

# **RESIDUAL JURISDICTION IN CIVIL AND COMMERCIAL DISPUTES IN CONNECTION WITH ARTICLE 4 OF BRUSSELS I REGULATION IN HUNGARY\***

– AN OVERVIEW –

**ZOLTÁN CSEHI**

Department of Civil Law  
Telephone number: (36-1) 411-6573  
Email: csehi@ajk.elte.hu

## **INTRODUCTION**

### **1. Legislation**

After the World War II and after the introduction of the socialist system and socialist legal system in Hungary, the sporadic rules of international procedural law were regulated by the case law, by the decision of principle of the Supreme Court of Hungary which are (were) binding upon the courts and are adopted by the presidential council of the Supreme Court, and by the relevant provisions of the Code of Civil Procedure<sup>1</sup> and by the Decree-Laws which provided for the introduction and execution of the Code of Civil Procedure and other acts and decrees of private law<sup>2</sup>. The opening of the economy and tourism of Hungary in the seventies induced the preparation of the codification of international private and procedural law. The first general and systematic codification of Hungarian international private law with international procedural law was enacted in 1979 by the Decree-Law no. 13 of 1979<sup>3</sup> (“IPL-Decree-Law” or later

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<sup>1</sup> SZÁSZY ISTVÁN: *International Civil Procedure*. Leyden 1967, 36.

<sup>2</sup> RÉCZEL, ISTVÁN: *Internationales Privatrecht*, Budapest 1960, 423.

<sup>3</sup> The Decree-Law was a special written source of law in the socialist legal system regulated in the constitution of Hungary. Instead of the parliament a selected committee with politicians of true communist devotion was entitled to pass Decree-Laws in the period, when the parliament

only “Decree”). The IPL-Decree Law entered into force on 1<sup>st</sup> July 1979. The draft proposal of Professor István Szászy from 1948, which remained only a draft in the stone-mills of the history, served as a very important pattern for the codification.

Even today it is generally regarded quite impossible to define the rules of the law of international procedure” on the basis of their sources, because they have no uniform sources.<sup>4</sup>” The multi- and bilateral international treaties are traditionally important in international procedural law, Hungary concluded bilateral agreements with procedural aspects with numerous countries (see Annex 1. below).

The original version of the IPL-Decree-Law provided for a very wide jurisdictional scope of the Hungarian Courts in all international disputes. Section 54 of the IPL-Decree-Law stated that “Hungarian court or another authority may proceed in all cases in which this Law-Decree does not exclude the jurisdiction of Hungarian courts or other authorities.” Under this rule no connection to Hungary was considered necessary in case of a legal action before the Hungarian courts, however the judicial practice made it a condition that a minimum link to Hungary or to a Hungarian nationality is needed.

The reform of the international civil procedural law was introduced in 2000, taking into account the proposed accession of Hungary to the Lugano Convention<sup>5</sup>. Act no. CX of 2000 completely changed the original structure of the international civil procedure of the IPL-Decree-Law. The rules of the reform came into force on May 1, 2001<sup>6</sup>. The rules of jurisdiction currently in force were introduced by the reform of 2000 which was based on the pattern of the Lugano Convention (and Lugano has the same structure and same rules on jurisdiction as the Brussels Convention’s in 1989<sup>7</sup>). Not even now is Hungary a party of the Lugano Convention. The reformed IPL-Decree-Law was not changed after Hungary joined the EC. From May 1, 2004 Hungary is the member of the EC and EU, so since then the rules of the European procedural law, including but not limited to Brussels I regulation, are in force.<sup>8</sup>

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was not in session. The Decree-Law had the same legal effect as the act enacted by the parliament. This unique undemocratic legislation was diminished during the political changes in Hungary. The Decree-Laws can be changed only by acts of the parliament.

<sup>4</sup> SZÁSZY: International Civil Procedure (n. 1.) 16.

<sup>5</sup> VÉKÁS, LAJOS: Die Reform des internationalen Zivilverfahrensrechts in Ungarn, IPRax 2002, 142-145; KENGYEL MIKLÓS: Die neue Regelung des ungarischen Zivilprozessrechts, in Festschrift für Reinhold Geimer, München 2002, 397-415;

<sup>6</sup> See section 6 of the Act no. CX of 2000.

<sup>7</sup> HARMUT LINKE: Internationales Zivilprozessrecht. 4. Aufl. Köln 2006, p. 50.

<sup>8</sup> JAN KROPHOLLER: Europäisches Zivilprozessrecht. 8. Aufl, Frankfurt a.M. 2005, p. 37.

## 2. The structure of the international procedural law regulation in Hungarian law

Since Hungary is a member-State of the EC, the principle of priority of EC-law over other sources of law is also applicable. In addition thereto section 2 of the IPL-Decree-Law states that “the Decree-Law shall not apply in matters which are regulated by international conventions.” This general provision is to be applied both for material and procedural questions.

The first level of the regulation of Hungarian law of international procedure constitutes the EC-law and the international multi- and bilateral agreements, provided that the agreements are ratified and promulgated by Hungarian law. Hungary joined the EU on May 1, 2004, from this date the EU law has been, of course with some exceptions, generally applicable. In case of conflict of treaties the special convention shall prevail (art. 71 of the Brussel I. Regulation). Hungary is listed in article 69, having concluded bilateral treaties<sup>9</sup> with Poland (1959), Greece (1979), France (1980), Cyprus (1981), Check and Slovak Republics (1989), among the states which have bilateral treaties on mutual legal assistance. Pursuant to article 70 of Brussels I Regulation those treaties shall continue to have effect in relation to matters to which the Regulation does not apply. The relation to specific conventions is regulated in art. 71 and third countries convention in art. 72. Accordingly, all those conflicts are basically governed by Brussel I.

The second level of the regulation is to be found in three chapters of the IPL-Decree-Law. Chapter IX of the IPL-Decree-Law under the title “Jurisdiction” contains twenty sections, chapter X “Provisions of Procedural Law” with eight sections on personal capacity, international legal aid, chapter XI “Recognition and Enforcement of Foreign Decisions” with six sections.

The third level of the rules in the Hungarian legal regime is the special provisions of the Code of Civil Procedure. The relation of the IPL-Decree-Law and the Code of Civil Procedure is expressly not clarified by legal provisions, but we are of the opinion that to the extent the IPL-Decree-Law contains special rules for international matters, this regulation shall prevail as *lex specialis*, and the Code of Civil Procedure is applicable only for cases not covered by the IPL-Decree-Law. There is, however, some duplication, since section 57 IPL-Decree-Law is the same as section 32(3) of the Code of Civil Procedure.

The fourth level is the special rules of special matters and procedures, such as tort cases in connection with a Hungarian criminal procedure.

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<sup>9</sup> KENGYEL MIKLÓS-HARSÁGI VIKTÓRIA: Európai polgári eljárásjog [European Procedural Law], Budapest 2006, p.62.

### 3. Reported case law

In Hungary the reported case law is traditionally very important in civil law. The simple reason for this is that Hungary did not have a Civil code until 1959<sup>10</sup>. Over the centuries, before the codification of civil law, civil and private law was basically a judge made law with several acts and other rules. After the World War II Hungary neither published nor collected the case law in the field of international private and procedural law like in Germany<sup>11</sup>. The reported and not reported case law has been published partially since the first edition of the Mádl-Vékás IPL-Book and its latest editions. A few cases were published in the monthly official journal of the Supreme Court of Hungary, the so-called “Bírósági Határozatok” [Court Decisions, in Hungarian: “BH”] and some decisions of special importance are to be found in “Legfelsőbb Bíróság határozatainak hivatalos gyűjteménye” [Official Collection of the Decisions of the Supreme Court of Hungary, in Hungarian: “EBH”], which is the yearly publication of the Supreme Court, unfortunately only in Hungarian.

It has to be mentioned that the Hungarian judges are still not able to recognize the international cases, the conflicts of law issues, or the conflicts of international procedures. However, since the second half of the eighties, as a result of the introduction of the private international law studies at the universities, this situation has got somewhat better.

### 4. The sciences and scholars of international civil procedural law

Because there are only few reported cases available, because of the blindness of the judges, and the lack of international cases, the activity of scholars and university professors is even more important in this field of law.

Before the World War II the international civil procedure was only a chapter of the national rules of the civil procedure. However, the Hague conferences, the multi- and bilateral treaties were only shortly elaborated in connection with this topic in the most important handbook on Hungarian Civil Procedure; this subject was only a small part of the civil procedure<sup>12</sup>. The first internationally recognized book on international civil procedural law was written by Prof. István Szászy. Another Hungarian scholar, István Réczei published his book in German, *Internationales Privatrecht*, (1960) before the IPL-Decree-Laws. Ferenc Mádl and Lajos Vékás published in 1981an IPL book [“Nemzetközi magánjog

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<sup>10</sup> EÖRSI GYULA: Richterrecht und Gesetzesrecht in Ungarn. Zum Problem der Originalität eines Zivilrechts, 30 RabelsZ 117-140 (1966)

<sup>11</sup> See “Die deutsche Rechtssprechung auf dem Gebiete des Internationalen Privatrechts” published by Max Planck Institut für Ausländisches und Internationales Privatrecht, Hamburg

<sup>12</sup> MAGYAR GÉZA – NIZSALOVSZKY ENDRE: Magyar Polgári Perjog. 3. kiad. [Hungarian Civil Procedure. 3rd ed.] Budapest 1939, 10. §, 45-53, 142-143,

és a nemzetközi gazdasági kapcsolatok joga”, the Law of Conflicts and Foreign Trade] (second Hungarian edition in 1985, third 1992, fourth 1997, fifth in 2000 and sixth 2004). This basic book of international private and procedural law was translated into English and published first in 1987, the second edition afterwards in 1998. A new book was published for university students in 1997 by three professors, Burján László, Kecskés László and Vörös Imre (“Magyar Nemzetközi Kollíziós Magánjog”, “Hungarian International Law of Conflicts”). The revised and enlarged version of the university book was published in 1999, 2004. This book is shorter and less complex than the Hungarian IPL-classic of Mádl-Vékás. The officers of the Ministry of Justice, Brávác Ottóné and Szócs Tibor, published a practical guide-book for international legal disputes, which can be used in the everyday practice.<sup>13</sup> We need to mention here a new book under the title “European Civil Procedure Law” published in Hungarian by Kengyel Miklós and Harsági Viktória in 2006, which provides a detailed picture on the topic through its 610 pages.

## 5. Classification of jurisdiction

Traditionally, in the Hungarian jurisprudence the following classification of jurisdiction is followed: (i) exclusive (or unconditional or reserved) jurisdiction; (ii) the competitive (or parallel, facultative, cumulative, accidental, conditional) jurisdiction; and (iii) the precluded or declined jurisdiction<sup>14</sup>. To this classification a further one was added, the so-called (iv) general jurisdiction and (v) the jurisdiction based on the agreement of the parties; and (vi) jurisdiction stated in the multi- or bilateral treaties<sup>15</sup>. This classification was changed by the reform of 2000. The classification of the IPL-Decree-Law follows the system of the Lugano Convention, the IPL-Decree-Law provides for (i) general jurisdiction; (ii) special jurisdiction; (iii) exclusive; (iv) excluded and (v) prorogation jurisdiction (jurisdiction agreed by the parties).

