



The New Hungarian Private International Law Act – a Wind of Change

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Abstract. On 4 April 2017, the Hungarian Parliament adopted the new Hungarian Private International Law Act. The present study focuses on the following topics: the reasons for the revision of the previous legislative decree on Hungarian private international law, the appearance of new theoretical conceptions in the Hungarian private international law of the XXI century, the almost two-year procedure of the creation of the new Hungarian Private International Law Act, the structure of the Act, and the major changes compared to the previous codex.

Keywords: codification, the new Hungarian Private International Law Act, conflict-of-laws rules, connecting factors

I. Introduction

Until the middle of the 20th century, the sources of the Hungarian Private International Law were scattered in different laws, which were complemented by judicial practice in case it was necessary in solving a case. This was also complemented by international commercial conventions and bilateral conventions on mutual legal assistance. The hardships due to the lack of a unified source inspired the first draft of the Hungarian Private International Law in 1948.

However, the draft of legal scholar István Szászy¹ was not adopted due to the political atmosphere of the time. The next attempts were in 1968 and 1970, when

1 István Szászy (1899–1976) was an internationally respected legal scholar, university professor, and judge. His work is significant in several fields: private law, international private law, international procedural law, and international law. He was a full member of the Institut de Droit International, a visiting lecturer of the Academie de Droit International in Hague multiple times, and the creator of the first Hungarian international private law draft. He participated in the drafting of the Egyptian civil code and also was the director of the first Private Law Department of Pázmány Péter University of Budapest.

the second and third drafts were proposed respectively, but still without any result. After almost a ten-year hiatus, the fourth draft was prepared based on the concept of Ferenc Mádl² in 1978, which was adopted (by the Presidential Committee of the Hungarian People's Republic) and published as Law-Decree No 13 of 1979 on International Private Law.³

This law regulated the private international relations and international procedural questions in a unified, comprehensive manner; therefore, the expression 'Private International Law Codex' (hereinafter referred to as: Codex) became commonly used. Following the entry into force, the Codex consisted of the following chapters: I. General Rules, II. Personal Law, III. Law of Intellectual Property, IV. Property Law, V. Law of Obligations, VI. Law of Succession, VII. Family Law, VIII. Labour Law, IX. Rules of Jurisdiction, X. Rules of Procedures, and XI. Recognition and Enforcement of Foreign Judgments.

II. The Reasons for the Revision of Law-Decree No 13 of 1979 on Private International Law

Even though the Codex was created and adopted in the socialist era, the first substantial amendment was only made in 2000 mainly due to European legal harmonization. This clearly shows the future proof and modern nature of the Codex. The rich case-law also shows the effectiveness of the Codex, as it was widely used in cases of international family and succession law and also in cases of damages arising from accidents.⁴

In 2000, the chapters on the rules of jurisdiction and on the recognition and enforcement of foreign decisions were amended, harmonized with the European law. On 1 May 2004, Hungary joined the European Union (hereinafter referred to as: EU) as a full member, which is regarded as a milestone considering the later amendments. As the EU's regulations on private international law are regulating the EU's private international law relations with priority, this affected the subsequent amendments of the Codex. The aim of these amendments is mostly technical, by emphasizing in the chapters concerned that besides the regulations the rules of the Law-Decree are only applicable in a limited scope.

2 Ferenc Mádl (1931–2011) was a Hungarian scholar, head of department, university professor, respected scholar of European law, international private law, international commercial law, and comparative private law, full member of the Hungarian Academy of Sciences, member of the governing board of UNIDROIT, arbitrator of ICSID, President of the Republic of Hungary (2000–2005).

3 On the evolution of Hungarian private international law, see Mádl–Vékás 2015. 83–87, Burián 2014. 109–112.

4 Mádl–Vékás 2015. 85.

With changes in society and economic relations, the traffic of persons and assets increased, which also caused the sudden, significant growth in the number of private international law cases. The following intensive legislation resulted in numerous secondary laws (regulations) in the EU, which now govern most private international law relations.⁵ These regulations integrated in the structure of the Codex, forcing its integrity apart, occasionally generating conflicts between national and European rules. For example, in EU regulations, the principle of a person's habitual residence is the main connecting factor in family law cases; meanwhile, the Codex applies nationality as a main principle and only uses the residence (or, if not applicable, a person's habitual residence) as an auxiliary rule. The diverging rules of the regulations and the Codex made the application of laws difficult.

