

Recognition of judgments in matrimonial matters: general frame common to all Regulations

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1. Introduction

PIL instruments come into play whenever a case is characterized by **an international element**, in order to answer the following questions:

- a) which court has international jurisdiction to hear the case? (***jurisdiction***)
- b) which law governs the substantive aspects of the case? (***applicable law***)
- c) under which conditions can a decision issued abroad be recognized and enforced in the requested State? (***recognition and enforcement***)

Different types of EC/EU regulations

- Rome Regulations – **applicable law** (e.g. 593/2008; 864/2007 Reg.)
- Brussels Regulations – **jurisdiction + enforcement** (e.g. 2201/2003; 1215/2012 Reg.)
- **Mixture of both** (e.g. 4/2009; 650/2012; 2016/1103; 2016/1104 Reg.)
- **Judicial cooperation** (e.g. 1393/2007; 1206/2001 Reg.)

Family law matters



EC/EU Regulations concerning enforcement in Family Law

- Council Regulation (EC) No **2201/2003** of 27 November 2003 concerning jurisdiction and the **recognition and enforcement of judgments in matrimonial matters** and the matters of parental responsibility
- Regulation (EC) No **4/2009** of 18 December 2008 on jurisdiction, applicable law, **recognition and enforcement of decisions** and cooperation in matters relating to **maintenance obligations**.
- Regulation (EU) No **1259/2010** of 20 December 2010 implementing enhanced cooperation in the area of the law applicable to **divorce and legal separation**.

EC/EU Regulations concerning enforcement in Family Law

- Regulation (EU) **2016/1103** of 24 June 2016 implementing enhanced cooperation in the area of jurisdiction, applicable law and the **recognition and enforcement of decisions** in matters of **matrimonial property regimes**.
- Regulation (EU) **2016/1104** of 24 June 2016 implementing enhanced cooperation in the area of jurisdiction, applicable law and the **recognition and enforcement of decisions** in matters of the **property consequences of registered partnerships**

Conventions and National Laws

- Multilateral and bilateral treaties, e.g.:
 - Lugano Convention (30 October, 2007) between the EU member states and Norway, Switzerland and Iceland
 - Hague Convention of 23 November, 2007 on the International Recovery of Child Support and Other Forms of Family Maintenance
- National laws

2. Enforcement of judgments

Recognition and enforceability of the judgment

- Court/Notary

Enforcement of the judgment

- Bailiff

2.a) Application for a declaration of recognition

- Jurisdiction of the court/notary
- Application for the declaration of recognition
 - EC 2201/2003 Reg.
 - EU 1103/2016 Reg.
 - EU 1104/2016 Reg.

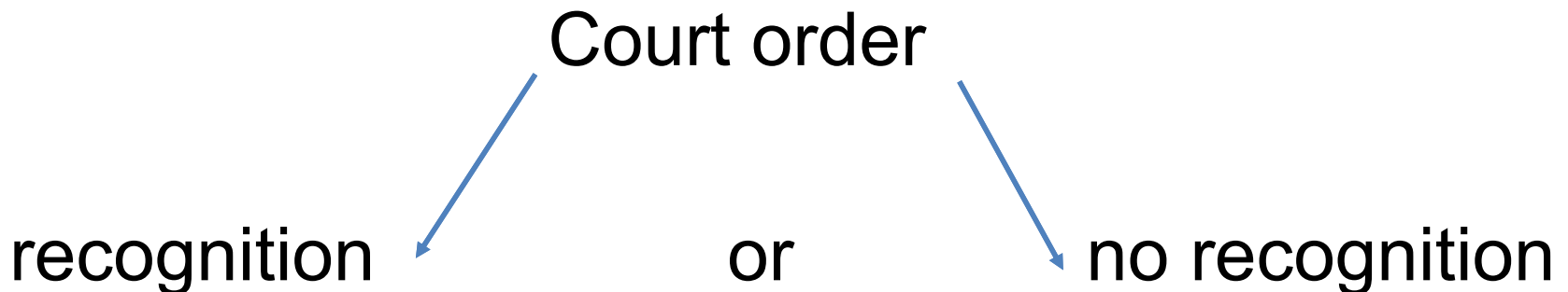
Except for:

- EC 4/2009. Reg. (under Hague Protocol)
- EC 805/2004. Reg.
- EC 1896/2006. Reg.
- EC 861/2007. Reg.
- EU 1215/2012. Reg.

