

THE IMPACT OF EUROPEAN PRIVATE INTERNATIONAL LAW ON THE NATIONAL CONFLICT OF LAWS RULES IN HUNGARY

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I. The main national source of private international law in Hungary: the Code

In Hungary, private international law was traditionally based on international customs and principles of customary law derived from the case law of national courts and arbitral tribunals.¹ This characteristic of private international law was also mirrored in the national sources thereof. Private international law legislation started to appear in the mid 19th century in Hungary, which at that time was very fragmented and directed to specific issues of private international law. This method of law-making created not only a ‘chaotic’ legislation but also an *‘uncertain and unsystematic state of the sources of private international law’* which situation inevitably called for a comprehensive codification.² After several attempts and proposals,³ in 1979 the fruit of the codification process, the so-called Code⁴ was adopted.

The Code when it was adopted was already a very complex and comprehensive law in the sense that it aimed to regulate not only conflict of laws issues, but all three areas of private international law: jurisdiction, conflict of laws and recognition and enforcement.⁵ The

¹ For an overview on the evolution of sources of Hungarian private international law see: MÁDL Ferenc, VÉKÁS Lajos, *The law of conflicts and of international economic relations*, Akadémia Kiadó, Budapest, 1998, pp. 56-59.

² MÁDL, VÉKÁS op.cit p. 57.

³ MÁDL, VÉKÁS op.cit p. 58.

⁴ Law-Decree No. 13 of 1979 on Private International Law.

⁵ Interesting to note that the structure of the Code does not follow the order of these issues when applied in practice (jurisdiction – conflict of laws – recognition and enforcement), but starts with the general and specific provisions on conflict of laws then continues with rules regarding jurisdiction and ends up with provisions on recognition and enforcement.

Code itself declares this aim when states that *‘in the interest of the development of peaceful international relations the purpose of the Code is to determine first, the law of which country is applicable if a foreign person, object of property or right is involved in a civil, family or labour law relationship and the laws of several countries could be applicable, and second, the jurisdiction and procedural rules to be followed in a legal dispute containing a foreign component.’*⁶ Although it is not expressly mentioned in the first few articles of the Code dealing with the scope of the law, but the Code, as it was mentioned earlier, from the very first moment of its adoption regulates recognition and enforcement as well. The Code is applicable only in matters which are not dealt with in specific international conventions.⁷

II. The structure of the Code

The Code consists of XI chapters and 76 articles. Chapter I deals with the general aspects related to the application of the Code, such as scope and applicability, and also with the general questions regarding the application of the specific conflict of laws rules. These general questions cover qualification,⁸ renvoi,⁹ determination of the content of the foreign law,¹⁰ reciprocity¹¹ and the rules on disregarding the application of

⁶ Art. 1.

⁷ See Art. 2. of the Code. Among other conventions, Hungary is member of many international conventions concerning issues falling under the scope of the Code, including the following HCCH Conventions: 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 on the Abolishing the Requirement of Legalisation 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 18 March 1970 on the Taking of Evidence Abroad 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.

⁸ Art. 3.

⁹ Art. 4.

¹⁰ Art. 5.

¹¹ Art. 6.

foreign law.¹² Chapters II-VII contain the specific conflict of laws rules grouped into six chapters as the underlying legal relationship. Chapter II provides conflict of laws rules for persons, including natural persons,¹³ legal entities¹⁴ and the state.¹⁵ As it will be discussed later, of these provisions the ones dealing with the determination of personal law for natural persons, more particularly the provisions on the determination on the law applicable to the right related to names were really affected by European law. Prior to Rome I regulation Chapter VIII originally dealt with the conflict of laws issues related to employment contracts, but these provisions were repealed by Art. 5 of Act IX of 2009 and are not in force as of December 17, 2009. Chapter IX of the Code deals with jurisdiction, the second pillar of private international law. Although the Code regulated jurisdiction from the very first adoption of its original version in 1979, but those first provisions were conceptually modified in 2000 with regard to the tendencies in jurisdiction in Europe. Chapter X of the Code contains certain procedural law provisions as to legal aid. Finally, the third branch of private international law – recognition and enforcement – is regulated in Chapter XI of the Code. It regulates not only the main principles of recognition and enforcement but the detailed requirements of recognition and enforcement of foreign court decisions as well and also provides for rules on the determination of the competent national court.

The Code has been subject to several modifications and amendments since July 1, 1979 when it first entered into force. Over the past thirty-five years the Code was modified thirty times. Of these thirty modifications only four took place during the first twenty years of the Code that is up until March 1, 1998. Starting with the fifth modification, almost all the subsequent modifications were made either because the Hungarian legislator voluntarily wanted the Hungarian law to follow the European tendencies in private international law, or it was an obligation deriving from the respective EU laws.

¹² Art. 7-9.

¹³ Art. 10-16.

¹⁴ Art. 18.

¹⁵ Art. 17.

In the following parts the present study will elaborate and discuss some of the most notably impacts of the respective EU laws on the Hungarian private international law, more particularly on the Code.

III. The impact of Rome I regulation on the Hungarian PIL rules

III.1. The pre-Rome I. conflict of laws rules on contracts

III.1.1. General rules for the determination of the law applicable for contracts

Originally, Chapter V of the Code contained the conflict of laws rules for contractual relationships. This chapter consisted of eight articles.

According to these rules, in general, the parties could choose the law for their contract, either at the time of the conclusion of the contract, or later.¹⁶ Although the Code does not expressly stated it, but the parties could choose only state law. If the parties chose other than state law, that choice was considered as a choice of rules of law and not as choice of law. If the parties did not choose the law applicable for their contract, or their choice was not valid, the law applicable to their contract was to be determined in accordance with the conflict of laws rules of the Code.

For specific types of contracts – such as contract for sales, leasing, loan, etc. – the Code itself provided clear and objective conflict of laws rules for the determination of the law applicable in the absence of choice.¹⁷ Generally we can say that in all except one contract the place of business/

¹⁶ Art. 24.

