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JUDICIAL CLASSIFICATION AND CONFLICT OF CLASSIFICATIONS

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JUDICIAL CLASSIFICATION AND CONFLICT OF CLASSIFICATIONS

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Abstract

The presence of the legal relationship with foreign element determines requirement to qualify for the determination of legal relations belonging to an institution or to a category of private law. Qualification has an axiological dimension, as it reflects the values enshrined in state court and is at the same time is an instrument of judicial and legislative policy. Qualification typology distinguishes primary qualification (operation qualification is to determine the law applicable to the legal relationship with the international element) and secondary qualifications (occurs by the time the primary qualification was done and is a matter for national law); content classification and qualification norms of conflict bond (if the change content classification norms of conflict; if the change link qualification applicable law legal relationship); legal qualification (operation definition, interpretation and classification of notions in the legal category by the very text of the law) qualification jurisprudence (belonging to national courts and international courts) and qualification doctrinal (eg qualification concepts "marriage", "effects of marriage" etc.).

Keywords: legal relationship, element, skill, concept, mechanism, typology.

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Jugastru, C. (2015). Judicial Classification and Conflict of Classifications. Jurnalul de Studii Juridice, Year X, No. 3-4, December 2015, 25-41.

Terminology. Notions

Determining the law applicable to a legal relationship with an extraneous element is inextricably connected to the issue of classification (O. Ungureanu, C. Jugastru, A.Circa.(2008): 86-90). The diversity of national legal systems, conventional law and European law – which also operates with its specific notions, they all require initial clarifications of the terms contained by the rule of conflict.

In order to establish which law shall apply to a certain legal relationship with a foreign element, we must first determine which laws are connected to said relationship. The main indicator is the binding point, which sets the spatial confines of the legal relationship in question. In order to establish the binding point, its content must first be determined first, namely the legal relationships governed by the rule of conflict. To that end, international private law employs categories, such as legal instruments, persons, assets, successions etc. All national legislations contain these categories; the difference, however, lies with the content of certain categories, depending on the perspective of national lawmakers. A common example is that the prescription for legal action is considered by British law to be a procedural matter, while continental law perceives it as a material, substantial issue.

What is the relationship between the applicable law and classification? The court of the forum must determine the applicable law to a certain institution. It follows, upon simple assesment of the provisions of (Romanian) international private law, that individual standing is subject to national law, bilateral legal documents follow the law agreed upon by the parties, immovable assets are governed by *lex rei sitae* etc. In turn, this implies qualifying the given institution into one of the known categories (to the state of the forum). Classification is an operation which is also used in internal law; in this case, classifying the notion into a certain category is only correlated with what the respective legal system is offering. In international private law, the classification implies analyzing and chosing from the legal categories offered by several legal systems, or by European or conventional law, depending on the case. It may happen that the law of the forum does not regulate certain institutions. In such cases, classification cannot be done following the "*lex flori* classification" rule. The indicator determining the classification shall be the legal system which regulates the institution or nation in question.

Classification is the biproduct of a logical and legal analysis, seeking to grasp the sense of the legal notions which express the content and the connection to the rule of conflict, in an attempt to interpret the notions and,

Jugastru, C. (2015). Judicial Classification and Conflict of Classifications. Jurnalul de Studii Juridice, Year X, No. 3-4, December 2015, 25-41.

ultimately, classification into a legal category – present in a legal system (I. Macovei. N.R. Dominte. F.-A. Baias, E. Chelaru, R. Costantinovici, I. Macovei (coord.)(2012):2556).

The conflict of classifications occurs when a certain notion, present in the content or connection of the rule of conflict, has different meanings in different legal systems.