- Documents to be attached:
 - The judgment - state of origin (its translation)
 - **Certificate** (application form) of the court of origin (no translation) e.g.:
 - 2201/2003 EC Reg. Article 28, 39 (exercising parental responsibility)
 - ➔ **exequatur in the state of enforcement**
 - 2201/2003 EC Reg. Article 40, 41 (1) or 41 (2) – (right of access; child return in child abduction)
 - ➔ **no exequatur in the state of enforcement**

2.b) Recognition procedure

- The court of the enforcement issues an **enforcement certificate** for the foreign judgement
- It is a court order, which means that the foreign judgment = national judgment in terms of enforceability



- The judgment must not be reviewed as to its substance
- Grounds for non-recognition of judgments
 - recognition is manifestly contrary to the public policy of the Member State in which recognition is sought
 - in default of appearance of the defendant, if he/she was not served with the document, to arrange for his or her defense
 - Res iudicata (national judgments)
 - Res iudicata (foreign, recognized judgments)

2.c) Appeal/Remedy

- Both parties receive the court order
- Both parties can appeal against the court order (second instance)
- Deadline: national rules or under e.g. Reg. 2201/2003 Art. 33 (5) one month
- Another remedy (third instance)
- Final order enters into force without any further remedies

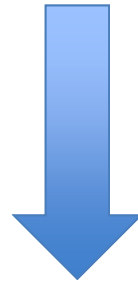
3. Enforcement procedure

- The court/notary issued writ of execution



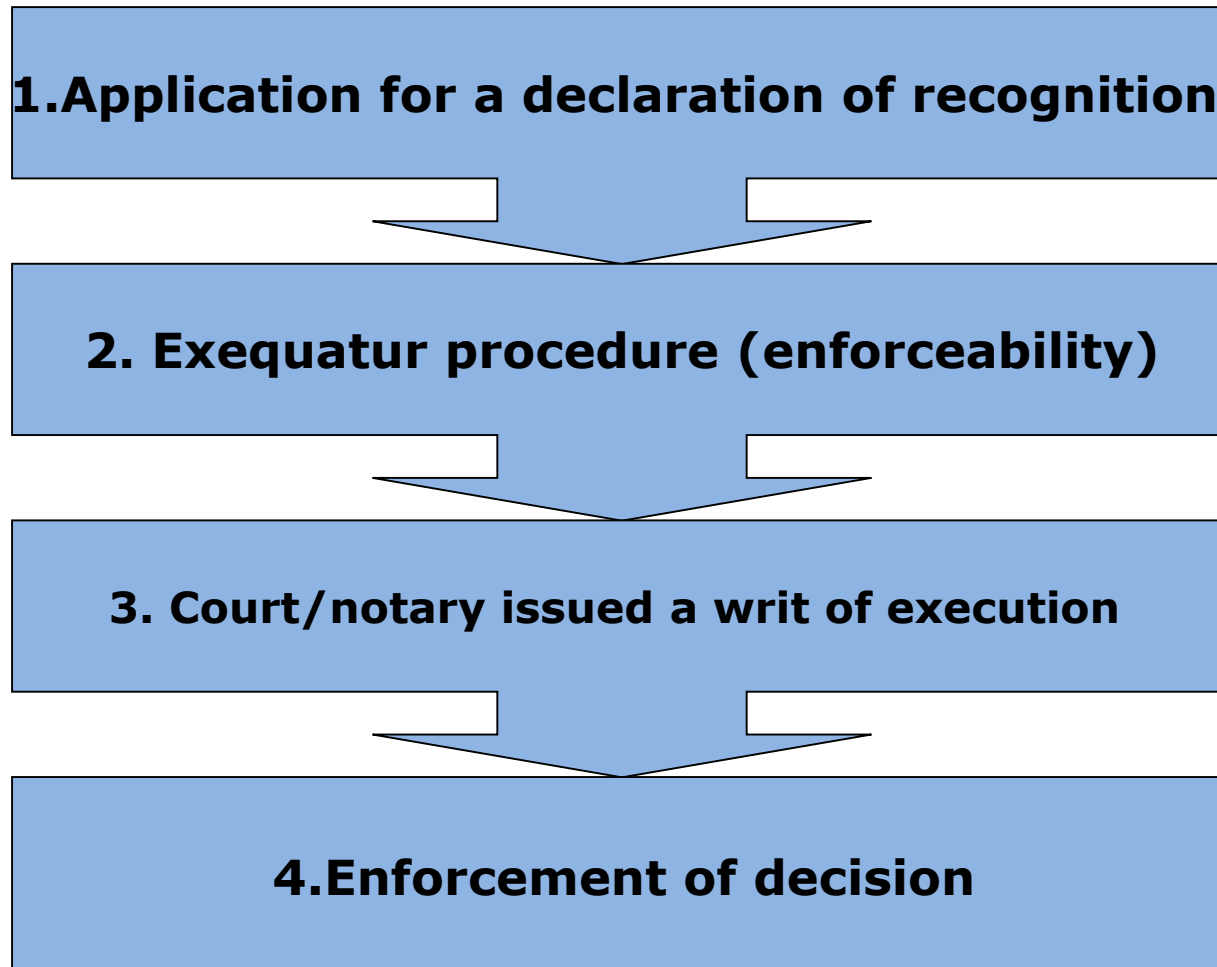
Bailiff's procedure

4. Abolition of exequatur ?

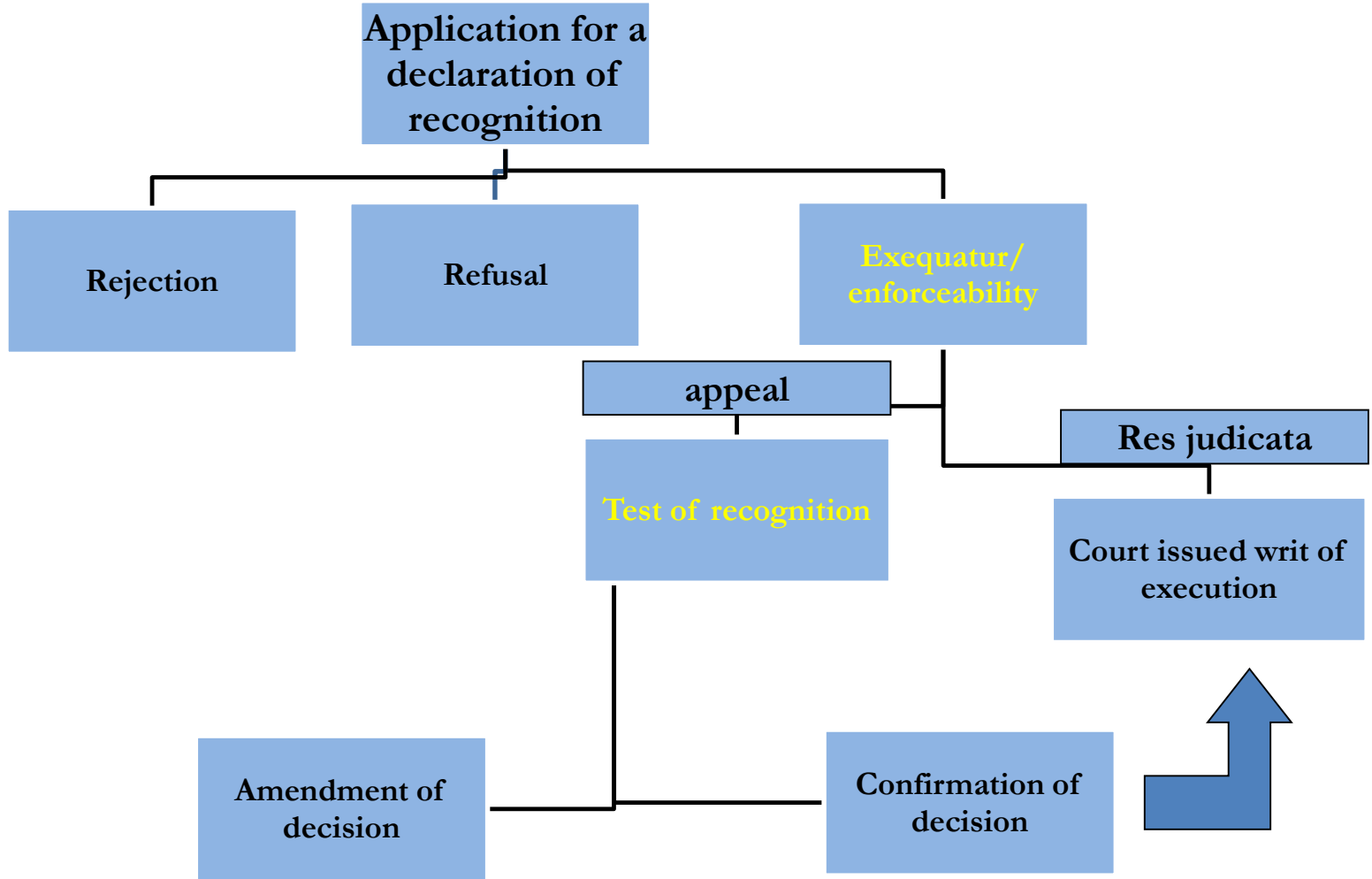


judgment of state of origin =
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enforcement

