipulates that appeals against decisions issued in enforcement proceedings are not subject to the restriction on new facts and evidence. However, the appellate court will only have regard to new facts and evidence in such cases if they were invoked by a party in the appellate proceedings.¹⁴² (4) Despite the fact that the judgment debtor argued in their appeal that the application for a

¹³⁸ Section 268(1)(h) of Act No. 99/1963 Coll., Code of Civil Procedure (approximate translation cited above).

¹³⁹ Preceding decisions in the case: (i) Resolution of the Municipal Court in Prague [Czech Republic], Case No. 18 Co 477/2009 – 98 of 12 November 2009, (ii) Resolution of the District Court for Prague 3 [Czech Republic], Case No. 34 E 1464/2008 – 20 of 09 March 2009, (iii) Default Judgment of the Regional Court of Munich I [Germany], Case No. 15 O 8488/07 of 02 January 2008, and (iv) Resolution on the determination of the costs of the Regional Court of Munich I [Germany], Case No. 15 O 8488/07 of 08 February 2008.

¹⁴⁰ See the reasoning in the resolution of the Supreme Court of the Czech Republic in Case No. 5180/2008 of 24 March 2011, and Case No. 20 Cdo 4154/2008 of 07 February 2011, in which the court has held that this procedure, as the recitals to the Brussels I Regulation suggest, is based on the principle of mutual trust in the administration of justice in the Community (the court in the country where enforcement is sought trusts the accuracy of the information concerning the enforceability of the decision that the court in the country of origin of the decision filled out in the certificate of enforceability).

¹⁴¹ Section 254(5) of Act No. 99/1963 Coll., Code of Civil Procedure (cit., approximate translation): (5) "It is permitted to include new facts and evidence in the appeal. The facts invoked against the writ of execution may only include those that are relevant for the opening of the enforcement proceedings; any other facts shall be disregarded by the court and any appeal that contains only such facts will be dismissed."

¹⁴² See also Resolution of the Supreme Court of the Czech Republic, Case No. 20 Cdo 2207/2004 of 30 June 2005, published in: Soudní judikatura, Prague: C. H. Beck, 2005, No. 10, Case No. 166, or in the reasoning in the resolution of the Supreme Court of the Czech Republic in Case No. 20 Cdo 3384/2008 of 17 August 2010.

payment order and “other materials concerning the dispute” were being **delivered** to the debtor to a non-existing address or, as applicable, that they were being delivered belatedly and, in consequence thereof, the debtor could not make a proper defence, but at the same time the debtor failed to argue in the appellate proceedings that the debtor had employed a remedy to eliminate this alleged procedural flaw, the appellate court could not assess whether or not the grounds exist for a refusal to recognise the underlying default judgment. Having said that, the appellate court was not obliged, as corroborated by Section 254(5)¹⁴³ and Section 212a(3) of the Code of Civil Procedure,¹⁴⁴ to examine the fact (decisive for an assessment of the case from the perspective of Article 34(2) of the Brussels I Regulation) of its own motion, but indeed, only upon an objection raised by the judgment debtor in the appeal.¹⁴⁵ (5) The cassation appeal is also not rendered admissible under Section 238(1)(c) of the Code of Civil Procedure¹⁴⁶ by an objection that the underlying judgment is not enforceable in the Member State of origin because the judgment debtor had fulfilled their commitment before the payment order was issued; the reason is that Article 45(1) of the Brussels I Regulation stipulates that a foreign judgment may under no circumstances be reviewed as to its substance.

9.36. Resolution of the Supreme Court of the Czech Republic, Case No. 20 Cdo 3282/2020 of 11 May 2021:¹⁴⁷ [discontinuation of the enforcement proceedings, enforcement of a foreign court’s decision; arbitral award; application of international treaties; court jurisdiction] (1) The Treaty between the

¹⁴³ Section 254(5) of Act No. 99/1963 Coll., Code of Civil Procedure (approximate translation cited above).

¹⁴⁴ Section 212a(3) of Act No. 99/1963 Coll., Code of Civil Procedure (cit., approximate translation): “(3) *The appellate court may only have regard to new facts or evidence (Sections 205a and 211a) if they were claimed.*”

¹⁴⁵ Concerning this issue, cf. Judgment of the Constitutional Court of the Czech Republic, Case No. I. ÚS 709/05 of 25 April 2006, already invoked by the appellate court, in which the following conclusion was articulated – *inter alia* (cit., approximate translation): “*The appellate court hearing the appeal against the decision on the declaration of enforceability of a decision is obliged to ascertain whether there exist any grounds for the refusal of the recognition of the foreign court judgment. However, this obligation of the court is not an ex officio obligation, because the court is only obliged to perform such examination if any of the parties to the proceedings raises the appropriate objections; the litigant’s first opportunity to raise such objections was in the appeal.*”

¹⁴⁶ Section 238(1)(c) of Act No. 99/1963 Coll., Code of Civil Procedure (cit., approximate translation): “(1) *A cassation appeal pursuant to Section 237 is not allowed (c) against judgments and resolutions issued in proceedings the subject matter of which was, at the time when the decision was made that contained the contested operative part, monetary performance not exceeding CZK 50,000, including enforcement proceedings, with the exception of relationships from consumer contracts and employment relationships; for this purpose, interest and other dues accruing to the claim shall be disregarded [...].*”

¹⁴⁷ Preceding decisions in the case: (i) Resolution of the Regional Court in Pilsen [Czech Republic], Case No. 11 Co 163/2019-493 of 17 January 2020, (ii) Resolution of the District Court in Karlovy Vary [Czech Republic], Case No. 27 EXE 158/2017-412 of 08 April 2019, (iii) Judgment of the Central District Court in Voronezh [Russian Federation], Case No. 2-4667/2010 of 23 December 2010, and (iv) Resolution of the Voronezh District Court [Russian Federation], Case 33-2749 of 19 May 2011.

