Enforcement of Judgments in civil and commercial matters in cross-border cases in the European Union

Statement

1. Evolution of enforcement procedure in Community Law

1.1. The definition of enforcement procedure, its types and stages

As a civil matter, *enforcement procedure* is a relatively independent, law-regulated procedure, in which recognised and enforceable subjective rights are enforced by State institutions or – from a certain aspect – by similar institutions, mainly through pecuniary force.[1] In most countries, this procedure is defined as part of the court proceedings and its regulations can be found in the Rules of Civil Procedure (e.g.: Romania), while in other countries it is a relatively independent out-of-court procedure, in fact, it also occurs, that this independence is shown through the creation of a special law for this field (e.g. Hungary).

In most of the law systems, proceedings for the payment of pecuniary claims and the enforcement of certain activities are regulated separately from each other, within the rules of enforcement procedure. It is also typical for the legislator to place the special rules on the enforcement of foreign judgments separately.

Enforcement procedure consists of two main stages. The first step is ordering the enforcement, the second is the effectuation of the enforcement. By ordering enforcement the court decides whether there is place for enforcement, whether the legitimate State powers may interfere in order to realize the claim. The effectuation of enforcement – in case a pecuniary claim is enforced this way – means that the property of the debtor maintained at a financial institution, his wage, other benefits, movable property and real property are placed under enforcement. These property items are first seized and then, if necessary, sold. Marketing can naturally take place only in relation to movable properties and real properties. Finally, the value of the seized property is paid to the eligible person to the extent of his claim, after all costs of the enforcement procedure were deducted. At the stage of effectuating enforcement most of the duties fall upon the court bailiffs.

1.2. European integration and enforcement procedure

Ensuring free circulation[2] of judgments became particularly important in the latest decades for the European Union. Community activity and the creation of Community legal norms in the field of civil procedure law and in particular enforcement procedure are inevitable to this end.

But why is Community activity necessary in the European Union in the field of enforcement procedure? Here are some examples to support the need for Community level regulation.

a) All persons in the European Union must be provided with the same legal protection and treatment, which shall be applied in the enforcement procedure as well.
b) Ongoing integration creates an increasing number of cross-border cases and related court hearings.
c) Different ways and effectiveness of enforcement procedure in the Member States would harm the functioning of the Common Internal Market.
d) It could entail thwarting results, if a legal entity carrying out business activities (e. g. provision of service) in many Member States simultaneously would find itself in different legal situations in respect of its non-performing debtor in the different Member States.

1 KAPA Mátyás: Hitelezővédelem a bírósági végrehajtásban. Dialóg-Campus, Budapest, 2006., p. 30–31.
2 Compare with: WOPERA Zsuzsa: Megjegyzések a polgári eljárásjogi harmonizáció szükségességéről és realitásáról. In: Európai Jog 2003/1., p. 19.

e) In extreme cases, impairments suffered during enforcement could undermine the situation of the eligible person, who believes in the implementation of the legal norms, but cannot enforce them nevertheless.

f) The free movement of goods, persons, services and capital within the Union provides the malicious obligors (debtors) with a broader scope to escape the enforcement procedure, therefore it is a must to provide improved protection to the creditor against such cases.

From the beginning, the main aim of the European Union was the creation of a common market. For the effective functioning of the common market it is important that state borders do not cause an unbeatable barrier to enforcing claims and enforcing judgments. Thus already at the earliest stage of the European integration the need has emerged to simplify the recognition and enforcement of judgments of a Member State in another Member State. The first step towards cross-border recognition and enforcement of judgments was the Brussels Convention in 1968 which, besides rules of jurisdiction, regulated recognition and enforcement of judgments in civil and commercial matters too. Later the need of the States outside the European Community has emerged to conclude a convention between them and the EC regarding mutual recognition and enforcement of judgments. Finally the Lugano Convention was concluded in 1988 by the Member States and EFTA States including Switzerland, Norway and Iceland.

The Treaty of Maastricht, which entered into force on 1 November 1993, also failed to bring any significant changes in Community cooperation in the field of civil procedure. The Treaty of Maastricht has widened the scope of the Union so the new model of European integration based on three pillars was born. First pillar of the new Union, the Community pillar, was the European Communities (EC, ECSC, Euratom Treaties). This focused on economical integration, the aim was to reach full economical, monetary and social integration. Here the Community cooperation model is functioning, which means that the principle of supranational competences rule the decision making procedure, also, Community institutions are active. The Treaty of Maastricht introduced the second pillar as the Common Foreign and Security Policy and the third one refers to Police and Judicial Cooperation in Criminal Matters. The second and third pillars are not based on supranational competences as the previous one, but on the cooperation among the governments, who may use the institutional system of the Union without conferring their competences on the supranational institutions. The matter of recognition and enforcement of judgments was originally based on the third pillar of Police and Judicial Cooperation in Criminal Matters. In the coming few years no significant step ahead was taken in the field of recognition and enforcement of judgments.

Strategic turn was introduced by the Treaty of Amsterdam signed in 1997, which entered into force in 1999, in the field of European civil rules of procedure.[3] The Treaty of Amsterdam revised the Treaty of Maastricht, thus judicial cooperation in civil and commercial matters was moved from the third to the first pillar. Legal literature[4] regards as one of the most important achievements of the Treaty, that the European Union, which until then had only been forming and carefully shaped in the field of Justice and Home Affairs, finally received a genuine content and aim.[5] In other words, the Treaty of Amsterdam broke up with former practice and instead of formulating the need of harmonization in an indirect, general way, it has put a direct stress on the harmonization of certain priority fields of civil rules of procedure, thereby creating the normative basis for harmonization.[6] According to that, measures in the field of judicial cooperation shall include improving and simplifying the system for cross-border service

3 RECHBERGER, Walter H.: Az európai polgári eljárásjog mai állapotáról. In: Miskolci Jogi Szemle 2008/1.

4 KECSKÉS László: Eu-jog és jogharmonizáció, HVG-ORAC, Budapest, 2003, p. 107.; HORVÁTH Zoltán: Kézikönyv az Európai Unióról. HVG-ORAC, Budapest, 2005, p. 568., KENGYEL Miklós – HARSÁGI Viktória: Európai polgári eljárásjog., Osiris Kiadó, Budapest, 2006, p. 36.

