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Current Challenges of Cross-Border Disputes in Slovakia – Is Slovak Law Anchored in the 21st century?

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Abstract

This contribution analyses the systematics and wording of the current Slovak Private International Law Act, which was adopted in 1963 and, with some changes, remains in force. For instance, the linguistic interpretation of the Act raises several problems in practice, to which case law responds with an *ad hoc* approach rather than on a systematic basis. This paper seeks to analyse the current changes the legislative process is bringing to streamline legislation, and draws attention to other shortcomings that need to be addressed. The paper considers the necessary comprehensive recodification of the Slovak Private International Law Act.

Keywords

Act No 97/1963, on International Private and Procedural Law; International Private Law; Recodification; Habitual Residence; Nationality; Jurisdiction; Applicable Law.

1 Introduction

We cannot deny the fact that, due to the considerable growth in the number of civil and commercial cross-border transactions, family relations involving citizens from other states, and procedural relations including a foreign element, the significance of private international law and the rules of procedure in day-to-day legal practice has also proportionally increased. Therefore, incorporating this field of law into legislation is not only a logical, but also a necessary step forward. While, to make legislation more

effective while taking into consideration social evolution and meeting the fair expectations of parties to private relations including a foreign element, the development of private international law within the European Union and in neighbouring countries has been accelerating, Slovak legislation has been significantly lagging behind and is generally regarded as rather obsolete, with a purpose that is not only outdated but, what is more, contrary to the modern trends of the 21st century.

2 National Regulation of the Slovak Private International Law Act

2.1 Necessity for a Comprehensive Recodification of the Slovak Enactment Dating From the Mid-1960s

Private international law is a rather complex legal field, the main sources of which consist of European law, on the one hand, and international treaties (multilateral and bilateral) on the other, whereas national law[1] is only applied in cases not covered by these sources and in accordance with these preferentially applicable norms.[2] For this reason, the national legal regulation should also be properly considered.

The Slovak legal regulation of private international law is governed by Act No 97/1963, on international private and procedural law of 4 December 1963 ("Private International Law Act") which entered into effect on 1 April 1964 and, partially amended,[3] remains applicable today. Although the Private International Law Act was originally regarded as a modern, progressive codification,[4] today it has diverted from modern trends generally applicable to private international law.

1 "National law" in private international law can be referred to as the *"ultima ratio"* standard.

2 PAUKNEROVÁ, M., ROZEHNALOVÁ, N., ZAVADILOVÁ, M. et al. *Zákon o medzinárodním právu soukromém. Komentář.* Praha: Wolters Kluwer, 2013, p. LIII.

3 Since coming into effect, it has been amended several times through Acts No 158/1969, 234/1992, 264/1992, 48/1996, 510/2002, 589/2003, 382/2004, 36/2005, 336/2005, 273/2007, 384/2008, 388/2011, 102/2014, 267/2015, 125/2016 and, most recently, Act No 108/2022.

4 PAUKNEROVÁ, M., ROZEHNALOVÁ, N., ZAVADILOVÁ, M. et al. *Zákon o medzinárodním právu soukromém. Komentář.* Praha: Wolters Kluwer, 2013, p. LXIX.

The Slovak Private International Law Act has lately been beset by a series of difficulties, making any comparison with neighbouring states infeasible (e.g., the recodification and adoption of new legislation in the Czech Republic through Act No 91/2012, on private international law).[5] It is therefore striking that at a time when the Czech Republic, bearing in mind the need to modernise private international law legislation,[6] carried out recodification back in 2012 and adopted a new law substituting the previous Private International Law Act,[7] Slovak lawmakers still hesitate about the thorough recodification of the respective law applicable in Slovakia even a decade later. In addition, it is noticeable that the Slovak lawmakers, when coming across *ad hoc* legal loopholes in the Slovak enactment, simply literally (and non-systematically) copy the corresponding part from the Czech Act No 91/2012.[8]

We would like to point out that the main aim of the changes to private international law as enacted in the Czech Republic back in 2012 was to reflect new trends in international private and procedural law around the world and in Europe since the adoption of the Private International Law Act in 1963. Besides this, they also had to consider the private international law applicable in the European Union that has been developing at an extremely high pace and slowly, but clearly, limiting the applicability of EU Member States' national enactments of private international law.[9]

One of the first modern trends significantly demonstrated in the legislation covering private international law in the Czech Republic was

5 SLAŠŤAN, M. et al. *Aktuálne otázky európskeho medzinárodného práva súkromného*. Pezinok: Justičná akadémia Slovenskej republiky, 2018, p. 9.