Slovak Republic and the Czech Republic on Legal Assistance provided by Judicial Authorities¹⁴⁸ does not offer any alternative that would render a foreign arbitral award enforceable in enforcement proceedings conducted by a private bailiff on the basis of priority in application; on the contrary, the wording of the Treaty only envisages enforcement through enforcement proceedings conducted by the court enforcement officer, which clearly follows from the linguistic interpretation of Article 24 of the Treaty, stipulating that a petition for the recognition and enforcement of a decision shall be submitted directly to the competent court of the Contracting Party in the territory of which the decision is to be recognised and enforced. (2) While Subsection (3) of the same Article of the Treaty stipulates that the court shall limit its review to the fulfilment of the requirements listed in Articles 22 and 23 of the Treaty and if the court ascertains that the requirements are fulfilled, the court recognizes the decision or issues a writ of execution thereof, the provision – again – explicitly refers to the court, and the court alone, as the public authority eligible for hearing the case and enforcing the foreign decision. (3) The court has no reason to depart from this conclusion if Article 24(1) of the Treaty between the Czech Republic and the Slovak Republic on Legal Assistance provided by Judicial Authorities¹⁴⁹ is identical to Article 54(1) of the Treaty between the Czechoslovak Socialist Republic and the Union of Soviet Socialist Republics on Legal Assistance,¹⁵⁰ in that the petition for recognition and enforcement shall be lodged with a court (the district court accepted the filing of the petition directly with the Czech court); and the wording of Article 24(3) of the Treaty between the Czech Republic and the Slovak Republic is identical to Article 56(2) of the Treaty between the Czechoslovak Socialist Republic and the Union of Soviet Socialist Republics on Legal Assistance,¹⁵¹ in that the court that rules on the recognition of the decision and issues the writ of execution shall only ascertain whether the requirements contained in Articles 22 and 23 of the Treaty between the Czech

¹⁴⁸ Treaty between the Czech Republic and the Slovak Republic on Mutual Legal Assistance Provided by Judicial Authorities and the Regulation of Certain Legal Relations in Civil and Criminal Matters, promulgated in the Czech Republic under No. 209/1993 Coll.

¹⁴⁹ Treaty between the Czech Republic and the Slovak Republic on Mutual Legal Assistance Provided by Judicial Authorities and the Regulation of Certain Legal Relations in Civil and Criminal Matters, promulgated in the Czech Republic under No. 209/1993 Coll.

¹⁵⁰ Treaty between the Czechoslovak Socialist Republic and the Union of Soviet Socialist Republics on Legal Assistance and Legal Relations in Civil, Family and Criminal Matters of 12 August 1982, promulgated in Decree of the Ministry of Foreign Affairs No. 95/1983 Coll.

¹⁵¹ Treaty between the Czechoslovak Socialist Republic and the Union of Soviet Socialist Republics on Legal Assistance and Legal Relations in Civil, Family and Criminal Matters of 12 August 1982, promulgated in Decree of the Ministry of Foreign Affairs No. 95/1983 Coll.

Republic and the Slovak Republic are fulfilled, and if the court ascertains that the requirements are fulfilled, the court issues the writ of execution. Finally, both Treaties also share the same wording of Article 1 concerning the equal protection of the rights of citizens of both Contracting Parties.

9.37. Resolution of the Supreme Court of the Czech Republic, Case No. 20 Cdo 1165/2016 of 03 November 2016:¹⁵² [enforcement proceedings, recognition of foreign decisions]

(1) The legal assessment of a case is generally incorrect if the appellate court assessed the case pursuant to a legal rule that does not apply to the facts of the case ascertained by the court, or if the court correctly identified the applicable legal rule, but did not interpret it correctly or did not apply it correctly to the facts of the case. (2) Decree No. 74/1959 of the Ministry of Foreign Affairs of 06 November 1959 (in conjunction with Article I of the Constitutional Act No. 4/1993 Coll., on Measures Relating to the Dissolution of the Czech and Slovak Federal Republic) has incorporated the Convention on the Recognition and Enforcement of Foreign Arbitral Awards, signed on 10 June 1958 in New York, in the law of the Czech Republic. (3) Article III of the Convention¹⁵³ stipulates that each Contracting State shall recognize arbitral awards as binding and shall enforce them in accordance with the rules of procedure of the territory where the award is relied upon, under the conditions laid down in the following articles (Articles IV and V). In the Czech Republic, such rules of procedure include the Code of Civil Procedure¹⁵⁴ and the Enforcement Code.¹⁵⁵ (iv) The Convention on the Recognition and Enforcement of Foreign Arbitral Awards¹⁵⁶ belongs to directly applicable international treaties; arbitral awards that fall within the scope of the Convention are consequently recognised as instruments enforceable in courts without any special proceedings. This fact alone does not mean that they could also be an eligible instrument as an *instrument enforceable in enforcement proceedings conducted by a private bailiff*. The answer to this question requires an analysis of Section 37(2) of the Enforcement Code,¹⁵⁷ which

¹⁵² Preceding decisions in the case: (i) Resolution of the Regional Court in Brno [Czech Republic], Case No. 20 Co 281/2015-225 of 19 October 2015, (ii) Resolution of the District Court in Vyškov [Czech Republic], Case No. 10 EXE 1107/2013-117 of 10 April 2014, and (iii) Arbitral Awards of the Refined Sugar Association in London, Case 2274, 2275 and 2276 of 13 November 2012.