5 KECSKÉS László: Eu-jog és jogharmonizáció, HVG-ORAC, Budapest, 2003, p. 109.

6 KAPA Mátyás: Európai jogharmonizáció a bírósági végrehajtás területén. In: A magyar polgári eljárásjog a kilencvenes években és az Eu jogharmonizáció, (szerk.: PAPP Zsuzsanna), ELTE Eötvös Kiadó, Budapest, 2003, p. 104. Compare with: WOPERA Zsuzsa: Megjegyzések a polgári eljárásjogi harmonizáció szükségességéről és realitásáról. Európai Jog 2003/1., p. 18.

of judicial and extrajudicial documents, the cooperation in the taking of evidence and the recognition and enforcement of decisions in civil and commercial cases, including decisions in extrajudicial cases, promoting the compatibility of the rules applicable in the Member States concerning the conflict of laws and of jurisdiction and eliminating obstacles to the good functioning of civil proceedings, if necessary by promoting the compatibility of the rules on civil procedure applicable in the Member States.[7] The Treaty, among other matters, has moved the field of judicial cooperation in civil and commercial matters from the third to the first pillar, under Community competences."[8] Thus the regulation through secondary Community legislation became possible in this field as well.[9] The Treaty of Amsterdam created a new direction and drove forward the legal harmonization in the field of civil procedure law, and therefore an active legislative work has also started regarding the field of enforcement procedure.

The European Council has adopted an action plan for five years *(Vienna Action Plan),* which had the main target of developing the principle of mutual recognition of judicial decisions and allowing the enforcement of these decisions in the whole territory of the European Union.[10] The European Council *meeting in Tampere*[11] in 1999 has targeted the creation of an European Judicial Area as an area of freedom, security and justice. The conclusions of Tampere were to be deepened by the so called Program of Hague (Brussels, 4-5 November 2004), and the new five years plan based on it[12]. Meanwhile, a paradigm shift has occurred however.[13] While the meeting in Tampere „only" had as direct aim the cross-border judicial cooperation in civil and commercial matters, the Program of Hague moved beyond that and supported the creation of new, uniform, Community level common procedures which may also point to the high level harmonization of national procedures. This means that the legal activity in the Union is heading towards two very different directions. On the one hand Regulations exist, which are to handle special problems of cross-border procedures regulated by national rules (jurisdiction, service, evidence, enforcing judgments). On the other hand other Regulations introduce sui generis European procedures which are governed by Community rules (European summary proceedings concerning orders to pay, European small claims procedure).

1.3. Recognition and enforcement of judgments in the European Union

The most important field of regulation regarding enforcement procedure in the European Union is the recognition and enforcement of judgments. This problem presents a serious challenge even to simple international relations, not to mention an economically based, integration structure like the European Union, which goes way beyond economic objectives.

The enforcement of foreign judgments itself raises interesting problems, when the authorities of a State require the debtor to perform his obligation, but the realization of the performance must be ensured in another State. This may be the case when the obliged person has his goods to be enforced in a different State than the State of the court which issued the judgment. Some questions relating cross-border procedures with an international element inevitably require normative legislation. The main question to investigate is how to recognize and enforce a judgment given by an alien authority in a different legal environment in a State other than the State of the court which issued it.

As regards the inland enforcement of a foreign judgment, two related, but not equal measure needs to be separated: recognition and the enforcement of judgments. Recognition decides whether the foreign

7 Article 65 of the Treaty establishing the European Union

8 KAPA Mátyás: Az Európai jogharmonizáció a bírósági végrehajtás területén. In: A Magyar polgári eljárásjog a kilencvenes években és az Eu jogharmonizáció. (szerk.: PAPP Zsuzsanna), ELTE Eötvös Kiadó, Budapest, 2003,104-105.o.

9 The legislative competence of the European Community is provided for by Article 61(c) of the Treaty establishing the European Community

10 http://ec.europa.eu/justice_home/key_issues/tampere/tampere_0704_hu.pdf., 2009.03.10.

11 The European Council meeting in Tampere on 15 and 16 October 1999.

12 In more detail see: http://ec.europa.eu/justice_home/news/information_dossiers/the_hague_prioritiesdochague programme_hu.pdf., 2009.03.12.

13 SADLER Astrid: Das Europaische Zivilprozessrecht – Wie viel Beschleunigung über den Europaischen Vollstreckungstitel und ihrer Grund. praxis des Internationalen Privat- und Verfahrensrecht, 2004., p. 5.

judgment is able to legally and finally solve the problem between the parties, according to the internal legal system. Legal sources may prescribe several conditions relating to this question, which are to be scrutinized by national institutions. Recognition may take place ipso iure, or may be declared in a separate procedure.

The domestic enforcement of a recognised foreign judgment may be effected differently regarding the different types of judgments on the substance. Substantive judgments on actions brought for declaration, creation of rights and condemnation need no further steps after recognition in order to reach the right legal status.[14] In case of condemning judgments which are not performed voluntarily, coercive measures of the State are needed for internal enforcement. Such a judgment shall not be enforceable ipso iure in a foreign State, not even in case of recognition, but a declaration is needed that the judgment is enforceable from a court of the State of enforcement.[15] Enforcing foreign judgments is special whereto an intermediate measure is to be taken by the party seeking enforcement, and the court can only start the enforcement procedure after that measure. This intermediate step is the exequatur procedure. This procedure again constitutes the enforceability in a constructive way.[16] Most legal systems include a separate exequatur procedure to declare a foreign decision enforceable.[17] Enforcement can only take place after the exequatur procedure, this is a precondition to enter the enforcement procedure. The procedure can be a single court proceeding[18] or an out-of-court procedure or can be a relatively independent stage of the enforcement procedure itself.[19]

During the enforcement of foreign judgments the creditor already possesses a judgment laying down an obligation for performance, which is to be enforced in another State. Usually the party seeking enforcement already went through the procedure deciding the case, therefore he can reasonably request not to have to verify the well-foundedness of his claim once again, and it is in his interest that the judgment is declared enforceable in a quick and simple procedure, under the same conditions as domestic judgments. Nevertheless, the fair legal protection of the debtor must be taken into consideration as well, because the „legal force" which affects him during the domestic enforcement of a foreign judgment is based on a decision which was delivered in a different material and procedural environment than the one in the State in which enforcement is sought.

Recognition and enforcement of foreign judgments are drawn under the legislation of the European Union, aiming for simplification and abolition of exequatur procedures. Nowadays three Regulations exist in this issue within the Union, Council Regulation (EC) No 2201/2003, Council Regulation (EC) No 44/2001 and Regulation (EC) No 805/2004 of the European Parliament and of the Council. The scope of the regulations covers all Member States excluding Denmark. Within the meaning of the Agreement between the European Community and the Kingdom of Denmark on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters, signed on 19 October, 2005, the provisions of Council Regulation (EC) No 44/2001 apply to the relations between Denmark and other Member States of the European Community from 1 July, 2007.

