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CHOICE OF LAW IN PRIVATE INTERNATIONAL LAW

ВИБІР ПРАВА В МІЖНАРОДНОМУ ПРИВАТНОМУ ПРАВІ

Plhakova J.,
Doctor of Law,
PhD Student at the Department of International Law
Comenius University in Bratislava

The aim of this contribution is to a more detailed analysis of one of the principles of private international law and choice-of-law, t. j. the choice of the applicable law. Choice of law comes into question in cases where for the participants of contractual relations occurs a collision of two or more laws involved, which is possible on a contractual relationship with an international element to apply. The way options of one of these governing laws, and other laws of the waive. As regards the national law, so the possibility of the choice of law is very narrow, however, in international law, plays a choice of law an important role. And especially in international trade. Allows participants of contractual relations made subordinate to a particular legal relationship, this legal order, which appears to be like for them most optimal. Choice of law has resulted in order to prevent any legal disputes and ensure the participants of contractual relations legal certainty as regards applicable law.

Choice of law in the present time is therefore not only a legal issue but I can say with reference to processed issue that significantly interferes with and into the economic sphere of the participants of contractual relations. Thanks to the choice of law, participants of the contractual relations to optimize their business activities.

Choice of law may be made by the legislator in each of the states is limited. With a choice of law arises and the issue of circumvention of the law, or abuse of law. Of course, that the deliberate circumvention of the law through choice of law has resulted in the prosecution of the participants of contractual relations. However, we cannot punish the participants of contractual relationships, if made a legal transaction in that country only, therefore, of the view that the choice of law, it is for them most acceptable result. It is always necessary to examine the intent as well as consequence. Currently, the principle of choice-of-law started to apply and for the regulation of international family law, international inheritance law. Choice of law brings to the participants of contractual relations in particular benefits. Selected right it is possible to change during the duration of the relationship, i. e. adapted to the circumstances.

Key words: legal conflict, norm, legal order, international law, legal relations.

У статті надається детальний аналіз одного з принципів міжнародного приватного права – вибору права, тобто визначення того, право якої держави підлягає застосуванню до правовідносин з іноземним елементом. Вибір права є необхідним у випадках, коли щодо учасників договірних відносин виникає колізія двох чи більше правопорядків, які можуть бути застосовані щодо договірних відносин з іноземним елементом. Ідеться про спосіб вибору одного з таких правопорядків, при цьому застосування інших правових порядків буде відхилене. Коли йдеться про національне право, можливість вибору права є дуже вузькою, однак у міжнародному праві вибір права відіграє важливу роль. Насамперед це стосується міжнародної торгівлі. Вибір права дає можливість учасникам договірних відносин підпорядкувати конкретні правові відносини тому правовому порядку, який буде для них найбільш оптимальним. Вибір права сприяє запобіганню виникненню судових спорів та забезпечує учасникам договірних відносин правову визначеність щодо права, яке підлягає застосуванню.

Вибір права на сьогодні не є виключно правовим питанням. Автор, спираючись на дослідження цієї проблематики, доходить висновку, що вибір права суттєво впливає на економічну діяльність учасників договірних відносин. Завдяки вибору права учасники договірних відносин мають можливість оптимізувати свою господарську діяльність.

Вибір права може бути обмежений в окремих державах законодавцем. З вибором права виникає також проблема обходу закону, тобто зловживання правом. Звичайно, навмисний обхід закону шляхом вибору права призводить до притягнення до відповідальності учасників договірних відносин. Однак учасники договірних відносин не можуть бути покарані тільки з тих підстав, що внаслідок вибору права щодо них виникли найбільш прийнятні результати. Завжди необхідно встановлювати наміри учасників правовідносин, а також наслідки, що виникли. Нині принцип вибору права почав застосовуватися також для врегулювання питань міжнародного сімейного права та міжнародного спадкового права. Вибір права приносить учасникам договірних відносин насамперед вигоду. Крім того, є можливість зміни обраного права впродовж здійснення правовідносин, тобто адаптуватися до обставин.

