

Recognition and Execution of the Foreign Court Decisions

Abstract

Recognition and execution of the foreign court decisions at the same time as globalization represents both an opportunity and a challenge for the international legal system. The article aims to examine the legal framework and practice around the cross-boundary enforcement of judgments, both through a review of national legislation and practice, as well as the experience of foreign countries. The article, through doctrinal analysis, presents the main issues that are essentially important to consider in the process of recognition and enforcement of foreign court decisions. In addition, the main factors influencing the recognition and enforcement mechanisms and the effectiveness of these mechanisms are highlighted. The article presents important differences between legal systems in relation to notice-execution approaches. The issue is interesting from the point of view that it is directly related to public policy, which is accompanied by a number of procedural difficulties. Naturally, effective administration of justice during cross-boundary court proceedings is essential in order to protect the rights of the parties involved in a specific case. In relation to this, the above-mentioned institution is an effective legal mechanism, which in the end effectively helps to harmonize international legal standards, which is necessary for continuous and rapidly developing international legal relations.

The issue is also interesting from the point of view of how the legal systems of countries with different jurisdictions can cooperate so that their sovereignty and public policy are not roughly treated. The transnational approaches that exist today need constant change and renewal, since cultural, political or social factors have a constant influence on this process. Unequal approaches will have a direct proportional negative impact on the rights of individuals.

A comparative analysis of the legal provisions, judicial approaches and international treaties regulating this field reveals the challenges and inconsistencies in the current approaches. Although there is a general tendency to simplify this process, there are significant difficulties

due to differences in national legal traditions, bilateral requirements, sovereignty, and public policy.

Keywords: recognition, execution of decisions.

Introduction

In the wake of transnational globalization, international trade and commercial activities have witnessed a rapid expansion. Concurrently, there has been an upsurge in court disputes across various states, where the legal mechanisms for resolution have not evolved as swiftly as the aforementioned processes.¹ It becomes evident in international disputes that the choice of applicable law and jurisdiction emerges as a critical issue. This is because the procedural frameworks for enforcing foreign court decisions vary across jurisdictions. At this juncture, the significance of international law becomes paramount. Bilateral and multilateral agreements between states play a crucial role in ensuring the recognition and enforcement of decisions. The intricacies of contemporary society have woven a fabric of interdependence among nations, giving rise to what can be termed as a legal landscape. Within this landscape, the domain of national law extends beyond geographical boundaries, necessitating collaborative efforts on a global scale. In this context, states are tasked with creating legal mechanisms that safeguard the rights of the parties involved. However, it is essential to identify three potential impacts of foreign decisions. First, a foreign decision stands as a fact, independent of whether it is recognized or not. Second, once a foreign decision is recognized, it prevents the same issues from being re-litigated in domestic courts.² However, the scope of this preclusive effect is subject to determination by the specific legal system involved. Recognition of a foreign decision occurs when a court in one country or jurisdiction acknowledges and adopts a judicial decision made by the courts of another, issuing a ruling on terms that are substantially similar. This process primarily involves an evaluation of fundamental principles, during which several challenges may arise. These challenges include differences between legal systems, cultural disparities, and divergent interpretations of laws

¹ Model Law on the Recognition and Enforcement of Foreign Judgments, Commonwealth Secretariat, 2018, 1.

² Ralf Michaels, Max Planck Encyclopedia of Public International Law, Max Planck Institute for Comparative Public Law and International Law, Heidelberg and Oxford University Press, 2009, 1-2.

and procedures. At this juncture, it is vital to strike a balance between the interests of the parties involved, aiming to uphold the integrity of both legal systems.³

Declaring that a foreign country enforces decisions a priori does not automatically confer legal force within a country that operates under a specific legal system. The acceptance of a foreign judicial act without thorough examination is considered unacceptable. To address this issue, the Institute of Recognition was established. Under this framework, a decision made by a foreign court is subjected to the legal system of a specific country.⁴ Consequently, the validity of a judicial act is bounded by certain limits and frameworks, as a state should only recognize legal consequences with which it is familiar.