¹⁵³ Convention on the Recognition and Enforcement of Foreign Arbitral Awards, signed on 10 June 1958 in New York, promulgated in Decree of the Minister of Foreign Affairs No. 74/1959 Coll.

¹⁵⁴ Act No. 99/1963 Coll., Code of Civil Procedure.

¹⁵⁵ Act No. 120/2001 Coll., on Private Bailiffs and Enforcement Proceedings (Enforcement Code).

¹⁵⁶ Convention on the Recognition and Enforcement of Foreign Arbitral Awards, signed on 10 June 1958 in New York, promulgated in Decree of the Minister of Foreign Affairs No. 74/1959 Coll.

¹⁵⁷ Section 37(2) of Act No. 120/2001 Coll., on Private Bailiffs and Enforcement Proceedings (Enforcement

clearly stipulates that this would only be possible if a decision “on recognition” existed. (5) The logic of the preceding points is that, contrary to the order opening *court enforcement* of a foreign decision and the associated mandatory requirement of providing reasons for the decision, here – in “enforcement proceedings conducted by a private bailiff” – the fulfilment of this requirement is impossible.¹⁵⁸

- 9.38. Resolution of the Supreme Court of the Czech Republic, Case No. 20 Cdo 5882/2016 of 16 August 2017:¹⁵⁹ [enforcement proceedings conducted by a private bailiff; application of the New York Convention (1958); relation between the New York Convention (1958) and a bilateral legal assistance treaty] (1) Whereas the New York Convention¹⁶⁰ regulates a specific subject matter, the Treaty between the Czech Republic and the Slovak Republic on Legal Assistance provided by Judicial Authorities¹⁶¹ covers a whole range of issues (including the recognition of arbitral awards). Hence, the subject matter is not identical, as the contents of the rules only partially overlap. In such case, it is necessary to apply the *lex specialis derogat legi generali* rule, which requires the application of the New York Convention (1958).¹⁶² (2) At the same time, however, it is necessary to keep in mind Article VII of the New York Convention (1958),¹⁶³ which in Paragraph 1 stipulates that the provisions of the present Convention shall not affect the validity of multilateral or bilateral agreements concerning the recognition and enforcement of arbitral awards entered into by the Contracting States, nor deprive any interested party of any right that they may have to avail themselves of an arbitral award in the manner and to the extent allowed by the law or the treaties of the country where such award is sought to be relied upon. (3)**

Code) (cit., approximate translation): “(2) *The judgment creditor may petition for enforcement pursuant to this Act if the judgment debtor fails to voluntarily fulfil the obligation stipulated by the enforceable instrument under this Act.*”

¹⁵⁸ See Resolution of the Supreme Court of the Czech Republic, Case No. 20 Cdo 4663/2015 of 18 October 2016, and especially (ii) Resolution of the Supreme Court of the Czech Republic, Case No. 20 Cdo 1349/2016 of 01 July 2016.

¹⁵⁹ Preceding decisions in the case: (i) Resolution of the Regional Court in Brno [Czech Republic], Case No. 20 Co 559/2015 of 26 September 2016, (ii) Resolution of the private bailiff, Case No. 067 EX 14954/15-15 of 15 June 2015, and (iii) Arbitral Award of the Royal Development Arbitral Tribunal, Case No. RD/43/2015.

¹⁶⁰ Convention on the Recognition and Enforcement of Foreign Arbitral Awards, signed on 10 June 1958 in New York, promulgated in Decree of the Minister of Foreign Affairs No. 74/1959 Coll.

¹⁶¹ Treaty between the Czech Republic and the Slovak Republic on Mutual Legal Assistance Provided by Judicial Authorities and the Regulation of Certain Legal Relations in Civil and Criminal Matters, promulgated under No. 209/1993 Coll.

¹⁶² See NADĚŽDA ROZEHNALOVÁ, ROZHODČÍ ŘÍZENÍ V MEZINÁRODNÍM A VNITROSTÁTNÍM OBCHODNÍM STYKU [title in translation – RBITRATION IN INTERNATIONAL AND NATIONAL COMMERCE], Prague: ASPI (2nd ed. 2008), et. 94–97.

¹⁶³ Convention on the Recognition and Enforcement of Foreign Arbitral Awards, signed on 10 June 1958 in New York (Decree of the Minister of Foreign Affairs No. 74/1959 Coll.).

Article VII of the New York Convention (1958)¹⁶⁴ hereby incorporates the most favourable treatment principle, which allows the application of another contractual instrument or national law, in this particular case the Treaty between the Czech Republic and the Slovak Republic on Legal Assistance provided by Judicial Authorities,¹⁶⁵ if the latter is more liberal with respect to the recognition of the arbitral award, i.e. if it leads to the easier recognition and enforcement of a foreign arbitral award. Consequently, the legal assistance treaty can be applied, but only if the above requirements are fulfilled. (4) If the arbitral award was issued by an arbitral tribunal in the Slovak Republic established pursuant to Section 12 of Act No. 244/2002 Coll. [Act of the Slovak Republic], the enforcement of the arbitral award cannot be denied as being contrary to public policy merely based on the fact that the tribunal is not a permanent arbitral institution in terms of Section 13 of the Arbitration Act¹⁶⁶ (*Note:* (a) means Act No. 216/1994 Coll. and (b) which meets the requirement of a “transparent” choice of arbitrators).¹⁶⁷ (5) An arbitral award that the Contracting State enforces in accordance with the rules of procedure applicable in its territory (Article III of the New York Convention (1958))¹⁶⁸ cannot be enforced in enforcement proceedings conducted by a private bailiff, unless a decision on recognition of the award was issued in terms of Section 37(2) of the Enforcement Code,¹⁶⁹ as

¹⁶⁴ Convention on the Recognition and Enforcement of Foreign Arbitral Awards, signed on 10 June 1958 in New York (Decree of the Minister of Foreign Affairs No. 74/1959 Coll.).