Ключові слова: правова колізія, норма, правовий порядок, міжнародне право, правовідносини.

Formulation of the problem. In private international law occurs between the participants of contractual relations to the collision of two or more laws involved. This problem allows you to solve one of the principles of private international law, and it is the choice of law, which is used mainly in international commercial law. Choice of law allows participants of a contractual relationship to choose the most optimal legal rules, through which they reach the specified result.

For participants of contractual relations is an important detail to know the issue of the principles of choice of law, as this does not affect only the legal field but also in the economic. The objective of this contribution is the processing of the classification to the choice of law but at the same time point out the possible misuse or circumvent the choice-of-law.

Analysis of publications in which there is a solution of this problem. The problems of the role and place case-law of the European Court of Human Rights in national law has been studied by many scholars. The most significant works have been done by K. Csach, E. Judova, E. Dobrovolna, J. Hurdik, M. Seluska, P. Briza, Z. Kuchera, N. Stefankova, P. Lysina, M. Benecke and others. Among Slovak scholars, the problem present very devoted by assistant professor of faculty of law at Comenius University in Bratislava JUDr. Peter Lysina, PhD, however, has not yet been completely processed by any Slovak entity and, consequently, the need for further study.

Basic content. Institute of choice of law in terms of its present-day position is solved in the framework of the current Union legislation of the Convention of April 19. June 1980 on the law applicable to contractual obligations (hereinafter "Rome convention") and the Regulation of the European parliament and of the Council (EC) № 593/2008 of 17. June 2008 on the law applicable to contractual obligations (hereinafter the "regulation Rome I"). Even though the Rome convention is no longer current effective tool úniového rights, with effect from 17. December it replaced the "regulation Rome I", Art. 28 of the Rome I regulation provides for its application to contracts concluded after 17. December 2009, to contracts concluded before this date continue to be governed by the provisions of the Rome convention. At the same time, according to the Art. 24 of the Rome I regulation there are states to which the regulation Rome I does not apply. These countries are Great Britain and Ireland, as stated in a Regulation of the European parliament and of the Council (EC) № 593/2008 of 17. June 2008 on the law applicable to contractual obligations (Rome I) (hereafter referred to as "Regulation RIM I").

As the notes Širicová the reason for this change was the need to align EU legislation [1]. As shown, proper functioning of the internal market requires that the conflict of laws rules applicable in the member states determined the use of the same national law irrespective of the court of which country the case is heard, in the interest of predictability to the outcome of litigation, certainty as regards the law applicable and the free movement of judgments. In parallel, it is preferred to apply the international treaty unifies rules on conflict of laws (traffic accidents, parental rights and obligations…). As shown in Art. 2) of the Regulation Rim, I "*the law determined by this regulation shall apply regardless of whether or not it is the law of a member state*" (Art. 2).

From the historical point of view, has this principle, which is now considered an obvious part of the private sphere of international law, the roots of up to 16. century notes in his work Z. Kuchera [2, p. 67]. With the increase of relations between individuals from different government departments according to him expressed the need for a legal way to deal with a new type of social relations, and of private-law relations with a foreign (international) element. This trend continued up to the present time, and currently occupies the principle of autonomy of choice to the leading place in the theory of private international law.

Choice of law can be understood to mean, according to Z. Kucera in relations with an international element, the choice of legal order as a whole, including its indicative and mandatory standards [2, p. 73]. Choice of law arises in a situation where we elect in the result of collision of two or more laws involved, which is possible on a contractual relationship with an international element to apply. The way options of one of these governing laws, the other laws of the waive, including their mandatory standards. The possibility of the choice of law, even within the purely national relationship is rather limited. In most developed countries of the world, within the framework of the elimination of barriers in international trade, also thinking about the freedom of trade allows you to in the present choice of law, as a basic part of their governing laws.