1. The Concept of Recognition and Enforcement of a Foreign Court Decision

The efficacy of a court decision within a specific country is inherently limited to its own territory. Consequently, a foreign court's decision gains validity in another country only upon recognition there, ensuring it does not encroach upon the judicial sovereignty of that nation. This arrangement does not automatically obligate any country to recognize and enforce a foreign court decision. Positions on this issue vary considerably. For instance, a segment of German scholars, including Professor R. Gaimer, argue that based on the principle of "Good Will," states inherently bear the responsibility for direct recognition and subsequent enforcement of foreign decisions. It is crucial to highlight that recognizing a foreign court decision often entails acknowledging certain segments of the ruling rather than its entirety. The party in favor of whom the decision was made should endeavor to secure its enforcement in the second country through legal avenues provided by its laws. This is feasible when the recognizing court has undertaken procedural steps that allow the decision to be enforced within its territory, subjecting it to the enforcing country's legal mandates for compulsory execution. Historically, the acknowledgment of foreign court decisions during the Middle Ages was contingent upon formal approval, a requirement outlined by the so-called "Saxon Mirror."⁵ However, influenced by the burgeoning concept of state sovereignty, nations began

³ Professor Fausto Pocar, EXPLANATORY REPORT, Convention on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters, signed in Lugano on 30 October 2007, Official Journal of the European Union, 2009, 1-3.

⁴ Haas, Ulrich, Die Anerkennung und Vollstreckung ausländischer und internationaler Schiedssprüche: Dissertationsschrift (Schriften zum Prozessrecht), Schriften zum Prozessrecht, 1991, 128-129.

⁵ Charles Platto, Enforcement of Foreign Judgments Worldwide, Published by Graham & Trotman, London, and the International Bar Association (1989, viii and 271 incl. Contents and Preface), 1-20.

to resist recognizing foreign court decisions, and the application of international goodwill in private legal relations was curtailed.

By the end of the 20th century, the "principle of reciprocity" played a pivotal role in shaping discussions on this matter. Essentially, the recognition of a foreign court decision aims to streamline civil legal proceedings and the operation of judicial bodies. This is critical for the disputing party, which seeks to conclusively address all contested issues raised in its claim against the defendant. It is not uncommon for a court decision to necessitate enforcement across multiple countries. Thus, should any country involved in the recognition and enforcement process opt out of enforcement, the aggrieved party is compelled to initiate legal action in that country, inevitably incurring additional expenses, consuming more time, and utilizing more resources. Therefore, each country engaged in international affairs has a vested interest in establishing the most accommodating and advantageous conditions for this process. This inclination frequently leads to the harmonization of foreign and national court decisions.⁶ Regarding the recognition and enforcement of decisions from foreign countries, each nation independently determines its stance on enforcement.⁷ Approaches to decision enforcement are generally categorized into traditional and simplified procedures, with the choice dependent on the legal framework of the country. The traditional method is also known as the "exequature procedure," which involves granting a special exequature to a foreign court decision. This method is observed in countries such as France, Germany, and Switzerland. Within the Georgian legal system, the authority to execute a foreign court decision is vested exclusively in the Supreme Court of Georgia.⁸

2. Regulation of Recognition and Enforcement of Foreign Court Decisions in Georgia

In Georgia, the regulation concerning the recognition and enforcement of foreign court decisions lacks a precise definition. According to Article 68 of the Georgian Law on Private International Law, the legislator stipulates that Georgia recognizes foreign court decisions that have attained legal force. However, a decision will not be recognized if the case falls under the

⁶ Anerkennung und Vollstreckung ausländischer Entscheidungen, Juracademy.de, available here: <https://shorturl.at/hjyIQ> (last reviewed on February 4, 2024).

⁷ Peter Gottwald, Internationales Zivilprozessrecht, 1991, 285.

⁸ Gabisonia Z., Georgian Private International Law, World of Lawyers Publishing House, 2016, 453-468.

exclusive jurisdiction of Georgia, if the party involved was not properly notified about the court summons, or if there were other procedural violations, among other reasons.

The focus of recognition extends beyond merely acknowledging a specific judicial decision as an act of justice. It also encompasses the extension of the legal validity of certain aspects of that decision within the territory of Georgia.⁹ Furthermore, it is crucial to highlight Article 33 of the Constitution of Georgia, which asserts that citizens of other countries and stateless persons residing in Georgia are entitled to the same rights and obligations as Georgian citizens, with the exceptions explicitly outlined by the Constitution and the law. This provision underlines Georgia's commitment to ensuring that the principles of justice and fairness apply not only to its citizens but also to those from other jurisdictions, within the framework established by its legal system.¹⁰

