Aspirations and reality: The right to apply for a review under Art. 19 of the EU Maintenance Regulation

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Overview

Theses

1. The article 19-procedure is the only guarantee for procedural fairness on a european level in regulation 4/2009. The article 19-procedure is an important justification for the abolition of the enforceability procedure and of controls of the decision in the enforcement member state. Its relevance differs among the member states.

2 Given the central importance of the article 19-procedure, common european standards in as many aspects as possible are desirable. Those common standards should be laid down in clear and unambiguous terms. Clear and detailed common european standards do not strongly interfere with the member states‘ procedural autonomy, since article 19 provides for a subsidiary remedy.

3. The limitation of relevant mistakes to the initial phase of the proceedings might be deplored, but is sensible with regard to the abolition of the public policy exception.

4. Most vague terms of article 19 can be interpreted with reasonably certainty, but the cumulation of a multitude of terms in need of interpretation may be harmful.

5. The time limit for the article 19-application lacks clarity. It should be handled flexibly with regard to all the circumstances of the case, without recourse to national time limits. The appreciation of the individual case should take account of factors such as the distance between the defendant‘s habitual residence and the court, of the complexity of the case and of the need of translation of documents. A hypothetical standard time limit should guard a considerable distance to the maximum time limit of 45 days.

6. The regulation’s provisions for the national procedures implementing article 19 lack detail.

7. The member states‘ provisions about the competent court differ strongly. A mixed approach, depending on whether the case concerns Art. 19 (1)(a) or Art. 19 (1)(b) appears particularly favourable.

8. The member states‘ provisions about the applicable procedure differ strongly. More detailed provisions need to be developed on the basis of the principles of equivalence and efficiency.

9. On a practical level, the member states‘ communications as provided for by article 71 (1) (c) reg. 4/2009 are not in all cases satisfactory for the defendant.

10. As various other member states, German implementation law refers to the provisions on judgments given by default (see § 70 (3) AUG, §§ 343 et seq. ZPO) for the consequences of a successful article 19-application. Though German terminology might be irritating, since it provides for a „continuation“ of the proceedings, the provisions about judgements given by default give the court the necessary freedom to review the decision. The German implementation of Art. 19 fulfills the regulation‘s requirement that the attacked decision shall be „null and void“.