

Cuniberti on the Efficiency of Exequatur

I have posted Some Remarks on the Efficiency of Exequatur on SSRN. The abstract reads:

After the European Council announced that it wanted to suppress intermediate measures in the enforcement of foreign judgments within the European Union, the European Commission has proposed to abolish the procedure whereby courts of the Member states may verify whether foreign judgments meet some basic requirements of the forum (exequatur).

The project of abolishing exequatur has attracted strong criticism among European scholars. It has been pointed out that the most important function of exequatur is to verify whether the foreign court did not violate human rights, and that suppressing it would entail dramatically reducing human rights protection in the European Union.

Most of these scholars have dismissed the economic argument made by the European lawmaker to justify its project that the existing procedure, which delays and increases the costs of cross-border debt recovery, is simply too costly. This short paper offers some preliminary thoughts on the efficiency of the exequatur procedure. It argues that as human rights violations are, in practice, almost exclusively violations of procedural rights, the impact of human rights violations is essentially to decrease the chances to win on the merits in cases where the symbolic dimension of the right to a fair trial is negligible. The paper thus distinguishes between two categories of cases and argues that, in commercial and consumer cases, exequatur is clearly too costly and should be abolished, while the situation might be different in tort and labor cases.

The paper is forthcoming in the *Festschrift für Bernd von Hoffmann*.