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Fundamental Principles of Private International Law

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Abstract: *The principles of private international law are fundamental rules of a general character, which express the values, aims and guidelines of this branch of law and which underlie the elaboration, interpretation and application of conflict and procedural rules concerning legal relations with a foreign element. In concrete terms, the principles lay down the general orientation of the rules, guide the resolution of conflicts of laws and jurisdictions, provide a foundation for specific institutions (e.g. international public policy, party autonomy), and ensure the coherence and unity of private international law. The principles of private international law are of particular importance as they ensure the coherence and predictability of international legal relations and lay down clear rules on how to determine the applicable law, which court has jurisdiction and how to recognise the effects of foreign judgments. This enables individuals and companies to know which rules to refer to when entering into legal acts with foreign elements. Through these principles, States can prevent the application of foreign provisions that are contrary to their own fundamental values (e.g. respect for human rights, good morals). The balance between openness to foreign law and the protection of the national interest is thus guaranteed. In other respects, the principles enable foreign judgments to be recognised and enforced and facilitate cooperation between the judicial authorities of different States, which is essential in the context of globalisation and the increasing mobility of persons and capital. By allowing parties to choose the applicable law, the principles foster confidence in international legal relations and the development of cross-border trade. The reality is that, without these principles, the same facts could be treated differently from one State to another, creating legal uncertainty and insecurity, and the principles offer solutions to avoid such conflicts. In a world where migration, outward investment and intermarriage are common, the principles of private international law provide the necessary framework for resolving complex disputes.*

Keywords: *international; jurisdiction; enforcement.*

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Introduction

The beginnings of private international law can be traced back to antiquity, linked to the interactions and conflicts between newly formed states seeking to expand their territories and capture slaves. The first rules of international law emerged in Mesopotamia, Egypt, Greece and Ancient Rome. These early rules reflected the need to regulate relations between different communities and states and to protect the rights of foreigners within these societies. In Ancient Rome, for example, the *ius gentium*, a set of rules applicable not only to Roman citizens but also to foreigners, regulating the commercial and legal relations between them.

We mention that, in the medieval period, the development of private international law was influenced by the development of Italian and Dutch theories of statutes. For example, in northern Italy, in the 13th-15th centuries, the first legal solutions to conflicts of laws emerged in the context of wealthy city-states with an advanced legal system. The theory of the Italian statutes, formulated by jurists such as Bartolus and Baldus, was based on the distinction between personal and real statutes and the application of the locus regit actum rule to the external form of legal acts.

Walking the line of history, in 16th century France, jurists such as Charles Dumoulin and Bertrand d'Argentre contributed to the development of the French doctrine of statutes, which influenced the resolution of conflicts of laws in Europe. Dumoulin was a proponent of party autonomy, allowing parties to choose the law applicable to their contracts. Later, Dutch doctrine was dominated by the concept of *comitas gentium* (courtesy of nation or international comity), proposed by lawyers such as Ulrich Huber. This allowed foreign laws to be applied on national territory by virtue of an agreement of comity between states, which facilitated international trade relations.

In the modern era, private international law has been strengthened by international conventions and European regulations such as the Hague Convention on the Civil Aspects of International Child Abduction and the Brussels II bis Regulation. These instruments have standardised and simplified the procedures for resolving conflicts of laws and the recognition and enforcement of judgments between signatory states (Filipescu & Filipescu, 2007).

We consider that, private international law is a distinct branch of law, regulating private law relationships that contain an element of foreignness. This element of foreignness may be present in the form of a person, an asset or a legal fact located outside the national territory. The essence of private international law consists in identifying the applicable law, determining the

competent court and recognising and enforcing foreign judgments (Floroiu, 2011).

The term "private international law" was first introduced by Joseph Story, an American jurist, in his work entitled „Commentaries on the Conflict of Laws" published in 1834. This work is considered to be one of the first comprehensive treatises on the conflict of laws and laid the theoretical foundations for what we today call private international law. After Joseph Story, the term and associated concepts were taken up and developed by other European lawyers, including Conrad E. L. Foelix and Schaffner. Private international law is not uniform in all States, as it has mainly domestic sources and conflict rules are specific to each jurisdiction. These rules are designed to resolve conflicts of law and jurisdiction arising in cross-border legal relations (Filipescu & Filipescu, 2007).