Many international conventions were adopted at the Hague Conference on Private International Law (hereinafter referred to as: HCCH), of which Hungary was a founding member from the beginning, and Hungary joined most of them.⁶ Therefore, the priority of the international conventions increased in the legal source's hierarchy, making it more and more difficult to find which law shall be applied in this structure of three: whether the national (Hungarian) regulation

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- 5 Council Regulation (EC) No 2201/2003 of 27 November 2003 on jurisdiction and the recognition and enforcement of judgments in matrimonial matters and the matters of parental responsibility repealing Regulation (EC) No 1347/2000 (Brussels II bis), OJ L 338, 1–29; Regulation (EC) No 864/2007 of the European Parliament and of the Council of 11 July 2007 on the law applicable to non-contractual obligations (Rome II), OJ L 199, 31.7.2007, 40–49; Regulation (EC) No 593/2008 of the European Parliament and of the Council of 17 June 2008 on the law applicable to contractual obligations (Rome I), OJ L 177, 4.7.2008, 6–16; Council Regulation (EC) No 4/2009 of 18 December 2008 on jurisdiction, applicable law, recognition, and enforcement of decisions and cooperation in matters relating to maintenance obligations ('Maintenance Regulation'), OJ L 7, 10.1.2009, 1–79; Council Regulation (EU) No 1259/2010 of 29 December 2010 implementing enhanced cooperation in the area of the law applicable to divorce and legal separation (so-called 'Rome III'), OJ L 343, 29.12.2010; Regulation (EU) No 650/2012 of the European Parliament and of the Council of 4 July 2012 on jurisdiction, applicable law, recognition and enforcement of decisions, acceptance and enforcement of authentic instruments in matters of succession, and on the creation of a European Certificate of Succession ('Succession Regulation'), OJ L 201 of 27.7.2012, 107; Regulation (EU) No 1215/2012 of the European Parliament and of the Council of 12 December 2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (recast) ('Brussels I Recast'), OJ L 351, 20.12.2012, 1.
- 6 Convention of 1 March 1954 on Civil Procedure; Convention of 15 April 1958 concerning the Recognition and Enforcement of Decisions Relating to Maintenance Obligations towards Children; Convention of 5 October 1961 Abolishing the Requirement of Legalization for Foreign Public Documents; Convention of 15 November 1965 on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters; Convention of 25 October 1980 on the Civil Aspects of International Child Abduction; Convention of 29 May 1993 on Protection of Children and Co-Operation in Respect of Intercountry Adoption; Convention of 19 October 1996 on Jurisdiction, Applicable Law, Recognition, Enforcement, and Co-Operation in Respect of Parental Responsibility and Measures for the Protection of Children.

or the international convention or maybe the EU's regulation. In certain cases, 3–4 different sources could all be relevant, which creates uncertainty in the application of law.

Besides the EU and international legal effects reforming the private international law, substantive and procedural changes in private international law also have to be taken into consideration. In recent years, the whole Hungarian private law structure was renewed: the new Civil Code⁷ and the new Civil Procedure⁸ was adopted. With regard to the renewal of civil law, it became necessary for private international law to change in order to unify the regime of notions between all substantial codices.

Last but not least, it should be highlighted that in recent years the comprehensive reform of private international law started in several Middle Eastern European (ex-socialist) states, in Bulgaria,⁹ Poland,¹⁰ Romania,¹¹ and the Czech Republic,¹² which acts also inspired Hungarian legislation.

