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CENTER FOR
PRIVATE INTERNATIONAL LAW
OF THE HAGUE CONVENTIONS

18th Regional Conference on Private International Law
- Celebrating the first 20 years (2003-2023) -

Private International Law and International Organizations - achievements and challenges -

Faculty of Law University of Niš
November 16-18, 2023

Deutsche Gesellschaft für Internationale Zusammenarbeit
Faculty of Law University of Niš
Center for Private International Law of the Hague Conventions

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Niš, June 2024.

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Publisher
Faculty of Law University of Niš

For the Publisher
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Desktop Publishing
Vladimir Blagojević

Cover
Vladimir Blagojević

Print
Faculty of Law University of Niš
Digital edition, optical disc

Circulation: 50

ISBN: 978-86-7148-320-9

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UDK: 340.137:341.9(100)

REFLECTIONS ON THE COMPLEMENTARITY OF GLOBAL AND REGIONAL UNIFICATION OF PRIVATE INTERNATIONAL LAW

The efforts to unify private international law rules in the Hague Conference on Private International Law (HCCH) started very much as a project of European States and remained so for a long time. Starting with the Brussels Convention (1968), European PIL unification initially focused on intra-European Union (EU) relations, leaving relations with third States aside.

The EU's accession to the HCCH (2005-2007) has had a twofold effect. First, the relationship between the EU and the EU Member States has changed. Before accession, the EU participated as an observer; since accession, it acts as a full member and replaces its Member States in cases where they have transferred powers to the EU. Secondly, accession has made the EU a global player in PIL unification and strengthened its global perspective. Moreover, when the EU joined the HCCH, consensus was introduced as the primary negotiating method.

This new institutional configuration has laid the foundation for the emergence of a common governance principle shared by the EU and the HCCH: global PIL problems should preferably be dealt with at the global level, regional problems at the regional level, while certain issues are best left to national legislation. This principle includes Paul Beaumont's concept of "reverse subsidiarity", but unlike that principle, is not tied to EU competences but to the nature of the problems to be regulated.

The emergence of this "principle of the appropriate level of governance in PIL" is illustrated by:

- The leading role of the EU in bringing into force the 2005 Choice of Court Convention, the 2007 Recovery of Child Support Convention and its Protocol on Applicable Law, and the 2019 Judgments Convention.
- The impact of the 2005 Convention on the 2012 Brussels I Recast Regulation, of the 2007 Convention and its Protocol on the 2008 EU Maintenance Regulation, and of the 1980 Child Abduction and 1996 Child Protection Conventions on the Brussels II b/ter regulation.

- The 2023 Commission's proposal for a regulation on the protection of adults, which seeks to complete the 2000 Convention on the Protection of Adults, and not to replace it.
- The principle has drafting and policy implications for both organisations. With regard to drafting: for the HCCH, the principle implies that drafting should focus on global issues while leaving ample room for regional PIL arrangements. Indeed, Hague Conventions generally allow for regional (and bilateral) agreements between States parties. For the EU, the drafting should focus on regional issues and, where global instruments exist, seek to implement or complement them, as the examples above illustrate.

Regarding policy: while the modern Hague Children's Conventions provide PIL solutions for human rights issues addressed by the UN Convention on the Rights of the Child, there is more broadly need for private international law to orient itself towards global human rights, and conversely, for global human rights work to look for support to PIL (cf. 2021 Resolution of the Institut de Droit International on human rights and PIL). More generally, the broader global legal framework, including UN instruments on the environment and climate change, the UN Guiding Principles on Business and Human Rights, and other global standards should increasingly provide guidance to HCCH work, also because, as globally accepted standards, they facilitate decision-making by consensus.

The EU, for its part, would do well to continue focusing on regional PIL issues. In this respect, the Commission's proposal for a regulation on parenthood raises a question mark. Work on this global issue is ongoing in the HCCH, and so EU efforts should be very carefully coordinated with the Hague work. On the other hand, regional PIL rules are desirable, for example, in the Commission's proposal for a Directive on Corporate Sustainability Due Diligence, in respect of judicial jurisdiction in relation to persons domiciled in third countries, and regarding the general part of PIL. Here, the EU could benefit from preparatory work by the European Group for Private International Law (GEDIP).

Key words: Unification of Private International Law (PIL), Global and regional PIL unification, Emerging Principle of the appropriate level of governance in PIL, Drafting implications for the Hague Conference and for the EU, Policy implications for the Hague Conference and the EU.

