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THE CONFLICTUAL NORM

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Abstract:

The conflictual norm is the specific legal rule of the private international law which resolves the conflict of laws, meaning that it designates the competent domestic law that would rule the legal relationship with foreign element. The law system thus designated is called "the case law" (lex causae).

The conflict norm has a peculiar physiognomy, in the ensemble of all the legal rules, not only in terms of the role it performs, but also in terms of its structure. The conflictual norm is made up so as to match the mission that the private international law has conferred it- which is to show the competent norm that would rule directly and immediately the rights and obligations of the legal relationship with foreign element. Therefore, the conflictual norm has a beforehand and indirect character because it solves the conflict of laws.

Keywords:

private international law; conflictual norm; particularities.

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1. The definition, the role and the source of the conflictual norm

Definition

The specific legal rules of the private international law are, in their majority, conflictual rules, meaning they are norms that are designed to resolve conflicts of laws. Besides, the name "conflictual norm" was imposed in relation to the specific of the private international law to be a reference or fixing right, meaning an indication right of the applicable law, in particular, to the external legal relationship.

The conflictual norm *is the legal norm specific to the private international law which resolves the conflict of laws, meaning it designates the competent domestic that would substantially rule the legal relationship with foreign element.* The law system thus designated is called "case law" (*lex causae*). (N.C., Aniţei. (2015):60)

The role and sources of the conflictual norm

The conflictual norm has a peculiar physiognomy, in the ansemble of the legal rules, not only in terms of the role it performs, but also in terms of its structure. The conflictual rule (norm) is made up so as to match the mission that the private international law has conferred it - which is to show the competent norm that would rule directly and immediately the rights and obligations of the legal relationship parties with foreign element. That is why, the conflictual rule has beforehand and indirect character because it solves the conflict of laws (I.P., Filipescu. A.I., Filipescu. (2005):37). In a logical order of operations, once the court proceeds at verifying their own competence and retains the case for trial, the resolution of the conflict of laws in space is next. Examining the conflictual norm allows identifying the applicable law, among the laws found in competition. The designation of the national applicable law coincides with the time when the role of the conflictual norm ends and enteres into action the national legal norm (the family law norm, the commercial law norm, the intellectual property law norm, etc.). The latter norm may belong to the legal system of the forum or to the legal system of a foreign state.

The role of the conflictual norm is to establish which of the current law systems is required to be applied during the existence of the legal relationship. The conflictual rule appears, therefore, as an indicator of the applicable law or as a reference, fixing norm (E.Em., Antonescu. (1934):132).

The source of the conflictual norm can be the internal law or the conventional law. The conflictual norms from the internal law of the states emanate from the national legislature; they may differ or may coincide - for the same subject - but in any case, they reflect the policy of the State in

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matter. The conventional law norms are uniform norms. The states that have ratified or acceded to an international convention are bound to fully comply with its rules. Of course that the international treaties ratified by the Parliament are part, eventually, of the internal law. They establish uniform rules for all the participants in the convention. A broad category of treaties have had as object the legal assistance between states (E.Em., Antonescu. (1934):132).

We note that, at the European Union level, the legal rules setting out the conditions of the judicial cooperation in civil and commercial matters, are included, at present, in the regulations whose implementation is direct and override the internal law of the states. These norms are not included in the domestic law of each state, but are rules contained in normative laws adopted by the European legislator.

So, *the elements of distinction between the conflict rule and the material rule* can be played as follows:

• The conflict norm solves only a pre-judicial matter (the conflict of laws), while the material norm (substantial) governs the legal relationship. It is stated, in this regard, that the conflictual norm presents a dual character: it is indirect, because it does not resolve the dispute on the merits and is neutral, because it is disinterested in the case of the cause (D., Gutmann. (1999):33);

• The conflictual norm has prior application towards the substantial norm; After the court is declared competent, it is first determined the applicable legal system and only then it is identified, in this system, the material law applicable to persons, properties, legal act, legal succession etc.;

• The conflictual norm is made up of content and connection. The applicable law is not a component of the conflictual norm, but is an integrant part of the legal system from which it originates. The material norm is an ordinary norm that regulates the civil law relationships, the family law, etc. It is structured in theory, disposition and sanction.

2. The structure of the conflictual norm

Regarding the structure of the conflictual norm, the doctrine has countoured two opinions. The conflictual norm has two elements: content and link. The link of the conflictual norm is reflected in liaison points, applicable to the matter in question.