The conflict of classifications has a certain specificity in international private law, in the sense that it brings together several legal systems, while the solution to the conflict of classifications "points out", ultimately, the solution to the conflict of laws (Y. Loussouarn, P. Bourel, P. de Vareilles-Sommières. (2013): 249). The conflict of classifications deals with cases where the legal relationship is susceptible of being governed by laws belonging to different states. Each of these laws has a different take on the meaning of the notions present in the rule of conflict, which, in turn, shall dictate the selection of one legal system or another.

Among the factors which influence or determine the classification, we mention the following (I.P. Filipescu, A.I. Filipescu. (2005): 84-85) the fact that legal notions may have different meanings in different legal systems; the fact that certain legal systems contain legal institutions which are not regulated in the legal system of the forum; the fact that different legal systems classify identical situations into different legal categories. Dissolution of engagement, for instance, is qualified either as delictual or contractual liability. In the same way, *decujus* has no heirs and passes away abroad: who shall inherit his assets and on what grounds? There are two possibilities: either the assets are taken over by the state of nationality of the deceased, or they become the property of the state in which they were located upon initiating the succession. It is necessary to classify the right of the state over the vacant assests. When talking about an inheritance right, then the assets shall be handed over to the state of nationality of the deceased. However, if the assets would be given to the state as assets without owner (res nullius), they would be awarded, under this title, to the state where they are located.

The relevant part, from the viewpoint of international private law, is the conflict of classifications. Classifying in itself is not difficult. However, problems occur when, upon examination of the relevant legal systems, there are differences in defining or interpreting the notions, or, when it is necessary to identify institutions unknown to the law of the forum.

We wish to point out the dynamic (variable) character of the legal categories which encompass the different notions operating in private law legal relationships with an extraneous element. A fairy recent situation emphasizes

Jugastru, C. (2015). Judicial Classification and Conflict of Classifications. Jurnalul de Studii Juridice, Year X, No. 3-4, December 2015, 25-41.

the dynamism of national regulations and the significant element of national specificity. The notion of "marriage", in the traditional sense of the word, has been modified and extended among the states of the world. Within the European Union, certain states have ruled on same-sex marriages: France, Holland, Portugal, Sweden, Belgium, Denmark, Spain and the United Kingdom. The differences occur, however, when it comes to the legal frame work – we currently have two legislative models: on the one hand, we have the "mariage-*bis*" model, or "institutionalized partnership", regulated, for instance, in the Nordic countries, Germany and Great Britain for same sex persons. On the other hand, we have the convention-partnership ("parteneriat-forme alternative de conjugalité" or „Pacs", in France; "cohabitation légale", in Belgium), which is an alternative to life in a couple, regardless of the partners' sexual orientation. The conflict of classifications occurs when the same type of partnership is classified in different categories, either as "marriage", or as "partnership". Classification has direct repercussions for the law applicable to the validity of the union between the partners concerned. Moreover, it has consequences over aspects such as dissolution of marriage, succession, divorce (and the effects of divorce on the partners' assets) (M.-L Niboyet, G. de Geouffre de la Pradelle (2013):225-227).

Case laws in matters of classification

We mention below a few case laws which are traditionally included in specialized literature, in order to express the issue of classification.

The Maltese succession (Bartholo case law (B. Ancel, Y. Lequette (1998):61-69))

Two spouses by the name of Bartholo, married in Malta (where they also had their spousal domicile) emigrate to Algeria, where the husband acquires real estate and eventually passes away. The widow files a legal action before French justice, claiming a part of the assets. The question confounding French courts is determining what is the *nature of the widow's demands*.

According to Maltese law, these demands were considered matrimonial advantage (effects of the matrimonial regime) and entailed the application of Maltese law (as law of the first spousal domicile), which awarded the widow a quarter of the deceased husband's assets.

However, according to French law, these demands were classified as successional and prompted the competence of French law (as the law of the

Jugastru, C. (2015). Judicial Classification and Conflict of Classifications. Jurnalul de Studii Juridice, Year X, No. 3-4, December 2015, 25-41.

place where the assets are located), which states that the widow is not entitled to any of the assets in question.