III. Legislative Procedure

After Hungary had joined the EU, several studies were written in the field of Hungarian private international law about how secondary EU regulations rearrange and facilitate the fragmentation of the Hungarian conflict-of-laws rules.¹³ As newer and newer EU regulations were adopted, the idea of the comprehensive renewal of the Hungarian private international law was born. By the end of 2014, the Hungarian government was planning the codification of a new codex. The next step of this process was a national conference on the topic in February 2015, where the relevant scholars agreed that it was about time to re-codify the Hungarian private international law.¹⁴

Government Decree No 1337/2015. (V. 27.) on the codification of the new Hungarian private international law and on the foundation of the Private International Law Codification Committee was published in the Hungarian

7 Act V of 2013 on the Civil Code.

8 Act CXXX of 2016 on the civil procedure.

9 Bulgarian Private International Law Code 2005. Available at: <http://www.ifrc.org/Docs/idrl/868EN.pdf>.

10 Act of 4 February 2011, Private International Law.

11 CARTEA VII – Dispoziții de drept internațional privat. Codul Civil. Noul Cod Civil republicat, 2011. Legea 287/2009 privind Codul civil.

12 91/[2012] Act as of 25 January 2012 on Private International Law.

13 Burián 2011, Vékás 2015.

14 Eötvös Lóránd University, Faculty of Law: 9th National Conference of Private International Law Professors, 'The National and European Perspectives on the Codification of Private International Law' 2015.02.06, Budapest.

Journal on 27 May 2015¹⁵ (hereinafter referred to as: Decree). The Decree required the commencing of the renewal process of Law-Decree No 13 of 1979 on Private International Law. The aim was to create a new, up-to-date private international law regulation in concordance with the European and international sources of private international law. The Private International Law Codification Committee was established in the framework of this process, with members invited by the Minister of Justice, academic professionals of the field, lawyers, judges, and government officials.

The Decree laid out a schedule for the construction of the new private international law regulation as follows:

- the deadline for the concept of the regulation: 30 November 2015;
- the deadline for professional and social debate on the concept: 31 January 2016;
- the deadline for the preparation of the text: 30 November 2016.

The first meeting of the Codification Committee was held in June 2015, where – besides the schedule of legislation – an agreement was made on the necessity of background studies as bases for the draft regulation. After the preparation and debate of these studies, the concept of the private international law act was ready by the end of November. The main issues were discussed in workgroups formed of the members of the Codification Committee. The workgroups – in personal law, property and obligation law, family law, jurisdiction, recognition and enforcement, procedure and liquidation – formed expert opinions, which were discussed in front of the Codification Committee. After the professional and social debate, the Minister of Justice filed Draft Regulation No T/14237 on the private international law, which was adopted by the Parliament as the Act XXVII of 2017 on the Private International Law (hereinafter referred to as: Act). This new law, in accordance with the new Act CXXX of 2016 on Civil Procedure, is entering into force on 1 January 2018.

IV. The Structure of the New Private International Law Act

Multiple ideas were discussed regarding the structure of the new Act in the Codification Committee. According to one alternative solution, the structure of the law should reflect the process of application; therefore, the rules of jurisdiction shall be placed immediately after the introductory chapter; after these, the general and special parts, and finally the rules of procedures, recognition, and enforcement. Another solution suggested that every chapter should have a part of jurisdiction – applicable law – recognition and enforcement, as in legal relations.

15 Hungarian Journal No 72 of 2015.

Eventually, the latter option was discarded, as it would have made the structure of the law too complex. Finally, the Codification Committee decided to keep the present Codex's structure, amending it slightly in several places. The aim of the amendments was to follow the structure of the Civil Code: the rules of trusteeship were moved from the family law to the personal law chapter, the family law chapter comes after the personal law chapter, and the intellectual property chapter comes after the rights of ownership. On the other hand, some chapters that fall under the jurisdiction of the EU were removed from the law such as the employment law chapter.

Finally, after multiple modifications, the new Act consists of twelve chapters:

- I. General Rules
- II. Personal Law
- III. Family Law
- IV. Partnership, Registered Partnership
- V. Property Law
- VI. Law of Intellectual Property
- VII. Obligation Law
- VIII. Law of Succession
- IX. Procedural Rules
- X. Jurisdiction Rules
- XI. Recognition and Enforcement of Foreign Judgments
- XII. Concluding Provisions.