6 It was necessary to react to developments in private international law since the mid-1960s when the currently applicable legislation was adopted. The legislation needed the modification and amendment of some applicable solutions while considering the developments and tendencies in the field of private international law as demonstrated in other states' legislation and to ensure its compatibility with EU law. See Důvodová zpráva k zákonu č. 91/2012 Sb., o mezinárodním právu soukromém (obecná část). *Ministerstvo spravedlnosti ČR* [online]. Pp. 41–46 [cit. 30. 5. 2022]. Available at: http://obcanskyzakonik.justice.cz/images/pdf/Duvodova-zprava-k-ZMPS.pdf

7 Note that the Private International Law Act was adopted when the Czech and Slovak Republics formed their federation.

8 See PEKÁR, B., SLAŠŤAN, M. Zisťovanie a používanie cudzieho práva v Slovenskej republike. In: ROZEHNALOVÁ, N., DRLIČKOVÁ, K., VALDHANS, J. (eds.). *Dny práva 2015 – Days of Law 2015. Část IV. Kodifikace obecné části kolizního práva – cesta či omyl?* Brno: Masarykova univerzita, 2016, pp. 177 ff.

9 PAUKNEROVÁ, M., RŮŽIČKA, K. et al. *Rekodifikované mezinárodní právo soukromé*. Praha: Univerzita Karlova, Právnická fakulta, 2014, p. 33.

the implementation of the new internal and systematic dispositions of the newly adopted law to clarify the previous legislation applicable to private international law. This, unfortunately, does not exist in the Slovak conditions.

The Slovak Private International Law Act is split into two parts, and these are subdivided into sections. The first part, named "Provisions concerning conflict of laws and the legal status of aliens", contains several conflict of law principles and governs the question of the legal status of foreigners in terms of personal and ownership rights. The second part, named "International procedural law" regulates matters such as the jurisdiction of Slovak judicial authorities, the status of foreigners in proceedings, legal aid involving foreign countries, and the recognition and enforcement of foreign decisions. The national systemic disposition of norms within the Slovak Private International Law Act as enacted in the last century needs to be profoundly modified as the current regulation seems quite vague and does not reflect the existence of new legal institutes.

The above may be demonstrated by the fact that Czech legislation, after the mentioned recodification and adoption of the new law, abstains from modifying conflict of law rules and procedural norms in two separate parts of the law, and when determining norms for particular types of private legal relations, this law has joined procedural norms – i.e., on determining the jurisdiction of Czech courts for the given types of relations and recognising foreign decisions in connection with these relations – with corresponding conflict of law rules.

The new structure of the legal enactment enables courts to understand how to proceed in cases including a foreign element, and what questions need to be addressed when deciding on the respective subject matters.[10] In other words, the new systematic disposition of private international law regulations as enacted in the Czech Republic facilitate the application of the law in cases including a foreign element. It is also noteworthy that the legislative and technical disposition of the newly adopted Czech regulation on private international law is based on the legal practice determining that, when deciding

10 See Důvodová zpráva k zákonu č. 91/2012 Sb., o mezinárodním právu soukromém (obecná část). *Ministerstvo spravedlnosti ČR* [online]. Pp. 41–46 [cit. 30. 5. 2022]. Available at: http://obcanskyzakonik.justice.cz/images/pdf/Duvodova-zprava-k-ZMPS.pdf

on the above subject matters, the international procedural issues, the question of jurisdiction in relation to a foreign country needs addressing first. This is followed by finding a normative basis for deciding about the subject matter to be applied, unless unified legislation including conflict of law rules is used to determine the governing law.[11] This structure corresponds with solutions contained within some modern national regulations on private international law, some EU directives, and other international treaties.[12]

The opacity of the Slovak Private International Law Act that necessitates a new structure of legal enactments is not the only burning issue relating to Slovak legislation concerning private international law.

