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PROROGATION OF INTERNATIONAL JURISDICTION

SUMMARY
OF A DISSERTATION THESIS FOR PHD DEGREE

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Introduction

International relations, the exponential development of technology and trade have a fundamental impact on private relations with an international element.

Currently, the worldwide COVID-19 pandemic and the ensuing war in Ukraine are the main causes of the deterioration of international relations, which continuously reflects on private relationships. Globalization is turning into regionalization, and at this moment, quick and effective measures need to be taken to guarantee the fast recovery and normal development of the private sector.

The European Union is one of the most export-oriented economies in the world. It is also the largest single market in the world. Free trade between EU members, as well as the liberalization of world trade, are some of the fundamental principles of the Union. Even in the EU, however, lower profit margins and increased costs are observed due to the strong European economies' dependence on Russian resources.

Frequent delivery delays and the lack of certain raw materials force traders in highly competitive environments to take precautionary measures. One of the most important ways to protect themselves is predictability in relationships. The most suitable preventive mechanism for settling potential disputes is specifying a known court or neutral arbitration. There is almost no contract anymore in which the parties have not specified the competent court to resolve their disputes.

At the same time, there are around 16,000,000 couples (spouses or registered partners) on the territory of the EU who consist of individuals with different nationalities or live in a Member State different from their origin, or own property in a Member State different from their origin. Each year, some of these couples divorce, separate, their children require maintenance or one of them dies. Annually, the value of the property that needs to be divided between these former couples amounts to around 500,000,000 euros[1]. Most of them prefer to settle their relationships before a court specified by them.

These factors led to a sudden development in the legislation concerning choice-of-court agreements to the extent that in recent years, the volume of norms regarding choice-of-court agreements significantly overshadows those concerning choice-of-law agreements. In this area, the European Union, as well as Europe as a whole, strives to respond to the public need for specific regulation, recognizing the enormous importance of choice-of-court agreements in private legal relationships with an international element. The possibility for the parties to determine the competent court to decide future disputes between them should be sufficiently accessible but at the same time clearly regulated to minimize the possibility of abuse and

[1] Bulletin on European Regulation concerning the Property Relations of International Couples, available in English at https://commission.europa.eu/system/files/2019-01/190129_international_couples_factsheet.pdf.

achieve maximum protection of the interests of both parties in the legal relationship[2].

Relevance of the Research

The relevance of the dissertation research is determined by the object, subject, aim, and tasks of the discussed issues. The material is of significant theoretical and practical value. In addition to the aforementioned reasons, the research is relevant due to the ongoing migrant wave, which has not stopped for almost a decade. The cultural and ethnic diversity in Europe continues to increase, inevitably leading to changes in civil and commercial transactions, as well as in personal and property relations within families, which guarantees an increase in private international relationships and therefore in agreements for the choice of a competent court.

Subject

The dissertation work includes an examination of the issues related to the possibility of countries to determine a competent court or arbitration to resolve their disputes, as well as an examination of the regulation concerning the prorogation of international jurisdiction contained in various sources of law, including international legal sources, EU law, and the Bulgarian Code of Private International Law.

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[2] This main objective is set by the European legislator as a starting point when creating the content of the provisions regarding the possibility for the parties to choose the competent court in all relevant regulations.

Aim

The aim of the dissertation work is to trace the development of the regulation and to present the basic provisions related to the prorogation of international jurisdiction for different types of private law relationships with an international element and the principles that the legal authorities must follow in assessing their international competence.

Scientific research objectives

The above-mentioned goal of the dissertation research also defines its tasks. They are as follows:

- to examine the main problems faced by Bulgarian courts when determining their international jurisdiction;
- to propose specific guiding ideas that will help with the correct application of the rules regarding prorogation of international jurisdiction;
- to clarify the contentious issues arising from the practice of the Court of Justice of the European Union and the need to use it in resolving legal disputes in Bulgarian courts;
- to distinguish the specifics of the different forms of prorogation of international jurisdiction;
- to present starting points that should be examined by competent authorities when assessing the parties' will in the choice-of-court agreement;

– to distinguish the differences in the various types of private law relationships: civil law and commercial law, family law and succession law.