There is another opinion, according to which, the conflict norm also includes, along with the content and connection, a third element - the

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applicable law (*lex causae*) (Fr., Knoepfler. Ph., Schweizer. (1990):81-82)[2]. The applicable law is the law system with which the connection is made via the connection point. The partisans of this idea say that the *lex causae* is of paramount importance when the applicable law is a foreign law.(T.R., Popescu. (1994):29).

One should underline that the *lex causae* has equal value, whether a Romanian law is under discussion or a foreign law. Of course that the legal system to which the conflictual norm reffers is particularly important because on its basis it is regulated, in principle, the legal relationship with foreign element. However, the law applicable to the legal relationship with foreign element is not a structural part of the conflict norm. The applicable law - be it Romanian or foreign - is not part of the conflict norm, but is part of the legal system in which it arose. The Romanian law, applicable as *lex causae*, is part of the Romanian rightful law system and the foreign law, determined as *lex causae* is integrated in the foreign legislation concerned. The applicable law does not detach from the legal system from which it emanates, in order to become a structural element of the conflict norm. It remains, along with the other laws in the country in matter, in the legal system of origin. The application of the foreign law is not made under a state command which generated it, but is the expression of exercising the court forum sovereignty, through its own legal conflictual system.

The content of the conflictual norm

It is represented by all the legal relations to which the conflict rule it refers and determines application scope of a law in space.

The connection of the conflictual norm

It is that part of the conflictual norm which indicates the applicable law of the juridic relationship. The link of the conflictual norm is reflected in the connection point. This is the element that determines the relationship between a legally binding report and a law.

[2] The Swiss doctrine admits structuring the conflictual norm into three elements: the basic report; the connection point or the localization index and the legal system designed or the competent authority. The basic report includes, for an undetermined number of cases, almost identical situations in different legal systems. The connection point is the element where the basic relationship report enters into relationships with a legal system, and the third element is *lex causae*.

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The main connection points in the private international law

The citizenship is a „privileged" connection point in matters of personal status[3]. The civil status, capacity and family status are subjected to the state law whose nationality the person concerned has, unless there are special provisions that provide otherwise (citizenship is the main connection point in matters of parentage of the child that is out of wedlock, of the fund conditions and the effects of adoption).

It's a tradition option of the Romanian legislator, that to subject the individual's status, to the citizenship law. The solution is found in most national laws and reflects the ability of the citizenship to be the testimony or the strongest link between the state and the individual. Moreover, determination and proof of citizenship are made in accordance with the state law whose nationality is invoked.

In some cases, the Romanian citizenship is the connection point for determining the competent jurisdiction. For example, the exclusive personal jurisdiction is based, mostly, on cumulative conditions - Romanian citizenship and residence in Romania (art. 1078 pts. 1,2,3,5 C. civ.). Also, the citizenship law of the person who has consented the juridical act is applicable to the form conditions, alternating with other laws, according to art. 2639, par. 2 C. civ.).

Foreign citizenship (respectively foreign nationality) is relevant from the perspective of the international process with foreign element. Thus, individuals and foreign legal persons benefit, in Romania, from the same rights and the same procedural obligations as Romanian citizens, respectively as the Romanian moral people. The procedural or security exemptions and expenditure cuts, the free legal assistance, are also conditioned according to the Code of Civil Procedure, by the proof of citizenship or nationality of another state (and also by reciprocity). Statelessness, meaning the lack of citizenship of the individual, generates the same effects in procedural plan, such as those mentioned by the Code for foreigners (art. 1082-1086 Civil Procedure Code).

The residence is a connecting point[4] for a small number of reports of private international law. Residence remained benchmark for the international jurisdiction of common law of the Romanian courts, for the exclusive jurisdiction and, sometimes, for the preferential jurisdiction (art. 1065 par. 1, art. 1078-1080 Civil Procedure Code).

Habitual residence is gaining ground among the connection points, both in relation to the individual, but also in terms of moral people. The

[3] The legal system that citizenship reffers to, as a liaison, is called *lex patriae*.

[4] The law system to which this connection point refers to is called *lex domicilii*.

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habitual residence of the legal person is where it has its main establishment or central administration.

