# Regulation BIa: a standard for free circulation of judgments and mutual trust in the European Union (JUDGTRUST)

## National Report (Czech Republic)

## 15 April 2022

This project is funded by the Justice Programme
of the European Union (2014-2020)

This National Report was written by the team of three co-authors (led by Marta Zavadilová):

1. Monika Pauknerová, Professor in the Department of Business Law at Faculty of Law, Charles University, Prague
2. Magdalena Pfeiffer, Associate Professor in the Department of Business Law at Faculty of Law, Charles University, Prague
3. Marta Zavadilová, Senior Lecturer in the Department of Business Law at Faculty of Law, Charles University, Prague.

We worked on the basis of the case law applying the new Brussels Ia Regulation (1215/2012); only where necessary, we referred to older case law interpreting the previous Brussels I Regulation (44/2001). The case law of the Czech Supreme Court is publicly available at the Court´s website (www.nsoud.cz). The case law of courts of lower instances has only recently been made publicly available on-line (https://justice.cz/web/msp/rozhodnuti-soudu-judikatura).[1] Upon request and for the purposes of this report, we received considerable number of anonymized decisions of appellate courts from the Analytical Department of the Supreme Court. We worked also with available literature and our practical experience.

# CHAPTER I

## Application of the Regulation – in general

1. Are judgments applying the Brussels Ia Regulation and its predecessor(s) rendered in all instances (first, appellate and in cassation) published? Are they available online?

   Recently, decisions of all court levels are publicly available on-line (https://justice.cz/web/msp/rozhodnuti-soudu-judikatura). In Czech only.

2. Has the CJEU case law generally provided sufficient guidance/assistance for the judiciary when applying the Brussels Ia Regulation?

   Generally, yes, the CJEU case law is applied by Czech courts when applying the Brussels Regulations. References to the CJEU rulings are often mentioned in the reasonings of judgments and, although not frequently, Czech judges ask for preliminary rulings by the CJEU. The awareness of the Luxembourg´s case law is promoted by commentaries, textbooks and number of articles published in professional journals and newsletters. The International Department for Civil Matters of the Ministry of Justice provides courts with collections of summaries

[1] The database was made publicly available from 1st December 2020.

of the CJEU case law on the Brussels I (Ia) and the Brussels IIa Regulations (regularly updated and available on-line on the judicial extranet). The Judicial Academy organises seminars for judges and trainees focused on the interpretation of the Regulations.

3. Which changes introduced in the Brussels Ia Regulation are perceived as improvements and which are viewed as major shortcomings likely to imply difficulties in application – experience in practice and prevailing view in the literature in your jurisdiction?

   The abolishment of exequatur is certainly one of the most welcomed changes. Practitioners and academics also welcome, with some reservations, changes in *lis pendens* rules favouring the prorogation of jurisdiction (Art. 31/2)[2] and the aim to clarify the scope of the Regulations towards arbitration procedure (Recital 12). See also the answer to the question No. 9. The number of decided cases under the new regime is not high enough to assess its real impact on the practice.

4. Taking into consideration the practice/experience/difficulties in applying the Regulation in your jurisdiction and the view expressed in the literature, what are suggestions for improvement?

   1. *Lis pendens* rule favouring the prorogation of jurisdiction (Art. 31/2):
      To prevent cases, when a party invokes an invalid choice-of-court clause (which was probably never agreed between the parties) before a court with the sole purpose to hinder proceedings before a court with jurisdiction.[3]
   2. Relationship between Art. 17/1, lit. c) and Art. 18/2:
      To clarify, whether relationship between the domicile of the consumer (as defendant) at the moment when the court is seised is a condition for application of Art. 18/2.[4]
   3. Personal scope of the jurisdiction based on appearance of the defendant (Art. 26):
      To clarify, whether Art. 26 is applicable also towards defendants outside the EU.
   4. Prorogation of courts of third states:
      To clarify the relationship of choice-of-court clauses in favour of third-state court(s) and the Regulation.[5]

[2] Bříza, P.: Volba práva a volba soudu v mezinárodním obchodě. C.H.Beck, 2012 (thereinafter only "BŘÍZA", p. 184-186.
[3] *Bříza* proposes to take over the solution promoted in the Hague Choice of Court Convention – to allow courts of every Member State (i.e. the court first seised) to decide on the validity of prorogation clause (BŘÍZA, p. 185, marg. 236).
[4] In the meantime, this question has already been answered by the CJEU in case C-296/20.
[5] BŘÍZA, p. 127-130.

5. Has there been a tension between concepts under national law and the principle of 'autonomous interpretation' when applying the provisions of the Regulation?

   Sometimes, it follows from the case law, that the courts of lower instances tend to interpret some notions purely under the national law (e.g. contractual v. non-contractual obligations, consumer contract). Appellate courts or even the Supreme Court provide them with autonomous interpretation including the CJEU´s conclusions and guidelines.

6. The majority of the rules on jurisdiction in the Regulation refer to a Member State and not to a particular competent court. Has the application of national rules on territorial jurisdiction caused difficulties in the application of the Regulation?

   No. In cases where the territorial (local) jurisdiction is not set directly in the Regulation, national rules apply. In cases, where Czech courts are competent under the Regulation (have international jurisdiction) but there is no court with territorial (local) jurisdiction, it is up to the Supreme Court to designate the court. Such cases are rather exceptional; however, they occur; the Supreme Court usually designates the requesting court (e.g. decision of the Supreme Court 25 Nd 87/2018).

7. Has it occurred or may it occur that there is no competent court according to the national rules on jurisdiction in your Member State, thereby resulting in a 'negative conflict of jurisdiction'? If so, how has this issue been addressed?

   See the previous answer.

8. Are the rules on relative and territorial competence regulated in the same legislative act or are instead contained in different statutory laws (e.g., Code of Civil Procedure and statutory law on organisation of judiciary or other statute)?

   The competence of courts (what kind of matters they can decide) and their territorial and functional jurisdiction are regulated together in two procedural codes – the Civil Procedural Code (general regulation) and the Act on Special Judicial Proceedings (special rules for proceedings in certain matters). The international jurisdiction is regulated in the Private International Law Act.

**Substantive scope**

9. Has the delineation between court proceedings and arbitration led to particular problems in your Member State? If yes, please give examples. Please explain

whether the clarification in the Recast (Recital 12) has proved helpful and/or has changed the practice in your Member State.

The Recital (12) has in principle confirmed the existing practice. According to the decision of the Supreme Court no 23 Cdo 2540/2010 on the jurisdiction issue, if the subject-matter of the court proceedings is to set aside an arbitral award, Brussels I Regulation does not apply. The decision however is rather unclear: it does not disclose the reasons for application of Brussels I: the foreign element probably only concerned a company located in UK, as defendant. We cannot identify whether the arbitral award at hand was rendered in the Czech Republic or abroad.

Problems with the delineation between court proceedings and arbitration emerged in connection with the possibility to recognise a decision of an Austrian court on an application to set aside an arbitral award. The award was issued by the Czech Arbitration Court (Rsp no 979/05 dated 29.5.2006) with the place of arbitration in Austria: the arbitral award was rendered in Austria and the *lex arbitri* was the Austrian law. Under the Czech Arbitration Act (now is this provision included in the PIL Act) such award should be considered a foreign arbitral award. The application to set the award aside was dismissed by the court in Austria and the question has arisen whether such decision of the Austrian court can be recognized by Czech courts. The expert opinion (prepared by one of the authors of this report) which concentrated in particular on the question of the possibility of Czech courts to set aside a foreign arbitral award, arrived *inter alia* at the partial conclusion that the Brussels I Regulation does not apply to arbitration, including decisions on setting aside of arbitral awards so that such a decision of the Austrian court cannot be recognized by Czech courts under the Brussels I Regulation. This conclusion is now explicitly confirmed by Recital (12) paragraph 4 Brussels Ia under which the Regulation should not apply to any judgment concerning the annulment, review, appeal, recognition or enforcement of an arbitral award. However, at the time of the expertise (15.6.2011) it was not at all clear. In this case, the Supreme Court decided only that the arbitral award is a foreign arbitral award and Czech courts do not have jurisdiction to set aside such award; however, the decision did not address the question of applicability of the Brussels I Regulation (23 Cdo 2542/2011). Under this viewpoint, the insertion of the Recital should be positively assessed.

10. Has the delineation between "civil and commercial proceedings" on the one hand and "insolvency proceedings" on the other hand led to particular problems in your Member State? If yes, please give examples. Please, explain whether the latest case law of the CJEU (e.g., C-535/17, *NK v BNP Paribas Fortis NV*) has been helpful or has created extra confusion.

In general, the delineation between civil proceedings and insolvency proceedings may cause problems.