In this way, participants of the contractual relations a particular legal relationship subjected to the rule of law, which to them seems like a most optimal, and in this way they can achieve also minimize the risk of any litigation, the maximum possible degree of legal certainty in relation to the decisive law. It provides them also a space to optimize the costs of the implemented transactions and thereby achieve maximum gains from them. Choice of law becomes - in connection with the above - a major legal and economic institute.

Choice of law thus refers to a particular kind of legal norm in international law, its specific form in the form of a standard conflict of laws. Conflict of laws rules have the task of choice of the applicable law, while according to Širicovej in the absence of choice the applicable law specifies 4 specific contract types with a special conflict modification – the contract of carriage, consumer contracts, insurance contracts and individual employment contracts [1].

Article 3 of the Rome I Regulation regulates the question of choosing the applicable law, and is based on the contractual freedom of the parties, i. e. on the fundamental principle of private law, as well as the fundamental principle of the Rome I Regulation [3, p. 126]. "The freedom of parties to choose the applicable law should be one of the basic elements of the system of conflict of laws rules in the area of contractual obligations" (the preamble of the Rome I Regulation, paragraph 11). This is called the "the Free choice of law. This name captures the principle which was enshrined in the law and the case law of the then signatories of the Rome convention" [4, p. 221].

According to čl. 3 para. 1 the Rome convention the contract is governed by the law that the parties themselves will choose. In the case of connecting an unlimited choice of law. The parties can also choose any of the currently valid legal order one from the states. On this, he says I in the Giuliano/Lagarde report (comment Art. 3 in the Giuliano/Lagarde report). It is excluded the possibility to choose the order beyond the state of the nature, for example, the principles of UNIDROID and INCOTERMS. If the overriding mandatory rules of applicable law allow, to give to them in the agreement to refer. Referred to choice of law, in my opinion, allows for the circumvention of the law. While it is impossible to choose the order beyond the state of the nature, however, allows the possibility of a reference to it directly in the contract upon agreement of the parties. The Rome convention was conceived as an erga omnes, embedded in the Art. 2, which means its use by the courts regardless of the parties and the chosen law. This universal character emerges from the purpose of the adjustment, which is the unification of certain parts of the collision law in the member states in general, i. e. not only for relations between them [5, p. 78]. The contracting parties may choose the law applicable to the entire contract or only its part. According to the Giuliano/Lagarde report, this is possible because options a number of legal orders is connected with the autonomy law (comment Art. 3 in the Giuliano/Lagarde report).

From Art. 3 of the Rome convention indicates the possibility of the choice of law expressly and inexpressibly, and she must, with sufficient certainty to result from the provisions of the treaty [2, p. 99–100]. In the case of the unspeakable choice of law for the court derives the intention of the parties to choose the applicable law, e.g. from the established practice between the parties [4, p. 222].

According to Art. 3 para. 2 of the Rome convention, the parties may at any time agree to change the already selected applicable law or choose it additionally. No change made to the parties after the conclusion of the contract shall not prejudice its formal validity under Art. 9 of the Rome convention and the rights of third persons [4].

Another hallmark of the conflict of laws adjustments to liability ratios is the exclusion of renvoi or further reference. In the framework of the applicable law is the relevant substantive law. Renvoi is excluded in the Art. 20 of the Rome I regulation and in the Art. 24 of the Rome II regulation, both articles are of the same version.

ZMPS expressly excludes renvoi in contractual relations in § 21 sec. 2. When choosing the applicable law, the parties can application of the law to agree, in the event that they fail to do so, so the chosen law become legal standards, with the exception of rules of private international law.

In the event that the conflict of laws regulation allows the parties to convert the choice of law, the connecting factor in the following konštruovanej conflict of law standard is the manifestation of the will of the parties and the applicable law is the so-called lex electa. Choice of law is the primary and preferred form of the conflict of laws modifications in contractual conditions, in our time, however, it penetrates even to the conflict of laws modifications, international family law (e. g. divorce conflict of laws rules of the regulation Rome III), and the international law of succession (option rights in probate proceedings), i. e. the area traditionally mandatory conflict of laws rules.

