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CONSIDERATIONS ON THE CONFLICT OF LAW S IN TIME AND SPACE (THE OBSERVANCE OF THE RIGHTS ASQUIRED IN A FOREIGN COUNTRY) UNDER THE PROVISIONS OF THE ROMANIAN CIVIL CODE

Nadia-Cerasela ANIȚEI

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CONSIDERATIONS ON THE CONFLICT OF LAW S IN TIME AND SPACE (THE OBSERVANCE OF THE RIGHTS ASQUIRED IN A FOREIGN COUNTRY) UNDER THE PROVISIONS OF THE ROMANIAN CIVIL CODE

Nadia-Cerasela ANITEI[1]

Abstract:

This article aims to answer the following questions:

1. What is meant by the concept of conflict of laws in time and space?

2. What comparisons are made between the conflict of laws in time and space, and that conflict of laws in space?

3. What are the forms of conflict of laws in time and space?

4. In what areas the conflict of laws in time and space can occur?

5. What are the Romanian legal regulations concerning the recognition in our country of the rights acquired abroad?

6. What are the conditions of recognition (observance) in Romania of a right acquired (won) abroad?

7. Which are the consequences of the positive condition: the rules applicable to the effects of a right acquired according to foreign law?

Keywords:

conflict of laws in time and space; the conflict in "space"; the conflict in "time"; recognition in Romania of the rights acquired abroad.

[1] PhD Univ. Prof. Faculty of Law, Social and Political Sciences, Dunărea de Jos University, Galați, Romania, e-mail: ncerasela@yahoo.com, nadia.anitei@ugal.ro.

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1. What is meant by the concept of conflict of laws in time and space?

The conflict of laws in time and space exists where the effects of legal relation born, modified or extinguished under the incidence of the legal system of a country, are required to be later recognized in another country.

From the point of view of the Romanian law, the conflict of laws in time and space raises the question of recognition (observance) in Romania of the acquired rights (earned) in another country.

because the two systems of law in presence –namely the foreign one under which the right was born and the Romanian one within which the right is required to be legally recognized –coexist in space.

The conflict is in "time" because between the moment of birth of the legal relationship (so of the right), under the foreign law, and the moment when its effects are required to be recognized in Romania, there is a time frame.

In the research literature the institution of the "*conflict of laws in time and space*" is called the "*theory of recognition of the rights acquired*" or "*the theory of extraterritorial effects of the acquired rights*" (D.-Al., Sitaru (2012):121)

We agree with a reputed Romanian author according to whom the Romanian law, the appropriate terminology is that of "*conflict of laws in time and space*" or "*recognition (observance)* of *the rights acquired in a foreign country*" as shown in Article 2567 Civil Code.

For example, we are in the presence of a conflict of laws in time and space where two persons were divorced in a certain country (Spain) and subsequently they seek the recognition of the court decision by means of which the divorce was ruled in another country (Romania).

2. What comparisons are made between the conflict of laws in time and space, and the conflict of laws in space, respectively?

The conflict of laws in space occurs where a legal relationship with a foreign element, is likely to be applied at the same time, two or more legal systems belonging to different countries[2].

The two forms of conflict of laws are similar in that both are in space, so they spatially coexist.

The two forms of conflict of laws differ because the conflict of laws in space, the law systems in presence are taken into account simultaneously,

[2] "*The conflict of laws in space is the most important conflict subject to private international law, and was the subject of the analysis in the context of private international law peculiarities*" (apud D.-Al., Sitaru. p. 121).

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while in case of the conflict of laws in time and space, they apply successively namely that the right born in a country is then recognized in another country.

For example: there is a conflict of laws in time and space where a Romanian national married in Span a Spanish citizen and then comes back to Romania asking to the Romanian court child support from her husband; There is a conflict of laws in space where two citizens of whom one Italian and one Romanian want to marry and the question of the law applicable to marriage arises.

