

Seminar of Experts, 20 April 2018, University of Wrocław

The seminar constitutes a part of the project entitled “Informed Choices in Cross-Border Enforcement (IC2BE)”

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The Seminar took place in the Faculty Council Room (Sala Rady Wydziału), building A, Faculty of Law, Administration and Economics, University of Wrocław (address: ul. Uniwersytecka 22/26, 50-145 Wrocław). The Seminar started at 10.30 a.m. and it ended at 3.15 p.m.

The Seminar was opened at 10.30 a.m. by Prof. Łukasz Machaj, Vice-Dean of the Faculty of Law, Administration and Economics, University of Wrocław.

First speaker, Dr Agnieszka Frąckowiak-Adamska (University of Wrocław), leader of the Polish part of the project “Informed Choices in Cross-Border Enforcement (IC2BE)”, presented general aims of the project, all the Partners involved in the project and different methods of research. She also outlined quantitative data concerning the rulings of Polish courts. During the presentation practical aspects were highlighted.

Afterwards, the introductory lecture was conducted by Prof. Maciej Szpunar, Advocate General of the Court of Justice of the European Union. The lecture focused mainly on the reflections on territorial scope of application of EU private international law. Initially, the Advocate General stressed specific conflict-of-law rules in particular directives (e.g. art. 6 par. 2 of Council Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts). Then he emphasized the significance of two EU Regulations: EU Regulation on the law applicable to contractual obligations (Rome I) and EU Regulation on the law applicable to non-contractual obligations (Rome II). After that he gave examples of judgments of CJEU in cases concerning the situation of self-employed commercial agents (Case C-381/98, *Ingmar*; Case C-184/12, *Unamar*, Case C-507/15, *Agro Foreign Trade & Agency Ltd*)

Following the introductory lecture, Dr Piotr Rodziewicz (University of Wrocław, advocate in Wrocław) started the panel on European Payment Order, with his speech on practical choices in cross-border enforcement. He compared EPO with national procedures by writ taking into consideration the formal requirements, e.g. fees, proceedings with evidence (evidentiary hearing), time for becoming the order non-appealable. He stated that plaintiff has a real choice between EPO and national procedures by writ only if he stays in another Member State (the court and the defendant are in Poland). If plaintiff stays in Poland and defendant in another Member State, EPO is the only choice possible. He also noticed that until 10th of January 2015 the abolition of *exequatur* was an important advantage of EPO. After the beginning of the application of Brussels I bis Regulation, the EPO is less attractive because any judgment which has become enforceable in the Member State of origin shall be recognised and enforced in the other Member States without the need for a declaration of enforceability. He concluded that European procedures should be more correlated with national procedures.

Next, practical comments were made by Grzegorz Karaś (judge in the Regional Court in Wrocław) and Andrzej Żurawski (advocate in Wrocław). Grzegorz Karaś presented judicial perspective of application of EPO. He summarized main problems resulting from judicial practice, e.g. formal deficiencies and difficulties in claiming interest (in relation with Case C-215/11, *Iwona Szyrocka*), lack of knowledge of EPO procedure by Polish lawyers, lack of adjustment of EU forms to the needs of the practice. He also emphasized the problems concerning the methods of service on the debtor and the costs of translation. In turn, Andrzej Żurawski stated that the clients mostly choose EPO procedure instead of other procedures and he underlined the advantages of EPO procedure for creditors. There are among them the following: the form and the written nature of the proceedings, cross-border nature of the proceedings, speed of proceedings, limited participation of the defendant and high costs for him, no need to present evidence. He also pointed out some practical problems in cooperation with courts, e.g. cases of requests to submit documents that form the basis of the claim, lack of uniform practice in awarding costs of proceedings, imprecise indication of interest.

After their speeches Prof. Maciej Szpunar started an engaging discussion with the involvement of invited experts. The following issues were discussed: application of EPO in business-to-consumer (B2C) relations, the amount and purposefulness of fees in European and national procedures, plea of lack of jurisdiction, questions concerning specialization of judges and creation of one court in Poland competent in cross-border cases.