International jurisdiction

International jurisdiction determines the competence of national courts to settle disputes with foreign elements. This principle is fundamental to determine the competent forum and to ensure efficient resolution of cross-border disputes. Thereby, international jurisdiction determines who has the authority to judge and where a case with foreign elements should be tried, avoiding conflicts of laws and denial of justice.

The defining elements of international jurisdiction. The jurisdiction of national courts defines the limits within which a national court may exercise authority over an international dispute, so this includes determining the substantive and territorial jurisdiction of the court, ensuring that the chosen court is the most appropriate court to try the case based on its connections to the facts and parties involved. We determine that, extraneous elements are aspects of a dispute that transcend national borders and may include the parties involved, the subject-matter of the dispute and the place of the relevant facts. For example, if the parties to a dispute are domiciled in different countries, the courts must determine which jurisdiction has jurisdiction to hear the case. Ensuring the efficient resolution of cross-border disputes is essential to protect the rights of the parties and maintain stability and predictability in international legal relations. This is achieved through the application of clear principles and rules that facilitate the identification of the competent court and avoid conflicts of jurisdiction.

Basic principles of international jurisdiction. The general forum is the principle that the national courts of the domicile or residence of the defendant have general jurisdiction to settle disputes. We mention that, this principle, known as *actor sequitur forum rei*, is widely applied in most

jurisdictions and is enshrined in international rules such as the Brussels I bis Regulation in the European Union and It ensures procedural fairness by allowing the defendant to be tried in his own jurisdiction. Special fora are exceptions to the general principle that the courts of the defendant's domicile have general jurisdiction to settle disputes. These courts are determined according to specific criteria, such as the place where the tort or delict was committed, the place of performance of the contractual obligation or the place where the property in dispute is located. For example, in delictual disputes, the courts of the place where the tort or delict occurred have jurisdiction, facilitating access to evidence and witnesses and contributing to an efficient and fair resolution of the dispute. Choice-of-court agreements are a mechanism whereby the parties to an international contract agree in advance which court has jurisdiction to settle any disputes. These agreements, also known as *forum selection clauses*, are essential to provide legal certainty and facilitate the management of cross-border disputes. Exclusive forum selection clauses provide maximum legal certainty by eliminating the possibility of disputes being brought before courts other than those agreed by the parties.

Forum non conveniens is a legal principle applied in certain jurisdictions, particularly in common law systems, which allows courts to decline jurisdiction in a case on the ground that there is a more appropriate forum for the resolution of the dispute. This principle aims to ensure efficient and fair justice by transferring the dispute to a court that has a closer connection with the facts and parties involved. Connectivity-based jurisdiction is a fundamental principle in private international law, which establishes the jurisdiction of national courts on the basis of the real and substantial links between the dispute in question and the designated forum. This principle ensures that the courts that have a direct and significant connection to the facts and parties involved are the ones to adjudicate the dispute, thus promoting a fair and efficient resolution (Lupaşcu & Ungureanu, 2012).

Recognition and enforcement of judgements

Recognition of judgments given in one state in other states is essential to ensure legal continuity and protection of the rights of the parties involved. It implies that the courts of one State accept the validity and legal effects of a judgement given in another State, without reviewing the merits of the case.

We specify that, there is some essential conditions for recognition and enforcement and those are: the jurisdiction of the foreign court is an

essential criterion for the recognition and enforcement of judgments; the judgement must have been given by a court that has jurisdiction according to the rules of private international law and the law of the State of origin. Also, respect for the right to a fair trial is crucial. The judicial procedure by which the judgment was rendered must respect the fundamental principles of the right to a fair trial, including the right of defence and proper notification of the parties involved.

Compliance with the public policy of the requested State is another essential condition. If the foreign judgment is contrary to the fundamental values and principles of the legal system of the State in which recognition and enforcement is sought, recognition may be refused. The finality of the judgment implies that it must be final and enforceable in the State of origin. This means that all ordinary legal remedies have been exhausted and the judgment is capable of being enforced. The non-existence of a conflicting judgement is essential to avoid legal conflicts. Recognition and enforcement of a foreign judgment may be refused if there is an earlier or contemporaneous judgment that is incompatible with the foreign judgment. Procedural fraud is another ground for refusal. If the foreign judgment was obtained by fraud or serious breach of due process of law, its recognition and enforcement may be refused.