The problem before us is trying to determine the nature of the widow's demands. Depending on the classification of successional demands, either the Maltese or the French law was applicable. At any rate, in this case law, the French law was applied and the claim was denied.

The Dutchman's Last Will and Testament (the handwritten testament case law)[2]

A Dutch national passes away, in France, leaving behind a holograph testament. At that time, Dutch law forbade handwritten testaments (article 992 of the civil Code), but French law considered it a viable alternative.

The crux of the matter was the *holograph character of the testament* – considered as an issue of form, it led to the application of French law, as the law where the legal instrument had been drafted. On the other hand, if the holograph dimension was seen as a matter of capacilty, Dutch law became applicable, as the *lex patriae* of the deceased, and the testament itself became null and void.

Ultimately, French law had been applied. In the meantime, the Low Countries have ratified the Hague Convention of 1961 concerning the conflicts of laws in matters of successions, which supported the validity of handwritten testaments. However, the example remains relevant for Portugal[3], because a Portuguese citizen cannot leave a holograph testament, not even in a country which recognizes this kind of will.

The marriage of the Orthodox Greek (Caraslanis case law)[4] *(* B. Ancel, Y. Lequette (1998):215-224))

An Orthodox Greek citizen marries a woman, French national. Greek law states that for a valid performance of marriage, religious celebrations must take place.

The legal instrument of marriage shall be deemed as valid depending on the classification of *the religious marriage requirement*. If it is considered a matter of form, French law shall be applied, as *lex loci celebrationis* and the marriage will be perceived as performed; however, if it is classified as a condition of form, then the marriage is null and void, because Greek national law is applicable.

[2] http://www.cours-de-droit.net/droit-international-prive/droit-international-prive,r1542903.html (webpage visited on 10 April 2015).
[3] Article 65(2) of the Portuguese Civil Code.
[4] The French Court of Cassation, first civil division, decision on 22 June 1955.

Jugastru, C. (2015). Judicial Classification and Conflict of Classifications. Jurnalul de Studii Juridice, Year X, No. 3-4, December 2015, 25-41.

The common issue put forward by these case laws is determining the law which regulates classification. It can be noticed that legal systems qualify legal institutions based on different opticcs, which sometimes leads to radically different solutions in terms of the law applicable as *lex causae*.

The importance of classification within international private law resides in the repercussions of the classification operation on the *lex causae*: the solution of the conflict of laws may ultimately depend on how a legal fact is classified. On the other hand, settlement of the conflict of classifications precedes the settlement of the conflict of laws. In other words, settling the conflict of classifications is a step towards settling the conflict of laws.

Typology of classification

1. Primary classification and secondary classification

Primary classification is the qualification operation whose objective it is to determine the law applicable to a legal relationship with an extraneous element. In turn, the law competent to govern the legal relationship is established depending on the result of the classification.

Primary classification is performed in accordance with the law of the forum. For Romanian law, the rule is imperative: "When establishing the law applicable depends on the classification of a legal institution or of a legal relationship, the relevant legal classification is that prescribed by Romanian law" (article 2558(1) of the civil Code).

Secondary classification is, basically, subsequent to primary classification and does not influence the determination of the *lex causae*. Secondary classification operates after the moment when primary classification has been performed and is a matter belonging to internal law. For instance, it rules if a contract is of civil or commercial nature.

2. Classification of content and classification of the connection to the rule of conflicts of laws

In the case of classification of content, the rule of conflicts of laws is modified; when classifying the connection, the law applicable to the legal relationship is modified.

The classification mechanism

The role classification plays within international private law is significant, especially in terms of conflicts of laws and conflicts of jurisdictions.

Jugastru, C. (2015). Judicial Classification and Conflict of Classifications. Jurnalul de Studii Juridice, Year X, No. 3-4, December 2015, 25-41.