In accordance with Article 11.4 of the Civil Procedure Code of Georgia (CPSU), the common courts of Georgia are vested with the jurisdiction to adjudicate cases that arise from international agreements or involve foreign enterprises and organizations.¹¹ This delineates a broad scope for the application of Georgian judicial authority in matters with an international dimension. Furthermore, the international competence of Georgian courts is clarified under Article 8 of the Law of Georgia on Private International Law. This provision asserts that Georgian courts possess international jurisdiction if the defendant, a legal entity, is situated within Georgia. Additionally, as per subparagraph "B" of Article 9 of the same law, Georgian courts are granted international jurisdiction if Georgia is designated as the place for fulfilling the obligations stipulated by a contract. In an extension of these principles, Article 18 of the Law on Private International Law enhances the autonomy of parties in determining jurisdictional competence. According to paragraph 3 of this article, parties can consent to the jurisdiction of a foreign court if at least one of the parties resides in a foreign country. Such an agreement must be: A) Formulated in writing or verbally, with written confirmation; or B) In the context of international trade relations, established in a form that aligns with customary international trade practices, which ought to be understood or should have been known to the parties involved. Articles 8 and 9 of the law expound on a nuanced approach to international civil procedural law, acknowledging various bases for international competence.¹²

⁹ Liluashvili B., Dissertation Thesis: Recognition and Execution of Foreign Court Decisions in Georgia, Ivane Javakhishvili Tbilisi State University, 2009, 56.

¹⁰ Article 33, Constitution of Georgia, August 24, 1995, Parliament of the Republic of Georgia.

¹¹ Article 11, Civil Procedure Code of Georgia, November 14, 1997, Parliament of Georgia.

¹² Articles 8, 9, 18, 68, Law of Georgia on Private International Law, April 29, 1998, Parliament of Georgia.

In the realm of international law, the differentiation between various forms of jurisdiction—such as direct and indirect, international and local, as well as common and special, optional, and exclusive international competence—is crucial. This framework allows for the identification of specific jurisdictions like common and special international competence. In the context of continental European legal systems, common international competence is primarily associated with the defendant's place of residence, adhering to the principle of *actor sequitur forum rei*, which means "the plaintiff follows the forum of the defendant."¹³

The Supreme Court of Georgia plays a pivotal role in this process, as it is tasked with verifying the decisions of foreign courts solely based on the legal prerequisites for their recognition or execution. For a foreign court decision to have its legal force extended to another country, it must be supported by both factual and legal justifications. Factual grounds refer to the implications of a foreign court's decision within the territory of the country that is considering its recognition. On the other hand, the legal grounds consist of the norms of private international law that guide the examination and execution of such decisions. This nuanced approach ensures that the recognition and enforcement of foreign court decisions are grounded in a balance of international legal standards and domestic legal principles, facilitating cross-border legal proceedings while respecting the sovereignty of nations.

The Supreme Court of Georgia's approach to recognizing and enforcing foreign court decisions is fundamentally grounded in the protection of the rights and legitimate interests of the parties involved. This process not only acknowledges the legal outcomes emanating from such decisions but also seeks to ensure their applicability and enforcement within Georgian territory. The pivotal aspect of this procedure is the determination of the specific criteria that the Georgian court employs to assess the recognizability of foreign judgments. These criteria can vary significantly across jurisdictions and may be influenced by the domestic legislation of Georgia or by international agreements to which Georgia is a party.

Therefore, the Supreme Court of Georgia acknowledges the rights and legitimate interests protected by a foreign court decision by recognizing it, thereby allowing its legal effects to extend within Georgia. When addressing the issue of recognizing a decision from a foreign court, it is crucial to understand the criteria applied by the court in the respective country towards such recognition. These criteria can vary. Moreover, the legislation of the concerned country or any bilateral international agreement it has entered into may explicitly outline specific principles for recognition. Additionally, the concept of "principle of mirror reflection" has gained traction in the international civil process. This principle dictates that the decision-

¹³ Decision of the Supreme Court of Georgia, Case No. A-2761-sh-69-2016, July 7, 2017.

making court should reflect its country's rules regarding the competency of making decisions on a foreign court's decision.¹⁴

In deliberating on the legitimacy of such recognitions, the issue of "de facto" territories must be considered, as parts of Georgian territory are occupied. This occupation means Georgia does not have an effective control mechanism over these territories.¹⁵