It needs to be mentioned, that meanwhile the Lugano Convention of 1988 has been developed as well. The revised Lugano Convention on jurisdiction and the recognition and enforcement of judgments in civil an commercial matters, which replaces the Lugano Convention of 16 September 1988, was signed on 30 October 2007 in Lugano by the Republic of Iceland, the Kingdom of Norway, the Swiss Confederation and the Kingdom of Denmark. In respect of the fact that according to the Opinion of

14 Compare: BRÁVÁCZ Ottóné – SZŐCS Tibor: Jogviták határok nélkül. HVG-Orac, Budapest, 2003., p. 257.

15 BRÁVÁCZ Ottóné – SZŐCS Tibor: Jogviták határok nélkül. HVG-Orac, Budapest, 2003., p. 269.

16 Compare: GEIMER, Reinhold – SCHÜTZE, Rolf: Europäisches Zivilverfahrenrecht. 2 Aufl. Beck, München, 2004., p. 611., illetve KENGYEL Miklós – HARSÁGI Viktória: Európai polgári eljárásjog. Osiris Kiadó, Budapest, 2006., p. 427.

17 On exequatur procedures applied in the countries of Europe see: SZŐCS Tibor: Bírósági határozatok külföldön történő végrehajthatóvá nyilvánítása Európában, különös tekintettel a Luganói Egyezményre. In: Magyar Jog 1997/4., p. 238–240.

18 In Germany a litigious procedure needs to be instituted for the declaration of enforceability of a foreign judgment [Vollstreckungsklage, in Hungarian: végrehajtási kereset (action for enforcement)] – ld. ZPO 722. §.

19 The solution of Hungarian law is an example for the latter.

the Court of Justice of the European Union No 1/03 published on 7 February 2006, the conclusion of the revised Lugano Convention falls under the sole competence of the Community, its scope covers all Member States that are party to the Convention. The conclusion of the Convention was approved by the Council by Council Decision 2009/430/EC of 27 November 2008. The Convention extends the most important developments of Council Regulation (EC) No 44/2001 to Iceland, Norway and Switzerland as well.

1.4. Council Regulation (EC) No 2201/2003

Council Regulation (EC) No 2201/2003 of 27 November 2003 regulates jurisdiction and the recognition and enforcement of judgments in matrimonial matters and the matters of parental responsibility. This regulation simplifies the enforcement procedure in the matters under its scope.

The Regulation should be applied to civil matters relating to divorce, legal separation or marriage annulment, the attribution, exercise, delegation, restriction or termination of parental responsibility. Matters relating to parental responsibility may, in particular, deal with rights of custody and rights of access, guardianship, curatorship and similar institutions, the designation of any person or body having charge of the child's person or property, the placement of the child in a foster family or in institutional care, measures for the protection of the child relating to the administration, conservation or disposal of the child's property. (Article 1)

According to the Regulation a judgment given in any Member State shall be recognised in the other Member States without any special procedure being required (Article 21). Grounds of non-recognition for judgments are listed in Articles 22 and 23. Under no circumstances may a judgment be reviewed as to its substance (Article 26). Documents which have been formally drawn up or registered as authentic instruments and are enforceable in one Member State and also agreements between the parties that are enforceable in the Member State in which they were concluded shall be recognised and declared enforceable under the same conditions as judgments. (Article 46)

A judgment on the exercise of parental responsibility in respect of a child given in a Member State, which is enforceable in that Member State and has been served, shall be enforced in another Member State when, on the application of any interested party, it has been declared enforceable there. However, in the United Kingdom, such a judgment shall be enforced only when, on the application of any interested party, it has been registered for enforcement. (Article 28)

The procedure for making the application shall be governed by the law of the Member State of enforcement. (Article 30) The court applied to shall give its decision without delay. Neither the person against whom enforcement is sought, nor the child shall, at this stage of the proceedings, be entitled to make any submissions on the application (Article 31). The decision on the application for a declaration of enforceability may be appealed against by either party. The appeal shall be dealt with in accordance with the rules governing procedure in contradictory matters. (Article 33)

Special provisions for enforceable judgments concerning rights of access are stated in Article 41, special provisions for enforceable judgments concerning return of the child are stated in Article 42 of the Regulation.

1.5. Council Regulation (EC) No 44/2001

Enforcement of judgments in civil and commercial matters is governed by Council Regulation (EC) No 44/2001, which simplifies the procedure of exequatur between the EU Member States. 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, or – due to regulations applicable in the United Kingdom – it has been registered by the court for enforcement (Article 38). The same shall apply to authentic instruments and court settlements (Articles 57 and 58). The local jurisdiction shall be determined by reference to the place of domicile of the debtor, or to the place of enforcement (Article 39). The court immediately decides on the application without having heard the debtor in an

out-of-court procedure. The court only examines the compliance with the formalities in the application, not the grounds of refusal (Article 41). The declaration of enforceability shall be served on the debtor (Article 42). The debtor is informed about the court action against him only at this stage of the procedure after the court made its decision on enforcement, and is only entitled to make any submissions in the proceedings concerning an appeal. Examination of the grounds of refusal may also take part here after objections from the debtor. The decision on the application for a declaration of enforceability may be appealed against by either party (Article 43). The party against whom enforcement is sought can lodge an appeal within one month of service of the declaration. The time for appealing shall be two months if the residence of the party is in another State than the State of declaration. The appeal shall be dealt with in accordance with the rules governing procedure in contradictory matters. The court shall refuse or revoke a declaration of enforceability only on one of the refusal grounds (Articles 34 and 35). Those refusal grounds in the Regulation are stricter than those in the Lugano Convention or in the Brussels Convention[20]. Under no circumstances may the foreign judgment be reviewed as to its substance (Article 45). The judgment of second instance given on the appeal may be contested by an appeal based on a violation of law, the rules thereof are provided for in the internal rules of procedure of the Member States.[21] The applicants are protected in many provisions of the Regulation, especially by the further exemptions from costs or expenses provided by the Member State of origin (Article 50).

1.6. Regulation (EC) No 805/2004 of the European Parliament and of the Council

A further step ahead was made in the Union regarding enforcement of foreign judgments in a narrower scope of civil and commercial matters. Regulation (EC) No 805/2004 of the European Parliament and of the Council creating a European Enforcement Order for uncontested claims was launched on 21 April 2004.[22]

This Regulation goes beyond the regulations of Council Regulation (EC) No 44/2001 and announces the abolition of exequatur between Member States in certain cases. Similarly to Council Regulation (EC) No 44/2001, Denmark does not take part in the application of this Regulation, therefore the Regulation applies to the Member States with the exception of Denmark. Regulation (EC) No 805/2004 of the European Parliament and of the Council should apply basically to civil and commercial matters, excluding matters relating to the legal capacity of natural persons, matters of succession, insolvency and arbitration.

It needs further explanation that the aforementioned Regulation announces the abolition of exequatur only in certain cases. First of all the Regulation applies only to pecuniary claims.[23] Secondly, Regulation (EC) No 805/2004 of the European Parliament and of the Council consists of special provisions relating to the so-called uncontested claims.