Both citizenship and the habitual residence give expression to the national law, according to art. No. 2568 from the Civil Code. The two connecting points mentioned are applicable for the beginning and the termination of the legal personality, the judicial declaration of death, the name, and the inherent rights of the human being. For the legal person, the scope of the national law is circumscribed to all aspects that regard the establishment, operation and termination of the rightful subject.

The habitual residence, for the first time regulated in the Romanian conflict of laws, has an expanded field of application. It is, for instance, the main connection point for the general effects of marriage (where we find citizenship only in the subsidiary), for the law applicable to the matrimonial regime, for the dissolution of marriage through divorce, for the filiation of the child through marriage, for the civil claims derived from the infringement of the personality rights (art. 2642 par. 1 letter a from the Civil Code).

The importance of the habitual residence can also be seen in the new regulation of the law applicable to heritage in Romanian private international law. The legislature has abandoned the previous dichotomous system (the estates are subjected to a last citizenship of the deceased, the estates follow the law of the place where the good is situated) (D.A., Popescu. (2002):55-83) and, following the model of other legislations (but also in the spirit of realism) has resorted to the habitual residence. It is alleged that the deceased's assets can be found at his main home - meaning at his habitual residence. It is unlikely that, in the current cross-border reality, characterized by mobility, the individuals remain sustainable in terms of space, on the territory of the State whose nationality they have. There was quite rightly stated in the previous doctrine of the new Civil Code, that, in terms of the property succession, the rule was "founded on the existence of fictitious goods at the residence of the deceased; and the rule was applied even contrary to the real situation of the movable property (I., Deleanu. (2005):64)". At the level of the Member State, it is practiced the same connection point as competence in matters of succession is determined in relation to habitual residence at the time of death (art. 4 of the Regulation no. 650/2012).

Rightly, the habitual residence is established as liaison point, to the detriment of the residence and domicile, which rises, in practice, difficulties in determination. The need to prove the main household and the absence of registration formalities in the profile records constitute advantages for the habitual residence in order to prevail between the preferences of the

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legislator in regulating an increasing number of materials. The trend shown is also found at union level, as regulations are focused on the habitual residence as the main connection point.

The Headquarter[5] is the main connection point for the legal relations where the legal person takes part (art. 2571 par. 1 of the civil Code). The text relating to the legal entity refers to its *registered office*, meaning to the statutory office (the place where, according to the articles of incorporation, the governing bodies of the legal entity are found). If there are offices in several states, the head office is relevant. The *real head office* is the place where the main center of leadership and management of the legal person is found, even if the decisions of the organ in matter are taken in compliance with the directives transmitted by the shareholders or associates from several states. (D.-Al., Sitaru. (2006):529-541)

The commerce fund is the connection point for the substance conditions of the legal act, to the extent of use of the law with which the legal act maintains the closest connections and when the debtor of the characteristic benefit is a trader. According to art.2638 from the civil Code, in the absence of a law chosen by the parties, it will be applied the state law that has the closest connections with the legal act. It is believed that such links exist with the law of the state where the debtor of the characteristic performance has, on the closing date of the act, as appropriate, the habitual residence, the commerce fund or registered office.

The location place of the good is the main connection point in matters of the legal regime of the mobiles and immobile seen as *ut singuli* (art. 2613, art. 2615 to 2617 civ. code), In the matter of mortgage securities (art. 2627 of the Civil Code.), for the competent jurisdiction, in some cases (art. 1079 pts. 11 and 2, art. 1080 par. 1 pt. 5 civ. C.)

The place of elaboration of the legal act[6] for the form of the act, in the meaning of *instrumentum*. The juridical act is valid in terms of form if it meets the conditions provided by the law of the place where he was drafted (art. 2639 par. 2 letter to civil Code.).

The place of the conclusion of the contract[7] is subsidiary to the will autonomy and to the law of the closest links, for the substance conditions of the legal act (art. 2638 of the civil Code). According to art. 1078 pt. 1 civ. c., the Romanian courts are exclusively competent to judge litigations with foreign elements in the sphere of personal status, which regard civil status

[5] The applicable legal system as a result of the reference made to this connection point is called *lex societatis*.

[6] This connection point sends to the*locus regit actum system*.

[7] The rightful system designed is called *lex loci contractus*.

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papers elaborated in Romania and which concern persons residing in Romania, Romanian citizens or stateless persons.

The place of performance of the contract[8] is the connection point for the method of performing the contract.