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Article 4 of Council Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters set forth as follow:

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<sup>13</sup> BRÁVÁCZ OTTÓNÉ – SZÓCS TIBOR: *Jogviták határok nélkül* [Litigations without borders], Budapest 2003

<sup>14</sup> SZÁSZY: *International Civil Procedure* (n. 1.) p. 298 (Hungarian edition, p. 322.)

<sup>15</sup> MÁDL-VÉKÁS: *Nemzetközi magánjog és a nemzetközi gazdasági kapcsolatok joga*. Budapest 2000, 462.

1. If the defendant is not domiciled in a Member State, the jurisdiction of the courts of each Member State shall, subject to Articles 22<sup>16</sup> and 23<sup>17</sup>, be determined by the law of that Member State.

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<sup>16</sup> Article 22

The following courts shall have exclusive jurisdiction, regardless of domicile:

1. in proceedings which have as their object rights in rem in immovable property or tenancies of immovable property, the courts of the Member State in which the property is situated.

However, in proceedings which have as their object tenancies of immovable property concluded for temporary private use for a maximum period of six consecutive months, the courts of the Member State in which the defendant is domiciled shall also have jurisdiction, provided that the tenant is a natural person and that the landlord and the tenant are domiciled in the same Member State;

2. in proceedings which have as their object the validity of the constitution, the nullity or the dissolution of companies or other legal persons or associations of natural or legal persons, or of the validity of the decisions of their organs, the courts of the Member State in which the company, legal person or association has its seat. In order to determine that seat, the court shall apply its rules of private international law;

3. in proceedings which have as their object the validity of entries in public registers, the courts of the Member State in which the register is kept;

4. in proceedings concerned with the registration or validity of patents, trade marks, designs, or other similar rights required to be deposited or registered, the courts of the Member State in which the deposit or registration has been applied for, has taken place or is under the terms of a Community instrument or an international convention deemed to have taken place.

Without prejudice to the jurisdiction of the European Patent Office under the Convention on the Grant of European Patents, signed at Munich on 5 October 1973, the courts of each Member State shall have exclusive jurisdiction, regardless of domicile, in proceedings concerned with the registration or validity of any European patent granted for that State;

5. in proceedings concerned with the enforcement of judgments, the courts of the Member State in which the judgment has been or is to be enforced.

<sup>17</sup> Prorogation of jurisdiction

Article 23

1. If the parties, one or more of whom is domiciled in a Member State, have agreed that a court or the courts of a Member State are to have jurisdiction to settle any disputes which have arisen or which may arise in connection with a particular legal relationship, that court or those courts shall have jurisdiction. Such jurisdiction shall be exclusive unless the parties have agreed otherwise. Such an agreement conferring jurisdiction shall be either:

(a) in writing or evidenced in writing; or

(b) in a form which accords with practices which the parties have established between themselves; or

(c) in international trade or commerce, in a form which accords with a usage of which the parties are or ought to have been aware and which in such trade or commerce is widely known to, and regularly observed by, parties to contracts of the type involved in the particular trade or commerce concerned.

2. Any communication by electronic means which provides a durable record of the agreement shall be equivalent to "writing".

3. Where such an agreement is concluded by parties, none of whom is domiciled in a Member State, the courts of other Member States shall have no jurisdiction over their disputes unless the court or courts chosen have declined jurisdiction.

2. As against such a defendant, any person domiciled in a Member State may, whatever his nationality, avail himself in that State of the rules of jurisdiction there in force, and in particular those specified in Annex I, in the same way as the nationals of that State.

The national legislation is free to determine the rules on jurisdiction under this section. Special rules under section 71 shall prevail.<sup>18</sup> Should the defendant have more domiciles, section 4 is not applicable. However, articles 22 and 23 of the Brussels I Regulation provide special jurisdictional rules, called exclusive jurisdiction, to be referred to in connection with the special Hungarian rules.

### **A) GENERAL STRUCTURE OF NATIONAL JURISDICTIONAL RULES FOR CROSS-BORDER DISPUTES**

The main legal jurisdictional rules of Hungary regarding international disputes in civil and commercial matters apart from the Brussels I Regulation and Brussels Convention (that is disputes with “international element”), as discussed in the Introduction, are provided for by Chapter IX (sections 54–62/H) of the Law Decree No. 13 of 1979 on International Private Law (hereinafter referred to as “IPL-Decree-Law” or simply “Decree”). In addition to the Decree there are few scattered jurisdictional provisions pertaining to particular legal issues in other internal regulations and international treaties (see point (B)/1., and further below).

An equally important legal source of the rules of jurisdiction and competence of the Hungarian courts regarding internal disputes is Act III of 1952 - on the Civil Procedure (hereinafter referred to as “Civil Procedure Act”). Sections 29 - 40 of the Civil Procedure Act set out the exact factors and rules to be followed for determining which Hungarian court has jurisdiction and competence over internal disputes.

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4. The court or courts of a Member State on which a trust instrument has conferred jurisdiction shall have exclusive jurisdiction in any proceedings brought against a settlor, trustee or beneficiary, if relations between these persons or their rights or obligations under the trust are involved.

5. Agreements or provisions of a trust instrument conferring jurisdiction shall have no legal force if they are contrary to Articles 13, 17 or 21, or if the courts whose jurisdiction they purport to exclude have exclusive jurisdiction by virtue of Article 22.

<sup>18</sup> RAUSCHER/MANKOWSKI, *EuZPR*<sup>2</sup> (2006) Art. 4 Brüssel I-VO, 1 (Europäisches Zivilprozessrecht. Kommentar, München 2006)

The Act LXXI of 1994 on Arbitration (“Hungarian Arbitration Act”) also has to be mentioned. The parties may provide for the jurisdiction of an arbitral tribunal with respect to the dispute concerning their business relationships and by doing so exempt the dispute from the jurisdiction of the ordinary courts.

When it comes to the question whether jurisdictional rules are specific to transnational disputes or they are derived from those applied in international disputes we need to clarify in the first place what is to be understood under “transnational disputes”. Hungary, although divided up into 19 counties, has got one unified legal system. Therefore, for the purposes of the present paper we consider “transnational disputes” to be tantamount with “international disputes”.

The provisions of the Decree are specific to the jurisdictional and competence rules of the Civil Procedure Act. In case an international element is involved in the dispute the provisions of the Decree should apply. If it has been ruled that, pursuant to the Decree, the Hungarian courts shall have jurisdiction over a certain international dispute, the aforementioned provisions of the Civil Procedure Act shall determine which exact Court of Hungary is to entertain the case. Furthermore, any procedural instrument (e.g.: “preliminary proving” - section 207 of the Civil Procedure Act) shall be governed by the respective provision of the Civil Procedure Act.

As far as the jurisdiction of the court pursuant to Article 4(1) of the Brussels I regulation is concerned, we have to mention that Brussels I came into force with the accession of Hungary to the EC without any special national rule to the implementation of the Regulation. So there is no specific set of national rules designed to govern jurisdictional issues under Article 4(1) of the Brussels I Regulation. The general and special rules of the Hungarian international civil procedures are applicable irrespective of the Brussels I.

Neither the application nor the interpretation of national jurisdictional rules was influenced by the Brussels I and/or the case law of the European Court of Justice. The reform of the jurisdictional rules of the IPL-Decree Law came into force on May 1, 2001. Since then no relevant case law has been reported where the influence of the Brussels I regulation and the case law of the European Court of Justice could be verified or examined. After having reviewed some reported case laws on jurisdiction, we can state that the Hungarian courts are not influenced either by the Brussels I Regulation or by the case law of the European Court of Justice.

No other sources of law (such as principles of constitutional law, human rights principles, principles of public international law, etc.) have an impact on the application of Hungarian jurisdiction in general. Hungarian case law is not



inspired and influenced either by the human rights principle or by fundamental rights like German law. Only one reported case should be referred to, but this relates to family law, a German-Hungarian case concerning the maintenance of contact with the child of the parent living in another State (EBH 2001.418). The Supreme Court of Hungary called article 9(3)<sup>19</sup> of the New York Convention (1989) on the Rights of the Child and based on these rules declared that a child has a fundamental right to maintain personal relations with his or her parent living separately. Similar cases in the scope of the Brussels I are not known.

*a) Strasburg Human Rights case law*

Hungary signed the European Convention of November 4, 1950 on the Human Rights and Fundamental Freedoms on November 5, 1992. Furthermore, Hungary ratified the Protocols pertaining to the convention on the following dates: (i) Protocol No. 1, 2, 4 and 9 on November 5, 1992; Protocol No. 6 on December 1, 1992; Protocol No. 7 on February 1, 1993 [promulgation: Act XXXI of 1993]; (ii) Protocol No. 11 on April 26, 1995 [promulgation: Act XLII of 1998]; (iii) Protocol No. 13 on July 17, 2003. [promulgation: Act III of 2004]; (iv) Protocol No. 14 on May 13, 2004. [promulgation Act CXXIV of 2005]. The convention contains a list of the rights and guarantees that the Contracting States have to adhere to/enforce. Upon accession to the convention the judgments of the European Court of Human Rights are binding upon Hungary. So the case law of Strasburg is binding on Hungarian courts as well.

*b) Fundamental rights control*

If conflict arises between the provisions of an international norm and the provisions of an internal regulation there is a possibility to file a so-called “constitutional appeal” to resolve the given controversy. According to Section 48 of the Act XXXII of 1989 on the Constitutional Court (“Constitutional Court Act”), anyone may lodge a constitutional appeal with the Constitutional Court for the violation of his/her rights guaranteed by the Constitution, if the injury is consequential to the application of the unconstitutional rule of law and if he/she exhausted all other possible legal remedies or no further legal remedies are available to him/her. It may be lodged in writing within sixty days of the delivery of the non appealable resolution.

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<sup>19</sup> Art.9 (3) States Parties shall respect the right of the child who is separated from one or both parents to maintain personal relations and direct contact with both parents on a regular basis, except if it is contrary to the child's best interests.

*c) Miscellaneous*

We might say that there is no other specific feature in Hungary with respect to the jurisdiction in cross-border disputes. As far as we know there is no proposed changed currently contemplated in Hungary for these rules.

**B) BILATERAL AND MULTILATERAL CONVENTIONS IN MATTERS REGULATED BY THE BRUSSELS I REGULATION****1. Bilateral Conventions**

Hungary has entered into Bilateral Investment Treaties with numerous countries. All these treaties contain jurisdictional clauses by exempting the investment dispute from the jurisdiction of the Parties and usually provide among others for International Arbitration.

The other related group of bilateral conventions is the Agreements on Judicial (legal) Assistance that Hungary concluded with a great number of countries. However, out of such Agreements only few contain jurisdictional elements.