3. General International Review of Foreign Decision Recognition and Enforcement

Throughout the 19th century, various nations began to establish bilateral treaties regarding the recognition and enforcement of judicial decisions between them. These agreements were often tailored to the specific needs and legal environments of the participating countries, encompassing reciprocal measures for acknowledging each other's court rulings. It's important to highlight that EU directives, which are binding for member states, necessitate the incorporation of specific regulations from the directives into domestic law.¹⁶

The Brussels Convention of 1963 addressed jurisdiction and the enforcement of decisions in civil and commercial law cases, outlining which country's courts were competent in cross-border disputes. This convention set up a legal framework determining the appropriate court to consider a case, taking into account factors such as the domicile and place of business of the parties involved. Focusing mainly on civil and commercial issues, the convention explicitly excluded certain domains, such as specific aspects of family law. It allowed for exceptions where member states could refuse recognition or enforcement on grounds including public policy concerns or procedural infringements. The overarching goal of the convention was to bolster legal certainty and facilitate cross-border commerce and cooperation within the EU. This framework was further elaborated and enhanced by the 1968 convention, which significantly contributed to defining the legal parameters for jurisdiction, as well as the recognition and enforcement of decisions, across the European Union.¹⁷

Moreover, the Lugano Convention of 1988, which encompasses not only EU member states but also members of the European Free Trade Association (EFTA), mirrors the principles of

¹⁴ Decision of the Supreme Court of Georgia on the case No. A-1522-44-2022, November 28, 2022.

¹⁵ Akhaladze, M., *Recognition and Enforcement of Court Decisions of Foreign States in the Practice of the Supreme Court of Georgia*, Supreme Court of Georgia, 2021, ISBN 978-9941-8-2368-8, 6.

¹⁶ Lakerbaya and., *Dissertation - Comparative Analysis of Georgian and European Contract Law*, Ivane Javakhishvili Tbilisi State University, 2016, 34.

¹⁷ Robert C. Reuland, "The Recognition of Judgments in the European Community: The Twenty-Fifth Anniversary of the Brussels Convention," *Michigan Journal of International Law*, 1993, 560-572.

the Brussels Convention. Beyond the realms of family law, bankruptcy, and arbitration, it addresses a wider scope including contracts, torts, and more. Initially established in 1988, the Lugano Convention aimed to extend the regulatory framework of the Brussels Convention to EFTA countries, promoting a unified legal foundation, enhancing legal certainty, and fostering cross-border commerce and collaboration.¹⁸

The most recent iteration, the 2007 Lugano Convention, which took effect in 2010, represents a significant update and revision.¹⁹ In 1997, the Council of the European Union initiated a joint revision of both the Brussels and the 1988 Lugano Conventions, involving an ad hoc group²⁰ tasked with their comprehensive harmonization and amendment. This effort aimed to address interpretative challenges and ensure the conventions remained pertinent to cross-border relations. A critical focus was placed on streamlining the enforcement of decisions, a priority underscored in Article 65 of the Amsterdam Treaty of 2 October 1997, even though this was not in effect when the revisions commenced.²¹

Building upon its predecessors, the Lugano Convention of 1988 served as an important legal framework that extended the principles of the Brussels Convention to the European Free Trade Association (EFTA) member states, including Switzerland, Norway, Iceland, and initially Denmark. Its essence was similar to that of the Brussels Convention, covering a wide range of legal matters beyond family law, bankruptcy, and arbitration to encompass contracts, torts, and more. The objective behind the creation of the Lugano Convention was to bring about a unified legislative foundation among the states, thereby enhancing legal certainty and facilitating cross-border commerce and cooperation. The Lugano Convention underwent significant revisions and updates, culminating in the 2007 Lugano Convention, which came into effect in 2010. This updated version marked a departure from the 1988 Lugano Convention by not only including EFTA countries but also expanding its reach to encompass EU member states. It broadened its scope significantly and aimed to align more closely with the legal principles established by the EU, thereby promoting a more flexible and integrated approach to addressing cross-border legal issues.²²

¹⁸ Council Regulation (EC) No. 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters, available at: [link](#) (last reviewed on February 04, 2024).

¹⁹ Csongor István Nagy, "Cross-Border Litigation in Central Europe: EU Private International Law Before National Courts," Kluwer Law International, 2022, 0-20.

²⁰ Opinion 1/03 Opinion pursuant to Article 300(6) EC, available at: [link](#) (last reviewed on February 04, 2024).

