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Introduction to Polish private international law: General part

1. Structure of the private international law rules

Private international law in the strict sense (conflict of laws) is a specific area of law. It does not consist of legal rules directly regulating social relations, but of **indirect rules** constituting a "guidance to direct legal provisions." Their purpose is only to designate the legal system that is appropriate for a situation qualified as private law one (i.e. belonging to civil, commercial, family and guardianship law, individual labor law). Otherwise it may be said that conflict-of-law norms are **'second-degree legal rules'** or **'meta-rules.'** This fact determines their specific structure.

Every legal rule begins with the so-called '**operative legal facts**' (Polish: *hipoteza*; German: *Rechtstatbestand*), i.e. the description of an ideal factual situation for which the legal consequences have to be derived from the following part. However, in the field of private international law this part of the legal rule plays a specific function and looks quite different from other branches of law. Hence the specific wording of the private international rules as compared against average legal rules: at the beginning there usually stands the name of a legal institution or the notion reminding the vocabulary of the substantive law[1], e.g.—

1. Sec. 16 of PILA 2011: 'personal rights of a natural person'
2. Sec. 17 of PILA 2011: a **'moral person'**
3. Sec. 41 of PILA 2011: 'ownership and other property rights'
4. Sec. 48 of PILA 2011: 'ability to conclude a marriage'

[1] See also at https://polishprivatelaw.pl/basic-notions-of-private-international-law/ (last visited: 06/06/2020).

5. Sec. 51 of PILA 2011: 'spouses' personal relations and the matrimonial property regime'.

For these reasons this opening part of the legal rules of private international law bears the name of the '**legal category**.' For a national judge such a way of building the structure of the rules of private international law poses a particular problem due to a possible conflict between the way she interprets a comparable term under Polish substantive law and its divergent classifying and understanding pursuant to foreign laws; for instance, what may well be treated in accordance with the Polish private law as a succession case, becomes a problem of the matrimonial property regime in another legal system, or vice versa. This phenomenon universally is referred to as the 'conflict of characterizations' (French: *le conflit de qualifications*)[2] and it will be discussed later on.

The relationship or situation specified as the legal category of the conflict-of-law rule has to find its substantive regulation somewhere; it has to be 'localised' in a legal sense. Hence the judge's obligation to apply—as the consequence of matching a given factual situation with a particular legal category in the scope of the conflict-of-law provision—the law of a country designated by the a particular criterion named in the **connecting factor** (Polish: *łącznik*, German: *der Anknüpfungspunkt,* French: *le point de rattachement,* Spanish: *el punto de conexión*). In so-called *bilateral conflict-of-law rules* (which designate either the law of the forum or the law of any other country), the connecting factor is formulated in an abstract way, see the example—

Article 15 PIL [The name of a natural person]

(1) The name and surname of a natural person will be subject to the law of his [or her] nationality [...].

Legal category: name and surname of a natural person

Connecting factor: *law of one's national country applies* → nationality of the person whose name or surname is dealt with

[2] See also at https://polishprivatelaw.pl/basic-notions-of-private-international-law/ (last visited: 06/06/2020).

In our example, nationality (in red) plays a role of the so-called **basis of the connecting factor** (Polish: *podstawa łącznika*), whereas the phrase referring to a person (in blue) fills out the connection by giving it a subject or an object—hence its name as the **supplement** (Polish: *dopełniacz*).

It should also be noted that in order to fulfil its role of addressing the legal question to an appropriate legal system, the connecting factor requires settling the **time factor** (Polish: *subokreślnik temporalny*). This part of the connecting factor is not always expressly called; sometimes its establishing requires some interpretive effort of the judge. In Sec. 15 of PILA 2011 it is the current nationality of the person (i.e. the time factor is **not immutable**: each time the person changes his or her nationality, the law applicable to his or her name changes). There are, however, conflict-of-law provisions which expressly provide for a fixed moment in time, e.g. Sec. 48 PILA 2011 refers to the law of nationality of each of spouses as of the time of conclusion of marriage.