¹⁶⁵ Treaty between the Czech Republic and the Slovak Republic on Mutual Legal Assistance Provided by Judicial Authorities and the Regulation of Certain Legal Relations in Civil and Criminal Matters, promulgated under No. 209/1993 Coll.

¹⁶⁶ Section 13 of Act No. 216/1994 Coll., on Arbitration and Enforcement of Arbitral Awards (cit., approximate translation): “(1) *Permanent arbitral institutions may only be established by another law or only if another law expressly allows their establishment.* (2) *Permanent arbitral institutions can issue their own statutes and rules, which must be published in the Business Journal;*³⁾ *these statutes and rules may determine the method of appointment and the number of arbitrators and may stipulate that the arbitrators shall be selected from a list administered by the permanent arbitral institution. The statutes and rules may also determine how the arbitrators shall conduct the proceedings and render their decisions, as well as resolve other issues connected with the activities of the permanent arbitral institution and the arbitrators, including rules regulating the costs of proceedings and fees for the arbitrators.* (3) *If the parties agreed on the jurisdiction of a particular permanent arbitral institution and failed to agree otherwise in the arbitration agreement, they shall be deemed to have submitted to the regulations specified in Subsection (2), as applicable on the day of commencement of the proceedings before the permanent arbitral institution.* (4) *No entity may carry out its activities using a name that evokes a misleading impression that the entity is a permanent arbitral institution under this law, unless a different law or regulation or an international agreement integrated in the legal system authorizes the entity to use the name.”*

¹⁶⁷ A conclusion formulated in the resolution of the Supreme Court of the Czech Republic in Case No. 20 Cdo 676/2016 of 13 December 2016.

¹⁶⁸ Convention on the Recognition and Enforcement of Foreign Arbitral Awards, signed on 10 June 1958 in New York (Decree of the Minister of Foreign Affairs No. 74/1959 Coll.).

¹⁶⁹ Section 37(2) of Act No. 120/2001 Coll., on Private Bailiffs and Enforcement Proceedings (Enforcement Code) (cit., approximate translation): “(2) *The judgment creditor may petition for enforcement pursuant to this Act if the judgment debtor fails to voluntarily fulfil the obligation stipulated by the enforceable instrument under this Act.”*

applicable until 31 December 2013.¹⁷⁰ (6) If Article III of the New York Convention (1958)¹⁷¹ stipulates that each Contracting State shall recognize arbitral awards as binding and enforce them in accordance with the rules of procedure of the territory where the award is relied upon, under the conditions laid down in Article IV and V of the New York Convention (1958), it is necessary to consider the rules of the Code of Civil Procedure¹⁷² and of the Enforcement Code.¹⁷³ (7) The fact alone that the New York Convention (1958)¹⁷⁴ belongs to directly applicable international treaties and that the arbitral awards that fall within its scope are recognised as enforceable instruments *ipso facto* does not mean that they could also constitute *any* eligible instruments, in this particular case *instruments enforceable in enforcement proceedings conducted by a private bailiff*; an answer to this question requires another reference to Section 37(2) of the Enforcement Code,¹⁷⁵ which stipulates that this would be possible – for enforcement proceedings conducted by a private bailiff – only if a decision “on recognition” existed. (8) But the most relevant factor is that enforcement proceedings conducted by a private bailiff are not opened by a writ of execution, because the appointment of the private bailiff to conduct the enforcement proceedings is not a decision, contains no reasons and cannot be challenged.¹⁷⁶ (9) Act No. 91/2012 Coll., on Private International Law,¹⁷⁷ does not apply if any international treaties exist that provide for the recognition and enforcement of the arbitral award and which are binding on both States;¹⁷⁸ *however, this does not mean “never”* – the Act does not apply only if an international treaty provides otherwise.¹⁷⁹ (10) If an international treaty contains a reference to national laws, it is not out of the question that even Act No. 91/2012 Coll., on Private International Law,¹⁸⁰ could be “back in the game”, at least as an interpretation tool for other national

¹⁷⁰ A conclusion formulated in the resolution of the Supreme Court of the Czech Republic in Case No. 20 Cdo 1165/16 of 03 November 2016.

¹⁷¹ Convention on the Recognition and Enforcement of Foreign Arbitral Awards, signed on 10 June 1958 in New York (Decree of the Minister of Foreign Affairs No. 74/1959 Coll.).

¹⁷² Act No. 99/1963 Coll., the Code of Civil Procedure.

¹⁷³ Act No. 120/2001 Coll., on Private Bailiffs and Enforcement Proceedings (Enforcement Code).

¹⁷⁴ Convention on the Recognition and Enforcement of Foreign Arbitral Awards, signed on 10 June 1958 in New York (Decree of the Minister of Foreign Affairs No. 74/1959 Coll.).

¹⁷⁵ Section 37(2) of Act No. 120/2001 Coll., on Private Bailiffs and Enforcement Proceedings (Enforcement Code) (approximate translation cited above).

¹⁷⁶ See Resolution of the Supreme Court of the Czech Republic, Case No. 20 Cdo 1349/2016 of 01 July 2016.

¹⁷⁷ Act No. 91/2012 Coll., on Private International Law.

¹⁷⁸ See Resolution of the Supreme Court of the Czech Republic, Case No. 26 Cdo 2983/2015 of 07 October 2015.