The decision of the Supreme Court no 20 Cdo 2302/2017 tackled the question whether in proceedings on declaration of enforceability of a judgment of the Chancery Division in the High Courts of Justice in England and Wales under the Brussels I Regulation, which was applied by the Czech court, Article 26 of the Insolvency Regulation No 1346/2000 should have been applied instead, in particular, if it also concerned effects of another decision (i.e. not only the execution title) issued in the same insolvency proceedings in the English court. Another question was, in the opposite, whether the Brussels I Regulation can be applied in the proceedings on declaration of enforceability of an execution title which immediately comes out from the insolvency proceedings and keeps narrowly in its framework, or whether in such a case the Insolvency Regulation should be applied. The claim at hand concerned request for damages against the debtor who participated in the company with the intention to damage the creditor, the issue was qualified by the lower courts as a civil action for damages and the BI Regulation was applied. According to the Supreme Court, the scope of the Insolvency Regulation should not be interpreted extensively: whether the exclusion from the scope of the BI shall apply depends on whether the claim is based on specific rules on insolvency or narrowly connected with insolvency, or whether it is based on a general regulation and is only deferred from the insolvency (referring to *German Graphics* C-292/08, *Gourdain v. Nadler* C-133/78 and *SCT* C–11/08 and to the Czech Commentary on Brussels I[6]). The Supreme Court concluded that the particular circumstances give reasons for application of the exception of Art 1 (2)b BI in favour of the Insolvency Regulation. However, it is crucial to add, said the Court, that under Art 25 (1) of the Insolvency Regulation judgments handed down by a court whose judgment on opening of proceedings is recognised in accordance with Article 16 and which concerns the course and closure of the insolvency proceedings, shall also be recognised with no further formalities. Such judgments shall be enforced in accordance with Articles 31 to 51 of the Brussels Convention (…). Despite the fact that the appellate court wrongly concluded that the Insolvency Regulation shall not apply, its Article 25 explicitly refers to BI in the part concerning recognition and enforcement. For the result of proceedings, this inaccuracy of legal assessment does not have a real impact: the foreign decision is assessed in both cases under the identical rules. Therefore, the decision of the appellate court was confirmed.

[6] Drápal, L., Bureš, J. et al, Občanský soudní řád I, II, Komentář, 1. vyd., C. H. Beck 2009, p. 2872/2874 (thereinafter only „DRÁPAL“).

In 19 Co 312/2016, the Municipal Court Prague (as appellate court) decided on an appeal against the decision of first instance District Court in Prague 5, according to which this court does not have jurisdiction to hear the case. The case concerned the declaratory action whether the debtor in insolvency (located in Slovakia where the insolvency proceedings have been opened) is owner of immovables at hand as the respective sales contract is absolutely null and void. The District Court assessed such action as an action derived directly from the insolvency proceedings and discontinued the proceedings. The appellate court, instead, concluded that the dispute concerns damages between the claimant as a third person, standing fully outside the framework of the insolvency proceedings of the debtor, and the defendant who is in this proceedings not acting as an insolvency practitioner (in Czech SKP) where the damage of the claimant should have arisen in causal connection with legal duties of the defendant. The Dispute does not concern the debtor's property but a possible liability of the defendant for the damage caused in performing the function of the SKP, its result does not relate to the course and result of the insolvency proceedings of the debtor. The exclusive jurisdiction of the District Court in Slovakia concerns only the "insolvency" proceedings of the debtor and not the issue at hand in which the defendant acts independently on the bankrupt. The jurisdiction of the District Court in Prague was confirmed, and the order of discontinuance was annulled.

So far, there have been no cases based on the recent Recasts of both Regulations in their mutual relationship. The latest CJEU case law (e.g. C-535/17 *BNP Paribas*) has been assessed positively but only in academic papers. To our knowledge, it has not yet been applied.

11. Is there case law in your Member State on the recognition and enforcement of court settlements? If yes, please provide information about these.

The recognition and enforcement of foreign court settlements as such is in principle acceptable and does not bring any problems. In Czech autonomous private international law, judgments of foreign courts and judgments of foreign authorities on rights and obligations which would be, based upon their private-law nature, decided by courts in the Czech Republic, as well as foreign court settlements and foreign notarial acts or other public documents on these matters (hereinafter referred to as "foreign judgments"), shall be effective in the Czech Republic provided a certificate of the foreign authority confirms the judgment has become final and provided it has been recognized by the Czech public authorities (section 14 PIL Act). In other words, Czech judges are familiar with the possibility to recognise and enforce foreign court settlements. So far, no particular decisions are available.

12. Is there case law in your Member State on the recognition and enforcement of authentic instruments? If yes, please provide information about these.

    The situation is similar: the recognition and enforcement of foreign authentic instruments (public documents) in private matters should not bring any particular problems. So far, no decisions are available.

## Definitions

13. Have the courts in your jurisdiction encountered difficulties when applying the definitions provided in Article 2? If yes, how are these problems dealt with? Is there any controversy in the literature concerning (some of) these definitions?

    So far, there is no available case law in this respect.

14. Whilst largely taking over the definition of a 'judgment' provided in Article 32 of the Regulation Brussels I, the Recast in Article 2 widens its scope so as to expressly include certain decisions on provisional measures within the definition of a 'judgment' in Article 2(a) for the purposes of the recognition and enforcement. What is the prevailing view in the literature or jurisprudence in your jurisdiction on the appropriateness of the definition of 'judgment'?

    The main issue of this definition (based on the previous CJEU conclusions) is its incompatibility with the Czech law on preliminary measures. Generally, preliminary measures are taken by Czech courts in *ex parte* proceedings and are enforceable without service to the defendant. Therefore, most of the Czech decisions on preliminary measures cannot be effectively certified under Art. 53.

    See also the answer to the question No 59.

15. Within the context of including certain decisions on provisional measures in the definition of a 'judgment', how is 'jurisdiction as to the substance of the matter' to be understood/interpreted – jurisdiction actually exercised or jurisdiction that can be established according to the rules of the Regulation?

    So far, there is no available case law in this respect.

    In the opinion of co-authors of this text, it has to be interpreted as jurisdiction that can be established according to the rules of the Regulation in order to cover also cases where a preliminary measure is made prior to the opening of proceedings on substance.

16. Should a decision on provisional measure issued by a court of a Member State, that could base its jurisdiction on the substance of the matter according to the Regulation's rules, be considered as a 'judgment' for the purposes of enforcement in your jurisdiction, when no proceedings on the merits of the case have yet been initiated? If the claim on the substance of the matter is subsequently filed with a court in another Member State also having jurisdiction under the Regulation, how would that reflect on the request for enforcement in your Member State of the 'judgment' issuing the provisional measure?

    So far, there is no available case law in this respect.

    In the opinion of co-authors of this text, nothing in the Regulation prevents the enforcement of a foreign provisional measure issued prior to the opening of proceedings on merits when it fulfils the requirements set by the Regulation for enforcement. The preliminary measure shall, in principle, remain enforceable until the decision on substance is issued by the competent court or this court withdraws the preliminary measure.

17. When deciding on the enforcement of a decision issuing a provisional measure, are the courts in your jurisdiction permitted to review the decision of the court of a Member State confirmed by the certificate that the court has jurisdiction as to the substance of the matter? What is the prevailing view on this point?

18. Has the definition of the 'judgment' and the 'court or tribunal' attracted particular attention in your jurisdiction (e.g., raising issues similar to those in CJEU case C-551/15, *Pula Parking d.o.o. v Sven Klaus Tederahn*)?

    Regarding questions 17.-18., to our knowledge these issues have not so far been dealt with in case law, nor discussed in literature.

## CHAPTER II

### Personal scope (scope *ratione personae*)

19. The Recast introduces a number of provisions aimed at further improving the procedural position of 'weaker' parties. Thus, it widens the scope of application *ratione personae* so as to enable consumers and employees to rely on the protective provisions of the Regulation against non-EU 'stronger party' defendants (Article 6(1) referring to, *inter alia*, 18(1) and 21(2)). Are there any statistics available illustrating an increased number of suit actions filed by consumers and/or employees in your jurisdiction?

Such statistics are unfortunately not available.

20. As to the scope of application *ratione personae*, has it been dealt with in case law or discussed in the literature whether Article 26 applies regardless of the domicile of the defendant, considering that Article 6 does not specifically refer to Article 26?

    Article 26 is, in the case law available, applied regardless of the domicile of the defendant. The Supreme Court does not mention domicile of the defendant as a relevant fact when applying Article 26 and gives the domicile no special relevance in its reasoning of judgements (e.g. Ref. Nr. 29 Nd 130/2016 of August 25, 2016 or Ref. Nr. 30 Cdo 1860/2015 of February 24, 2016).

    In one of the decisions of lower courts that are available, the Municipal Court in Prague, as Court of Appeal, confirmed jurisdiction of Czech courts based on Article 26 where the defendant did not have domicile within the EU and stated in the reasoning that Article 26 was to be applied also in relation to defendants domiciled outside of the territory of the EU (Ref. Nr. 18 Co 374/2016 of January 24, 2017).