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341.9(4-672EU)
061.1(4):347.9

CHARACTERISATION IN THE CJEU CASE LAW: UNITY OR DIVERSITY?

A number of CJEU judgments, such as C 25/18 and C-242/20, point to a discrepancy in the characterisation of a subject-matter of the dispute for the purposes of application of different EU PIL legal instruments. This presentation focuses on the CJEU judgments addressing the characterisation within the context of the substantive scope of application of the Brussels Ibis and Insolvency Regulations. Indeed, the dividing line between the two Regulations can be blurred considering that insolvency law touches upon various civil and commercial matters which may imply different legal consequences in and outside the insolvency.

The 'insolvency exception' under Article 1(2)(b) of the Brussels Ibis Regulation including the relevant CJEU case law is addressed first. Thereby, a due regard is given to a possible impact of the recent Revision of the Insolvency Regulation. In particular, Article 6 of the latter provides that the court opening the insolvency proceedings shall have jurisdiction over actions which are directly derived from or are closely linked with insolvency proceedings. In addition to the general principle of restrictive interpretation of the exclusion and the requirement that there must be no overlap between the two Regulations, the CJEU case law insists that the legal basis of an action is decisive.

This presentation points to the deficiencies of the latter criterion (the legal basis of an action) as a method in defining the substantive scope of application between the two Regulations, in the view of the CJEU C 535/17 judgement. In the latter, the CJEU surprisingly held that the so-called 'Peeters/Gatzen' action under Dutch law (actio pauliana) fell within the Brussels Ibis Regulation's substantive scope of application. It seems that the CJEU considered it decisive that as an action for liability for a wrongful act was based on the ordinary rules of civil and commercial law (actio pauliana), regardless of the fact that a link with insolvency proceeding is undeniable.

In its subsequent judgment CJEU C-498/20 mitigated to some extent the potential adverse consequences of its ruling in C-535/17. It held that the 'Peeters/Gatzen' action was to be qualified as a tort within the meaning of Article 7(2). In determining where the harmful event occurred or may occur for the purposes of attribut-

ing jurisdiction under Article 7(2) the CJEU concludes that jurisdiction rests with the court of the place of establishment of a company which is unable to satisfy its obligation towards its creditors because its 'grandmother' has breached its duty of care towards the creditors of that company. Thus, it is the court in the same Member State in which insolvency proceeding is initiated. Accordingly, the place where the harmful event occurred or may occur coincides with the forum concursus if insolvency proceeding is opened in the place of the debtor's establishment. Most likely it will be so in the majority of cases, considering that the centre of main interest (COMI) is the main criterion of jurisdiction under the Insolvency Regulation.

These judgments clearly illustrate the need to adjust the current state of law. First of all, such a claim should be properly qualified as a claim closely related to insolvency proceedings and accordingly to be within the jurisdiction of the court before which insolvency proceeding has been commenced. Besides, it will do away with the dichotomy in qualifying an actio pauliana as a tort when filed in the context of insolvency proceeding and as a contract when filed outside the insolvency proceeding (CJEU C-337/17).

Key words: Brussels Ibis Regulation, substantive scope of application, actio pauliana, Insolvency Regulation.

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341.1/.8+341.9]:061.1(492 Den Haag)
341:061.1(100)

THE CENTENNIAL OF THE HAGUE ACADEMY AND OUR REGION

This paper presents the slightly extended content of a presentation delivered at the 18th Regional Private International Law Conference in Niš, which traces the historical presence of the Hague Academy of International Law in the consciousness of the South Slavs region, particularly during the period from 1918-1991 when the region existed as the State of Yugoslavia. The paper explores how diplomats and scholars in this newly formed State, emerging from the aftermath of World War I, enthusiastically embraced and participated in the establishment and activities of the Hague Academy. The Academy aimed at promoting and facilitating "a thorough and impartial examination of the problems arising from international juridical relations." The early relationship was marked by a shared trust in international law as an instrument for peacebuilding.

Subsequent events reveal a pattern of interactions with the developing branches of Public and Private International Law becoming pivotal for long-lasting peace in Europe. During this period, a majority of international law professors from the region attended the Hague Academy, contributing not only as attendees but also as professors and researchers. The relationship reached a culmination during the breakup of Yugoslavia, a defining moment that unexpectedly amplified the activities of the Academy, This shift offered new topics for discussion and research, including secession and dissolution, recognition of new States, division of property, debts and archives, international criminal courts and tribunals and more.

