

1.1 CONCEPT, NATURE AND SUBJECT MATTER OF PRIVATE INTERNATIONAL LAW

1.1.1 Sources

- Act No. 97/1963 Coll. of 4 December 1963 on International Private and Procedural Law as amended

1.1.2 Literature

BOGDAN, M. *Concise Introduction to EU Private International Law*. 2nd ed. Groningen: Europa Law Publishing, 2012

LYSINA, P., BURDOVÁ, K. Slovak Republic. In VERSCHRAEGEN, B. (ed.) *International Encyclopaedia of Laws: Private International Law*. Alphen aan den Rijn, NL: Kluwer Law International, 2023

ROZEHNALOVÁ, N., DRLIČKOVÁ, K. et al. *Czech private international law*. 1st edition. Brno: Masaryk University, 2015

SLAŠŤAN, M. *Private international law. Text, Cases and Materials*. First Edition. Bratislava: Comenius University, Faculty of Law, 2012

1.1.3 Case law

Slovak courts

- Opinion of the Supreme Court of the Czechoslovak Socialist Republic of 27 June 1987, Cpjf 27/86, published under R 26/1987 of the Collection of Judicial Decisions and Opinions

1.1.4 Assignments to practise the topic

Asses the following situations and find the answer to the following questions:

- a) Asses whether the model situation falls into the scope of Slovak private international law?
- b) Which legal orders come into “conflict of laws” in the model situation?
 1. Slovak citizen bought goods in a grocery store in Vienna.
 2. Slovak citizen bought ice cream from a Slovak legal entity (ltd.) with its registered office in Bratislava, whose sole shareholder is a Croatian citizen.

3. Slovak citizen sold his motor vehicle to a German citizen who works in the Slovak Republic as a diplomatic representative of his country.
4. Slovak citizen concluded a sales contract with another Slovak citizen in Prague. The object is the sale of a property in Košice.
5. Slovak citizen is fined for exceeding the maximum speed limit in Austria.
6. Slovak citizen concludes a sales contract with a person who is a citizen of the Slovak Republic and France at the same time. The contract was concluded in Bratislava and its object is the sale of a property located in Bratislava.

1.1.5 Questions

1. What is the principle of territoriality?
2. What is the principle of personality?
3. What does conflict of laws mean?
4. What is the subject matter of Slovak private international law?
5. What is the meaning of "international" in the title of the branch of Private International Law and in the title of the branch of Public International Law?

2.6 DETERMINATION OF APPLICABLE LAW IN RIGHTS IN REM WITH LINK TO SEVERAL LEGAL ORDERS

2.6.1 Sources

- Act No. 97/1963 Coll. of 4 December 1963 on International Private and Procedural Law as amended

2.6.2 Literature

LYSINA, P., BURDOVÁ, K. Slovak Republic. In VERSCHRAEGEN, B. (ed.) *International Encyclopaedia of Laws: Private International Law*. Alphen aan den Rijn, NL: Kluwer Law International, 2023

ROZEHNALOVÁ, N., DRLIČKOVÁ, K. et al. *Czech private international law*. 1st edition. Brno: Masaryk University, 2015

SLAŠŤAN, M. *Private international law. Text, Cases and Materials*. First Edition. Bratislava: Comenius University, Faculty of Law, 2012

ŠTEFANKOVÁ, N. *Introduction to Private International Law*. Praha: Aleš Čeněk, 2012

2.6.3 Case law

Slovak courts

- Opinion of the Supreme Court of the Czechoslovak Socialist Republic of 27 June 1987, Cpjf 27/86, published under R 26/1987 of the Collection of Judicial Decisions and Opinions

2.6.4 Assignments to practise the topic

The plaintiff (a citizen of the Slovak Republic) seeks a judgment declaring that the defendant (a U.S. citizen residing in Florida) has not become a shareholder of Alfa, s.r.o., a company with its registered office in Žilina.

Questions:

- a) Assess the international jurisdiction of the Slovak court to hear the case.
- b) Apart from the answer to question 1, if the Slovak court were to hear the case, under which law would it be determined whether the defendant became a shareholder?

- c) Would it be permissible in the present case to establish by agreement the jurisdiction of the German court, the agreement being based on the provisions of the Brussels Ia Regulation? Please indicate the relevant provisions justifying your conclusion.

Canadian citizen seeks to establish title to a car which is in the custody of a notary in Slovakia. However, a citizen of the Slovak Republic is also deemed to be the owner of the car.

Questions:

- a) Assess the international jurisdiction of the Slovak court to hear the case.
- b) Determine under which law the ownership of the car will be assessed and why (independently of the question posed earlier, assume that the Slovak court decides).
- c) Would it be permissible in the present case to confer jurisdiction on the Canadian court by agreement, the agreement being based on the provisions of the Brussels Ia Regulation

2.6.5 Questions

- 1. What connecting factors does Slovak private international law apply in determining rights in rem?
- 2. Define *lex rei sitae* criterion.

3.1 NATIONAL LEGISLATION

Act No. 97/1963 Coll. of 4 December 1963 on International Private and Procedural Law as amended²

The National Assembly of the Czechoslovak Socialist Republic has passed this Act:

Introductory

§ 1 Purpose of the Act

The purpose of this Act is to provide for the law governing civil, commercial, family, labour and other similar relations with an international element, to regulate the legal status of foreigners, and to provide for the procedure of the Slovak judicial authorities in regulating and deciding on such relations, and thereby to facilitate international cooperation.