**2. Multilateral Conventions**

Hungary also adopted the Hague Convention of 15 November 1965 on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters and the Hague Convention of 18 March 1970 on the Taking of Evidence Abroad in Civil or Commercial Matters. Both conventions contain jurisdictional provisions (that is the execution may be refused only if according to the internal law the claim/action at hand belongs to the exclusive or excluded jurisdiction of the State.)

Hungary acceded to the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards [accession document was submitted on March 5, 1962; promulgated by Law Decree no. 25 of 1962, further enforcing regulation: Decree of Minister of Justice no. 12//1962 (X.31)]. This convention is implemented by the Hungarian law, thus its provisions (requirements regarding the arbitral awards) are in conformity with the Hungarian Arbitration Act.

There are further multilateral conventions containing jurisdictional provisions, but not falling under the scope of Brussels I.<sup>20</sup>

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<sup>20</sup> – Hungary acceded to the Hague Convention of 25 October 1980 on the Civil Aspects of International Child Abduction. The Convention provides for the jurisdiction of the Country where the Child has been taken to. (The applicable law, however, is the law of the permanent

The practical impact of those conventions on the regulation shows section 2 of the Decree, according to which the Decree shall not apply in matters which are regulated by international conventions. This way treaties and bilateral agreements shall prevail.

## C) APPLICABLE NATIONAL RULES PURSUANT TO ARTICLE 4 OF THE BRUSSELS I REGULATION

### 1. General structure of the rules on jurisdiction

For actions against defendants domiciled in non-EU states pursuant to Article 4(1) of the Brussels I Regulation the general structure of jurisdiction in the matters regulated by Brussels I Regulation can be described as follows, taking into account articles 22 and 23 of Brussels I.

- **General Jurisdiction.** (Section 54 of the Decree, see more on General Jurisdiction in point 2 below) (place of residence or domicile of the defendant in Hungary; the seat of the legal person is located in Hungary)
- **Special Jurisdiction.** If the general rule does not establish jurisdiction, the Decree provides special connections for: contract related disputes, section 55; matters relating to maintenance, section 56; disputes concerning torts, section 56/A; disputes relating to operation of branch offices or representations of foreign enterprises, section 56/B (1). Additionally, Hungarian courts have jurisdiction in lawsuits filed against foreign nationals who have settled in Hungary as independent entrepreneurs if the litigation pertains to the business activities of such persons in Hungary (Section 56/B (2) of the Decree).
- The Hungarian courts have jurisdiction over disputes if the defendant has property in Hungary (section 57);

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residence of the Child.) [Accession document was submitted on April 7, 1986; promulgated by Law Decree no. 14 of 1986];

– Hungary acceded to the Convention of 19 October 1996 on Jurisdiction, Applicable Law, Recognition, Enforcement and Co-operation in respect of Parental Responsibility and Measures for the Protection of Children. Pursuant to this convention the country, where the permanent residence of the Child is, has jurisdiction. (In case of abduction the country of the last residence has jurisdiction over the dispute.) [Signed on October 19, 1996, promulgated by Act CXL of 2005];

– According to Section 3 of the Convention on 15 April 1958 concerning the recognition and enforcement of decisions relating to maintenance obligations towards children the court having jurisdiction is the court of the State in which the permanent residence of the obligee or obligor is. [Accession Document was submitted on October 20, 1964; promulgated by Law Decree no. 7 of 1965]

- There are further cases of special jurisdiction provided for by the Decree which, however, do not fall under the scope of Brussels I.<sup>21</sup>
- **Jurisdiction in legal disputes concerning consumer contracts and employment contracts.** (Sections 60-62), (see more on protective rules of jurisdiction in point 4 below);
- **Exclusive Jurisdiction.** By exclusive Jurisdiction the Decree expresses that within the scope of this category the State (Hungary) is willing to secure the jurisdiction exclusively for itself. (Based on section 62/A it entails disputes pertaining to (i) ‘in rem’ right in connection with real estate that is located in Hungary, (ii) probate proceedings where the estate is located in Hungary and the testator is also Hungarian, (iii) cases filed against Hungary, provided that there is no immunity, (iv) Hungarian citizens abroad, who were granted immunity, (v) destruction of securities issued in Hungary, (vi) proceedings regarding industrial rights in Hungary, proceedings concerning legal entities registered in Hungary, (vii) proceedings concerning the registration of rights, facts and data into official records in Hungary, (viii) enforcement in Hungary. Based on section 62/B of the Decree it entails all cases concerning the personal status of Hungarian citizens with the exception as set forth in the same section. It should be emphasised that nos. (i), (vi), (vii) and (viii) shall fall under article 22 of the Brussels I Regulation as well, the general rules of exclusive jurisdiction of the Brussels I, which shall prevail over the Hungarian national rules.
- **Excluded Jurisdiction.** Under the excluded jurisdiction the Hungarian Courts shall have no rights to entertain the cases arisen. This category is the mirror image of the scope of Exclusive Jurisdiction being referred to a third country accordingly (sections 62/C-62/E).

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<sup>21</sup> Hungarian courts shall have jurisdiction in lawsuits pertaining to inheritance if the testator held Hungarian citizenship at the time of his death. A Hungarian notary public shall have jurisdiction in probate proceedings if the testator held Hungarian citizenship at the time of his death or if the estate is in Hungary, section 58.

Hungarian court or some other Hungarian authority shall have jurisdiction in child custody cases and proceedings pertaining to visitation rights and parental supervision when the child's parents are separated if the domicile or residence of the child is in Hungary.

Hungarian courts shall have jurisdiction in proceedings pertaining to property by contract of marriage if the domicile or residence of one of the parties is in Hungary.

When any of the cases defined above is adjudicated in a proceeding that also involves personal status, a Hungarian court or some other Hungarian authority shall be entitled to proceed if it has jurisdiction in matters affecting personal status, section 59. / Hungarian courts shall have jurisdiction in cases pertaining to guardianship if the person under guardianship is a Hungarian citizen or has a domicile or residence in Hungary, section 59/A.

The excluded jurisdiction contains hence: (i) *in rem* in connection with real estate that is located outside Hungary, (ii) probate proceedings where the estate is located outside Hungary and the testator is foreigner, (iii) cases filed against a foreign state provided that the state did not waive its immunity, (iv) claims brought against a foreign citizen, who is on a diplomatic mission in Hungary or is otherwise granted immunity, unless the foreign country in question has expressly waived the right to immunity, (v) destruction of securities issued outside Hungary, (vi) proceedings regarding filing, deleting and scope of foreign industrial rights, (vii) proceedings concerning legal status of legal entities registered outside Hungary, (viii) proceedings concerning the registration of rights, facts and data into official records outside Hungary, (ix) enforcement outside Hungary. In accordance with section 62/D of the Decree all cases concerning the personal status of foreign citizens fall under excluded jurisdiction with the exceptions as set forth in the same section.

- **Jurisdiction Stipulated by the Parties** (sections 62/F-62/H). Parties are entitled to stipulate the jurisdiction of a specific court, unless the dispute at hand falls into the category of the exclusive (section 62/A, see above) or excluded (section 62/C, see above) jurisdiction, subsection 1 of section 62/G. Also, the Parties can not opt out of the protective rules of jurisdiction of the Decree. Also keep in mind that article 23 of the Brussels I Regulation provide a special rule for jurisdiction agreed by the parties, which rule shall prevail over the Hungarian national rules.
- The Hungarian court shall be deemed having jurisdiction if the defendant fails to file a contest concerning the lack of jurisdiction and makes a statement on the merits of the case (admission of suit), unless the jurisdiction of the Hungarian court is excluded under the provisions of this Act (section 62/H).

## 2. General rule(s) of jurisdiction against defendants domiciled in non-EU states

There is no general rule applicable especially to a defendant domiciled in a non-EU state. The general jurisdiction provision, Section 54 (1) of the Decree provides that Hungarian courts shall have jurisdiction in all cases in which the defendant's domicile or residence or, if the defendant is a legal entity (or de facto corporation) its seat<sup>22</sup> is in Hungary, unless its jurisdiction is precluded by

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<sup>22</sup> Pursuant to section 30 of the Hungarian Civil Procedure Act, if the seat of the Company raises doubts, the place of the administration of the Company shall be considered as the seat thereof.

this Law-Decree. Accordingly the *relevant factors are the domicile or the residence (registered address)* of the defendant.

Section 54(2) of the Decree further provides that when a legal action involves more than one defendant, it may be adjudicated in a Hungarian court with all the defendants involved, if the domicile (registered address) or residence of at least one of the defendants is in Hungary, provided that either the subject of the litigation is a common right or a common liability that can only be resolved uniformly, or the ruling would affect all defendants - even those not appearing in front of the court -, or the claims under litigation originate from the same legal relationship. In respect of a lawsuit filed against both the principal and the secondary obligee, the Hungarian court shall have jurisdiction regardless of the domicile or residence of the secondary obligee, if the domicile (registered address) or residence of the principal obligee is in Hungary. Whenever a Hungarian court has jurisdiction in a lawsuit, it shall also have jurisdiction in respect to any counterclaim filed against it.

### **3. Specific rule(s) of jurisdiction against defendants domiciled in non-EU states**

#### *a. Contracts*

Section 55 of the Decree stipulates the connecting factors applicable in contract matters, if the place of performance is Hungary. Hungarian courts shall have jurisdiction over contract-related legal disputes if *the place of performance* is in Hungary. The place of performance is defined by the Decree as follows:

Primarily, the place of performance is stipulated as such by the parties in the contract.

In the absence of such stipulation the place of performance is (the Decree provides special connections, irrespective of the applicable law on the contract):

- with respect to sale of goods, the place where the subject of the purchase is to be delivered to;
- with respect to a contract the subject of which is the performance of a specific activity (performance), the place where the activity is to be performed in accordance with the terms and conditions of the contract;
- with respect to contracts other than the aforementioned, the place of performance as provided for by Hungarian law. [Note: This connecting factor is interesting because irrespective of the law to be applied to the contract (which can be the law of a foreign state) the provision states that from procedural point of view the place of performance is to be considered and qualified under Hungarian law.

This can be a nice collision between the material qualification and the procedural connecting rule (factor)].

- There is one exception to the rule regarding the contract that is the lease and usufruct agreements. Pursuant to subsection 62/A (a) of the Decree the Hungarian courts have exclusive jurisdiction with respect to proceedings concerning lease and usufruct agreements relating to Hungarian real estates, and have no jurisdiction – based on subsection 62/C (a) – regarding lease and usufruct agreements pertaining to foreign real estates.

### *b. Torts*

Hungarian courts have jurisdiction over legal disputes concerning torts if the *torts are committed in Hungary* or if the *consequences* (damages) of the damaging conduct *occurs (manifests itself) in Hungary* (subsection 1 of Section 56/A of the Decree). This rule differs from art. 5 (3) of the Lugano Convention, because it distinguishes clearly between the place, where the harmful event took place and the place, where the damages occurred (“Handlungsort” – “Erfolgort”). This distinction follows the case law of the Brussels I Regulation.<sup>23</sup>

The same section goes on saying that Hungarian courts have jurisdiction in lawsuits filed for establishing or increasing compensation payments if the recipient is domiciled or has residence in Hungary (subsection 3 of section 56/A).