Recognition and enforcement procedure. We emphasize that, filing the application is the first step in the process of recognising and enforcing foreign judgments. The interested party lodges an application with the competent court, accompanied by a certified copy of the judgment and, in some cases, a certified translation. Verification of the conditions involves the court examining the application to check whether the necessary conditions for recognition and enforcement are met. This includes assessing the jurisdiction of the foreign court, respect for the right to a fair trial and compliance with public policy. The hearing of the parties may be organised by the court to allow the parties to present additional arguments and evidence. This may be necessary to clarify certain aspects of the foreign proceedings or to address objections raised by the defendant against the recognition and enforcement of the judgment. The decision on recognition and enforcement is given by the court after verifying all the conditions and, if necessary, hearing the parties. This means that the foreign judgment is recognised as having legal effect in the requested State and can be enforced as if it had been given by the local courts.

We mention that, actual enforcement involves the implementation of the foreign judgment, which may include enforcement measures, the issuance of payment orders or other actions necessary to realise the rights

established by the judgment. Legal remedies can be used by the defendant to challenge the decision on recognition and enforcement by way of appeal or further appeal, depending on national procedural rules. These remedies may include invoking violation of fundamental principles, procedural errors or other specific grounds.

Refusal of recognition and enforcement. Recognition and enforcement of a foreign judgment may be refused in certain situations. Incompatibility with public policy is a main ground, as the judgement must not contravene the fundamental values and principles of the requested State. Failure to respect the right to a fair trial is another important ground. A foreign judgement can be refused if it has been obtained through a procedure that does not respect the right to a fair trial. There are also grounds for refusal related to the existence of a conflicting judgement or procedural fraud. If there is an earlier or contemporaneous judgment that is incompatible with the foreign judgment or if the judgment was obtained by fraud, its recognition and enforcement may be refused.

International conventions play a key role in facilitating the recognition and enforcement of foreign judgments between states. These conventions establish common rules and uniform procedures, promoting international judicial co-operation and protecting the rights of parties involved in cross-border disputes. The Brussels Convention (1968) and the Brussels I bis Regulation are the European Union's main instruments in the field of recognition and enforcement of judgements in civil and commercial matters. These instruments lay down uniform rules for the Member States, facilitating judicial co-operation and ensuring fast and efficient enforcement of judgments. The Lugano Convention (2007) governs the recognition and enforcement of judgments between the Member States of the European Union and the Member States of the European Free Trade Association (EFTA). The Convention aims to extend the principles and procedures laid down in the Brussels I bis Regulation to relations between these States. The Hague Convention on the Recognition and Enforcement of Foreign Judgments in Civil and Commercial Matters (1971) provides a uniform and predictable legal framework for the enforcement of judgments in civil and commercial matters between the signatory States. The New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards (1958) governs the recognition and enforcement of foreign arbitral awards, providing a uniform and effective legal framework for the settlement of international commercial disputes.

The recognition and enforcement of foreign judgments is vital for the harmonious functioning of the international legal system and for the

protection of the rights of parties involved in cross-border disputes. This process ensures legal continuity and enables parties to obtain effective enforcement of their rights in other jurisdictions, thereby reducing the risk of denial of justice and promoting stability and predictability in international legal relations. The recognition and enforcement of foreign judgments also contributes to judicial efficiency by avoiding the need to re-litigate the merits of the case and saving judicial and financial resources for the parties and the courts involved.

Scope and limits

The scope and limits of private international law determine the scope and the conditions under which its rules are applicable, regulating legal relationships with foreign elements and identifying the limits and exceptions which may restrict their applicability.