The Slovak Private International Law Act, due to its obsoleteness, is not properly reacting to changes brought about by social evolution. Essential facts include, for instance, that the connecting factor of habitual residence shall be preferred to the nationality factor to reflect EU norms and the corresponding international obligations of the Slovak Republic.

When it comes to the applicable recodification of private international law in the Czech Republic, *Pauknerová* states that the main change compared to the previous legal enactment is the substitution of nationality of the natural person as a connecting factor with habitual residence. This may relate to subject matters concerning some personal and family relations, and succession among natural persons. It can also be noted that nationality maintains its status where this seems rational and practical. The Act is based on the assumptions and experience that the sphere of private law is dominated by real life relations connecting a specific person with specific residence and state over apparently formal relations to another state. By means of their habitual residence in a specific state, a natural person becomes part of the social and economic environment of that state and takes part in its economy. Being subordinated to a certain extent to the legal order of that state facilitates their position and the establishing of their legal relations with entities in the given state, which eventually contributes to increasing their legal certainty.[13]

11 PAUKNEROVÁ, M., RŮŽIČKA, K. et al. *Rekodifikované mezinárodní právo soukromé*. Praha: Univerzita Karlova, Právnická fakulta, 2014, p. 18.
12 Ibid., p. 35.
13 Ibid., p. 22.

In light of the above, in personal matters, especially when it comes to the personal status of natural persons, the Czech Republic, following other similar enactments, refrained from the connecting factor of *lex patriae* and instead defined habitual residence,[14] where the obsolete provision of Section 3 para. 1 of the Private International Law Act, which is unfortunately still valid in the Slovak enactment and pursuant to which *"legal capacity of a person shall be governed, if not otherwise stated, by the legal order of the state of which he/she is a national"*, was replaced with Section 29 para. 1 of the Private International Law Act determining that *"legal status and legal capacity shall be governed, if not otherwise stated, by the legal order of the state where the person has their habitual residence."* For the avoidance of doubt, we might also point out that the connecting factor of habitual residence is less stable than nationality and, therefore, it might be assumed that the high international mobility of people will sooner or later cause, due to its application, more frequent changes of personal status. Even though the basic conflict of law norm lacks the enshrinement of an *expressis verbis* time settlement, it is always necessary to consider the habitual residence of a natural person within the applicable period (e.g., at the time of legal proceedings).[15]

The applicable trend of modern legal enactments, where the connecting factor of nationality is replaced with the factor of habitual residence (the centre of the person's main interests), or the factor of habitual residence is overruled by the factor of nationality, is present in the subject matter

14 The same enactment has been adopted by Switzerland, Estonia and Sweden. The term "habitual residence" is sufficiently interpreted by the practice of courts. This term has already been interpreted by the Court of Justice (e.g., Judgment of the European Court of Justice of 17 February 1977, *Silvana di Paolo vs. Office national de l'emploi*, Case 76-76; Judgment of the European Court of Justice of 8 July 1992, *Doris Knoch vs. Bundersanstalt für Arbeit*, Case C-102/91). As presented by the Court, habitual residence is defined as the place the given person defined due to its permanent character, and is regarded as the permanent and habitual centre of their interests. Within this concept, we should in particular take into consideration the family situation of an employed person, the reasons motivating a person to move, the duration and continuity of their residence, whether they have stable employment at the place, and their intentions under all circumstances. For more details, see Důvodová zpráva k zákonu č. 91/2012 Sb., o mezinárodním právu soukromém (zvláštní část). *Ministerstvo spravedlnosti ČR* [online]. Pp. 47–70 [cit. 30. 5. 2022]. Available at: http://obcanskyzakonik.justice.cz/images/pdf/Duvodova-zprava-k-ZMPS.pdf

15 PAUKNEROVÁ, M., ROZEHNALOVÁ, N., ZAVADILOVÁ, M. et al. *Zákon o mezinárodním právu soukromém. Komentář.* Praha: Wolters Kluwer, 2013, p. 223.

of family relations. Slovak legislation again is not keeping up with the above trends, as demonstrated below:

In the field of family relations, we can refer in particular to the subject matter of personal relations between spouses[16] and the property relations[17] of spouses, as governed by Section 21 of the Slovak Private International Law Act. Pursuant to Section 21 para. 1 of the Slovak Private International Law Act, it is understood that: *"The personal and property relations of spouses shall be governed by the law of the state of their common nationality. If the spouses have different nationalities, such relations shall be governed by Slovak law."* This is to say that the personal and property relations of spouses, which are jointly governed for the two fields of spousal relations by one conflicts of law rule, will be assessed on the basis of the legal order of the state of which these spouses are nationals *(lex patriae)*. The detailed application of the said connecting factor is possible only if the two spouses are nationals of the same state. Otherwise, their personal and property relations will be governed by Slovak law. In personal and property matters, the Slovak Private International Law Act acknowledges only *lex patriae* and *lex fori*.