The Regulation creates a European Enforcement Order[24] for uncontested pecuniary claims. The European Enforcement Order serves the aim that once in the Member State of origin the enforcement is ordered by this instrument, the enforcement can be arranged in other Member States without any intermediate measures to be taken. Uncontested claims may be incorporated in sentences (court judgments), court decisions[25], court settlements or other authentic instruments, to which documents the European En-

20 Compare with: KORMOS Erzsébet: A bírósági végrehajtás szabályozásának egységesítése az Európai Unión belül. In: Európai Jog 2003/2., p. 17-18.

21 BRÁVÁCZ Ottóné – SZŐCS Tibor: Jogviták határok nélkül. HVG-Orac, Budapest, 2003., p. 278. old.

22 www.europa.eu.int/smartapi/cgi.

23 Compare with Article 4 (2)

24 Under the English text of the Regulation: European Enforcement Order, under the German text: European (legal) Title for Enforcement. The instrument for ordering the enforcement procedure, called writ of enforcement (writ of fieri facias) in Hungary under the Act on Enforcement procedure of 1881 and enforceable instrument from 1955, is called Title for Enforcement in several legal systems (in Germany for example its Vollstreckungstitel). The Hungarian Ministry of Justice translated this legal instrument, introduced by Regulation (EC) No 805/2004 of the European Parliament and of the Council, into Hungarian as „European Enforceable Instrument".

25 The English version of the Regulation uses the term „judgment", i.e. sentence, however, according to the definition set out in Article 4, it is not the name of the resolution (judgment) that is of importance, because it may include any court order, decision or writ of execution, or even the determination of costs or expenses.

forcement Order can be attached. The Regulation announces the abolition of exequatur for uncontested claims between Member States. Article 5 states that once a judgment has been certified as a European Enforcement Order in the Member State of origin it shall be recognised and enforced in the other Member States. In this case there is no legal possibility of opposing its recognition and no need for another declaration of enforceability. This entire means that with a European Enforcement Order a judgment made in a Member State is enforceable in the other Member State without any exequatur procedure preceding it.

Providing an uncontested claim with a European Enforcement Order requires slightly different regulations, depending on the ground on which the claim is declared uncontested. Either a claim is uncontested because the debtor has never objected to it in the course of court proceedings, or the debtor has not appeared at a court hearing regarding that claim (Article 3(1)(b) or (c)), a European Enforcement Order can be issued if the court proceedings in the Member State of origin met the requirements as set out in Chapter III (minimum standards).

Having regard to the fact, that in the two cases mentioned above the decision is based on the absence of objection to the claim or the absence of activity in the proceedings, in order to ensure the debtor's rights – taking into account the right to a fair trial as recognised in Article 47 of the Charter of Fundamental Rights of the European Union – minimum standards should be established for the proceedings leading to the judgment. The aim of these minimum standards is to ensure that the debtor is informed about the court action against him, the conditions for his active participation in the proceedings, the consequences of his non-participation in such a way as to enable him to arrange for his defense. It is necessary to lay down the minimum standards due to differences between the Member States as regards the rules of civil procedure[26].

The Regulation, as a pre-condition of issuing the European Enforcement Order – in case of absence of objection to the claim or the absence of the debtor in the court hearing – sets out requirements as regards service and the provision of information to the debtor, notwithstanding the national rules of procedure.

Checking compliance with the minimum procedural standards falls in the competence of the court where the issuing of the European Enforcement Order was applied for. Once a European Enforcement Order is issued no further judicial review on minimum standards is possible in any other Member State.

Regulations mentioned above – with a few exceptions[27] – shall also apply, if the uncontested claim is part of a court settlement or an authentic instrument and the issuing of a European Enforcement Order is applied for by virtue of these documents.

Most provisions of Regulation (EC) No 805/2004 of the European Parliament and of the Council shall apply from 21 October 2005. It is worth to note, that this Regulation does not overwrite Council Regulation (EC) No 44/2001, because even after entering into force the application for a European Enforcement Order remains optional for the creditor. The applicant may still choose the exequatur procedure provided for in Council Regulation (EC) No 44/2001 instead of the special rules for uncontested claims.

Regulation (EC) No 805/2004 of the European Parliament and of the Council is therefore a great step towards the free circulation of judgments, court settlements and authentic instruments on pecuniary claims. However, the significance of the Regulation goes far beyond its real content, because by creating a European Enforcement Order for uncontested claims, it also created the prototype of the European Enforcement Order which may be applicable to other claims in the future.

The instrument of the European Enforcement Order is of great significance also as regards the assurance of creditor's rights.

– Abolition of exequatur procedure saves time and money for the creditor.

26 The Regulation does not imply an obligation for the Member States to adapt their national legislation to the minimum procedural standards set out in the Regulation.

27 The exceptions can be found in Articles 24 and 25.

– In the common internal market of the Union cross-border cases are gaining in numbers, creating the need for adequate protection of rights of the nationals and undertakings of the Union in these matters as well.
– The increase of cross-border cases – besides maintaining the exequatur procedure – may also entail growing burdens of the courts, and the slowing down of the proceedings, which also works against creditor's rights.
– The free movement of goods, persons, services and capital within the Union provides a wider space to malicious debtors to escape the enforcement procedure. The instrument of the European Enforcement Order provides a higher level of protection to the creditors in these cases as well– making it more difficult for the debtor to save his property and remove the cover.

1.7. The European order for payment procedure and the European Small Claims Procedure

The emerging of two new Community-regulated, independent supranational civil procedures also mean a significant development within the field of enforcement of judgments in civil and commercial matters having cross-border implications. Regulation (EC) No 1896/2006 of the European Parliament and of the Council of 12 December 2006 creates a European order for payment procedure while Regulation (EC) No 861/2007 of the European Parliament and of the Council of 11 July 2007 establishes the European Small Claims Procedure. These two types of independent (sui generis) European civil procedures can be applied in order to enforce claims in cross-border cases.

The significance of the above mentioned Regulations in proceedings before a court lies in the fact that judgments on the substance delivered in a proceeding under those provisions are deemed enforceable in any other Member State. A European order for payment 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 and without any possibility of opposing its recognition. (Article 19 of Regulation (EC) No 1896/2006) A judgment given in a Member State in the European Small Claims Procedure shall be recognised and enforced in another Member State without the need for a declaration of enforceability and without any possibility of opposing its recognition. (Article 20 of Regulation (EC) No 861/2007)

1.8. Proposals relating enforcement procedure in the European Union

As mentioned before, since the Millennium legislative activities are considerably increasing in the field of civil procedure in the European Union, supranational institutions widen the scope of Community Law. Latest tendencies show that further Community measures and laws may arise in the future. Their point of interest lies in the possibility of handling issues regarding not only judgments of enforceability but partially also the effectuation of enforcement. The Green Paper on the attachment of bank accounts issued on 24 October 2006, and the Green Paper on how to improve the transparency of the debtor's assets issued on 6 March 2008 may create the basis of such measures and laws.