¹⁷ ex Art. 25 provided the following: *'The law relating to contracts shall be the law of the state in which the following persons have their place of residence, usual place of abode, central office or premises at the date of the conclusion of the contract: a) in the case of a contract on sale, the seller; b) in the case of a rent or leasing contract, the lessor; c) in the case of a contract relating to the utilization of rights falling under copyright protection, the user; d) in the case of a contract relating to the utilization of rights of industrial right protection and other rights representing pecuniary value, the party ceding use; e) in the case of deposit (warehousing) contract, the custodian; f) in the case of a contract on commission, the commissioned party; g) in the case of a contract on consignment, the consignee; h) in the case of a contract relating to commercial representation, the representative (agent); i) in the case of a contract on transport and forwarding, the transporting or forwarding agent; j) in the case of a contract relating to banking and credit transactions, the financial institution providing the banking service; k) in the case of an insurance contract, the insurer; l) in the case of a loan or loan for use contract, the lender; m) in the case of a contract of donation, the donor.'*

residence/habitual residence of the person providing the characteristic performance was the connecting principle. The only exemption was the contract relating to the exploitation of rights under copyright protection.¹⁸ Beside these general rules, there were some general exceptions calling for specific connecting principles, such as for example *lex rei sitae*,¹⁹ *lex bandi*,²⁰ or *lex loci solutionis*.²¹

If the applicable law could not be determined on the basis of the previous rules and principles, the contract was governed by the law of the place of residence, usual place of abode or central office (place of business) of the party performing the primarily characteristic performance. If the applicable law could not be determined in this way either, the law applicable was the one to which the contract was most closely connected according to the material elements of the given contractual relationship.²²

The law applicable to the contract covered every element of the contractual relationship, in particular, the conclusion of the contract, substantive and formal validity, contractual effects, and, unless the parties agreed otherwise or the Code provided otherwise, the agreements guaranteeing the contract, and the possibility of set-off.²³

Furthermore, the Code provided that unless the parties agreed otherwise, the law of the state of the place of delivery or receipt was applicable to the existence of any obligation regarding inspection, the method of inspection, the time limits for complaints and its possible legal effects.²⁴

If a contract was not valid for formal reasons according to the law applicable to the contract, the court could still consider the contract as a valid contract if it was valid according to the *lex fori*, or the law of the state of the place of the conclusion of the contract, or the law of

¹⁸ ex Art. 25. c).

¹⁹ ex Art. 26 (1) (for contracts concerning immovables).

²⁰ ex Art. 26 (1) (for contracts concerning registered vessels and aircraft).

²¹ ex Art. 26 (2) (for contracts of locatio conductio operis). For more exemptions see: ex Art. 26-28.

²² ex Art. 29.

²³ ex Art. 30 (1).

²⁴ ex Art. 30 (2).

the state where the intended legal effects of the contract were to take place.²⁵

III.1.2. Specific rules for consumer contracts

Up until 1 March 1998 the Code did not contain special conflict of laws rules for consumer contracts. In 1997 however, the Act CXLIX of 1997²⁶ brought about a significant change in the architecture of the Code by introducing specific conflict of laws rules for consumer contract. As we know it from the explanatory report attached to this act, the main reasons of these amendments laid in the intention to incorporate into the Hungarian law not only the basic principles of the Rome Convention,²⁷ but also its detailed provisions.²⁸ On 1 March 1998 the new Article 28/A entered into force. The aim of this article was to provide protection for consumers not only through the substantive law rules, but also through the conflict of laws rules.

For the purposes of the application of the specific conflict of laws rules for consumer transactions, the new law also determined the concept of consumer contract. According to the concept employed in the Code, a consumer contract was a contract for the provision of goods or services with a party acting outside the sphere of economic or professional activities, or a loan or credit contract in connection thereto.²⁹ The newly introduced Article 28/A provided that in respect of consumer contracts, the law of the country in which the consumer's domicile or residence is located was the governing law³⁰ on the conditions that an invitation for the conclusion of a contract was issued or an advertisement was published prior to the conclusion of the contract within the territory of such country, and the consumer has made the statements and performed

²⁵ ex Art. 30 (2).

²⁶ Act CXLIX of 1997 on the amendment of the Act IV of 1959 on the Civil Code.

²⁷ 80/934/EEC: Convention on the law applicable to contractual obligations opened for signature in Rome on 19 June 1980, OJ L 266, 09/10/1980 p.1-19.

²⁸ see: Specific justifications for Art. 11 of the Act CXLIX of 1997 on the amendment of the Act IV of 1959 on the Civil Code.

²⁹ Art. 28/A (2).

³⁰ Art. 28/A (1).

the acts necessary for the conclusion of the contract within that country;³¹ or the other party or his representative has received the order from the consumer in that country;³² or in the interest of having a sales contract concluded, the seller has made travel arrangements for the consumer and the consumer has concluded the contract, or made a statement thereto, within the territory of that country during his visit.³³ These protective provisions could not be applied in respect of shipping and transportation contracts and contracts, based on which services to the consumer were to be provided exclusively outside the territory of the country where the consumer's domicile or residence is located, except if such contract was for the provision of a travel service or visiting certain locations along such trip for a unit price.³⁴

However, it was not only the Code which contained conflict of laws provisions for consumer contracts. The Law-Decree 2 of 1978 limited the parties' ability to choose the law applicable for consumer contracts by providing for the application of the mandatory consumer protection rules of the Hungarian law if the parties chose another but Hungarian law for consumer contracts for which otherwise the Hungarian law would have been the applicable law.³⁵

III.1.3. Specific rules for employment contracts

The Code as it was adopted in 1979 already provided very detailed provisions on the conflict of laws issues related to the terms of employment and so to the employment contracts.

First and foremost, it was not possible to choose the governing law for these relationships, but objective connecting factors were to be applied. The Code – as a general rule – applied the principle of *lex loci laboris*, meaning, that unless the law provided otherwise, the law of the state

³¹ Art. 28/A (1) a).

³² Art. 28/A (1) b).

³³ Art. 28/A (1) c).

³⁴ Art. 28/A (3).

³⁵ See: Art 5/C of the Law-Decree 2 of 1978.

where the work had to be carried out was the applicable law.³⁶ If the employment was subject to appointment or election, the personal law of the appointing authority or electing body was the governing law for the employment relationship.³⁷ If the employer was a foreign state, state authority or state administration agency, or a foreign person operating in Hungary as a diplomatic representative or otherwise exempt from Hungarian jurisdiction, and the employer and the employee had the same personal law, that law governed the terms of employment as well.³⁸ If the employee had to perform his or her obligations under the employment contract in more than one state, the employment was subject to the personal law of the employer.³⁹ If the employer was Hungarian and its employee had to perform his or her work abroad or was on a permanently deployed employee, the Hungarian law applied to that employment.⁴⁰ *Lex bandi* was the law applicable to employments which took place on the board of a registered ship or airplane. For employment contracts between a transport company and its employees, the personal law of that given company was the law applicable.⁴¹ The law applicable to the employment contract extended to the validity of the contract, the consequences of the invalidity of the contract and the termination of the employment.⁴²

This system was modified radically in 2001 due to the intention to make the Hungarian law to follow the tendency reflected in the Rome Convention and Directive 96/71/EC.⁴³ The new rules on employment contracts were in force on July 1, 2001.

³⁶ Art. 51 (1).

³⁷ Art. 51 (2).

³⁸ Art. 51 (3).

³⁹ Art. 52 (1).

⁴⁰ Art. 52 (2).

⁴¹ Art. 52 (3).