The provisions, which lay the possibility of choosing the applicable law can be formulated in a different way. Either can be the choice of the right is unlimited, the participants of the contract of employment can in such a case, its relationship to subordinate to the law of any state, according to their options without regard to the existence of ties to the chosen law (e. g. Art.3 para.1 Regulation Rome I). Or it may be a choice of law by the legislator in various ways limited. The restriction may apply to the circuit governing laws from which the parties of the contractual employment can choose. The opportunity to make a choice of law may be awarded only one side of the contractual employment (e. g. § 10 sec 3 MPS), as the case may be the choice of applicable law is limited in the sense that it is not possible to its design to avoid kogentnému provision of the law that would be applied in the event

that the parties the possibility of choosing the applicable law has not been used and the applicable law would be určovalo on the basis of the conflict rules (we are talking about the so-called material choice of law) (e. g. Art. 3 para 3 of the Rome I regulation). Limited can be a certain way and the time moment in which the choice of applicable law shall be allowed (e. g. Art. 14 of the Rome II regulation).

From the formal point of view can be arrange on the choice of the applicable law incorporated into the text of the treaty, the main form of clause on the applicable law, but may also be the subject of a separate agreement (most often in contracts of high value), often also in conjunction with the prorogation whether arbitration clause. Even in the case that a clause on choice of law applicable to part of the text of the main contract, it is a separate legal arrangement, the validity of which can be maintained even in the event of invalidity of provisions of the main contract. Unless otherwise provided, may be choice of law made and subsequently, i.e. after the formation of the contractual relationship, or can be chosen applicable law is subsequently amended. With such possibilities it is, however, in practice, need to be handled very carefully and consider the consequences of such a step. Desirable in such cases, always specify whether the additional choice of law or change of applicable law applies ex tunc or ex nunc.

Next to the express choice of law may be the law admit even unspeakable, default option. In the event of a dispute depends then on the arbitrator or the judge, if it concludes that the parties have made ineffable choice of the applicable law. The referee or judge will in this case consider a range of partial indicators, which will be considered relevant, e. g. the language of the contract, the state judging by prorogation clause, a reference to the specific provisions of a particular national legislation, to use the legal term, institute a legal order, the place of conclusion of the contract, the apparent connection with any other contract etc. From the very fact that the contract is concluded in a certain language version or that the parties agreed the assessment on the territory of a certain state, should not be derived konkludentná choice of law. In practice can be recommended always express choice of the applicable law, implied choice of law is associated with legal uncertainty and it is difficult to demonstrate.

To control one of the legal employment relationship as a whole, it is possible to select only one law. It is unacceptable to apply two or more legal orders at the same time. If there was such an agreement, should be regarded as uncertain and the applicable law would be určovalo under the mandatory conflict of laws rules. But is admissible to the various aspects of a contractual relationship were subordinated to the different laws, bond status then breaks down and goes on mosaic adjustment. With such a possibility must be handled very carefully, because the individual provisions of the legal regulation of a certain institute or the contractual type, in the framework of the legal order usually mutually coupled and mosaic treatment may not be all of the aspects of properly treated and taken into account.

The classification to the choice of law we can realize the multiple ways – this is a classification from the point of view of the mandatory standards, in terms of restrictions to the choice of the parties, in terms of expression, from the point of view of the time-the moment of choice of law.

Choice of law is according to the N. Štefanková, P. Lysina et al. the collision criterion, or also the connecting factor, which decides on the labour law [6, p. 295].