¹⁷⁹ See Resolution of the Supreme Court of the Czech Republic, Case No. 20 Cdo 2214/2009 of 20 December 2011.

¹⁸⁰ Act No. 91/2012 Coll., on Private International Law.

laws. (11) Indeed, one may even advocate a more weighty argument that there are no reasons why Section 122(2) of the Private International Law Act¹⁸¹ could not stand (if its Subsection (1) stands), both under the New York Convention (1958)¹⁸² and under the Treaty between the Czech Republic and the Slovak Republic on Legal Assistance provided by Judicial Authorities.¹⁸³ (12) The appointment of the private bailiff pursuant to the Enforcement Code could not constitute the recognition of the foreign decision, because the appointment does not concern the relevant requirements for the recognition and enforcement of foreign instruments and, as noted on multiple occasions, it is not a “writ of execution”, i.e. a “decision” whereby the enforcement is ordered – albeit only by “being taken into consideration”.¹⁸⁴ (13) It is specifically worth highlighting that *this is the reason why* “appointment of the private bailiff” is an instrument that inherently cannot constitute an authorisation to implement the procedures envisaged both in Article V of the New York Convention (1958)¹⁸⁵ and in Article 23 of the Treaty between the Czech Republic and the Slovak Republic on Legal Assistance provided by Judicial Authorities,¹⁸⁶ the framework of which allows the enforcement of the arbitral award to be denied, subject to the requirements stipulated therein. The court

¹⁸¹ Section 122(2) of Act No. 91/2012 Coll., on Private International Law (cit., approximate translation): “(2) Foreign arbitral awards can be recognised by a special decision issued upon a motion. The court with territorial jurisdiction to grant the recognition of the judgment is the district court of the party who seeks the recognition or, if not applicable, the district court in whose district the fact occurred or could occur that is material for the recognition, unless this Act or any other legislation indicates otherwise. Recognition of the award pronounced by the court shall take the form of a judgment; no hearing needs to be summoned.”

¹⁸² Convention on the Recognition and Enforcement of Foreign Arbitral Awards, signed on 10 June 1958 in New York (Decree of the Minister of Foreign Affairs No. 74/1959 Coll.).

¹⁸³ Treaty between the Czech Republic and the Slovak Republic on Mutual Legal Assistance Provided by Judicial Authorities and the Regulation of Certain Legal Relations in Civil and Criminal Matters, promulgated under No. 209/1993 Coll.

¹⁸⁴ Resolution of the Supreme Court of the Czech Republic, Case No. 20 Cdo 1349/2016 of 01 July 2016.

¹⁸⁵ Convention on the Recognition and Enforcement of Foreign Arbitral Awards, signed on 10 June 1958 in New York (Decree of the Minister of Foreign Affairs No. 74/1959 Coll.).

¹⁸⁶ Article 23 of the Treaty between the Czech Republic and the Slovak Republic on Mutual Legal Assistance Provided by Judicial Authorities and the Regulation of Certain Legal Relations in Civil and Criminal Matters, promulgated in the Czech Republic under No. 209/1993 Coll. (cit., approximate translation): “Decisions specified in Article 22 of this Treaty shall be recognised and enforced if: (a) the decision is final and enforceable according to a confirmation issued by the authority that rendered the decision; provisionally enforceable decisions and enforceable interim measures can be recognised and enforced in the territory of the requested Contracting Party whether or not they can be challenged by a regular remedy, (b) the judicial authorities of the other Contracting Party did not render any decision that had become final earlier or did not recognise and enforce any decision of a third country in the same matter and between the same parties, (c) the party had the opportunity to duly enter an appearance, i.e. the party especially (without limitation) received a due and timely summons to a hearing in compliance with the law of the Contracting Party where the proceedings were held and the decision was duly served on the party with instructions about the possibility of appeal and, if the party suffered from any procedural incapacity, the party was duly represented, (d) the proceedings did not fall within the exclusive jurisdiction of the authorities of the Contracting Party in whose territory recognition is sought, (e) the Contracting Party, in the territory of which recognition or enforcement is sought, is convinced that the recognition or enforcement will not jeopardise its sovereignty or security and will not be contrary to its public policy.”

intervention provided for in Section 43a(3) and (6) of the Enforcement Code¹⁸⁷ has no effect on this conclusion. (14) It does not conflict with the New York Convention (1958)¹⁸⁸ or with the Treaty between the Czech Republic and the Slovak Republic on Legal Assistance provided by Judicial Authorities,¹⁸⁹ because the principles enshrined in both international agreements do not apply (in their entirety) in Czech law only with respect to one of the two regimes provided for the enforcement of arbitral awards, namely enforcement proceedings conducted by a private bailiff. The principles remain applicable with respect to the other regime, i.e. enforcement proceedings conducted by the court enforcement officer. (15) If the enforcement of a foreign decision is governed by Sections 14 to 16 of Act No. 91/2012 Coll., on Private International Law,¹⁹⁰ it can only be implemented in enforcement proceedings conducted by the court enforcement officer. Conversely, enforcement proceedings conducted by a private bailiff under the Enforcement Code¹⁹¹ may in such case only be implemented on the basis of a foreign decision that was recognised on the basis of a special decision of a Czech court pursuant to Section 16(2) of the Private International Law Act,¹⁹² i.e. a judgment, which must contain reasons.¹⁹³ (16) The Treaty between the Czech Republic and the Slovak Republic on Legal Assistance provided by Judicial Authorities¹⁹⁴ does not offer any alternative that would render a foreign arbitral award enforceable in the enforcement proceedings conducted by a private bailiff