    The scope of application *ratione personae* is also mentioned briefly in the Czech commentary to the Brussels I Regulation written by Pavel Simon, who is a Supreme Court judge.[7] The commentary states that this issue is not clear and will stay unclear till the CJEU clarifies it. The commentary leans toward applying Article 26 (former Article 24) also in cases where the defendant has his domicile outside of EU. However, opposite opinion (Art. 26 cannot apply toward defendants outside the EU) treated by practitioners and academics in the literature.[8]

21. In a similar vein, what is the prevailing view in your jurisdiction on whether provisions on *lis pendens* contained in Articles 29 and 30 apply regardless of the domicile of the defendant? Is the fact that a court of a Member State has been seised first the only relevant/decisive factor for the court second seised to stay its proceedings or does the obligation to stay persist only if the court first seised has jurisdiction according to the Regulation (with respect to the claim falling within the substantive, *ratione personae* and temporal scope of Regulation's application)?

    To our knowledge, the Czech practice has not yet met the problem. It is difficult to estimate in advance how the courts would assess such situation: one may expect that rather restrictively, in conformity with the Czech concept of the *lis*

[7] Simon, P.: Evropské mezinárodní právo procesní in Drápal, L., Bureš. J. a kol.: Občanský soudní řád. Komentář, C. H. Beck, 2009, p. 2965 (thereinafter only „SIMON").
[8] BŘÍZA, p. 176-177.

*pendens* in international cases.[9] Anyway, *lis pendens* rules would apply, either those of BIa or those of the Czech autonomous private international law.

**Temporal scope**

22. Have your courts or other authorities had difficulties with the temporal scope of the Brussels Ia Regulation? E.g., have they found it clear when the abolition of *exequatur* applies and when not?

In some cases, courts of lower instances applied the old Regulation 44/2001 instead of the recast 1215/1012 in proceedings initiated after 10. 1. 2015, however, these mistakes were corrected by appellate courts (e.g. decision of the Municipal Court Prague 39 Co 397/2016.

So far, there is no available case law on transitional provision in the context of recognition and enforcement.

**Alternative Grounds of Jurisdiction**

23. In general, have the provisions containing alternative jurisdictional grounds in Article 7, 8 and 9 triggered frequent discussion on the interpretation and application of these provisions in theory and practice? Which rules have been relied upon most frequently? Which have proved to be particularly problematic?

Alternative grounds of jurisdiction were applied in number of cases where international jurisdiction of Czech courts was determined. The Supreme Court decided (after 10. 1. 2015) at least 19 cases on contractual obligations (Art. 7/1), 8 cases on non-contractual obligations (Art. 7/2) and 2 cases on counter-claim (Art. 8/3). The lower courts have applied mostly Art. 7/1.

In some cases, lower courts did not apply Art. 7/1 correctly, when they requested the Supreme Court to determine the local jurisdiction; the Supreme Court had to explain, that Art. 7/1 sets directly the local jurisdiction, therefore, there is no space for application of the national rules for determination of the local jurisdiction by the Supreme Court (e.g. decisions of the Supreme Court 30 Nd 79/2017, 30 Nd 392/2017).

For other problems arising out of the application of the alternative jurisdiction see the following answers.

[9] Compare Belloňová, P. commenting on the *lis pendens* rules in the Czech PIL Act, in: Pauknerová/Rozehnalová/Zavadilová, Zákon o mezinárodním právu soukromém. Komentář (PIL Act, Commentary, in Czech), Wolters Kluwer Czech Republic, Prague 2013, p. 74.

24. Which issue(s) proved particularly problematic in the context of Article 7(1): interpretation of the concept 'matters relating to a contract', distinction between the types of contracts, principle of 'autonomous interpretation' of the Regulation, determination of the place of performance? How were the difficulties encountered dealt with?

1. Matters relating to a contract:
   A declaratory action on determination who is a party of a contract (which person was legally bound by a contract) was not found as an action falling under Art. 7/1 by an appellate court (decision of the Municipal Court Prague 39 Co 85/2019).

2. Distinction between the types of contracts, principle of 'autonomous interpretation':
   In one case, jurisdiction was disputed in proceedings on remedy arising out of violation of a framework contract on distribution of goods. The contract was concluded between a Czech company on one side and a Czech and a Slovak company on the other side as a framework contract for distribution of Slovak alcoholic beverages in the Czech Republic. The Czech distributor sued the Czech and the Slovak companies for remedies (loss of profits) as they breached their contractual obligations. Courts of lower instances decided on the international and local jurisdiction under Art. 7/2 – the seat of the claimant as the place where the damage occurred. The Supreme Court (decision 30 Cdo 6002/2016) firstly explained the notions of delict and quasi-delict and matters relating to contract and the principle of autonomous interpretation and with reference to the CJEU case law *Granarolo SpA*[10] provided the lower courts with the rules for the test of the existence of contractual obligation and came to the conclusion, the action arised out of a contract, therefore Art. 7/1 was applicable. Secondly, the Supreme Court assessed also the type of the contract and explained the distinction between sale of goods on the one hand and distribution as service on the other hand. Following the guidelines of the Supreme Court, the court of the first instance assessed the contract as sale of goods, but this decision was changed by the decision of the appellate court which concluded differently that the subject of the contract was provision of services which were provided in the place of the seat of the distributor (the claimant).

   In several cases the Supreme Court assessed the nature of duties of a member of statutory body of a company (managing director, member of the board of directors). The Supreme Court explained, on one side, the distinction between contractual and non-contractual obligation in these

[10] Judgment of the CJEU C-196/15.

cases with the conclusion that the duties of members of statutory bodies towards the company are contractual obligations, therefore Art. 7/1 applies, whereby the place of performance of these obligations is usually the place of central administration ('factual seat') of the company (decisions 27 Cdo 4352/2017, 27 Cdo 3456/2019). On the other side, the Supreme Court in its decision 27 Cdo 3456/2019 also explained the distinction between contractual obligation under Art. 7/1 and obligations from individual contracts of employment concluding that the contractual relationship between a member of the statutory body and tehe company does not, in principle, fulfil the characteristics of an individual employment contract within the meaning of the Brussels I bis Regulation and does not benefit from the jurisdictional protection of Articles 20 to 23 of that Regulation. The Court referred to the CJEU case-law (cases C-603/17 *Peter Bosworth*, *Colin Hurley v Arcadia Petroleum Limited and Others*; or C-47/14 *Holterman Ferho Exploitatie BV*). In its decision 27 Cdo 2619/2020 the Supreme Court concluded that the contractual obligation of a member of statutory body of a company has to be regarded as obligation to provide services within the meaning of Art. 7/1b.

In its decision 30 Cdo 3098/2018, the Supreme Court explained the distinction between a contract on delivery of goods on one side and a contract on provision of services on the other side. The Supreme Court stated that even in the case of book printing, the supply of the text of the book in the data file represents individualization and precise specification of the goods rather than the supply of an essential part of the materials necessary for their production and manufacture. On the contrary, these materials (paper, binding, or packaging) were provided by the seller. A contract between the parties can thus be characterized, within the meaning of Article 7/1 of the Brussels I bis Regulation, as a contract for the supply of goods and not for the provision of services.

In its decision 30 Nd 186/2018 the Supreme Court interpreted the distinction between the place of performance of service within a loan agreement on one side and within a credit contract on the other side for the purposes of the Art. 7/1b. The credit contract is a consensual contract for which the place of performance is, unless otherwise agreed, the place of residence of the provider, i.e. the credit institution; the loan agreement is on the contrary a real contract for which the place of performance of the service must therefore be considered the place where the borrower has been allowed to dispose of the borrowed funds (e.g. the registered office of the bank holding the borrower´s account to which the loan was paid).

25. Is the place where the goods were delivered or services provided decisive for determining jurisdiction even when the place of payment is agreed upon and a failure to pay the price has solely given rise to the dispute? If so, what is the prevailing view in the literature and case law on how the wording 'unless otherwise agreed' in Article 7(1)(b) is to be understood?

In general, the Supreme Court interprets with reference to the CJEU case-law (decision of the CJEU *Color Drack* C-386/05, p. 26) that the place where the goods were delivered or services provided are decisive for determining jurisdiction for all obligations arising out of the contract (decisions of the Supreme Court No. 23 Cdo 3689/2011, 30 Nd 486/2019).

The Supreme Court has not yet decided a case where the place of payment has been explicitly agreed by the parties.

The wording 'unless otherwise agreed' is interpreted by the Supreme Court, firstly, as allowing the parties to agree on this place (regardless of the conflict of law rules and law applicable) and, secondly, as a factual concept – where the place is not agreed in the contract, it has to be determined in the place where goods were physically delivered (decision of the Supreme Court No. 30 Cdo 5535/2015).

26. Has Article 7(2) given rise to difficulties in application, if so which particular aspect(s): the wording 'matters relating to tort, delict or quasi-delict', the wording 'place where the harmful event occurred or may occur'/locating the place of damage, cases where the place of wrongful act is distinct from the place where the damage has been sustained, types of claims and actions falling within the scope of this provision, identification of the 'centre of interests' in cases of the infringement of personality rights/privacy, application of the requirement of 'immediate and direct damage' in the context of financial loss, interplay between the rules on jurisdiction contained in other EU legal instruments and in the Regulation especially in the context of infringement of intellectual property rights?

