

University of Szeged - Hungarian

Academy of Sciences

Federal Markets “Momentum” Research
Group



MINISTRY OF JUSTICE
HUNGARY



Global challenges, European unification and national diversity in private international law

November 17, 2017

Venue: University of Szeged Rector's Office, ground floor room 5.
6720 Szeged, Dugonics square 13.

Convener:

Prof. Csongor István Nagy, professor of law and head of the HAS-Szeged Federal
Markets “Momentum” Research Group

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The last one and a half decades saw a legislation boom in the field of EU private international law (EU PIL) – EU conflicts instruments have gradually taken over national rules and today the overwhelming part of private international law (PIL) has been shifted to the EU level. In terms of significance, these changes parallel the American choice-of-law revolution with the difference that the European conflicts revolution is rather a legislative boom and shift of conflicts law from state to federal level without questioning its core foundations and principles.

Nevertheless, while the European choice of law revolution has indeed entailed no paradigm-shift and is based on the “savignyan” conception of choice of law, it has produced a number of novel and distinctive features distinguishing it both from Europe’s pre-revolution conflicts landscape and other conflicts systems of the world. First, EU PIL is probably the first major conflict of laws system which has no uniform substantive law or at least “monolingual” substantive laws (as the United States has). This has implied that EU PIL had to develop its own conceptual structure autonomously without an entrenched notional architecture. Second, EU PIL has, so far, not developed a general part addressing the various cross-cutting issues of conflicts law. While issues like *renvoi* and public policy (and imperative norms) are sporadically addressed, characterization, pre-question and fraudulent connection are left out from the EU codification. Third, it is a novel feature of EU choice-of-law that it relies extensively on party autonomy: with this approach it probably stands out from the various systems of the globe through featuring party choice not only in contract law but also in various other fields, such as torts, divorce, maintenance, matrimonial property and succession. The prevalence of party autonomy is a special feature of European choice-of-law, which may be explained by the special traits of the European integration. Fourth, the extensive use of escape clauses also distinguishes EU PIL from its “pre-revolution” predecessors. While European choice-of-law systems have created various opportunities for courts to apply a law different from the one otherwise applicable, such as the ubiquity principle in tort law or the application of a law more favorable to the child, the possibility to apply the most closely connected law became prevalent as a result of the EU’s choice-of-law revolution. Although it would be an exaggeration to say that with this the EU moved in the direction of American choice of law relying on “approaches” instead of “rules”, the discretion of courts has been significantly widened. Finally, EU PIL has so far declined to address the conflicts issues of arbitration. While this was due to the fact that arbitration has been intensively regulated on the international level, the frictions between arbitration and EU private international law has created a number of questions and a significant body of case-law, calling for the settling of the relationship between the two fields.



Pólay Elemér Alapítvány

Although revolutions usually promise something qualitatively new, they are normally neither rootless, nor completely uninfluenced by the things they wish to leave behind. EU private international law has been fostered by the various highly developed national conflicts systems it amalgamated instead of surpassing. Furthermore, national regimes have not only been the Caballine Fountain but also the framework of operation of the sporadically developing EU conflicts law. The EU PIL revolution has raised various new issues of interpretation (application), accommodation and reconciliation, and has called for the re-thinking of national PILs. While the development of EU conflict of laws has been, in terms of competence and pre-emption, a one-direction move from national to EU law, in terms of substance, it has been characterized by impact and reverse impact, interaction and cross-fertilization. This process has plastically manifested itself in countries whose private international law went through a reform or recodifications in the last one and a half decades.

Due to recent re-recodifications and major reforms, some countries gained significant experiences regarding the symbiosis of the EU and national regimes. Private international law has recently been re-codified in Poland (2011), the Czech Republic (2012) and in Hungary (2017); in Romania, the new civil code of 2009 brought new conflicts rules, while re-codification is pending in Croatia. While it is not an exaggeration to predict the twilight of national private international laws in the European Union, this promises to be a long and mentally demanding process, which should and will be fed my national systems, concepts and doctrines, as it has been the case so far.

The conference addresses the distinctive features of the emerging EU private international law, including their causes and consequences and, through the lenses of various national jurisdictions and codifications, it presents the evolving interaction between EU conflict of laws and national systems featured by various forms of cross-fertilization.



Conference program

9:30 – 10:00 *Registration*

10:00 – 10:10 Csongor István Nagy, professor of law, University of Szeged
The EU's conflicts law revolution

SESSION 1

Global challenges

Chair: Tibor Várady, professor emeritus, Central European University

10:10 – 10:30 János Martonyi, Chair of UNCITRAL, professor emeritus,
University of Szeged
ISDS and UNCITRAL

10:30 – 10:50 Vesna Lazic, senior researcher, Asser Institute
Arbitration in EU private international law

COFFEE BREAK

SESSION 2

European perspectives

János Martonyi, Chair of UNCITRAL, professor emeritus, University of Szeged

11:10 – 11:30 Mihail Danov, associate professor, University of Exeter
*Cross-Border Litigation in England and Wales: New Data and the Brexit
Implications*

11:30 – 11:50 Markus Petsche, associate professor, Central European
University
Non-state law and EU private international law

11:50 – 12:10 Csongor István Nagy, professor of law, University of Szeged
Party autonomy as a pillar of EU private international law



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SESSION 3

National perspectives

Chair: Csongor István Nagy, professor of law, University of Szeged

13:30 – 13:50 Carmen Otero, professor of law, Complutense University
Spain

13:50 – 14:10 Emmanuel Guinchard, senior lecturer, University of Northumbria
France

14:10 – 14:30 Claudiu Buglea, associate professor, University of Bucharest
Romania

COFFEE BREAK

SESSION 4

National perspectives

Chair: Zoltán Víg, associate professor, University of Szeged

14:50 – 15:10 Mátyás Császár, associate professor, University of Szeged
Hungary

15:10 – 15:30 Elena Judova, professor of law, Matej Bel University
Slovakia

15:30 – 15:50 Grzegorz Gorczyński, lecturer, University of Silesia
Poland

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SESSION 5 **National perspectives**

16:10 – 16:30 Bernadett Bordás, professor of law, University of Novi Sad &
Sanja Marjanovic, assistant professor, University of Nis
Serbia

16:30 – 16:50 Davor Babic, professor of law, University of Zagreb
Croatia

16:50 – 17:10 Katažyna Mikša, associate professor of law, Mykolas Romeris
University
Lithuania

Closing remarks