The place where the prejudice occurs is the connection point (alternatively) in matters of liability for infringements brought to the personality (art. 2642 par. 1 b civ. code).

The place where the will was drafted, modified or revoked is an alternatively connection point in matter of the form of the testament (art. 2635 of the Civil Code).

The most closely connections enter into action for the affectation heritage (art. 2614 of the Civil Code), the substance conditions of the legal act (in subsidiary) - art. 2638 from the civil code).

The will of the parties[9] is used classically as a main link in the matter of the substantive conditions of the legal act (art. 2638 of the civil Code.). Regarding the form conditions, they accommodate themselves after the substantive conditions, but alternatively with other interconnection points indicated in art. 2639 from the civil code. The substance conditions of the legal are established according to the law chosen consensus by the parties (for contracts) and by its author (for the unilateral legal act).

The place from where the good was shipped is applicable to the goods found in ongoing transport (art. 2618 of the Civil Code).

The authority that examines the validity of the legal act[10] is a connection point for its form conditions, in some cases. The legal act is valid in terms of the form if it meets the conditions required by the applicable law according to the private international law of the authority which examines the validity of the legal act (art. 2639 par. 1 letter c of the civil code).

The seized court[11] is a connection point (Ş.Al., Stănescu. (2007):30) for procedural matters. In the international civil lawsuits the court applies the Romanian procedural law, if it was not stated otherwise through contrary express provisions (art. 1087 Civil Procedural Code). Furthermore, qualification in the private international law follows the law of the forum, meaning the law of the court seized. "Qualifying a problem as being one of procedural or substantive law is made under the Romanian law, subjected to the legal institutions without correspondent in the Romanian law."

[8] The rule through which this connection is expressed is lex loci executionis or *lex loci solutionis*, if a payment is made.

[9] This connection point draws the application of the rightful system called *lex voluntatis*.

[10] The rule is*auctor regit actum*.

[11] The rightful system thus determined is called *lex fori* or the law of the forum.

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During the international civil process, the administration of evidence is governed by the provisions of the Romanian law (art. 1090 par. 5 of the civil Code). Before the Romanian courts, the procedural capacity of a stateless person is subjected to the Romanian law (art. 1082 par. 2 of the civil Code.).

The flag of the vessel or of the aircraft (T.R., Popescu. (1994):25)[12] is, typically, a connection point for these means of transport. The creation, transmission or termination of the real rights over a mean of transport are subjected to the law of the pavilion that the vessel is flying or to the state law where the aircraft is registered (art. 2620 par. 1 letter civil code).

The organic statute of the transport undertaking is a connection point for activities involving railway or road vehicles (Art. 2620 to 2621 of the Civil Code).

Types of connections in the conflict norms matter

Unique and complex (multiple) connections

The cross-border realityhas proved that the conflict rules should respond optimally to the extremely varied requirements, generated by the multiplying matters where the elements with foreign elements are involved and by the situations that can become complicated, especially at the interference of the national legislations with the union right and with the conventional right. It is natural that the conflict rules to adjust themselves, the connection and the connection points being particularly targeted. In principle, each subject has a favorite connection point: citizenship is used in the personal status, the headquarters is taken into consideration for legal persons, the place of the deed is the connection point in the civil liability etc. However, under the pressure of the fact assumptions that are generated by the frequent presence of more foreign elements into a single legal relationship, it appears necessary that in the same subject, to be operated more connecting points.

From a technical standpoint, the doctrine underlined that *several solutions work (*M.-L.,Niboyet. G., de Geouffre de la Pradelle. (2013):171-172; B., Audit. L., d'Avout. (2013):149-150).

The unique connections are the ones that set, in a given matter, a single connection point. Determining the applicable law is relatively simple, since the indication is unique and accurate. Inheritance is subjected to the law of the state on whose territory the deceased had, at the time of death, the habitual residence (art. 2633 of the civil Code.). The legal statement

[12] It has been appreciated, concerning this connection point, that it fulfills, regarding ships and aircrafts, about the same function as citizenship or residence in the case of individuals.

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subjects inheritance, regardless of the type of goods that are part of the succession, to a unique law: the law of the last habitual residence of the deceased. The current regulation simplifies the possible solutions and leaves no doubt. The connection point is the habitual residence, and the mobile conflict of laws will be resolved with the enforcement of the new law - the law of the last habitual residence of the person leaving the inheritance. The old law of Romanian private international law resorted to two different connection points, as the good was movable or immovable: the national law of the deceased, at the time of death, respectively, the law of the place where the good was located.