In the literature the result of the application of conflict-of-law provisions often is referred to using Latin expressions: *lex* + an appropriate name of the connecting factor in the genitive. Here is the list of most common phrases—

Basis of the connecting factor	Name of the law applicable	Law applicable in Latin	Legal categories (examples)
Nationality	Law of nationality (of a natural person, a spouse, a child, etc.)	*Lex patriae*	Capacity of natural persons (e.g. Sec. 11(1) PILA 2011)
Residence (permanent residence – domicile)	Law of the place of residence	*Lex domicilii*	Capacity and personal status of stateless persons and refugees – Sec. 3
Habitual residence	Law of the place of habitual residence	*Lex habitationis*	
Place (country) where the object is situated	Law of the place where the object is situated	*Lex rei sitae*	Absolute property rights (*iura in rem*), Sec. 41(1)
Place (country) where the act was accomplished	Law of the country where the juridical act was accomplished	*Lex loci actus*	Form of juridical acts, Sec. 25(1)

Registered office of a company	Law of the company's registered office	*Lex situs*	Corporations and similar entities, Sec. 17 PIL
Place where a company was incorporated	Law where the company was founded	*Lex incorporationis*	
Place of celebrating the marriage	Law of the place (country) where the marriage was concluded	*Lex loci celebrationis*	Form of marriage – Article 49(1) PIL
Place of arbitration	Law of the place of arbitration	*Lex loci arbitri*	Arbitration agreements – Article 39(2), 2nd sentence
Place of the damage	Law of the place where the damage occurred	*Lex loci damni*	Article 4(1) Rome II Regulation
Choice of law by the parties	Law chosen by the parties	*Lex voluntatis*	Article 3(1) Rome I Regulation, Article 14(1) Rome II Regulation
Place (country) where the court is seated	Law of the court's own seat (country)	*Lex fori*	Article 4(2) of the 2007 Hague Protocol on Maintenance Obligations
The connection is 'borrowed' from the conflict of law provision designating the law applicable to a broader (more general) legal category	Law governing the act or the claim itself	*Lex causae*	Limitation of debts or actions; the prescription period, Sec. 26 PILA 2011; form of juridical acts, Sec. 25(1)

In most cases, the provisions of private international law designate only one law as applicable. There are, however, provisions in which more than one connecting factor is put in the legal consequences of the rule of private international law. Designating multiple legal systems (more than one) usually has some substantive objectives standing behind, as evidenced with an example of Article 1, 1st indent of the 1961 Hague Convention on the Conflicts of Laws Relating to the Form of Testamentary Dispositions[3]—

[3] Full text see at https://www.hcch.net/en/instruments/conventions/full-text/?cid=40 (last visited 06/06/2020).

Article 1. A testamentary disposition shall be valid as regards form if its form complies with the internal law:

a) of the place where the testator made it, or

b) of a nationality possessed by the testator, either at the time when he made the disposition, or at the time of his death, or

c) of a place in which the testator had his domicile either at the time when he made the disposition, or at the time of his death, or

d) of the place in which the testator had his habitual residence either at the time when he made the disposition, or at the time of his death, or

e) so far as immovables are concerned, of the place where they are situated.

Article 1 of the Convention is an instance of an *alternative connection*. It consists in leaving several connecting factors to the judge's choice. In such a case, the less strict and severe legal order applies, which results in the most favorable treatment of the form of a testamentary disposition (*favor testamenti*).

The choice of that kind may well be left to the parties themselves. Such a variant of an alternative connection is referred to as 'optional' one or, in Latin, as *professio iuris,* used wherever the lawgiver wants to broaden the parties' autonomy and, at the same time, to secure a certain level of control over the legal transactions in order to prevent the law evasion, see e.g. Section 52(1) PILA 2011—

As the law applicable to their matrimonial property regime, the spouses are free to choose the law of nationality of one of the spouses, or the law where one of the spouses is domiciled or has habitual residence. The choice may also be made before the marriage is concluded.

Other variants of multiple law designation in the conflict-of-law provisions may consist in the weakened alternative, cumulative, or parallel connections. They do not require a specific discussion here.

Conflict-of-law rules may be either bi- or unilateral. The difference between them consists in the scope of legal systems to which they refer. Unilateral rules designate

only one applicable law, which is the court's own (*lex fori*), as e.g. Sec. 13(2) PILA 2011 does—

If the Polish court decides on the legal incapacitation of a foreign citizen, Polish law applies.

In turn, bilateral conflict-of-law rules designate law of any country as applicable.

2. Characterization in the conflict of laws

The issue of the so-called 'characterization' (French: *qualification*; German: *Qualifikation*; Polish: *kwalifikacja*) consists in analyzing the concepts used by the legislator to designate an appropriate legal category in conflict-of-law provisions. As already mentioned, private international law provisions use very concise terms, usually taken from the dictionary of their own legal system (e.g. "legal capacity", "legal person" or "ownership and property rights" easily may be associated with corresponding concepts of the Polish private law, standing respectively in Sections 8, 33, and 140 ff. of the Civil Code).