Research methods

Various scientific research and methodological approaches have been used in the dissertation work, which are necessary due to the broad interdisciplinary nature of the problem under consideration. The research methodology includes normative, historical-chronological, logical-analytical, and systematic approaches, supported where necessary by comparative legal analysis. The analysis of international legal sources on the subject is based on traditional methods of legal document analysis. The problems are analyzed both from a theoretical perspective and based on the specifics of the topic, with the appropriate conclusions and generalizations made.

Scientific novelty of the dissertation work

The dissertation is the first comprehensive study in Bulgarian legal literature on the problems of prorogation of international jurisdiction. While various normative sources and regulations concerning the possibility of parties choosing a competent court have been studied by multiple authors, this is the first structured, comprehensive analysis of individual aspects of the problem arranged in logical sequence. Some of the theoretical studies are based on existing doctrine, but the novelty lies in their specific application to European practices to achieve stated goals and address given tasks.

Practical significance

The findings of the dissertation can be used in further studies of the problems of prorogation of international jurisdiction and their application by legal authorities. They can also serve as a guide for participants in civil and commercial transactions when making specific decisions related to agreements on choosing a court. The conclusions drawn can also be applied to personal and property relations between spouses, as well as issues related to succession matters.

Scope and structure

The scope and structure of the dissertation reflect its content. It consists of an introduction, exposition in four chapters, conclusion, and bibliography. Each chapter includes separate sections and subsections. The main content of the work is 200 pages, with the bibliography totaling 219 standard typewritten pages. The dissertation cites 51 monographs, books, and articles, 31 in Bulgarian and 20 in foreign languages (English and German), as well as 34 sources from the European Union database, 14 in Bulgarian and 20 in English. The study analyzed 20 decisions and orders of the Court of Justice of the European Union, 1 opinion, and 1 conclusion, 16 in Bulgarian and 6 in English, as well as 2 decisions in English from the US Supreme Court.

BRIEF SUMMARY OF THE DISSERTATION WORK

In the introduction to the work, the main scientific research objectives and the subject of the study are outlined, and its relevance is highlighted in the context of the contemporary development of international private law.

Chapter One is titled "Sources of Law and the Arbitration Agreement as a Similar Institute." **The first section of the chapter** focuses on one of the main problems that arise in the study of international private law, namely the hierarchy of sources of this branch of law[3]. The need for a more specialized examination of this matter arises from the large volume of sources that regulate the subject matter.

The first question that arises in doctrine and practice when a private legal dispute with an international element arises is which normative source should be used to resolve the case. Three main legal orders are sought for sources related to the dispute – EU law, international legal sources, and domestic/national sources. This is due to the participation of the Republic of Bulgaria, on the one hand, as a member state of the European Union, on the other hand, as a contracting state to various international conventions and treaties, and finally as a sovereign state creating positive law that regulates legal relationships

[3] More about the general framework for the sources of international private law, see Kutikov, Vladimir. International Private Law of the Republic of Bulgaria. General Part. New edition by Assoc. Prof. T. Todorov, Sofia, Sofi-R, 1993, pp. 113–153.

within its territory. Through the prism of the different normative sources, the institute of prorogation of international jurisdiction will be examined, as each source reveals different specifics characteristic of the legal order from which it arises.

The European Union law takes precedence over internal/national legislation[4], given the fact that in general, in the relations between member states, EU law sources have priority over international treaties and conventions concluded by the same contracting parties. Relations between Member States and third countries are mainly regulated by international legal sources, and if such sources are lacking, the internal conflicting rules of the states are applied. In this hierarchical sequence, Bulgarian courts must apply the provisions of specific sources, taking into account the principles and objectives of each source. Based on this, the structure of the present study on the issue of prorogation of international jurisdiction is built.