The Supreme Court has determined as the place where the harmful event occurs in case of alleged unlawful publication of personal data in an internet database the place of the habitual residence of the claimant (decision of the Supreme Court No. 30 Nd 7/2017).

The Municipal Court Prague decided that the place where the harmful event occurs in case of damages sued against a Slovak insolvency practitioner arising from the obligation to recover the cost of proceedings on declaratory action is

the place of the seat of the court seised with the declaratory action (decision of the Municipal Court 39 Co 340/2017).

In its decision 30 Cdo 3189/2019 the Supreme Court applied conclusions on the place where the damage occurs reached by the CJEU in case C-343/19 *Verein für Konsumenteninformation proti Volkswagen AG* also to non-pecuniary damage. The Court decided that it was common ground that the defendants' alleged unfair competition in the form of the unlawful fitting of the vehicle with emission control software took place in Germany, since the vehicles were manufactured there and equipped with that software. The place where the harmful event occurred was therefore in Germany. As a result of the defendant's unfair competition, the injured party decided to purchase the vehicle on the basis of false assumptions, and failure to comply with them constitutes non-material damage to him. This damage thus consists in the fact that the injured party bought a different vehicle than the one he wanted to purchase as a result of the unfair competition. Thus, this injury is not derived from any other injury, but is a primary (original) injury.

27. The Recast introduced a new provision on jurisdiction regarding claims for the recovery of cultural objects as defined in Directive 93/7/EEC. Has this triggered discussion in the literature or resulted in court cases?

So far, there is available neither case law nor literature in this respect.

28. Have there been any significant controversies in connection with other rules on jurisdiction under Article 7, 8 and 9, if so which particular rule: regarding claims based on acts giving rise to criminal proceedings, interpretation of 'operations of a branch, agency or other establishment, claims relating to trusts, claims relating to salvage of a cargo or freight, proceedings involving multiple defendants, third-party proceedings, counterclaims, contractual claims related to a right *in rem* on immovable property, limitation of liability from the use or operation of a ship?

No. So far, there is no case law available on "significant controversies".

To the proceedings involving multiple defendants the Supreme Court decide in its decision 30 Cdo 4162/2019 that Article 8(1) of the Brussels I bis Regulation cannot be used in cases where the person according to whom the jurisdiction of the court is to be determined is not domiciled in the State in which the action is brought but the international jurisdiction of the courts is determined by the Regulation, e.g., in accordance with the procedure laid down in Article 26 of the Brussels I bis Regulation. A contrary interpretation would, under the opinion

of the Court, inadmissibly go beyond the cases expressly provided for and provided for in the Brussels I bis Regulation.

## Rules on jurisdiction in disputes involving 'weaker parties'

29. In the newly introduced paragraph 2 in Article 26, the Recast imposes the obligation upon the courts in Member States to inform 'weaker parties' of the right to oppose jurisdiction according to the protective provisions of the Regulation, but does not expressly regulates consequences of a court's failure to do so. What is the prevailing view in your jurisdiction on the point whether the omission of the court qualifies as a ground to oppose the recognition and enforcement of a decision rendered in violation of this obligation under Article 45?

    The Supreme Court does not consider the absence of information under Art. 26/2 as a ground to declare non-jurisdiction where the defendant enters an appearance without objecting the jurisdiction of the court (21 Cdo 4436/2018).

    There has been yet any case law assessing the absence of information under Art. 26/2 as a ground for non-recognition of a foreign decision.

30. According to the prevailing view in your jurisdiction, do the provisions limiting effectiveness of prorogation clauses in cases involving 'weaker parties' apply to choice-of-court agreements providing for jurisdiction of a court in a country outside the EU?

    So far, there is no relevant case law available.

    According *Simon*,[11] a prorogation agreement concluded by parties in favor of a court or courts of a non-EU Member State would not fall within Article 23 of Brussels I (Article 25 of Brussels Ia). *Bříza* contemplates the possible impact of *Owusu* case on choice-of-court agreements in favor of non-EU courts in cases where the defendant is domiciled in the EU. The question arises, whether Art. 4 hinders the applicability of choice-of-court agreements under such circumstances.[12]

31. According to the prevailing literature in your Member State, do provisions in Sections 3, 4 and 5 provide effective protection to 'weaker parties'?
    There is no available case law assessing in general the level of effectiveness of protection of weaker parties in section 3, 4 and 5 of the Regulation. The protection of consumers was considered several times in the case law of courts, especially in so called mobile consumer-cases (see the answer No 34).

[11] SIMON, p. 2959.
[12] BŘÍZA, p. 127-130.

According to Petr Šuk, who is a Supreme Court judge and author of a commentary to the Brussel I Regulation,[13] Sections 3, 4 and 5 provide more favorable rules for the weaker parties.

32. In general, have there been difficulties in applying Section 3 of the Regulation on the jurisdiction in matters relating to insurance, if so which aspect(s): definition of 'branch, agency or other establishment' in the identification of the competent court, the identification of 'the place where the harmful event occurred', the definition of 'injured party', the application of the provisions of Articles 15 and 16 relating to choice-of-court agreements?

No. So far, there is no case law available on these issues.

33. Have there been difficulties in applying Section 4 of the Regulation on the jurisdiction in matters relating to consumer disputes, if so which aspect(s): requirements for a transaction to be considered as a 'consumer contract' as defined in Article 17, the application of the norms on the choice-of-court agreements?

Disputes arising out of consumer contracts represent substantial part of all cases where the international jurisdiction of Czech courts is solved. From the available case law of the courts of lower instances is obvious that classification of a contract as consumer contract in the sense of Art. 17/1, lit. c) and the *perpetuatio fori* under Art. 18/2 might create problems and that the courts are not consistent in this respect.

The most frequent subjects of disputes in the available case law are loan agreements or credits others then those falling under Art. 17/1, lit. b) concluded between a bank or other credit company domiciled in the Czech Republic and a consumer residing at the moment when the contract is concluded either in another Member State or in the Czech Republic, but moving afterwards in a different state. Problems arise due to the inconsistency in consumer´s domicile at the moment of conclusion of the contract and at the moment when the court is seised of the claim.

The Supreme Court decided in 2012, that a loan agreement (falling outside the scope of Art. 17/1, lit. b) between a professional domiciled in the Czech Republic and a consumer domiciled in a different Member State could not be "consumer contract", when the loan was provided in the Czech Republic; and the professional neither pursued nor directed his activities to the Member State of the consumer´s domicile (decision of the Supreme Court 32 Cdo 1318/2011). Appellate courts follow this conclusion and consistently change the decisions of courts of first instances, which refused jurisdiction on the basis of Art. 18/2

[13] Šuk, P.: Nařízení Brusel I in David, L; Ištvánek, F; Javůrková, N; Kasíková, M; Lavický, P. a kol. Občanský soudní řád. Komenář. II. Díl. Wolters Kluwer ČR, 2009, p. 1790_1791.

(8 decisions of the Municipal Court in Prague), and base jurisdiction on Art. 7/1.

Inconsistently with the above-mentioned conclusions on loan agreements, the Municipal Court in Prague, as an appellate court, classified as consumer contract under Art. 17/1, lit. c) in two decisions contracts on gas supply (decisions of the Municipal Court Prague 39 Co 108/2016, 39 Co 188/2018) and in another two decisions medical treatment provided by a hospital to a foreigner with unknown place of domicile (decisions of the Municipal Court Prague 18 Co 35/2016, 25 Co 140/2018).

The above described difficulties with the interpretation of Art. 17(1)(c) were solved by the CJEU in its judgment C-296/20.

In one case the Supreme Court submitted request for preliminary ruling to the CJEU regarding interpretation of 'consumer' (C-208/18 *Petruchová*). Following the CJEU´s guidelines, the Supreme Court decided that Article 17(1) must be interpreted as meaning that a natural person who: under a contract such as a difference agreement concluded with a brokerage company, transacts through the company on the international foreign exchange market FOREX (Foreign Exchange), must be listed as a "consumer" within the meaning of this provision, unless the conclusion of this agreement falls within the professional or business activities of that person, which is for the court to verify. Factors such as the value of the transaction under contracts such as differential contracts, the extent of the risk of financial losses associated with entering into such contracts, the person's potential knowledge and expertise in financial instruments or his active involvement in such transactions are as such for the purposes of this qualification is in principle irrelevant. As regards the question whether a person may lose the status of 'consumer' within the meaning of Article 17(1) if he has the knowledge and expertise in the field covered by the contract which he has concluded in the field covered by the contract. In the field of difference agreements in the main proceedings, the CJEU stated that, in order for that status to be granted, it is sufficient for the contract to be concluded for a purpose which does not relate to its professional or business activities.

In its decision 30 Cdo 2084/2019 the Supreme Court interpreted the concept of 'directing of activities' within the meaning of Article 17(1)(c) when providing investment services. Under the opinion of the Court, it should also be taken into account that a foreign entrepreneur who has provided investment services to a consumer resident in the Czech Republic started providing such services after the conditions set out in Section 25, Paragraphs 1 and 2 of Act No. 256/2004 Coll., on the Capital Market Business, were met.