⁴² The modification was made by Art. 39 of the Act XVI of 2001 on the modification of the Act XXII of 1992 on labour law and related laws with regard to the requirements deriving from legal harmonization.

⁴³ Directive 96/71/EC of the European Parliament and of the Council of 16 December 1996 concerning the posting of workers in the framework of the provision of services, OJ L 18, 21.1.1997, p. 1–6. See Explanatory memorandum prepared for the Act XVI of 2001, specific justifications and notes on Art. 39 of Act XVI of 2001.

The new, harmonized rules⁴⁴ – as a general rule – provided⁴⁵ that employment relationships were governed by the law chosen by the parties at the time of conclusion of the employment contract or later.⁴⁶ However, – in line with Art 6 of the Rome Convention – in order to protect the employee the liberty of the parties to choose the applicable law was not limitless.⁴⁷ The choice of law made by the parties could not result in any detriment regarding the provisions of Hungarian employment-related legislation for the protection of employees and which did not allow any deviation,⁴⁸ provided the Hungarian law would be the applicable law in the absence of the parties' choice in the given relationship.⁴⁹

For the instances where the governing law was not specified the employment relationship the Code followed the rules of Art. 6 (2) of the Rome Convention and provided that the governing law shall be the law of the country where

a) the employee habitually carried out his/her work, even if temporarily employed in another country within the framework of posting, assignment or hiring out, or

b) the place of business that employed the employee was located, if the employee did not habitually carry out his/her work in any one country, unless it appears from the circumstances as a whole that the contract was more closely connected with another country, in which case the contract is to be governed by the law of that country.⁵⁰

⁴⁴ Art. 75 (4) b) provides: '[w]ithin the framework of Section 3 of Act I of 1994 promulgating the Europe Agreement establishing an association between the Republic of Hungary and the European Communities and their member states, signed in Brussels on 16 December 1991, this Law-Decree - together with the pertinent provisions of the Labour Code, the Labour Safety Act and the legislation on employment control - contains regulations designed to approximate Directive 96/71/EC of the European Parliament and of the Council concerning the posting of workers in the framework of the provision of services.'

⁴⁵ Based on Art 3 of the Rome Convention.

⁴⁶ new Art. 51 (1).

⁴⁷ See specific justifications and notes on Art. 39 of Act XVI of 2001.

⁴⁸ Making these rules mandatory rules.

⁴⁹ Art. 51 (3).

⁵⁰ new Art. 51 (2).

The other provisions of the Chapter on labour law remained intact.⁵¹

III.2. The amendment of the Code due to the adoption of the Rome I regulation

III.2.1. General rules for the determination of the law applicable for contracts

Act IX of 2009 radically modified Chapter V of the Code containing the general conflict of laws rules applicable to contractual relationship. Due to this modification not only the conflict of laws rules for contracts falling under the scope of the Rome I regulation were repealed, but interestingly, the main connecting principle for the determination of the law applicable in the absence of choice of law by the parties was also changed.

Chapter V now consists of seven articles. Art. 24 sets the scope of the applicability of the Code in this regard when provides that provisions of the Code on contract law can be applied to the contractual obligations which are not covered by Rome I Regulation.

For the contracts not falling under the material scope of Rome I regulation, the main determination factor is still the parties' choice. Art. 25 of the Code expressly provides that the contract is governed by the law chosen by the parties at the time of the conclusion of the contract, or any time

⁵¹ See the new provisions:

'Art. 52.

- (1) *Where employment is contrived by way of appointment or election it shall be governed by the personal law of the appointing authority or of the electing body.*
- (2) *If the employer is a foreign state, state authority or administration agency, or a foreign citizen working in Hungary as a diplomatic representative or otherwise immune from Hungarian jurisdiction and the personal law of the contracting parties is the same, that law shall apply to such employment relationship.*
- (3) *The employment of a person serving on board a water or air transport vehicle shall be governed by the national law under whose flag or other ensign it sails or flies; the employment relationship of the employees of other carriers shall be governed by the personal law of the forwarder.*

Art 53

The substantive and formal legal conditions of the validity of a labour contract, the consequences of the invalidity of a labour contract, and the contents and termination of employment, shall be adjudged according to the law applicable to the employment relationship.'

thereafter, to the whole or to part only of the contract. The choice shall be made expressly or clearly demonstrated by the terms of the contract or the circumstances of the case.⁵² If we compare this wording with the previous text of the Art. 24 which contained the rules for the parties' choice of law, we immediately can see that it is wordier. Although the Code still does not allow the choice of non-state law for a contract as choice of law, it contains more detailed rules for the choice itself. In parallel with Rome I regulation, the Code declares that not only express, but also a kind of implied choice can be a valid choice. The Code now also declares that it is possible to choose law only to a part of the contract. It should be mentioned that it was the case prior to these modifications as well, however earlier it was based on case law and jurisprudence but not the explicit text of the law. However, if we examine this new text, we still can see that it is very vague and is not concrete enough on essential points of choice of law. Just to mention one: its rules on the implied choice are not certain as to the determining factors or what circumstances can be taken into account.

Where the parties have not chosen any law as applicable law to their contract, the Code provides that apart from some exceptional cases the contract should be governed by the law of the country with which it is most closely connected based on the key elements of the contract.⁵³ It is clear for an observer that this rule resembles Art. 4 of the Rome Convention under which it was the general principle for the absence of parties' choice.⁵⁴ This is an interesting turn back regarding the EU tendency on determining the law applicable for contracts in case of the absence of parties' choice. Although the Rome Convention provided a presumption⁵⁵ that the contract is most closely connected with the country where the party who is to effect the performance which is characteristic of the contract has, at the time of conclusion of the contract, his habitual residence, or, in the case of a body corporate or unincorporated, its

⁵² new Art. 25.

⁵³ new Art. 28.

⁵⁴ Art 4 (1) of the Rome Convention provides that '*[t]o the extent that the law applicable to the contract has not been chosen in accordance with Article 3, the contract shall be governed by the law of the country with which it is most closely connected...*'

⁵⁵ Art. 4 (2).

central administration, this rule is not present in the new Chapter V of the Code.

The new rules also contain some exceptions to the general principle, e.g. in case of contracts concluded in the stock exchange.⁵⁶

The law of a contract applies to all elements of the contractual relationship, in particular, to the conclusion of the contract, material and formal validity, contractual effects, and, unless the parties agreed otherwise or unless otherwise implied by the provisions of the Code, to the agreements guaranteeing the contract, and the possibility of set-off.⁵⁷ If a contract is considered not valid for formal reasons according to the law applicable to the contract, the court shall recognize the contract as valid if it is valid according to the law of the country of the competent court, or the law of the country where it was concluded or where the intended legal consequences are to take effect. The prescription of a claim is governed by the law that is otherwise applicable to the claim in question.⁵⁸ Finally, unless the Code provides otherwise, the provisions relating to contracts applies to unilateral acts.⁵⁹

III.2.2. Specific rules for consumer contracts

Since consumer contracts are regulated in Rome I Regulation the Hungarian legislator repealed Art. 28/A of the Code in 2009.⁶⁰

However, Art. 5/C of the Law-Decree 2 of 1978 remained in force. Paragraph 1 of this article restricts the parties' freedom of choosing the law governing a consumer contract by providing that the parties even in cases when they choose foreign law cannot contract out the Hungarian consumer protection laws if the Hungarian law would otherwise be the applicable law under Art. 28/A of the Code. One can argue that since Art.