Given the specificity of the matter and the fact that the regulation of the issue of prorogation of international jurisdiction is contained in numerous different in origin, nature and application sources, a unified concept of prorogation of international jurisdiction cannot be derived, without reference to the provisions of the particular source. The reason for this lies partly in

[4] Popova, Jasmin. Law of the European Union. Sofia, Siela, 2009, pp. 358 and onwards, ISBN 978-954-28-0574-8.

the institute of autonomous qualification[5]. As a relatively new type of qualification of concepts in Private International Law, the model of autonomous interpretation of concepts in EU law, borrowed from the Hague Conventions on Private International Law[6], hinders the derivation of a common definition of "prorogation of international jurisdiction" that would be applicable in every case. And while there is still one body at the EU level whose autonomous interpretation of EU law is mandatory for all Member States, namely the Court of Justice of the EU[7], regarding international legal sources, outside those where the EU itself is a contracting party, this issue is under the jurisdiction of the supreme courts of the contracting states. Another reason for the impossibility of deriving a unified concept of prorogation of international jurisdiction is the specificity of individual private legal relationships with an international element, where it is possible for the parties to choose the competent court themselves – civil and commercial cases are characterized by different degrees of intensity and prioritize different elements of the legal relationship, unlike family and succession relationships. While trade turnover is rarely affected by cultural, moral, and

[5] Todorov, Todor. Private International Law – The European Union and the Republic of Bulgaria, Sofia, Sibi, 2010, ISBN 978-954-730-677-6, p. 134.

[6] More on the issue of autonomous qualification as a means of unifying the content of concepts, see Kamenova, Tsvetana. Unification of Private International Law. The Activity of the Hague Conference, Sofia, University Publishing House "St. Kliment Ohridski", 1991.

[7] Popova, Jasmin. Ibid., p. 433 and following

political differences, personal and property relationships between spouses and questions of parental responsibility often depend precisely on such specificities of national legislation.

Therefore, I believe that the best approach to clarifying the content and characteristics of the prorogation of international jurisdiction is to first examine the similarities and differences with a well-known and extensively doctrinal legal institution, and subsequently to examine separately the regulation of the possibility for parties to choose a competent court in individual sources, distinguished by the legal system from which it originates, and by the nature of the private legal relationship with an international element.

The prorogation of jurisdiction as a fundamental manifestation of procedural freedom is undoubtedly closely related to the possibility for parties to take their dispute out of the state apparatus and turn to an independent body to regulate their relationship, namely arbitration. Therefore, in the **second section of the chapter**, attention is paid to the characteristics of the arbitration agreement, as well as its similarities and differences with the choice-of-court agreement. The aim of the distinction is to provide practicing lawyers with basic positions to start from when studying the problem of prorogation of international jurisdiction.

Chapter Two, "International Legal Regulation of the Prorogation of Jurisdiction," examines the prorogation of jurisdic-

tion under the Hague Convention on Choice of Court Agreements of June 30, 2005, and the Lugano Convention on Jurisdiction and the Recognition and Enforcement of Judgments in Civil and Commercial Matters of October 30, 2007.

In the **first section of the chapter** dedicated to the 2005 Hague Convention, an analysis of the regulation of choice-of-court agreements is performed. The benefits for European enterprises are discussed, for whom the Convention's ratification will have a stimulating impact on international trade, as the regulation contributes to reducing legal uncertainty for EU enterprises trading outside the Union by ensuring that choice-of-court agreements included in their contracts are respected, and that decisions rendered by the courts designated in such agreements meet the criteria for recognition and enforcement in other contracting states under the Convention. The Convention applies only with respect to exclusive choice-of-court agreements, except where a state has made a declaration to extend on a reciprocal basis the application of the chapter on recognition and enforcement with respect to judgments rendered by a court designated in a non-exclusive choice-of-court agreement. The requirements that the choice-of-court agreement must meet in order to produce the intended legal effects are examined in detail. The forms of the choice-of-court agreement provided for in the Convention are also discussed – in writing or by any other means of communication which allows subsequent use of the information. One of the most important parts of this section is the comparison between the Convention and the 1958 New

