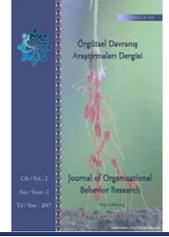




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THE ROLE OF PUBLIC SECTOR ORGANIZATIONS IN THE CONFLICT OF LAWS CONTEXT

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ABSTRACT

Public sector organizations in the broad concept include both governmental and non-governmental entities which provide civil and public services in various areas of social life. Some of these organizations are directly under the orders of official authorities, while some of them are merely under the governmental supervision. However, it is incumbent on them to participate in the framework of their duties to realize justice, welfare, security, education and so on. Conflict of laws questions are among the matters that dealt with by public sector organizations. Courts, diplomatic and consular missions, welfare organizations, registration offices and legal translation bureaus possess significant powers in conflict of laws context. These entities may participate in one or more features of conflict of laws, as the case may be. Conflict of laws incorporates three different, albeit interconnected issues, namely, jurisdiction, characterization and choice of law and recognition and enforcement of foreign judgments. Other above-mentioned public sector organizations help courts decide in regard to conflict of laws cases. The main aim of the present paper is to clarify the limits and challenges of these organizations in the conflict of laws context and explain how to increase their efficiency in this respect.

Keywords: *Public Sector Organizations, Conflict of Laws, Jurisdiction, Characterization, Choice of Law, Foreign Judgments*

INTRODUCTION

Public sector organization in a broader concept incorporates both core civil service organizations and the public service organizations. The increasing expectations of the public from public sector organizations has diversified the scope, increased the functions and broadened the concept of public sector organizations. Public sector organizations consists of core administrative branch of government organizations (civil service organizations) and others that work under their supervision, as well as organizations that implement public programmes, policies and provide public services to the citizens. In general terms, they are agencies, entities and related government organizations that deliver public programmes, goods, or services whose sources of funds are from taxes, fees, charges and direct financial allocations or subsidies from government (Nwokorie, 2017: 10-11). Because of its nature and relationship to sovereignty and public policy, the conflict of laws is enforced by public sector organizations. In both legislative and judicial stages of the conflict of laws, public sector organizations do have important functions. Judiciary is the most important organization which plays an essential role in resolving questions of the conflict of laws. Courts recognize and enforce foreign laws if necessary.

Conflict of laws is one of the most important branches of private international law. Private international law is the area of law that comes into play whenever a court is faced with a

question that contains a foreign element, or a foreign connection. The mere presence of such a foreign element in a legal matter raises a number of questions and it is the function of private international law to provide an answer to these questions and to ensure just solutions. (Kiestra, 2014: 14).

Conflict of laws is concerned with three main issues. The first issue with which one may be faced in a case with a foreign element is the issue of jurisdiction: which court is competent to hear such an international case? If, for example, a conflict arises concerning a contract between an English company and a Dutch company, should this issue be brought before a court in England or the Netherlands? The second issue that could arise after a decision on the competent court has been made is whether, for example, English or Dutch law would be applied to this case. Or, perhaps, the parties have chosen the law of a third country, or a uniform international law may even apply to their dispute. Finally, after the case has been decided, it is necessary to determine if, and under what circumstances, this decision can be recognized and enforced in another country. These three issues could be considered to be the nucleus of private international law, as it is generally accepted in most countries that these issues are part of private international law. (Kiestra, 2014: 14-15). It can be summarized that the scope of conflict of laws is confined to the rules on choice of courts, rules on choice of law and rules on recognition and enforcement of foreign judgment. (Fitwi, 2013: 6).

Generally, conflict of laws can be defined as a rule, which applies to cases arising from private nature with two or more legal units. It is a body of rules, which applies to a case that contains an extra-state element. For a certain case to have a foreign element either the events giving rise to litigation should, totally or partially, occur in the place other than the forum or one of the litigants should be a national or domiciliary of another state. (Gebretsadik, 2010: 2).

Whenever a court of a certain state is seized of a case having no-external elements, obviously, a question of jurisdiction arises. By the same token, a court of a certain state seized of a case having external element has to, make sure that it has jurisdiction over the defendant as well as the cause of actions. (Fitwi, 2013: 4) In other words, after considering the facts and circumstance of the case; the fundamental question of jurisdiction or competency of a court, without which the court cannot proceed, has to be answered. And jurisdiction of court of a state is defined as the power or ability of a state give a judgment enforceable or binding on individual or his property. In other words the court has to be competent to entertain a certain case. (Fitwi, 2013: 4).