In internal law, regardless of the way a certain notion or institution is classified, that operation does not bring any changes to the applicable law. Classification within the Romanian legal system entails, invariably, the application of Romanian law.

For international private law, classification has major consequences. A primary classification of an institution not regulated by the law of the forum shall always entail the application of a foreign law. Additionally, the presence of supranational rules (European law) may lead to autonomous concepts, defined and interpreted as such, via European legal norms.

In other words, when all legal systems involved regulate a certain notion but classify it into different categories, a conflict of classifications occurs. One such example is the secular or religious character of marriage, which causes the applicable law to differ depending on the result of classification. From the perspective of states requiring that valid marriages be celebrated before a State Registrar, this is just a formal issues, settled in accordance with the law of the place where the union is performed. In religious systems, however, observance of religious customs is indissolubly tied to the contents of marriage as an institution, so that we no longer have to deal with an issue of form, but a substantive matter (settled in accordance with the law governing personal standing) (M.-L Niboyet, G. de Geouffre de la Pradelle (2013):224).

Classification, from the perspective of international private law, can be broken down into *two stages*. The first stage refers to classifying the legal notion into its corresponding category of internal law. Some examples are personal standing, the organic standing of a legal person, contracts, real standing, successions etc. This operation is confined to the sphere of internal law and, in principle, it ought not pose any problems, since it involves examining internal law and establishing the relevant legal category. The second stage (which is not always necessary) occurs when different classifications are made by different national legal systems. Only once the notion is classified – according to one of the legal systems involved or another – can the law applicable to the legal relationship be determined. This second phase brings a conflict of classifications and it is precisely the solution of said conflict that dictates the applicable law (the applicable law is, depending on the case, Romanian law, French law, Spanish law etc.).

Corresponding to these two stages, *compared law* identifies two types of conflicts: conflicts of categories and conflicts of classifications. *The conflict of categories* is the operation of classifying performed by the interpreter of the rule of conflict and it always deals with the known categories of internal law. The objective of this operation is to determine the prevalent legal nature of an

Jugastru, C. (2015). Judicial Classification and Conflict of Classifications. Jurnalul de Studii Juridice, Year X, No. 3-4, December 2015, 25-41.

institution when several possible variants exist (considering exclusively the concepts available in the internal law of the state concerned). For instance, failures of consent may fall either in the category of personal standing, or in that of contractual matters; another case in point is dissolution of marriage, which can belong either to personal standing or matrimonial status etc. (B. Audit, L. d'Avout (2013):236) The second conflict is *the conflict of classifications,* which occurs when two or more different states classify the same legal institution differently. It is accepted that certain categories of internal law have a wider meaning within international private law. For instance, family status is an element of individual standing and it is governed by the personal law. However, the meaning of the notion of "family status" is seen extensively, combining aspects concerning establishment of filiation, the maintenance obligation among spouses, the possibility that the spouses close contracts with one another or that they mutually guarantee their debts. As we move further away from the nucleus of the category in question, the possibility exists that certain aspects be "taken over" by other legal categories and, by way of consequence, be classified differently (M.-L Niboyet, G. de Geouffre de la Pradelle (2013):225-227) (.M. Attal, A. Raynouard (2013):314-318)

As a rule, the classification mechanims works in favor of the state of the forum. The discussion concerns the forum's rule of conflict – which needs to be interpreted – so that it is normal that it be analyzed from the perspective of the forum, as the legal system from which it emanates. However, if this is the main argument for applying the *lex fori*, there are some undeniable shortcomings in applying it. For instance, the *Caraslanis* case law discusses the problem of validating a marriage (N.C. Aniţei (2013):11-13) cosidered null and void in the country of origin of the spouses. This leads to the "misrepresentation" of foreign law, when this is considered, from the perspective of the necessity to classify. Classifications become radically different according to the two legal systems involved because they oppose two conflicting concepts governing the character of marriage (the secular character and the religious character) (N.C. Aniţei (2013):11-13).