York Convention on the Recognition and Enforcement of Foreign Arbitral Awards. The widespread inclusion of arbitration agreements in international trade agreements is largely due to the guarantees created by the New York Convention regarding the validity and consequences of the arbitration agreement, as well as the recognition and enforcement of the arbitral award. The question that arises is whether, after the Hague Convention came into force in a significant number of countries[8], choice of court clauses will succeed in displacing arbitration agreements or at least be used when necessary to achieve a balance between the parties' interests. If choice of court clauses are as easy to apply as arbitration agreements, and the enforcement of court judgments is as effective and speedy as arbitral awards[9], then the choice between the two institutions will inevitably depend on the specific relationship between the parties. Whether the Hague Convention will provide equal conditions for choice of court in the future and will displace arbitration agreements depends on both the balance of the rules applicable to private relationships with an international element and the ways in which the contracting states can decide to influence the application of choice of court agreements falling within the scope of the Hague Convention. It is clear that similarities are greater than differences and that mass ratification and accession to the

[8] At present, the convention has been ratified by the European Union, Mexico, Montenegro, Singapore, and the United Kingdom.

[9] In regard to the advantages of arbitration proceedings see Stalev, Zhivko. Arbitration in Private Legal Disputes, Sofia, Siela, 1998, ISBN 954-649-096-2., pp. 17–18

Hague Convention will change the current situation of widespread application of arbitration agreements and less frequent use of state courts to a balanced mechanism for applying both institutions. This development of relationships will benefit international trade, as it will allow jurisdictional clauses to be included in contracts that maximize the parties' desires and fully protect their interests.

In the **second section of the chapter** dedicated to the 2007 Lugano Convention, attention is drawn to the relationship between the convention and the non-EU Brussels I bis Regulation[10], which regulates jurisdiction agreements in civil and commercial matters. Article 23 of the Convention is analyzed, which, by repeating the amendment of the already repealed Article 23 of the Brussels I Regulation[11], attempts to introduce good practices from the application of the regulation with regard to the other contracting states to the Lugano Convention. The focus is on the nature of the choice-of-court agreement, as well as on the formal requirements laid down in the convention. The provision regulating the so-called tacit prorogation is also analyzed, namely the jurisdiction based on the appearance of the defendant. The replication of the Brussels I Regulation at

[10] 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)

[11] Council Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters

the international level opens up possibilities for the establishment and subsequent recognition and enforcement of judicial decisions on the territory of the contracting states, and the use of a known and established legal framework in the convention creates guarantees of security and predictability in the development of economic relations. The convention practically allows states that, for various reasons, do not want/cannot be part of the EU to participate in civil and commercial transactions on an equal footing with member states. As a means of determining the competent court, prorogation of jurisdiction enables parties who are resident in contracting states that are not member states to take advantage of their opportunity to choose a trusted court to resolve their dispute. The main benefit of prorogation of jurisdiction under the convention is the guaranteed recognition/enforcement of the decision rendered by the courts of the member states.

In **Chapter Three**, "Regulation on the Prorogation of International Jurisdiction in EU Law," an analysis is made of the fundamental regulations in the area of European international private law. The chapters are structured around the content of individual regulations, and thus are also based on the various types of private law relationships with an international element – civil and commercial, family or succession law.