⁵⁶ For the exemptions see new Art 26-27.

⁵⁷ new Art. 29 (1).

⁵⁸ new Art. 29 (2)-(3).

⁵⁹ new Art. 30.

⁶⁰ Art. 2 of the Act IX of 2009 on the modification of PIL Code.

28/A is not in force anymore, this provision, even is still in force, has no legal relevance and consequence. However, it can have, especially if a consumer contract was concluded before 17 December 2009, since in this case we just cannot apply Rome I Regulation to that contract, but the Code itself, and of its provisions the ones on general contract law. However, this Art. 5/C has another paragraph as well, which by its wording is applicable not only to consumer but any contract. The second paragraph provides that if a contract or publicly available general terms and conditions applied by one party is in close connection with any country forming the European Economic Area and the parties chose the law of a third country as applicable law to that contract, the parties' choice is void in the regard this third country law is contrary to the those rules of Directives 93/13/EEC and 1999/44/EC from which the parties may not deter as these rules are implemented into the national law of the EEA country with which the contract in close connection is. In these matters the law applicable is not the one chosen by the parties but the law of this EEA country.⁶¹

III.2.3. Specific rules for employment contracts

Due to the fact that employment contracts fall under the scope of Rome I Regulation, Art. 5 of the Act IX of 2009 repealed Art. 51-53 of the Code as of December 17, 2009. It means that now the Code does not provide any conflict of laws rule for employment and employment contracts. In most of the cases it would not cause any problem, still, might create uncertainties as the determination of the law applicable to employment contracts concluded before December 17, 2009.⁶²

⁶¹ Art. 5/C (2) of the Law 2 of 1978.

⁶² See: Rome I regulation Art. 28: '*This Regulation shall apply to contracts concluded after 17 December 2009.*'

IV. The impact of Rome II regulation on the Hungarian rules

IV.1. The pre-Rome II rules on non-contractual obligations

The Code when it was adopted in 1979 contained specific conflict of laws rules for non-contractual obligations concerning torts/delicts and unjust enrichment.⁶³

Up until the amendments required by Rome II Regulation *lex loci delicti commissi* was the general connecting principle for torts and delicts in the Hungarian law. The Code provided that the law applicable at the place and time of the activity or omission causing damage was to be applied, unless the Code itself provided otherwise.⁶⁴ The application of the principle of the *lex loci damni* was possible only in cases where the application of the law designated by this principle was more favorable for the injured party than the law designated by the application of the principle of the *lex loci delicti commissi*.⁶⁵ This special rule was introduced to tackle the situation when the place of the damage and the place of the harmful event were in two different states. The explanatory notes prepared for the original Code expressly mention⁶⁶ road traffic accidents as a possible area where this special rule might have significant relevance.⁶⁷ To enhance the position of the person who sustained the damage,⁶⁸ the Code provided that if according to the law of the place of the activity or omission causing the damage, culpability was a condition of liability, the capacity of culpability could be established either according to the personal law of the party causing the damage, or according to the law of the place of the breach of law.⁶⁹ The Code provided an exception to the general principle, creating a special connection where the parties have their places of residence in the same country. Based on this special rule, if the places of residence of the party causing the damage and the injured party were in the same

⁶³ Art. 32-35.

⁶⁴ Art. 32 (1).

⁶⁵ Art. 32 (2).

⁶⁶ See Specific justifications to Art. 24-35 of the Code, para 3.

⁶⁷ Hungary is not a signatory state of the HCCH Convention of 4 May 1971 on the Law Applicable to Traffic Accidents.

⁶⁸ See Specific justifications to Art. 24-35 of the Code, para 3.

⁶⁹ Art. 32 (4).

state, the law of that state was the applicable law.⁷⁰ Regardless of the connecting factor applied in a specific case, the law of the place of the conduct causing damage was to be applied to whether the conduct causing damage was realized through the violation of the rules of traffic or another rule of safety.⁷¹ If the place of the activity or omission was on board of a registered vessel or aircraft, the principle of *lex bandi* was to be applied to designate the law applicable.⁷² The Code considered unlawfulness a public policy requirement of the Hungarian law for the purposes of establishing liability,⁷³ therefore expressly provided that no Hungarian court could establish liability for conduct which was not unlawful according to the Hungarian law.⁷⁴ Similarly, for public policy reasons, the Code did not allow Hungarian courts to apply foreign law remedies that were not otherwise available under Hungarian law.⁷⁵

As mentioned above, the Code also provided certain conflict of laws rules for unjust enrichment. According to these rules for unjust enrichment and the legal consequences thereof, the law applicable was the law of the country in which the unjust enrichment took place.⁷⁶

IV.2. The modification of the PIL Code due to the adoption of the Rome II regulation

As of 4 April 2009 the Code can be applied only to those non-contractual obligations which are not covered by Rome II Regulation.⁷⁷ To be in compliance with Rome II, the Code provision on unjust enrichment was repealed.⁷⁸ As far as non-contractual obligations are concerned, the Code

⁷⁰ Art. 32 (3).

⁷¹ Art. 33 (1).

⁷² Art. 33 (2).

⁷³ Art. 339 of the Act IV of 1959 on the Civil Code determines the basic requirements of liability for torts and delicts. Art. 339 (1) states that a person who causes damage to another person in violation of the law shall be liable for such damage. He shall be relieved of liability if he is able to prove that he has acted in a manner that can generally be expected in the given situation.

⁷⁴ Art. 34 (1).

⁷⁵ Art. 34 (2).

⁷⁶ Art. 35.

⁷⁷ Art. 32.