V. Conceptual Changes of the New Law

By the authorization of Article 81 of the Treaty on the Functioning of the European Union—TFEU, numerous EU regulations were adopted in the topic of private international law, which all have a priority to the domestic laws. In these cases, domestic laws are not allowed to regulate these topics; therefore, the new codex is not allowed to do that either. Therefore, the new law focuses on issues not regulated by either EU laws or international conventions. It is expressed in Chapter I. (General Rules): according to Section 2, the rules of the present laws shall only be applicable in cases which do not belong either to general, directly applicable EU jurisdiction or under an obligation of an international convention.

The unique attribute of private international law relations is that there is a relevant international element in the cases, which connects to two or more legal systems; therefore, it is up to the conflict-of-law rules to decide which national law shall be applied. The answer of private international law is the so-called 'indirect' application of law, which uses connecting factors to point out the applicable law. This rule is value-neutral by following an automatism, strictly

pointing out the applicable law. This strict system though is without regard to the individual interests of the parties, to the fact that in some cases the application of another law would result in a fairer resolution, and to the interests of the weaker party. The old Codex, in concordance with the traditional private international law point of view, followed this strict approach. From the second half of the 20th century, private international relations became more and more complicated and complex; therefore, a legal relation can be affected by many different legal systems; so, one could often feel that the strict rules result in an unfair resolution.

The EU law gradually phased out this strict point of view and introduced a more flexible one: by giving more opportunity to the autonomy of the parties (the freedom to choose applicable law), by the protection of the weaker party (mandatory rules, special rules of jurisdiction), and by more flexible judicial consideration (the principle of the closest link).

The new Hungarian private international law Act also follows these winds of change and is more flexible in contrast to the old, strict regulation by giving more freedom to the parties to choose applicable law within the frame of their agreement and also by giving the possibility of a more flexible judicial consideration. This modern approach – the dilution of rules pointing to only one applicable law – is an integral part of the new law.

In the following, the main amendments of the general and special parts are presented with focus to those rules which were not covered by the previous Codex.

V. General Part

In Chapter I (General), the effect of the law, the interpreting clauses, the classification, the renvoi, the rules applicable to states with multiple legal systems, the rules of application of foreign law, the choice of law, the escape clause, the general auxiliary rules, the public policy clause, the overriding mandatory rules, and the rules of change of connecting factors are placed.

The new Act begins with the interpreting clauses, a chapter which was completely missing from the previous Codex. Similarly to the structure of EU regulations, the Hungarian legislation placed the definitions of main principles in the first part of the law, which are used and referred to later in the text. The new law uses three definitions in Section 3: how to interpret in the context of this law: the definition of the court, habitual residence, and residence.

The definition of the court includes every authority with jurisdiction for cases under the scope of the law.

Habitual residence is one of the most commonly used connecting factors both in EU regulations and in international conventions. However, neither EU regulations nor the HCCH conventions define it. The European Court of Justice

(hereinafter referred to as: ECJ) declared the deciding factors helping to define habitual residence in several cases. The new act defines habitual residence based on the rulings of the ECJ in order to help its application. According to Section 3 Point b) of the new Act, it is the centre of the person's livelihood, which is specified by taking the facts and the intentions of the person into consideration. The new law intends to give an important connecting role to the definition of habitual residence: by applying it in personal law, to the protection of individual rights, to family law, and to registered partnerships.

The new Act uses the definition of residence in concordance with the Brussels I and Brussels I A regulations, mainly in the frame of rules of jurisdiction in property cases. Residence means the place where the person actually lives, permanently or with the intention of settling down permanently.

The rule of characterization and *renvoi* has also changed (sections 4–5). In the process of characterization, the legal category in the frame of the legal system and, depending on it, the applicable connecting factor has to be decided for the given fact – for example, whether the usufruct of the surviving spouse on the property is a matrimonial property right or a matter of succession. The rules of *renvoi* have also changed substantially. The Codex generally accepted the partial *renvoi*. The new Act, however, only regards the *renvoi* as an exception while requiring both the back and forward referral and therefore accepting the whole *renvoi*.