The first section of the chapter focuses on the most widely applied source of rules on competence in the EU, namely the Brussels I bis Regulation, which regulates competence, recog-

nition and enforcement of judicial decisions in civil and commercial matters. It is for this reason that this regulation receives the most attention in the dissertation. The prorogation of international jurisdiction is most characteristically expressed in the Brussels I Regulation, which gives maximum freedom of choice to the parties. The huge importance of this source is also linked to the fact that the choice of a competent court is not bound by the parties' place of residence. Therefore, whenever a court or tribunal of a Member State is chosen to be competent in a case falling within the scope of the regulation, their jurisdiction will be assessed under the rules of the regulation, rather than based on the national rules of the court seized. The section contains a detailed study of the prerequisites for concluding an agreement on the choice of a competent court, the functions and effects of such an agreement, as well as the requirements for its material and formal validity. Unlike the previous regulation in the field – the Brussels I Regulation, the current regulation explicitly requires the seized court to assess the substantive validity of the choice-of-court agreement through the prism of its own law, and as for formal validity, the regulation introduces detailed rules that are carefully examined. This section further discusses the silent prorogation of jurisdiction based on the defendant's appearance, focusing on what exactly is meant by the defendant's appearance and how the defendant's actions taken in his defense should be interpreted in order to determine the international jurisdiction of the dispute. Finally, the prorogation of international jurisdiction in so-called weaker party cases – in insurance, consumer and individual employment contracts – is

discussed. The limitations that the regulation imposes on the conclusion of an agreement on the choice of court in these cases are discussed with a view to protecting the weaker party. The decision of the European legislator to include the concept of habitual residence in the territorial limitation of the possible competent court in the targeted choice-of-court agreement is also discussed. This connection is not used in other provisions establishing jurisdiction, which are based on the connection of residence. A proposal *de lege ferenda* is made for further revisions of the Regulation's texts to ensure that only one of the binding factors remains, in order to guarantee equal and accurate application of these hypotheses of prorogation of international jurisdiction in cases related to insurance and consumer contracts and to avoid conflicting court decisions.

The second section of the chapter analyzes the possibility of extending international jurisdiction in cases related to parental responsibility. The reasons for adopting a third regulation in this matter in the last 20 years, as well as the evolution of this regulation, have been discussed. Unlike the regulation for competent courts in so-called “marital cases” (i.e. cases of divorce, legal separation, and annulment of marriage), where the Brussels IIb Regulation[12] does not provide for the possibility of extending jurisdiction, in cases related to parental responsibility,

[12] Council Regulation (EU) 2019/1111 of 25 June 2019 on jurisdiction, the recognition and enforcement of decisions in matrimonial matters and the matters of parental responsibility, and on international child abduction (recast)

the European legislator has provided for hypotheses where parties can deviate from the general situation of the jurisdiction of courts of the Member State based on the child's habitual residence. The Brussels IIb Regulation removes one of the hypotheses for extending international jurisdiction, provided for in the Brussels IIa Regulation[13], and leaves an explicit form of extending jurisdiction, making some changes. The trend of limiting the possibility of choosing a competent court in cases related to parental responsibility is also strengthened in relation to the specific possibilities for choosing a competent court[14]. Nevertheless, to gain a more complete understanding of the development of the regulation on the choice of a competent court, the already cancelled possibility of extending jurisdiction is also discussed, since the action of the new Brussels IIb Regulation is still too short, and regarding the ongoing judicial proceedings before August 1, 2022, the provisions of the Brussels IIa Regulation will continue to apply.

A detailed analysis has been made of the prerequisites and limitations in choosing a competent court for cases related to parental responsibility, with an emphasis on the best interests of the child. The best interests of the child should be the guiding

[13] 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

[14] For more information on this topic, see Gray, Jacqueline. "Party Autonomy Under the New Brussels IIa (Recast) Regulation: Stalemates and Innovation," 18(1) Utrecht Law Review, 2022, pp. 45–56. DOI: 10.36633/ulr.763.

factor in the court's assessment of whether to exercise jurisdiction. Several criteria for assessing this interest can be derived from the practice of the Court of Justice. One of these is the child's age, taking into account their maturity and ability to express their opinion, and it is important for the judge to listen to them. When the child is too young to understand all the details of the situation and cannot express themselves properly, it is essential for the judge to establish a connection with them. In this situation, with a view to the child's best interests, it would be most appropriate for them to remain in their comfort zone, to be heard by a judge who speaks their language, and to participate in proceedings in their hometown or at least in their own country, avoiding long journeys.