The presentation draws on the writings of several Yugoslav scholars on the Hague Academy throughout the years, books published during the 75th and 100th jubilee of the Hague Academy, and research from Recueil des cours.

Key words: The Hague Academy of International Law, Yugoslavia, Private International Law.

Part I

Private International Law Unification - From The Hague to Brussels

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TWO FACES OF HABITUAL RESIDENCE – A MASTERPIECE OF THE HCCH AND A CHALLENGE

Habitual residence is a concept created by the Hague Conference on Private International Law. To reconcile two polarised legal systems, one of which preferred nationality as a connecting factor and the other, which used domicile, the Hague Conference offered a third, neutral solution: habitual residence. Guided by the old Latin maxim that every definition is dangerous – omnis definitio periculose est, the Conference did not define habitual residence but left its interpretation to judicial practice. Over time, habitual residence has become a necessary criterion for determining the applicable law and international jurisdiction in most of its conventions.

Today, habitual residence is the decisive connecting factor in the PIL of the EU and the national PIL systems of an increasing number of states. Perhaps the most significant thing is that in recent national codifications of PIL, uniform solutions have been offered regarding the status, family, inheritance and obligation law. All this is thanks to the habitual residence. We can talk about the beginning of the creation of unified Private International Law, made by the states through their national codifications. In the outcome, this could result in establishing "International Private International Law", with the remaining minor differences of a national character. So, it would not be wrong to call the habitual residence a kind of masterpiece of the Hague Conference.

On the other, the unequal interpretation of habitual residence represented one of the biggest challenges for the Hague Conference. There seem to have been no problems until 1983 when the Child Abduction Convention entered into force. It became apparent that specific dilemmas arose regarding determining a person's habitual residence. Also, some other questions were raised, starting with its constituent elements, methods of acquisition, and loss, through to whether it is possible for a person to have no habitual residence at all or even to have more than one habitual residence.

In addition to the general concept of habitual residence, the Hague Conference also created its particular forms: habitual residence of a legal entity, habitual residence of a child and habitual residence of the de cujus. The paper describes the development of habitual residence through the three periods of the Hague Conference:

the first – from the foundation to the adoption of the Statute (1893-1951); the second one – from the adoption of the Statute to the accession of the European Union (1951-2007) and the third one – from the accession of the European Union until the present day (2007-).

Key words: Habitual residence, the Hage Conference, a masterpiece, a challenge.

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UDK: 316.344.7:341.9(094.2)"2000"
342.7-053.8

INTERNATIONAL PROTECTION OF ADULTS: FROM CATERPILLAR TO BUTTERFLY?!

Within the last few decades age pyramid has (undoubtedly) turned upside down. Instead of becoming younger society is growing older. Intertwined with increasing globalization and mobility, ageing society requires significant transformations in almost all sectors of society, particularly with regard to social protection. Due to freedom of movement of persons within the European Union, but also globally, international protection of vulnerable adults is certainly gaining its momentum. All the more so because currently, neither at the EU level, nor at the global level, there is a generally or at least widely accepted private international law regime for the international protection of vulnerable adults. The Hague Adult Protection Convention (HAPC), which entered into force in 2009, is currently in force in only 15 states (out of which 12 Member States). Since it is impossible to ascertain exact reasons for the lack of ratifications, and having in mind several gaps which need to be mitigated in order to enhance legal certainty, one of the possible steps forward is to enact EU legislation to improve further the protection of vulnerable adults among member states, based od the HAPC. On that track, Proposal was presented in May this year. The aim of this article is to establish whether this Proposal delivers what is promisses, i.e. complete, simplified and more efficient international protection of vulnerable adults.

Key words: international protection of adults, Hague 2000 Convention, Proposal for Regulation, human rights.

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EMBRACING THE STATES' POSITIVE OBLIGATION TO RECOGNIZE AND ENFORCE UNDER THE HAGUE JUDGMENTS CONVENTION

The issue of recognition and enforcement of foreign judgments in civil or commercial matters is one of the most complex issues in the theory of Private International Law. Although much has been written in the theory, for a long period of time there was no multilateral international instrument that will unify the rules for recognition and enforcement of such judgments. Unlike the New York Convention 1958 under which the international commercial arbitration blooms, the world for a long period of time was not ready for a new step towards uniform rules for recognition and enforcement of foreign judgments in civil or commercial matters. Thus, parties seeking to enforce their foreign arbitral awards were in a more favourable position than international litigants. However, recently, the international scene has been changed and now is set up in favour of international litigants by the adoption of the Convention of 2 July 2019 on the Recognition and Enforcement of Foreign Judgments in Civil or Commercial Matters (hereafter: Hague Judgments Convention).