When the court assumes jurisdiction to entertain the case, the next step is selecting the appropriate law under which the forum applies in determining the merits of the dispute.²⁰ It is to mean that the court has to scrutinize whether the law of the forum or the law of a foreign country which is connected to the issue of the dispute shall apply. (Fitwi, 2013: 5).

Recognition and enforcement of foreign judgments is one of the three parts of conflict of laws, besides jurisdiction and private international law (choice of law). This entry is confined to judgments of foreign States. It excludes the recognition and enforcement of foreign arbitral awards and the recognition of foreign legislative and administrative acts as well as the role of international judgments in national law, although there are some parallels in treatment (Michaels, 2009: 1).

The process of recognition and enforcement of foreign judgments belongs to a key issue whether the judgments will have legal effect in other state and will be enforceable on the



territory of another state. In case of impossibility to recognize foreign judgment in another state, the court decision loses its legal function and calls for weakness of the branch of law (Hradilova, 2008: 1).

It should be noted that the lexical meaning of foreign legal texts is of great importance in private international law. Nevertheless, only experienced legal interpreters are able to translate such texts. Thus, courts have to use of their ability in order to attain the true meaning of foreign law. The generally accepted definition of translation competence assumes the ability to express the source language message in the target language on all language levels, also including cultural elements present in the text or utterance. This transfer is to be accurate and should reflect the complexity of the original (Kosclalkowska-Okonska, 2010: 39).

Legal translation must be categorized as a main prerequisite for the stage of choice of law; during this process, judges should firstly take into account the precise interpretation of the foreign choice of law rules and secondly give attention to the true content of foreign substantive laws. Translation of legal texts is not a judicial task per se, but helps judges make sound decisions. It is often accomplished by certified translators and interpreters who manage or work for an official translation bureau. Those bureaus are members of the associations of certified translators and interpreters which are categorized as public sector entities. Their role in the administration of justice in private international law is undeniable.

Guardianship of unparented children is another issue, in which the discretion of public sector organizations is determinative; apart from courts, welfare organizations or offices of the public guardianship which are governmental entities play role during the process of granting a guardianship or custody.

Diplomatic and consular missions are also competent to make decisions on some issues of private international law abroad. For example, in those legal orders which the competent authorities' permit is necessary for the conclusion and registration of marriage between a citizen of the respecting state and a foreign national, they have full discretion in deciding whether to issue a marriage license after assessing the requirements and criteria of the applicants. Furthermore, any certificate of the compatibility of foreign documents with statutes of the relevant state should be issued by diplomatic and consular missions.

Departments of the registration of personal status have discretion in deciding on any question of birth, marriage, divorce and death. Thus, they can help courts decide in regard to choose the proper law in confronting with the cases of conflict of laws on some personal status issues.

Departments of the registration of deeds and real estate have a duty to consider the authenticity and validity of official documents. Whereas, such documents may be invoked during legal proceedings relating to conflict of laws, the importance of the administrative task of those departments is undeniable.

In the present article, I intend to clarify the role of public sector organizations in the context of conflict of laws issues including jurisdiction, choice of law and recognition and enforcement of foreign judgements. The discussions are not solely concentrated on a certain legal order, although, some references have been made to practice and mechanism of significant legal systems if necessary. However, the paper should be considered as a supranational research on this topic.



Courts

Courts have a significant role in the determination and enforcement of conflict of laws rules. First, they have a full power to decide on their jurisdiction. It is precedent to characterization the subject of the case and choice of substantive law which should govern on the merits. Additionally, they have full discretion in deciding whether to recognize and enforce the foreign judgement.

A. Jurisdiction

Naturally, jurisdiction is the power of a court or judge to entertain an action, petition or other proceedings. This means when a proceeding in respect of certain subject matter is brought in one court that a court is said to have jurisdiction. Jurisdiction also signifies the district or geographical limits within which the judgment or orders of a court can be enforced or executed (Gebretsadik, 2010: 39).

Since laws differ from one state to another often times, the conclusions for a defined problem are different, for different states. Exactly for this reason, it is important to define clearly which courts will have the jurisdiction in defined cases, and which would be the applicable law for the concrete case (Kazazi & Cela, 2015: 27).