Through connecting factor, therefore the conflict of laws norm builds on the one legal order and on its basis decides on the selection of the determining legal order of the various laws involved, which are mutually in conflict. We understand him, a fact which is significant for the given kind of legal relationship or legal issues identified in the scope of the conflict of law rule, decisive for the choice of law for their processing. Such facts, which are used in the construction for the boundary parameters are the relations to one element of the legal relationship, which can:

be related to some aspects of the private relationship with an international element, the perspective of the rule of employment – in particular, the relation with the entity of a legal relationship, whether with a reality, which created the legal relationship, with the behaviour of the participants, which is the subject of a legal relationship, whether with a thing or a value, which is the subject of a legal relationship (for example, on nationality (lex patriae), domicile (lex domicili), the place of the act (lex loci actus), the state of residence of the legal entity (lex societatis), the law applicable at the seat of the authority (the lex fori), the law of the place where the damage occurred (lex loci damni infecti), the position of things (lex rei sitae) and the like);

otherwise be significant for the legal relationship – terms of the criteria, related to facts important to the legal ratio – such a fact is for example identical to the ratio of the will of the parties in relation to the decision on choice of law (for example, what law is to govern their legal ratio).

These criteria are according to the P. Bříza clearly defined and also in terms of time precisely formulated facts which have a crucial impact on the legal situation, whether addressed legal questions regarding the scope of the conflict of law rule. The deviation is according to the P. Bříza permissible only in exceptional cases (e. g. Art. 4 para. 3 of the Regulation Rim I) [7].

Border indicator is according to the P. Dobias et al. the fact, on the basis of which the conflict of laws norm follows the law of a particular state [8, p. 428]. Either it follows directly, or can establish looser manner, thereby providing through the formulation of the data space for the judge to himself, decided on the use of a particular legal order. In such a frontier and indicators may be "a sensible arrangement of relations", or "the closest possible connection with the legal order".

Conflict the norm, is understood as a special kind of legal standard, which in the field of private international law regulates issues of legal situation with an international element – specifies which of the governing laws used a private law relationship with an international element. N. Štefanková, P. Lysina et al. they state that the conflict of laws norm represents the basic type of the legal standards used in the private international law (in other branches of law with this type of legislation we don't), which can be characterised as the special type of legal norms, the task of which is to establish a judicial authority, the right to which the state of overlapping legal orders has to be used for the solution of a private relation with a foreign element [6, p. 322]. It is about which of two or more laws involved, represented through a foreign element in a legal relationship, is used for its meritórne solution.

Scope of the conflict of law rule determines the range of questions that the legal standard applies. Therefore, the main function of the conflict of law rule is the solution of the conflict of legal systems of different countries, t. j. the choice of the applicable law of at least two in the specific case of the applicable governing laws. It is based on the legal employment of participants who have in relation to the existing international element, the ratio for these rights.

Between the characteristics of the conflict of laws rules according to the Z. Kuchera are that they are based on:

– from the principle of equality between the applicable laws, there is no distinction between them on the basis of their substantive content;

– to the principle of conflict of laws justice according to him is also the principle of material justice;

– do not include substantive editing, only defined by the conflict of laws addressing the area of standards for the use of debit use other (material) standards (t. j. are not substantive, do not govern directly the scope of the rights and obligations of participants of the legal employment relationship with an international element, provide it to material standards) [2, p. 162].

Shows also, that under the legal theory of private international law conflict of laws rules constructed from the parts

of the rozsahovej, which answers the question on which the legal situation or questions the conflict of laws norm applies, and also from a part of the authoritative, nadväznej, which determines what the legal procedure is to be used for the treatment of the relevant legal situation. The output is done by using the border designator, which we have above defined, and which makes it possible to realize connection relationship with the law.