2. Dilemma of the European rules of civil procedure on the way to integration

Community regulations in the European Union have been created in ever wider areas in the last few years. Legislative activities are considerably increasing in the field of civil procedure, with a growing number of supranational norms that regulate civil disputes. The expansion of Community acts however raises some special issues, including the following, which are only some examples that I wish to mention.[28]

28 In more detail see: KAPA Mátyás: Realization of law in the European Union. In: Studia Iuridica Caroliensia 3. Budapest, 2008., p. 89–94.

a) Due to the direct effect of Community law, Community regulations unambiguously build in into the national legal systems. Therefore, the legal systems of the Member States became two-level systems: in the legal system of each country we can distinguish a European and a national level.[29] Thus, presently the legal system of each member country is divided vertically into two great structural parts. The national level aims at complete and flawless regulation. The European level contains partial, aim oriented regulation, where the Community aspect generates the creation of a norm, and therefore, regulations are not created in every field, but basically in connection with Community aims.[30]

b) Legal norms of the European Community naturally do not exist and function alone, but in functional interaction with other norms of the legal system. Moreover, the Community regulation often cannot be interpreted without the national law.

c) When exploring the content of each norm during the application of the traditional methods of legal interpretation, we must regard the European and national level in each legal system as a unit. Therefore, in case of grammatical, logical and especially the systematic and historical legal interpretation we must interpret national and European norms in relation. However, if we do so, a certain norm might have different content in each legal system. Thus, using the different methods of legal interpretation we could have a different content for the same norm in various legal systems, as the theoretically unified Community law must be compared with practically different national laws when interpreted.

d) Linguistic diversity and the dissonance of the different legal cultures also present a problem in the field of legal harmonization and legal unification and in the application of the directly applicable Community law. In my opinion, with the presently applied methods, European legal unification cannot be properly achieved. Translating the certain legal terms into 23 languages cannot result in a unified legal order. Without legal comparative studies, establishing legal unification, we cannot expect any valuable results.

e) The *institutional system of asserting rights* can raise further issues. All the claims based on national laws, and most of the claims based on Community law can be asserted in front of the court of the member country.[31] Therefore, if a legal entity in the European Union intends to assert its claim in a legal way, they can turn to the court of the given Member State. This, however, means 27 different countries, the same number of different procedural orders, legal cultures, and jurisdictions functioning on different levels of efficiency, 23 different official languages and 60,000 judges.

f) In the last few years, legislative bodies of the European Union have created an increasing number of supranational laws even in the field of civil proceedings. The Amsterdam Treaty has created the legal framework for cooperation of justice in civil proceedings. Since then, the supranational institutions of the European Union have been working feverishly on legislative processes and the legal practice and legal theory have tried to follow new trends ever more hopelessly. Are these regulations appropriate, have they been created with the appropriate methods and can they address the challenges they face? I am convinced that we cannot say a firm yes to these questions. I would like to briefly mention the newest dilemmas, which have arisen upon the implementation of regulation (EC) No. 861/2007, a Community regulation on small claims procedure. Some ex-

29 It is worth mentioning that the rules of the European level are not necessarily the same in each Member State. There are, for example, countries, which do not participate in certain forms of cooperation (see, eg. monetary union, home affairs in civil cases)

30 For the problem of the division of legislative spheres between the European Union and the Member States, see KENDE Tamás – SZŰCS Tamás – JENEY Petra (editor): Európai közjog és politika. Budapest, 2007, pp. 744-795.

31 KIRÁLY Miklós (editor): Az Európai Közösség kereskedelmi joga. Budapest, 2004, p. 31., OSZTOVITS András: A jogérvényesítés nehézségei az Európai Unióban. In: Az igazságszolgáltatási kihívásai a XXI. században. Budapest, 2007. p. 288.

amples are the terms “clearly unfounded claim” or “judgment null and void”. These categories are unknown or alien in the legal systems of some Member States (e.g.: Hungary, Germany)[32].

3. Problems relating to the interpretation and application of Regulation (EC) No 44/2001 and Regulation (EC) No 805/2004

The problems referred to in Point 2 above naturally emerge upon the interpretation and application of Regulation (EC) No 44/2001 and Regulation (EC) No 805/2004 as well. The workgroup of Hungarian and Romanian researchers also faced these difficulties while preparing this booklet. Some problems that have arisen while completing this survey are introduced below. Hopefully this will contribute to the work of the reading public.

3.1. Problems of terminology

The first problem to be faced regarding Community legislation directly applicable in the Member States is the use of certain legal expressions. There are differences between the contents of the expressions accepted in the different Member States, and there is often tension between the content of the expression according to the Member State and its Community-related content.

3.1.1. As an example, the expression of ordinary appeal used in Articles 37 and 46 of Regulation (EC) No 44/2001 can be mentioned. According to Romanian legal literature, ordinary remedies are means of procedure that can be submitted by any party on any ground. The theoretical basis of ordinary remedies is that they should be available for free use without any restrictions. Extraordinary remedies on the other hand can only be lodged if strict, statutory conditions are met. Hungarian legal literature distinguishes between ordinary and extraordinary remedies in a slightly different way. According to that an ordinary remedy can be lodged against a judgment not yet final, whereas an extraordinary remedy is lodged against a final judgment. Judgments that are not yet final can be challenged by means of remedy in general, while final judgments can be challenged by means of remedy only as an exemption. Ordinary remedies in the Hungarian Code of Civil Procedure are the opposition, the appeal and the cross-appeal, extraordinary remedies are the retrial, the application for review and the cross-application for review, mixed remedies are the application for rectification and completion of the judgment[33].

The Community distinction between ordinary and extraordinary appeals differs from any other theories mentioned above. The judgment[34] of the Court of Justice of the European Union relating to the Convention of Brussels, which is still relevant after the adoption of Regulation (EC) No 44/2001, states that any appeal, which is such that it may result in the annulment or the amendment of the judgment and the lodging of which is bound, in the state in which the judgment was given, to a period which is laid down by the law and starts to run by virtue of that same judgment constitutes an ordinary appeal. According to that however, - besides appeals - the application for review, which amounts to an extraordinary remedy under Hungarian legal literature, shall be regarded as an ordinary remedy upon the application of the Regulation.

3.1.2. Rather chaotic is the use of the terms *enforcement title, enforcement order and the instrument on which enforcement is based (European Enforcement Order).* Regulation (EC) No 805/2004 announces the abolition of exequatur in the European Union in respect of uncontested claims and introduces a new legal instrument. While most foreign versions of Regulation (EC) No 805/2004 use the expression „European enforcement title” for this new legal instrument, the Hungarian translation uses “European enforceable instrument” (European Enforcement Order).