Please note that the solutions in the two forms of conflict are different. As shown in the previous studies, the effects of invoking public order in the event of conflict of laws in time and space are "attenuated" in relation to the effects of invoking public order, in the event of invoking the conflict of laws in space. Thus, some legal relationships that would not be able to occur Romania as a result of invoking public order will be recognized in our country, in the circumstances in which they were established abroad. For example, a person already married would not be able conclude in Romania a new marriage, but once the marriage is validly concluded in the state to which the person concerned belongs, the effects of this marriage may be invoked in Romania[3].

3. What are the forms of conflict of laws in time and space?

The conflict of laws in time and space has two forms (I., P Filipescu, A.I. Filipescu (2005):134-135; D.-Al., Sitaru (2012):121-122; O., Ungureanu. C. Jugastru. A., Circa (2008):117-118; S., Deleanu (2013):213-214; C., P., Buglea (2013):70):

a. *The legal relationship is born, changed or extinguished in the internal law of a foreign state, and then it is invoked in Romania*

At the time of occurrence, modification or extinguishment of the legal relation there is no conflict of laws and it may not be provided that such conflict will occur in the future. The conflicting problem arises when the legal conflict is raised in another country. So, the conflicting problem will occur if the right won abroad will be invoked in Romania. For example, two Portuguese citizens get married in Portugal. We see that this legal report has no legal connection with the Romanian law. Later, the Portuguese couple come to Romania where they ask for the recognition of the legal effects of such marriage. To that context, the Portuguese law conflicts with

[3] There are legal systems, such as the French legal system, in which the issue of the rights gained abroad is analyzed in relation to the private international law public order (H., Batiffol. P., Lagarde.)

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the Romanian law, being necessary to determine the international effectiveness of a right gained within the Portuguese legal system.

b. *The legal relation (subjective law) occurs, is amended or extinguished in the private international law (within the international framework) and then it is invoked in Romania*

In this case, two problems are met successively: on the one hand, the conflict on the occurrence, modification, transmission or extinction of the legal relation with a foreign element (conflict of laws in space) and the question of the international effectiveness of a legal relation (conflict of laws in time and space). So, at the moment of occurrence of the legal relationship there is a conflict of laws in space that is resolved by applying one of the laws in presence, and after a certain time, occurs when invoked in our country, the right earned abroad, another conflict of laws (conflict of laws in time and space).

This form of the conflict of laws in time and space presents two scenarios (I., P Filipescu, A.I. Filipescu (2005):134-135; D.-Al., Sitaru (2012):121-122; O., Ungureanu. C. Jugastru. A., Circa (2008):117-118; S., Deleanu (2013):213-214; C., P., Buglea (2013):70); NC., Anitei. (2015):186):

- At the time of its occurrence the legal relationship has nothing to do with Romanian law. For example, an Italian citizen marries a Belgian citizen in Belgium and then they come to Romania where they ask for the legal effects of such marriage to be recognized. At the time of marriage it is necessary to resolve a conflict of laws in space to determine the law that will govern marriage. In Romania, a conflict of laws occurs later in time and space, whereas the question of knowing whether the right born according to the competent foreign law will be recognized in Romania;

- At the very moment of its occurrence, that legal relation is related to the forum country, in that at least one of its foreign elements referred to the Romanian law. For instance, a Romanian citizen divorces a Spanish citizen in Spain, and then asks for the recognition or enforcement of the judgment by means of which the divorce was ruled in Romania. At the time of the divorce, the Spanish court must resolve a conflict of laws in space in order to determine the law applicable to this legal institution. Subsequently a conflict of laws occurs in time and space because the right acquired in the international framework is invoked in Romania.

So, in case of the conflict of laws in time and space, the question is whether a legal situation acquired according to a competent law (of a country) may be recognized in another country, namely the question of the international effectiveness of an acquired legal situation. According to Article 2567 Civil Code "*The rights acquired in the foreign country are respected in*

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Romania, unless they are contrary to the public order in the Romanian private international law."