²¹ Treaty of Amsterdam amending the Treaty on European Union, the Treaty establishing the European Communities and certain related acts, 2 October 1997, available at: [link](#) (last reviewed on February 04, 2024).

²² Enforcement of foreign judgments, available at: [link](#) (last reviewed on February 24, 2024).

Simultaneously, the European Union has been instrumental in progressively harmonizing the rules of International Civil Procedure Law. Through the adoption of various directives, the EU has set out comprehensive regulations concerning jurisdiction, the recognition and enforcement of decisions in civil and commercial law, matters of marriage, the collection of evidence, the exchange of documents, and International Insolvency.²³ The efforts undertaken by both the European Union through its directives and the parties to conventions like the Lugano Convention are geared towards simplifying the processes of recognition and enforcement. These efforts include adapting specific measures to suit the particularities of each case. Given that the approaches and requirements may vary across domestic, commercial, and other types of international disputes, a thorough understanding and application of the fundamental principles outlined in these legal instruments are crucial. This tailored approach ensures the effective and nuanced handling of cases, reflecting the diverse nature of legal disputes in an international context.

4. The Recognition and Execution of Foreign Court Decisions Across Different Countries' Legal Systems

Countries may have treaties, bilateral or multilateral agreements, that regulate the recognition and enforcement of foreign decisions, with the application of flexible legal mechanisms aiding in simplifying this process. Nonetheless, challenges abound, often due to differences in legal systems, cultural disparities, or even political tensions between countries. A distinct approach is notably apparent in family law disputes, where specialized procedures may be imposed. This is because each country's legal system possesses its own unique characteristics and complexities that influence the recognition and enforcement of foreign decisions.

In the context of the United States, any decision made by a foreign country or another U.S. state is treated as a "foreign decision" and cannot be enforced without prior court action that "recognizes" that decision as an interstate decision. However, based on the principle of full faith and credit, a decision rendered in any U.S. state or federal court is afforded the same recognition and legal effect in any other U.S. court. This dual approach underscores the variances in handling foreign decisions within a single country's legal framework, reflecting both the challenges and mechanisms in place to navigate these complexities.²⁴ This approach does not extend to decisions rendered by foreign courts. Regarding this, it should be noted that

²³ Kazhashvili G., "Measures for the Provision of Claims in the Practice of the European Court of Justice and the European Court of Human Rights," Law Journal N1, IV. Javakhishvili Tbilisi State University, 2018, 296-300.

²⁴ Article IV, Constitution of the United States, available at: [link](#) (last reviewed on February 04, 2024).

the principle of comity among nations has fostered a pro-recognition stance within U.S. courts, even in the absence of bilateral or multilateral treaties.²⁵ The District of Columbia, the Northern Mariana Islands, and the U.S. Virgin Islands have adopted the Uniform Enforcement of Foreign Judgments Act (UEFJA), 13 U.L.A. 261 (1986), which mandates the enforcement of judgments from other states and territories. This Act essentially establishes a streamlined process for the recognition and enforcement of judgments made in one state by the courts of another state. The UEFJA enhances the efficiency and uniformity of this process in recognizing and enforcing foreign court decisions. The U.S. states that have not adopted the Uniform Enforcement of Foreign Judgments Act are California and Vermont.

The recognition and enforcement of foreign judgments in France are governed by both international conventions and domestic regulations. France has ratified numerous international agreements that facilitate the recognition and enforcement of foreign judgments. The Brussels I Regulation is a significant convention that governs the recognition and enforcement of judgments in civil and commercial matters.²⁶ The French Code of Civil Procedure (Code de Procédure Civile) addresses the recognition and enforcement of foreign judgments. This code specifies the procedures, conditions, and criteria required for recognizing and enforcing judgments from foreign courts. Specifically, Article 509 of the code stipulates that a foreign judgment can be recognized and enforced in France if it fulfills certain conditions, such as adherence to international conventions, the relationship with the country of origin, and compliance with French public policy. Enforcement can only proceed based on the court's declaration of enforcement (exequatur), unless an international agreement stipulates that exequatur is not required. This declaration must be issued by the Civil Court (Tribunal de Grande Instance) at the location of the individual against whom the enforcement is sought. An analysis of French judicial practices allows for the generalization of criteria for the enforcement of a foreign court decision, including the connection of the case to the foreign judge, the absence of violations of French jurisdiction, and compatibility with French public policy.²⁷

In Canada, for a foreign court decision to be recognized and enforced, three essential prerequisites must be met. First, only final decisions from foreign courts will be enforced. A "final" decision is one that is no longer subject to alteration by the originating court. This

²⁵ Dannis Campbell, "Enforcement of Foreign Judgments," 1997, 128.