⁷⁸ Art. 35 of the Code was repealed by Art. 5 of IX of 2009.

kept the principle of *lex loci delicti commissi* as the main connecting principle for this area,⁷⁹ the provision ensuring specific protection for the person sustaining the damage,⁸⁰ and the exception applicable in the cases where the places of residence of the responsible party and the person sustaining the damage are in the same country.⁸¹ Furthermore, the specific rules on culpability,⁸² violation of traffic and similar safety rules,⁸³ the application of *lex bandi*⁸⁴ also remained intact. The specific rules on unlawfulness and applicability of foreign consequences were deleted from the Code. The justification for this deregulation was that the general rule on the protection of public policy in Art. 7 of the Code⁸⁵ can provide a sufficient basis for preventing the application of foreign law not being in compliance with the respective provisions of the *lex fori*.⁸⁶

V. The impact of Rome III regulation on the Hungarian PIL rules

As it is known, Rome III Regulation⁸⁷ was the result of an unsuccessful attempt⁸⁸ to create an EU-wide regulation to amend Regulation (EC) No. 2201/2003 as regards jurisdiction, and to introduce rules concerning the determination of the applicable law in matrimonial matters.⁸⁹ Since it was not possible to reach an EU-wide consensus on this matter, Rome III was

⁷⁹ Art. 33 (1) (ex Art. 32 (1)).

⁸⁰ If it is more favourable for the person having sustained the damage, the law of the country where the damage occurred shall apply. Art. 33 (2) (ex Art. 32 (2)).

⁸¹ Art. 33 (3) (ex Art. 32 (3)).

⁸² Art. 33 (4) (ex Art. 32 (4)).

⁸³ Art. 34 (1) (ex Art. 33 (1)).

⁸⁴ Art. 34 (2) (ex Art. 33 (2)).

⁸⁵ Art. 7 (1) provides that '*the application of foreign law shall be disregarded if it conflicts with the Hungarian public order.*'

⁸⁶ See Explanatory notes attached to proposal for Act IX of 2009.

⁸⁷ Council Regulation (EU) No 1259/2010 of 20 December 2010 implementing enhanced cooperation in the area of the law applicable to divorce and legal separation, OJ L 343, 29.12.2010, p. 10-16

⁸⁸ Proposal for a Council Regulation amending Regulation (EC) No. 2201/2003 as regards jurisdiction and introducing rules concerning applicable law in matrimonial matters {SEC(2006) 949} {SEC(2006) 950}, COM/2006/0399 final - CNS 2006/0135.

⁸⁹ '*The objectives of Rome III could not be attained within a reasonable timescale by applying the relevant Treaty provisions.*' see: COM(2010) 105 final p. 2.

adopted through enhanced cooperation, the consequence of which is that its rules are not applied in all EU member states.⁹⁰

Rome III Regulation affected the provisions of the Code to a large extent. Prior to the adoption and entering into force of the Rome III Regulation, the Code already contained specific rules related to the determination of the law applicable to divorce or as the respective sub-part of the Code was titled: dissolution of marriage.

The Code provided a three-level mechanism for the determination of law to divorce. First, if the spouses had the same personal law at the time of filing for divorce, this law was the law applicable to the divorce as well.⁹¹ Second, if the spouses did not have the same personal laws at the time of filing for divorce, their last common personal law was the governing law, if any. If they never had common personal law the following solution was provided: if either of the spouses was Hungarian, then the Hungarian law was the governing law. If none of the spouses had Hungarian law as his or her personal law, then the law of the country where the spouses had their last common place of residence was the applicable law.⁹² Third, if the spouses had no common place of residence, the *lex fori* was the applicable law to the divorce.⁹³ Moreover, the Code contained some special rules ensuring specific public policy considerations when foreign law is applied to a divorce. The Code stated when foreign law was applicable to the dissolution of marriage the competent forum had to apply the given foreign law with the following differences:

- marriage could be dissolved even where the foreign law excluded divorce, or the conditions of divorce were not met under the foreign law but were met under the respective Hungarian law;

⁹⁰ The member states originally forming this enhanced cooperation were the followings: Belgium, Bulgaria, Germany, Spain, France, Italy, Latvia, Luxembourg, Hungary, Malta, Austria, Portugal, Romania and Slovenia. Greece originally wanted to participate in the enhanced cooperation but later withdrew from the cooperation. Lithuania became the 15th Member State to take part in this enhanced cooperation on 21 November 2012.

⁹¹ Art. 40 (1).

⁹² Art. 40 (2).

⁹³ Art. 40 (3).

- the requirement of divorce under Hungarian law that the married life must be completely and irreparably damaged⁹⁴ must be examined;
- the divorce could not be based upon culpability.⁹⁵

Prior to Rome III Regulation, the Code and so the Hungarian law did not allow the parties to choose the law applicable to divorce. However, now the new choice of law rules of Rome III Regulation make it possible for the parties to choose the law applicable, so does the Code for divorces and legal separations falling under the scope of Rome III Regulation. The Code now states that spouses shall be able to exercise the choice of applicable law referred to in Art. 5-7 of Rome III Regulation⁹⁶ by the

⁹⁴ See: Art. 18 (1) of Act IV of 1952.

⁹⁵ Art. 41.

⁹⁶ *'Art. 5: Choice of applicable law by the parties*

1. The spouses may agree to designate the law applicable to divorce and legal separation provided that it is one of the following laws:

(a) the law of the State where the spouses are habitually resident at the time the agreement is concluded; or
(b) the law of the State where the spouses were last habitually resident, in so far as one of them still resides there at the time the agreement is concluded; or
(c) the law of the State of nationality of either spouse at the time the agreement is concluded; or
(d) the law of the forum.

2. Without prejudice to paragraph 3, an agreement designating the applicable law may be concluded and modified at any time, but at the latest at the time the court is seized.

3. If the law of the forum so provides, the spouses may also designate the law applicable before the court during the course of the proceeding. In that event, such designation shall be recorded in court in accordance with the law of the forum.

Art. 6: Consent and material validity

1. The existence and validity of an agreement on choice of law or of any term thereof, shall be determined by the law which would govern it under this Regulation if the agreement or term were valid.

2. Nevertheless, a spouse, in order to establish that he did not consent, may rely upon the law of the country in which he has his habitual residence at the time the court is seized if it appears from the circumstances that it would not be reasonable to determine the effect of his conduct in accordance with the law specified in paragraph 1.

Art. 7: Formal validity

1. The agreement referred to in Article 5(1) and (2), shall be expressed in writing, dated and signed by both spouses. Any communication by electronic means which provides a durable record of the agreement shall be deemed equivalent to writing.

2. However, if the law of the participating Member State in which the two spouses have their habitual residence at the time the agreement is concluded lays down additional formal requirements for this type of agreement, those requirements shall apply.

deadline set by the court in the first hearing.⁹⁷ The formal validity of such choice of law agreement is to be assessed on the conditions laid down in Art. 7(1) of Rome III Regulation.⁹⁸

Art 15 of Act XXIX of 2009⁹⁹ supplemented the already existing conflict of laws rules related to marriage¹⁰⁰ with the new conflict of law rules related to registered partnerships.¹⁰¹ These new provisions were also amended by the Act LXVII of 2011 on the performance of central authority functions in cross-border maintenance matters in order to bring the national law in compliance with the then recently adopted 4/2009 (EC) Regulation¹⁰² and the Rome III Regulation.¹⁰³

3. *If the spouses are habitually resident in different participating Member States at the time the agreement is concluded and the laws of those States provide for different formal requirements, the agreement shall be formally valid if it satisfies the requirements of either of those laws.*

4. *If only one of the spouses is habitually resident in a participating Member State at the time the agreement is concluded and that State lays down additional formal requirements for this type of agreement, those requirements shall apply.'*

⁹⁷ See new Art. 40.