On the contrary, after the recodification of private international law in the Czech Republic, Czech legislation governs personal and property relations through individual conflicts of law rules. The conflicts of law rule governing personal relations between spouses sets forth the following: *"Personal relations of spouses shall be governed by the legal order of the state of which the two are nationals. If they are nationals of different states, the relations shall be governed by the legal order of the state where the two spouses have their habitual residence, otherwise by Czech law."*[18] The conflicts of law rule governing the property relations between spouses states the following: *"Property relations of spouses shall be governed by the legal order of the state where the spouses have their habitual residence; otherwise by the legal order of the state of which the spouses are nationals; otherwise by Czech law."*[19]

16 Note: Personal relations of spouses are referred to as the obligation of spouses to be loyal to each other, to live together, to help each other, and to handle things together. For more details, see LYSINA, P., ŠTEFANKOVÁ, N., ĎURIŠ, M., ŠTEVČEK, M. *Zákon o medzinárodnom práve súkromnom a procesnom. Komentár.* Praha: C. H. Beck, 2012, p. 118.

17 Note: Property relations between spouses refer to arrangements related to the property regime between spouses. Under Slovak legislation, this mainly relates to the institute of the community property of spouses. For more details, see ibid.

18 § 49 para. 1 of the Czech Private International Law Act.

19 § 49 para. 3 of the Czech Private International Law Act.

In contrast to Slovak legislation, the Czech legal enactment, in terms of the personal and property relations of spouses, also allows the application of the law of the state where the spouses have their habitual residence. It is understood that connecting factors will be gradually applied through the cascading clauses of the respective provision. When it comes to connecting factors in the conflicts of law rules for the personal relations of spouses, the quoted interpretation of Section 49 para. 1 of the Czech Private International Law Act stipulates that these are set in a cascading manner in the following order:

- the joint nationality of spouses; if absent then
- the joint habitual residence of spouses; if also absent then
- *lex fori*.

When it comes to limiting criteria in the conflicts of law rule for the property relations of spouses, the following cascading clauses will apply:

- the joint habitual residence of spouses; if absent then
- the joint nationality of spouses; if also absent then
- *lex fori*.

At this point, it is crucial to emphasize that in contrast to the personal relations of spouses, the assessment of their property relations always prioritizes the joint habitual residence of the spouses, which is very reasonable as the legal enactment of property relations does not only affect the spouses themselves, but also third parties and therefore should be connected to the place where the spouses live and where most property transactions are expected to take place. This is to say that the condition of the joint habitual residence of spouses is deemed met if, during the applicable period, the two spouses have their habitual residence in a single state, which does not necessarily need to refer to living in the same household. On the contrary, cases involving property disputes between spouses and disputes related to the settlement of property disputes after divorce more and more frequently involve cases of spouses living separately.[20]

Modern legal enactments tend to apply the prevailing trend of habitual residence over the nationality factor in succession matters. Nevertheless,

20 PAUKNEROVÁ, M., ROZEHNALOVÁ, N., ZAVADILOVÁ, M. et al. *Zákon o mezinárodním právu soukromém. Komentář.* Praha: Wolters Kluwer, 2013, p. 338.

its application is absent in the obsolete Slovak legislation, e.g., when Section 17 of the Slovak Private International Law Act determines: *"Any relationships arising out of succession shall be governed by the law of the state of which the deceased was a national at the time of their death."* The more reasonable Czech lawmakers, having adopted the aforementioned recodification a decade ago, have replaced the connecting factor of the deceased's nationality with the connecting factor of the place of habitual residence of Section 76, first sentence of the Czech Private International Law Act, determining: *"Any relationships arising out of succession shall be governed by the body of laws of the state in which the deceased had their habitual residence at the time of their death."*

It is obvious that private law relations should take into account the facticity of personal relations overruling more formal ties, while the shift of the criterion from nationality to habitual residence takes this fact into consideration and should reflect it, not just practically ignore it as the Slovak lawmakers did.