International jurisdiction of a national court is regulated by the court's own national regulation of private international law. In certain contexts, such as in Europe, some aspects of international jurisdiction are regulated by conventions or supranational instruments. Thus, jurisdiction in civil and commercial matters is determined by the Brussels Council Regulation on Jurisdiction and the Recognition and Enforcement of Judgments in Civil and Commercial Matters (Cordero Moss, 2007: 4).

Obviously, a state's power to assert jurisdiction may not be challenged if a case is entirely between and among its residents or domicile arise, and for a claim or controversy that arose locally. No other state can claim to have an interest in resolving such cases, which are purely domestic to one state. The issue of judicial jurisdiction is, however, bound to arise when a case involves non-domestic elements that one of the parties, at least, is a resident /domiciliary of another state, or that the cause of action has arisen elsewhere (Gebretsadik, 2010: 13).

In order to understand the rules regarding jurisdiction, it is important to note that the question of jurisdiction is always dealt with from the viewpoint of the court which is actually seized by the parties to the proceeding. The seized court only has to answer the question whether it has jurisdiction to provide a decision. If it thinks that it has jurisdiction, it will accept the case. If it thinks that it has no jurisdiction, it will refuse to take the claim into consideration. The seized court does not have to investigate if there is a possibility that courts in other States may or may not deal with the lawsuit (Bilkis, 2016: 13).

It should also be considered that protection of a court's jurisdiction and processes is one thing and prevention of unacceptable behaviour in law is a completely different thing. Of course, Courts now embrace the doctrine of *forum non conveniens*' to prevent forum shopping, but this principle should only be applied where it is essential to do so for ends of justice and not merely for upholding the superiority of a particular forum. Therefore, the proper place to bring the claim should be determined considering the interests of all the parties and for the ends of justice. (So, when it comes to conflict of laws, responsible law courts should enforce a liberal public policy reflected in their law, acting as guardians of the standards usually accepted by civilized states. If „just and convenient solutions in the context of international



society” are among the ends of an efficient public international law, so they might – even should – be also of an efficient private international law. (Bilkis, 2016: 13). Furthermore, Necessity may also form a basis of the exercise of jurisdiction.

The provenance of the doctrine of jurisdiction by necessity is credited to civil law traditions, although there is some probability that the doctrine appeared at an earlier time in US jurisprudence than it did in the law or jurisprudence of any other country. The doctrine has roots in Article 6(1) of the ECHR which establishes a right of access to justice. Early adoptions of the doctrine were not based on statutory authority. In the Netherlands, for instance, where the doctrine was statutorily adopted at a relatively early time, even before the statutory adoption Dutch courts avoided jurisdictional injustices by extensively interpreting jurisdictional statutes ‘or by assuming jurisdiction as *forum necessitates*’, where there was a sufficient connection with the Netherlands. The doctrine’s first formal adoption may be found in the 1985 Inter-American Convention on Jurisdiction in the International Sphere for the Extraterritorial Validity of Foreign Judgments (Nwapi, 2014: 31), Article 2 of which provides:

The requirements for jurisdiction in the international sphere shall also be deemed to be satisfied if, in the opinion of the judicial or other adjudicatory authority of the State Party in which the judgment is to be given effect, the judicial or other adjudicatory authority that rendered the judgment assumed jurisdiction in order to avoid a denial of justice because of the absence of a competent judicial or other adjudicatory authority.

B. Characterization and choice of law

In the process of selecting or determining the applicable law characterization plays a significant role. It is obvious that different countries of the world have their own municipal legal system. And with in every municipal system of every country rules and principles are classified in the different divisions of the system. In other words, the rules of every state are classified under different categories such as succession, contract, tort, property and procedure. Therefore, a court, for the real application of the rules, has to place any situation of fact, on which it has to adjudicate, in to its appropriate law. Although this process exists in municipal law, it can be said that it creates no complex for it is a common process of the domestic courts. However, owing to the diversity of the laws of every country characterization appears to be a chronic problem in choice of law process (Fitwi, 2013: 11).

The concept of characterization is in itself a problem in the context of the private international law. So far the study relating to private international law is concerned, it is the established rules thereof that any court which assumes jurisdiction over a case that involves certain foreign element, has, at the first instance, to determine whether a given factual situation gives rise to rights, or imposes obligation, or creates a legal relations or an institutions or an interest in a thing (Agarwal, 2015: 45).