This article is indented to give an overview of the positive obligation of a state to recognize and enforce under the Hague Judgments Convention. The obligation to recognize judgments applies only if the subject matter of the judgment falls within the scope of the Hague Judgments Convention. By its nature, the Hague Judgments Convention is the new revolution in international court litigation.

The matter of interest in this paper is to what extent the state is obliged to recognize and enforce a foreign judgment in civil or commercial matters under the Hague Judgment Convention. Special attention will be given to the possible existence of the "positive obligation for the state to assist in the enforcement". As such, the authors will examine the interference between the positive obligation to recognize and enforce and the right to access to a court.

This paper aims to examine the practical impact and provide a critical reflection of the Hague Judgment Convention in the sphere of the rights of international litigants and the sovereign right of the state to recognize and enforce foreign judgments. In particular, the positive obligation of a state to recognize and enforce will be examined in the following context: what is the relationship between the obligation to recognize and enforce a foreign judgment and indirect jurisdiction; how is the concept of public policy shaped within Hague Judgments Convention; the question for international and natural justice and the complementary nature of the Hague Judgments Convention with the Choice of Court Convention.

Key words: Hague Judgments Convention, Foreign court judgment, public policy, positive obligation.

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PUBLIC POLICY EXCEPTION UNDER THE 2019 HCCH JUDGMENTS CONVENTION

Public Policy Exception is generally accepted as a ground for the refusal of the recognition and enforcement of foreign judgments in national legislations and in international legal instruments. Even though it has some common characteristics, its content is diverse and depends on the law of requested State. Namely, each state has its own set of fundamental values that constitute public policy and they naturally differ. However, some states may adopt a common public policy, such as the public policy established by European Union for its member states.

In this paper, we firstly analyze regime for refusal of recognition and enforcement of foreign judgments on public policy grounds in the Hague Judgments Convention. Convention provides a general reservation clause in Article 7(1)(c), as well as specific reservations in Articles 7(1)(a), (b), (e) and (f), 7(2), and 10 of Convention. In some cases, specific reservations may alsobe considered as procedural public policy, if conditions are fulfilled. Therefore, we examine weather this overlap can cause interpretation problems in practice, especially having in mind that Article 13 of Convention leaves the procedure to law of the requested State.

Then, given that the European Union is contracting party to the Convention, we examine the public policy exception in law of the European Union.On EU level, public policy has mostly negative function and there were attempts to restrict its application only to exceptional cases. The core values that constitute European public policy include those fundamental principles established in primary European Union law and in the European Convention on Human Rights. We proceed to analyze how public policy has been interpreted in the case law of CJEU and ECHR.

Analysis finally considers the relationship between two regimes. Specifically, it examines whether they are complementary and potential issues of interpretation that could emerge in its practical application. Consideration is also given to possible approaches for addressing and resolving any issues that may arise.

Aim is to examine whether diversity between approaches can ultimately lead to profound policy discrepancies, which could restrict the reciprocal enforcement of judgments, and do they have the potential to undermine the desired uniformity established by theConvention.

Key words: Public Policy Exception, Recognition and Enforcement, HCCH, 2019 Judgements Convention.

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WHEN TO SERVE ABROAD – THE HAGUE AND EU THE PERSPECTIVE

The article is devoted to the question of when documents in civil and commercial matters with cross-border implications must be served abroad. If this is required, in most cases judges have the mechanism of the Hague Service Convention and if the service has to take place between EU Member States - the new Regulation (EU) 2020/1784.

Practice shows that service abroad is one of the reasons why judges prefer to "nationalize" cases that have an international element and use any national rules to help them do this. At the service level, these are usually norms that provide for the so-called substitute or fictitious services that allow a person to be summoned within the country of the court seized, while this person does not actually reside there.