We can talk about the conflict of national, unijných and international. Collision method can be used in all relationships, regulating private international law. Private international law is, according to F. Poredoš et al. part of the national legal order, and with this fact is also connected a different content of the conflict rules of private international law of the individual states as well as the diversity of the borderline criteria that are contained in them [9, p. 43]. We may not understand as a manifestation of sovereignty of each state and the will of the legislators to appointed by each of the states in which way the adjusted private-law relations with foreign element and which in this case is considered as correct and fair. Conflict of law rules of individual states governing the legal issues of the same kind, but in doing so they may use the same range of other establishment, other border-line criterion for the assessment of the same legal issues, such as the criterion of nationality, and the criterion of domicile in status questions. In the framework of the conflict of law rule may arise two situations link of follow-up. One is it remissions (re-link) represents the situation when the conflict of laws norm of the legal order of the state A refers to the use of the law of the state B, however, according to the conflict rules of the legal order of the state B, the solution of the private problem with the foreign element returns back to the standards of the legal order of the state A, who will assess the legal problem according to their substantive standards. In the second place, it regards the transmission of (next link), which arises in the case, if the conflict of laws norm of the legal order of the state And referring to the use of the legal order of the state B and the conflict of laws rules of the legal order of the state B, odkážu solution of the legal problem to the law of state C, while the solution of the legal problem to apply the substantive standards of the state C. the Reason for the existence of the remission and transmission is according to the F. Poredoš et al. the differences of the legal regulation of international law, the private individual states and the apparent or hidden conflict of these laws.

There are a number of classifications of conflict of law rules – one of them is to classify rules on conflict of laws to the standards indicative within them, participants deciding to use them to exclude and their border determinant replace, and standards mandatory, in which it is exercising them implemented regardless of the will of the parties cannot derogate from the rule in them referred to, not themselves participants in these standards exclude or in any way limit it. Mandatory standards are a protective framework, and only in their absence can be applied standards indicative [10].

From the perspective of the binding effect of the mandatory standards in relation to the choice of law according to the Z. Kucera terms of its breakdown on a mandatory, material and materialized [2, p. 202]. Material choice of law is according to him, by limiting the application of the chosen law to its application as a whole, t. j. elect only those provisions of the chosen law, that are consistent with its content mandatory standards of the law otherwise applicable. T. j. is not limited to the choice of the applicable law, but the restriction to them of the chosen law in its application of the – framework of the standards of the law otherwise applicable. Notes that indicative standards may deviate contractual arrangement and the contractual relationship without the international element, so that we exclude the impact of the conflict of law rules otherwise applicable rule of procedure is sufficient to contractually modify the indicative provisions. The chosen law is to be applied only within the limits set out kolíznou the norm. An example of a material to the choice of law is Art. 3 para. 3 Rim I. a Convenient material to the choice of law is its application simplicity.

Material choice of law is – as shown in S. Trávničková – used primarily for the purpose of securing the standards of protection of the contracting parties [11, p. 72]. As well as in cases where it is not permissible to be party to the contract on the standard, which has already once been awarded. The protection of the essential interests of the state, and are not sufficient other forms of their protection. Material choice of law are, therefore, occurs for example in the conflict of laws regulation of relations, where the participants have unequal status (for example, consumer contracts or labour law contracts and their treatment in the treaty of Rome and Regulation Rim I. Notes also that in the case of material options, it is necessary, similarly as in the conflict of laws choice of law, entitled to dispose with the chosen law as with the laws of the foreign, to interpret it and apply it as abroad. This, according to the different material the choice of law from the inkorporácie.

A special protective mechanism to enforce the interests of the private international law and procedural and secondary well as the substantive national rules is the institute of circumvention of the act and the simulation.

The definition of circumvention of the law is according to the P. Bříza can be adequately used in the field of EU regulations [7]. Those according to him this term, although directly not adjusted, and therefore keep silent about its use, however, the case law of the EU, in general, however, the principle of prohibition of abuse of law are respected, as can be seen from some of the judikátov in the field of private international law. As an example of the unilateral circumvention of the laws of the states in relation to the collision and procedural law situation, where one of the parties involved artificially creates or feigns reality, determining the place of habitual residence (for example, the face that is permanently residing in some place, where in fact pobýva only temporarily), while such a place is often not only the connecting factor in the conflict of laws rules, but also the criterion for the determination of the judicial role.