Characterization is defined as a process whereby it is determined whether a certain disputed matter is allocated in to the potentially applicable categories or not. It is also defined as an analysis undertaken by the court in the allocation of the question raised by the factual situation (example, tort, contract succession) and of the nature of each question (whether it is a matter of ‘procedure’ or of ‘substantive’ law) in order to reveal the appropriate system of law. It is



simply to mean that characterization is the determination of the legal nature of the matter at hand in to its legal category (Fitwi, 2013: 11).

Characterization includes the following three things. The first one relates to the determination of whether, for instance, the disputed question before a court is a tort or contract issue and this process is known as subject matter characterization. The second part relates to the use and definition of connecting factors. The selection of the governing law is conditioned by what is called a connecting factor. The connecting factors employed by the conflict of laws are not very numerous. They include the personal law (domicile, habitual residence, and very rarely, nationality), the place where the transaction takes place, the place of performance, the intention of the parties, the *situs*, and the place where the court (forum) is sitting. In attempting to determine what law governs such situations, courts seek guidance from connecting factors, that is the factors which link to an event, a transaction or a person to a country (Gebretsadik, 2010: 15).

The connecting factors determining one's personal law varies from one legal system to another. For instance, common law legal systems generally adopt 'domicile' as a relevant connecting factor, civil law legal systems adopt 'nationality', and Islamic law assigns personal law by reference to 'religion'. But, connecting factors have no independent significance. They only provide the means to choose the appropriate law, but they cannot determine that choice. They are nearly determined by the law of the forum. The third and last part relates to the extent of the application of the law that has already been selected (Gebretsadik, 2010: 16).

It can be said that whether or not the question and the subsidiary questions that might arise after the foreign law has been chosen by the *lex fori*, should invariably be referred to the *lex causae*. The answer to the question would be simple if the characterization of the problem at this stage merely involves the application of foreign internal law-the answer would be that, the foreign law should govern. Thus, if the proper law to be applied is directed to be, say, French law, then if the case is, say, of contract or of tort, all subsidiary questions, as for instance, whether the contract is to be regarded as a loan or deposit, or whether master is responsible for the tort of the servant, should be governed by the *lex causae* (Agarwal, 2015: 51).

As it can be seen above, the role of courts in the characterization process is determinative, because the result will be the enforcement of municipal and/or foreign law on the merits. The triple stages of characterization are fully in the ambit of judges' discretion. It is a mere judicial decision and no other entity can intervene in this task. This stage of conflict of laws obviously reflects the separation of powers and the judiciary independence. After the characterization of the legal subject, the court should choose the proper law upon the conflict of laws rule by the *lex fori* and the connecting factors as it considers appropriate.

C. Renvoi

The *renvoi* is an institution of Private International Law that allows the possibility for the foreign law declared as competent by the conflicting norm of the forum court, to decide in turn, to make a *renvoi* through its own conflicting norms, to another law, either to the approached court's law, or to the law of a different legal system. The *renvoi* implies a conflicting between conflicting norms. This conflict can be positive or negative. We can state the presence of a positive conflict between the conflicting norms (between the conflicting norm of the forum court and the foreign conflicting norm declared competent) when both conflicting norms stipulate that their own law is competent to regulate the judicial relation



with foreign element. For instance, to regulate the succession of an Italian citizen who owned an immovable property in France, the French conflicting norm declares competent the law of the place where the property is located, in the French law, while the Italian conflicting norm declares competent the Italian national law of the citizen, i.e. the Italian law. In this case, the positive conflict arises between the French conflicting norm and the Italian conflicting norm (Remus Daniel, 2013: 66-67).

This being so, however, in the course of selecting the applicable law the problem of “Renvoi” arises. And the term “renvoi”, which is a French word, means “refer back” or ‘sending before the court’. Such a problem exists whenever the choice of law rules of the forum refers a disputed matter to a foreign state and the conflict of law rules of whose would have referred the matter to the forum or to the law of another third legal unit (Fitwi, 2013: 7).

In the case of the positive conflict, there will be no renvoi because this conflicting will be solved in the sense that the court will take into account its own conflicting norms. If the issue is to be solved by the French court, the French conflicting norm will be applied, and if the issue is raised to the Italian court, the Italian conflicting norm will be applied. As for the negative conflict, both conflicting norms in presence declare unqualified their own material law to manage the judicial relation with element of extremity. In this case, the forum law court pronouncing itself as unqualified to manage the judicial relation, assigns this responsibility to another law, meaning it refers to another foreign law. If the latter does not accept the given competence and declares competent another law (that of the Court of the judicial forum or that of a third country) regarding that judicial relation, renvoi to that law (Remus Daniel, 2013: 66-67).