The Hague Convention applies in all cases where there is occasion to transmit a document for service abroad, i.e. the answer to the question of when to serve abroad is given by the law of the court seized. In the same sense were the previous Regulation (EC) No. 1348/2000 and Regulation (EC) No. 1393/2006. This understanding was changed by the practice of the Court of Justice of the EU in the case C-325/11 Alder and found a positive regulation in the new Regulation (EU) 2020/1784.

The article analyzes the legal framework and developments in the two sets of legislation and their impact on the way national courts should proceed.

Key words: service of documents, Regulation 2020/1784, Hague Convention, access to justice.

Part II

Private International Law Unification - From The Hague to the National PIL Systems

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RECOGNITION AND ENFORCEMENT OF FOREIGN JUDGMENTS IN CIVIL AND COMMERCIAL MATTERS: THE NORMATIVE CROSSROADS IN BOSNIA AND HERZEGOVINA

A simple internet search can reveal a definition of crossroads as a moment when a crucial decision must be made that will have profound consequences. Bosnia and Herzegovina is facing a normative crossroads in its legislative activity regarding the recognition and enforcement of foreign court judgments in civil and commercial matters. In Bosnia and Herzegovina, this area is still primarily regulated by the PIL Act from 1982, which was adopted from the legal system of former Yugoslavia into Bosnia and Herzegovina. Bosnia and Herzegovina has a significant number of bilateral agreements on international legal aid that are currently in effect and include provisions for recognizing and enforcing foreign court judgments. The candidate status of Bosnia and Herzegovina for EU membership must be taken into account when providing forthcoming normative action in this area. Therefore, it is essential to analyze the respective provisions of the Brussels I Recast Regime and its relation to the law of third countries. It is essential to evaluate the current possibilities and obstacles for recognizing and enforcing foreign court judgments in a mutual way. The authors will specifically address the existence of exorbitant grounds of jurisdiction in the national systems of individual EU Member States, as well as the possibility of recognition of such judgments. In the case of third countries, the application of the Brussels I Recast Regime has been excluded, while national PIL provisions are applied. In this context, the authors will consider the "jurisdictional filters" which the 2019 Hague Convention is based upon. The aim is to see whether it represents a sufficient guarantee for protection against the recognition and enforcement of foreign court judgments based on exorbitant grounds of jurisdiction. Consequently, the authors will conclude whether Bosnia and Herzegovina should accede to this instrument.

Key words: Recognition and Enforcement, BH PIL Act, Brussels I Regime, Hague Convention 2019, exorbitant grounds of jurisdiction, jurisdictional filters.

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PRACTICAL IMPLICATION OF HCCH CONVENTIONS IN ALBANIA - DIVORCE AND ITS CONSEQUENCES

In the early 1990s, Albania opened its borders to the rest of the world, allowing foreigners to establish economic and family ties with Albania. This move also permitted Albanians to establish ties in foreign jurisdictions. In fact, almost one-third of Albanians live and work abroad, and this reality has affected cross-border family relations, presenting Albanian courts with numerous challenges when rendering judgments involving foreign elements in family matters.

Albanian jurisprudence in the last decade has undergone significant evolution. When dealing with family cases with foreign elements, the courts must consider several legal sources of different hierarchies, sometimes providing different solutions.

The main aim of this paper is to analyze the jurisprudence of the Albanian courts in the context of the interplay of legislative sources, identifying specific paths of court decisions and potential challenges. It will focus on issues of divorce and its consequences, such as parental responsibility, maintenance obligations, and matrimonial property regimes. The court has often opted for the unity of proceedings, declaring jurisdictions for divorce and its consequences, and refusing to stay proceedings in the case of lis pendens. The paper underscores the indispensable role of the HCCH conventions, encouraging courts to observe guiding principles such as the best interests of the child and good administration of justice when dealing with divorce cases.

The paper concludes that the proper application of the HCCH conventions requires Albanian courts to take a different approach and explore new paths.

Key words: divorce, jurisdiction, lis pendens, transfer of jurisdiction, recognition of judgments.