4. In what areas the conflict of laws in time and space can occur?

The conflicts of laws in time and space may occur in the following areas:

a. in the area of material law, regarding a subjective right acquired under a foreign law;

b. in the field of procedural law, regarding a right acquired on the basis of a foreign judgment. In this situation, the question of recognition of the effects of foreign judgments in Romania is raised.

5. What are the Romanian legal regulations concerning the recognition in our country, of the rights acquired abroad?

In accordance with the provisions of Article 2567 Civil Code the rights acquired abroad are recognized in principle in Romania except where the Romanian private international law public order is breached.

In the event that a right has been acquired under a foreign judgment(C. Jugastru. (no1/2015):66-68), it may be recognized in Romania under the terms of the Code of Civil Procedure.

In accordance with the provisions of Article 1094 Code of Criminal Procedure. "*Foreign judgments are recognized by operation of law in Romania, where it refers to the personal status of the citizens of the State where they were ruled or if given in a third State, they were recognized first in the State of nationality of each party, or in the absence of recognition, they were ruled under the law determined as applicable according to the Romanian private international law, they are not contrary to Romanian private international law public order and the right of defence has been respected."*

Article 1095 of the Code of Civil Procedure sets out the conditions of recognition. Thus, "*Decisions related to trials other than those referred to in Article 1094 may be recognized in Romania, to benefit from the authority of res judicata if the following conditions are met cumulatively:*

a) the decision is final under the law of the State where it was ruled

b) the court which delivered it had, according to the law of the state, the competence to judge the trial without being based solely on the presence of the defendant or of some of his/her possessions without direct connection to the dispute in the state of the respective jurisdictions;

c) there is reciprocity as regards the effects of foreign judgments between Romania and the State of the court which delivered the judgment. (Paragraph 1)

If the judgment was given in default of the party who lost the trial, it must note as well that the party in question was awarded in a timely manner both the summons for the

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debate on the merits hearing and the document instituting the proceedings and that it was given the opportunity to defend itself and exercise the appeal against the decision. (Paragraph 2)

The undefinable nature of the foreign judgment arising out of the failure to summons the person who has not attended the trial before the foreign court, can only be invoked only by that person. "(Paragraph 3)

According to Article 1096 Code of Criminal Procedure.

"The recognition of the foreign judgment may be refused for any of the following cases:

a) the judgment is manifestly contrary to the Romanian private international law public order; this incompatibility is assessed taking into account in particular the intensity of the connection of the case with the Romanian law and severity of the effect such caused;

b) the judgment ruled in a matter in which people do not freely dispose of their rights was obtained with the sole purpose of evading the cause of the incidence of law applicable under the o Romanian private international law;

c) the trial has been settled between the same parties by means of judgment, even of not final, of the Romanian courts or is on the dockets before them on the date when the foreign court is seized;

d) it is irreconcilable with an earlier judgment ruled abroad and likely to be recognized in Romania;

e) the Romanian courts had exclusive jurisdiction for the proceedings;

f) the right to defense was violated;

g) the decision may be subject to an appeal in the state where it was issued. (Paragraph 1)

Recognition may not be refused on the sole ground that the court which delivered the foreign judgment has applied a law other than that which would have been determined by the Romanian private international law, unless the trial concerns the marital status and the capacity of a Romanian citizen, and the solution adopted is different from the one that would have been taken according to Romanian law. "(paragraph 2)

Recognition of the foreign judgment can be obtained within a separate procedure or with the consent of enforcement of the judgment on the basis of *exequatur* procedure.

According to Article 1103 of the Code of Civil Procedure *"The enforcement of the foreign judgment is consented by observing the conditions referred to in Article 1095, as well as of the fact that the ruling should enforceable under the law of the state of the court which ruled it. (Paragraph 1) The provisions of Article 1096 and Article 1097 are applicable accordingly to the request of consent of enforceability. "(Paragraph 2)*

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6. What are the conditions of recognition (observance) in Romania of a right acquired (gained) abroad?