32 Compare with: VARGA István: Úton az egységes európai peres eljárás felé? In: Európai Jog 2008/5., p. 12–13.

33 Compare with: KAPA Mátyás – SZABÓ Imre – UDVARY Sándor: A Polgári Perrendatrtásról szóló 1952. évi III. törvény magyarázata. II. kötet. Magyar Hivatalos Közlönykiadó, Budapest, 2006., pp. 920–921.

34 Case Industrial Diamond Supplies contra Luigi Riva, 43/77. sz. (EBHT 1977., 2175. old.)

In Romanian law, enforcement title means a judgment of the court or any instrument imposing an obligation on the debtor. Here, it is a precondition of the institution of enforcement that the enforcement title is provided with an enforcement clause (this verifies enforceability), and that the court approves enforceability by an order. In Hungary the term of enforcement title is not in use, instead the expression of the instrument on which enforcement is based is applied. Here, the enforcement procedure starts with the imposition of enforcement, the court orders the enforcement by issuing an enforceable instrument (e.g. enforcement document, enforcement clause etc.).

In this relation the term „European enforcement title" is more adequate than „European enforcement order". In case the judgment (instrument) on an uncontested claim is provided with a certificate as stated in Regulation (EC) No 805/2004, this in fact means that the judgment (instrument) in question is enforceable under the same conditions as the domestic judgments (instruments) within the Member States taking part in the judicial cooperation. Thus it becomes an instrument on which enforcement is based, i.e. an enforcement title, without any further measures, but nothing more. This also means, that for example in Hungary an enforcement order (e.g. enforcement document) needs to be given pursuant to this judgment (instrument) within the scope of imposing enforcement. However, understanding the essence of and difference between the European enforcement order and the Hungarian enforcement order becomes rather difficult thereby.

3.1.3. Partly terminological and partly structural questions arise concerning the *types and legal effects of judgments and the remedies against them.* The concept of "judgment" is fundamental in both mentioned Regulations; Regulation (EC) No 44/2001 gives its definition in Article 32, Regulation (EC) No 805/2004 gives the definition in Article 4. According to them a judgment is any judgment given by a court or tribunal of a Member State, whatever the judgment may be called, including a decree, order, decision or writ of execution, as well as the determination of costs or expenses by an officer of the court.

Under the Romanian rules of procedure a court judgment means an act of disposal by the court. In a broad sense "judgment" means all court judgments, regardless of the fact whether it resolves the dispute or not. In this sense the concept of judgment includes judgments given both in court proceedings and out-of-court proceedings. In a strict sense however, a judgment means a decision given in a court proceeding, regardless of the fact whether it closes the case or it merely decides upon a question arising in the course of proceedings. The Romanian legislator differentiates between two types of court decisions. The first category consists of decisions that decide the dispute at basic instance or at an ordinary or extraordinary appellate level. The judgment of basic instance is the "judgment (sentence)" (sentință), the judgment given in the remedy procedure is the "decision" (decizie). The second category covers decisions given by the court in the course of proceedings and they are called "order" (încheierie).[35] A special type of decisions given by the court is the „regulations" (ordonanță). In case of proceedings concerning orders for payment, provided that the court approves the application, the court shall oblige the debtor to pay (see Governmental Ordinance No. 5/2001 and Governmental Emergency Ordinance No. 119/2007, the latter is applicable to commercial arrangements only).

In the Romanian legal system judgments can be challenged by several remedies. Such remedies are the appeal (apel), the recourse (recurs), the recourse for the harmonization of legislation (recurs în interesul legii), the application for review (revizuire precum), and the application for annulment (contestație în anulare). Judgments of first instance can usually be challenged by an appeal, the judgments listed in the laws only by recourse. Judgments delivered following an appeal can be further challenged by recourse. As regards the legal force (finality) and enforceability of judgments there are not non-definitive (nedefinitive), definitive (definitive), and irrevocable (irevocabile) judgments. All judgments that can be appealed against fall under the category of non-definitive judgments. A definitive judgment cannot be challenged any more by an appeal, only by a recourse. Irrevocable judgments are not to be challenged neither by an appeal nor by a recourse.

35 DELEANU, Ion: Tratat de procedură civilă, vol. II, Editura Servo-Sat, Arad, 2004., p. 214.

In the Hungarian civil procedure law the term of "judgment" covers a broad category. Judgments can be given both in court proceedings and out-of-court proceedings. Hungarian Rules of Civil Procedure differentiates between the following judgments:

– judgments (sentences) (deciding the case on the substance)
– decisions having the an effect of a judgment (order to pay, enjoinment, court settlements approved by the court)
– orders (in the course of court proceedings the court gives an order regarding every question that does not concern the substance of the case, in out-of-court proceedings orders are given on both substantial and non-substantial issues)
– decisions having the effect of an order (having the same legal effect as an order, but without its form, e.g. calling the court room to order).

Hungarian law provides different options to challenge judgments too. Ordinary remedies are the opposition, the appeal and the cross-appeal, extraordinary appeals are the retrial, the application for review and the cross-application for review, mixed remedies are the application for rectification and completion of the judgment. The possible legal effects of court judgments under Hungarian law are: simple binding, formal binding force, substantive binding force and enforceability.

Attention should be drawn to two issues upon comparing the Hungarian rules with the Regulations. On the one hand, the enjoinment which is a known type of judgment in the Hungarian civil procedure law is not mentioned separately in the Regulations. It is obvious however, that it also belongs to "judgments". On the other hand, within the meaning of Act L of 2009, the proceedings concerning orders to pay shall become out-of-court proceedings and shall fall under the competence of public notaries from 1 June, 2010. These may raise problems regarding the application of the Regulations, because the Hungarian orders to pay shall no longer comply with the definition of the Regulation, since they shall be given by a public notary and not by a court. A possible solution to this problem could be the completion of the Regulations with the Hungarian specialties. Otherwise, for the purposes of the Regulations, the Hungarian order to pay issued by a notary will be dealt with not as a judgment but as an authentic instrument.

3.2. Logical and methodological dilemmas

In connection with supranational regulations the following dilemmas emerge from the fact that Community and national laws are to be used together as a single norm system. Sometimes the Community norm itself contains implicit rules, according to which national regulations need to be applied to certain questions[36], while in other cases the application of the Community norm itself needs the help of national law, in the absence of an express implicit rule. In this context, it is a special duty for the judicature that the interpretation of Community and national laws needs to be done with regard to one another.

