Recognition and Enforcement: 30 years from the entry into force of the Brussels Convention in Greece – A practitioner's account –

I. Introduction

It was the 3rd of March 1989, when an announcement was published in the Official Gazette of the Hellenic Republic, stating that the Brussels Convention would finally enter into force on April 1, 1989. Why finally? Because it took the state nearly a decade after the accession to the EC [1.1.1981] to activate the Brussels Convention in the country. After a long hibernation time, Law Nr. 1814/1988 was published in November 11, 1988, marking the official ratification of the Convention. In less than a year, the Convention became operative in the Greek legal order. Since that time, a great number of judgments were published in the legal press, some of them with elucidating notes and comments. Commentaries and monographs paved the path for widespread knowledge and ease of access to the new means of handling cross border cases within the EC.

Almost 12 years later, Regulation 44/2001 replaced the Brussels Convention. On the whole, the application of the Regulation in the country can be described as satisfactory. Courts proved to be open minded in exequatur proceedings, thus fulfilling the mandate for a free circulation of judgments dictated by the EU. Only minor issues cause some skepticism, the majority of which could have been solved by means of an implementing act to the Regulation. Regrettably enough, Greek governments persistently omit to issue any such acts in the course of communitarization in civil and commercial matters. Consequently, primarily academics, and later courts, were called to find viable solutions to problems faced or potentially confronted in the future.

II. Problems faced / solutions given

A problem causing doubts and confusion in Greece was the exact definition of the term used under Art. 36 Brussels Convention. Unlike the English version, where

the same terminology is used ["may be appealed"], the Greek text showed a discrepancy, causing contradictory rulings. The issue reached the Supreme Court, which finally clarified the problem in 2001. In particular, the wording used in Articles 36.1, 37-40 Brussels Convention did not make specific reference to an *appeal*. Instead, the terminus used was the equivalent of "*recourse*". For the purposes of Art. 37 Brussels Convention, the Hellenic Government declared that the "*recourse*" shall be filed at the Court of Appeal. It is an elementary rule in Greek civil practice, that all remedies against first instance decisions are filed with the secretariat of the court rendering the decision challenged. In light of this fact, several lawyers lodged the "*recourse*" there, i.e. at the competent 1st instance court. In the ensuing process before the CoA however, they were in for a surprise: Many appellate courts in the country repeatedly dismissed the "*recourse*" as inadmissible, because it was not filed properly. As a result, courts followed different directions which can be summarized as follows: The first view considered the "recourse" as a blend of 1st and 2nd instance legal remedies; consequently it reached the conclusion that ordinary rules of appeal proceedings are to be used in the process at hand, with the exception that the "*recourse*" shall be filed with the secretariat of the CoA, which was the competent one according to Art. 37 Brussels Convention. Furthermore, given the fact that the appellant is not obliged to serve the appeal under Greek law, the terms set under Art. 36.2 Brussels Convention & 43.5 Brussels I Reg. relate to the act of filing, not serving the document. The opposite view however confers to the recourse the nature of third party proceedings, thus changing the procedural requirements. In particular, by adopting this position, the appellant is burdened with the duty to serve the document within the term of one or two months respectively. The latter view has finally prevailed.

Following the entry into force of the Brussels I Regulation, the above issue has been made redundant, given that the Greek wording was streamlined to that of the English text. The Greek version of the Brussels I bis Regulation follows suit. However, it still affects the adjacent area of the Lugano Convention. A recent ruling of the Supreme Court bears witness to this assumption [SC 2078/2017, confirming Thessaloniki CoA 1042/2015, published in: Civil Procedure Law Review 2015, 351, note *Anthimos*: Filing does not suffice; service of the appeal to the appellee is imperative, otherwise the remedy is dismissed as inadmissible].

III. The Brussels I bis Regulation

Entering into the era of the Brussels I bis Regulation, we see however a remarkable absence of case law in regards to Chapter III on recognition and enforcement: For more than 4 years after the Regulation entered into force, there isn't a single judgment reported in the country, most notably on Section 3, which established the new system of the application for refusal of recognition and enforcement [Articles 45 et seq.]. In the sole case found, the creditor followed erroneously the previous system of exequatur, which led the court to dismiss the application as inadmissible [lack of locus standi].

Hence, the question: Is Greece the sole exception to other Member States' practice? I could associate the lack of case law with the devastating situation my country suffered over the last years: The Grexit-nightmare, financial instability and capital restrictions could serve as an explanation for this plunge.

However, to the extent of my ability to follow the German literature, I do not see any application of Chapter III in Germany either. It would be very interesting to find out by the readers of this blog, whether there's already some 'action' in other Member States.