Not only have the Hungarian courts jurisdiction over damages as elaborated above, but also over claims filed concerning a danger of imminent injury if the place where the injury *is likely to occur* is in Hungary (subsection 4 of section 56/A).<sup>24</sup> (Please note that in the Civil Code a special rule relates to the threatening actions in section 341.<sup>25</sup>)

There are cases where the question is whether a contractual or tortious liability is to be considered, such as for example in case of liability for medical malpractice, which is traditionally tortious liability, not contractual, under Hungarian material law. Similar issue is the product liability. This is not a contrac-

<sup>23</sup> See KROPHOLLER op.cit. (n. 8) p.152-153.

<sup>24</sup> Section 340 of the Hungarian Civil Code provides for the obligation of the potentially damaged party to mitigate and prevent the damage of an imminent harm, which rule is in conformity with the case law of Brussels I.

<sup>25</sup> Section 341 of the Hungarian Civil Code

(1) In the event of the presence of a threatening danger, the endangered person shall be entitled to request the court to restrain the person from imposing such danger from continuing such conduct and/or to order such person to take sufficient preventive measures and, if necessary, to provide a security.

(2) This provision shall be applied also if the danger of imminent damage has been caused as a result of unfair market practice.

tual relation, rather an extension of the tortious liability of the producer and/or distributor.

*c. Specific ground of jurisdictions against a defendant domiciled in a non-EU State*

The Decree provides that Hungarian courts shall have jurisdiction in liability (assumpsit's) actions concerning acts of criminal misconduct if the act in question is punishable under Hungarian criminal law and the crimination falls under the jurisdiction of the Hungarian Courts (subsection 2 of section 56/A).

Pursuant to section 54 of Act XIX of 1998 on the Criminal Procedure the private party or its heir shall be entitled to file a civil claim against the defendant (the accused) if the civil claim arose as a consequence of the act being the subject of the accusation. Also the state prosecutor may file the civil claim under circumstances specified in the Criminal Procedure Act.

Bringing the civil claim before the criminal court is a tool of obtaining a ruling in an expedited way thereon. Nevertheless, it is only an option: the private (damaged) party may opt for enforcing its claim by other legal means (such as by civil court), subsection 3 of section 54 of the Criminal Procedure Act. Other means, however, may take much more time.

Pursuant to sections 3 and 4 of Act IV of 1978 on the Criminal Code Hungarian Courts have jurisdiction over crimination in the following cases:

- Hungarian law shall apply to crimes committed in Hungary, as well as to any conduct of Hungarian citizens abroad, which are deemed criminal in accordance with Hungarian law.
- Hungarian law shall also apply to criminal acts committed on board of Hungarian ships or Hungarian aircrafts situated outside the borders of the Republic of Hungary.
- Hungarian law shall apply to any act committed by non-Hungarian citizens in a foreign country, if:
  - a) it is deemed a felony in accordance with Hungarian law and is also punishable in accordance with the laws of the country where committed;
  - b) it is a crime against the state (Chapter X), excluding espionage against allied armed forces (Section 148), regardless of whether or not it is punishable in accordance with the law of the country where committed;
  - c) it is a crime against humanity (Chapter XI), or any other crime that is to be prosecuted under the strength of an international treaty.



- Espionage (Section 148) against allied armed forces by a non-Hungarian citizen in a foreign country shall be punishable according to Hungarian penal laws, provided that such offense is also punishable by the law of the country where committed.
- In the cases described in Subsections (1)-(2) the indictment shall be ordered by the Attorney General.

*d. Specific ground of jurisdiction in case a defendant has an establishment (or a branch or agency) in Hungary*

Hungarian courts have jurisdiction under section 56/B of the Decree in cases of lawsuits filed against foreign enterprises if *the enterprise has a branch office or representation in Hungary and the litigation pertains to the operations of the latter*. The existence of the two requirements (having a branch office/representation and the dispute should relate to the operations thereof) does limit the jurisdiction over such disputes.

Act CXXXII of 1997 sets out the determination of the “branch offices” and “commercial representatives” of foreign-registered companies: (i) “branch office an organizational unit of a foreign company, without legal personality, vested with financial autonomy and registered as an independent form of company and Hungarian company registration records as a branch office of a foreign company”; (ii) „commercial representative office: shall mean an organizational unit of a foreign company not involved in business activities, which organizational unit is registered as an independent business entity in the Hungarian register of companies and is engaged - in the name and on behalf of the foreign parent company - in the mediation, preparation and conclusion of contracts, provision of information to clients and partners and other related client service activities.”

Separately, for so-called independent entrepreneurs, i.e. for a business man or a business woman with license for doing business without establishing a company, subsection 2 of section 56/B of the Decree provides that Hungarian courts have jurisdiction in lawsuits filed against foreign nationals who have settled in Hungary as independent entrepreneurs if the litigation pertains to the economic activities of such persons in Hungary.

The definition of independent entrepreneurs under Hungarian law is given by subsection 2 of section 3 of the Act V of 1990 on Private Entrepreneurs: „When a foreign national who is regarded as non-resident within the scope of foreign exchange regulations is authorized by specific other legislation to establish residence for self-employment purposes, this person may also engage in

activities as a private entrepreneur, provided he has legal competency, has a valid residence permit and is not barred from working in self-employment”.<sup>26</sup>

*e. Specific grounds of jurisdiction based on the arrest of property*

Hungarian courts have jurisdiction in lawsuits for material, financial claims (property law, contract law), where the defendant has no domicile or residence in Hungary but does have assets in Hungary that can be attached. Any claim due a defendant shall be considered as the defendant's asset in Hungary if the residence of the person owing the claim is in Hungary or if the claim is secured by an asset situated in Hungary (Section 57 of the Decree).

Hungarian courts have *exclusive jurisdiction* in proceedings concerning execution/enforcement in Hungary (subsection (i) of section 62/A). On the other hand Hungarian courts do not have jurisdiction (*excluded jurisdiction*) in proceedings concerning execution/enforcement abroad (subsection (i) of section 62/C).<sup>27</sup>

There is a special attachment-procedure in Hungarian law called preliminary arrest procedure. Preliminary shall mean that this request can be filed only in connection with a claim already filed or the two claims (basic claim and the arrest claim) shall be filed together. In this case the jurisdiction of the “basic” claim determines the jurisdiction for the arrest procedure, provided that the defendant has a bank account or assets in Hungary. The creditor can bring a claim for arrest before a final judgment. If the creditor can presume that any delay in the enforcement of his or her claim is endangered, the court procedure will take a long time, the court should order the following protective measures upon the creditor's request: (a) pledge of bank account or other monetary claims, or (b) arrest of specific things (movables or real estate) (section 185 of Act LIII of 1994 on Judicial Enforcement – “Enforcement Act”). Section 187 of the Enforcement Act states this special rule for arrest (we call protective measures) as follows: (1) A protective measure may be ordered for the enforcement of a claim for which<sup>28</sup> /.../ c) another action has been filed in a Hun-

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<sup>26</sup> In accordance with the Act LXXII of 1998 foreigners willing to engage in entrepreneur activity in Hungary should meet the same requirements as the Hungarian nationals (licensing) if there is a national treatment provided for by international treaty or agreements with respect to the economic activities of those foreigners.

<sup>27</sup> The main legal source of the execution/enforcement is Act LIII of 1994 on Judicial Enforcement. Special emphasis should be made to the provisions of this act concerning the protective measures (sections 185-190) that may be requested if the debt is in jeopardy and no enforcement order could be issued.

<sup>28</sup> Subsection a) and b) of section 187: a) an action for matrimonial property right has been filed; b) an action for infringement of a patent, encroachment of a protected design or of the patented topography of micro-electronic semiconductors, violation of plant variety rights, infringement of a trademark, infringement of a geographical indication, infringement of a de-

garian court with public documents or private documents with full probative force attached in proof of the inception, volume and expiration of the claim. (2) The protective measure shall be ordered by the court at which the legal action has been filed. Where protective measures are requested, a hearing shall be held if necessary. (3) Protective measures may also be ordered under the same section if the legal action has been lodged under Council Regulation 44/2001/EC in another Member State of the European Union. (forum arresti, so-called attachment-procedure).

*f. Jurisdiction for trusts*

Hungarian law does not know the common law “trusts” as such, and no specific provision on trusts was filed in the international procedural rules. Hungary is not a signatory to the Hague Convention on the Law applicable to Trusts and on their Recognition either. Jurisdictional issues as regards legal instruments not known under Hungarian law are to be resolved on the basis of the general jurisdictional provision, i.e. section 54 of the Decree. Also see the special jurisdictional rules of article 23(4) and (5) of the Brussels I Regulation.

#### **4. Protective rule(s) of jurisdiction for particular types of disputes**

*a. General*

Pursuant to section 62 of the Decree in employment-related or consumer-related disputes the special protective rules (as set forth below), or the general rule of jurisdiction (section 54,) or the jurisdiction stipulated by the parties (section 62/F) shall apply and any other connection is excluded. Accordingly, with respect to issues not covered by the special protective rules, the general rules and the provisions on the jurisdiction chosen by the parties serve as default rules.

No stipulation of jurisdiction regarding legal disputes in connection with consumer contracts or contracts of employment (i) may result in making the consumer or the employee become exposed to being sued in courts other than the courts of the state in which his/her domicile or residence is located; or (ii) may exclude the opportunity for the consumer or the employee to file a lawsuit in the courts of the state in which his/her domicile or residence is located or in which the place of regular employment is located. These provisions do not apply if the parties implement the stipulation after the legal dispute has been materialized [subsections (2) and (3) of Section 62/G].

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sign, infringement of a certificate for the extension of protection, or for any copyright violation has been filed in a Hungarian court under the conditions laid down in the relevant laws;

*b. Ground(s) of jurisdiction in consumer contracts*

Hungarian courts have jurisdiction in actions filed by consumers in connection with the consumer contracts, if the *consumer's domicile or residence is in Hungary* and the other *party* that is in contractual relationship with the consumer with respect to its professional or business services

- i. *operates in Hungary*, including the operations performed elsewhere (outside Hungary) but aimed at Hungarian consumers; or
- ii. *has a branch office or representation in Hungary* or is a foreign national who has settled in Hungary as an independent entrepreneur (section 60).

Section 28/A of the Decree interprets the notion of “consumer contracts” that is a contract for the provision of an object or services for a party acting outside the sphere of economic or professional activities, or a loan or credit contract in connection thereto.

*c. Employment contracts*

Hungarian courts have jurisdiction in employment-related actions filed by employees against employers if (i) the place of regular employment is in Hungary, or was last in Hungary; and/or (ii) the place where work was actually performed is in Hungary, provided that the place of regular work neither is nor was in the same country (section 61 of the Decree).