3.2.1. In order to make a Community norm applicable in all Member States the norm must often be formulated at a very high level of abstraction. In such cases however it is an individual task to determine: which national legal institution belongs under the scope of a certain Community norm. This in fact is a special appearance of subsumption, in a broader sense: subsumption has to be done between norms of different levels. As an intermediate measure of application of law, Community legal findings of fact and national legal findings of fact have to be compared, and Community legal findings of facts must dominate above national legal findings of facts (which shall be subordinated). Article 3 (1) of Regulation (EC) No 805/2004 which determines the scope of uncontested claims is an example thereof. This rule is very important, because it is here that the Regulation determines the scope of those claims, which are enforceable in the Member States of the European Union without the need for a preliminary procedure regarding enforceability ("exequatur" procedure). Article 3 (1) of the Regulation states that a claim shall be regarded as uncontested if:

36 For example, see: Articles 40, 42, 44 and 47 of Regulation (EC) No 44/2001 and Articles 3, 10 and 20 of Regulation (EC) No 805/2004.

a) the debtor has expressly agreed to it by admission or by means of a settlement which has been approved by a court or concluded before a court in the course of proceedings;
b) the debtor has never objected to it, in compliance with the relevant procedural requirements under the law of the Member State of origin, in the course of the court proceedings;
c) the debtor has not appeared or been represented at a court hearing regarding that claim after having initially objected to the claim in the course of the court proceedings, provided that such conduct amounts to a tacit admission of the claim or of the facts alleged by the creditor under the law of the Member State of origin;
d) the debtor has expressly agreed to it in an authentic instrument.

The scope of uncontested claims can then be defined in every Member State, according to the national regulations.

Due to Hungarian rules of procedure the debtor can expressly agree to the claim by admission at any stage during the court proceedings, this fact is usually indicated in the explanation of the judgment. It is also possible to conclude a settlement before a court in the course of proceedings (a). The case provided for in Article 127 (2) of the Hungarian Code of Civil Procedure is an example to the latter, because it allows the parties to ask the competent local court to hold a pre-trial review and thereby maybe settle the dispute before bringing the action to court. The court can also attempt to resolve the dispute between the parties or part of the disputed questions by means of a settlement. A settlement concluded in the course of mediation is also approved by the court provided that it complies with the legal regulations. The effect of a settlement approved by a court is equivalent of that of a judgment of a court.[37]

The proceedings concerning orders to pay can be a Hungarian example for a claim that is uncontested as a result of the passive conduct of the debtor (b), provided that the debtor has not objected to the claim. It should also be emphasized that the Hungarian law of civil procedure grants access to orders to pay concerning claims for surrendering movable property. However, certification as a European Enforcement Order is only possible where the order is given on a pecuniary claim. It shall not be regarded as an objection to the claim where the debtor agrees to the total amount of the claim and only applies for a payment extension or payment facilities or requests the rectification of the order to pay. Another typical scope of application of paragraph (b) can be the so-called enjoinment. An enjoinment shall be issued upon the application of the creditor where the debtor has failed to appear at the first hearing and has not arranged for his defence. The court shall condemn the defendant by the enjoinment merely on the grounds of the omission, according to the application. The enjoinment may be challenged. An enjoinment falls under the scope of paragraph (b) if the party who has failed to appear at the first hearing has not objected to it.

In case the defendant has objected to the enjoinment the court shall fix a new hearing. Should the defendant fail to appear at the next hearing as well the court shall sustain the order. This case however is no longer covered by Article 3(b) but by paragraph (c).[38]

The case provided for in Article 3(1)(d) is the admission of debt included in a notarial instrument and which is governed by Article 242 of the Hungarian Civil Code.

All in one, the Hungarian instruments covered by Article 3(1) of the Regulation are the following: pecuniary claims included in decrees based on admission, court settlements that were approved by a final order, final orders to pay, final enjoinments or notarial instruments.

In Romania the defendant may agree to the entire claim of the plaintiff or to parts thereof, according to the rules of civil procedure in effect, which is the case covered by Article 3(a). In case the defendant agrees to only parts of the claim the court, upon application by the plaintiff, may issue a partial decision to the extent of the recognition without the possibility of appealing the decision. A partial decision falls

37 Article 148 (1) to (4) of the Code of Civil Procedure
38 HARSÁGI Viktória: A nem vitatott követelések végrehajtása az Európai Igazságügyi Térségben. In: Európai Jog 2005/6. p. 26.

under the scope of paragraph (a) as well. The defendant who agrees to the claim of the plaintiff on the first day of the hearing without any default in advance on his part cannot be obliged to bear the costs.

The passive conduct of the debtor, i.e. default of appearance before the judiciary, failure to answer the questions in the course of questioning or to appear at the questioning, shall not trigger an automatic impact on him. The court may decide, upon taking into consideration the circumstances of the case, whether to approve the application of the plaintiff or not. The case governed by Governmental Emergency Ordinance No. 119/2007 on measures to compete delayed performance of obligations arising from commercial contracts is an exception thereof, according to which, where the debtor has failed to object to the claim by means of a written response within the statutory time limits, he shall lose his right to contest the claim in the course of the proceedings.

In case a claim has been approved and the debtor has failed to appear in the course of proceedings or, although he has appeared, he has not objected to the claim, the claim can be regarded as uncontested. There is no case in the legislation of Romania that is equivalent to Article 3(c). Where the debtor, after having initially objected to the claim, has performed passive conduct in the course of proceedings of the court of first instance, the judgment delivered in Romania shall be given on a contested claim. It is also worth talking about the absence of remedies briefly. A voluntary performance shall mean the tacit admission of the judgment. The mere default of seeking legal remedy within the statutory time limits does not amount to the admission of the claim and the judgment. Therefore, where the debtor has objected to the claim before the court of first instance but does not take advantage of the possibility to seek legal remedy, the claim sued for shall not amount to uncontested.

According to Romanian law, Article 3(d) is fully applicable.

3.2.2. In connection with the joint application of Community law and national law, interesting questions arise regarding *an appeal against the judgment on a declaration of enforceability.* The first option to appeal is basically regulated in Article 43 of Regulation (EC) No 44/2001. This Article states that the decision on the application for a declaration of enforceability may be appealed against by either party. The name and type of the appeal is provided for in the national laws. In addition to stating the possibility of an appeal the referred Article also gives some rules for the appeals procedure. For example „the appeal shall be dealt with in accordance with the rules governing procedure in contradictory matters". This latter rule is interpreted the same way both by legal literature[39] and case-law: the norm concentrates on the hearing of both parties, thus the contradictory procedure. English, French and German versions of the Regulation support this as well.

In Romanian law recourse can be lodged against the decision on enforceability. In Romania, the recourse is an extraordinary, reformative, non-devolutive legal remedy available to either party, which has no suspensive effect on enforcement[40]. It is dealt with in accordance with the rules governing procedure in contradictory matters.

In Hungary, the available remedy against a judgment on enforceability is the enforcement attestation (certificate), as an appeal against an order. The rules of court proceedings, i.e. the Code of Civil Procedure, shall apply to the assessment of an appeal. Within the meaning of Article 257(1) of the Code of Civil Procedure, the court of second instance shall decide on the appeal against an order outside the hearing, in principal.