Thus, renvoi is a state in which the relevant legal systems refrain from applying their substantive law on the matter, because of the content of the related choice of law rule. In other words, the legal orders to which the case is somehow related, do not exercise their legislative jurisdiction.

There are two forms of renvoi, namely, first degree renvoi or single renvoi is that form when the foreign law refers to the forum law, and if the renvoi is accepted, the approached court shall apply its own domestic law. Second degree renvoi can be a means of coordination of law systems in the presence, if one of those law systems does not accept the renvoi (Remus Daniel, 2013: 66-67).

In the case of second degree renvoi in those legal orders which explicitly permit the application of first degree renvoi, two different viewpoints may arise on the application of the renvoi made by the foreign state; some researchers believe that it is obligatory for courts not to apply this form of renvoi, but others consider it as discretionary. For instance, this difference of opinions exists among Iranian private international law writers, the reason of which is the wording of Article 973 of the Civil Code which provides:

If the foreign law that should be applied according to Art. 7, Vol. 1, or other articles of this Code, refers the settlement of the litigation to a third legal order, the court will not be obliged to observe this renvoi, unless it is referred back to the Iranian law.

As it can be seen, the first section of the article states second degree renvoi; the expression ‘*the court will not be obliged to...*’ has caused confusion. Some writers believe that upon the lexical



meaning of the expression, the application of the law of the third state to which resolving the issue has been referred, is discretionary for Iranian courts (Arfa Nia, 1997:72). In contrast, most of authors are of the opinion that Iranian judges are obliged not to observe second degree renvoi. They argue that the expression *‘the court will not be obliged to observe this renvoi...’* does not mean that it is optional with Iranian judges whether second degree renvoi is to be observed, but it implies that they are not permitted to observe this form of renvoi (Almasi, 2001: 129-130; Saldjoughi, 2005: 236).

D. Recognition and Enforcement of Foreign Judgements

The judgments of one State's courts have no force by themselves in another State. This is often unsatisfactory. Parties are interested in transnational legal certainty and in avoiding repeated litigation and conflicting decisions; the general public has an interest in avoiding resources spent on re-litigation and in international decisional harmonies; and States have a common interest in promoting inter-State transactions. However, States have valid reasons to deny foreign judgments the same force they grant their own judgments since the foreign procedure may be viewed as deficient, or the outcome of the foreign litigation may be viewed as objectionable. The field of recognition and enforcement of foreign judgments mediates between these competing considerations (Michaels, 2009: 1).

Each state specifies, in its conflict rules, those conditions under which a foreign judgment may be recognized and enforced. Foreign judgment would be enforced by a competent court if it satisfies those requirements prescribed by the local law for that purpose. Even if these requirements or conditions usually differ from country to country, one can make a general conclusion that in most countries a foreign judgment cannot be enforced if a foreign court, which rendered the judgment, had no jurisdiction of the judgment, violates the local notion as to public policy or good morals (Gebretsadik, 2010: 18). Furthermore, reciprocity is also a determinative basis of the recognition and enforcement of foreign judgments.

Although countries worldwide recognize and enforce foreign judgments under some conditions, differences are vast. Some countries do not enforce foreign judgments in the absence of a treaty. This is the case for the Netherlands—in theory, because in effect the substance of foreign judgments is not reviewed—and some Scandinavian countries. By contrast, some legal systems recognize foreign judgments more or less to the same degree as domestic judgments. This is the case for the United States, where the generous treatment owed under the Constitution to sister-state judgments is expanded by many states to foreign nation judgments. Between these extreme positions, countries have a variety of domestic rules allowing or mandating enforcement under certain conditions (Michaels, 2009: 3).

The recognition and enforcement of foreign judgments is proceeded in three steps:

1. the recognition of foreign judgment,
2. the declaration of the enforcement of the foreign judgment (exequatur),
3. the enforcement of foreign judgment. (Hradilova: 1).