There is an important exception to this rule, namely, if the employer is a foreign State Authority (Organ), or otherwise protected by immunity (e.g. embassy, diplomats) it can only be sued before Hungarian courts if it has expressly waived its right to immunity (section 62/A.)<sup>29</sup>.

As regards the right of an employer to bring a claim before the Hungarian courts against an employee domiciled in a non-EU state the general rules (section 54) should apply.

*d. Insurance matters*<sup>30</sup>

As far as insurance claims are concerned there are no special jurisdictional rules. It is a question of interpretation whether any insurance related contracts are to be considered consumer contracts. If they are, the rules of consumer contracts shall apply.

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<sup>29</sup> The same was ruled in the case BH 1998.248 under the old legal regime of international jurisdiction where the dispute arose between a foreign embassy in Hungary (employer) and a Hungarian national employee.

<sup>30</sup> See JANNET A. PONTIER – EDWIGE BURG: EU Principles on Jurisdiction and Recognition and Enforcement of Judgments in Civil and Commercial matters, The Hague 2004, p. 136 – Insurance policyholders (the insured and the beneficiary of the policy) as the weaker party.

If the dispute arisen pertains to an insurance matter the general rules apply. Based on the general rules (section 54) both the insured and the insurer may bring a claim before the Hungarian courts if the requirements of section 54 of the Decree are met.

If the insurance contract is not to be considered a consumer contract the general factor of the contract-related disputes (place of performance) shall apply.

If the insurer is a branch office or representation office, see point 3. d. above.

Theoretically, a connection between a tortious case and an insurance case can not be excluded, so the rules on tort may be applicable.

*e. Distribution contracts, commercial agency, franchise agreement*

There are no protective rules of Jurisdiction with respect to distribution, commercial agency or franchise agreements. (Although there are several internal regulations that provide for the protection of the commercial agents, they do not contain any protective jurisdictional provisions.<sup>31</sup>) If a dispute arises concerning the above mentioned agreements the general rules (section 54) and the rules governing contract-related issues apply (section 55).

Considering that the distribution agreement and the franchise agreements are qualified as “atypical contracts”, under Hungarian law they are interpreted and handled always on the basis of the rules of the nearest type of contract or the general contract rules. If either the distribution or the franchise agreement involves lease or usufruct questions, the jurisdiction of the Hungarian courts may be exclusive or excluded depending on the location of the real estate they relate to (section 62/A or 62/C, see point 2. a. above).

*f. Specific matters subject to protective rules of jurisdiction*

Under the Code of Civil Procedure a preliminary procedure to take evidence can be brought if it is proved that the hearing would not be successful later on or it would be difficult to take evidence later (or this procedure would help to speed up the process or in case of warranty - section 207 of the CCP). This procedure shall be filed at the competent court but if such a claim is not lodged yet the claim can be filed either (i) at the local court of the residence of the plaintiff or (ii) where taking evidence seems mostly appropriate and reasonable [section 208 (1) CCP].

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<sup>31</sup> Act CXVII of 2000 on the independent commercial agency agreements. This Act is fully in conformity with the 86/653 EU Directive.

## 5. Consolidation of related claims

### a. General rule

According to Section 54 (2) of the Decree, a defendant domiciled in a non-EU state can be sued before Hungarian courts as a co-defendant in a proceeding brought against a defendant domiciled in Hungary, provided that

- the object of litigation is a common right or a common liability that can only be resolved uniformly, or
- the ruling would affect all defendants, even those not appearing in court, or
- the claims under litigation originate from the same legal relationship.

According to Section 63 of the Decree, Hungarian law shall apply to the proceedings of Hungarian courts or other authorities, unless the Decree provides otherwise. There are two types of joinders, according to Sections 51-53 of the Code of Civil Procedure (hereinafter referred to as “CCP”), the “compulsory joinder” is a joinder, where the lawsuit can only be decided when all parties are involved [Section 51 a) of the CCP<sup>32</sup>]; the “no compulsory joinder” is regulated in Section 51 b) and c) of the CCP (please see below).

Unlike in case of a co-defendant the Decree does not provide any special rule for an action of a third party on warranty or guarantee (where guarantee means a remedy for breach of implied or expressed warranty). In this case the third party can be called as joinder in the procedure. Another possibility is that the tortious liability of this third party can be dealt with in connection with the Hungarian jurisdiction.

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<sup>32</sup> [Section 51 of the CCP] Two or more plaintiffs may start a lawsuit together, or two or more defendants may be sued together, If (a) the object of the lawsuit is a common right or common obligation, that can only be decided uniformly, or the decision would apply to the joinders without taking part in the lawsuit; (b) the claims of the lawsuit derive from the same legal relationship; (c) the claims of the lawsuit derive from similar factual and legal base, and the jurisdiction of the same court can be determined regarding all defendants without applying the provisions of Article 40.

[Section 52 of the CCP](1) In case of a joinder according to Section 51. a), the acts within the lawsuit of any joinder - apart from settlement, acknowledgement and waiver of rights - apply to joinder who missed a deadline, closing date or an act, if the default was not supplied later. (2) In case the acts or statements of joinders according to Section 51 a) differ from each other, the court shall judge them in accordance with the other data of the lawsuit.

[Section 53 of the CCP] (1) In case of a joinder according to Section 51 b) or c), no acts or defaults of one of the joinders can cause the other joinders any advantages or disadvantages. (2) In case of joinder according to Section 51 b) or c), the summons for closing date and resolution on merits shall be disclosed to the joinder who is not directly concerned; although in case of the separation of the trial, the summoning of the joinder who is not directly concerned can be disregarded.

According to Section 54 (3) of the IPL-Decree-Law, a defendant, as a *secondary obligee* (collateral obligee), domiciled in a non-EU state can be sued before Hungarian courts as a third party in an action on a warranty or guarantee or *any other secondary obligation* (collateral), if the domicile of the principal obligee is in Hungary.

*b. Counter claim of the domiciled party against the claim of a non-EU domiciled party*

If, pursuant to Section 63 of the Decree, Hungarian law shall apply to the proceedings, according to Section 54 (4) of the Decree, whenever a Hungarian court has jurisdiction in a lawsuit, it shall also have jurisdiction in respect of any *counterclaim*. The counterclaim shall be interpreted according to the Hungarian CCP<sup>33</sup>.

*c. Connected claims*

In case a claim is *connected* with another claim pending before Hungarian courts, there are no other rules to consolidate related claims except those mentioned under 5.a. to c.

## **6. The application of jurisdictional rules listed in Annex I of the Brussels I regulation (exorbitant jurisdiction)**

Similarly to Section 23 of the German Code of Civil Procedure and according to Section 57 of the Decree and Section 32 Subsection (3) of CCP, Hungarian courts shall have jurisdiction in lawsuits for financial claims in relation to assets (in German: “Vermögensklage”)<sup>34</sup> where the defendant has no domicile in Hungary but does have assets in Hungary that can be declared enforceable. Any claim due of a defendant shall be considered as the defendant’s asset in

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<sup>33</sup> According to Section 147 of the CCP, the rules of counterclaim are the followings: (1) The defendant may enter a counterclaim against the plaintiff until the adjourn of the trial before passing the first instance judgment, if the right which the defendant wishes to enforce in this way is the same as the claim of the plaintiff or it derives from a legal relationship connected to it, or the object of the counterclaim can be set off against the claims of the plaintiff. The court may dismiss the counterclaim without trial on the merits, if it is obvious that the counterclaim was submitted late to obstruct the conclusion of the trial; (2) A counterclaim which regarding to the whole amount of the claim would be in the county court competence, can only be entered before a local court, if this counterclaim is also suitable of off-setting, and the local court has competence regarding the amount of the claim above the claim of the plaintiff; (3) The trial court in an action in property law is competent regarding a counterclaim in the absence of any other ground of jurisdiction.

<sup>34</sup> Please note that Hungarian “*vagyonyjogi per*” can not be translated in English (In German: “*Vermögensklage*” – ‘assets-claim’) “lawsuits for financial claim in relation to assets” in this paper does not only mean “in rem” lawsuits, but also “contract law” and similar lawsuits.

Hungary if the domicile of the person owing the claim is in Hungary or if the claim is secured by an asset situated in Hungary.

Asset as such is not defined under Hungarian law, however, assets shall mean everything which qualifies, according to Act C of 2000 on Accounting, as an asset in the balance sheet of a company; or movables and real estates, tangible and intangible assets, rights or claims.

*Under the old legal regime of the jurisdiction, before May 1, 2001, the following case was published in the reported case law: Both the plaintiff and the defendant were Russian companies, the dispute related to an escrow agreement signed by them in Russia, under Russian law, the defendant was a Russian bank. Plaintiff brought a claim before a Hungarian state court for damages arising from the breach of the escrow account. Plaintiff referred to the old version of section 54 IPL-Decree Law, and to the fact that defendant had assets in Hungary, the defendant was shareholder of a bank established, registered and operating in Hungary. All three levels of the Hungarian courts, first instance, the revision court and the court of supervision terminated the procedure on the basis that Hungary has no jurisdiction in this case, since the facts show a clear Russian case rather than an international case. The place of the shares in the Hungarian bank was not proved, so this special provision of the jurisdiction could not be referred to (EBH 2004.1047.). The courts referred to sections 1, 54 and 56 of the IPL-Decree-Law, and sections 130 (1)(a) and 157 (a) of the CCP. We think that a Hungarian relation was a minimum requirement under the old regime of jurisdictional rules of the Decree.*

We have no knowledge of any special case published concerning this issue, but Hungarian courts definitely apply this rule whenever the facts of the case it require, however, there is no precedent published in any law digest.

#### **7. Jurisdiction on the basis that there is no other forum available abroad (*forum necessitatis*)**

Hungarian rules do not use the principle “forum necessitates.” Under Hungarian law, there are no rules of forum necessitatis, not even in the court praxis. However, according to Section 62/F of the Decree, if the parties stipulate the jurisdiction of a foreign court of law and this court declares that it has no jurisdiction, a Hungarian court may declare its jurisdiction under the general rules.

Furthermore, according to Section 62/H of the IPL-Decree-Law, the Hungarian court shall be deemed having jurisdiction if the defendant fails to file a contest concerning the lack of jurisdiction and makes a statement on the merits of the case (admission of suit), unless the jurisdiction is excluded under the provisions



of the IPL-Decree-Law. There is a reported case (EBH 2002.650) in connection with this provision, according to which the parties stipulated the jurisdiction of the Arbitration Court of the Vienna Federal Chamber of Industry, but the defendant failed to file a contest concerning the lack of jurisdiction and made a statement on the merits. This was a lawsuit on a compensation matter which qualifies as asset-related lawsuit.<sup>35</sup>

## **D) HUNGARIAN RULES OF JURISDICTION BARRING THE ENFORCEMENT OF A NON-EU JUDGMENT**

### **1. Denying recognition or enforcement of foreign non-EU judgment on the basis that the Hungarian courts have exclusive jurisdiction to entertain the claim**

According to Section 70 (1) of the IPL-Decree-Law, the judgments of foreign courts and other foreign authorities shall not be recognized if a Hungarian court or another Hungarian authority has exclusive jurisdiction concerning the matter to which the decision pertains. Please remind that article 23 lit 1-5 provide also special jurisdictional rules for same or similar matters, and Brussels I Regulation shall prevail.