The law governing classification in Romanian law

Rule

The lex flori *classification*

Currently, there are two legal texts regulating classification in accordance with Romanian law, as law of the forum.

Jugastru, C. (2015). Judicial Classification and Conflict of Classifications. Jurnalul de Studii Juridice, Year X, No. 3-4, December 2015, 25-41.

Pursuant to article 2558(1) of the civil Code, the classification governing the determination of the applicable law is performed according to Romanian law. This text establishes the rule that the main classification follows the *lex fori*, namely the law of the state whose authority is presiding over the litigation with an extraneous element.

Pursuant to article 1089 of the Code of civil procedure, classification of a certain issue as substantial or procedural is done according to Romanian law (except for legal institutions which have no correspondent in Romanian law).

Classification according to the law of the forum has been introduced in Romanian law by Law no. 105/1992. The current text of the civil Code is, in fact, a reiteration of the old regulation (article 3 of the Law concerning the regulation of legal relationships pertaining to international private law).

The established rule is for classification to be made according to the law of the forum, since it is obvious that the law of the court seized is the closest to the judge of the forum. At the same time, it is the law with which he is the most acquainted with, so that there are no difficulties in applying it. Therfore, classification essentially means interpreting the rule of conflicts of laws and the judge of the forum is the most competent to interpret the rule of conflicts of laws belonging to his own legal system (I.P. Filipescu, A.I. Filipescu. (2005): 88-89). The norms of international private law belonging to the forum are national, so that the classification envisaged by the regulator (in art. 2558 of the civil Code) refers to the national legal system.

Without a doubt, the differences which exist between the rules of conflicts of laws belonging to different national legal systems cannot be overcome by establishing a rule other than classification via *lex fori*. No other rule able to face the constraints of classification within international private law in a satisfactory way can be currently identified. From such a standpoint, foreign doctrine postulates that accepting the law of the forum, in cases of classification, is equivalent to resignation, rather than enthousiasm. The voices against classification in accordance with the law of the forum have pointed out that this solution represents a vehicle for legal isolationism (Y. Loussouarn, P. Bourel, P. de Vareilles-Sommières (2013):257-259).

Be that as it may, accepting the rule of classification *lex fori* comes in the spirit of legal realism. Certain corrections of this principle are necessary and they come as exceptions, namely situations in which classification is done according to a law other than that of the law of the state of the court seized. As the process of unification of international private law picks up steam, the differences of content and connection regarding the rules on conflicts of laws shall disappear. It is only full unification that allows us to do away with

Jugastru, C. (2015). Judicial Classification and Conflict of Classifications. Jurnalul de Studii Juridice, Year X, No. 3-4, December 2015, 25-41.

classification according to the law of the forum, justified by the use of the same notions at a conflictual level. For now, the results of regional unification can only be observed in exceptional solutions, since classification is allowed by virtue of the use of the notions contained by conventional law and European law.

Exceptions to the lex fori classification

Exceptional situations regulated by the Civil Code

Unlike Law no. 105/1992, which only mentioned the situation-rule, the civil Code covers more ground and regulates both the rule and the exceptional situations identified in the previous doctrine.

In the cases listed explicitly by article 2558(2-5) of the Civil Code, classification follows a law other than the law of the court seized. Just as the application of *legem fori* is the attribute of state sovereignty, exceptions to this rule are justified by virtue of the same principle. It is up to the sovereign state to allow, in certain cases, the application of a law of classification other than the law of the court seized. It is, in fact, a means of realizing the role of international private law – that of coordinating national legal systems, of aligning them with one another and with European law.

Below, we list the exceptions to the principle of classification according to the *lex fori*, following the order in which they are presented in the code.

a. *Classification in cases of renvoi*

Renvoi is a useful and indispensable institution of private international law. It implies negative conflicts of laws, in the sense that none of the existing laws is applicable to the legal relationship, but rather renvoi to the law of another state. Romanian law, for instance, grants competence to French law which, in turn, refuses to assume its competence in the matter in question and refers it back to Romanian law. On this occasion, Romanian law shall be applied in terms of material or substantial law (the legal rules which regulate natural persons, special contracts, successions etc.).