We determine that, private international law applies to legal relationships containing one or more foreign elements. These include:

- Contractual relationships: they involve parties from different states or are performed on the territory of several states. Examples include international sales contracts, service contracts and joint venture agreements between companies in different countries.
- Tort relationships: Involving parties from different states or torts committed in a state other than that of the parties' domicile. Examples include road traffic accidents, infringements of intellectual property rights and unfair competition offences.
- Family and personal relationships: Marriages, divorces, child custody, maintenance and other aspects of family law involve cross-border elements. Examples include marriages between nationals of different states, divorces with international elements and child custody disputes in an international context.
- International successions: Inheritances involving assets located in different States or heirs with different domiciles. Examples include successions with immovable and movable property located in different countries and disputes between heirs residing in different countries.
- Commercial and Corporate Relations: The operation and regulation of multinational companies, international transactions and other aspects of international trade. Examples include international mergers and acquisitions, foreign investment disputes and international commercial contracts.

Private international law rules apply mainly within the national jurisdictions that have adopted them or are bound by international

conventions. The applicability of these rules is determined by the domestic law of each state as well as by international treaties to which the state is a party. This includes conflict-of-law rules which determine the law applicable to a cross-border dispute.

Private international law lays down criteria for determining the law applicable in legal relationships with foreign elements. These criteria include:

- Domicile or residence of the parties: The applicable law may be determined by the domicile or habitual residence of the parties to the legal relationship. This is a common method in family law and successions.
- Place of the offence: In the case of tortious offences, the applicable law may be the law of the place where the offence was committed. This often applies in disputes concerning damages and civil liability.
- Place of performance: In contractual relations, the applicable law may be the law of the place where the contractual obligation is to be performed. This is important for labour and service contracts.
- Choice of law: The parties may agree on the applicable law by means of choice-of-law clauses, provided that it is in conformity with public policy and the mandatory rules of the States concerned. Choice of parties is commonly used in international commercial contracts.

Limits of applicability. Public policy is a set of fundamental principles and essential values of a State's legal system. If the application of a rule of foreign law is contrary to these principles and values, national courts may refuse to apply that rule on public policy grounds. This limitation is designed to protect the integrity of the domestic legal system and to prevent the application of rules that would be incompatible with the State's standards of justice and fairness. Mandatory rules are rules of domestic law which are binding and override rules of private international law. They apply in all cases falling within their scope, irrespective of the applicable foreign law. Examples include consumer protection legislation and employees' rights. International conventions may set specific limits to the applicability of private international law rules. These conventions take precedence over national law and lay down uniform rules for the recognition and enforcement of judgments, the determination of applicable law and other essential aspects of cross-border disputes.

The principle of reciprocity influences the territorial applicability of the rules of private international law by striking a balance between the States involved. According to this principle, a State will recognise and apply foreign judgments and rules only to the extent that the State of origin of those judgments or rules similarly recognises and applies the judgments and rules

of the requested State. Exclusive jurisdiction is provided for by national law in certain areas, limiting the applicability of rules of private international law. These areas may include disputes concerning immovable property situated in the territory of the State or disputes concerning the personal and family status of its citizens (Aniței, 2022).

Setting limits to the applicability of private international law is crucial to protect the integrity of national legal systems and to ensure respect for fundamental principles of justice. These limits help to maintain the balance between the application of foreign law rules and the protection of essential State values. The limits of applicability of private international law also ensure that cross-border legal relations are regulated in a manner that respects the sovereignty of States and the fundamental rights of the parties involved. The benefits of establishing limits on the applicability of private international law include the protection of public policy, respect for mandatory rules, international legal coherence and the preservation of state sovereignty. These benefits contribute to ensuring fair and efficient resolution of cross-border disputes, promoting stability and predictability in international legal relations.

Conclusions

The importance of private international law derives from the need to manage and regulate cross-border legal relations in a fair and efficient manner. In a world characterised by globalisation and increased mobility, these relationships are increasingly frequent and complex. Private international law provides the legal tools to deal with these issues, contributing to the stability of international relations and the protection of the rights of the parties involved. Ensuring respect for the fundamental rights of the parties involved in international legal relations is another major objective. This includes guaranteeing a fair trial, respecting the principle of non-discrimination and ensuring the protection of personal data. Private international law must ensure that conflict rules and judicial proceedings respect the fundamental rights of the persons involved, including the right to a fair trial, non-discrimination and the protection of personal data. At the same time, private international law should facilitate access to justice for parties involved in cross-border disputes by ensuring that they can obtain effective and fair remedies. Promoting coherence and uniformity in the application of international legal rules through international conventions and treaties is essential to reduce conflicts of laws and facilitate international co-operation.

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