We have mentioned that social evolution required not only a more significant change with regard to elevating the connecting factor of habitual residence over the nationality factor, as clarified above, while stating the examples of some provisions from the Czech Private International Law Act which properly reacted to this development, in contrast to the provisions of the Slovak Private International Law Act, which are deemed obsolete and do not meet the standards of the 21st century, but also highlighted the will of parties to determine the governing law beyond the field of the laws of obligation. The Czech enactment has reacted to this development, while Slovak lawmakers could seek inspiration from this and eventually move the border of private international law into the 21st century in terms of its national application.

Finally, it can be said that habitual residence, in the manner defined by the settled case law of the Court of Justice of the European Union,[21] has not been sufficiently demonstrated in the practice of Slovak courts, especially in the field of international abductions of children.

21 See also SLAŠŤAN, M. Výhody a nevýhody "ustálenej judikatúry" Súdneho dvora Európskej únie. In: LENGYELOVÁ, D. (ed.). *Právny pluralizmus a pojem práva*. Bratislava: Slovak Academic Press, 2017, pp. 150–156.

One of the fields giving more emphasis to the demonstration of the will of the parties as the decisive factor for determining governing law is represented by the choice of law when arranging property relations as enacted by Section 49 para. 4[22] of the Czech Private International Law Act. It is "surprising" that similar regulations are absent in the Slovak Private International Law Act. It should be noted that the choice of law in this field is limited in both material and formal ways. The material limitation is demonstrated by the enumerative description of the connecting factors:

- the nationality of at least one of the spouses,
- the habitual residence of at least one of the spouses,
- the location of the immovable property, if any,
- *lex fori*.

The formal limitation is linked to the signing of the corresponding agreement or contract between spouses, which must be notarized.[23]

It is evident that abstract legal norms cannot foresee or cover all exceptional situations that might occur in private international relations in terms of their social situation or life events. The application of a particular law according to conflicts of law rules could contradict the legitimate expectations of the parties.[24]

For such an event, modern legal enactments[25] incorporate a provision providing the parties with a fair solution when determining and using the applicable law. The Czech Republic, for instance, was inspired by the Swiss Federal Act on Private International Law. More precisely, it refers

22 *"The contractual regulation of the spousal property rights is subject to the body of laws which was applicable for the spouses' property relations as of the moment when the contractual agreement was concluded. Otherwise, spouses may also decide that their property relations will either be subject to the body of laws of the state of which one of the spouses is a citizen or in which one of the spouses has his or her habitual place of residence or to the body of laws of the state in which any real restate is located, provided this involves real estate, or to Czech law. Any such agreement must be the subject of a notary record or of a similar document, if the agreement is concluded abroad."*

23 For more details, see PAUKNEROVÁ, M., ROZEHNALOVÁ, N., ZAVADILOVÁ, M. et al. *Zákon o mezinárodním právu soukromém. Komentář.* Praha: Wolters Kluwer, 2013, p. 339.

24 See Důvodová zpráva k zákonu č. 91/2012 Sb., o mezinárodním právu soukromém (obecná část). *Ministerstvo spravedlnosti ČR* [online]. Pp. 41–46 [cit. 30. 5. 2022]. Available at: http://obcanskyzakonik.justice.cz/images/pdf/Duvodova-zprava-k-ZMPS.pdf

25 E.g., Art. 15 of the Swiss Federal Act on Private International Law, Art. 19 of the Belgian Private International Law Act, and Art. 8 of the Dutch Private International Law Act.

to Section 24[26] of the Czech Private International Law Act named "The exception and subsidiary designation of the applicable law" incorporated into Czech legislation through the aforementioned recodification. This provision, one of the most significant recodification changes to private international law,[27] enacted, *inter alia*, so-called general escape clauses. Under specific circumstances, such clauses enable the non-application of a law the conflicts of law rule under this Act had previously determined the governing law. Unfortunately, our obsolete legislation lacks the rules that could possibly handle the exceptional situations this legal enactment formally affects but, due to their specific or exceptional nature, are not deemed *in concreto* appropriate.