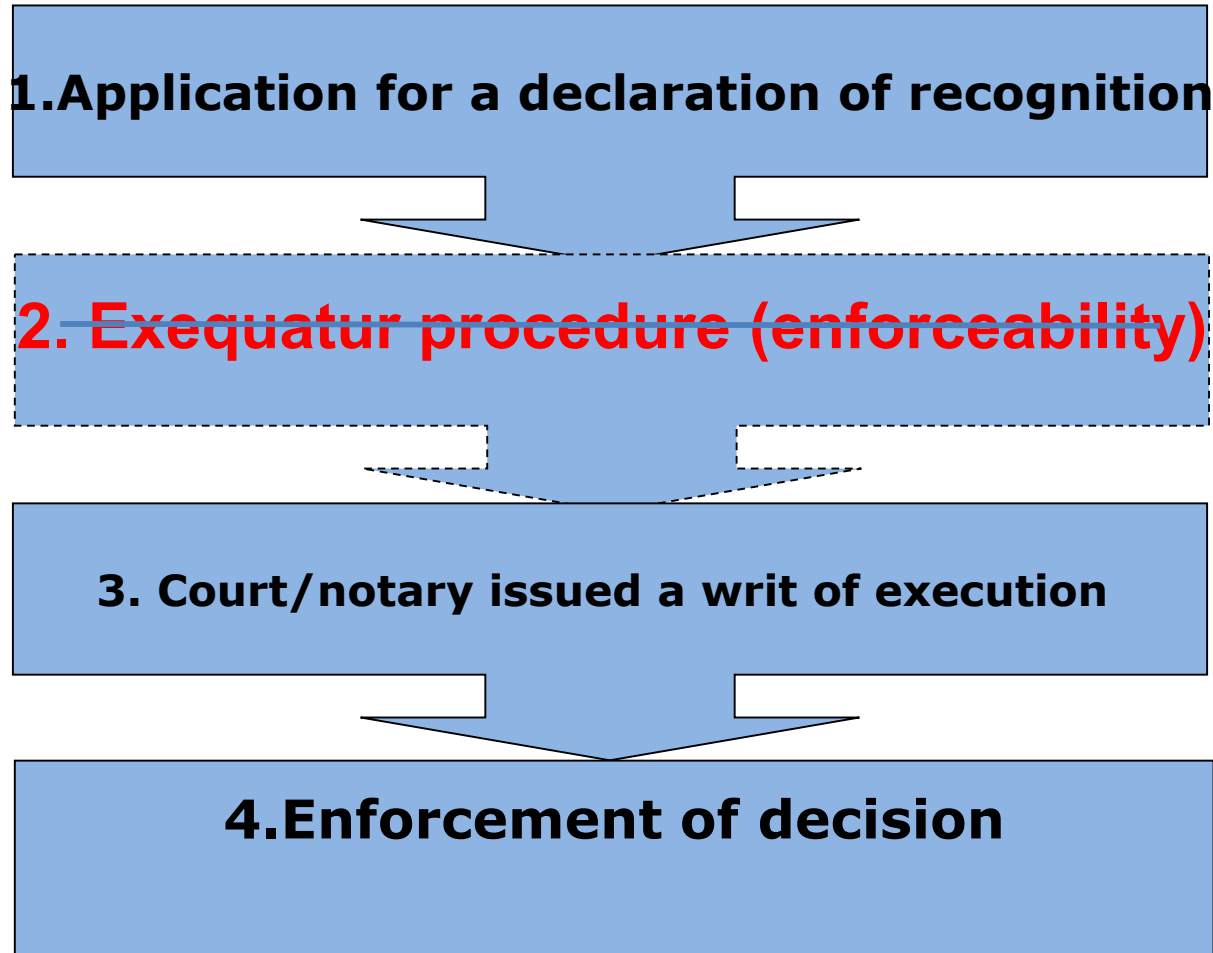
Previous enforcement procedure



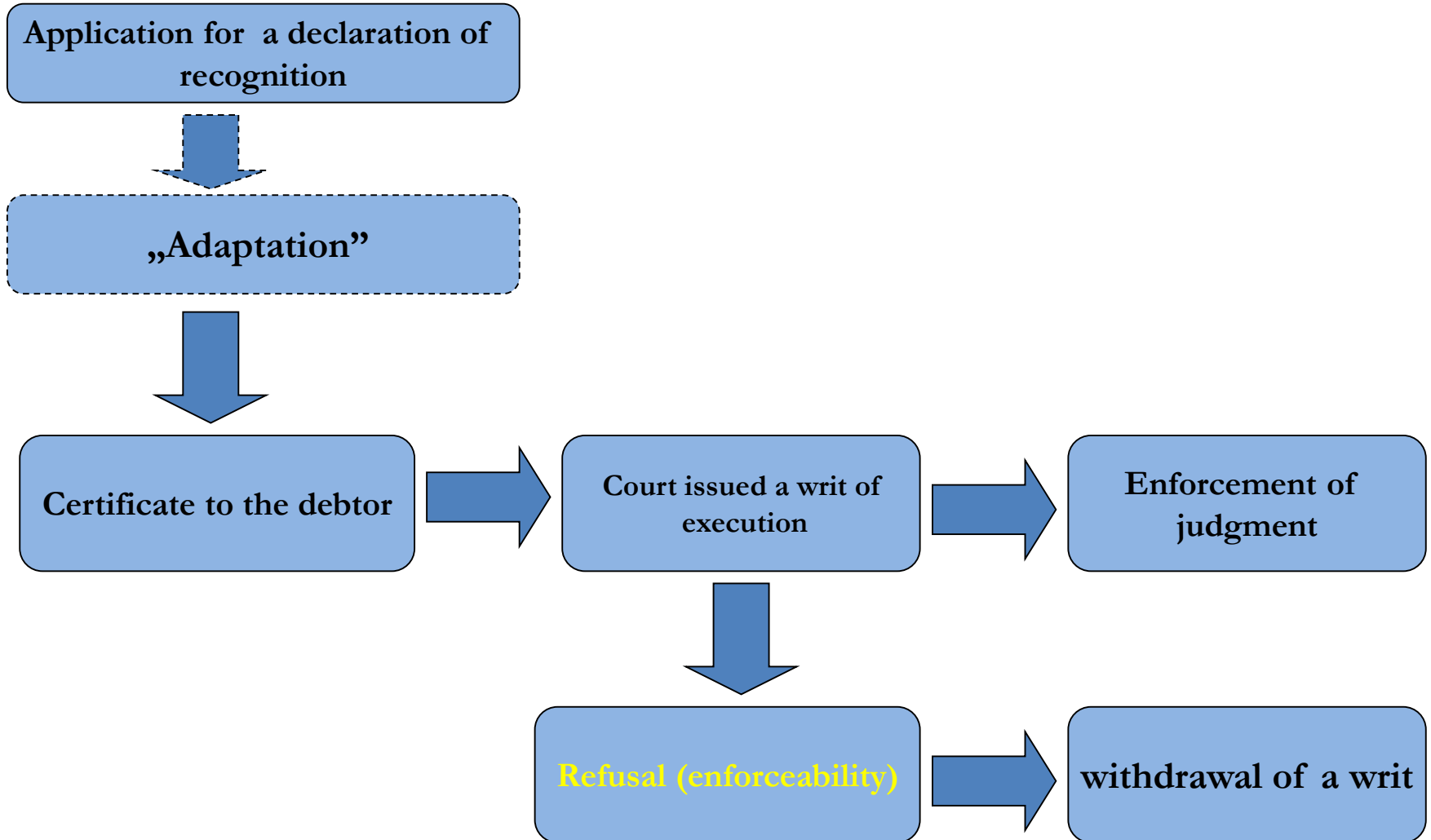
Previous enforcement procedure



New enforcement procedure



New enforcement procedure



Abolition of exequatur

- **Reg. 44/2001**

the debtor was allowed to defend his **grounds for non-recognition** of judgments in the **appeal procedure**

- **Reg. 1215/2012 (recast)**

the **grounds for non-recognition of judgments** transferred to the stage of recognition and enforcement

No application for a declaration of recognition

- Reg. 4/2009 (under Hague Protocol)
- Reg. 805/2004
- Reg. 1896/2006
- Reg. 861/2007
- Reg. 1215/2012
 - Documents to be attached:
 - The judgment - state of origin
 - The court certificate – state of origin
 - The court certificate –state of enforcement
 - court/notary issued a writ of execution – state of enforcement