⁹⁸ According to the referred provision of Rome III the agreement must be expressed in writing, dated and signed by both spouses. Any communication by electronic means which provides a durable record of the agreement shall be deemed equivalent to writing. See new Art. 40.

⁹⁹ Act XXIX of 2009 on registered partnership inspired by the European tendencies regarding the recognition of same sex registered partnerships. See Explanatory memorandum prepared for the Act XXIX of 2009.

¹⁰⁰ Due to the modification introduced by the Act LXVII of 2011 as of 21. 06. 2012 the Code provisions on the dissolution of a marriage are not applicable to registered partnership since the Code contains specific rules on this issue. See Art. 41/B of the Code.

¹⁰¹ Under Hungarian law marriage is the union of a man and woman, so Hungarian law does not provide for same-sex marriages.

¹⁰² 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, OJ L 7, 10.1.2009, p. 1-79.

¹⁰³ Council Regulation (EU) No. 1259/2010 of 20 December 2010 implementing enhanced cooperation in the area of the law applicable to divorce and legal separation. OJ L 343, 29.12.2010, p. 10-16.

As a general rule, the conflict of laws rules applied to marriage¹⁰⁴ are

¹⁰⁴ These were the followings:

'Marriage and Its Validity

Art 37

- (1) *The substantive legal conditions of the validity of marriage shall be adjudged according to the joint personal law of those getting married at the time of the marriage. If the personal laws of those getting married are different at the time of the marriage, the marriage is only valid if the substantive legal conditions thereof are satisfied according to the personal laws of both parties to the marriage.*
- (2) *The law in force at the place and date of the marriage shall apply to the formal requirements of the validity of marriage.*
- (3)
- (4) *The provisions relating to marriage and the validity thereof shall duly apply also in the matter of establishing the existence or non-existence of marriage.*

Art 38

- (1) *If a non-Hungarian citizen wishes to get married in Hungary, he or she shall verify that there is no obstacle to his or her getting married according to his or her personal law. In justified cases, the public administration body of the Government of regional jurisdiction may grant exemption from the burden of verification.*
- (2) *A marriage may not be contracted in Hungary if there is an insuperable obstacle to the marriage according to the Hungarian law.*
- (3) *If a Hungarian citizen or a displaced person residing in Hungary wishes to get married abroad, the public administration body of the Government of regional jurisdiction shall certify that there is no obstacle to the marriage according to the Hungarian law.*
- (4) *If the place of residence of a Hungarian citizen is abroad, the certificate shall be issued by the Hungarian authority of foreign representation.*

Personal and Property Relations of Spouses

Art 39

- (1) *The law which is the joint personal law of the spouses at the time of adjudgement shall apply to the personal and property relations of the spouses, including the bearing of the spouses name, maintenance and agreements on possessions in marriage.*
- (2) *If the personal laws of the spouses are different at the time of adjudgement, their last joint personal law, or in the absence thereof, the law of that state shall apply, in the territory of which the spouses last shared a joint place of residence.*
- (3) *If the spouses had no joint place of residence, the law of the state of the proceeding court or another authority shall apply.*
- (4) *A change in the personal law of the spouses shall not affect the bearing of names established on the basis of the former law and the proprietary effects which came into being validly, including maintenance and agreements on possessions in marriage.*

Dissolution of Marriage

Art 40

- (1) *The conditions of the dissolution of marriage shall be adjudged on the basis of the law which is the joint personal law of the spouses at the time of the submission of the statement of plaint to the court.*
- (2) *If the personal laws of the spouses are different at the time of the submission of the statement of plaint, their last joint personal law, or in the absence thereof, if either of the spouses is Hungarian, the Hungarian law, or in a case to the contrary, the law of that state shall apply, in the territory of which the spouses last shared a joint place of residence.*

rendered to be applicable to registered partnerships¹⁰⁵ as well, with some exceptions.

The Code, as of 21 June 2012, provides that the provisions on marriage also apply to registered partnerships in terms of contracting, validity and legal effects, subject to the following exceptions.

The fact that the personal law of the would-be registered partner does not recognize the legal concept of registered partnership among couples of the same sex does neither prevent the establishment of a registered partnership nor affects its validity on the conditions that:

- the non-Hungarian citizen would-be registered partner certifies that under his or her personal law he or she would be allowed to enter into a marriage,¹⁰⁶ and
- at least one of the would-be registered partners is a Hungarian citizen or permanently resides in the territory of Hungary.¹⁰⁷

If this exceptional rule applies to a given registered partnership that registered partnership as to its legal effects will be subject to Hungarian law.¹⁰⁸

The Code rules on registered partnership were supplemented with new rules on the termination of registered partnership in 2011. The new rules now provide the following conflict of laws rules as to the termination of registered partnerships:

(3) If the spouses had no joint place of residence, the law of the state of the proceeding court or another authority shall apply.'

¹⁰⁵ The concept of registered partnership was introduced into the Hungarian law by the adoption of the Act XXIX of 2009 on registered partnerships. According to Art. 1 (1) of the Act XXIX of 2009 same sex couples can enter into registered partnerships.

¹⁰⁶ In certain, justified instances the Budapest and county government agencies may grant an exemption from this requirement. See Art 41/A (3).

¹⁰⁷ Art. 41/A (2).

¹⁰⁸ Art. 41/A (4). Up to 21 June 2012 the Hungarian law was applicable to the dissolution of the given registered partnership as well.

- the applicable law shall be the law of the country where the registered partners are habitually resident at the time of filing for termination of the partnership;¹⁰⁹
- if the registered partners do not have common habitually residence at the time of filing for termination, the applicable law shall be the law of the country where the registered partners were last habitually residents, provided that the period of residence did not end more than one year before the filing for termination of the partnership, on the condition that one of the registered partners is still residing in that country at the time of filing for termination of the partnership;¹¹⁰
- if none of the previous rules can be applied in a particular situation, the law of the country of which the registered partners are citizens at the time of filing for termination of the partnership shall be the applicable law.¹¹¹

As a last resort, if none of these rules would lead to a result as to the determination of the applicable law for the termination of the registered partnership, *lex fori* is rendered to govern the termination.¹¹² Also *lex fori* is the governing law if the national law of the registered partner having Hungarian citizenship or having a permanent residence in Hungary does not recognize the legal concept of registered partnership.¹¹³

VI. The impact of the Maintenance Regulation on the Hungarian PIL rules

In December 2008, the Council adopted Regulation 4/2009 on jurisdiction, applicable law, recognition and enforcement of decisions and cooperation in matters relating to maintenance obligations.¹¹⁴ The adoption and

¹⁰⁹ Art. 41/B (1) a.