§ 2 International agreements

The provisions of this Act shall apply only insofar as nothing else is provided for in an international agreement by which the Slovak Republic is bound or in a law enacted to implement an international agreement.

PART I CONFLICT OF LAWS PROVISIONS AND PROVISIONS ON THE STATUS OF ALIENS

Section 1 Conflict of laws provisions

§ 3 Capacity

(1) The capacity of a person to have rights and to perform legal acts shall be governed, unless otherwise provided in this Act, by the law of the State of which he is a national.

² Translated by Peter Lysina.

(2) If a legal act in the Slovak Republic is performed by an alien, it shall be sufficient, unless otherwise specified below, if the alien is competent to perform the act under Slovak law.

§ 4 Legal acts

Unless otherwise provided or necessary for a reasonable arrangement of relations, the validity of a legal act, as well as the consequences of its invalidity, shall be governed by the same legal order as the effects of the legal act; however, as regards the form, it shall be sufficient if the law of the place where the expression of intent was made has been complied with, except that the legal order governing the contract may prescribe the written form of the act as a condition of its validity.

Rights in rem

§ 5

Rights in rem in immovable and movable property shall be governed, unless otherwise provided in this Act or in special regulations, by the law of the place where the property is located.

§ 6

The creation and extinction of rights in rem in respect of movable property shall be governed by the law of the place where the property was at the time when the fact giving rise to the creation or extinction of that right occurred. Where the item is transported under a contract, the creation and extinction of those rights shall be determined by the law of the place from which the thing was dispatched.

§ 7

The provisions on entries in the public registers applicable in the place where the immovable property is located shall also apply when the legal basis for the creation, extinction, limitation or transfer of the book right is considered according to another law.

Regulation (EC) No. 1896/2006 of the European Parliament and of the Council of 12 December 2006 creating a European order for payment procedure⁵

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 61(c) thereof,

Having regard to the proposal from the Commission,

Having regard to the Opinion of the European Economic and Social Committee,

Acting in accordance with the procedure laid down in Article 251 of the Treaty,

Whereas:

(1) The Community has set itself the objective of maintaining and developing an area of freedom, security and justice in which the free movement of persons is ensured. For the gradual establishment of such an area, the Community is to adopt, *inter alia*, measures in the field of judicial cooperation in civil matters having cross-border implications and needed for the proper functioning of the internal market.

(2) According to Article 65(c) of the Treaty, these measures are to include measures eliminating obstacles to the good functioning of civil proceedings, if necessary by promoting the compatibility of the rules on civil procedure applicable in the Member States.

(3) The European Council meeting in Tampere on 15 and 16 October 1999 invited the Council and the Commission to prepare new legislation on issues that are instrumental to smooth judicial cooperation and to enhanced access to law and specifically made reference, in that context, to orders for money payment.

(4) On 30 November 2000, the Council adopted a joint Commission and Council programme of measures for implementation of the principle of mutual recognition of decisions in civil and commercial matters. The programme envisages the possibility of a specific, uniform or harmonised procedure laid down within the Community to obtain a judicial decision in specific areas including that of uncontested claims. This was taken forward by the Hague Programme, adopted by the European Council on 5 November 2004, which called for work to be actively pursued on the European order for payment.

⁵ OJ L 399, 30. 12. 2006, p. 1 – 32.

(5) The Commission adopted a Green Paper on a European order for payment procedure and on measures to simplify and speed up small claims litigation on 20 December 2002. The Green Paper launched consultations on the possible objectives and features of a uniform or harmonised European procedure for the recovery of uncontested claims.

(6) The swift and efficient recovery of outstanding debts over which no legal controversy exists is of paramount importance for economic operators in the European Union, as late payments constitute a major reason for insolvency threatening the survival of businesses, particularly small and medium-sized enterprises, and resulting in numerous job losses.

(7) All Member States are trying to tackle the issue of mass recovery of uncontested claims, in the majority of States by means of a simplified order for payment procedure, but both the content of national legislation and the performance of domestic procedures vary substantially. Furthermore, the procedures currently in existence are frequently either inadmissible or impracticable in cross-border cases.

(8) The resulting impediments to access to efficient justice in cross-border cases and the distortion of competition within the internal market due to imbalances in the functioning of procedural means afforded to creditors in different Member States necessitate Community legislation guaranteeing a level playing field for creditors and debtors throughout the European Union.

(9) The purpose of this Regulation is to simplify, speed up and reduce the costs of litigation in cross-border cases concerning uncontested pecuniary claims by creating a European order for payment procedure, and to permit the free circulation of European orders for payment throughout the Member States by laying down minimum standards, compliance with which renders unnecessary any intermediate proceedings in the Member State of enforcement prior to recognition and enforcement.

(10) The procedure established by this Regulation should serve as an additional and optional means for the claimant, who remains free to resort to a procedure provided for by national law. Accordingly, this Regulation neither replaces nor harmonises the existing mechanisms for the recovery of uncontested claims under national law.

(11) The procedure should be based, to the largest extent possible, on the use of standard forms in any communication between the court and the parties in order to facilitate its administration and enable the use of automatic data processing.