

RESUME

Before the Czech Republic's accession to the European Union on May 1, 2004, the Czech procedural law, involving the foreign element comprised of national law (mainly the Act No. 97/1963 Coll., on private and procedural international law) and international agreements that had been previously ratified by Parliament and therefore binding on the Czech Republic. After the accession, the European law became a part of the Czech legal order and it introduced a number of legal rules that changed the international procedural law in the Czech Republic.

The motive for European integration, along with political and economic cooperation, was the desire to make one homogenous Europe, where all factors of production (goods, workers, services and capital) could move freely. The common market was created in order to help individuals and companies to realize economic growth and compete with world standards. For the purpose of regulating the internal market, the EC Treaty imposed on the European institutions the powers to make secondary legislation. On the basis of that, the European Council adopted a number of regulations regarding European judicial cooperation in civil and commercial matters, which unified the international civil procedural rules in the member states.

Today, it is common for European citizens and companies to relocate, to restate and to establish companies within the internal market. International trading relations gives rise to the possibility of transnational debts and insolvency of the companies. An increase in the level of international trade and investment has therefore increased the requirements for satisfactory means of dispute resolution and effective cross-border insolvency proceedings.²³²

The object of this thesis is to introduce in more detail some topics of the Czech international procedure law after the accession of the Czech Republic to the European Union and take a look what kind of benefits it has brought. This thesis deals with the issues of recognition and enforcement of foreign judgments in civil and commercial matters and cross border insolvency proceedings, within the European area, comparing the Czech legislature, which is now to be applied to the non-member states and new European legislature in the Council regulations. Namely, it introduces the provisions of Regulation (EC) No. 44/2001, on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters ("**Brussels I Regulation**") and Council regulation (EC) No. 1346/2000, on

²³² REED, A. *Anglo- american perspective on private international law*, New York: The Edwin Mellen Press, 2003, s. 459.

insolvency proceedings ("**Insolvency Regulation**"), the key instruments for the establishment of a European judicial area and good functioning of the internal market. Furthermore, it briefly introduces the Regulation (EC) No. 805/2004, creating a European Enforcement Order for Uncontested Claims and Regulation (EC) No. 1896/2006, creating a European Order for Payment Procedure and Regulation (EC) No. 861/2007, establishing a European Small Claims Procedure, that also deal with the recognition and enforcement of civil and commercial judgements of specific nature.

The Brussels I Regulation, adopted by the Council of the European Union on 22 December 2000, laid down minimum standards for the free circulation of judgements in all member states. It applies in civil and commercial matters and it does not, in particular, cover status of natural person questions, insolvency proceedings, social security and arbitration. The purpose of the Brussels I Regulation is to simplify access to enforcement in member states, other than that, in which the judgment was given. The principle is that the foreign judgement is recognised automatically, without any special procedure being required, within the EU territory. The enforcement is relied on for the grant of declaration of enforceability issued by the authority in a member state where the judgement is to be enforced. For the Czech Republic, the Brussels I regulation introduced a new procedure called "the exequatur" (i.e. declaration of enforceability). This is seen a step backwards for the Czech law, because before, the foreign judgement was recognized automatically on the basis of reciprocity and enforced if the Czech court ordered its enforcement. Now, the creditor has to apply together for both declaration of enforceability and the order of enforcement. Nevertheless, the Brussels I Regulation brought simplification and certainty for creditors in the means of that the judgments given by the EU member state courts and authorities can be enforced in all other EU member states.

The Council Regulation (EC) No 1346/2000, of 29 May 2000, on insolvency proceedings, which came into effect 31 May 2002, has introduced a legal framework for dealing with cross-border insolvency proceedings in the territory of European Union (Denmark excluded), which was completely new for the Czech Republic. The Insolvency Regulation now contains provisions on jurisdiction built in the principle of COMI of the debtor ("center of main interest"), recognition and applicable law and provides the rules for opening the insolvency proceeding in the member states. It introduces two types of proceedings, the main proceeding and several secondary (regional) proceedings. In the main proceeding, all the debtors' assets are affected. In the secondary proceedings only the assets of the debtor situated in the territory of the member state that opened the proceeding, are affected. The

Insolvency Regulation does not apply to insolvency proceedings concerning insurance undertakings, credit institutions, investment undertakings which provide services involving the holding of funds or securities for third parties, or to collective investment undertakings. As well as the Brussels I Regulation, the Insolvency Regulation on based of automatic recognition of judgments. For the Czech Republic, the Insolvency regulation introduced a new set of rules that also help the creditors to recover their debts and help to ensure the legal certainty.

It is to say, that all the above mentioned regulations regarding European judicial cooperation in civil and commercial matters has brought to the EU states and Czech Republic uniform rules and achieved one of the key aims of the regulations - avoiding forum shopping. Although there are still some issues remaining, I believe that the progressing European integration and the increase of rules of the civil procedure involving the foreign element is a benefit for both EU states and their citizens.

Key words

recognition - uznání

enforcement – výkon

foreign - cizí

judgement – rozhodnutí

element - prvek

insolvency - insolvence

proceedings – řízení

European Union – Evropská unie