However, foreign law may not necessarily understand the same names in the same way; it can also create institutions completely foreign to our legal system. Hence the problem of the so-called conflict of qualifications. His "discoverers" and first researchers at the end of the 19th century: German scholar and judge Franz Kahn[4] and French academician Etienne Bartin[5] made an initial assumption that private international law is an integral part of the substantive law of the forum. That is why they were of the opinion that the relations dealt with by private international law are "ordinary" civil-law relations, although they go beyond one state. Hence their belief that it is the state that the court rules that should decide how to understand the terms in legal categories of conflict of law provisions. The problem is easiest to explain by examples—

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[4] F. Kahn, *Gesetzeskollisionen: Ein Beitrag zur Lehre des internationalen Privatrechts*, 30 Jahrbücher für die Dogmatik des heutigen römischen und deutschen Privatrechts [1891], p. 1 *et seq*.

[5] E. Bartin, De l'impossibilité d'arriver à la suppression définitive des conflits de lois, 24 Journal Clunet du droit international privé [1897], p. 225 et seq., 466-495 et seq., 720-738 et seq.

Example 1: two Dutch nationals of the male sex living in Poland entered into a *huwelijk* (marriage) before the competent authority of their home state and subsequently concluded a property agreement. How to determine the law applicable to their property relations in relation to the pending court case in Poland?

Example 2: A person of Polish nationality established before his death a *trust* in Malta, by contracting a local lawyer as the manager of the property located there in the interest of his three children living in Poland. The institution of trust is very often used in countries of the common law legal family (or the 'mixed jurisdictions'), but our legal system does not know it. So how to treat the situation?

In example no. 1 it is specifically about whether in Sec. 51 and 52 PILA 2011, the concepts of "spouses", "property relations between spouses" and "marriage contract" also include institutionalized relationships of persons of the same sex, rejected by the Polish legislator. It is not enough to refer to Article 18 of the Polish Constitution, defining marriage as a relationship between a man and a woman, or to claim that foreign law will not be applied anyway due to an exception to public policy, but it should first be determined what law is applicable at all: Polish or foreign. In turn, example No. 2 raises the need to look for solutions in several different conflict-of-law standards, e.g. regarding "inheritance matters" (Sec. 66-1 PILA 2011), legal entities (Sec. 17 PILA 2011) or contractual obligations.

Theoretically, the characterization of legal concepts can be done in at least three or even four ways—

1. according to the substantive law of the court's seat ('lex fori' characterization): this would mean taking the concepts of our law as a starting point. Of course, this legal order is familiar with the concept of "spouses" (however, it only covers couples of different sexes), while the institution of "trust" is alien. This reduces legal certainty, as it causes 'gaps' in conflict of laws that need to be filled only on the basis of Art. 67 PILA 2011;

2. according to the substantive law which is relevant to a given case (**'lex causae' characterization**): one could refer to the conceptual grid of law proper for the relationship in question. The problem is that since it is not known in advance what conflict rule to apply, so it is also difficult to say which law would 'determine' the results of characterization. This can only be arbitrarily presumed (e.g. that in our examples the common national law of the Dutch parties and the place of establishment of the Maltese trust shall decide how to treat a homosexual marriage or a trust, etc.);
3. **autonomously**: all terms used in conflict-of-law rules are considered independent of any national system of private law (i.e. civil, commercial, family, and labor law), except that there are some differences of view at the level of detailed solutions: (a) **the comparative method of the characterization** is based on comparative legal research striving at determining which legal institutions correspond to general concepts in conflict-of-law rules, such as "marriage", "contractual obligation", "property law", etc.[6]; (b) the **autonomous *lex fori* approach**: the understanding of legal categories in conflicts of laws does not coincide with the concepts of the substantive law of the court's state, and the judge has to keep in mind the different function and related conceptual autonomy of private international law in relation to substantive law.

The latter method is used most often today, although the problem of correct interpretation and qualifications in private international law has not become significantly simpler. It is especially the case in the European private international law, which by definition is independent of the Member States' laws; hence in this regard the characterization should be made in an exceptionally cautious way—

[6] The foundations of this school of characterization in the conflict of laws were laid down esp. by the German famous scholar Ernst Rabel; see E. Rabel, *Das Problem der Qualifikation,* 5 Zeitschrift für ausländisches und internationales Privatrecht 1931, p. 241-288.