In Hungarian judicial practice there is an uncertainty as regards the exact meaning of the obligation that an appeal shall be dealt with in accordance with the rules governing procedure in contradictory matters.[41] The question to decide is what exactly does the condition "the rules governing procedure in

39 KENGYEL Miklós – HARSÁGI Viktória: Európai polgári eljárásjog. Osiris Kiadó, Budapest, 2006., p. 450.

40 ROŞU Claudia: Drept procesual civil. Partea specială, Editura C.H. Beck, Bucureşti, 2008., p. 36.

41 See the orders delivered by the County Court of Győr-Moson-Sopron No. 2.Pkf.50.279/2006/2., No. 2.Pkf.50.872/2005/2., No. 2.Pkf.50.387/2006/2., No. 2.Pkf.50.388/2006/2., No. 1.Pkf.50.937/2007/2., No. 2.Pkf.51.430/2008/2., and the orders delivered by the County Court of Komárom-Esztergom, who proceeded under the rules of litigation, No. 2.Pf.21.015/2005/3., No. 2.Pkf.20.293/2008/7. (The judgments were worked up by GÉCZINÉ BÁRDOSI Eszter.)

contradictory matters" set out in Article 43(3) mean, as well as the requirement of contradiction. Is it obligatory to hold a hearing in such a case?

According to Regulation (EC) No 44/2001 the exequatur procedure is a unilateral ex parte procedure at first instance, the debtor cannot present his defence at this stage of the proceedings, the decision is a surprise to him. The requirements of the proceedings of second instance are to be interpreted in this regard. In such proceedings one shall proceed according to the rules governing procedure in a contradictory manner, all information, documents shall be made available to the debtor, who shall be granted the possibility to express his defence. Case-law of the Court of Justice of the European Union states that the court hearing an appeal by the party seeking enforcement is required to hear the party against whom enforcement is sought.[42] In Hungary, the procedure of second instance governed by Article 43 is conducted in compliance with the Regulation, according to the rules of procedure, but outside the hearing. The rights provided by the Regulation to the debtor can also apply outside the hearing, since both the Code of Civil Procedure and the Act on Enforcement procedure provides for the listening to the parties.

3.2.3. Even Community Regulations themselves state that *enforcement procedure* shall be governed by the law of the Member State.

Hungarian law, within the legislation of enforcement procedure, distinguishes between general enforcement procedures and special enforcement procedures. *Enforcement procedures according to the general rules* concern satisfaction of pecuniary claims based on domestic enforceable judgments (instruments). By contrast, *special enforcement procedures* concern enforcement of specific acts or provision of guarantees for the claim instead of satisfaction, or enforcement of a foreign judgment.

The enforcement procedure is basically divided into two main stages. The first stage is the imposition of enforcement, the second is executing enforcement (distrain). The court shall act during *imposition of enforcement:* the court seized of the proceedings shall decide whether enforcement is justified and whether legitimate state force can be used in order to realize the claim. Imposition of enforcement shall be carried out by issuing an enforceable instrument, such as executable document, enforcement clause, transfer order, banning order. In the stage of executing enforcement, the tasks are divided between the court and the court bailiff. In the course of executing enforcement, in case a pecuniary claim is enforced thereby, the (a) property maintained by a financial institution, (b) salary, other emoluments, (c) movable property, and finally (d) real property of the debtor shall be seized. These property items shall first be seized then, if necessary, sold. Only movable property and real property may be sold mutatis mutandis. Sale can be effected by a traditional auction, electronic auction or outside auction. If sale is unsuccessful, the seized property item may be taken by the person who requested execution: in case of a residential property for 70% of the estimated value, for 50% of the estimated value in case of other real property, and for 25% of the estimated value in case of movable property. At the closure of the enforcement procedure the value of the seized property items, after the deduction of the costs related to enforcement, shall be paid to the entitled person up to the existing claim. In case several persons requesting enforcement are involved simultaneously and the income does not cover all claims upon which recovery was sought during enforcement, the individual claims shall be satisfied in the order stipulated by law and arranged primarily pursuant to the legal title of the claim.

In Romania the provision of the judgment with an enforcement clause is necessary to institute enforcement. This means that a clause shall be entered on the certified copy of the definitive or irrevocable judicial decision by the court of basic instance for its enforceability, in cases stipulated by law. Another precondition of enforcement is the enforcement to be approved by the administration of justice. The application for enforcement, to which the enforceable title (judgment, instrument) has been attached, shall be lodged with the court bailiff. The bailiff shall be obliged to immediately apply to the court for approval (imposition), to which end he shall submit a copy of the application for enforcement and the enforceable title. The president of the court shall decide on the approval (imposition) of enforcement,

42 Case Firma P. Kontra Firma K. No. 178/83 (EBHT 1984., p. 3033.)

without having summoned the parties, by means of an order, and not even a public hearing is necessary. No appeal shall lie against an order approving enforcement. A recourse against an order refusing approval of the enforcement can be lodged by the creditor only, within 5 days from the day of communication. An enforcement dossier is put together following the approval of enforcement. The bailiff is obliged to lodge a copy of every enforcement instrument with this dossier, within 48 hours from the given act of enforcement.

In Romania there are two types of forced enforcement:[43]

a) Direct enforcement, which shall mean the type of enforcement where the creditor aims for in-kind enforcement of his claim. This can be achieved as follows:
   (aa) direct enforcement concerning movable property, in case the subject of the claim is handing over a particular animal;
   (ab) direct enforcement concerning real property, in case the subject of the claim is handing over real property or putting the creditor in possession thereof;
   (ac) direct enforcement concerning the performance of an act or abstention from an act.
b) Indirect enforcement, which means enforcement, where the movable property and real property of the debtor are sold in order to recover the pecuniary claims, or the procedure in which enforcement also extends to the claims of the debtor against third persons. There are several methods of indirect enforcement as well:
   (ba) blocking of cash, securities and other immaterial movable property, that are owed or shall be owed by third persons to the debtor, resulting from the legal relation existing between them.
   (bb) seizure of the crop of the debtor, not yet harvested, but already conceived;
   (bc) seizure of the movable property of the debtor in order to have them sold for the purpose of covering the claim and the costs of enforcement. Sale can be effected by means of an auction, direct sale or other methods provided for by law.
   (bd) seizure of real property for the purpose of sale, in order to cover the claim included in the title.

3.3. Conclusion

The few examples mentioned above clearly show that the development of Community law needs stronger efforts to be taken in order to solve terminology problems emerging from dissonances caused by lingual diversity and different legal cultures in the European Union and to get national regulations closer to each other through logic and methodology. Otherwise "common law", operating as a uniform system in the 27 Member States, shall remain an unclear illusion.

43 For further details see the commentary on Article 20 of Regulation (EC) No 805/2004.