34. Have the courts in your jurisdiction encountered difficulties in the application of Article 18(2), in the case of *perpetuatio fori,* occurring if the consumer moves to another State? If yes, how are these problems dealt with?
Yes, it seems from the available case law that judges are still inconsistent in this issue (for more details see the previous answer No. 33).

This issue was also discussed in the literature, where different approaches to this inconsistency were treated, however, all authors were uniform in one conclusion – the only binding interpretation is to be provided solely by the CJEU.[14]

This question, however, was solved by the CJEU in its judgment C-296/20.

35. Have there been difficulties in applying Section 5 of the Regulation on the jurisdiction in matters relating to employment contracts, if so which aspect(s): the interpretation of the concept of 'matters relating to individual contracts of employment', the interpretation of the concept of 'branch, agency or establishment', 'place where or from where the employee habitually carries out his work', the application of the provision on the choice-of-court agreements?

In its decision 30 Cdo 4402/2017 the Supreme Court interpreted the concept of 'matters relating to individual contracts of employment' using the same logic which applies to the interpretation of the concept of 'matters relating to contract' in Art. 7/1. Claims for breach of contractual obligation (late payment of compensation for an accident at work), whether for damages arising out of the contract or for the obligation to pay default interest arising out of late payment, which have a basis in the contract of employment, must be classified as matters relating to individual contract of employment within the meaning of Art. 20.

## Exclusive jurisdiction

36. Article 24(1) uses the expression rights '*in rem'*, but provides no definition. The same holds true for case-law of the CJEU, even though it has to some extent clarified the concept by holding that it is not sufficient that the action merely concerns a right *in rem* or is connected with such right. Do the courts in your Member State experience difficulties in distinguishing between disputes which have 'as their object' 'rights *in rem'* from those that merely relate to such rights

[14] HAVELKA, L. Migrující spotřebitelé a určení mezinárodní příslušnosti v kontextu nařízení Brusel I bis. *Právní rozhledy*, 2016, No. 18, p. 625; ZAVADILOVÁ, M. Spotřebitel v jurisdikčních normách nařízení Brusel Ia aneb kde žalovat migrujícího spotřebitele, in EICHLEROVÁ, K. a kol. Rekodifikace obchodního práva – pět let poté. Svazek II. Pocta Ireně Pelikánové. Wolters Kluwer ČR, 2019, s. 387 – 395.

and accordingly do not fall within the exclusive jurisdiction? If so, how are these problems solved? Have there been any problems with applying Article 31(1) in this respect?

So far, there is no available case law in this respect.

37. For the purposes of applying Article 24(2), which rule of private international law applies for determining the seat of the company in your legal system? Do the courts in your Member State experience difficulties in this respect and, if so, how are these problems dealt with?

Under this provision, in order to determine the seat of the company, the court shall apply its rules on private international law. Czech PIL Act lays down the incorporation principle: Legal personality and legal capacity of an entity other than a natural person shall be governed by the law of the state under which it was established (incorporated). This law shall also govern a trading name or a name and internal relations of such an entity, the relations between such an entity and its partners or members, mutual relations of its partners or members, a responsibility of its partners or members for liabilities of such an entity, a person responsible for acting on behalf of such an entity, as well as its winding up (section 30 (1) PIL Act). The seat is defined in the Civil Code (sections 136 and 137) under which "registered seat" is relevant – Czech law is based on a concept of a formal seat. Pursuant to the Civil Code, anyone may invoke the real registered office of a legal person. And a legal person may not claim to have its registered office elsewhere against anyone who invokes the registered office entered in a public register (section 137 of the Civil Code).

38. In cases concerning the violation of an intellectual property right, the invalidity of the patent may be raised as a defence. In *GAT v Luk* (C-4/03) the CJEU ruled that for the exclusive jurisdiction it should not matter whether the issue is raised by way of an action or as a defence. This rule is now incorporated in the text of Article 24(4). Do the courts in your Member State experience any particular difficulties when applying the provision regarding the validity of the rights covered by Article 24(4)? If so, how are these dealt with?

There is no case-law yet but the *GAT v LUK* judgment (C-4/03) is well known and often cited in the Czech literature (e.g. in the Commentary to the BI Regulation),[15] so that most probably no particular difficulties in application of Article 24(4) can be expected.

[15] SIMON, p. 2948 ff., in particular 2954.

39. Given the variety of measures in national law that may be regarded as 'proceedings concerned with the enforcement of judgements', which criteria are used by the courts in your Member State to decide whether a particular procedure falls under the scope of Article 24(5)? Please elaborate and provide examples.

Under the *Jenard* Report, cited in the Czech Commentary to BI Regulation, proceedings concerned with the enforcement of judgments are disputes that may arise from the use of force, of coercion or of dispossession of movable and immovable property to assure the material enforcement of judgments and acts. In other words, as the Czech Commentary adds, this scope will include not only proceedings on the enforcement of a decision or, as the case may be, an execution but also other narrowly related proceedings. Typically, petitions for property excluding from enforcing a decision in sense of section 267 of the Civil Procedure Code. On the other hand, an *actio pauliana* cannot be considered as narrowly related to the enforcement proceedings (referring to the *Reichert* judgment C-115/88).[16]

The Civil Procedure Code stipulates manners of the enforcement in section 258. A decision imposing payment of a financial amount may be enforced by deductions from payroll, receivable debiting, administering an immovable, selling movable assets and real estate, affecting the business premises and establishing a judicial lean-to real estate. A decision imposing an obligation other than payment of a financial amount shall be governed by the nature of the obligation imposed. It may be implemented by vacating, withdrawing a property, dividing a common property and exercising of works and taking acts. Enforcing a decision by the sale of pledge may be provided for a secured receivable by selling pledged movable and immovable assets, multiple items and sets of items, debiting a pledged financial receivable and involving other pledged property rights. Pursuant to section 257 of the Civil Procedure Code, a decision may only be ordered and enforced in manners mentioned in this Act.
The Execution Order (Act on judicial executors and executory activity) provides for similar manners of execution: deductions from payroll, receivable debiting, selling movable and immovable assets, affecting the commercial premises, administering an immovable and suspension of the driving licence. A manner of execution imposing an obligation other than payment of a financial amount shall be governed by the nature of the obligation imposed. It may be implemented by vacating, withdrawing a property, dividing a common property and exercising of works and taking acts, see sections 58 and 59 of the Execution Order. It is permitted to combine several manners of execution within one proceeding, in details see section 58 (2) of the Execution Order.

[16] SIMON, p. 2955.

40. Does the removal of a conservatory third party attachment (in case of seizure) fall within the scope of 'enforcement' in the sense of Article 24 chapeau and fifth paragraph Brussels Ia leading to the exclusive jurisdiction of the court where the removal has to be enforced, or can jurisdiction of the removal be based on Article 35 leading to jurisdiction of the court that has granted leave to lay a conservatory third-party attachment (seisure)? In other words, is Article 24 interpreted extensively or narrowly in you Member State?

    The Czech Commentary to BI Regulation highlights the duty to restrictively interpret the provisions on exclusive jurisdiction as they constitute an exception to general jurisdictional rules (referring to C-343/04 *ČEZ*).[17] The rules on provisional, including protective measures which represent exception from the jurisdiction regime should be interpreted restrictively as well (referring *inter alia* to C-391/95 *Van Uden* judgment).[18]

    So far, there is no available case law in this respect.

**Prorogation of jurisdiction and tacit prorogation**

41. Application of Article 25 requires a minimum degree of internationality. Is there any particular case-law and/or literature, in your Member State in which this minimum degree of internationality has been discussed and/or a certain threshold has been set? If yes, what are the considerations and/or arguments that have been made?

    This issue has been partially discussed by the Supreme Court in its decision 30 Cdo 2784/2016. In this case both the plaintiff and the defendant were Czech companies with their seat in the Czech Republic, but the terms and conditions of the defendant included prorogation agreement in favour of the court in Mechelen in Belgium. The Supreme Court stated in its reasoning that to judge the internationality of the case it is first necessary to find out whether these terms and conditions form part of the contract concluded between the plaintiff and the defendant. If they do not, the necessary international element would not be given and Brussels Ia would not apply. If they do, the Court of Appeal should ask the CJEU a preliminary question whether there is an international element when the prorogation agreement is concluded by two parties with domicile in the same Member State in favour of courts of another Member State.

[17] SIMON, p. 2947.
[18] SIMON, p. 2982-2984.

42. The requirement that at least one of the parties to the choice-of-court agreement must be domiciled in a member state, as stated in Article 23 Brussels I, has been deleted in Article 25 Brussels Ia. Has this amendment resulted in an increase of a number of litigations in which jurisdiction has been based on choice- of-court agreement falling under the Regulation?

    Unfortunately, there are no statistical data available on which this assessment could be performed.

43. Are there particular examples in which the formal requirements for validity of choice-of-court agreements (Article 25(1)(a-c)) caused difficulties in application for the judiciary or debate in literature? Which requirement has appeared most problematic in practice? When applying the respective requirements of an agreement 'in writing or evidenced in writing', 'practice which the parties have established between themselves' and 'international trade usages', which facts do the courts and/or literature deem decisive?