The new Act also takes inter-territorial and interpersonal conflicts into account and regulates the issue in the chapter of states with multiple legal systems (Section 6). There are states where multiple legal systems are in parallel use, especially in federal states, where the separate territorial entities have their own legal system (for example, the USA or Canada) and in private international law cases, where the facts are connected to multiple territorial units, and so an inner collision may arise. Given that it is not a genuine collision in terms of private international law, the solution to the case is to apply the national conflict-of-laws rules of the affected state.

There are also states where multiple legal systems are applicable to different groups of people: this is the so-called interpersonal conflicts. It may happen in states applying religious laws (for example, Israel or Muslim states) that different laws are applicable to different persons in cases on personal status. In this case, the state's domestic conflict-of-laws rules decide which law shall be applied to the affected person. Whether the solution of the inter-territorial or interpersonal conflicts is not possible – for example, if there is no proper applicable rule – or if the result after the application of the rules would not be clear, the closest connection clause shall be applied, meaning that the applicable law is the law of the state which has the closest connection to the case.

The private international law continues to give the parties autonomy by letting them choose the applicable law with an agreement in most cases. While the

previous Codex also let the parties choose the applicable law only for contractual and non-contractual obligations, the novelty is that the new one regulates the choice of law in a separate clause in the general part, as a general rule (Section 9). The law emphasizes that the choice of law must be expressed – in concordance with the EU laws – and the parties must choose the applicable rules without leaving any doubt. The rules of the chosen law also apply to both the foundation and the validation of the contract but are also valid if they are in concordance with the rules of the law at the place of the choice. However, the autonomy of the parties cannot diminish the rights of third persons.

The general escape clause is regarded as a conceptual novelty (Section 10). This means that if the judge decides that the facts of the case have a closer connection with another law, then he has the possibility to apply that instead of the original applicable law. The parties also have the right to initiate this proceeding, in which case it is up to the judge to decide on the acceptance and application of the clause. The previous Codex only used the escape clause in the chapter of obligations as an auxiliary connecting factor, but then the Rome I and Rome II regulations expanded its scope to contracts as a whole.

Its regulation as a general clause gives more possibilities to the court to consider the application of the law that is properly connected to the case. The only limitation of the freedom of the judge guaranteed by the general escape clause is the choice of law by the parties; in this case, the general escape clause is not applicable. The issue of the general substitute law (Section 11) is also relevant, which applies the closest connection clause to a case when the law does not provide other rules.

The aim of the public policy (*ordre public*) clause (Section 12) in private international law is to protect the basic values of domestic law and to refuse the application of a foreign rule against national values. In this case, the domestic law (*lex fori*) shall be applied as substitute law. Therefore, the public policy is a general clause filled with content by the applier of the law. Although the previous Codex also dealt with public policy, the new one further helps the applier of law by clarifying the scope of those fundamental values which expressly contain the protection of constitutional principles as well.

Besides the public policy clause, overriding mandatory rules (Section 13) also provide a layer of protection. The aim of these substantive rules is the protection of public interest, and it is not allowed to deviate from them. These substantive rules serve fundamental political, economic, and social political interests of the relevant country; therefore, their application is mandatory not only in domestic relations but also in relations affected by foreign facts. The previous Codex did not cover the overriding mandatory rules; that is why the new one had to fill this gap, also in concordance with the EU law (mainly with Rome I and II regulations). The new law also gives the possibility to the court to also take another state's

overriding mandatory rules into consideration if they have a close connection to the case and the debated case could not be decided in their absence.