According to Section 62/A of the IPL-Decree-Law, a Hungarian court shall have exclusive jurisdiction in cases defined in subsections a) through i) as follows:

*Subsection a)* in actions pertaining to some ‘*in rem*’ right in connection with real estate that is located in Hungary and in proceedings concerning lease and usufruct agreements<sup>36</sup>.

In rem rights shall mean under Hungarian law the proprietary rights and the so-called limited proprietary rights (in rem rights), such as (a) beneficial use, such as (i) tenure in land; (ii) usufruct; (iii) use; (iv) servitude; (v) public interest use; (b) lien and mortgage.

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<sup>35</sup> Please see the previous note 34.

<sup>36</sup> Article 22 No. 1 Brussels I creates a special jurisdictional rule like the Hungarian regulation: 1. in proceedings which have as their object rights *in rem* in immovable property or tenancies of immovable property, the courts of the Member State in which the property is situated. However, in proceedings which have as their object tenancies of immovable property concluded for temporary private use for a maximum period of six consecutive months, the courts of the Member State in which the defendant is domiciled shall also have jurisdiction, provided that the tenant is a natural person and that the landlord and the tenant are domiciled in the same Member State;

Even scholars of law cannot come to an agreement whether or not the option and the right of preemption is an ‘in rem’ right. Since there is a numerus clausus of *in rem* rights under Hungarian law, these rights qualify rather as obligatory rights.

A claim in relation to the deed of foundation of an apartment ownership located in Hungary (in German: ‘Wohnungseigentum’) is considered to belong to the exclusive Hungarian jurisdiction. It is more difficult to consider a registered mortgage or other “in rem” right if the contract provides for the exclusive jurisdiction of another state, since the registered mortgage is an “in rem” right, but the contract by which the mortgage was created can refer to another jurisdiction.

On the basis of the forgoing rules a Hungarian property related trespass claim, as long as it falls under the Regulation, can be filed, we think, only in Hungary, and an exclusive jurisdiction is reasonable. (Trespass is a civil instrument under Hungarian law.)

According to a reported case, in a lawsuit between a foreign state and a foreign legal person for the ownership of a Hungarian real estate, the Hungarian court has exclusive jurisdiction, even if the plaintiff refers to an international agreement as an evidence for his ownership. In the reported case the plaintiff was Russia and the defendant was a Ukrainian joint-stock company. According to an international agreement between the Russian Federation and Ukraine, the parties agreed in setting-off each others receivables, pursuant to which the real estate of the former Soviet Union located in Budapest shall be owned by Russia. Since the Ukrainian joint-stock company did not grant the real estate to Russia, plaintiff filed a lawsuit against defendant. Defendant filed a contest concerning the lack of jurisdiction, since in his interpretation the dispute qualified as a dispute in connection with an international agreement under the Vienna Convention for international agreements and the Hungarian court had no jurisdiction in the case. The contest was rejected both by the second instance and the supervision court, saying that the international agreement was only the evidence for the title of ownership of the plaintiff and that the Hungarian court has exclusive jurisdiction in any actions pertaining to some ‘in rem’ right in connection with real estate that is located in Hungary (BH 2001.442).

Another reported case EBH 2003.255, please see below, at subsection h).

*Subsection b)* deals with the law of succession.

*Subsection c)* in cases filed against the Hungarian State or a Hungarian government agency, provided that the Hungarian State has expressly waived the right to immunity, or if the subject matter of the case in question pertains to a legal relationship to which the Hungarian State or a Hungarian government

agency is a party and which does not grant foreign countries immunity from Hungarian jurisdiction.

*Subsection d)* in actions filed against a Hungarian citizen who is on a diplomatic mission abroad or is otherwise granted immunity, unless the Hungarian State has expressly waived the right to immunity.

*Subsection e)* in actions filed for the destruction of securities and official instruments issued in Hungary.

The security is defined in Hungarian substantive law. According to Section 338/A of the Hungarian Civil Code<sup>37</sup>, a *security* is a document bearing the requisites prescribed by legal regulation or data recorded, registered, and forwarded in some other way, as specified by legal regulation, and the printing and issuing of which or publication in such form, is permitted by legal regulation.

The term “*official instrument*” as such is not defined under Hungarian law. However, legal scholars define official instruments as human thoughts recorded by common characters.

According to the CCP, there are three types of official instruments:

- (i) Public document (i.e. a document duly issued by a court, notary or any other authority within its competence in the prescribed form);
- (ii) Private document representing conclusive evidence (i.e. either (i) a document written and signed by any party; or (ii) a document witnessed by two witnesses; or (iii) the signature of the issuer is certified by a court or notary; or (iv) a document issued and duly signed by a business associate in its business competence; or (v) a document prepared and countersigned by an attorney-at-law;
- (iii) Other private documents.

According to Government Decree 98/1995, the issuer of the securities has the right to the *physical destruction* of securities after the expiry of a 6-month-period following the termination of the rights and obligations contained therein. The physical destruction of securities shall take place by burning, reduction to pulp or any other method equivalent from the aspect of security in the presence of a committee, and the fact of destruction shall be attested to by a notary public. Members of the committee: (i) representative of the issuer authorized to corporate signing; (ii) representative of the organization carrying out the destruction; (iii) representative of the licensed depository, if the issuer keeps the securities in custody.

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<sup>37</sup> Act IV of 1959

*Subsection f)* in proceedings in connection with registering, extending or terminating industrial property rights in Hungary<sup>38</sup>.

Industrial property rights as such are not defined under Hungarian law, however, according to legal scholars, these are the following under Hungarian law:

- Trademarks and Geographical Indicators (Act XI of 1997);
- Industrial Designs (Act XLVIII of 2001);
- Patents (Act XXXIII of 1995).

*Under the old legal regime of the jurisdiction, before May 1, 2001*, there is a reported case (BH 1999.169) according to which the decision of a foreign court on the termination of a trademark is not binding for the Hungarian court, since Hungarian courts have exclusive jurisdiction in proceedings in connection with terminating industrial property rights in Hungary. Nevertheless, the Hungarian court may take the decision of the foreign court into account in the course of deciding the lawsuit. In the reported case two tobacco companies had a dispute whether the secondly registered trademark can easily be mixed up with the other one. The defendant furnished evidence with a decision of the German court on the same factual basis, where the German court stated that the trademark in question cannot be mixed. The Hungarian court stated, that the decision of the German court is not binding, it may be evaluated as evidence.

*Subsection g)* in proceedings concerning the establishment, insolvency and voluntary winding up of a Hungarian-registered legal entity or de facto company (company without legal personality); in proceedings concerning the validity of the contract or charter (deed of foundation) on the basis of which the legal entity (association) is registered; and in proceedings concerned with reviewing the resolutions passed by an organ of the legal entity (association)<sup>39</sup>.

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<sup>38</sup> Article 22 No. 4 Brussels I creates a special jurisdictional rule like the Hungarian regulation 4. in proceedings concerned with the registration or validity of patents, trade marks, designs, or other similar rights required to be deposited or registered, the courts of the Member State in which the deposit or registration has been applied for, has taken place or is under the terms of a Community instrument or an international convention deemed to have taken place.

Without prejudice to the jurisdiction of the European Patent Office under the Convention on the Grant of European Patents, signed in Munich on 5 October 1973, the courts of each Member State shall have exclusive jurisdiction, regardless of domicile, in proceedings concerned with the registration or validity of any European patent granted for that State;

<sup>39</sup> Article 22 no. 2 of the Brussels I Regulation provides a similar, but a narrower jurisdiction rule in the same matter as follow:

“2. in proceedings which have as their object the validity of the constitution, the nullity or the dissolution of companies or other legal persons or associations of natural or legal persons, or of the validity of the decisions of their organs, the courts of the Member State in which the company, legal person or association has its seat. In order to determine that seat, the court shall apply its rules of private international law;”

The most important legal persons under Hungarian law are the following:

- Governmental Agencies (HCC Sections 36-37);
- Cooperatives (HCC Sections 38 and 51; Act no. X of 2006 on Cooperatives);
- Business Associations with Legal Personality (HCC Sections 52-56.)
  - Corporations or Joint-stock companies (Act IV of 2006 on Companies (“CA”), Sections 171-315.);
  - Limited liability companies (CA, Sections 111-170.);
- Associations, Public Corporations and National Sport Associations (HCC, Sections 61-66.);
- Foundations (HCC, Sections 74/A - 74/G.)
- Various other legal entities, such as political parties, law firms etc.

Business associations without legal personalities are the following:

- Partnerships (CA, Sections 88 - 107.);
- Limited partnerships (CA, Sections 108 - 110.).

We are familiar and acting in a pending case with a matter related to this question. The plaintiff is a corporation domiciled and registered in Hungary and the principal defendant is a corporation domiciled in the UK, the secondary defendant a corporation domiciled in the US. Both defendants used to be shareholders of the plaintiff company. The defendants increased the capital of the plaintiff issuing new shares. Both defendants subscribed the new shares, but, and this is the essence of the dispute, the shareholders failed to make payment for those new shares or, in their wording they performed these obligations and plaintiff’s statement is only a mistake. The court rejected the claim on the basis of lack of jurisdiction in relation to the UK-shareholder, according to the very narrow interpretation of the IPL-Decree-Law. The court said, since May 1, 2001 the philosophy of the IPL-Decree-Law has been changed, and Hungarian courts have only jurisdiction against foreign defendants if the IPL-Decree-Law expressly provides so. Please note that the case is still pending.

*Subsection h)* in proceedings concerning the registration of rights, facts and data into official records in Hungary<sup>40</sup>.

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<sup>40</sup> Article 22 no. 3 of the Brussels I Regulation provides a similar jurisdictional rule in the same matter as follows:

“3. in proceedings which have as their object the validity of entries in public registers, the courts of the Member State in which the register is kept;”

The most important official records under Hungarian law are the

- Register of personal data and address of private persons (Act LXVI of 1992);
- Land register (Act CXLI of 1997 on Land register);
- Lien register at the Hungarian Chamber of Notaries Public (Decree 11/2001 of the Minister of Justice on Lien register);
- Register of companies (Act V of 2006);
- Address records (Act XX of 1996);
- Trademark register (Act XI of 1997);
- Penal register (Act LXXXV of 1999);
- Register on the road traffic (i.e. vehicle register) (Act LXXXIV of 1999);
- Aircraft register (Decree 32/2001 of the Minister of Transport on the Rules of Aircraft register);
- Ships and other watercraft register (Governmental Decree 198/2000 on Watercraft register).

According to a published case (BH 2003.255), the Hungarian court has no jurisdiction for the judgment of the validity of an international credit agreement on the basis that the collateral was registered into a public register (land register).

*Subsection i*) in proceedings concerning inland enforcement in Hungary<sup>41</sup>.