    Neither relevant case law, nor literature available.

44. Is there case-law in your Member State in which the formal requirement(s) of Article 25 (1)(a-c) have been fulfilled, but the choice of court agreement was held invalid from the point of view of substantive validity due to a lack of consent? If the answer is in the affirmative, what were the considerations made by the court?

    In its decision 30 Cdo 5383/2016 the Supreme Court annulled a decision of the Court of Appeal according to which a prorogation clause containing the term "arbitration court" was not considered valid as there is no such court in the system of courts in the Czech Republic. The Supreme Court stated that the Court of Appeal took account of the linguistic interpretation of the term "arbitration court" only not having regard also to the circumstances of the case, thus favouring invalidity to party autonomy. According to the Supreme Court, when assessing the validity of the prorogation agreement the Court of Appeal will have to take into account not only the linguistic term "arbitration court" but also the circumstances under which the prorogation clause was concluded. Account will have to be taken of the fact that the original contract was written in Russian language and Russian law was chosen as applicable. It will not be possible not to take into account that in the Russian Federation courts deciding commercial disputes are called "arbitration courts".

    In another decision the Municipal Court in Prague (39 Co 310/2016) ruled that the clause "The forum is the general forum of the creditor" in a contract concluded between Czech and Slovak parties could not be considered a prorogation clause, as the clause did not name a concrete state and the creditor could have his general forum (domicile) in both Czech Republic and Slovakia. According to the court the clause was not unambiguous and understandable

enough to be able to conclude that it is a prorogation agreement in favour of courts of a concrete state.

In its decision 27 Cdo 714/2019 the Supreme Court decided on the law applicable to substantive validity of a choice-of court agreement in the following situation: In 2011, the plaintiff concluded an agreement with the defendant, the subject of which was the transfer of 100% of business share in a company and 753 shares of the company from the plaintiff to the defendant. The protocol also provided for the sale of 'residual shares' (602 shares) and an exclusive choice of the Commercial Court in Lyon (France). In 2014, the plaintiff and the defendant entered into an agreement on the purchase of 602 shares which they subject to Czech law. The Supreme Court concluded that French law must be followed in resolving the question whether the former choice-of-court agreement also affects disputes arising from the purchase agreement for residual. In other words, the court must interpret the choice of court agreement under French law and, on that basis, assess whether that agreement establishes (international and local) jurisdiction of the Commercial Court of Lyon (and therefore excludes jurisdiction of the Czech courts).

In other decision, the Supreme Court had the opportunity to rule on effect of a choice-of court agreement designating a court which does not exist. The parties have agreed that if they are unable to resolve the dispute by negotiation, the "Commercial Court in Prague, Czech Republic" will decide in such disputes. This clause was inaccurate in that it designated a court whose name does not exist. However, the Court explained that even such clause could show the will of the parties to settle their disputes before the Czech courts, and this will must be respected. The Supreme Court therefore determined that the lawsuit would be heard and decided by the District Court for Prague 5, in the district of which the plaintiff's registered office is located.

In its decision 29 Cdo 416/2019 the Supreme Court decided that a prorogation clause contained in a credit agreement, in conjunction with other provisions of this agreement and the content of the bill of exchange statement for blank bills of exchange, also applies to the dispute arising from the bill of exchange.

45. Are there cases in which the courts in your Member State experienced problems with the term ‘null and void’ with regard to the substantive validity of a choice-of-court agreement?

No case law available.

46. Article 25(1) Brussels Ia has been revised so as to explicitly state that the substantial validity of a choice-of-court agreement is determined by the national

law of the designated court(s). Recital 20 clarifies that the designated court is to apply its own law including its private international law rules. Has the reference to private international law in this context led to discussion in literature or difficulties in application for the judiciary in your Member State?

There is only one court decision available to the authors where the court applied rules of private international law in connection with Article 25(1). The Municipal Court in Prague (18 Co 229/2016), as an appellate court, ruled that Czech courts had jurisdiction in a dispute based on a contract on provision of medical care that was concluded in 2012 and contained a prorogation agreement in favour of Czech courts. The defendant, a national of Brazil, was domiciled in the Czech Republic at the time of the conclusion of the contract, but not at the time the proceedings were initiated (unknown domicile). The Municipal Court in Prague applied Art. 25 and stated that the validity of the prorogation agreement is to be assessed according to Czech law. The court applied a provision of Czech Private International Law Act allowing prorogation agreement in written form. The court did not apply any provision of Czech substantive civil law.

47. Is there particular case law or literature in your Member State in which the test of substantive validity of non-exclusive choice-of-court agreements was discussed? If yes, how is dealt with the substantial law of the different designated Member States?

So far, there is no case law available

48. Has the express inclusion of the doctrine of severability of choice-of-court agreements, as mentioned in Article 25(5) Brussels Ia merely confirmed a principle that had already been firmly established and accepted in theory and practice within your Member State?

Yes, the doctrine of severability of choice-of-court agreement as a principle had already been established in the Czech Republic (the CJEU decision *Benincasa* C-269/95).[19]

49. Do the courts in your Member State experience difficulties in applying the rules as to defining 'entering an appearance' for the purposes of applying Article 26 Brussels Ia?

The Supreme Court dealt with the interpretation of "entering an appearance" when applying Article 26 Brussels Ia in connection with an order for payment. The Supreme Court clarified whether lodging of a statement of opposition to the order for payment by the defendant, without contesting jurisdiction of Czech

[19] SIMON, p. 2961.

courts, can be considered as entering an appearance. The Supreme Court concluded that according to Czech procedural law it is not the statement of opposition to the order for payment but the procedural step of the defendant addressing the court after the order for payment had been annulled (Ref. Nr. 30 Cdo 2784/2016 of February 28, 2017).

In its decision 27 Cdo 12/2019 the Supreme Court assessed the situation where the court appointed a procedural guardian to a defendant whose domicile is unknow. The Court concluded that if a national court appointed a defendant who had not been served with the application on the ground that his domicile was unknown, the activity of the guardian cannot be regarded as entering an appearance of the defendant within the meaning of Art. 26(1), thereby it cannot establish the international jurisdiction of that court.

**Examination jurisdiction and admissibility; *Lis pendens* related actions**

50. Have courts in your Member State experienced any particular problems when interpreting the 'same cause of action' within the meaning of Article 29(1) (e.g. a claim for damages for breach of contract and a claim for a declaration that there has been no breach ('mirror image')? Please elaborate and provide examples from your own jurisdiction (if any).

Pursuant to the Czech literature, in general, the 'same cause of action' means that later proceedings concern the same matter (claim or status) for which other proceedings were initiated and it relates to the same subject-matter and to the same persons. It is not relevant as such whether the same persons have in various proceedings different procedural position (e.g., acting in one proceeding as claimants and in the other as defendants). The same subject-matter is given if the same claim or status defined by the petition follows from the same factual allegations (from the same fact) on the basis of which it was pleaded.[20] Apparently, the interpretation of the 'same cause of action' is rather broad. This notion was specified in 30 Cdo 638/2019 on EU trademarks, regarding parallel proceedings before a court in Luxembourg and a court in the Czech Republic, in which the claims were based partly on identical and partly on different trademarks. As the Supreme Court stated, for the purposes of interpreting Article 29(1) BIa in the light of the concept of identity proceedings before courts of different Member States concerning EU trademark rights, it must be assumed that the notion of identity is connected with a specific trademark to the extent

[20] DRÁPAL, p. 549.

to which the effects of decisions issued in the proceedings would manifest itself in the territory of the same Member State.

In 47 Co 154/2016 the Regional Court (as an appellate court) stayed its proceedings pursuant to Article 29 BIa, until the establishment of the jurisdiction of the first seised court in Italy. The subject-matter of the case was the request of the claimant to return a half of the paid purchase price after the withdrawal from a work contract; at the same time the defendant objected that the withdrawal is null and void and that the defendant lodged against the claimant in the court in Italy a claim for the payment of the second half of the purchase price. The first instance Czech court concluded that under Article 30 BIa it may stay its proceedings where related actions are pending but it is only a facultative procedure (not obligatory) and, in particular, the first seised court should have jurisdiction for both proceedings which in the case at hand the court in Italy does not have. The claimant asserted that the work contract includes a prorogation clause in favour of the Czech court and, referring to Italian torpedoes, that the submissions of the defendant in Italy are only purpose-made. The Regional Court concluded that such a choice of a Czech court cannot be derived from the provisions of the contract at hand which only stipulates that the relations arising out of this contract shall be governed by the European law: such a clause is unclear, the court concluded. The Regional Court changed the statement of the District Court with arguments that it is necessary to start with the "European" interpretation of identity of the matter and to derive the identity of both pending actions from the fact that they concern the same participants and the same contract. There are mutually related performances from one obligational relation with the identity of the fact, applicable law and intended purpose of claims. For this reason, the District Court had been obliged to stay proceedings. Consequently, the Regional Court stayed proceedings until the time the jurisdiction of the Italian court be established.