Example. Such an attitude was adopted by the Court of Justice of the EU in one of the recent cases concerning the international successions. In *Mahnkopf*[7], the beneficiaries of the estate were a spouse and a son of the deceased German living in Berlin, who died intestate; still, the cross-border element was due to the location of some assets in Sweden. In order to decide whether or not the German court may issue the European Succession Certificate declaring each of the beneficiaries to inherit the estate in one half, it was necessary to decide the nature of the widow's claim to an additional one quarter of the estate, foreseen in Section 1371(1) of the BGB (German Civil Code). The provision belongs to the part of the Code pertaining to the statutory matrimonial property regime, i.e. the community of accrued gains (German: *Zugewinngemeinschaft*); still, the Court of Justice decided to characterize it in the European conflict of laws as the matter of succession, which falls within the scope of the EP and the Council Regulation No. 650/2012.

3. *Renvoi* (remission and transmission)

The subject matter of the designation of the law applicable is not so much a specific set of norms (e.g. Civil Code of State X), but rather the legal system as a whole, including both the substantive and conflict-of-laws rules. Thus the question is whether the court in Poland should apply or disregard the latter ones. The possible application of the foreign conflict of law rules bears the French name of the 'renvoi.'

There are quite important reasons in favor of it. The most important is that in this way discrepancies and conflicts between the provisions of private international law of various nations are mitigated: e.g., for the capacity of natural persons, Polish law and many other European countries generally adopt nationality as the connecting factor, while in Anglo-Saxon countries it is domicile, in Latin America in turn the residence. Therefore, the renvoi helps avoid negative conflicts between the laws of different countries. In the case of the so-called 'remission' (see below), there is also a pragmatic

[7] Judgment of 1 March 2018, C-558/16 *Mahnkopf*, EU:C:2018:138.

argument: after all, the work of the court is simplified thanks to coming back to the *lex fori,* which results in the application of its own legal system.

However, the disadvantages of the reference include the even greater methodological complexity of private international law. Moreover, there are countries that allow the *renvoi*, as well as those in which it is not foreseen at all or where it is limited in various ways. In this state of affairs, it is difficult to find any compatibility and international predictability of decisions. The benefits seem uncertain, especially since the reconciliation of all the laws of the world with it is not possible.

Due to which law will ultimately be indicated as applicable, two types of reference are distinguished—

1. remission (French: ***renvoi au premier degré***): Polish law (*lex fori*) is designated as applicable under a foreign conflict of law rule, so the court hearing the case "returns to the starting point" and has grounds to apply its own law;
2. transmission (French: ***renvoi au second degré***): foreign conflict of laws law, which has been designated by the conflict of law rule in Poland, designated yet another foreign law as applicable to the matter.

Example. In Polish case law, the decision of the Supreme Court of January 26, 2006, II CSK 124/05 (unreported) is noteworthy: the deceased French citizen was an owner of two properties on the territory of the Republic of Poland. The higher court, with further approval by the Supreme Court, decided the case pursuant to Articles 935, paras (2) and (3) of the Polish Civil Code, which resulted in the right of the Polish State Treasury to the real estate. While the then Polish private international law (more specifically, Article 34 of the PIL Act of 1965) designated the national law of the deceased (*lex patriae*) at the time of his or her death, which here was the French law, the latter disagreed with its competence to govern the case by splitting the estate into two parts: in general, successions were subject to the law of the last domicile of the deceased (*lex domicilii*), but for the real estate which was governed by the law of the

location of the immovable assets (*lex rei sitae*). As the case concerned immovables, the Polish court finally could apply Polish law.

In the Polish Act on Private International Law of 2011, the *renvoi* has been acknowledged only to a limited extent. In accordance with Sec. 5 (1) PILA 2011, if a foreign law, indicated as being applicable by the Act, provides for the application of Polish law to a given legal relationship, Polish law shall apply. Therefore, the remission was allowed, while the transmission—to the law of a third country—is not. The only exception in the entire Act is Sec. 17(2) PILA 2011, according to which, if the law of the country where there is a seat of a legal person, designated by Sec. 17(1) as applicable to a legal person, designates the law according to which the moral person was set up, the latter law shall apply. The latter provision allows both types of the *renvoi*.