Provisional measures

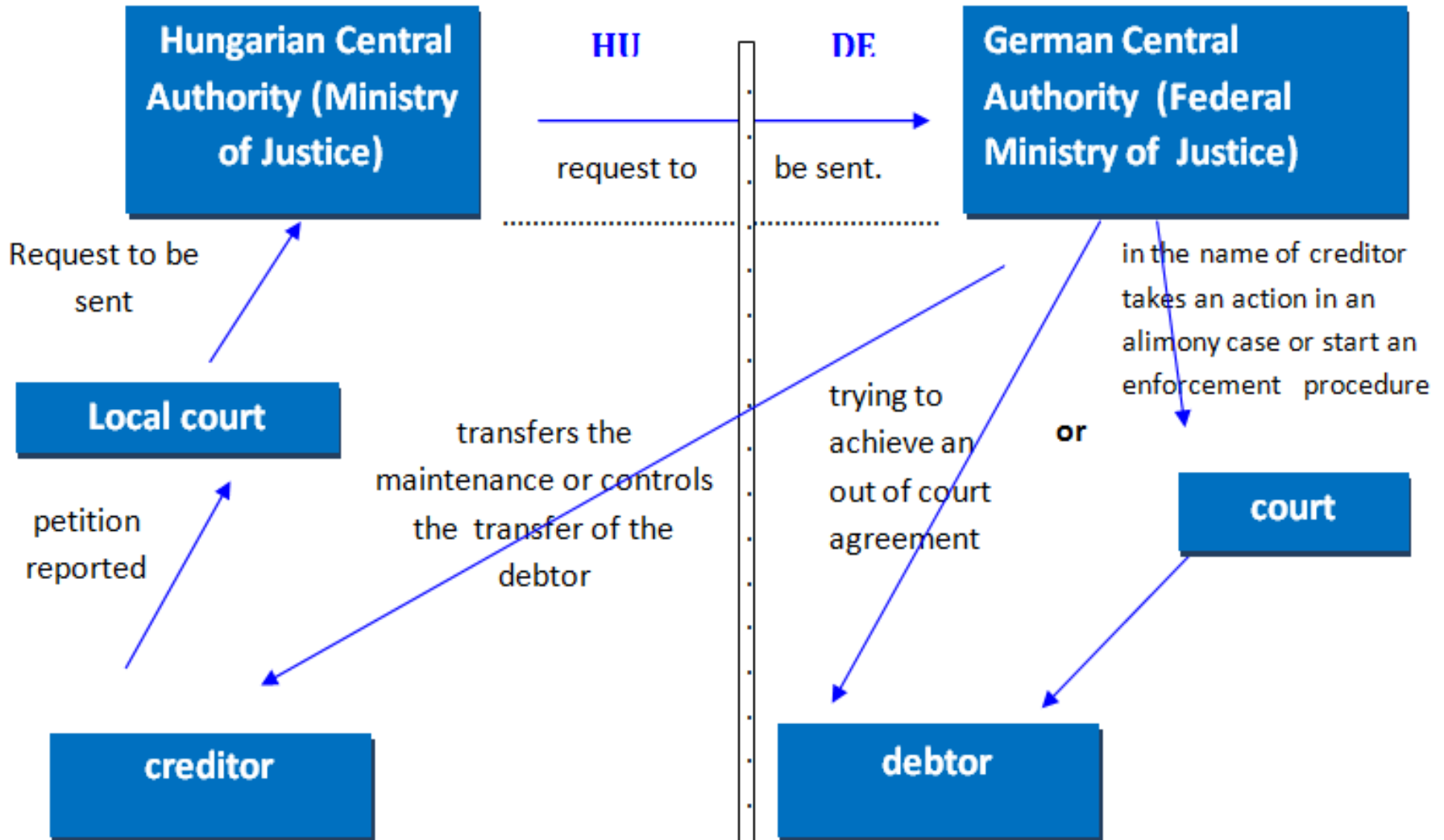
Competent authority (jurisdiction)

- decision
- Legal effect in all EU member states
- Recognizable and enforceable in all EU member states

No competent authority (no jurisdiction)

- decision
- Legal effect only in the given EU member state
- Not recognizable and enforceable in another EU member

Maintenance Regulation



5. Summarising conclusions

characteristics of the enforcement procedure

- Mutual recognition [Article 36(1)]
- Foreign judgment = national judgment in enforcement
- The law of the state of enforcement is applicable [Article 41(1)]
- The State of enforcement has the exclusive competence for enforcement procedures [Article 24, point 5]
- Under no circumstances may a judgment given in a Member State be reviewed as to its substance in the Member State addressed [Article 52]

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Case study

FACTS

A Hungarian national nurse applied for a home care job in Germany. In Germany she engaged in an intimate relationship with her employer's son, a German national. They got married and settled in Germany after her employer's death. Their child was born in Germany, where the little girl received German citizenship. Because of her husband's business interests, they lived in Denmark for a few years, and they signed a matrimonial property agreement under Danish law, according to which the wife could benefit only from a part of their matrimonial property. Later they moved back to Germany and after 17 years of marriage they divorced. The wife decided to return to Hungary together with her little daughter aged 10. Following a 6 month stay in Hungary the wife brought an action against her husband *for divorce, the division of the matrimonial property and the child maintenance*.

In her statement of claim the applicant refers to the invalidity of the matrimonial property contract, claiming that under the Hungarian Act on Private International Law the law of the country of the last common residence of the married couple should be applied to matrimonial property agreements, moreover, the agreement is to be deemed formally invalid under German law.

The parents could agree with each other on exercising of parental rights, the regulating of contact with the child in order to an action in these claims is not necessary.

Since the birth of the child, the husband receives a family allowance from the German State, which he does not want to release to his wife.