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340.142:[341.9:347.61/.64-053.2(560)

EVALUATION OF TURKISH COURT PRACTICE REGARDING THE HAGUE CONVENTION ON CHILD ABDUCTION

The Convention of 25 October 1980 on the Civil Aspects of International Child Abduction ("Convention") aims to secure the prompt return of children who were wrongfully removed to, or retained in a Contracting State, in violation of the rights of custody or access under the law of another Contracting State. However, although exceptional, it is possible to refuse the return of the child. The reasons for the refusal of return are set out in Articles 12, 13 and 20 of the Convention. Among these, the most frequently invoked exception is stipulated under Article 13, paragraph 1-b, often called as the "grave risk" exception. Türkiye is a party to the Convention as of 2000. In the twenty-three years following its entry into force, there is a high volume of Turkish case-law related with the Convention as Turkish citizens historically tend to form cross-border families especially within Europe. In our paper, the recent Turkish court decisions are reviewed and Turkish court practice is evaluated in the light of two very recent sources published by the Hague Conference on Private International Law; Guide to Good Practice 2020 on Article 13/1/b, and Conclusions and Recommendations by the Eighth Meeting of the Special Commission dated October 2023. How the Turkish courts construe "habitual residence" of the child; the importance given to hearing of the child and his/her opinion in invoking the "child's objection" as a separate ground for refusal; and certain problems in implementation of "grave risk" exception are especially set forth, and recommendations and conclusions as to Turkish practice are drawn.

Key words: The Hague Convention on the Civil Aspects of International Child Abduction, habitual residence, right of custody and of access, reasons for refusal of return, grave risk.

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HCCH CONVENTIONS AND BILATERAL TREATIES IN THE SERBIAN PRIVATE INTERNATIONAL LAW: EVERYTHING EVERYWHERE ALL AT ONCE?

Currently, thirteen Hague conventions on Private International Law bind the Republic of Serbia. Concurrently, numerous bilateral treaties which are in force in the Republic of Serbia regulate various Private International Law matters, completely or partially corresponding to the relevant HCCH conventions. Most of these bilateral treaties stem from the period of former Yugoslavia, when they were tailored to fit the frequent PIL relations mostly with the states which later became the EU Member States. On the other hand, the conflict clauses in the relevant Hague Conventions are often neutral in respect of their priority over other corresponding international treaties binding the same Contracting States. Some of these clauses merge their neutrality with the possibility to declare the primacy of the specific Hague convention. Yet, when the other state is an EU Member State, this clause does not seem to leave an escape, which generates further perplexity. Consequently, the international treaties hierarchy labyrinth expands, imposing the systematic integration approach as part of the law of treaties and International Public Law. However, the IPL's systematic integration patchwork does not match up with the Serbian bilateral PIL treaties when they amalgamate with the HCCH conventions. In effect, it prevents the rational and efficient outcome, especially in the cross-border family matters, where the Serbian bilateral treaties are to be systematically applied with the 1996 Hague Children Protection Convention, the 2007 Hague Maintenance Protocol or the 2007 Hague Child Support Convention. In this regard,, the authors of this paper strive to disentangle the IPL and PIL's nodus regarding the Serbian bilateral PIL treaties and the corresponding Hague conventions. Thus, the paper addresses the following dilemmas: can States tacitly manifest their intention to supersede the prior treaty, especially when the joint declaration on the posterior convention's priority cannot be anticipated due to the legal or factual obstacles; are the bilateral treaties always in compliance with the lex specialis rule or may they reverse it in certain cases?

Key words: conflict clauses, lex specialis, systematic integration approach, HCCH conventions, bilateral PIL treaties.

Part III

Private International Law and International Dispute Resolution Contemporary challenges

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UDK: 341.9(4-672EU):349.6
502/504(4-672EU)

CONSIDERING THE APPLICATION OF THE EU PIL SYSTEM TO CLIMATE CHANGE LITIGATION

Climate change has gradually become one of the most important issues globally, with multiple fields and stakeholders being involved. According to the IPCC Report 2023, human activities, principally through GHG emissions, have unequivocally caused global warming, with global surface temperature reaching 1.1°C above 1850–1900 in 2011–2020. At international level, soft law guiding principles and recommendations have been accompanied by hard law legislative instruments to confront climate change impact. The latter can be summarised in the Kyoto Protocol and the Paris Agreement, while at EU level, climate change targets are currently pursued through the European Green Deal, the European Climate Change Law and the relevant Fit-for-55 Package. As a result of the regulatory background, specific obligations to protect the environment and make adaptation or mitigation efforts to tackle climate change have been imposed on states, public entities and private entities. In numerous jurisdictions, national climate laws and regulations have been promulgated affecting a vast range of activities having an environmental impact, whereas sustainable investments have been significantly increased. Moreover, commercial contracts in specific sectors, such as energy, infrastructure, transport, agriculture and other land use and food production, as well as industry, are also expected to be strongly impacted. In this context, natural climate phenomena, human activities, violations of international or national environmental and climate laws and regulations as well as breach of relevant contracts may give rise to numerus climate change related disputes.Given that the issue of climate change develops in an inherently international and multi-normative setting, PIL has an important role to play. The paper will refer to the typology of climate change related disputes, the conditions for the application of the EU PIL rules and selected issues concerning jurisdiction and applicable law that arise in this respect. It will highlight the complexity and fragmentation of the existing EU PIL framework as applied to the particular case, leading to both forum shopping and qualification shopping practices.