Still, there are certain cases requiring that the competent authority be enabled to take a rather flexible approach. The main justification for being able to divert from the law will be the circumstance that applying the given governing law, as prescribed by the conflicts of law rule, would certainly contravene the picture of a prudent and fair arrangement of parties' relations and their legitimate expectations. Limitations justifying this exceptional approach include adequacy, conflicts of law justice (the principle of a reasonable and fair arrangement when determining governing law, considering the summary of all relevant circumstances and the protection of third parties' rights).[28]

Not only is Slovak legislation in international private and procedural law extremely opaque, ossified, and failing to respond to the evolution of social relations, but even the wording and diction of some of the currently applicable provisions of the Slovak Private International Law Act could cause various practical problems that would need to be addressed by *ad hoc* courts.

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26 § 24 para. 1 of the Czech Private International Law Act: *"It is possible not to use the body of laws which should be used in accordance with the provisions of this Act in exceptional cases, where their use would appear to be inconsistent and at odds with the reasonable and just organisation of the relationship between the participants upon due consideration of all the circumstances pertaining to the matter and especially given the justified expectations of the participants with regard to the use of another body of laws. The body of laws which best corresponds to this situation is used under these conditions, provided the rights of any other parties remain unaffected."*

27 PAUKNEROVÁ, M., RŮŽIČKA, K. et al. *Rekodifikované mezinárodní právo soukromé*. Praha: Univerzita Karlova, Právnická fakulta, 2014, p. 49.

28 For more details, see PAUKNEROVÁ, M., ROZEHNALOVÁ, N., ZAVADILOVÁ, M. et al. *Zákon o mezinárodním právu soukromém. Komentář*. Praha: Wolters Kluwer, 2013, p. 175.

The Slovak Private International Law Act tends to use terms such as "public records" (Section 7) or does not contain adequate terms or institutes at all, e.g., unjust enrichment, temporary custody, etc. The Slovak Private International Law Act needs to be first unified in terms of its linguistics and content with the Brussels I bis Regulation[29], Brussels II bis Regulation[30], Regulation on maintenance[31], and Regulation on succession[32]. All the linguistic errors in the Slovak interpretation of relevant EU legislation will also need to be specifically addressed. We understand that the unification, lexicological modification and codification of European private international law is crucial for any further development of the Slovak Private International Law Act.[33]

Let's take Section 37 of the Slovak Private International Law Act as an example: *"Unless the subsequent Articles provide otherwise, Slovak courts shall have jurisdiction if the defendant has his residence or seat in the Slovak Republic or, provided property rights are involved, if he has property there."* Here it needs to be clarified to what "property rights" and "property" really refer. Legal regulations do not contain an exact definition of these terms. When interpreting the given terms, legal doctrine and case law need to be applied.

- Property rights include any rights arising out of material, liability or succession rights, and property rights related to objects of intellectual property.[34]

29 Regulation (EU) No 1215/2012 of the European Parliament and of the Council of 12 December 2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (recast).

30 Council Regulation (EC) No 2201/2003 of 27 November 2003 concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and the matters of parental responsibility, repealing Regulation (EC) No 1347/2000.

31 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.

32 Regulation (EU) No 650/2012 of the European Parliament and of the Council of 4 July 2012 on jurisdiction, applicable law, recognition and enforcement of decisions and acceptance and enforcement of authentic instruments in matters of succession and on the creation of a European Certificate of Succession.

33 See SLAŠŤAN, M. Plusy a mínusy európskeho medzinárodného práva súkromného. In: ROZEHNALOVÁ, N., DRLIČKOVÁ, K., VALDHANS, J. (eds.). *Dny práva 2017 – Days of Law 2017. Část IV. Aktuální otázky evropského mezinárodního práva soukromého*. Brno: Masarykova univerzita, 2018, pp. 118–133.

34 LYSINA, P., ŠTEFANKOVÁ, N., DURIŠ, M., ŠTEVČEK, M. *Zákon o medzinárodnom práve súkromnom a procesnom. Komentár.* Praha: C. H. Beck, 2012, p. 190.