Procedural peculiarities of the proceedings for deciding on parental responsibility should also be taken into account as a criterion for assessing the best interests of the child. For example, in Bulgaria, a social report is always prepared by competent authorities in these cases. To prepare this report, it is necessary to obtain information from the place where the child lives, where they go to school, and where they spend most of their time. In this way, the court directly acquires an opinion on the child's interests.

The best interests of the child are the primary requirement that the presiding court should consider, which takes precedence over the jurisdictional autonomy of the parties' will. An argument in favor of this assertion is also the fact that in its latest practice, the Court of Justice of the EU supports the view

that the best interests of the child authorize and oblige the court to correct the result of the spouses' expressed will to choose a court.

At the end, a proposal *de lege ferenda* was made regarding the inability to extend jurisdiction in divorce cases. The regulation concerning the potential extension of jurisdiction in divorce cases can be constructed similarly to cases with a weaker party in insurance, consumer, or individual labor law cases under Regulation Brussels I bis and can be limited regarding the time of concluding such an agreement after the dispute arises between the spouses or even after a competent court has been seized according to Article 3 of Brussels IIa Regulation. The regulation can be constructed so that the extension of jurisdiction is not exclusive, i.e., it can only be an alternative to the general provisions on jurisdiction. Another possibility is for the parties' will to be limited only to specific courts of member states that are closely connected to the marriage. In any case, an agreement could be reached on adopting a specific formula that would protect both parties in the marriage relationship to the fullest extent, and in case of necessity, such as established domestic violence, only one of them.

The third and fourth sections of this chapter discuss the possibilities of extending international jurisdiction in cases related to alimony and property relations.

The choice of court is not possible in disputes concerning child maintenance obligations for children under 18 years of

age. On the other hand, silent prorogation is always possible – the court of a Member State before which the defendant appears is competent, unless the defendant appears to challenge the court's jurisdiction. The provision concerning agreements on the choice of court in cases related to maintenance is conservative and limits freedom of choice, excluding this possibility with regard to child maintenance and indicating specific courts that can be the subject of such choice. It is precisely the specificity of the relationships related to maintenance that has led to the exclusion of this matter from the regulation on civil and commercial matters and its isolation in a separate regulation, which pays more attention to the nature of the relationships that most often lead to maintenance obligations – family, kinship, marital or relationship by marriage, rather than the monetary nature of the due performance. Therefore, the prorogation of jurisdiction in cases related to maintenance rather resembles that in cases related to family relationships than in civil and commercial matters. In view of the changes that Brussels IIb Regulation created regarding prorogation of international jurisdiction in cases related to parental responsibility, it would not be illogical to expect soon an amendment to the Regulation 4/2009[15] and a reorganization of the mechanism for respecting the parties' freedom of choice regarding the competent court.

[15] 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

Through the prism of enhanced cooperation, the extension of jurisdiction on cases related to property relations between spouses is considered. Regarding the regulation of property relations for registered partners, it should be noted that the regulation is identical and has not been separately addressed. Given that Regulation (EU) 2016/1103[16] was adopted under the conditions of enhanced cooperation and is only applicable in 18 member states, the choice of the parties is limited primarily to the courts of these member states. The choice of parties is possible only when the issue of property relations between spouses is not related to succession of a spouse under Regulation (EU) No 650/2012 or divorce, legal separation or annulment of marriage under Regulation (EC) No 2201/2003, respectively its revised text. In this way, the European legislator concentrates jurisdiction in the area of property regimes between spouses in the member state whose courts are seised to rule on succession or divorce, legal separation or annulment of marriage, and the procedural autonomy of the parties is left second. This is due to the fact that most often the problems related to property relations between spouses arise precisely when the marriage is terminated due to the death of one spouse or divorce/separation. The requirements for the choice-of-court agreement are discussed, as well as the possibilities for silent prorogation, which is based on the appearance of the defendant, provided that this

[16] Council Regulation (EU) 2016/1103 of 24 June 2016 implementing enhanced cooperation in the area of jurisdiction, applicable law and the recognition and enforcement of decisions in matters of matrimonial property regimes

appearance is not for the purpose of challenging jurisdiction and the seised court is in the member state whose law the parties have chosen to apply or in the member state of the spouses' first common habitual residence after the marriage or in the member state of the spouses' common nationality at the time of the marriage.