According to Act LIII of 1994 on Judicial Enforcement the decisions of courts and other judicial forums, furthermore, claims based on certain documents shall be executed by judicial enforcement proceedings. Judicial enforcement shall be ordered by the issuance of an enforcement order. Enforcement orders are the followings: (i) Certificate of enforcement issued by the court; (ii) Document with a writ of execution issued by the court; (iii) A judicial order or restraint of enforcement, or order of transfer, furthermore, a decree of direct judicial notice; (iv) A judicial notice on a fine, on a fine imposed as secondary punishment, on a penalty, on a fine for contempt, on a verdict of confiscation of assets, on the costs of a criminal procedure or the costs of arrest or escort, furthermore, notice from the court administration office on a fine for contempt levied or costs of a criminal procedure charged by the public prosecutor, and on the costs of arrest or escort charged by the public prosecutor or the investigation authority; (v) A writ of criminal attachment.

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<sup>41</sup> Article 22 no. 5 of the Brussels I Regulation provides a similar jurisdictional rule in the same matter as follows:

5. in proceedings concerned with the enforcement of judgments, the courts of the Member State in which the judgment has been or is to be enforced.

The court shall issue an enforcement order upon request by the judgment creditor. When filing a petition for enforcement, the judgment creditor shall disclose

- The judgment debtor's name (corporate name) and any data necessary for his identification; furthermore
- depending on the circumstances of the case, the judgment debtor's domicile, workplace or registered address, place of business and the venue where the judgment debtor's enforceable assets are located. At least one item from the data listed above shall be disclosed.

## E) DECLINING JURISDICTION

### 1. Hungarian court praxis of declining jurisdiction where the defendant is domiciled in a non-EU State and the jurisdiction is based on domestic law

There is no general rule to decline jurisdiction or to stay the procedure in those cases. Hungarian courts do not use the expression "forum non conveniens", but in the practice similar techniques can be discovered.

Please see a reported case slightly connected to this point referred to in point C) 6. above (EBH 2004.1047.). Based on the reported case law (EBH 2004.1047=BH 2004.376) if the facts of the case are not connected to Hungary in any way the Hungarian courts would declare the "forum non conveniens". This behavior of the Hungarian judges can be understood on following grounds: (i) Hungarian courts are traditionally overloaded and they try to terminate the cases based on procedural hindrances; (ii) secondly the judges are still very cautious with non-Hungarian matters, especially in cases of east-European (Russian, Bulgarian, Ukrainian) or unique states; (iii) the judges are not really fit for international cases.

### 2. Rules of declining jurisdiction in cases when the defendant is domiciled in a non-EU State and the jurisdiction is based on domestic law pursuant to article 4 of the Brussels I regulation

#### a. Choice of court clause

Article 23(1)-(3) of the Brussels I regulation provides a special choice of court provision if at least one of the parties is domiciled in a Member State<sup>42</sup>, irrespective of its legal status in the proceeding, claimant or defendant<sup>43</sup>. According to Section 62/F (1) and (2) of the Decree, the parties may stipulate the

<sup>42</sup> See note 17 above.

<sup>43</sup> KENGYEL-HARSÁGI: European Procedural Law (n. 9), p. 270.; Rauscher/Mankowski (n. 18) Art. 23, 2-2b (p. 394-395)

jurisdiction of a specific court (even the court of a non-EU state) in respect of property-related legal disputes. Unless the parties agree to the contrary, the court chosen by the *choice-of-court* clause shall have exclusive jurisdiction.

However, if,

- in respect of either of the cases where Hungarian courts have exclusive jurisdiction (see under point D above), the parties stipulate the jurisdiction of a foreign court of law or,
- in respect of either of the cases where the jurisdiction of Hungarian courts is excluded, the jurisdiction of a Hungarian court

shall be null and void.

No stipulation of jurisdiction regarding legal disputes in connection with consumer contracts or contracts of employment

- may result in making the consumer or the employee exposed to being sued in courts other than the courts of the state in which his domicile or residence is located; or
- may exclude the opportunity for the consumer or the employee to file a lawsuit in the courts of the state in which his domicile or residence is located or in which the place of regular employment is located.

These provisions shall not apply if the parties implement the stipulation after the legal dispute has been materialized.

*b. Parallel proceeding seized by non-EU state court*

According to Section 65 of the IPL-Decree-Law, if proceedings arising from the same factual basis and for the same rights are in progress between the parties before a foreign court in which the ruling can be recognized as valid and ready to be executed in Hungary in accordance with the IPL-Decree-Law, the Hungarian court *may terminate* the proceedings instituted before it subsequently.

This means, that if the proceeding is already started, the court may terminate it (the decision is up to the court). Scholars of law regard it as a must for the courts to terminate the proceeding.

*c. Cases when the subject-matter of the dispute is closely related to a non-EU State* (i.e. the equivalent of “exclusive jurisdiction” under the Brussels I regulation)

According to Sections 62/C to 62/E of the IPL-Decree-Law, Hungarian courts *shall not have* jurisdiction. Section 62/C refers to subsections from subsection a) until subsection i), as follows.



*Subsection a)* actions pertaining to some *in rem* right in connection with real estate that is located abroad or in proceedings concerning lease and usufruct agreements.

On *in rem* rights pls. see point D) 1 above.

*Subsection b)* cases filed against a foreign country or a foreign government agency, provided the state in question has expressly waived the right to immunity, or if the subject matter of the case in question pertains to a legal relationship of the foreign country or the foreign government agency under civil law as defined under Subsection (1) of Section 62/E.

*Subsection c)* actions filed against a foreign citizen who is on a diplomatic mission in Hungary or is otherwise granted immunity, unless the foreign country in question has expressly waived the right to immunity.

*Under the old legal regime of the jurisdiction, before May 1, 2001*, there is a reported case, according to which Hungarian courts have no jurisdiction in lawsuits against a foreign diplomatic mission unless it has expressly waived the right to immunity. The plaintiff was a Hungarian employee of the defendant, a diplomatic mission employer. Plaintiff brought claim against defendant, but the court rejected it without issuing summons saying that Hungarian courts have no jurisdiction unless the diplomatic mission expressly waived the right to immunity (BH 1998.248.).

*Subsection d)* actions filed against a foreign citizen who is on a diplomatic mission in Hungary or is otherwise granted immunity, unless the foreign country has expressly waived the right to immunity.

*Subsection e)* actions filed for the destruction of securities and official instruments issued abroad.

*Subsection f)* proceedings in connection with registering, extending, and terminating industrial property rights abroad.

*Subsection g)* proceedings concerning the foundation, insolvency and termination of a foreign-registered legal entity or de facto corporation, in proceedings concerning the validity of the contract or charter (deed of foundation) on the basis of which the legal entity (association) is registered, and in proceedings concerning the review of the resolutions passed by an organ of the legal entity (association).

*Subsection h)* proceedings concerning the registration of rights, facts and data into official records abroad.

*Subsection i)* actions concerning enforcement abroad.

Section 62/E of the Decree states that a Hungarian court shall have jurisdiction in actions filed against a foreign country or a foreign government agency if the subject matter of an action is

- a right or obligation of the foreign country (or foreign government agency) proceeding from a contract under civil law if the contracted place of performance is in Hungary, unless the other party is another state or the agency of another state;
- a right or obligation stipulated in a contract of employment or another work-related legal relationship between a foreign country (foreign government agency) and a natural person who holds Hungarian citizenship or has a domicile in Hungary, provided that the place or regular employment is or was last in Hungary, unless the employee is a citizen of the foreign country that employs him;
- a claim filed against a foreign country (foreign government agency) on the grounds of injury or material damage to life, limb, health or property, provided that the injury was committed in Hungary and the injured person was in Hungary at that time;
- a right to in rem to real property in Hungary that a foreign country (foreign government agency) owns or would like to acquire;
- is the membership, share or interest of a foreign country (foreign government agency) in a domestic-registered legal entity or de facto corporation, or any right or obligation that derives therefrom;
- the registration, extension or termination of industrial property rights in Hungary when the authorized is a foreign country (foreign government agency).

### **3. Rules of declining jurisdiction or to stay the proceeding in cases when the defendant is domiciled in an EU State and the jurisdiction is based on the uniform rules of the Brussels I regulation in favor of a non-EU court**

#### *a. Choice of court clause referring to the court of a non-EU state*

When it comes to the use of a *choice-of-court clause* designating the court of a non-EU State, we can state that according to the first sentence of subsection (4) of 62/F of the IPL-Decree-Law the particular court chosen by the parties shall have exclusive jurisdiction. In our interpretation this provision shall apply independently from the fact whether the court chosen is a court of a non-EU state or EU state.

*b. Parallel proceeding seized by a non-EU state court?*

As far as parallel proceedings are concerned according to Section 65 of the IPL-Decree-Law, if proceedings arising from the same factual basis and for the same rights are in progress between the parties before a foreign court in which the ruling can be recognized as valid and ready to be executed in Hungary in accordance with the Law-Decree, the Hungarian court *may* terminate the proceedings instituted before it subsequently or the *shall* reject the statement of plaintiff without issuing summons.

This means that if the proceeding is already ongoing, the court may terminate it, legal scholars regard it as a must for the courts to terminate the proceeding. If the proceeding is not ongoing yet, pursuant to the above-mentioned provision of the IPL Law-Decree, in accordance with the national rules of CCP (Section 130), the court shall reject the statement without issuing summons.

*c) Cases where there is an “exclusive jurisdiction” in a non-EU State*

Exclusive jurisdiction of foreign courts is not expressly regulated by Hungarian law, however, in our understanding it is only a question of recognition in the other state<sup>44</sup>. Hungarian courts have no obligation to reject the statement of plaintiff on the basis of exclusive jurisdiction in a non-EU state. Nonetheless, if there is a bilateral treaty or reciprocity between Hungary and the other state, the Hungarian court shall decline jurisdiction.

## **F) APPLICABLE NATIONAL RULES PURSUANT TO ARTICLE 14 OF THE NEW BRUSSELS II REGULATION**

Under article 14 of the new Brussels II Regulation No 2201/2003 on Jurisdiction and the Recognition and Enforcement of Judgments in Matrimonial Matters and the Matters of Parental Responsibility (“the Brussels II*bis* regulation”), relating to the “residual jurisdiction” in matters of *parental responsibility*, it is provided that “(w)here no court of a Member State has jurisdiction pursuant to Articles 8 to 13, jurisdiction shall be determined in each Member State, by the laws of that State”. The relevant grounds for jurisdiction that can be used in Hungary are the following:

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<sup>44</sup> FERENC MÁDL and LAJOS VÉKÁS: *The Law of Conflicts and Foreign Trade*. Akadémiai Kiadó, Budapest, 1998, p. 473.

According to Section 59 (1) of the IPL-Decree-Law<sup>45</sup>, a Hungarian court or some other Hungarian authority shall have jurisdiction in proceedings pertaining to parental supervision (i.e. a part of parental responsibility<sup>46</sup>) when the child's parents are separated if the domicile or residence of the child is in Hungary. According to officers of the Ministry of Justice<sup>47</sup>, this provision shall not apply to the termination or reinstatement of parental supervision of a child, only to lawsuits for custody or change of custody and to out-of-court proceedings related to unsettled questions of the parental supervision of separated parents.