¹¹⁰ Art. 41/B (1) b.

¹¹¹ Art. 41/B (1) c.

¹¹² Art. 41/B (2).

¹¹³ Art. 41/B (2).

¹¹⁴ 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, OJ L 7, 10.1.2009, p. 1-79.

turning into force of the Regulation resulted in modification of the Code on the respective provisions concerning maintenance obligations. The amendments were executed through the adoption of a specific act.¹¹⁵

With regard to the Maintenance Regulation the conflict of laws and jurisdiction rules of the Code were modified as of 18 June 2011.

The modification of the *conflict of laws* rules affected the determination of the law to maintenance obligations, and the specific rules providing for the application of the law more favourable for the child.

As far as the determination of the law applicable to maintenance obligations is concerned, prior to the modifications, the Code provided that the personal law of the child was to be applied to maintenance obligations, with the exception of the maintenance of parents.¹¹⁶ The maintenance of parents and any other relatives was subject to the personal law of the person to be maintained.¹¹⁷ There were also specific rules for the maintenance of spouses. The Code provided that the law of the joint personal law of the spouses at the time of adjudgement was the law applicable to maintenance.¹¹⁸ Subsequent change in the personal law of the spouses did not affect the maintenance obligations established under the previous applicable law.¹¹⁹ Finally, as a special rule the Code provided that if an urgent measure was necessary in the interest of maintenance of a non-Hungarian citizen residing in Hungary, the Hungarian law could have been applied.¹²⁰

The Code contained special rules in order to protect the interests of children. According to Art. 46 of the Code, the Hungarian law was applicable to maintenance obligations provided for a child, if it was more favourable for the child.

¹¹⁵ Act CXXVII of 2010.

¹¹⁶ See ex Art. 45 (1), not in force as of 18 June 2011.

¹¹⁷ See ex Art. 47, not in force as of 18 June 2011.

¹¹⁸ See: ex Art. 39 (1), not in force as of 18 June 2011.

¹¹⁹ See: ex Art. 39 (4), not in force as of 18 June 2011.

¹²⁰ See: ex Art 50, not in force as of 18 June 2011.

These provisions of the Code were modified to accommodate the rules and principles of the Maintenance Regulation. What these modifications really meant was actually the supplementation of the Code provisions presented above with a note that due to Art. 1 of the Maintenance Regulation¹²¹ these Code's rules¹²² are not applicable to maintenance obligations,¹²³ but only to the other named issues associated with the relationship between parent and child.

As far as the respective jurisdictional rules are concerned, the Code prior to 18 June 2011 provided that Hungarian courts had jurisdiction in legal disputes concerning maintenance obligations if the domicile or residence of the beneficiary of support was in Hungary.¹²⁴ When a maintenance obligation was adjudicated in a proceeding that also involved personal status, Hungarian courts had jurisdiction if they had jurisdiction in the respective personal status dispute.¹²⁵ These special jurisdictional rules were repealed as of 18 June 2011.¹²⁶

Regard has to be made to the fact that not only the Maintenance Regulation, but also Council Decision 2009/941¹²⁷ concerning the Hague Protocol of 23 November 2007 on the Law Applicable to Maintenance Obligations had impact on the Code rules dealing with maintenance obligations.

VII. The impact of the TFEU on the determination of personal law

Of the four freedoms provided by the EC Treaty and now the TFEU, the free movement of persons and the movement rights of EU citizens influenced the Hungarian Code to the extent that even new provisions

¹²¹ 'Article 1 Scope of application: 1. This Regulation shall apply to maintenance obligations arising from a family relationship, parentage, marriage or affinity.'

¹²² Art. 45 (1) and 46.

¹²³ The references in Art. 39 (1), 39 (4), 47 and 50 to maintenance obligations were also deleted.

¹²⁴ See ex Art 56 (1), not in force as of 18 June 2011.

¹²⁵ See ex Art. 56 (2), not in force, as of 18 June 2011.

¹²⁶ See Art. 4 c) of Act CXXVII of 2010.

¹²⁷ 2009/941/EC: Council Decision of 30 November 2009 on the conclusion by the European Community of the Hague Protocol of 23 November 2007 on the Law Applicable to Maintenance Obligations, OJ L 331, 16.12.2009, p. 17-23

were introduced. *Garcia Avello*¹²⁸ was the ECJ case based on which the Hungarian legislator modified the Code.¹²⁹

According to the Code, the legal capacity, disposing capacity of a human being and, in general, his personal status and rights attached to his person, shall be adjudged according to his personal law.¹³⁰ This means, that the right to choose a name and also, the form of bearing a name is subject to the personal law of the given person. The general connecting factor used in the field of personal law is citizenship. Art. 11 (1) of the Code provides the general rule in this regard, being that a human being's personal law is the law of the state, of which he is a citizen. A change in citizenship can not affect the former personal status and the rights and obligations created on the basis thereof.¹³¹ This rule is supplemented by a special rule in case of multiple citizenships. The special rules provides that if a person has multiple citizenships, and one of his citizenships is Hungarian, his personal law will be the Hungarian law.¹³² The personal law of a person who has multiple citizenships and none of them is Hungarian, as well as the personal law of a displaced person, is the law of the state in the territory of which his place of residence is, or the Hungarian law if he also has a place of residence in Hungary. In the case of a person who has several places of residence abroad, his personal law is the law of the state with which he has the closest connection.¹³³ In the case of a person whose personal law cannot be established on the basis of the foregoing and has no place of residence, his personal law is to be determined by his habitual residence. In the case of a person who has several habitual residences and one of them is in Hungary, his personal law is the Hungarian law.¹³⁴ However, based on the new rules introduced by the Act IX of 2009, upon request of the respective person, the registration of a birth name is subject to national law of the country of second citizenship, in which case the provisions as to the prevailing citizenships do not apply.¹³⁵

¹²⁸ C-148/02 Carlos Garcia Avello v. Belgian State, ECR 2003 page I-11613.

¹²⁹ See: Explanatory notes on Act IX of 2009.

¹³⁰ Art. 10 (1).

¹³¹ Art. 11 (1).

¹³² Art. 11 (2).

¹³³ Art. 11 (3).

¹³⁴ Art. 11 (4).

¹³⁵ Art. 10 (2).

