

Conclusions of the summary report on the jurisprudence relating to the application of Act number XXVIII of 2017 on Private International Law

Act number XXVIII of 2017 on Private International Law (“the Code”) created several new legal instruments and significantly changed the logic of the statutory regulation. The jurisprudence-analysing working group has examined the effects of these innovations; has formulated proposals for ensuring the uniformity of jurisprudence; has carried out an abstract interpretation of the law, in particular in respect of the new legal instruments; has examined the jurisprudence from a historical point of view and has studied the relevant legal literature; has carried out an international comparative analysis on certain issues (especially with a view to helping to navigate between the multi-tier rules); has sought to provide a kind of “best-practice” guide by using hypotheses analysis and several empirical methods.

The jurisprudence-analysing working group has examined the relevant jurisprudence by focusing on the innovations and the regulatory scope of the Code. One of the innovations is the introduction of a clause referring to the multi-tiered rules. Renvoi rules has substantially changed in determining the applicable law. The public policy rule is differently evaluated than formerly, and imperative norms have been enacted in addition to that rule. The Code contains a general escape clause and a general auxiliary rule as a general clause. It takes a more differentiated approach in the area of personal law (especially in case of multiple nationality). In the area of family law, greater emphasis has been placed on the parties’ autonomy, with a view to protecting the interests of the family and children. The rules on guardianship involving a restriction of capacity have been changed and a new connecting rule on the violation of rights relating to the person has been introduced. Specific innovations include provisions on the law applicable to arbitration agreements, cultural property, and insolvency proceedings. The rules on property rights, intellectual property rights and the law of obligations have been specified with a view to ensuring greater predictability and legal certainty. The enacted special rules relating to immunity based on international law and the rule facilitating cooperation on international legal assistance are also significant procedural changes. Unlike the former regulation, the Code lays down the jurisdiction rules by types of cases. The same approach is applied to the recognition and enforcement of foreign judgments.

Following the structure of the Code, the jurisprudence-analysing working group has made conclusions on the following issues:

Jurisdiction: general jurisdiction, jurisdiction rule governing multi-plaintiff or multi-respondent litigation, exclusive jurisdiction, jurisdiction based on entering the court proceedings, jurisdiction in property matters (jurisdiction in contracts, jurisdiction of the place of the damage, jurisdiction-related aspects of unjust enrichment, jurisdiction by agreement) jurisdiction in family law and personal status matters (determination of the source of jurisdiction in divorce, maintenance, parental responsibility, cumulation of actions, agreement on jurisdiction, habitual residence of a child in the event of child abduction).

Applicable law: application of foreign law in general, contractual relationships, Vienna Convention on Contracts for the International Sale of Goods, non-contractual obligations, family law (divorce, the child’s habitual residence as a connecting factor), succession (common legal questions arising in the context of the application of the Inheritance Regulation).

Recognition and enforcement: family law (the impact of foreign proceedings and judgments on Hungarian court proceedings), legal issues arising under the Brussels Ia Regulation (the separation of the substantive law applicable to a domestic action brought for the enforcement of a member state judgment finding against the respondent and the law applicable to enforcement proceedings, due service of process, the Maintenance Regulation, the temporal scopes of and the relationship between the Brussels I Regulation and the Brussels Ia Regulation, the relationship between the Regulation on the European Enforcement Order and the Brussels Ia Regulation), public policy clause (relationship between differing foreign court procedures rules and Hungarian public policy, state immunity in private international law, recognition of a decision on adoption by a same-sex couple, recognition of the adoption decision of an adult adoptee, the review of a foreign decision sought to be enforced).

Service: cooperation under the Regulation, cooperation under the Service Convention, bilateral and multilateral agreements, other solutions (reciprocity, international courtesy), service through a body enjoying international immunity, procedure in case of an addressee at an unknown location abroad.

Taking of evidence: the question of the mandatory application of the Regulation on the taking of evidence, the application of foreign procedural law in the execution of a request for assistance in taking evidence, the advance payment of costs and the bearing of costs in connection with the taking of evidence.

European order for payment: jurisdictional issues in the context of the issuance of a European order for payment and in the context of proceedings turned into litigation due to an objection, questions of service of documents.