- *"It is incontestable that the said shares of the joint-stock company S., with its seat in the Slovak Republic, represent the rights of the defendant to secondarily participate, in accordance with the applicable legislation, in the company management, company profit and liquidation balance pursuant to Section 155(1) of the Civil Code. Under Section 2(1) of the Securities Act, a share is a type of security representing material consideration in a pecuniary form. A share is a movable item under Section 9(2) of this Act."*[35]
- *"The proceedings on settling community property are deemed a material subject matter."*[36]
- *"A property dispute as set forth in Section 37 of Act No 97/1963 needs to be understood not only as a dispute on property consideration,* i.e.*, pecuniary consideration, but also,* e.g.*, a claim on determining the existence or non-existence of the right to such consideration."*[37]
- *"Property rights and property consideration cannot be interchangeable, as the property consideration also refers to monetary consideration mitigating non-material damage when protecting general moral rights or moral rights linked to creative mental work, even though property rights can hardly be addressed here."*[38]
- The term "property" may include all tangible and intangible items subject to private legal relations and the value of which can be expressed in monetary terms.[39]

2.2 The Slovak Private International Law Act Amended by Act No 108/2022

It is true that Slovak lawmakers have adopted Act No 108/2022 of 16 March 2022 amending, supplementing and modifying the Slovak Private International Law Act ("Act No 108/2022") for the purposes of reacting

35 Resolution of the Supreme Court of Slovakia (Najvyšší súd Slovenskej republiky), Slovakia, of 22 October 2008, Case 5 Obo 91/2008.

36 Resolution of the Supreme Court of Slovakia (Najvyšší súd Slovenskej republiky), Slovakia, of 18 March 2010, Case 3 Cdo 141/2008.

37 Resolution of the High Court in Prague (Vrchní soud v Praze), Czech Republic, of 15 November 1995, Case 10 Cmo 414/95.

38 LYSINA, P., ŠTEFANKOVÁ, N., ĎURIŠ, M., ŠTEVČEK, M. *Zákon o medzinárodnom práve súkromnom a procesnom. Komentár*. Praha: C. H. Beck, 2012, p. 190.

39 Ibid.

to newly adopted European legislation,[40] removing problems arising from application practice, and modernising some obsolete provisions contained in the Slovak Private International Law Act,[41] even though Act No 108/2022 governs only some partial areas, for instance part II of the Slovak Private International Law Act named "International procedural law", and these are as follows:

- *expanding the jurisdiction of Slovak courts:* a Slovak court can act where the interest of a minor is in question even though the child has no habitual residence in the Slovak Republic. Section 39 para. 1[42] of the Slovak Private International Law Act will only be applied if it relates to a Slovak citizen in a country with which the Slovak Republic is not bound by any treaty and where this procedure is in the best interests of the minor. A Slovak court can also act in exceptional situations where a foreign court that would otherwise have jurisdiction in the given subject matter cannot exercise this jurisdiction[43] and where the exercise of this jurisdiction has sufficient connection with the Slovak Republic[44]. This will also apply in cases where a foreign decision was not recognised in the Slovak Republic and new proceedings cannot be initiated due to a *res iudicata* obstacle.[45]
- *taking over jurisdiction by Slovak courts:* in the matter of the custody of a minor, this can follow the request of another court or a claim by a party to the proceedings where the foreign court interrupted the proceedings or invited the participant to file a claim to take over such jurisdiction.[46]

40 Contained in Regulation of the Council (EU) 2019/1111 of 25 June 2019 on jurisdiction, the recognition and enforcement of decisions in matrimonial matter and the matters of the parental responsibility, and on international child abduction; Regulation of the European Parliament and of the Council (EU) 2020/1784 on the service in the Member States of judicial and extrajudicial documents in civil or commercial matters (service of documents); and Regulation of the European Parliament and of the Council (EU) 2020/1783 on cooperation between the courts of the Member States in the taking of evidence in civil and commercial matters.

