

López de Tejada on the Abolition of Exequatur

María López de Tejada holds a PhD in law from the University of Paris II with a thesis on the abolition of the exequatur procedure. She has recently published an article on the topic in the Spanish journal La Ley (Diario La Ley, Nº 7766, Sección Tribuna, 30 Dic. 2011). Here is a summary of the contents.

The execution of foreign judgments has traditionally been subject to an enforcement procedure in the European judicial area. However, the Community lawgiver wants to get rid of that process so that any judicial decision could deploy its effects and be enforced throughout the community, without prior declaration of enforceability or control in the executing Member State. Several regulations of limited material scope have already achieved that objective, but the idea is to go further and abolish the exequatur procedure for all civil and commercial matters. Such an objective looks like praiseworthy at first sight, because it tends to break with a traditional legal lack of openness and to restore the continuity of the right to enforcement of anyone who has obtained a favorable judgment. But a deeper analysis of the issue shows that right now, the abolition of exequatur would be a hasty, even dangerous step for both the citizens and the harmony of the juridical systems of the Member States. The suppression of the exequatur procedure is based on the assumption that foreign court rulings, delivered under common jurisdictional criteria, provide similar guarantees and should be regarded as national decision. The truth is that until a higher level of integration has been reached such presumption, which implies the perfect equivalence of all national decisions, is simply excessive and unrealistic. On the one hand, the European system of jurisdiction set in regulations is still far from perfect; and the practical application of the rules leads too often to unpredictable consequences. On the other hand, the judicial area is characterized by a profound heterogeneity in as far as procedural law is concerned; and unfortunately both the ECHR and the ECJ case law still show scenarios of violations of fundamental rights by the States -in particular of Article 6 of the ECHR.

The suppression of all kind of control (meaning, public order clause included) of foreign rulings opens the door to the community space of judgments contrary to the fundamental rights enshrined in the ECHR and in the European Charter of

Fundamental Rights, notwithstanding the Member States commitment to abide by both them.