The most important obstacle of the recognition and enforcement of foreign judgments is public policy. National courts always retain the power to refuse to apply a foreign law or recognise or enforce a foreign judgment on the grounds of inconsistency with public policy. The law which would ordinarily be applicable under choice of law rules may, for example, be denied application where it is “manifestly incompatible with the public policy (‘ordre public’) of the



forum”, and a foreign judgment may be refused recognition on the grounds that, for example, “such recognition is manifestly contrary to public policy in the [state] in which recognition is sought”. The existence of such a discretion is recognised in common law rules, embodied in statutory codifications of private international law, including those operating between European states otherwise bound by principles of mutual trust, and is a standard feature of international conventions on private international law. It has even been suggested that it is a general principle of law which can thus be implied in private international law treaties which are silent on the issue (Mills, 2008: 1).

Diplomatic and Consular Missions

Consular responsibilities range from discretionary, to regulatory obligations, to obligations written into statute, to constitutional obligations. In recent years, several Western governments have vocally sought to restrain demand. However, in many rising powers, there is a strong sense that it is the responsibility or even duty of the state to protect its overseas citizens. Protection is associated with state legitimacy (Haynal et al., 2013: 9-10).

According to article 3 of the 1961 Vienna Convention³, the functions of a diplomatic mission are as follows:

- 1) Representing the sending State in the receiving State;
- 2) Protecting in the receiving State the interests of the sending State and of its nationals, within the limits permitted by international law;
- 3) Negotiating with the Government of the receiving State;
- 4) Ascertaining by all lawful means conditions and developments in the receiving State, and reporting thereon to the Government of the sending State;
- 5) Promoting friendly relations between the sending State and the receiving State, and developing their economic, cultural and scientific relations.

There is a close connection between representation, negotiation and protection functions. By performing the latter, the diplomatic mission achieves protection of interests that the sending State and the personnel under its authority might have in the country of residence. Actually, when the diplomatic mission represents its State and negotiates with authorities in the receiving State, then it acts in the name of specific interests, in order to accredit and promote these interests. The defence function as recognized by international law allows the diplomatic mission to offer diplomatic protection to citizens of the sending State, who are or live in the receiving State. Interventions at a diplomatic level can eliminate prejudicial pursuit, repair prejudice suffered by these citizens and try by lawful means to defend them against unlawfulness they could be subjected to (Iucu, 2010: 132).

Consular cooperation on children and family issues faces a growing caseload. Child abduction has received the most attention from policy-makers, but international adoption, forced marriage, child support enforcement and other issues are garnering attention (Haynal et al., 2013: 18). Consular agents have an important role in the prevention of illegal and forced marriage of the respective state’s citizens abroad. They are obliged to register marriage and divorce of the sending state’s nationals and issue the related certificates on these legal events. In addition, competent consular agents should affirm and certify the parental consent for the conclusion of marriage, when such consent is legally necessary. In conflict of laws cases, courts consider these official certificates as probative evidence.



Registration Offices

Registration offices refer to any governmental or public institution which has a duty to register a legal event or a document. The importance of their functions is undeniable, because any document registered by those offices is deemed as an official instrument and possesses a very high authenticity in every legal system. Institutions which accomplish this obligation cover a vast range of entities with a variety of structures, objectives and subject matters.

Marriage and divorce registration offices register any marriage and divorce between spouses, either citizens of the respective state or foreign nationals. Those offices have a significant role in the context of personal status questions relating to conflict of laws.

Marriage is an institution; in the maintenance of which in its purity, the public is deeply interested as for it is the foundation of the society without which there would be neither civilization nor progress. It has also importance under the law because marriage confers a variety of rights, privileges, and obligations that are unique to the institution of marriage (Gebretsadik, 2010: 35). Therefore, any certified document on marriage is of great importance. Courts undoubtedly refer to these documents in order to establish the marital relations between the litigants during the proceedings of conflict of laws cases. Divorce has also importance in the case of the conflict of law. Thus, documents confirming divorce are very important and determinative of final judicial decision.

Departments of the registration of personal status are also among institutions which play significant role in conflict of laws issues. They register birth and death of all habitants of the respective country. Nationality and domicile are two determinative factors of the governing law on personal status in different legal systems. Thus, the role of these departments is obviously important.

Departments of the registration of deeds and real estate also have an important role in this respect. Official documents of real estate are invoked before civil courts in order to establish matters such as ownership, partition of common estate, company formation and liquidation etc. These matters arise in the cases of conflict of laws regarding ownership and possession of real estate belonging to foreign national and/or nationals of the respective state abroad.