According to Section 62/B of the IPL-Decree-Law, a Hungarian court shall have jurisdiction in any and all cases that concern the personal status of Hungarian citizens. This jurisdiction is exclusive, unless the case is filed in a foreign country for the termination or reinstatement of parental supervision of a child who is a Hungarian citizen and if the domicile of both the child and the parent whose right of supervision is contemplated is in the country where the proceeding court is located [subsection 62/B (d) of the Decree]. According to officers of the Ministry of Justice<sup>48</sup>, these sections are not in complete accordance with Brussels IIa regulation, since the regulation provides for jurisdiction on the basis of the domicile of the child, but the Hungarian law is rather based on the citizenship. The exceptions from the citizenship-based rules are too narrow, e.g. the parent whose right of supervision is concerned shall be domiciled in the same state as the child.

The contradiction between section 59 (1) and 62/B of the IPL-Decree-Law can be solved because section 59 (1) provides a parallel jurisdiction if the child has residence or domicile in Hungary, section 62/B (d) states an exclusive jurisdiction with parallel exception, that in cases of a child of Hungarian nationality the Hungarian courts always have jurisdiction with the exception if both the parent

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<sup>45</sup> Section 59 (1) of the Decree: A Hungarian court or some other Hungarian authority shall have jurisdiction in child custody cases and proceedings pertaining to visitation rights and parental supervision when the child's parents are separated if the domicile or residence of the child is in Hungary.

<sup>46</sup> According to Article 2 point 7 of Brussels II regulation (2201/2003), the term "*parental responsibility*" shall mean all rights and duties relating to the person or the property of a child which are given to a natural or legal person by judgment, by operation of law or by an agreement having legal effect. The term shall include rights of custody and rights of access. According to Subsection (2) of Section 71 of Act IV of 1952 on Marriage, Family and Custody, the term "*parental supervision*" shall mean all rights and duties relating to the custody, upbringing, administration of the fortune and the legal representation of the child (minor) and the right to appoint a guardian and exclude someone from being a guardian of the minor.

<sup>47</sup> BRÁVÁCZ-SZÖCS: Litigation without borders (n. 13.) pp. 86-87.

<sup>48</sup> Cited by KENGYEL – HARSÁGI: European Procedural Law (n. 9.) pp. 553-554.

whose right of supervision is contemplated and the child has foreign domicile or residence. In this case the state might have also jurisdiction where the domicile and residence of the parties is located. Our opinion is that in this case parent and child must have a domicile or residence in the same state.

Articles 5 to 14 of the Hague Convention on Jurisdiction, Applicable Law, Recognition, Enforcement and Co-operation in respect of Parental Responsibility and Measures for the Protection of Children provide for the jurisdictional rules in such matters. Among many states, Hungary joined this Convention and promulgated it with Act CXL of 2005. Since many non-EU States joined this Convention, the jurisdictional provisions refer to these non-EU States as well.

### **Annexes**

Annex 1 – List of Bilateral Agreements on Judicial Assistance containing Jurisdictional Rules

Annex 2 – List of reported cases referred to in this paper

**Annex 1****BILATERAL AGREEMENTS ON JUDICIAL ASSISTANCE CONTAINING  
JURISDICTIONAL RULES**

<b>Country:</b>	<b>Promulgated by:</b>	<b>Signed</b>	<b>Jurisdiction clause</b>
Albania (on civil, family law and criminal matters)	Law Decree no. 25. of 1960	12 January 1960	Articles 25 (1), 29, 31, 33, 40 (2), 41
Bulgaria (on civil, family law and criminal matters)	Law Decree no. 6. of 1967	16 May 1966	Articles 17 (1), 20, 21 (3), 22 (4), 23 (2), 24 (4), 29, 29/A (4), 33 (1), 34, 38 (3), 48 (1), 52 (d), 61/A, 83/A
Czech Republic and Slovakia (on civil, family law and criminal matters)	Act. LXI. of 1991	28 March 1989	Articles 22, 25 (2), 27 (3), 28 (3), 29 (3), 30 (4), 31 (2), 32 (4), 33 (4), 37 (2), 38 (3), 39 (3), 44, 50 (5), 61 (1)
Yugoslavia, Bosnia, Croatia, Macedonia, Slovenia (on mutual judicial assistance)	Law Decree no. 1. of 1969	7 March 1968	Articles 28 (3), 30 (1), (3), 33, 35 (b), 36 (3), 37 (1), 39 (2), 39/A (3), 44, 45, 48
Korean Republic (on civil, family law and criminal matters)	Law Decree no. 12. of 1971	5 October 1970	Articles 25 (1), 29 (1), 31, 39 (2), 40
Cuba (on civil, family law and criminal matters)	Law Decree no. 4. of 1984	27 November 1982	Articles 29, 30, 31, 32(4), 33 (4), 39
Poland (on civil, family law and criminal matters)	Law Decree no. 5. of 1960	6 March 1959	Articles 30, 32, 33, 35, 35/A, 36 (4), 45, 45/A, 45/B, 50
Mongolia (on civil, family law and criminal matters)	Law Decree no. 11. of 1969	22 November 1968	Articles 25, 29 (1), 31, 39 (2), 40
Rumania (on civil, family law and criminal matters)	Law Decree no. 19. of 1959	7 October 1958	Articles 24, 25 (3), 28 (1), 29 (1), 33 (4), 39, 47 (1)
Soviet union (Byelorussia, Russia) (on civil, family law and criminal matters)	Law Decree no. 38. of 1958	15 July 1958	Articles 25, 26, 29, 31, 40
Vietnam (on civil, family law and criminal matters)	Law Decree no. 8. of 1986	18 January 1985	Articles 29, 30, 32 (5), (6), 33, 34 (3), 37, 41 (4), 46

**Annex 2**

*Reported Cases referred to in this paper:*

EBH 2004.1047

EBH 2003.255

EBH 2002.650

BH 2003.255

BH 2001.442

BH 2001.418

BH 1999.169

BH 1998.248

(Where “BH” is the abbreviation of “Bírósági Határozatok”, a reporter of the case law of the Supreme Court of Hungary in Hungarian.)

**SUMMARY****Residual Jurisdiction in Civil and Commercial Disputes in Connection with Article 4 of Brussels I Regulation in Hungary**

ZOLTÁN CSEHI

Article 4 of Council Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters plays an outstanding role in the approximation of the international rules of procedural law of the European Union. The treatise offers an overview of the recent history of Hungary’s international procedural law practice up until Regulation 44/2001 came into effect. Article 4 (1) of the Regulation stipulates: “if the defendant is not domiciled in a Member State, the jurisdiction of the courts of each Member State shall, subject to Articles 22 and 23, be determined by the law of that Member State.” Experts refer to such cases as exorbitant jurisdiction. Exorbitant jurisdiction determines under which circumstances may the state take action in civil and commercial cases when the defendant has no domicile in the state concerned.

The essay outlines relevant provisions of the Hungarian Decree-Law No. 13 of 1979 (which has been amended several times) on how Hungary regulates its practice in international procedural law in the field of civil and commercial law when the Hungarian state has exorbitant jurisdiction. Jurisdiction is classified under the following headings: general, special, exclusive and precluded. The essay calls attention also to some relevant though less known provisions that can be found in criminal procedural law, rules related to the confiscation of property and in some other rules of law.

The essay discusses some special rules that refer to employees, entrepreneurs, consumers and to insurance cases, as well as cases where Hungarian courts have exclusive jurisdiction. As for this latter case, the main issues mentioned are *in rem* rights, protection of the possession, and lawsuits related to securities, registered rights, such as trademark, design and patents.

In case of precluded jurisdiction the Hungarian courts may not take action. The author discusses here the *forum non conveniens* rules of Hungarian courts. In such situations the question whether or not a Hungarian court has jurisdiction over a case is decided after considering to what extent is a foreign case related to Hungary.

## RESÜMEE

### **Restliche (nationale) Zuständigkeitsnormen in Zivil- und Handelssachen in Verbindung mit Art. 4 der Brüssel I Verordnung**

ZOLTÁN CSEHI

In der Harmonisierung der internationalen verfahrensrechtlichen Regeln der Europäischen Gemeinschaft nimmt die Verordnung (EG) Nr. 44/2001 des Rates vom 22. Dezember 2000 über die gerichtliche Zuständigkeit und die Anerkennung und Vollstreckung von Entscheidungen in Zivil- und Handelssachen eine herausragende Position ein. Die Studie gibt einen kurzen Überblick über die neuere Geschichte des ungarischen internationalen Zivilprozessrechts bis zum Inkrafttreten der Verordnung 44/2001. Die Verordnung verfügt unter Artikel 4 Absatz 1 dermaßen, dass falls der Beklagte keinen Wohnsitz/Firmensitz im Hoheitsgebiet eines Mitgliedstaates hat, so bestimmt sich vorbehaltlich der



Artikel 22 und 23 die Zuständigkeit der Gerichte eines jeden Mitgliedstaats nach dessen eigenen Gesetzen. Diese Fälle nennen wir exorbitante Sachverhalte, d.h. in welchen Angelegenheiten darf der Staat solche Zivil- und Handelssachen verfahren, in denen der Beklagte über keinen Wohnsitz oder Firmensitz in einem Mitgliedstaat verfügt.

Die Studie gibt einen Überblick über die einschlägigen Regeln des mehrfach modifizierten IPR-Kodex, die gesetzkräftige Verordnung Nr. 13 vom 1979, die exorbitanten Vorschriften der Verträge, Delikte. Die Grundlage der Systematisierung stellen die so genannten allgemeinen, speziellen, ausschließlichen und ausgeschlossenen Zuständigkeiten dar. Über diese hinaus weist die Arbeit auch auf verborgene Regeln hin, die im Strafverfahrensrecht, in der Beschlagnahme und in sonstigen Rechtsvorschriften zu finden sind.

Die Analyse kommt auch auf die spezielle Regelung zu sprechen, die die Arbeitnehmer, Kaufleute, Verbraucher und die Versicherung betreffen, sowie auf diejenigen Angelegenheiten, in denen die ungarischen Gerichte eine ausschließliche Zuständigkeit haben. In diesem letzteren Kreis muss man in erster Linie an die *in rem* Rechte, den Schutz des Besitzes, sowie die Prozesse im Zusammenhang mit Wertpapieren und registrierten immateriellen Rechten – wie Schutzmarken, Designmuster und Patente – denken.

Im Kreis der ausgeschlossenen Zuständigkeit dürfen die ungarischen Gerichte in der gegebenen Sache nicht verfahren. Hierzu zählt der Verfasser auch die eigentümliche „forum non conveniens“ Regel des ungarischen Richterrechts, der im Falle eines ausländischen Tatbestandes die Zuständigkeit der ungarischen Gerichte an eine Verbindung mit Ungarn anknüpft.