²⁶ Delphine Eskenazi, Admitted to The New York and Paris Bars, Partner, Libra Avocats, "The Enforcement of Foreign Judgments in France," p. 6, available at: <https://shorturl.at/fwzJP> (last reviewed on February 04, 2024).

²⁷ Is it There or Exequatur Procedure? CMS Law-Tax-Future, available at: [link](#) (last reviewed on February 04, 2024).

implies the court should lack the authority to modify the decision or reconsider the matter. It is crucial to understand that there is no automatic right to postpone a request made in a foreign jurisdiction, nor does the possibility of an appeal affect the decision's finality and its enforceability. The considerations for courts in this context include the timeliness of the request and the potential harm to any party due to the postponement. Second, the foreign decision must pertain to either property or non-property matters. Lastly, the foreign court issuing the decision must have had jurisdiction over the subject matter of the dispute. The competency of the foreign court is determined not by its own regulations but by specific recognition and enforcement tests applied in Canada.²⁸

Germany, as a member of the European Union, adheres to The Hague Convention on Choice of Court Agreements of June 30, 2005,²⁹ which establishes a framework for the recognition and enforcement of judgments in cases governed by agreements selecting a court in a contracting state. This Convention mandates that the recognition and enforcement procedures of the state where enforcement is sought will apply. However, refusal to recognize and enforce a judgment can only be based on specifically listed grounds within the Convention. The Convention's scope includes Denmark, Mexico, Montenegro, Singapore, and the United Kingdom, post its exit from the European Union. If EU legislation or international treaties do not apply, or if they allow for the use of domestic law, German courts default to German domestic law for recognizing and enforcing foreign judgments. The recognition of foreign judgments is governed by Article 328 of the Code of Civil Procedure (ZPO), while enforcement is detailed in Articles 722 and 723 of the ZPO.³⁰ In Germany, there is no specific limitation period designated for initiating proceedings for the recognition and enforcement of foreign judgments. Some legal opinions suggest that German courts could apply the general 30-year limitation period that is applicable to judgments made by German courts. However, there is limited judicial practice on this matter, indicating that the application of the 30-year limitation period is not well-established in case law.³¹

²⁸ Craig Lockwood, Adam Hirsh, "Enforcing Foreign Judgments in Canada," Osler, April 2023, available at: [link](#) (last reviewed February 04, 2024).

²⁹ Convention of 30 June 2005 on Choice of Court Agreements, HCCH, available at: [link](#) (last reviewed February 2024 04).

³⁰ Article 328, 722, 723, Zivilprozessordnung, Bundesministerium der Justiz, available at: [link](#) (last reviewed February 04, 2024).

³¹ Germany: Enforcement of Judgments in Civil and Commercial Matters, Legal 500, available at: [link](#) (last reviewed February 04, 2024).

German and EU legislation fundamentally prohibits "révision au fond," meaning that courts do not reassess the substantive validity of foreign judgments. This prohibition extends to the examination of the facts and the application of the law made by the foreign court. In England, the principle of "action upon judgment" is employed, which allows for the recognition and enforcement of foreign judgments based on the premise of a claim. Under this principle, a foreign judgment is treated as a "legal obligation" of the debtor, necessitating enforcement by the creditor through an "action of debt." Importantly, adhering to this principle does not contravene the prohibition against "révision au fond" because it does not entail a legal and substantive review of the foreign judgment.³² Additionally, it's important to note that a German court will evaluate the outcome of a foreign judgment to ascertain whether it contravenes German public policy. Should new facts and circumstances come to light after a foreign judgment has been issued, these can be presented to a German court to assess whether recognizing and enforcing the judgment would breach German public policy norms. If a foreign judgment from a non-EU country is subject to domestic law enforcement, specifically through the Recognition and Enforcement Act (AVAG), which is primarily an ex parte procedure,³³ enforcement is generally restricted to provisional measures until the conclusion of the debtor's term. Upon application, courts may prolong this enforcement limitation to the subsequent appeal stage, if applicable.³⁴ When it comes to the recognition and enforcement of foreign court decisions, court costs and the expenses of the parties, including attorney's fees, can indeed be recovered from the debtor. However, the compensation for attorney's fees is constrained to the statutory fees as outlined in the German Act on the Remuneration of Lawyers. It is important to underline that the fee determined by this legislation is based on the value of the dispute, and it may be substantially lower than the actual cost of legal services rendered.³⁵