¹⁸⁷ Section 43a(3) and (6) of Act No. 120/2001 Coll., on Private Bailiffs and Enforcement Proceedings (Enforcement Code) (cit., approximate translation): "(3) *The court shall grant the authorisation within 15 days if all requirements stipulated by the Act are satisfied. If the court received the petition for authorisation together with a motion for declaration of enforceability or recognition, the court shall grant the authorisation after the court had ruled on the motion for declaration of enforceability or for recognition. The decision on declaration of enforceability or on recognition shall be made by the enforcement court without a hearing. The resolution or judgment on the declaration of enforceability or on recognition must contain reasons. (6) Unless all requirements are met that are stipulated by law for the conduct of the enforcement proceedings, the court instructs the private bailiff to reject or dismiss the petition for enforcement in whole or in part, or to discontinue the enforcement proceedings. The private bailiff is bound by the instruction.*"

¹⁸⁸ Convention on the Recognition and Enforcement of Foreign Arbitral Awards, signed on 10 June 1958 in New York (Decree of the Minister of Foreign Affairs No. 74/1959 Coll.).

¹⁸⁹ Treaty between the Czech Republic and the Slovak Republic on Mutual Legal Assistance Provided by Judicial Authorities and the Regulation of Certain Legal Relations in Civil and Criminal Matters, promulgated under No. 209/1993 Coll.

¹⁹⁰ Sections 14 – 16 of Act No. 91/2012 Coll., on Private International Law (approximate translation cited above).

¹⁹¹ Act No. 120/2001 Coll., on Private Bailiffs and Enforcement Proceedings (Enforcement Code).

¹⁹² Section 16(2) of Act No. 91/2012 Coll., on Private International Law (approximate translation cited above).

¹⁹³ This line of reasoning in the case-law was supported by the resolution of the Supreme Court of the Czech Republic in Case No. 20 Cdo 1349/2016 of 01 July 2016.

¹⁹⁴ Treaty between the Czech Republic and the Slovak Republic on Mutual Legal Assistance Provided by Judicial Authorities and the Regulation of Certain Legal Relations in Civil and Criminal Matters, promulgated under No. 209/1993 Coll.

on the basis of priority in application. On the contrary, the wording of the Treaty only envisages enforcement through enforcement proceedings conducted by a court enforcement officer, which clearly follows from the linguistic interpretation of Article 24 of the Treaty, stipulating that a petition for the recognition and enforcement of a decision shall be submitted directly to the competent court of the Contracting Party in the territory in which the decision is to be recognised and enforced. While Subsection (3) of the same Article of the Treaty stipulates that the court shall limit its review to the fulfilment of the requirements listed in Articles 22 and 23 of this Legal Assistance Treaty, and if the court ascertains that the requirements are fulfilled, the court *recognizes the decision or issues a writ of execution thereof*, the provision – again – explicitly refers to the *court, and the court alone*, as the public authority eligible to hear the case and enforce the foreign decision. (17) Conclusions analogous to those in the preceding paragraph can also be inferred from Articles III and IV of the New York Convention (1958).¹⁹⁵

- 9.39. Resolution of the Supreme Court of the Czech Republic, Case No. 20 Cdo 4732/2015 of 01 March 2016.**¹⁹⁶ [enforcement proceedings; enforceable instrument; enforcement of foreign courts' decisions; penalty for default; interest accrued to an awarded claim; separate determination of the penalty; enforcement of a substitute obligation] (1) Article 49 of the Brussels I Regulation concerns decisions imposing an obligation to provide non-monetary performance. According to the laws of certain Member States (France and the Benelux countries), the decision then also determines the amount that the judgment debtor must pay to the judgment creditor if the debtor fails to perform under the judgment. (2) The penalty can only be enforced in other Member States if the total amount of the penalty was determined by the courts of the Member State of origin. Consequently, these requirements are not fulfilled if, for instance, the decision indicates the amount of the penalty for each individual default on the obligation to provide non-monetary performance, or for each day of default on such performance, and the number of the individual defaults or the duration of the default is only indicated by the judgment creditor

¹⁹⁵ Convention on the Recognition and Enforcement of Foreign Arbitral Awards, signed on 10 June 1958 in New York (see Decree of the Minister of Foreign Affairs No. 74/1959 Coll.).

¹⁹⁶ Preceding decisions in the case: (i) Resolution of the Municipal Court in Prague [Czech Republic], Case No. 19 Co 17/2015-61 of 28 August 2015, (ii) Resolution of the District Court for Prague 1 [Czech Republic], Case No. 48 EXE 5502/2014-32 of 06 November 2014, and (iii) Judgment of the Labour Court in Moulins [France], Case No. F 08/00084 of 09 March 2010.

in the petition for the declaration of enforceability. (3) Hence, in those Member States that are familiar with the concept of “*astreinte*”, the default on the non-monetary obligation must be followed by a separate decision stipulating the final total amount of the penalty; depending on the circumstances, the amount may be even lower than the amount of the penalty calculated according to the original decision, because the latter commonly contains an exaggerated amount of the penalty or merely a threat of penalty.¹⁹⁷ (4) The decision on enforceability of the enforceable instrument cannot precede the decision of the court of the Member State of origin on the final total amount of the penalty for failure to meet the non-monetary obligation stipulated by the enforceable instrument. [*From the factual and legal findings*]: The appellate court making the decision on the declaration of enforceability of a foreign enforceable instrument limited its decision in the given case to the assessment of the formal requirements of the enforceable instrument and an examination of the existence of the grounds for refusing enforceability pursuant to Articles 34 and 35 of the Brussels I Regulation. But the court failed to notice that the operative part of the enforceable instrument contains (*inter alia*) an order to the judgment debtor to provide non-monetary performance and, should the judgment debtor fail to perform the obligation, a secondary obligation to pay to the judgment creditor a penalty for each day of delay with the performance. In view of the fact that the enforceable instrument in the given case only determined the daily rate of the penalty for a default on the stipulated non-monetary obligation, the appellate court should have first requested the judgment creditor to present a decision of the court of the Member State of origin of the original decision, i.e. the State in which the enforceable instrument was issued, in which the final total amount of the penalty was determined, and only then make a decision on the (non)enforceability of the individual operative parts of the enforceable instrument.