The last section of this chapter analyzes the possibility of choosing a competent court for cases related to matters of succession. The need for adopting a regulation in this regard and the reasons for shaping the final version of the provisions are discussed in detail. The choice of a competent court is primarily conditioned by the choice of applicable law by the deceased according to Article 22 of Regulation (EU) No 650/2012[17]. In other cases of determining applicable law, the Regulation does not allow for the possibility of choosing a court under Article 5. This is due to the fact that the Regulation aims to ensure that the competent court will apply its own law, which may have been changed as a result of the deceased's choice of his national law as applicable to his succession. In accordance with the ideas and objectives laid down in the introductory part of the Regulation, the possibility of choosing a court aims to unify the competent court and applicable law. The construction of the prorogation provided for in the Regulation is interesting in view of

[17] 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

the fact that the competent court is not chosen by the heir, but by the interested parties, i.e. the heirs. From the restrictions introduced in the Regulation, it can be concluded that the choice of a competent court is reduced to the court of the state whose citizen the deceased was at the time of the choice, or the court of the state whose citizen the deceased was at the time of his death. The agreement to select a court must be made in writing, with a notation of the date and signature from the interested parties. Any communication by electronic means that provides a durable record of the agreement is considered equivalent to "written form." Attention is drawn to the special silent prorogation of jurisdiction that arises from the appearance of the interested parties. It is only possible in cases where the parties in the proceedings have explicitly accepted the jurisdiction of the court seized, which is in a member state whose law has been chosen to apply by the deceased according to the restrictions on the first type of prorogation. Silent prorogation was created by European legislators in connection with the frequent difficulties in identifying all parties affected by succession at the time of opening the succession (the time of the testator's death). The conclusion is that, given the nature of the matter, the pure form of prorogation of jurisdiction, as regulated in other sources of EU law, is impossible. Nevertheless, the legislature has introduced opportunities for the selection of a competent court through agreement or through implicit actions, but the limitations placed on the possible choice of courts in the state whose citizen the testator is at the time of selection or at the time of death practically hinder the possibility of free choice.

The last **Chapter Four** is dedicated to "The Regulation of Prorogation of Jurisdiction in Bulgarian Legislation". The achievements of Bulgarian doctrine regarding the application of the Bulgarian Code of Private International Law are indicated. The concept of prorogation of international jurisdiction is derived, as well as its action and functions. Attention is drawn to the differences between the derogation and prorogation function with regard to the specific regulation in the Brussels I Regulation. The formal requirements for the choice-of-court agreement and the limitations of its scope are analyzed. The application of silent prorogation of jurisdiction by the Bulgarian court is also discussed. Finally, it is emphasized that with the amended text of Article 25 of the Brussels I Regulation, which no longer requires at least one of the parties to the legal relationship to have residence in a member state, but applies regardless of the parties' residence, the provision of Article 23 of the Bulgarian Code of Private International Law regulating prorogation of international jurisdiction has practically lost its legal application. This is so because in all cases where the Bulgarian court or a foreign court in a member state is selected as competent, this jurisdictional prorogation will fall under the regulation of the Brussels I bis Regulation, whose norms have precedence over national legislation. At the same time, if this foreign court is a court of a state party to the Hague Convention of 2005 or the Lugano Convention of 2007, Bulgarian legislation on prorogation of international jurisdiction will not be applicable, and the norms of the relevant convention will apply. Due to the above, it can be said that the development of international and

European regulation in the field of private international law and specifically in the field of prorogation of international jurisdiction in cases related to property disputes, practically leads to the silent repeal of Article 23 of the Bulgarian Code of Private International Law.