The legislator takes into account that the connection point it designates for a particular matter, to match (perfectly if possible), the content of the conflictual norm. It is assumed that the connection point is significant, determined, for the legal relationship with foreign element, meaning that is adequate and predictable. In fact, in this case, the connection point is predefined, generating a real template for a certain category of legal relationships with foreign element (M.-L.,Niboyet. G., de Geouffre de la Pradelle. (2013):171-172). It has been shaped a certain tradition in the application of some laws, based on the connection points that were extensively and commonly used in a particular matter. So, it is natural for the citizenship to be governed by the national law of the person; the form of concluding marriage to be governed by the law of the place where the marriage ceremony is celebrated; possession and the main real rights over the goods to be subjected to the law of the place where they are located or situated.

The complex or multiple connections are the hierarchical connections (with points of connection in cascade), the cumulative and alternative connections.

It can be seen, for example, that some conflicting rules contain *connection points that are in cascade*. The main connection point is seconded, in regulation, by a few other connecting points. This is a common method, to which both the European regulations and national legislations of private international law resort to.As an example: if the spouses do not choose the law applicable to divorce, it shall be applied, in this order: the law of the State of the spouses' common habitual residence at the time of filing for divorce; in the absence of the common habitual residence, the law of the State of the spouses' last common habitual residence (if at least one of them has his habitual residence on the territory of this state at the time the divorce action); in the lack of the common habitual residence, the common nationality law of the spouses will be applied at the date of filling the divorce; in the absence of the common citizenship it will be applied the law

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of their last common citizenship (if at least one of them has kept their common nationality at the time of the divorce request); Romanian law, in all other cases (art. 2600 par. 1 of the Civil Code).

The purpose of establishing multiple connection points is, eventually, to avoid situations where there cannot be identified any applicable law to the legal relationship (M.-L., Niboyet. G., de Geouffre de la Pradelle. (2013):172)[13]. This is an extra caution from the legislature, but at the same time, is a gesture of flexibility for matters that are difficult to obstruct between predetermined options by connection points. Eventually, the advantage is for the parties, which, step by step, will use the connection points that identify optimally with the given legal situation.

Also, *the connection points can be alternative*, a situation that provides the parties the opportunity to choose between two or more elements, within the limits prescribed by the conflict norm. All connection points are primary, so that the freedom of the parties acts in respect to all markers offered by the legal norm. Two or more alternative connecting points are considered, equally, significant for the type of legal relationships in question. None of the benchmarks has priority over another / other, the parties having freedom of choice, within the legal framework provided by the conflict norm.

For instance, claiming the stolen or illegally exported movable good is subjected, at the choice of the original owner, either to the law of the State in whose territory the property was located (at the time of the theft or export) or to the law of the State where the property was situated at the date of the claim (Article 2615 par. 1 of the Civil Code).

Regulating the alternative international competence is guided by the rule of establishing multiple connection points with equal value in the option of the parts. For example, the law applicable to divorce is, according to art. 2597 par. 1 civ. code, one of the following laws, over which the spouses have choice: the law of the State in whose territory the common residence is found at the date of the Convention of choosing the applicable law; the law of the State in whose territory the spouses' last common habitual residence was located, if at least one of them still lives there at the time of the convention of choosing the applicable law; the law of the State of nationality of either one of the spouses; the law of the State where the spouses have lived at least three years; the Romanian law.

[13] It is stated, in this sense, that the method of the subsidiary connections is booming and avoids the void. This legal technique also has justification because it allows the progresive release of the most appropriate connection point for the specific situation.

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In the same category of useful solutions for the conflict situations, *we can find the legal standards which impose bringing together, cumulatively, more conditions.* We are talking about the conflicting rules which seek, in order to produce legal effects, meeting the mandatory conditions laid down by two or more laws. Marriage in the Romanian private international law involves bringing together the substantive conditions laid down by the national law of each of the spouses at the time of the marriage ceremony. Likewise, it is stated that, if one of these laws contains an impediment to marriage (impediment that, according to the Romanian law, is not compatible with the freedom of marriage), the impediment in question will be removed as inapplicable - but only if one of the spouses is a Romanian citizen and the marriage is going to be concluded in Romania. It follows, from examples, that both the substantive conditions of marriage and also the marriage impediments are subjected to some cumulative requirements (art. 2586 par. 1 and 2 of the civil Code).