9.40. Resolution of the Supreme Court of the Czech Republic, Case No. 30 Cdo 2361/2011 of 30 September 2014:¹⁹⁸ [enforcement of foreign courts’ decisions; document that instituted the proceedings; service of documents; remedy]
(1) The concept of a document that instituted the proceedings

¹⁹⁷ VIKTOR VAŠKE, UZNÁNÍ A VÝKON CIZÍCH ROZHODNUTÍ V ČESKÉ REPUBLICE [title in translation – RECOGNITION AND ENFORCEMENT OF FOREIGN JUDGMENTS IN THE CZECH REPUBLIC], Prague: C. H. Beck (2007), et. 72.

¹⁹⁸ Preceding decisions in the case: (i) Resolution of the Regional Court in Brno, Case No. 20 Co 335/2007-44 of 18 January 2008, (ii) Resolution of the Municipal Court in Brno, Case No. 69 Nc 4064/2006-4 of 01 September 2006, and (iii) Default Judgment issued by the Regional Court in Linz, Case No. 5Cg 194/04 f-36 of 20 March 2006.

or an *equivalent document* employed in Article 34(2) of the Brussels I Regulation generally refers to a document(s) that, if served on the respondent in a proper and timely fashion, enables the exercise of rights before an enforceable judgment is issued in the State of dispatch.¹⁹⁹ (2) The written materials must contain a document or documents (if they are interconnected in essence) that will enable the respondent to understand the subject matter and the grounds of the action and the fact that court proceedings are pending in which the respondent may exercise their rights either by raising a defence in such proceedings or by challenging the decision issued on the basis of the action by a remedy.²⁰⁰ (3) A document enabling the respondent to exercise their rights by raising a defence in the pending proceedings includes a summons to a hearing; a document enabling the respondent to exercise their rights by filing a remedy is a decision – in this case, a judgment for default issued by the foreign court.

9.41. Resolution of the Supreme Court of the Czech Republic, Case No. 31 Cdo 2325/2008 of 14 July 2010:²⁰¹ [enforcement proceedings; enforceable instrument; EU law; enforcement of a foreign court's decision; impediments to recognition and enforcement] (1) In view of the fact that no bilateral international treaty has been entered into between the Czech Republic and the Federal Republic of Germany, the conditions for the recognition and enforcement of an enforceable instrument must be assessed pursuant to Section 63 of the Private International Law Act.²⁰² (2) Section 48 of the Private International Law Act²⁰³ requires the application of Czech law, specifically the Enforcement Code.²⁰⁴

¹⁹⁹ Judgment of the European Court of Justice, Case C-474/93, *Hengst Import BV v. Anna Maria Campese*.

²⁰⁰ Judgment of the European Court of Justice, Case C-14/07, *Ingenieurbüro Michael Weiss und Partner GbR v. Industrie- und Handelskammer Berlin*, joined party: *Nicholas Grimshaw and Partners Ltd*. See L'UBOMÍR DRÁPAL, JAROSLAV BUREŠ, OBČANSKÝ SOUDNÍ ŘÁD II., § 201-376. KOMENTÁŘ [title in translation – CODE OF CIVIL PROCEDURE II. SECTIONS 201-376. A COMMENTARY], Prague: C.H.Beck (2009), et. 2999.

²⁰¹ Preceding decisions in the case: (i) Resolution of the Regional Court in Ostrava, Case No. 9 Co 892/2007 – 139 of 19 November 2007, (ii) Resolution of the District Court in Vsetín – Valašské Meziříčí Office [Czech Republic], Case No. 2 Nc 4459/2005 – 90 of 17 July 2007, (iii) Decision of the District Court in Stuttgart “Vollstreckungsbescheid”, Case No. B 594/95 LM of 11 July 1995, and (iv) Judgment of the Regional Court in Heilbronn, Case No. 2 O 2400/96 I of 06 June 1997.

²⁰² Section 63 of Act No. 97/1963 Coll., on Private International Law and Procedure (cit., approximate translation): “Decisions of the judicial authorities of a foreign State in matters specified in Section 1, as well as foreign judicial settlements and foreign notarial instruments in such matters (hereafter referred to as ‘foreign judgments’) have effects in the Czechoslovak Socialist Republic if they have become final pursuant to a confirmation issued by the competent foreign authority and if they have been recognised by Czechoslovak authorities.” This Act was replaced by Act No. 91/2012 Coll., on Private International Law, with effect from 01 January 2014.

²⁰³ Act No. 97/1963 Coll., on Private International Law and Procedure. Czechoslovak courts apply Czechoslovak procedural laws in the proceedings and all parties have equal standing in the exercise of their rights. This Act was replaced by Act No. 91/2012 Coll., on Private International Law, with effect from 01 January 2014.

²⁰⁴ Act No. 120/2001 Coll., on Private Bailiffs and Enforcement Proceedings and Amending Other Laws (Enforcement Code).