VI. Special Part

Chapter II is complex, and multiple aspects have an effect on its thematic structure:

- EU regulations give its primary frame due to the fact that the exclusivity of EU law does not allow domestic legislation in fields covered by them (contract law, non-contractual obligations, divorce, alimonies, succession);
- it partially follows the thematic structure of the previous Codex (for example, the rights of persons and legal persons are in the personal laws' chapter);
- it regulates many questions which were missing from the previous Codex (for example, the protection of national cultural assets in the frame of property law);
- certain previously regulated questions were moved to other chapters (state immunity was moved to the procedural chapter from the personal laws' chapter).

In the chapter regulating persons, the new Act contains separate rules to natural and juridical persons. Similarly to the previous Codex, a natural person's legal capacity, acting capacity, right to name-bearing, and personal rights are still based on personal law. Following Hungarian and continental legal traditions, the main connecting principle of personal law is still nationality. Nationality is easier to follow and define than the other main connection principle: a person's habitual residence. The latter is a fact which needs extensive verification; that is why it is important to decide the personal law based on nationality, as a public law connection. It needs to be highlighted that the new Act eases the rigidity of the previous one regarding the rules on persons with multiple nationalities: if such a person also has a Hungarian nationality, his personal law is still Hungarian law according to the main principle except that he has the closest connection to his other nationality. If neither connection is close, the habitual residence is applicable.

Due to its specific nature, the new Codex regulates the applicable law on name-bearing in a separate section as part of the personal laws' chapter. The question of name-bearing has remained in the domestic scope although the rulings of the ECJ¹⁶ have to be taken into consideration. These rulings also declared the need of compliance between multiple nationality and the basic freedoms (such as the

16 Several cases on the right to surname-bearing shall be highlighted: C-168/91, Christos Konstantinidis v Stadt Altensteig. ECLI:EU:C:1993:115; C-148/02 Carlos Garcia Avello v Belgian State. ECLI:EU:C:2003:539; C-353/06. Stefan Grunkin and Dorothee Regina Paul. ECLI:EU:C:2008:559; C-208/09. Ilonka Sayn-Wittgenstein v Landeshauptmann von Wien. ECLI:EU:C:2010:806; C-391/09. Malgozata Runevič-Vardyn. ECLI:EU:C:2011:291; C-438/14. Nabil Peter Bogendorff von Wolffersdorff. ECLI:EU:C:2016:401.

freedom of movement of the European citizens). The law also contains a separate regulation to both birth surnames and marital surnames.

Another novelty is that trusteeship now has separate regulation from guardianship in the personal laws' chapter, not in family law – in concordance with the structure of the new Civil Code. A further novelty is that rules of supporting forms with no effect to acting capacity are now also regulated besides the already regulated trusteeship with the limitation on acting capacity. Both regulations are now more differentiated and up-to-date. The main connecting factor is also the habitual residence and a limited choice of law.

The scope of Rome II regulation does not cover relations arising from the breach of privacy and personality rights; therefore, these remain in the domestic legislative scope. The new Act placed these rules in the personal law chapter based on the relation's specific nature despite that the breach indisputably creates a non-contractual relationship. The main rule for applicable law is the injured party's habitual residence and in case of a juridical person the place of real seat (registered office). Only the injured party has the right of limited choice of law instead of applying the main rule. The choice is the following:

- the state at the centre of his interests,¹⁷
- the state of the habitual residence or real seat of the offender,
- Hungarian law.

The recodification of the family law chapter resulted in several substantial changes. The thematic structure of the family law chapter is determined by EU regulations on divorce and legal separation (Brussels IIB) and alimonies (Maintenance Regulation); therefore, the Hungarian legislator chose not to cover these topics. Accordingly, the family law chapter regulates marriage, marital property law, family status, adoption, guardianship, and parent–child relationship.

Another new element is that there is an instruction among general rules to the applier of law on the definition of common nationality and on the case where the partners have multiple common nationalities. In this case, the applicable law is based on the principle of the closest connection.

Regarding family law questions about children, the general principle of the new Act is to better promote the best interest of the child. In the proceedings of Hungarian courts and authorities, it makes the application of Hungarian law generally possible if it is better for the interest of the child, while it is also possible to apply a foreign law of close connection if it is in the interest of the child.