A right acquired abroad is recognized in Romania if the following conditions are met (I., P Filipescu, A.I. Filipescu (2005):137-140; D.-Al., Sitaru (2012):122-124; O., Ungureanu. C. Jugastru. A., Circa (2008): 118; S., Deleanu (2013):218-225; C., P., Buglea (2013):71-73; NC., Anitei. (2015):186-190):

a. the legal right has to occur, be modified or extinguished according to the competent law (whether the foreign law of the State where the right was acquired or the competent law designated by the conflicting rule of the state where the right is invoked;

b. the right to have fulfilled all the requirements provided by the competent foreign law;

c. the right acquired in one country will take effect in another country if in the meantime in the country where it is invoked a new law, that includes or excludes the one created abroad has not been created.

7. Which are the consequences of the positive condition: the rules applicable to the effects of a right acquired according to foreign law?

(D.-Al., Sitaru (2012):125; NC., Anitei. (2015):186-196)

The positive condition involves at least two legal consequences, which have the character of rules applicable to the effects of a right acquired according to a foreign law.

a. A valid right acquired according to the foreign law which is applicable to it produces in Romania (in principle) all effects allowed by the respective foreign law.

This rule is provided by Article 2583 paragraph (1), the first part of the Civil Code according to which "*A foreign legal entity that is recognized benefits from all the rights arising from the law of its organic status,"* (....).

Also, the religious marriage, validly concluded in a country where its legal effects are recognized, will produce in Romania, in principle, all the legal effects that the foreign law recognizes in relation to it.

b. A right acquired abroad cannot produce in Romania more effects than in the foreign country under the law of which it was created.

This rule applies in several fields of private international law such as:

- In the matter of the capacity of use of branches and representative offices of foreign companies in Romania. In principle, they cannot do in Romania legal acts that fall outside the scope of activity of the parent

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company, and their operation ceases as of right when the parent ceases to operate. Thus, there are legal provisions for representative office in the Decree-Law no. 122/1990 *regarding the authorization and operation of representative offices of companies and of foreign organizations in Romania* in Article 4 letter (b) and in Article 12 paragraph (1);

- The foreign judgment can be enforced in Romania unless the prescription of the law of the state the court of which ruled the judgment was met, the condition being inferred from the provisions of Article 1103 paragraph (1) Code of Civil Procedure.

Conclusions

From the point of view of the Romanian law, the conflict of laws in time and space raises the question of recognition (observance) in Romania of the rights acquired (gained) in another country.

The conflict is in the "space" because the two systems of law in the presence –namely the foreign one under the incidence of which the right occurred and the Romanian one under which the right is required to be legally recognized –coexist in space.

The conflict is in "time" because between the moment of occurrence of the legal relationship (so of the right), under the foreign law, and the moment when its effects are required to be recognized in Romania, there is a time frame.

In the research literature the institution of the "*conflict of laws in time and space*" is called the "*theory of recognition of the rights acquired*" or "*the theory of extraterritorial effects of the acquired rights*. (D.-Al., Sitaru (2012):121-121"

We agree with a reputed Romanian author according to whom the Romanian law, the appropriate terminology is that of "*conflict of laws in time and space*" or "*recognition (observance)* of *the rights acquired in a foreign country*" as shown in Article 2567 Civil Code.

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a. *The legal relationship is born, changed or extinguished in the internal law of a foreign state, and then it is invoked in Romania*

b. *The legal relation (subjective law) occurs, is amended or extinguished in the private international law (within the international framework) and then it is invoked in Romania*

The conflicts of laws in time and space may occur in the following areas:

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a. in the area of material law, regarding a subjective right acquired under a foreign law;

b. in the field of procedural law, regarding a right acquired on the basis of a foreign judgment. In this situation, the question of recognition of the effects of foreign judgments in Romania is raised.

In accordance with the provisions of Article 2567 Civil Code the rights acquired abroad are recognized in principle in Romania except where the Romanian private international law public order is breached.

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b. the right to have fulfilled all the requirements provided by the competent foreign law;

c. the right acquired in one country will take effect in another country if in the meantime in the country where it is invoked a new law, that includes or excludes the one created abroad has not been created.

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