In cases of renvoi, classification is done according to the foreign law which referred the case back to Romanian law. Romanian law only admits 1st degree renvoi[5], namely the situation where Romanian law renvois to a foreign law, which refers it back to Romanian law. To the extent in which we operate with the institution of renvoi, we must admit that the classification of the notions composing the

[5] Pursuant to article 2559 of the Civil Code, where the foreign law renvois to Romanian law or to the law of another state, Romanian law is applied, unless expressly stated otherwise.

Jugastru, C. (2015). Judicial Classification and Conflict of Classifications. Jurnalul de Studii Juridice, Year X, No. 3-4, December 2015, 25-41.

structure of the rule of conflict which prompts the renvoi is also performed in accordance with this law.

b. *Classification depending on the nature of the assets*

The law governing the classification depending on the nature of the assets is indicated by article 2558(3) of the civil Code. The movable or imovable nature of assets is determined according to the law of the place where said assets are situated. The exception is predicated on the closer ties of the assets to the law of the state where they are located when the classification is performed , as opposed to the law of the country of the court seized (where, of course, the assets are situated in the territory of a state other than the state of the forum).

c. *Classification of institutions not regulated by the law of the forum*

Une of the generally admitted exceptions from the *lex fori* classification is the classification concerning institutions which do not have a corresponding body in the law of the forum. This is a preemptive measure on the part of the legislator, prompted by the tremendous differences between the continental and Anglo-American legal systems. Both have their regulating particularities, reflected in unique institutions, inexistent in the other legal system.

Classification of institutions unknown to the forum is supposed to have been fathered by Bartin. (.M. Attal, A. Raynouard (2013):3170 He was the one who tackled the issue of classifying the "widow's quarter" (in the *Bartholo* case law), institution regulated by Maltese law, but not regulated by French law. According to Maltese law, the surviving spouse was entitled to a quarter of the assets of the deceased spouse, while French law had no such regulation[6](B. Audit, L. d'Avout *(2013):240-241).*

For instance, the concepts of *Aufhebung* in German law[7] and *trust*[8]*(* D. Hayton (2007):267-283) (R. Crone (2001):54) *(*B. Chappuis (2007):1648) in

[6] „Dans tous les cas, une phase d'analyse de l'institution étrangère, tendant à dégager son rôle, précède celle du classement dans l'une des catégories de droit international privé du for. Selon l'expression d'un auteur allemand, il faut «placer l'étoffe étrangère dans les tiroirs du système national» (Melchior); selon celle de l'autre, «l'État étranger caractérise ses règles, l'État du for les classes» (Raape)".

[7] *Aufhebung* refers to grounds for dissolution of marriage which had existed prior to its celebration, occupying an intermediary role among reasons for divorce (which occur after the marriage takes effect) and causes of nullity (which are either prior or concomittant to marriage).

[8] *The trust* is the relationship based on which a person, called *settler,* passes down an item to another person, called *trustee*, the latter being held to dispose of it according to the best interest of a third party beneficiary, appointed by the *settler*.

Jugastru, C. (2015). Judicial Classification and Conflict of Classifications. Jurnalul de Studii Juridice, Year X, No. 3-4, December 2015, 25-41.

Anglo-Saxon law classify according to the foreign legal system which regulates them.

In the same way, Muslim law regulates the *kafala,* which is a protective measure aimed at minors and involves placing them into a "receiving family", in order to complete their education (B. Audit, L. d'Avout *(2013):240-241)*. There is no overlap with the institution of adoption (which is not regulated in Muslim law), since the *kafala* bears no effect on filiation.