After coffee break, the panel on Small Claims was started by the speech of Monika Biała (judge in the District Court in Wrocław). She started her presentation with the description of European and national sources of law. Then she presented the objectives and principles of EU Regulation 861/2007 and the directions for future. She underlined the advantages of small claims procedure from judicial perspective. Practical comment was made by Joanna Lubecka (advocate in Poznań). As a practicing lawyer she emphasized the advantages of European Small Claims Procedure compared with European Payment Order Procedure. The following elements should be highlighted: adversarial character, pecuniary and non-pecuniary claims, limitation related to the hearing, possibility of applying the procedure also in the case of disputable claims. From her experience the costs of proceedings related to translations are problematic. She also mentioned practical consequences resulting from the defendant's refusal to accept the document.

Then, the next panel on European Enforcement Order was started by the speech of Dr Marek Zalisko (legal counsel in Wrocław). Based on his legal experience he stated that in cross-border proceedings the pecuniary claims are asserted much more frequently. The scope of the regulation applies to uncontested claims. Then the competitiveness of Brussels I bis Regulation was noticed. It was argued that EEO may be superseded in the future by Brussels I bis Regulation. Next, the situation of creditors was analyzed from legal perspective. It was underlined that EEO may be an alternative to national procedures by writ if service on the debtor takes place in Poland. Practical comment was made by Paweł Majewski (legal counsel in Szczecin and lawyer in Germany). He analyzed the situation of a debtor in cross-border proceedings applying comparative Polish-German analysis. From his experience, if the debtor continues to defend, the proceedings may take a long time. He gave an example of a case that lasts over 10 years. It was also stated that activity of advocates and legal counsels is the important element in cross-border proceedings.

Afterwards, another interesting discussion was initiated, this time concerning European Small Claims and EEO. It was conducted with the involvement of invited experts. The following issues were discussed: EEO as instrument appropriate for “old cases”, the predominance and significance of Brussels I bis Regulation, practical questions about enforcing the judgments in Germany, debt recovery in practice and possible changes of situation after Brexit.

After lunch, Dr Agnieszka Frąckowiak-Adamska started the last panel on European Account Preservation Order procedure. She presented the objectives and principles of EU Regulation 655/2014. It is applicable since 18 January 2017. It was underlined that a Preservation Order issued in one Member State shall be recognised in the other Member States without any special procedure being required and shall be enforceable in the other Member States without the need for a declaration of enforceability. She noticed Polish judgment of the District Court in Bydgoszcz of 23 March, 2017 (XII Co 1446/17) where the court referred to the preamble of EU Regulation 655/2014.

Then Dr Piotr Rodziewicz, as one of the member of Codification Commission, presented the course of works on the Polish law project. Technical questions have been analyzed for a long time in connection with obtaining information about bank accounts. The creation of a new system was also taken into consideration. It was finally decided that the bailiff shall acquire information on the court’s request and the entity responsible for the account register is the National Clearing House (Krajowa Izba Rozliczeniowa). It was also underlined that Polish provisions were introduced to Code of Civil Procedure as a part of international civil procedure.

Practical comment was made by Dr Wojciech Dubis (legal counsel in Wrocław). He emphasized that EU Regulation 655/2014 is a new instrument and within activity of his legal office the first application in this field was prepared. He focused his presentation on the effects of judgment of the District Court in Bydgoszcz of 23 March, 2017 (XII Co 1446/17). The court dismissed the application on the basis of submitting insufficient documents. According to the court, Polish law does not provide for a procedure for collecting evidence. In the opinion of Dr Wojciech Dubis, the provisions of EU Regulation 655/2014 should be applied directly in this case. Further, he also pointed out that, in accordance with the provisions of EU Regulation 655/2014, the security to be provided by the creditor is an obligatory measure. In Polish civil procedure the security does not constitute an obligatory measure. If the courts do not apply the procedure for collecting evidence, the question remains how to determine the circumstances for which the security is to be established.

Then, a short discussion was conducted with the involvement of invited experts.

Next, Damian Klimas (Phd student, University of Wrocław) presented e-CODEX Plus project. It is implemented within European Commission Connecting Europe Facility programme in the years 2017-2019. Prof. Jacek Gołaczyński represents University of Wrocław as Polish partner of the international consortium. E-CODEX enables cross border judicial cooperation by facilitating the digital exchange of case related data.

After few questions concerning E-codex project, the Seminar was closed at 3.15 p.m. by Dr Agnieszka Frąckowiak-Adamska, leader of the Polish part of the project.