VIII. The impact of EU law on the Hungarian PIL rules concerning proprietary rights and other real (in rem) rights

When Hungary joined the European Union, the Code's rules on proprietary rights and other real, *in rem* rights were supplemented with a provision to ensure the implementation of the respective rules of Directive 2002/47 on financial collateral arrangements¹³⁶ and Directive 98/26 on settlement finality in payment and securities settlement systems.¹³⁷

These new rules¹³⁸ were introduced into the Code by Article 59 of the Act XXVII of 2004 and turned into force upon the accession, on 1 May 2004. The Code now provides that ownership and other rights related to custody accounts and dematerialized securities shall be governed by the laws of the country where the securities account or securities custody account is located and to which any transfer has been made to the benefit of the owner or holder of other right. Although the Code provides for *renvoi* in general in the regard that if the foreign law refers back to the Hungarian law the courts must apply the Hungarian law, this area is an exception. Since the relevant rule in the Code is the result of the implementation of an EU rule, the Code expressly rejects the possibility of *renvoi* in this special area.¹³⁹

IX. Closing thoughts

As we could see, the developments that took place in the European Union in the field of private international law over the past years had a large impact on the national conflict of laws rules in Hungary, especially on the conflict of laws rules of certain specific areas of law. Also, there are signs that EU private international law affects not only the specific

¹³⁶ Directive 2002/47/EC of the European Parliament and of the Council of 6 June 2002 on financial collateral arrangements, OJ L 168, 27.6.2002, p. 43-50.

¹³⁷ Directive 98/26/EC of the European Parliament and of the Council of 19 May 1998 on settlement finality in payment and securities settlement systems, OJ L 166, 11.6.1998, p. 45-50.

¹³⁸ Art. 21/A.

¹³⁹ The explanatory notes prepared for art. 59-60 of the Act XXVII of 2004 mentions that the then expected accession of the EU to the 2002 Hague Convention on the Law Applicable to certain rights in respect of securities held with an intermediary might call for future modifications of Art 21/A of the Code.

conflict of laws rules, but issues of private international law falling within the general part of private international law as well, such as for example public policy or renvoi. Moreover, although it was not the topic of the present contribution, but we cannot overlook the developments both in the academia and in the European Union discussing, and sometimes articulating for more common and/or unified rules in the field of private international. For example, the European Parliament commissioned a study under the title '*A framework for European private international law: current gaps and future perspectives*'. The study was published in 2012 and provides an in-depth analysis of the current European legal framework for private international law, and also frames up the possible future developments. Although we do not know what the EU private international law will look like in a few years time, we can be sure that the development that has been happening in this area has not yet come to its end. The only question is that how and to what extent will the future EU law affects the national private international laws of the member states. This is something the future treasures for us.

SUMMARY

The Impact of European Private International Law on the National Conflict of Laws Rules in Hungary

ISTVÁN ERDŐS

The conflict of law rules in the national law were not unaffected by European integration and by the development of the European law, neither. This study is intended to present how the legislation of the European Union (e.g. Rome I Regulation, Rome II Regulation) and the development of the European law has affected the Hungarian conflict of laws rules, with special regard to the rules of Law-Decree No. 13 of 1979 on conflict of laws (the Code). Following a short introduction of the historical antecedents and the structure of the Code, the study deals with the following fields of the Hungarian conflict of laws rules influenced

by the development of the European law by concentrating on the major issues: the rules for determining the law governing contracts, with special regard to consumer and employment contracts besides general rules and principles, obligations in tort, the dissolution of marriage and maintenance. The author presents the rules applied in Hungary prior to the enactment of the European sources of law in question and the changes brought about by such legislation. After that, he discusses the changes to the Hungarian rules pertaining to the law of persons in respect of the use of names in light of the Treaty on the functioning of the European Union and the special rules enacted as part of the harmonisation of laws in the EU for the exclusion of accepting back-transfers in light of the rules governing the conflict of substantive laws with regard to dematerialized securities kept in escrow accounts. The author concludes his presentation of the special conflict of laws rules with a short epilogue and the challenge presented by the future, i.e. the ways and directions of the development of the European law concerning conflict of laws issues and its impact on the national rules related to conflict of laws.

RESÜMEE

Die Auswirkung des europäischen internationalen Privatrechts auf die nationalen Vorschriften des internationalen Privatrechts in Ungarn

ISTVÁN ERDŐS

Die Auswirkungen der europäischen Integration und der europäischen Rechtsentwicklung gingen auch an den internationalen privatrechtlichen Vorschriften, die im nationalen Recht auffindbar sind, nicht spurlos vorüber. Ziel der vorliegenden Studie ist es, vorzustellen, welche Wirkung die Gesetzgebung der Europäischen Union (z.B. Rom-I-Verordnung und Rom-II-Verordnung) und die Rechtsentwicklung auf das ungarische internationale Kollisions- und Privatrecht und dabei insbesondere auf die Ver-

änderung der Vorschriften der Gesetzesverordnung Nr. 13 aus dem Jahre 1979 über das internationale Privatrecht (Kodex) hatten und haben.

Die Studie gibt zunächst einen kurzen Überblick über die historischen Vorläufer des Kodex und seinen Aufbau. Im Anschluss daran behandelt sie – sich auf die Hauptpunkte konzentrierend – folgende Bereiche des ungarischen internationalen Kollisions- und Privatrechts, die von der europäischen Rechtsentwicklung betroffen sind: Vorschriften der Bestimmung des auf die Verträge anzuwendenden Rechts – über die allgemeinen Prinzipien und Vorschriften hinaus mit besonderem Blick auf die Verbraucher- und Arbeitsverträge –, der auf Schuldrechtsverhältnisse außer den Verträgen, der auf Ehescheidung sowie der auf den Unterhalt anzuwendenden Rechts.

Im Laufe dieser Untersuchung stellt der Verfasser die ungarischen Vorschriften vor den betroffenen Rechtsquellen der Europäischen Union und die Veränderungen infolge der Vorschriften vor. Im Anschluss daran werden die Veränderung der ungarischen Vorschriften in Bezug auf das persönliche Recht hinsichtlich des Tragens des Namens auf Grund des Vertrags über die Arbeitsweise der Europäischen Union sowie – im Rahmen der Rechtsharmonisierung der Europäischen Union – die speziellen Vorschriften bezüglich des Ausschlusses der Akzeptierung der Rücküberweisung im Rahmen der Sachrechts-Kollisionsvorschriften in Bezug auf die dematerialisierten und auf einem Depositenkonto verwalteten Wertpapiere behandelt. Der Verfasser beendet die Vorstellung der besonderen Kollisionsvorschriften mit einem kurzen Nachwort und dem Aufzeigen der Herausforderung der Zukunft: In welche Richtung und wie wird sich die europäische Rechtsentwicklung, die die Fragen des internationalen Privatrechts berührt, entwickeln, und welche Auswirkungen wird dies auf die nationalen internationalen privatrechtlichen Vorschriften haben.