Classification of institutions which are not present in the legal system of the forum is an extremely interesting topic for international private law. In corss-country relationships, finding solutions which are confortable for all parties involved is indispensable. Absolute and total uniformity of national regulations is impossible, just as the refusal to overcome known obstacles stemming from legal differences cannot be accepted. The permission granted by the law of the forum to apply a classification established abroad, in the legal system of another state, is a gesture of sovereignty made by the state of the forum in order to coordinate the national rules of conflict.

d. *Classification in accordance with the will of the parties*

In matters where *lex voluntatis* is applicable, the parties may choose the content of the nations with which they operate, without being able to define themselves the closed legal document. (T.R. Popescu (1994):92).

"When the parties have determined themselves the meaning of the notions included in a legal instrument, the classification of these notions is done according to the will of the parties" (the last paragraph of article 2558 of the civil Code). This exception is a particular case of the principle of freedom of will, which governs the matters of legal instruments in international private law. Weather we are talking about contracts or unilateral legal documents, the parties and the author of the unilateral instrument, respectively, are allowed to choose the applicable law. Additionally, they are allowed to classify the notions they have used in drafting the legal instrument.

Other exceptions from the lex fori *classification*

Doctrinally, other situations have been encountered, where a law different than the law of the forum is used to classify the notions which make up the structure of the rule of conflict.

These are mainly classifications included in the European Union law and in international treaties. Classifications belonging to European law are applicable to all states from the European space, while classifications stemming from international conventions are mandatory for the signatory states.

Jugastru, C. (2015). Judicial Classification and Conflict of Classifications. Jurnalul de Studii Juridice, Year X, No. 3-4, December 2015, 25-41.

However, this does not imply a possible relinquishment of sovereignty; on the contrary, it is the states themselves who decide, in a sovereign manner, the extent to which they allow, in their own territories, classifications other than *lex fori*.

e. *Classification of rules of conflict contained in the European law*

From the perspective of European law, there are two main categories of classification: the stipulations contained in the body of legislative instruments and the interpretations given by certain international jurisdictions.

Legislative instruments contain, in their vast majority, clarifications regarding the sphere of application of regulations. The introductory part defines the definitions of the notions with which the instrument operates, given that the preamble is confined to terminological explanations. In general, it is mentioned that the classifications in question are valid in the context of the legislative instrument that is being discussed.

We would like to emphasize the importance of explanations included in European regulations, for certain notions which do not always have legal definitions in internal systems. At the same time, if such definitions exist in the internal legal systems, they are optimally understood because of interpretations made by European courts.

We include here notions such as: "the insolvency procedure", "the bankruptcy procedure", "the center of main interests" (*of the debtor* – Regulation no. 1346/2000); "parental responsibility", "illegal departure with or restraining of a child" (Regulation no. 2201/2003); "usual residence of a natural person" and "the usual residence of commercial entities or of other bodies structured as legal presons or not" (Regulation no. 864/2007; Regulation no. 593/2008).

The texts of European directives also contain clarifications of the terms employed. In turn, the laws applying these directives into internal law use the very same terms, which simplify greatly the task of national legislators and ensure their unitary implementation in all Member States. For instance: "personal data", "processing of personal data", "operator", "management system of personal data", "recipient", "consent from the person in question" (Directive no. 95/46/EC concerning the protection of natural persons with regards to the processing of personal data and the free circulation of such data); "user", "transfer data", "location data", "communication", "electronic mail" (Directive no. 2002/58/EC concerning the processing of personal data and

Jugastru, C. (2015). Judicial Classification and Conflict of Classifications. Jurnalul de Studii Juridice, Year X, No. 3-4, December 2015, 25-41.

protection of confidentiality in the public communication sector[9]); "services provided by informational societies", "service provider", "commercial communication", (Directive no. 2000/31/EC concerning certain legal aspects of services provided by informational providers, especially in the field of electronic commerce, within the internal market[10]); "long distance contract", "consummer", "provider", "means of long distance communication" (Directive no. 1997/7/EC concerning the protection of consumers in cases of long distance contracts[11]); "electronic signature", "signatory", "data for creating the signature", "device for creating the signature", "product associated to electronic signature", "certificate", "qualified certificate" (Directive no. 1999/93/EC concerning a unitary frame work for electronic signatures[12]).