There is no substantial change in the rules of contracting a marriage, contrary to matrimonial property rights. As Hungary does not take part in the enhanced cooperation on matrimonial property regimes,¹⁸ the applicable law is regulated

17 This connecting factor was developed by CJEU in case C-68/93. *Fiona Shevill Ixora Trading Inc., Chequepoint SARL and Chequepoint International Ltd v Presse Alliance SA*. ECLI:EU:C:1995:61.

18 COUNCIL REGULATION (EU) 2016/1103 of 24 June 2016 implementing enhanced cooperation

separately (sections 28–30). The new Act offers limited choice of law to matrimonial property rights, which is also possible prior to marriage; therefore, it is an option for persons planning a marriage. The choices are the following:

- the law of the state of one party’s nationality,
- the law of the state of one party’s habitual residence,
- the law of the court (*lex fori*).

If the parties do not use the option of choice, the rules state the following order:

- law of the parties’ common nationality,
- if the parties do not have common nationality, the law of their common habitual residence,
- if they do not have a common habitual residence, then their last known habitual residence,
- and finally, the law of the court (*lex fori*).

The rules of registered partnership did not change substantially, though the appearance of rules of *de facto* partnerships is a novelty of the new Act. The rules of *de facto* partnerships of persons of different sexes is currently exceptionally problematic. As there is no EU regulation of this topic, it is possible to constitute domestic rules. The national legislator constituted these rules based on the rules of marriage, and as a result the structure of connecting factors is similar both in terms of the choice of law and the applicable law in the absence of party choice.

The rules of property law keep the traditionally accepted and unified general rule on a European level, by which the place of the property (*lex rei sitae*) is the primary connecting factor. Moreover, there are several new rules on certain questions previously not covered:

- the rules of property connections (to components and accessories, the place of the main property is the applicable law, while in the case of other property connections the principle of closest connection),
- the definition of the scope of the property law statute (the contents of property law, the order, the rise, the existence, the termination, etc. of guarantees),
- the change of statute of movable property,
- the usucaption of movable property (this rule has not changed).

There is a limited choice of law for the parties in connection with legal effects of property law, although this choice is limited to movable property and only available in case of transfer of property ownership. The parties may agree in the choice of rules either in the original or in a separate contract. The parties only have a choice between the laws of two states: either the law of the original place

in the area of jurisdiction, applicable law, and the recognition and enforcement of decisions in matters of matrimonial property regimes OJ L 183, 8.7.2016, 1–29.

COUNCIL REGULATION (EU) 2016/1104 of 24 June 2016 implementing enhanced cooperation in the area of jurisdiction, applicable law, and the recognition and enforcement of decisions in matters of the property consequences of registered partnerships OJ L 183, 8.7.2016, 30–56.

of the movable property or the law of the place of the designation agreed in the contract. In case of the transfer of complete company assets, the parties may also choose the personal law of the predecessor.

Following the present international tendencies, the arrangement of unlawfully removed cultural objects is now also regulated. These conflict-of-laws rules are expressly detailed in the new Act, as the aim is to restore the original status (*in integrum restitutio*), which is an important national interest of every state. In concordance with the EU regulation on the return of cultural objects unlawfully removed from the territory of a Member State, Hungary harmonized its domestic law, although only with substantive rules;¹⁹ therefore, the regulation of conflict-of-laws rules remained in national legislative power. Following this opportunity, the new Act introduced these rules. The biggest issue is that in most cases the unlawfully removed or stolen goods are sold abroad to a bona fide buyer, resulting in the change of the ownership status. This means that the third countries' more lenient laws are applicable instead of those of the country of origin. In these cases, the regulation offers the original owner (either state or individual) an advantage by giving him a limited choice of law by:

- either choosing the law of the original state, from where the goods were removed (*lex originis*)

- or choosing the law of the present location of the goods (*lex rei sitae*).