According to the Constitutional court of the SLOVAK republic: "*the Circumvention of the law lies in the exclusion of a legally binding rule of conduct is the deliberate use of means which in themselves are not forbidden by law, in consequence of which raised status seems to be from the point of view of positive law as unassailable. Proceedings in fraudem legislation represents a process when someone report formally under the law, but so as to deliberately achieve the result of the legal norm, the disabled or unforeseen and unwanted. Circumvention of the law occurs when the legal act is not in direct conflict with the law, but in their effects and, in particular, its purpose, the act, its aims and the meaning (ratio legislation) bypasses the*" (ruling of the Constitutional court of the Slovak Republic from 22. November 2012, the file is IV. HEAD 340/2012).

K. Csach states that *circumventing the law is understood as the targeted fulfilment of the factual circumstances, which combines the objectively right result desired by the parties, although the purpose of objective law is not fulfilled* [12, p. 68]. To circumvent the conflict of law rule may have according to him a form of manipulation, the follow-up, in which are artificially (purposely) meets the criterion, what leads to the use of the rule of law on the application which the participants have the legal relationship of interest.

M. Benecke describes the issue of circumvention of private international law [13, p. 186]. Circumventing the private international law is according to him also the handling with qualifications, therefore the deliberate construction of a legal relationship so that fell under the scope of the conflict of law rule, which follows the actual legal regulations (e. g. the construction of a legal relationship as the relationship of the company law in order to avoid employmend regulations). The same is also true for the circumvention of the rules of international jurisdiction.

The circumvention must be deliberate and the intention of the parties must also include the intention to achieve the legal consequences provided for eternal norms of the legal order, which would otherwise not occur. It is not a circumvention of the rules of private international law and process, if the rules allow the participants own will and without limitation the act to determine the legal order of which the participant wants to submit their legal relationship.

For example, as shown in K. Csach, if we consider súladné with the law, that the formal requirements for a legal act shall be governed by the law of the place where the action took place, so you don't think that is correct, if potrestáme parties only for the fact that a legal act made in a certain country just because of this, to get into the benefits of local law (the so-called *forum shopping*) [12, p. 102]. The legislature is such a possibility expressly recognised. The mere fact that a conflict of laws norm exists, cannot prevent the parties to its fulfilment of the target track. Also in the case, if they implement the option that such a conflict of laws norm admits. It therefore recommends that access to the penalizing circumvention of international private law and procedural prudently and penalize it, where there is a serious circumstance substantiating this penalty (typically effort to circumvent the other, related public-law rules). On an individual basis according to him has to examine whether the conflict of laws norm, they had the actors deliberately bypass, aims to prevent such circumvention, and if the solution does not offer nor the application of other protective mechanisms (reservation of public order, mandatory rules, and the like), including the failure to provide legal protection for the misuse of the law. Textbook example is according to the K. Csacha use of the freedom of settlement and choosing the such rights for inkorporáciu business of the company which is for the founder of the best. According to the court, it is not an abuse of rights but by using options, specifically the normotvorcom (C-167/01 "Inspire Art", paragraphs 96 and following).

Conclusions. The substantive standards regularly distinguishes between circumventing the law and abuse of rights. In the field of private international law and procedural not this difference is that substantial. The misuses of law in private international law and procedural international law is not about abuse of a subjective right, whereas the conflict of laws or procedural rules directly the rights of individuals confer. Rather the misuse of the possibilities to form a legal relationship or affect its content. Undoubtedly but in case, if the conflict of laws norm of a certain option for action (the implementation of subjective rights) allows – for example, the choice of a certain legal order – should be the court to explore whether the implementation of this authorization to avoid its misuse. What the legal consequences would be in the private and procedural international law should not be necessary to make a distinction between circumventing the law and abuse of rights.

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