Key words: Climate change litigation, EU PIL, jurisdiction, applicable law.

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PRIVATE INTERNATIONAL LAW ASPECTS OF FOREIGN DIRECT INVESTMENT PROTECTION

Foreign direct investment (FDI) is considered to be one of the strongest engines of global economic growth because they help the increase of national gross domestic products, lead to the rise of employment rates and favour transnational transfers of technology and know-how. It is therefore no wonder that both capital-exporting and capital-importing States are interested in inciting and promoting FDI.

Despite considerable efforts to create a unified international legal framework for FDI protection, the unification at the global level has not been achieved thus far. As a consequence of the absence of global unification, the rules of private international law still play a vital role in FDI protection. This is evident in almost every aspect of legal treatment of FDI. To begin with, foreign investors, as a special class of aliens, enjoy certain special, often preferential rights while at the same time they do not have access to some rights which are reserved for domestic nationals of the host State only (e.g. the right to invest in certain sectors which are of a particular public interest for the host State, such as production of weapons). In addition, due to the inevitable presence of a foreign element in a FDI venture, investment disputes usually require the determination of applicable law. This may sometimes be even more challenging than the determination of applicable law in "ordinary" commercial disputes, due to at least two reasons. First, the notion of "investment" is often too broad to represent a well-defined legal category (although it appears as such in many international treaties relating to FDI), so the issue of classification becomes particularly relevant. Second, instead of the application of a national law, the international investment treaties occasionally call for the application of "international law", which is yet another notion the actual meaning of which should be carefully determined. Finally, private international law aspects are important for the procedural protection of FDI as well. Although most of investment disputes are conducted within the arbitral framework of International Centre for Settlement of Investment Disputes (ICSID), such disputes can be arbitrated under other sets of institutional or ad hoc rules, or litigated before national courts.

This paper will therefore, meticulously examine the specificities of each aspect of FDI protection and attempt to offer some guidance for the points of concern that still remain open.

Key words: foreign direct investment, rights of the foreign investors, investment disputes, applicable law, ICSID.

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APPLICATION OF FOREIGN LAW IN TURKISH COURTS

Turkish courts do not exclusively apply Turkish law. In other words, foreign law may be applied to private law transactions and relations involving a foreign element due to the conflict of laws rules. According to Article 2 of the Turkish Code on Private International and Civil Procedure Law numbered 5718, the judge shall ex officio apply the rules of Turkish conflict of laws and competent foreign law under these rules. However, the different treatment of foreign law as fact or law in various legal orders changes the consequences of the application of foreign law. As a rule, the judge knows and applies the law in accordance with the principle of iura novit curia. However, in cases where foreign law is applied, the judge cannot be expected to be familiar with every legal system other than their own. This paper aims to explain how to determine the content of foreign law and how to apply it in cases where foreign law is applied in Turkish courts.

Key words: application of foreign law, law, fact, iura novit curia.

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THIRD-PARTY FUNDING IN CROSS-BORDER LITIGATION

Third-party funding has gained prominence as a strategic mechanism for overcoming financial barriers that may impede access to justice, particularly in complex, high-stakes cases. It refers to the practice where a third party, separate from the litigants, provides financial support to one of the parties, usually claimant, in exchange for a share of the awarded damages, if the case is successful. This dynamic turns the funding model into an investment vehicle, subjecting funders to the uncertainties of legal outcomes. A controversial aspect that the article will delve into is the potential responsibility of the funder for costs imposed on the opposing party to the funded litigant.

Despite the benefits, concerns have been raised about the potential for conflicts of interest, ethical considerations and the impact on the dynamics and strategy of litigation. Critics argue that third-party funding may lead to frivolous litigation or the exploitation of legal systems for financial gain. Therefor, the growth of third-party funding has led to demands for increased transparency, with litigants and funders often required to disclose their financial arrangements.