41 See Dôvodová správa k zákonu č. 108/2022 Z.z. *Najpravo.sk* [online]. 24. 5. 2022 [cit. 30. 5. 2022]. Available at: https://www.najpravo.sk/dovodove-spravy/rok-2022/dovodova-sprava-k-zakonu-c-108-2022-z-z.html

42 *"Slovak courts have jurisdiction in matters of custody of minors where the minor has their habitual residence in the Slovak Republic, their residence cannot be determined, or where they are a Slovak citizen."*

43 E.g., due to diplomatic immunity of the participant or civil war in the country.

44 E.g., the nationality of one of the parties, property interests in the Slovak Republic.

45 See § 47a of the Slovak Private International Law Act.

46 See § 39a the Slovak Private International Law Act.

- *international lis pendens obstacle:* the new Section 48a of the Slovak Private International Law Act enables one of the parties to the proceedings to file a claim to interrupt the proceedings where parallel proceedings are pending at a different court in a foreign state. The court will consider whether the issued decision might be recognised in the Slovak Republic.[47]
- *modifying the serving of correspondence:* Section 58 of the Slovak Private International Law Act governs the manner of serving correspondence in accordance with generally binding procedural principles in cases where the correspondence is being served in the Slovak language or a language the addressee can understand with regard to all the facts of the case. The newly applicable Section 58a deals with cases where a foreign authority asks for personal serving which is not governed by Slovak legislation but exists in foreign legislation.[48]
- *direct taking of evidence by a foreign authority:* the direct taking of evidence by a foreign authority in the Slovak Republic for the purpose of proceedings taking place abroad is subject to consent from the Ministry of Justice. The Ministry of Justice will forward such request to the competent judicial authority where its assistance in the taking of evidence is required.[49]
- *authorisation of the prosecutor to file a claim for non-recognition of a foreign decision:* the prosecutor is enabled by Section 68 para. 1 of the Slovak Private International Law Act to file a claim for non-recognition of a foreign decision. However, this authorisation is limited to the protection of public policy.

It is therefore obvious that unfortunately the adoption of Act No 108/2022 has left part I of the Slovak Private International Law Act named "Provisions concerning conflict of laws and the legal status of aliens" untouched. The need for comprehensive recodification of international private and procedural

47 See Dôvodová správa k zákonu č. 108/2022 Z.z. *Najpravo.sk* [online]. 24. 5. 2022 [cit. 30. 5. 2022]. Available at: https://www.najpravo.sk/dovodove-spravy/rok-2022/dovodova-sprava-k-zakonu-c-108-2022-z-z.html

48 The requesting authority may therefore ask for personal serving and, in this case, the correspondence will be delivered directly to the person to guarantee that it has been received by the authorised person. As registered delivery does not guarantee that correspondence is received by the authorised person, the institute of serving by means of a court employee or a judicial officer will be used; alternatively, the addressee will be summoned for the purpose of such serving.

49 See § 58d of the Slovak Private International Law Act.

law following the example of modern legal enactments in this field and starting with the internal systematic disposition until it reflects the changes that social evolution has brought, and which we have been trying to address in this paper, has been completely omitted by the Slovak lawmakers.

3 Conclusion

In this paper, we sought to specify the need for the comprehensive "renewal" of national legislation purporting to private international law enacted in the Slovak legal environment as the Private International Law Act.

We have drawn your attention to recodified and newly adopted legislation in the Czech Republic through the Private International Law Act No 91/2012 that replaced the previously valid "federal" Private International Law Act from the 1960s which, however, remains applicable in Slovakia.

Referring to Czech legislation that, in contrast to the Slovak one, reflects modern trends in international private and procedural law around the world as well as in Europe, we highlighted the opacity of the national disposition of norms applicable in the Slovak Private International Law Act that will certainly require a completely new structure and recodification. We also referred to the fact that, in contrast to our Czech peers, Slovak legislators have failed to react to changes brought by social evolution, e.g., considering the facticity of personal relations that prevail over relations of a more formal nature; instituting the will of parties in determining the governing law beyond liabilities and obligations; and anchoring the rules on how to avoid using the definite law according to conflicts of law rules that would definitely contravene the parties' legitimate expectations.

Finally, the paper focused on Act No 108/2022 amending and complementing the existing Slovak Private International Law Act. Unfortunately, the said law only modifies some partial areas in part II of the Slovak Private International Law Act named "International procedural law" while part I of the Slovak Private International Law Act named "Provisions concerning conflict of laws and the legal status of aliens" was left unchanged. It must be noted that the need for comprehensive recodification of international private and procedural law following the example of modern legal enactments in this

field, starting with the internal systematic disposition until it reflects the changes social evolution has brought, and which we have sought to address in this paper, has been completely omitted by the Slovak lawmakers.

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