Broadly speaking, once a court has rendered a decision in favor of an individual, that decision is automatically acknowledged across all EU member states. The refusal to recognize and enforce such decisions is reserved for exceptional circumstances only. This principle

³² STEPHEN MOI and others, "ENGLISH HIGH COURT ENFORCES FOREIGN JUDGMENT THAT is UNENFORCEABLE in the JURISDICTION of ORIGIN," Mayer/Brown, 20 DECEMBER 2023, available at: [link](#) (last reviewed on February 04, 2024).

³³ Execution judiciaire en Europe, E-note 1 – the prerequisites for execution, the basic general requirements for enforcement, available at: [link](#) (last reviewed on February 04, 2024).

³⁴ Oliver Browne and others, "Enforcement of foreign judgments 2022," Latham & Watkins LLP, Foreign Judgments 2022, Lexology, 39-46, available at: [link](#) (last reviewed on February 04, 2024).

³⁵ Act on the Remuneration of Lawyers (Rechtsanwaltsvergütungsgesetz – RVG) is available at: [link](#) (last reviewed on February 04, 2024).

underscores the commitment within the EU to ensure the free movement of judgments, reinforcing legal certainty and mutual trust among its member states.

5. Analysis of Judicial Practice

In analyzing judicial practice, it's important to examine a specific case that was brought before the Supreme Court of Georgia on November 21, 2022. The case involved a representative of the children's father who alleged that on October 28, 2022, in Tbilisi, the defendant forcibly took the children from their school. Subsequent to this event, the children, under duress, provided testimonies that led to the pre-trial detention of their father. The father's representative argued that despite the Supreme Court's ruling, neither the prosecutor's office nor the internal affairs bodies took appropriate action, resulting in the children remaining in the custody of their mother. The mother's abusive behavior towards the children was not only substantiated by several court decisions but also by publicly available footage showcasing her aggressive behavior. Furthermore, it was highlighted that multiple governmental agencies, including the Ministry of Internal Affairs and the LEPL State Care, Protection of Victims of Trafficking, and Victim Assistance Agency, had been petitioned numerous times to safeguard the children from their abusive mother. This case underscores the challenges and complexities involved in child custody disputes, especially when allegations of abuse are involved. It also raises questions about the effectiveness of law enforcement and child protection agencies in responding to court orders and protecting vulnerable children from harm.

The applicant's representative appealed to the Supreme Court for the issuance of a writ of execution, which would mandate the guardianship authority and other relevant entities to implement the court's decision that had restricted the parental rights of the children's mother. This request underscored the need for concrete actions to ensure the court's ruling was effectively enforced, particularly concerning the limited parental rights. Additionally, the representative sought clarification from the court regarding the criteria it would use to determine the extent of the restriction of parental rights. This request was aimed at understanding the specific considerations and conditions under which parental rights could be limited, providing a clearer framework for all parties involved. The involvement of the agency for state care, protection of victims of trafficking, and assistance to victims was highlighted, particularly their request for a writ of execution and further explanation on the restrictions of parental rights. The agency's stance was notable, especially given the circumstances where the children's whereabouts were kept secret. This situation was complicated by the fact that the mother, who was in custody of the children, had her parental

rights limited under Article 74 of the Family Code of the Russian Federation. The limitation of her rights raised significant concerns about her legal ability to retain custody of the children.

The case holds significance due to its focus on minors and their best interests, alongside the principle of *révision au fond*, as discussed in the context of US law, with pertinent explanations provided. Specifically, the Court of Cassation acknowledged the foreign court's decision that limited the parental rights of the children's mother. However, the decision also makes clear that the Georgian court's recognition of a legally binding decision from a foreign country does not entail a reevaluation of the case's core circumstances, the establishment of facts, or a reexamination. Moreover, the action of defining a foreign court's decision and issuing an additional ruling contradicts the principle known as the prohibition of *révision au fond*. This principle, previously discussed, bars any substantive reevaluation of a decision rendered by a foreign court. Consequently, considering the legal norms mentioned above and the arguments presented by the children's father's representative, the Court of Cassation determined that the legal prerequisites for issuing a writ of execution were not met. The ruling by the Cassation did not include any enforceable judgment. It recognized within Georgian jurisdiction the portion of the foreign court's decision requested by the children's father. The Court of Cassation found that the operative part of the Supreme Court of Georgia's ruling from July 6, 2022, lacked an enforceable element; thus, the request for a writ of execution was denied.³⁶