Challenges for third-party funding in cross-border cases, in focus of this article, include the complexity of navigating diverse legal systems, which can lead to increased costs and uncertainties for funders. Additionally, issues related to enforceability of judgments and the recognition of third-party funding agreements vary across jurisdictions, posing challenges in ensuring a consistent and predictable outcome for funders. Moreover, the potential for conflicting ethical standards and regulatory frameworks between different countries raises concerns about maintaining transparency and adherence to ethical standards in the context of cross-border litigation. It seems that the evolving landscape of cross-border litigation and third-party funding necessitates ongoing legal and ethical considerations to strike a balance between access to justice and maintaining the integrity of legal proceedings.

Key words: third-party funding, access to justice, disclosure of financial agreements, allocation of costs.

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UDK: 341.985(094.2)"2019"

THE HCCH 2019 JUDGMENTS CONVENTION: BASIS FOR RECOGNITION AND ENFORCEMENT

The HCCH 2019 Judgments Convention requires a special "quality" of a foreign court decision in order to meet one of the requirements for its recognition and enforcement. Toward providing greater predictability and certainty in relation to the global circulation of foreign judgments, Art. 5 of HCCH 2019 Judgments Convention prescribes an exhaustive list on the basis of the international indirect jurisdiction eligible for recognition and enforcement of a foreign court decisions. In addition, separate jurisdictional requirements considering judgments that ruled on rights in rem in immovable property are set out by Art. 6.

The list is the central part of the HCCH 2019 Judgments Convention and it defines the judgments eligible to circulate under the HCCH 2019 Judgments Convention. At the same time, the HCCH 2019 Judgments Convention still leaves the system of bilateralization opened, creating the flexible system of recognition and enforcement of foreign court decisions. The HCCH 2019 Judgments Convention has no per se primacy in relation to national legislations and other international agreements including the Brussels Ia Regulation on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters from 2012.

Key words: The HCCH 2019 Judgments Convention, international indirect jurisdiction, bilateralization, prospects for Republic of Serbia.

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PATHOLOGY DIAGNOSIS IN ARBITRATION CLAUSE

Diagnosing is the process of identifying the nature of a problem or disease by studying its symptoms and the context from which it arises. Only after reviewing the content of this article, which will be explained below, it is clear why the term ”diagnosing” was an adequate addition to the title.

The story about pathology in arbitration clauses starts with a proper identification of causative agents for its existence. The primary focus of the initial section of this article is to determine where and why pathology manifests in arbitration agreements. To support this, an examination of pathology samples extracted from three distinct cases in arbitration, each culminating in diverse outcomes, is undertaken. These examples are to be dissected and analyzed as a link between the causes of pathological arbitration clause and its consequences in practice.

Following the examination, we will move forward to pinpoint the specific flaws within the provided examples and give a concise explanation, drawing on pathology-type identification backed by scholarly theories. This section will incorporate a dedicated segment outlining several distinct classifications of defects found in arbitration clauses determined by most prominent experts in arbitration.

To sum up and bring everything to an end, the final section of the article titled ”Pathology Diagnosis in Arbitration Clause” will focus on ways of treating and preventing pathology in these clauses. To serve this purpose, the methodologies employed by courts, arbitrators, and other institutions when faced with the issue of a pathological arbitration clause will be presented, along with methods of ”healing clauses”, all while emphasizing the principle of effective implementation.

Key words: pathology arbitration clause, international commercial arbitration, clause comprimissoire, pro-arbitration.

CIP - Каталогизација у публикацији
Народна библиотека Србије, Београд

341.9(048)(0.034.2)

REGIONAL conference on private international law (18 ; Niš)
Private international law and international organizations - achievements and challenges [Elektronski izvor] : collection of summaries / 18th Regional conference on private international law ; [editors-in chief Nebojša Raičević, Sanja Marjanović]. - Beograd : University, Faculty of Law, 2024 (Niš : University, Faculty of Law). - 1 elektronski optički disk (CD-ROM) ; 12 cm

Tiraž 50. - Na nasl. str.: Celebrating the first 20 years (2003-2023)

ISBN 978-86-7148-320-9

1. Раичевић, Небојша М., 1969- [главни и одговорни уредник]
а) Међународно приватно право -- Апстракти

COBISS.SR-ID 148245257