There are some explicit exceptions provided for in Sec. 5 (2). There is no remission when the designation of the law applicable: 1) was made by choice of law; 2) relates to the form of a juridical act; 3) applies to contractual, non-contractual or unilateral legal obligations for which the applicable law is designated by the provisions of the Act on Private International Law. In all these cases, the Polish court does not examine conflict-of-law rules under applicable foreign law at all. Otherwise, checking the content of that legal system is the court's obligation, even though there may well be no remission due to the overlapping connecting factors of both systems.[8]

The *renvoi* in the instruments of the international and the EU law does not depend on the national law but is regulated by the particular sources of law, with the total exclusion of the national law. It has expressly been excluded in Article 20 Rome I and Article 24 Rome II. Among the international conventions, only a few explicitly require the court to consider foreign conflict of laws rules; most of the conventions in force in Poland remain silent on this subject. It must be concluded that, in general, the remission and transmission does not take place unless adopted by the EU law instrument or the convention in question.

[8] S.C. judgment of 2 December 2004, V CK 323/04, OSNC 2005/12/209.

4. Genres and types of the connecting factors

According to the most commonly represented positions in literature, connecting factors in bilateral conflict-of-law rules can be divided into personal, objective and subjective ones.[9]

Personal connecting factors are those that refer to various forms of ties between a person and the country or its territory; in the case of a natural person they include—

- nationality,
- place of ordinary residence (international 'domicile'),
- place of habitual residence.

Meanwhile, in relation to legal persons, the personal connecting factors comprise—

- the seat/place of office;
- place of incorporation/establishment.

In turn, objective connecting factors designate the applicable law based on specific circumstances that relate to some factual circumstances with regard to the object of the relationship. These are, for example, the location or registration of the objects of rights (the location of the immovable estate—*situs rei*; the flag of a vessel—*bandera navis*; the place of damage or a juridical act in question—*locus damni*, *locus actus*, etc.).

Least but not last, wherever the connecting factor is the will of the subject (subjects) of the relationship authorized to choose the applicable law, then the subjective connecting factor is meant.

5. Personal connecting factors

1. Nationality of a natural person[10] is undoubtedly the most frequently used criterion for indicating the applicable law in the Act on Private International Law of

[9] A certain modification of this division consists in distinguishing two groups of connecting factors: objective and subjective, where the former category does not depend on the will of the parties, while the latter one is based on the parties' will as to the choice of law applicable; see M. Świerczyński, [in:] M. Pazdan (ed.), *System prawa prywatnego. Prawo prywatne międzynarodowe,* vol. 20a, Warszawa 2014, p. 214; cf. J. Gołaczyński, *Prawo prywatne międzynarodowe,* Warszawa 2003, p. 17.

[10] Otherwise, it may be referred to as "citizenship", still it seems improper in the international context.

2011. The basis of the connecting factor here is directly the public-law bond between the individual concerned and the state. The justification for his dominance in conflict-of-law law since the late nineteenth century can be various: the sovereignty of the state and the extent of its authority over the individuals (now such arguments seem to be obsolete), the permanence of the relationship of the individual with the law of his or her state of origin, the actual closeness between the interests of individuals and this legal system, as well as the relative ease of determining the state where a person belongs. For these reasons, the criterion of citizenship is readily used in those areas of private international law in which it is necessary to indicate the law applicable to strictly personal relations, e.g. legal capacity and capacity to act in law, family-law matters, and the like.

Determining citizenship of a natural person (moreover, as well as determining other connecting factors, which will be discussed later) is in fact a matter of establishing the facts of the case. The way of confirming citizenship is governed by the law of the country whose citizenship is concerned (*lex causae* principle), although evidence proceedings are generally subject to the norms in force at the seat of the court (*lex fori processualis* principle). The Polish court has a general obligation to establish both foreign citizenship regulations and the acts of their application to interested persons (including recognition of acts of deprivation of citizenship, even if they run counter the will of the person). States may issue various official documents confirming citizenship, e.g. naturalization certificates. They are generally accepted by other countries due to the obligation to recognize foreign citizenship regulations. The passport is a commonly accepted proof of nationality (be it Polish or foreign). It is commonly referred to as *prima facie* evidence; a Polish court may also use other possibilities, including address inquiries to Polish or foreign registration bodies and consular offices.

The conflict of laws law considers the possibility of situations of both multiple nationality and complete lack of such a link to any State (statelessness).

In the first case, the following cases are distinguished—

• When a person belonging to many states is a Polish citizen, pursuant to Sec. 2(1) PILA 2011 only the Polish nationality is taken into account, with the exclusion of any foreign one (even if the latter is the so-called 'effective nationality', i.e. the individual would be associated with it more closely than with Polish citizenship). It cannot be ruled out that in cases of its strict application, such a rule could violate the EU prohibition of discrimination.

