

Setting the scene – matrimonial property law in the context of the EU law and PIL rules

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Il progetto e' realizzato da

Legal sources of matrimonial property law from Hungarian side

Matrimonial property law case containing foreign element before the Hungarian court

bilateral treaties

Act No XXVIII of 2017 (HPIL) – new rule

HUN is not a participant: COUNCIL REGULATION (EU) 2016/1103 of 24 June 2016

implementing enhanced cooperation in the area of jurisdiction, applicable law and the recognition and enforcement of decisions in matters of matrimonial property regimes

HPIL – matrimonial property rules

Jurisdiction, applicable law, recognition and enforcement of decisions

Partly special rules on matrimonial property law – partly general rules
family law – marriage – matrimonial property law

Separation: maintenance, succession

- Council Regulation (EC) No 4/2009 of 18 December 2008 on jurisdiction, applicable law, recognition and enforcement of decisions and cooperation in matters relating to maintenance obligations
- Regulation (EU) No 650/2012 of the European Parliament and of the Council of 4 July 2012 on jurisdiction, applicable law, recognition and enforcement of decisions and acceptance and enforcement of authentic instruments in matters of succession and on the creation of a European Certificate of Succession

HPIL – matrimonial property rules – jurisdiction 1

General and special jurisdiction

exclusive and excluded jurisdiction in connection of immovable
immovable in Hungary or abroad – rights *in rem* or the rent, lease of
such immovable

Jurisdictional grounds

- defendant spouse's habitual residence is in Hungary
- latest habitual residence of spouses was in Hungary and the habitual residence of one spouse is in Hungary at the time of the court is seized
or
- both spouses are Hungarian nationals

HPIL – matrimonial property rules – jurisdiction 2

Further

- the asset being the object of the proceeding is in Hungary

- **jurisdiction in special cases**

 - the proceeding may related to Brussels Ia Regulation** – proceeding concerning the matrimonial bond.

 - Hungarian Act on Civil Proceedings

 - the proceeding may related to Succession Regulation** – proceeding concerning the succession relations.

HPIL – matrimonial property rules – applicable law 1

Choice of law

- nationality of one party at time of entering into agreement
- habitual residence of one party at time of entering into agreement
- *lex fori*

When? – even future spouses, Hungarian specialities of Act on Civil Proceedings

How? – explicit agreement

Effect? – for future

HPIL – matrimonial property rules – applicable law 1

In absence of choice of law

- common nationality of parties at time of decision-making, in absence of this
- common habitual residence, in absence of this
- last common habitual residence, in absence of this
- *lex fori*

Matrimonial property agreement

valid: according to the requirements of the law of the state where it was stipulated

Public policy rules and imperative rules

Council Regulation 1103/2016 (EU)

Regulation on Matrimonial Property Regimes in the frames of the enhanced cooperation

Scope

marriage

not – other relationships between two partners

not – maintenance, succession, tax, social security

not – nature of rights *in rem*

not – registration of rights in connection with immovable

Matrimonial property regime and matrimonial property agreement

independent and autonomous ,definition'

Mahnkopf case (C-558/16)

Council Regulation 1103/2016 (EU) – jurisdiction 1

Jurisdiction

- Brussels IIa Regulation, Succession Regulation

Further jurisdictional grounds

- common habitual residence of spouses at the time of the court is seized, in the absence of that
- latest common habitual residence of spouses, if the habitual residence of one spouse is there at the time of the court is seized, in the absence of that
- habitual residence of the defendant, in the absence of that
- common nationality

Council Regulation 1103/2016 (EU) – jurisdiction 2

Choice of court

importance of close connection – primarily

- the law of which is applicable or
- Member State of the conclusion of the marriage

Further jurisdictional grounds

among others – jurisdiction based on the appearance of the defendant

Council Regulation 1103/2016 (EU) – applicable law 1

Choice of law

- habitual residence of (future) spouses or habitual residence of one (future) spouse at time of entering into agreement
- common nationality of (future) spouses or nationality of one (future) spouse at time of entering into agreement

Validity of agreement

formal: in writing and dated, signed as a main rule

substantial: which would be applied in case if the agreement is valid

Council Regulation 1103/2016 (EU) – applicable law 2

In absence of choice of law

- first common habitual residence after marriage, in absence of that
- common nationality at the time of marriage, in absence of that
- joint closest connection at the time of the conclusion of the marriage,

Exceptionally

last common habitual residence of the spouses
if one spouse claims for that

Other relationships between partners

HPIL

- different rules concerning informal cohabitants
- different rules concerning registered partners

Qualification problems can emerge more often

Thank you for your attention!