Registration offices should be regarded as third parties in the respect of disclosure of documents in civil proceedings including conflict of laws cases. A party may apply for an order for disclosure from third parties not involved in the proceedings and will be able to obtain specified documents or classes of documents if it can show that (i) the documents are likely to support its case or adversely affect the case of another party and (ii) disclosure is necessary in order to dispose fairly of the claim or to save costs (Lovells, 2017: 9).

Guardianship Authorities

National guardianship systems are an integral part of child protection systems. They should seek to respond to the needs of all children who are permanently or temporarily deprived of parental care and need protection. (European Union Agency for Fundamental Rights, 2014: 17) Transnational cooperation should go beyond the cooperation of judicial or police authorities. When necessary for the child's best interests, this cooperation should extend to national child protection authorities, including guardianship authorities, both within EU Member States and with third countries. Such cooperation should not be limited to only certain categories of children (European Union Agency for Fundamental Rights, 2014: 23).



Almost in all countries, the appointment of the guardian is, in any case, left to the judicial authority, which has no unified eligibility criteria on which the appointment is based apart from the general provisions provided by the Civil Code? This lack introduces an element of considerable subjectivity, compromising the principle of accountability. In other words, what judges are based on to appoint a guardian cannot be determined. There is no guarantee that the best interest of the child is the principle that guides the judge's decision. Nor is it possible to assess the appropriateness of guardians to represent children's best interest and perform their duties. The lack of clear normative defining procedures, methods and standards and the fact of not considering guardianship as an integral part of the wider child protection system gives place to heterogeneity of practices not only with regards to the appointment of the guardian but more generally in guardianship management. Interviews revealed that this is an important weakness. The other possible and more recent mechanism to appoint voluntary guardians responds to initiatives taken at the regional or local level (Safeguard Project, 2016: 14).

The institution in charge of implementing guardianship responsibilities can be a central institution responsible for the whole country or a regional or local institution (European Union Agency for Fundamental Rights, 2015:27). For instance, in Italy, the National Authority for Childhood and Adolescence was established in 2011 aiming at ensuring the full implementation and the safeguard of the rights and interests of minors (Safeguard Project, 2016: 14).

Most EU Member States entrust guardianship functions to municipal or local-level social services, and less than one in four has a central guardianship authority at national level. When guardianship is implemented at a regional or local level, different approaches may be applied in different parts of the country, as occurs in Austria and Germany, for instance. In some Member States, responsibilities are shared between regional and local level. In Poland for instance, the social services at local and regional level identify relevant cases, organise foster care and signal the need to appoint a representative or a guardian under Polish family law. For foreign nationals, the Law of 13 June 2003 on Granting Protection to Foreigners in Poland states that a guardian can be appointed upon the request of the President of the Office (a national level institution). The only body with the competence to issue decisions on guardianship is the family court, operating at local level. In Belgium, the Guardianship Service under the Ministry of Justice is the responsible guardianship authority for third-country and EEA unaccompanied children, whereas guardianship for national children deprived of parental care is regulated at local level. This is also the case in Finland, where the Migration Service is responsible for unaccompanied asylum-seeking children, while local child protection services are responsible for national children (European Union Agency for Fundamental Rights, 2015:27).

Legal Translation and Interpretation bureaux

Despite the fact that the translation of legal documents belong among the oldest and most important in the world, legal translation has been neglected in translation studies and studies in the field of law. Even more startling fact is the low attention given to legal translation from representatives of the legal profession, though it is in today's world that this area of translation plays an important role as a means of communication at national, transnational and international law (Schneiderová, 2016: 347). This role is more highlighted in the context of



private international law, because the cases of this branch of law relate to two or more countries mostly with different official languages and separate legal texts.

As legal and administrative systems evolved parallel to growing population mobility, the creation of civil registers to record births, deaths, and marriages marked the onset of administrative control of every area of our lives, and, thus, the need for the documents emanating from official institutions to be translated increased. Consider, for example, the European Commission Directorate-General of Translation, which translated more than 2 million pages in 2013 for European Union citizens into the 24 official languages at a cost of about €1 billion per year (Way, 2016: 1011).

Court interpreting is undoubtedly a demanding and challenging task. In some cases it is a combination of translation (should the need arise) and interpreting with all potential problems related with differences between those two modes, with differing specificities of the job, and with a variety of areas to be covered. It requires the knowledge of an entire spectrum of fields and domains, not to mention the legal one, which in this particular type of the interpreter's work is especially important (Kosclalkowska-Okonska, 2010: 45).