• If there is a conflict of foreign nationalities of a natural person, Sec. 2(2) PILA 2011 obliges national judges to take into account the law of the country with which the foreigner is most closely connected. Such a link may be derived from various circumstances, including the person's place of residence, employment, tongue used, family, personal or any other ties. It is for the court to assess these circumstances.

In the case of refugees, the priority is given not to nationality of a person but—for the reasons of her protection against the power abuse of the state of origin—to the law at the place of her residence (see Sec. 3(2) PILA 2011, Article 12 of the Geneva Refugee Convention).

In some cases - in the field of international family law (e.g. in Article 51 paragraph 1, Article 54 paragraph 1, Article 57 paragraph 2, first sentence ppm), in Polish private international law a common hyphen is used. citizenship of the parties. For such cases, Article 2 clause 3 p.p.m. a special second-degree conflict-of-law rule, according to which if the law makes jurisdiction conditional on the existence of certain persons as nationals of the same State, to accept that this requirement is met is sufficient for them to be recognized as nationals by the law of that State.

Example. If one of the spouses has Polish and German citizenship, while the other only German one, and they both reside in Poland, their marriage property regime is not subject to Polish law as the law of the state of common residence, but is governed by German law as their common national law. The rule of

preference for Polish nationality in relation to one of the spouses is exceptionally switched off at that time.

The rule of preference for the connecting factor of Polish nationality does not apply on the basis of conflict of laws arising from international conventions (especially bilateral conventions on legal assistance and legal circulation in civil matters).[11]

2. Domicile of a natural person (in a continental meaning of the term) is historically older and still plays a central role in many private law systems. On the European continent, regardless of deep differences, usually two basic components of residence are distinguished: 1) physical sojourn in a specific place (*corpus, factum*); 2) the intention to stay or otherwise to make that place the center of the person's own life interests (*animus*). Additional requirements may appear in substantive law, such as duration of stay for a specified period, permission of the authority, entry in the register of residents, etc. In addition, the criteria applied to a voluntarily chosen place of residence (*domicilium voluntarium*) do not apply to certain categories of persons, e.g. minor children whose place of residence is derived from the residence of others (*domicilium necessarium*).

The differences between substantive law definitions of domicile created characterization conflicts in the sphere of private international law. The notion might be interpreted either pursuant the law at the seat of the adjudicating court (*lex fori*) or in accordance with the law of the place of the person's residence (*lex loci*). Yet another understanding of domicile is typical for the common law countries (esp. England), where, looking functionally, it approaches to the continental nationality.

As the matter of fact, none of these options of the reference to national concepts seems to be convincing, just because the criterion of domicile in the conflict of laws law needs to be characterized autonomously, i.e. independently from the substantive private law of any country. In general, it means a permanent relationship of a person with the entire territory (and not only with one place) where she permanently abides.

[11] S.C. order of 15 April 2011, III CSK 223/10, OSNC 2012/1/13.

3. In order to avoid disputes over the interpretation of the concept of residence in conflict of laws, a new concept of **habitual residence** has been developed - especially thanks to the activity of the Hague Conference on Private International Law (French: *la résidence habituelle*, German: *gewöhnlicher Aufenthalt*).

Literally speaking, habitual residence means the place of actual center of a person's life activities, which however need not be absolutely uninterrupted and permanent. Persons who would have the dependent domicile in substantive law (e.g. children) still do have to evidence their objective connection with a given place and territory; no presumptions are used here or the will of the persons authorized to decide on the life matters of such a person should not be examined. There are no legal fictions concerning the place of residence of children, in spite of the fact that they usually abide in the same country as the persons taking parental care.[12]

4. In the light of the 2011 Act on Private International Law, the relationship between domicile and habitual residence may rise doubts. It seems that the lawgiver treats the criterion of habitual residence as weaker than domicile in terms of the closeness of the given person against the territory of the state: domicile is permanent, while habitual residence may be temporary. It may run counter the international and European instruments, in which domicile as the connecting factor plays no role any longer, and the habitual residence takes the place of an 'internationalized domicile'.

[12] CJEU judgments: of 8 June 2017, C-111/17 PPU, *OL v PQ*, EU:C:2017:436; of 22 December 2010, C-497/10 PPU, *Barbara Mercredi v Richard Chaffe*, EU:C:2010:829.