Related questions

- 1) Can the jurisdiction of the Hungarian courts and the jurisdiction of the court in the matter of divorce be established and, if so, on what basis? Is there a possibility of an agreement on jurisdiction?
- 2) Which law should be applied to divorce? Is there a choice of law?
- 3) Can the jurisdiction of the Hungarian courts and the jurisdiction of the court in the case of an application for child maintenance be established, and if so, on what basis? Is there a choice of law? Is there a possibility of an agreement on jurisdiction?
- 4) Which State's law should be applied to an application for child maintenance? Is there a choice of law?
- 5) Can the jurisdiction of the Hungarian courts and the jurisdiction of the court in matters of matrimonial property law be established - and, if so, on what basis?

- 6) Which State's law should be applied to the adjudication of a matrimonial property claim? Is there a choice of law?
- 7) What can the court do in the case of family allowance from Germany? Which court is responsible to take an action?

LEGAL INSTRUMENT(S) TO BE APPLIED
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Regulation No 2201/2003

Regulation No 4/2009 (and 2007 Hague Protocol)

Regulation No 1259/2010

Regulation No 883/2004/EC (recast 988/2009/EC Regulation)

National Law

Questions with guidelines

1) Can the jurisdiction of the Hungarian courts and the jurisdiction of the court in the matter of divorce be established and, if so, on what basis? Is there a possibility of an agreement on jurisdiction?

The applicant is deemed habitually resident if he or she resided in the given country for at least six months immediately before the application was made, or is the national of the Member State in question (2201/2003 EC Regulation, Article 3)

According to the Hungarian Code of Civil Procedure, if the defendant was not domiciled in Hungary, the place of residence or domicile of the plaintiff determines the jurisdiction of the court. [New Hungarian Code of Civil Procedure, Section 25 (2)]

No agreement on jurisdiction is possible

2) Which law should be applied to divorce? Is there a choice of law?

According to Articles 5-7 of Regulation (EU) No. 1259/2010, there is a possibility of a choice of law. In Hungary the parties may exercise choice of law at the latest until the deadline set by the court at the first hearing. Pursuant to Article 7 (1) of the Regulation, such agreement on the designation of law is valid, only if it is expressed in writing.

In the absence of choice of law pursuant to Article 5, divorce and legal separation shall be subject to the law of the state where the spouses were last habitually resident, provided that the period of residence did not end more than 1 year before the court was seized, in so far as one of the spouses still resides in that state at the time the court is seized (Article 8 of Regulation 1259/2010 EU). Therefore, in the absence of a choice of law by the parties, German law must be applied to the divorce.

A legal advice: the judge should direct the parties towards the choice of law, in order that the national law can be applied.

3) Can the jurisdiction of the Hungarian courts and the jurisdiction of the court in the case of an application for child maintenance be established, and if so, on what basis? Is there a choice of law? Is there a possibility of an agreement on jurisdiction?

In matters relating to maintenance obligations in Member States, jurisdiction shall lie with:

- (a) the court for the place where the defendant is habitually resident, or
- (b) the court for the place where the creditor is habitually resident, or
- (c) the court which, according to its own law, has jurisdiction to entertain proceedings concerning the status of a person if the matter relating to maintenance is ancillary to those proceedings, unless that jurisdiction is based solely on the nationality of one of the parties (4/2009 EC Regulation, Article 3)
- (d) the court for the place where the defendant is habitually resident, or

- (e) the court for the place where the creditor is habitually resident, or
- (f) the court which, according to its own law, has jurisdiction to entertain proceedings concerning the status of a person if the matter relating to maintenance is ancillary to those proceedings, unless that jurisdiction is based solely on the nationality of one of the parties (4/2009 EC Regulation, Article 3)

Agreement on jurisdiction (choice of court, 4/2009 EC Regulation, Article 4): this Article shall not apply to a dispute relating to a maintenance obligation towards a child under the age of 18. Jurisdiction is partially derived from other provisions of this Regulation, a court of a Member State before which a defendant enters an appearance shall have jurisdiction. This rule shall not apply where appearance was entered to contest the jurisdiction. (4/2009 EC Regulation, Article 5) - it is irrelevant when brought together with a marriage lawsuit.

4) Which State's law should be applied to an application for child maintenance? Is there a choice of law?

The law applicable to maintenance obligations shall be determined in accordance with the Hague Protocol of 23 November 2007 on the law applicable to maintenance obligations (hereinafter referred to as the 2007 Hague Protocol) in the Member States bound by that instrument. (4/2009 EC Regulation, Article 15.)

(1) Maintenance obligations shall be governed by the law of the State of the habitual residence of the creditor, save where this Protocol provides otherwise. (2) In the case of a change in the habitual residence of the creditor, the law of the State of the new habitual residence shall apply as from the moment when the change occurs. (Hague Protocol of 23 November 2007, Article 3)

(2) Notwithstanding Articles 3 to 6, the maintenance creditor and debtor for the purpose only of a particular proceeding in a given State may expressly designate the law of that State as applicable to a maintenance obligation.