In a distinct case, the Chamber of Civil, Entrepreneurial, and Bankruptcy Cases of the Supreme Court of Georgia reviewed the matter without an oral hearing. The case involved the petition by B. German for the recognition within Georgian territory of the verdict rendered on January 30, 2002, by the St. Court of First Instance regarding his divorce from citizen M. O. According to the documents dated September 29, 2003, it was established that B.E. and M.O. were married in Georgia in 1996. They welcomed a son, E., on September 6, 1999. By January 15, 2001, the marital relationship between B.E. and M.O. had effectively ended, with the couple living separately for over a year. Following this period, B.E. filed for divorce at the St. H. Court of First Instance in Germany, a motion that M.O. supported.

In 2002, the court issued a judgment on January 30, terminating the marriage between the parties and assigning custody of their child to E. B. by mutual agreement. This judgment became legally effective on March 20, 2002. Subsequently, E. B. petitioned the Supreme Court of Georgia for recognition within Georgia of the January 30 verdict rendered by the German Court of First Instance. The chamber ruled in favor of the petition, basing its decision on Articles 68-69 of Georgia's "Law on Private International Law," Article 284 of the Criminal

³⁶ Decision of the Supreme Court of Georgia on the case No. a-1522-44-2022, November 28, 2022.

Code regarding "Legal Assistance and Legal Relations in Civil, Family, and Criminal Cases," and the 1993 Minsk Convention.

This case is noteworthy as it falls within the realm of family legal disputes and pertains solely to the recognition of foreign judgments rather than their enforcement. Consequently, certain acts, by virtue of their nature, do not require enforcement. The court's acknowledgment effectively confirmed the legal fact that the marriage in question had been dissolved and no longer exists. However, the case is particularly intriguing because the Court of Cassation, in its deliberations, referred to the Minsk Convention, despite Germany not being a signatory to this convention, raising several questions regarding this reference.³⁷

Conclusion

The recognition and enforcement of foreign court decisions are foundational to fostering international cooperation, enhancing legal security, and safeguarding justice across borders. These actions represent globally interconnected transactions, constantly influenced by cross-border factors. To a certain extent, the acknowledgment and implementation of a foreign decision bolster confidence in international cooperation among states. Additionally, it naturally assures individuals that their rights and obligations will be safeguarded beyond domestic frontiers. Beyond these points, this process is pivotal in driving economic growth and cross-border investments, as it allows parties to participate in global commerce with the expectation that contractual obligations will be honored, thereby contributing to the economic development of nations. Indeed, the acknowledgment and enforcement of foreign court decisions underscore the collective commitment of countries to uphold the rule of law and show mutual respect for diverse legal systems.

At the same time, given the dynamic nature of legal development, the mechanisms for the recognition and enforcement of foreign decisions consistently require refinement to foster a global environment conducive to justice. Alongside the significance of this matter, the sovereignty of states—representing the independent authority and autonomy of a nation within its territorial borders—must be both acknowledged and deemed essential. This aspect inevitably introduces complexities into the process of recognizing and enforcing decisions, stemming from divergent interpretations of legal systems, cultural norms, and public policy. States retain the sovereign right to reject the enforcement of a foreign decision if it contravenes their public policy. International treaties and conventions seek to alleviate these challenges by

³⁷ Decision of the Supreme Court of Georgia on the case No. N-1226-71-03, September 29, 2003.

establishing a framework for mutual recognition and enforcement. Thus, these agreements aim to enhance harmonization and cooperation among states while upholding their sovereignty. Moreover, the influence of diplomatic relations and bilateral or multilateral agreements plays a crucial role in shaping the practical application of sovereignty in the context of recognition and enforcement. At its core, state sovereignty serves as a key determinant in establishing a system for the recognition and enforcement of foreign decisions. It embodies the power and discretion of nations in navigating the intricacies of international law, with their autonomy being counterbalanced by their engagement in the global legal community.

Notable disparities in legal principles, especially between the civil law and common law systems, can pose obstacles to the enforcement of foreign judgments. Even when a foreign decision gains recognition, the process for its enforcement may become complex, being heavily influenced by domestic laws and procedural norms.