The topic of law of obligations is properly detailed in Rome I and II regulations; so, the new Act only regulates questions out of the scope of the EU rules as, for example, the applicable law on arbitration agreements and on contractual obligations in securities. In both cases, the primary principle is the parties' choice of law or, in its absence, the contract's original law is governing the applicable law of the arbitration agreement or – if the parties have agreed on the location of the arbitration, and the facts of the case are in closer connection with it – the law of the place of the procedure.

VII. Jurisdiction–Procedure–Recognition and Enforcement of Foreign Judgments

The structure of this chapter is different from the previous Codex, as it details questions on procedure and immunity firstly, followed by rules of jurisdiction, and finally the rules of recognition and enforcement.

19 Directive 2014/60/EU of the European Parliament and of the Council of 15 May 2014 on the Return of Cultural Objects Unlawfully Removed from the Territory of a Member State and Amending Regulation (EU) No 1024/2012 (Recast) OJ L 159, 28.5.2014, 1–10. 2001. The Hungarian legislator complied by amending the Act LXXX of 2001 on the Return of Illegally Exported Cultural Goods.

The first part of the chapter contains general procedural rules in connection with international legal disputes. As in other parts of the Act, the EU regulations have to be taken into consideration; so, the Hungarian legislator stayed in the given frames. The general part declares the application of Hungarian procedural rules in front of Hungarian courts and authorities as primordial, although the law may contain exceptions as, for example, in procedural legal assistance. The rules on legal assistance (Section 72), on temporary measures (which is a novelty) (Section 70), on delivery of documents (sections 73–77), and on verification (sections 78–81) are placed in this chapter.

Moreover, another novelty is that the rules of state immunity are placed at the end of the chapter (sections 82–87). The previous codex placed these rules in the jurisdiction chapter. The reason of the structural change according to the explanation of the law is the following:²⁰ the state immunity has a primarily public law nature; therefore, it is not covered by the EU's private international law's regulation on jurisdiction. It means that the Hungarian court must be with regard to both international and domestic laws. It should be emphasized that these rules are only applicable under the scope of the law – so, only in procedures about private international law relations of states. The national legislator amended the previous rules of state immunity based on the UN's immunity convention.²¹ The definitions of the state (Section 82), the cases of waiver from immunity (paragraph 1 of Section 84), the exceptions from immunity (paragraph 1 of Section 84), and the rules of delivery to a foreign state (Section 87) are all in concordance with the convention.

Among the rules of jurisdiction, the law also contains general rules and special rules to the types of legal relations. General rules often cannot be connected to a single type of legal relation. Therefore, they have to be applied together with the governing special rules. On the one hand, the legislator took the EU's regulations into consideration in the drafting process of the rules of jurisdiction in order to help the national courts with a unified structure of rules (for example, the prioritization of habitual residence) in spite of different sources. On the other hand, the legislator tried to harmonize the rules of jurisdiction with the rules of the national civil procedure in order to ensure the convergence between different areas of private law (see the definition of property lawsuit).

A further novelty in the topic of jurisdiction is that the law lists different causes of jurisdiction for different types of legal relations, which is particularly obvious in cases of personal status and family relations (sections 102–108). In the latter areas, habitual residence has a priority over nationality, ensuring that the chosen court is as close as possible to the person or legal relation.

20 The Detailed Explanation of the Act on Private International Law 105.

21 United Nations Convention on Jurisdictional Immunities of States and Their Property. New York, 2 December 2004.

In the field of recognition and enforcement of foreign judgments, there is a substantial change. While previously the reciprocity with another state was one general requirement for recognition and enforcement, the new Act is going to require reciprocity only in property law cases; meanwhile, in every other area – such as in family law – the foreign decision is still going to be adoptable and enforceable regardless, if it complies with other guarantees or not.

IX. Brief Summary

As I stated in the introduction, the drafting and adoption of the new Private International Law Act is timelier than ever. The frames of the legislation were given by European and international sources, which had to be harmonized with the recent results of private law codification. Moreover, the existing private International Law directions/trends and social changes also had to be taken into consideration. We should wait a few years to see whether the new codex is successful in overcoming these new challenges, as the success of a new regulation is always measured by the feedback of its practical application.

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