DISSERTATION CONTRIBUTIONS

1. The dissertation represents an attempt to comprehensively examine the issues of the prorogation of international jurisdiction. This question has been studied in Bulgarian doctrine in relation to the regulation concerning the determination of an internationally competent court, but for the first time an attempt has been made to structurally analyze the individual aspects of the prorogation of international jurisdiction, with the latter being arranged in a logical sequence.

2. Attention should be paid to the *de lege ferenda* proposal regarding the organization of provisions concerning the prorogation of international jurisdiction in cases related to insurance and consumer contracts, and specifically the concept of habitual residence in the territorial limitation of the possible choice-of-court by the parties. In these provisions, habitual residence is presented as a possible alternative to domicile, a characteristic binding factor for the remaining regulations regarding jurisdiction in the Regulation. Habitual residence is not defined in Brussels I bis Regulation and is subject to autonomous qualification. In a further revision of the texts of the Regulation, it may be better to retain only one of the concepts, in order to ensure equal and precise application of these hypotheses for the prorogation of international jurisdiction in cases related to insurance and consumer contracts, and to avoid conflicting judicial decisions. Another possibility is to create a definition of the concept

of habitual residence in the sense of the provisions concerning cases with a weaker party.

3. The proposed *de lege ferenda* amendments regarding the possibility of prorogation of jurisdiction in cases related to divorce, legal separation, and annulment of marriage are also very important for the development of regulation in this matter. The establishment of regulations concerning the possible prorogation of jurisdiction in divorce cases can be made, as in cases with a weaker party in insurance, consumer, or individual labor disputes in the Brussels I bis Regulation and can be limited regarding the time of conclusion of such an agreement after the dispute arises between the spouses or even after a competent court is seized under Article 3 of the Brussels II bis Regulation. It is possible for the regulation to be designed in such a way that prorogation of jurisdiction is not exclusive, i.e., it is only an alternative to the general provisions on competent courts. Another option is for the parties' will to be limited only to specific courts of Member States that are closely connected to the marriage.

4. A contribution to Bulgarian doctrine represents the analysis of the relationship between the prorogation agreement and the arbitration agreement as forms of the parties' freedom to choose the body that will decide their dispute, based on the comparison of the Hague Convention on Choice of Court Agreements of 2005 and the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards of 1958. The expected consequences of the ratification of the

Hague Convention by an increasing number of states and the wider application of the choice-of-court agreement are also noted.

5. The novelty lies in the attempt to make a comprehensive analysis of the main sources related to the prorogation of international jurisdiction that bind Bulgarian courts, as well as the indication of specific examples that highlight the different hypotheses of the application of various normative sources.

6. In the dissertation, an interdisciplinary scientific research approach is applied to investigate a current problem.

7. The analyses and conclusions reached in the dissertation are a useful starting point for further research on the issues of prorogation of international jurisdiction. They can be used for the needs of the Bulgarian legal system, both by practicing lawyers in drafting contracts and conducting negotiations, and by the judiciary when resolving issues of international jurisdiction.

LIST OF PUBLICATIONS RELATED TO THE TOPIC OF THE DISSERTATION

Raychev, Kristian. Form of the prorogation agreement in civil and commercial cases. Collection of scientific readings dedicated to the 140th anniversary of the adoption of the Tarnovo Constitution, Siela Norma AD, 2019, ISBN 978-954-28-3043-6, pp. 463–472;

Raychev, Kristian. On some issues of prorogation of international jurisdiction in cases related to parental responsibility and maintenance. Collection of reports "Spring legal days" volume 1, University Publishing House "Paisii Hilendarski", 2021, ISBN 978-619-202-723-0, pp. 313–329;

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