51. Do you know whether the courts of the other Member State are typically contacted immediately once sufficient evidence has been gathered which suggests or confirms that courts in the other Member State may have been seised of the 'same cause of action'? Is there a standardised internal procedural guideline which is followed by the courts of your Member State? And are there any practical (for example, linguistic, cultural or organisational) obstacles or considerations which may hinder contact between the courts of your Member State and the other Member State?

To our knowledge, there have been no such communications so far (such contacts have not been mentioned in the decisions at disposal), the standardised procedure between courts is running through the EJN.

52. When should a court in your Member State be considered to be seised for the purposes of Article 32 Brussels Ia? Is this when the document instituting the proceedings or 'equivalent document' is lodged with the court (a) or when such document is received by the authority responsible for service (b)? Does the moment of filing a suit with the court determine the moment as from which a proceeding is deemed pending or the proceeding is considered to be actually pending at a later point after certain administrative/organisational steps have been taken (see e.g., circumstance in C-173/16 *M.H. v. M.H.* relating to this issue under Regulation Brussels IIbis)?

    Under section 82 of the Czech Civil Procedure Code, proceedings shall be initiated on the day on which the court received the proposal for initiating thereof. If the proposal for initiating proceedings (an action) is sent by means of the public data network and the electronic application for delivery of such proposal (so called data boxes), the proceedings are deemed to be initiated on the moment on which the proposal is accessible within the information system designed for reception of such a submission.

    The moment of filing a suit with the court determines the moment as from which the proceeding is deemed pending.

53. Do subsequent amendments of claims in any way affect the determination of the date of seising in your Member State? Is any differentiation made in that respect between cases where a new claim concerns facts known at the date of the original proceedings and amendments based on facts which have only emerged after the date of the original proceedings?

    In general, subsequent amendments of claims cannot affect the determination of the date of seising in the Czech Republic. As for any differentiation between cases where a new claim concerns facts known at the date of original proceedings and amendments based on facts which have only emerged after the date of the original proceedings, it is difficult to assess such situations in general, it will depend on particularities of the case. Under any circumstances, pursuant to section 103 of the Civil Procedure Code, the court shall at any time during proceedings monitor whether the conditions under which the court may decide in the given matter are being satisfied.

54. Do courts in your Member State tend to decline jurisdiction if the court seised previously had jurisdiction over the actions in question 'and its law permits the consolidation thereof' (see Article 30(2))?

The Czech law explicitly permits "joining matters" (section 112 of the Civil Procedure Code). Under this provision, for the sake of economic efficiency of the proceedings, the court shall be authorised to join in common individual matters that have been initiated at the court, and facts at issue of which are connected with each other or involve the same participants.

In case of such situation as foreseen in Article 30(2) BIa, it can be expected that a Czech court would decline its jurisdiction but it will depend on particular circumstances of the case. There is no case law so far.

55. Has the application of Article 31(2) proved to be counterproductive and resulting in delaying the proceedings by the obligation of the court seised to stay the proceedings until a designated court has decided on the validity of a choice- of- court agreement, even when a prorogation clause has never been entered into or is obviously invalid?

    There is so far no relevant case law.

56. Has the combined application of Articles 33 and 34 in your view contributed to greater procedural efficiency and accordingly diminished the risk of delays in resolving disputes as well as the risk of irreconcilable judgments between a third state and your Member State?

    There is so far no relevant case law.

57. Apart from concerns regarding procedural efficiency, are connections between the facts of the case and the parties in relation to the third state typically also taken into account by the courts in your Member State in determining their jurisdiction under Articles 33 and 34, bearing in mind the aims as expounded by Recital 24 of the Regulation?

    There is so far no relevant case law.

58. Does the application of both provisions in your view amount to a sufficiently 'flexible mechanism' (see further Recital 23) to address the issue of parallel proceedings and *lis pendens* in relation to third states?

    There is so far no relevant case law.

## Provisional measures, protective measures

59. Do the courts in your Member State experience difficulties defining which 'provisional, including protective, measures' are covered by Article 35?

Provisional measures are laid down in sections 74 -77a of the Civil Procedure Code. Under section 74, an interim measure may be ordered by the presiding judge before proceedings are initiated, if necessary, to provisionally modify the relation of participants, or if feared the enforcement of the judicial decision could be jeopardised. The participants in the proceedings shall include the claimant and those who would be participants if the matter itself was concerned. Pursuant to section 76 (1) of the Civil Procedure Code, an interim measure may especially impose on the participant the following obligations: to provide at least part of work reimbursement; to pay a financial amount or deposit an item with the court; not to dispose some items or rights; to perform something, refrain from something or permit something.

As consequence, provisional measures are exactly defined in the Czech law. The literature points out that the link or connection should be interpreted restrictively, in conformity with *Van Uden* case (C-391/95).[21]

60. In the *Van Uden Maritime v Deco-Line and Others* case (C-391/95) the CJEU introduced a requirement of territorial connection between the subject matter of the measures sought and the territorial jurisdiction of the Member State's court to issue them. How is the 'real connecting link' condition in *Van Uden* interpreted in the case-law and doctrine in your Member State?

In 30 Nd 27/2018, the Supreme Court applied Article 31 of Lugano Convention II which corresponds to Article 31 BI (now Article 35 BIa) as the court remarked, referring in particular to *Van Uden* case (C-391/95). Article 31 of the Lugano Convention should be interpreted in the sense that the granting of a provisional measure is conditioned by the existence of a real connecting link between the subject-matter of the measure sought and the territorial jurisdiction of the court. The case was complicated as the claimant was a Russian citizen with a permanent stay in the Czech Republic, the defendant was a citizen of Georgia and the proposed preliminary measure required not to dispose a property located in Switzerland where the judgment in favour of the claimant was rendered but where the defendant raised an action to discharge the claim pursuant to the Swiss law. The asserted narrow link consisted in the fact that the claimant has permanent residence in the Czech Republic and there exists a real

[21] SIMON, 2983-4.

fear that the defendant would transfer the property and dispossess it in order to avoid the performance of its legal duty, so that the claimant seeks protection of his rights in the Czech court. The Supreme Court concluded, following *Van Uden* case, that the jurisdiction of the Czech court cannot be established. Ordering of a provisional measure cannot be inferred because an essential narrow link between the duty required by the motion of the claimant, where the defendant should be forbidden to dispose a property located not in the Czech Republic but in Switzerland and Georgia, and the jurisdiction of courts in the Czech Republic, is missing. The argument of the claimant that he has a permanent residence in the territory of the Czech Republic does not play any role, the court added.

The 'real connecting link' condition has been interpreted narrowly but the case was in our opinion quite obvious as the asserted link was not very relevant. However, it would be interesting whether the arguments of the court would be the same if the claimant were a Czech national or a national of some other EU Member Country.

### Relationship with other instruments

61. Has the Hague Convention on Choice of Court Agreements to your knowledge ever been relied upon in declining jurisdiction in your Member State and allocating jurisdiction to third states party to that Convention? Please provide examples from case-law with a short summary.

There is so far no relevant case law.

## CHAPTER III

### Recognition and Enforcement

62. How frequently is the optional procedure, established in Article 36(2), to apply for a decision that there are no grounds of refusal of recognition employed in your jurisdiction?

To our knowledge, there has not been submitted any such application so far.

63. Abandoning *exequatur,* Section 2 of Chapter III grants direct access to national enforcement agents (in a wide sense, including particularly courts and *huissiers*) or enforcement agencies. Have such agents or members of such agencies in your jurisdiction received specific training or instruction on how to deal with enforcement requests based on judgments rendered in other Member States? If so, who undertook the effort and who seized the initiative?

    The status of "national enforcement agents or agencies" pursuant to the Czech law is governed by the Execution Order (Act on judicial executors and executory activity). The executors are natural persons who meet the requirements stipulated by the Execution Order and who obtained from the State an authorisation of an execution agency. To our knowledge, executors do not have a specific training on how to deal with enforcement requests based on judgments rendered abroad.

64. Has there been a concentration of local jurisdiction (venue) at the national or regional level in your jurisdiction institutionalising specialised enforcement agents for the enforcement of judgments rendered in other Member States?

    In the Czech Republic, the implementation of the territoriality principle (local jurisdiction of executors) is being discussed but it does not relate specifically to the enforcement of judgments rendered in other Member States. At present, such a concentration does not exist. The execution is administered by the executor (enforcement agent) designated in the execution motion by the entitled person and recorded in the Register of commenced executions (section 28 of the Execution Order).

65. Have there been other specific legislative or administrative measures in your jurisdiction possibly facilitating the direct access of creditors or applicants from other Member States to the enforcement agents?

    Act no 629/2004 Coll. on securing of legal assistance in cross-border disputes in the framework of the EU, which implements the Directive no 2003/8/EC to improve access to justice in cross-border disputes, applies. It includes general rules in accordance with the Directive, but there are no specific rules facilitating the direct access of creditors from other Member States to the enforcement agents.