(3) If the effects of a foreign court's decision can be perceived as consistent with Czech laws, and there are no impediments preventing the enforcement thereof stipulated in Section 64 of the Private International Law Act,²⁰⁵ and if, at the same time, there is reciprocity in the recognition and enforcement of judgments in civil and commercial matters with the respective State, the requirements for ordering enforcement pursuant to Section 44(2) of the Enforcement Code²⁰⁶ were fulfilled.

|||

Bibliography:

PETR BŘÍZA, TOMÁŠ BŘICHÁČEK, ZUZANA FIŠEROVÁ, PAVEL HORÁK, LUBOMÍR PTÁČEK, JIŘÍ SVOBODA, ZÁKON O MEZINÁRODNÍM PRÁVU SOUKROMÉM. KOMENTÁŘ [title in translation – PRIVATE INTERNATIONAL LAW ACT. A COMMENTARY], Prague: C. H. Beck (2014).

L'UBOMÍR DRÁPAL, JAROSLAV BUREŠ, OBČANSKÝ SOUDNÍ ŘÁD II., § 201-376. KOMENTÁŘ [title in translation – CODE OF CIVIL PROCEDURE II. SECTIONS 201-376. A COMMENTARY], Prague: C.H.Beck (2009).

Helmut Koziol, Vanessa Wilcox, *Punitive Damages: Common Law and Civil Law Perspectives. Tort and Insurance Law*, 25 SPRINGER 198–199 (2009).

ZDENĚK KUČERA, MEZINÁRODNÍ PRÁVO SOUKROMÉ [title in translation – PRIVATE INTERNATIONAL LAW], Brno: Doplněk (7th ed. 2009).

ZDENĚK KUČERA, LUBOŠ TICHÝ, ZÁKON O MEZINÁRODNÍM PRÁVU SOUKROMÉM A PROCESNÍM. KOMENTÁŘ [title in translation – ACT ON PRIVATE INTERNATIONAL LAW AND PROCEDURE. A COMMENTARY], Prague: Panorama (1989).

²⁰⁵ Section 64 of Act No. 97/1963 Coll., on Private International Law and Procedure (cit., approximate translation): "Foreign judgments cannot be recognised or enforced if (a) the judgment cannot be recognised due to the exclusive jurisdiction of Czechoslovak authorities or if no authority of a foreign State could conduct the proceedings if the provisions on the jurisdiction of Czechoslovak courts had been applied to the assessment of the foreign authority's jurisdiction; (b) a Czechoslovak authority has already issued a final judgment regarding the same legal relationship or if a final judgment of a third State's authority has already been recognised in the Czechoslovak Socialist Republic, (c) a party to the proceedings against whom the recognition of the judgment is sought was deprived by the acts of the foreign authority of the opportunity to duly enter an appearance, primarily if the party was not personally served with a summons or a petition to open the proceedings, or if the respondent was not personally served with the petition to open the proceedings; (d) if the recognition were contrary to the Czechoslovak public policy; (e) no reciprocity is guaranteed; reciprocity is not required if the foreign judgment is not directed against a Czechoslovak citizen or legal entity." This Act was replaced by Act No. 91/2012 Coll., on Private International Law, with effect from 01 January 2014.

²⁰⁶ Section 44(2) of Act No. 120/2001 Coll., on Private Bailiffs and Enforcement Proceedings and Amending Other Laws (Enforcement Code) (cit., approximate translation): "(2) The notice shall be served on the judgment debtor personally."

Clarence Morris, *Punitive Damages in Tort Cases*, 44 HARVARD LAW REVIEW 1184 (1931).

Csongor István Nagy, *Recognition and enforcement of U.S. judgments involving punitive damages in continental Europe*, 30(1) NEDERLANDS INTERNATIONAAL PRIVAATRECHT 4–11 (2012).

NADĚŽDA ROZEHNALOVÁ, ROZHODČÍ ŘÍZENÍ V MEZINÁRODNÍM A VNITROSTÁTNÍM OBCHODNÍM STYKU [title in translation – ARBITRATION IN INTERNATIONAL AND NATIONAL COMMERCE], Prague: ASPI (2nd ed. 2008).

Anthony Sebok, *Punitive Damages in the United States*, in HELMUT KOZIOL, VANESSA WILCOX, PUNITIVE DAMAGES: COMMON LAW AND CIVIL LAW PERSPECTIVES, Springer: Vienna (2009).

PAVEL SEDLÁČEK, ÚMLUVA CMR: (komentář): MEZINÁRODNÍ SILNIČNÍ NÁKLADNÍ DOPRAVA – SOUDNÍ ROZHODNUTÍ – VÝKLAD JEDNOTLIVÝCH USTANOVENÍ [title in translation – CMR CONVENTION: (A COMMENTARY): INTERNATIONAL CARRIAGE OF GOODS BY ROAD – COURT DECISIONS – INTERPRETATION OF THE INDIVIDUAL PROVISIONS], Prague: Vox (2009).

Soudní judikatura, Prague: C. H. Beck, 2005, No. 10, Case No. 166.

Soudní judikatura z oblasti občanského, obchodního a pracovního práva [title in translation - Court Case-Law Concerning Civil, Commercial and Labour Law], 5th edition (volume), 2020, p. 321. Published under Reg. No. 47/2020.

Soudní judikatura z oblasti občanského, obchodního a pracovního práva [Court Case-Law Concerning Civil, Commercial and Labour Law], 1st edition (volume), 2017, p. 15. Published under Reg. No. 4/2017.

VIKTOR VAŠKE, UZNÁNÍ A VÝKON CIZÍCH ROZHODNUTÍ V ČESKÉ REPUBLICE [title in translation – RECOGNITION AND ENFORCEMENT OF FOREIGN JUDGMENTS IN THE CZECH REPUBLIC], Prague: C. H. Beck (2007).