Constant connections (fixed) and variable connections (mobile)

The constant connections are reflected in fixed connection points, which cannot be displaced from a law system which is under another legal system. The place of committing the illegal act and the location place of the immobile are connection points that are part of some constant connections.

The variable connections are expressed in mobile connection points that can be moved in space (Fr., Knoepfler. Ph., Schweizer. (1990):15): the place where the movable property, nationality, habitual residence etc. are found. A useful specification that takes into account the category of the connections: only the mobile or variable connections allow the fraud of the law in private international law. The fraudulent activity can only take place under the conditions when the connection point is changed, deliberately, by the parties, so that the legal relationship is removed from the competent normal law. The fraudulent changing of the connection point is of the essence of fraud to the law (and is one of its conditions), being possible only in the case where connections contain movable connection points.

3. Classifying the conflictual norms

Several criteria underlie the classification of the conflict rules. The unilateral conflict rules differ from the bilateral ones (which represent the rule). The civil Code establishes an inventory of the conflictual norms using the criterion of their content; also, the European regulations that are interested in the private international law.

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Classifying the conflictual norms by the nature of the connection

The unilateral conflictual norms are characterized by the fact that they expressly determine only the application scope of the national substantive law, not being interested in the cases where the foreign law has jurisdiction (I.P., Filipescu. A.I., Filipescu. (2005):39)[14]. The unilateral norms only indicate cases where the law of the forum is applied.

The bilateral conflictual norms (complete or double norms) are rules that determine both the application scope of the national law and of the foreign law. Most conflictual norms contained in the Civil Code and in the modern codifications, fall into this category. We exemplify article no. 2616 par. 1 from the Civil Code: "The usucapion is governed by the law of the state where the property was situated at the commencement of the period of possession, prescribed for this purpose"; art. 2614 Civil Code: "The law applicable to an affected patrimonial mass to a special destination, professional or otherwise, is the law of the state with which this patrimonial mass has the closest connections".

The classification of the conflictual norms after their content

Romanian civil code. Title II of Book VII covers the conflict norms specific to different matters. This part - which is the special part of the Romanian private international law – is the one that groups the conflict norms as it follows:

• conflict norms regarding the status of the individual and the organic statute of the legal person: art. 2572-2584;

• conflict norms regarding family status (marriage, affiliation, adoption, parental authority and protection of children, maintenance obligation): art. 2585-2612 of the Civil Code;

• conflict norms concerning goods: art. 2613-2632 of the Civil Code;

• conflict norms concerning inheritance: art. 2633-2636 of the Civil Code;

• conflict norms regarding the legal act: art. 2637-2639 of the Civil Code;

• conflict norms relating to the contractual obligations and non-contractual obligations: art. 2640-2646 of the Civil Code;

• conflict norms regarding securities: art. 2647-2658 of the Civil Code;

[14] Law no. 105/1992 contained a unilateral conflict rule in art. 63: "Copyright and Industrial Property of physical and judicial persons are protected in Romania, according to Romanian law and international conventions to which Romania is a party".

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• conflict norms applicable to the trust: art. 2659-2662 of the Civil Code.

The European regulations and the conventional law. The legal relations with foreign element are regulated in the European regulations. Designed for the European area, they constitute the legal framework that gives priority for implementing the union law. International conventions give effectiveness in the bilateral or multilateral relations between state parties.

We mention the main *international regulations and conventions* (N.C., Aniței. (2015):61-63) which concern the private law relations with foreign element:

• the contractual obligations are covered by Regulation no. 593/2008;

• the non-contractual obligations are found in Regulation No. 864/2007;

• the rules applicable in the matter of divorce, body separation and parental responsibility are contained in Regulation No. 2201/2003, Regulation no. 1259/2010 (enhanced cooperation form) and in the Hague Convention of 19 October 1996;

• The maintenance obligation is regulated by Regulation No. 4/2009 (it will also be taken into account the Decision no. 2009/941 of the EC regarding the Protocol from Hague, 2007 on the law applicable to maintenance obligations);

• the laws applicable to insolvency are contained in Regulation No. 1346/2000.