The theory of translation is based on an understanding of two texts: a source text which is to be translated and a target text which is the result of the actual translation process. The task of the translator is to establish a relationship of equivalence between the source and target texts, i.e. a substantive homogeneity (Galdia, 2003: 1). The generally accepted definition of translation competence assumes the ability to express the source language message in the target language on all language levels, also including cultural elements present in the text or utterance. This transfer is to be accurate and should reflect the complexity of the original (Kosclalkowska-Okonska, 2010: 39).

Legal translation bears the added burden of taking into account legal aspects that are not found in other texts. Legal translators must work not only between two languages and two cultures but between legal systems that are very different due to the strong sociocultural and historical influence exerted on them. This is aggravated by the fact that the systems are not even synonymous with countries: Common law, as the basis of the legal system, may apply in the United States, England, and Wales, but not in Scotland; nor entirely in the state of Louisiana, which has a mixed legal system due to the French influence there; Australia may use common law, but this has developed according to its own sociocultural context. In the United States, the division of federal law and state law also complicates the task. Roman law extended from Spain to much of South America, where it evolved differently within each system and is subject to the linguistic variations of each country. This added complexity is partly to blame for the neglected field of legal terminology (Way, 2016: 1012).

Fidelity, impartiality, confidentiality and professional conduct are key characteristics of professional translation. These factors form an essential element known as quality which is of great importance in conflict of laws cases.

In efforts aiming at defining quality we should concentrate on a triad of factors vital for successful performance, i.e., the interpreter (as the author/ producer of the text), the interpreting process and the interpreting product. The product itself is the final stage in the quality-operation mechanism as it is the stage in which quality of the interpreter's performance is revealed. This quality is the result of the operation of the aforementioned linguistic, extra linguistic and cognitive domains. The interpreting product is subject to



quality-oriented assessment (including also formal requirements such as professional standards or codes of ethics in force). The interpreting process encompasses specific stages of the process (e.g., preparation for the task, information collection and research) (Kosclalkowska-Okonska, 2010: 42).

CONCLUSION

Private international law is a two-sided branch of law. It applies to the cases which have both national and supranational aspects, the latter raises conflict of laws questions. Thus, it relates somehow to sovereignty issues and then the role of public sector organizations is of great importance in the conflict of laws context. Conflict of laws covers three different but related matters, namely, (i) jurisdiction, (ii) characterization and choice of law and (iii) the recognition and enforcement of foreign judgments. Public sector organizations play determinative roles in resolving conflict of laws disputes.

Jurisdiction is to be determined by the court before which the action has been brought. No other national or foreign entity may intervene in the determination of jurisdiction. Furthermore, the respective court only has to answer the question whether it has jurisdiction to consider the action and does not have to investigate if there is a possibility that courts in other States may or may not deal with the lawsuit. Thus, unlike choice of law questions, rules regarding a court's power to assert jurisdiction have only municipal aspect.

Characterization is a prerequisite for choice of law. It includes three interrelated stages: subject matter characterization, the use and definition of connecting factors and the extent of the application of the law that has already been selected. Thus, it can be said that choice of the proper law is the result of the characterization process.

Renvoi refers to a negative conflict between national legal orders and arises whenever the choice of law rules of the forum refers a disputed matter to a foreign state and the conflict of law rules of whose would have referred the matter to the law of the forum (first degree renvoi) or to the law of another third legal system (second degree renvoi).

Recognition and enforcement of foreign judgments is another feature of private international law. It is based on two essential factors, namely, reciprocity and public policy of the country in the territory of which, the judgment is to be exercised. There are three different approaches regarding the recognition and enforcement of foreign judgments and various countries may be categorized as such. Some countries do not enforce foreign judgments in the absence of a treaty. By contrast, some legal systems recognize foreign judgments more or less to the same degree as domestic judgments. Between these extreme positions, countries have a variety of domestic rules allowing or mandating enforcement under certain conditions, including reciprocity and the observance of their public policy.

Besides courts, registration offices and legal translation and interpretation offices are also considered as important organizations in the public sector which participate in resolving conflict of laws disputes. It is obvious that the accuracy and quality of their fulfilment of functions realize legal justice in private international law. In other words, courts are unable to administer justice without official translators' or interpreters' viewpoints and/or certificates of registration offices in conflict of laws cases.



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