(3) A designation made before the institution of such proceedings shall be in an agreement, signed by both parties, in writing or recorded in any medium, the information contained in which is accessible so as to be usable for subsequent reference. (Hague Protocol, Article 7)

Advice: at the opening of the case it is worthwhile to procure that the parties state their choice of law, because in this case the "link" applicable in the absence of choice of law does not apply.

5) Can the jurisdiction of the Hungarian courts and the jurisdiction of the court in matters of matrimonial property law be established - and, if so, on what basis?

In Hungary EU Regulation 2016/1103 must not be applied; Act XXVIII of 2017 on Private International Law:

The spouses may choose the law applicable to their property relationship, provided that it is one of the following rights:

- (a) the law of the State of which one of the spouses is a national at the time the agreement is concluded;
- (b) the law of the State in which one of the spouses has his habitual residence at the time the agreement is concluded;
- (c) the law of the State of the court seized. [Section 28 (1)]

Jurisdiction: Hungarian Code of Civil Procedure

6) Which State's law should be applied to the adjudication of a matrimonial property claim? Is there a choice of law?

In Hungary EU Regulation 2016/1103 must not be applied; Act XXVIII of 2017 on Private International Law

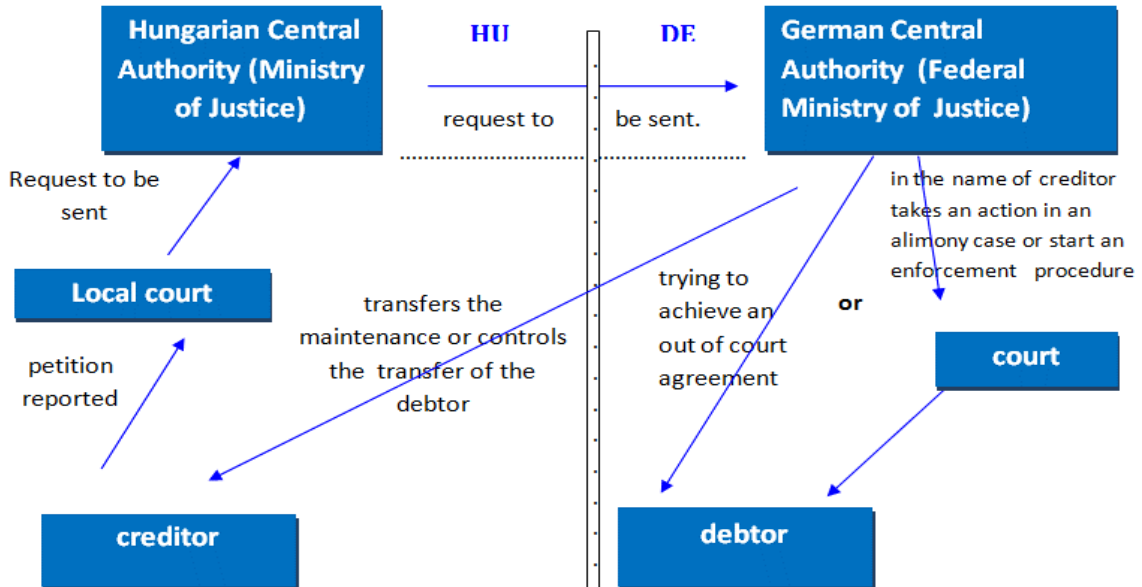
- (1) The law applicable to the spouses' personal and property relations - with the derogations provided for in Article 16 (3) - (5) - shall be the law of the State of which both spouses are nationals at the time of judgment.
- (2) If the nationality of the spouses is different at the time of the examination, the law of the State in which the spouses have their habitual residence, failing which the last common habitual residence of the spouses shall apply. (German Law)
- (3) If the spouses did not have their common habitual residence, the law of the State of the court seized shall apply. [Article 27 (1)]

There is no choice of law.

7) What can the court do in the case of family allowance from Germany? Which court is responsible to take an action?

The legal separation (and also the divorce) is such a circumstance that makes the husband not eligible for the German family allowance, if the child does not live with him any more. The husband has to pay this German family allowance to the mother, this can be enforced under the Article 84 of the 883/2004/EC Regulation (recast 988/2009/EC Regulation) and the 4/2009 EC Regulation.

The mother reports a petition at the Hungarian court and the German Central Authority starts an enforcement procedure in the name of the mother in Germany. The Hungarian court sends the request of the mother to the Hungarian Central Authority only when the requirement that she grants for legal aid is complied with. (This Hungarian law is not compatible with the 4/2009 EC Regulation!)



Maintenance Regulation