The judicial cooperation in civil and commercial matters has the framework settlement in Regulation no. 1215/2012 (effective from January 2015) and in the body of the mentioned regulations. Matters relating to the trial proceedings are regulated according to the problematic, as it follows:

• the notification or communication of the judicial and extrajudicial documents in civil or commercial matters: Regulation no. 1393/2007 and the Hague Convention of 1965;

• cooperation on for obtaining evidence in civil or commercial matters: Regulation no. 1206/2001, the Hague Convention of 1970 (obtaining evidence abroad) and the Hague Convention of 1961 (abolishing the requirement of over legalization.)

• information on the foreign law: the London Convention (1968) and the Additional Protocol to the Convention (1978);

• special procedures: Regulation no. 861/2007 (low value claims); Regulation no. 1896/2006 (requiring the payment); Regulation no. 805/2004 (uncontested claims);

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• successions, European Certificate of heir: Regulation no. 650/2012 (effective from August 2015).

4. Immediate application norms

The rules for immediate application have also received other names, which also express the same reality: necessary application rules or laws, police laws, imperative application rules. We'll use them alternatively, giving them the same meaning, in the context of the legal relations of private international law.

The specialty literature knows no unanimity regarding the definition of immediate application norms. The criteria used to determine these rules are diverse (I.P., Filipescu. A.I., Filipescu. (2005):41-42), but, whatever was the thesis embraced, it was concluded that there is in question a separate category of norms, compared to the conflict norms. The immediate application norms and the conflictual norms are two different types of norms to which the private international law appeals.

In a common denominator of doctrinal views, the immediate application norms exclude the conflict of laws. Hence, the major difference compared to the conflict norms. If the latter ones are intended to make reference to the applicable law - the only one which will rule the legal merits – the immediate norms apply directly to the legal situation for which they are intended. Once the immediate application norm is present, it will remove from application the conflict norm, which means that it is also excluded the possibility of applying the foreign law.

Immediate application rules are the subject of some broad discussions in the foreign doctrine. It is emphasized the fact that we are in the presence of some rules of private international law, which define the international field in which material norms of internal right are applied. Basically, these rules extend the application, in international situations, of some material norms provided for the private domestic relations, considering the intended purpose of the state forum (M.-L., Niboyet. G., de Geouffre de la Pradelle. (2013):188; B., Audit. L., d'Avout. (2013):161-171).

The immediate application norms (S., David. (2002):40)*are material norms that belong to the internal law of the state forum and which, due to their imperative character, are primarily applied to the legal relationship with foreign element, removing from application the conflict norm.*

The foundation of the necessary rules is found in their imperatively emphasized character. There are legal rules that give expression to some fundamental principles of the state forum of the forum, which explains the absence of the choice between two or more laws applicable to the legal

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relationship with foreign element. The legislature uses the method of the laws with immediate application to decide directly on those legal situations which it considers being essential for the state forum and for which it applies, firmly, the right of the forum – through the mediation of these rules. For these reasons, the rules of immediate application were close to the public order of private international law, which, in turn, leads to the removal of the foreign law and to the application of the right of the forum. However, the two are not identified. The public order of private international law requires prior consultation with the conflict norm, designing as competent the foreign law, examining the foreign law and establishing that it contains inconsistent provisions with the fundamental principles and concepts of the state forum state. Meanwhile, the police norm applies immediately, without raising any problem about some conflicting norm for the case brought before court.

It is certain the fact that the norms of necessary application prevail compared to conflict norms, and the court has no possibility of option, being required to apply the substantive norms. We identify immediate application norms not only in the national systems of private international law, but also in the union law. The text of Regulation No. 593/2008 (Rome I)[15] defines the norms of immediate application as being norms whose consideration is regarded as crucial by a certain country for safeguarding its public interests, such as its political, social or economic organization, to the extent that these rules will apply to any situation falling within their field of action, whatever the law applicable to the contract, under the Regulation.

The Romanian Civil Code operates with immediate application norms, most kept from the old regulation of private international law. For example, art. 2587 par. 2 of the civil code states that the Romanian citizen located abroad may enter into marriage only in front of the diplomatic agent or consular officer of Romania, in the state in which he is accredited and only in compliance with the formalities provided by the Romanian law. This provision removes from application the conflict norm contained in Art. 2587 par. 1, which states that the form of concluding marriage must respect the law of the State in whose territory is celebrated.

[15] http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2008:177:0006:0016:RO:PDF

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