66. Has the transgression to direct enforcement enhanced the number of attempts to enforce judgments rendered in other Member States? Are there

any respective statistics available in your jurisdiction? If so, may you please relay them?

The Czech Republic has always supported the abolition of *exequatur* proceedings which was only introduced into the Czech law to implement the declaration of enforceability under EU Regulations. The transgression to direct enforcement was complicated only in relation to the interpretation of transitional provisions with respect to the BI Regulation (Article 66 BIa) where in legal proceedings instituted before 10 January 2015 the *exequatur* procedure is still required.

For the time being, no statistics on attempts to enforce judgments rendered in other EU Member States after the applicability of the BIa Regulation are available.

67. Section 2 of Chapter III has created a specific interface between the Brussels Ia Regulation and national rules on enforcement. Has this generated particular problems in your jurisdiction?

So far, there are no particular problems in this respect; on the reverse, some problems were connected with the declaration of enforceability which was a legal institution originally unknown to Czech law.

68. Has Article 41(2) in particular attracted specific attention in your jurisdiction?

To our knowledge, this issue has not so far been dealt with.

69. Article 46 introduced the so called 'reverse procedure'. Are there any statistics available in your jurisdiction on the absolute frequency and the relative rate of such proceedings, the latter in comparison to the number of attempts to enforce judgments rendered in other Member States? If so, may you please relay the said statistics?

To our knowledge, this issue has not so far been dealt with.

The Supreme Court only recently decided in 20 Cdo 705/2021 on the necessity of oral hearing in the second instance. Pursuant to the Supreme Court, as is clear from Article 47/2 BIa, the procedure for refusal of enforcement shall be governed by the law of the Member State addressed. As the Czech autonomous law does not specifically regulate this type of procedure, it was necessary to apply accordingly the Private International Law Act under which if a party requests to have recognition decided upon in special proceedings, the court shall decide by means of a judgment on recognition, a hearing does not need to be ordered (sec. 18 PIL Act). If an appeal is lodged against the judgment of the court of first instance in which

the appellants claim their right to be heard, they challenge the facts on which the court of first instance relied and propose to adduce evidence in their allegations, which, unlike the court of first instance, the court of appeal learned in its review procedure, it is no longer possible to decide without ordering a hearing. If a decision on refusal of recognition constitutes the obstacle of *res iudicata* for a subsequent application for a recognition of a judgment and it also prevents that judgment from ordering enforcement, or entrusting the executor to enforce the execution of such judgment, the appellants must be given a space in which they could challenge the findings of the court on the grounds for refusal of recognition or refusal of enforcement.

70. Public policy and denial of a fair trial to the defaulting defendant in the state of origin (now Article 45(1)(a) and (b) respectively) have a certain tradition of being invoked rather regularly as grounds for refusal of recognition or enforcement. Has this changed in your jurisdiction following the advent of the 'reverse procedure' (Article 46)? Has the rate of success invoking either of them changed?

    To our knowledge, this issue has not so far been dealt with. Public policy as a ground for refusal of recognition has always been interpreted restrictively (with relation to BI, see e.g. decision of the Supreme Court no 20 Cdo 2302/2017, details see supra no 10).

71. Has the extension of now Article 45(e)(i) to employment matters practically altered the frequency of, or the approach to, enforcing judgments in employment matters in your jurisdiction?

    To our knowledge, this issue has not so far been dealt with.

72. Article 52 strictly and unequivocally inhibits *révision au fond*. Do courts or enforcement agents in your jurisdiction comply with this in practice?

    The prohibition of *révision au fond* is a traditional principle in the Czech private international law and this principle has been explicitly observed in the case-law relating to Brussels Regulations (e.g. decision of the Supreme Court no 20 Cdo 2302/2017 and resolution of the Municipal Court in Prague no 18 Co 407/2016)).

73. Article 54 introduced a rule for adaptation of judgments containing a measure or an order which is not known in the law of the Member State

addressed. How frequently or regularly does such adaptation occur in practice in your jurisdiction? In the event that the judgment gets adapted, how frequently is such adaptation challenged by either party?

To our knowledge, this issue has not so far been dealt with.

74. Translation of the original judgment is optional, not mandatory by virtue of Article 37(2) or Article 54(3) respectively. How often require courts or enforcement agents in your jurisdiction the party invoking the judgment or seeking its enforcement to provide a translation of the judgment?

Pursuant to section 18 of the Civil Procedure Code, participants possess the right to act in their mother tongue before the Czech court at court hearings. The court shall appoint an interpreter to the participant in the proceedings whose mother tongue is other than Czech as soon as such need appears in the proceedings. Pursuant to BIa, translation of the original judgment is optional but the courts and executors in the Czech Republic expect that the submitted foreign document would be translated into the Czech language (except for Slovak language), the submission of a translation of a foreign judgment is a standard procedure.

## CHAPTER VII

### Relationship with Other Instruments

75. Which impact has Annex (1)(q) of Directive 93/13/EEC (Unfair Terms in Consumer Contracts) generated in your jurisdiction?

In the Czech Republic arbitration clauses are not admitted in consumer contracts from December 1, 2016. Sec. 2(1) of the Act No. 216/1994 Coll, on arbitration proceedings and on enforcement of arbitration awards (changed by Act No. 258/2016 Coll.) stipulates "that parties may conclude an agreement that property disputes between them falling within the jurisdiction of courts shall be decided by one or more arbitrators or by a steady court of arbitration except for disputes [....] from contracts concluded between a consumer and an entrepreneur."

76. Can you identify examples for an application of Article 70 in your jurisdiction?

Czech Republic is bound by a number of bilateral treaties on legal assistance concluded among others also with other EU Member States. [e.g. with Hungary, Poland and Croatia (treaty with former Yugoslavia)]. These treaties continue to have effect in relation to matters that are

excluded from the material scope of the Brussels Ia Regulation and not covered by other relevant EU Regulations, e.g. matters of legal capacity of natural persons. All the above mentioned treaties include jurisdiction rules in matters of limitation or deprivation of legal capacity of natural persons.

77. Has the precedence of Art. 351 TFEU to Article 71 Brussels Ia, as established by the CJEU in *TNT v AXA* (C-533/08) and *Nipponkoa Insurance Co. (Europe) Ltd v Inter-Zuid Transport BV* (C-452/12) prompted any practical consequences in your jurisdiction?

This issue is known in the Czech Republic and has been rather critically assessed in literature, as the conditions for application of this TNT formula are somewhat unclear and in opinion of one of the authors of this report do not attribute to legal certainty and predictability.[22]

To our knowledge, the *TNT* formula has not yet been applied with respect to Brussels Ia Regulation but it was applied to Brussels I Regulation on a maintenance issue. In the resolution No 20 Cdo 1851/2013 the Supreme Court held that the Hague Convention on the recognition and enforcement of decisions relating to maintenance obligations of 1973 is to be considered a convention in particular matters in sense of the Article 71(1) BI. If the decision on maintenance for a minor child was rendered in Germany after 1.5.2004 and the enforcement proceedings in the Czech Republic were initiated before the date of applicability of the Maintenance Regulation, i.e. before 18.6.2011, the maintenance creditor had a choice to request enforcement of this decision either on the basis of the Hague Convention of 1973 (without the necessity of declaration of enforceability), or on the basis of the Brussels I Regulation (after such a decision had been declared enforceable in the Czech Republic, or, as the case may be, to submit along with the application for a declaration of enforceability the application for a writ of execution). If the Hague Convention of 1973 does not contain rules on procedure for the recognition and enforcement and refers in Article 13 to the law of the state addressed, in the Czech Republic the procedure based on the Private International Law Act of 1963 (as applicable till 31.12.2013[23]) shall apply. Under the Section 65 of the PIL Act 1963, the recognition and enforcement of a foreign decision in matters of property shall not be pronounced in a separate finding, it shall be recognised by the fact that the Czech organ takes note thereof in the same manner as if it were decision of a Czech organ. The Supreme Court cited the *TNT* decision and concluded

[22] Pauknerová, M. Evropské mezinárodní právo soukromé (European Private International Law, in Czech), 2nd ed., C.H.Beck, Prague 2013, p. 39.
[23] The current PIL Act entered into force as of 1.1.2014.

that the purpose-made interpretation of Article 71 BI is just suitable for the application of section 63 of the PIL Act, as such solution observes a weaker party's position and is in conformity with the best interest of the child. The application of this provision secures a prompt and more effective enforcement of the maintenance decision.

In our opinion, this particular solution of the Supreme Court should be assessed positively as it simplified the situation at hand. However, such a purpose-made interpretation cannot be predicted.

78. Which Treaties and international Conventions have triggered Article 71 in your jurisdiction?
See the answers No 77 and 80.

79. Have there been problems in your Member State with the delineation of the application of Article 25 Brussel Ia and the The Hague Convention on Choice-of-Court agreements?

No problems are known to the authors.

80. Have Articles 71(a) – 71(d) been already applied in your jurisdiction?

In the case-law available there are only cases when the courts applied the CMR based on Art. 71(1) the defendant being domiciled in another Member State bound by the Convention.