Aside from these clarifications, it is, of course, necessary to interpret the European legal dispositions. There are countless situations, brought before national courts, which bring into discussion issues that are insufficiently clarified in the bodies of regulations. The solutions offered by the EUCJ attest the fact that it is preferable to interpret these notions at a European level, not at state level. Since national courts are free to supply each their own interpretation, the harmonizing and unification role of European law is lost.

A decisive role in classifying the notions contained by European Union law is played by the *Court of Justice of Luxembourg*. By way of preliminary questions, legal issues occurred while applying Union law before national legal authorities are clarified.

For this reason, it is preferable that the texts of European instruments be as clear as possible and let the Court interpret the cases where these legal rules leave room for interpretation. Precisely because the variety and multitude of national solutions to the same legal issue has been considered, the Court has put forward the idea of establishing autonomous notions or categories, regulated by European regulations. The justification for autonomous

[9] The set of directives concerning the protection of personal data has been applied by two laws adopted by the Romanian legislator: Law no. 677/2001 for the protection of natural persons regarding the processing of personal data and the free circulation of this data (for Directive no. 1995/46/EC) and Law no. 506/2004 concerning the processing of personal data and the protection of private life in the field of electronic communications (for Directive no. 2002/58/EC).

[10] Directive no. 2000/31/EC has been applied in Romanian law by Law no. 365/2002 concerning electronic commerce (modified).

[11] Directive no. 1997/7/EC has been appied in Romanian Law by G.O. no. 130/2000 (approved with modifications by Law no. 51/2003). The text of the ordinance has been republished in the O.G. no. 177/7.03.2008.

[12] This directive has been applied by Law no. 455/2001 concerning electronic signatures.

Jugastru, C. (2015). Judicial Classification and Conflict of Classifications. Jurnalul de Studii Juridice, Year X, No. 3-4, December 2015, 25-41.

interpretation lies with the necessity to unify practice in matters of legal relationships with an extraneous element, leaving aside all possible solutions provided by national courts. These autonomous categories must become common categories for all Member States, especially since they are applied preferentially compared to national law.

Useful and relevant clarifications concern "civil matters" and "commercial matters", for which the EUCJ offers consistent jurisprudence. In accordance with the old Regulation no. 44/2001 (and the Brussels Convention), the Court has ruled on the categories of causes which fall under its incidence. Moreover, the interpretations supplied remain currently relevant in terms of fiscal, customs and administrative matters, while international judicial cooperation is excluded for the scope of the Regulation.

f. *Classification of norms stemming from international conventions*

International treaties are binding for signatory states, because the convention has the power of a law. It has been claimed (Y. Loussouarn, P. Bourel, P. de Vareilles-Sommières (2013):257-258) that it is preferable to avoid that each state classify according to *lex fori*, since this would affect the balance of the international convention in question. It is recommended that prior to classification, the common intention of the parties that negotiated the terms of the convention be identified, so that classification corresponds to the legal realities they had wished to express.

It is, of course, ideal that, upon drafting the international treaty, the Member States clarify the terms used. To the extent in which it is necessary that they be explained/ interpreted, it is recommendable that the classification issues be included in the treaty. This has been, for instance, the case with the Hague Convention of 1984, concerning the law applicable to trusts and tehir recognition. The Convention contains an adequate definition of trust, which is an institution of Anglo-Saxon origin, unknown to the legal systems of continental countries (Y. Loussouarn, P. Bourel, P. de Vareilles-Sommières (2013):257-258).

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