NEW DIMENSIONS OF PARTY AUTONOMY IN EUROPEAN PRIVATE INTERNATIONAL LAW

ISTVAN JANOS MOLNAR

Associate Professor Karoli Gaspar University of the Reformed Church in Hungary, Faculty of Law,
Department of European Law and Private International Law
Email: molnar.istvan@kre.hu

Abstract - The parties' right to determine the applicable law to their relationship has been a basic legal institution in private international law for a long time. Despite the fact that it was recognized by scholars in the second half of the 19th century, in the next hundred years its application remained mostly within the frame of the law of contracts only. The developments of private international law at the end of the 20th century (especially those of the law of the European Union) then profoundly changed the situation and the possibility to choose the applicable law by the parties visibly became part of all other areas of private international law, from family law through the law of property to the law of succession and some choice of law rules seem to be recognized even in some aspects of the law of persons. The paper discusses the new dimensions of party autonomy in determining the applicable law according to the relevant EU legislation - with some comments on the recent changes of Hungarian private international law.

Keywords - Choice of Law, Conflict of Laws, EU Law, Hungary, Party Autonomy, Private International Law.

I. INTRODUCTION

In private international law party autonomy has an importance in two different aspects. First of all, it is understood to be the right of the parties to agree on the forum in front of which their disputes will be resolved and secondly, it may also mean the right of the parties to choose the applicable law to their relationship. This article is further dealing with the second aspect only and we will examine how the dimensions of the determination of the *lex pro voluntate* has been extended in the private international law of the European Union from the law of contracts to other fields.

The party autonomy to select the applicable law has a long history in private international law. Some scholars go back even to ancient times for examples: a decree from the Hellenistic Egypt (120-118 B.C.) stating that contracts written in Egyptian are subject to Egyptian courts, while contracts in Greek are subject to the Greek courts was considered as an "indirect trace" to party autonomy as a conflict rule, since Egyptian courts applied the law of Egypt and the Greek court applied the Greek law.

In Europe, although the existence of party autonomy in contract can be traced in Roman law, the concept was not recognized by the early statutists. It was only in the 16th century whenCharles Dumoulin, the French scholar stated in a legal opinion that the common will of the parties should be the determining factor of the governing law of a contract. Interestingly, the said legal opinion concerned a matrimonial property matter and Dumoulinordered the law of the spouses' first common domicile to be applied to matrimonial property relations on the basis of an 'implied agreement' between the spouses.

The development of modern views on the application of the *lex pro voluntate*, on the other hand, is due toPasquale Stanislao Manciniand the Italian school. In 1851 he formulated the doctrine as known today. By all means, its application remained limited to contractual relations. Very simply, Mancini extended the principle of contractual freedom to the issue of the applicable law: if the parties may freely establish the content of their contractual relationship, they should be free to determine the applicable law, too.

Although there were still some theoretical debates on the acceptance of party autonomy in the continental Europe, it became an established doctrine in the first half of the 20th century. The growth of international trade continued to accelerate the process and party autonomy found its way not only to the national codifications, but also to international conventionsthus becoming a fundamental institution of international contract law. It could be said that the 'final victory' of the doctrine in continental Europe came in 1980 when it was incorporated in the Rome Convention.

The doctrine's acceptance in common law was a longer process. Based on the much-quoteddictum of Lord Mansfield in *Robinson v. Bland* scholars and latter English cases developed the doctrine, drawing influences from contemporary civil law solutions.Lord Mansfield's dictum was also followed in the United States. In his *Commentaries on the Conflict of Laws* published in 1834 the American scholar, Joseph Story argued that while as a general rule contracts are governed by the law of the place of the contract (*lex loci contractus*), if such place is different from the place of performance, there isa"presumed intention"that the law of thislatter place (*le loci solutionis*) must be applied. Although the United States courts followedthe doctrine, some

American scholars, especially J.H. Beale, vehemently criticized both the idea of party autonomy and the intention theory. Not surprisingly, as Beale was the Reporter for the proposed *Restatement (First) of Conflict of Laws* discussed at the 1927 American Law Institute conference, the final version did not acknowledge that parties to an international contract could depart from the *lex loci contractus*. The doctrine was finally accepted in the US only in the second half of the 20th century. Both the Uniform Commercial Code (1952) and the second Restatement (1971) recognized the doctrine of party autonomy with qualifications.

By all means, today's private international law is characterized by the fact that we can find only very exceptionally a national law which does not allow parties to a contract to choose the applicable law at all or only with significant restrictions.

At the end of the 20th centuryparty autonomy to determine the applicable law was extended beyond international contract law and, albeit to a limited extent, seeped into other areas of private international law, such as non-contractual obligations, matrimonial property law, succession law and the law of property. One of the most inventive national legislations, the Swiss Federal Act on Private International Law for example recognized the parties' autonomy in respect of marital property relations, property law and torts. EU regulations adopted in the last two decades has also extended the scope of the parties' choice of law beyond its traditional focus on contracts which makes party autonomy more and more a 'unifying principle' of modern private international law.

It therefore seems appropriate that the basic issues of the parties' choice of law should now be discussed within the general part of private international law rather than in the specific part relating to contracts and the topicshould be examined with respect to the entire spectrum of private international law. In the frame of such extended analysis, it seems appropriate to visit some specific issues in the discussion of whichthere is 'particular deficit' according to some academics.

Scholars in Hungaryare divided as to whether the parties' choice of law should be regarded as a connecting factor, exactly the same way as for example *lex rei sitae* or *lex patriae*. According to professor Imre Vörös, we are dealing with a connection factor, which is "*the spillover of the private autonomy of the parties into the field of private international law*". Another leading Hungarian scholar, László Burián also treats the parties' choice of law as a connecting factor. Others, like Gábor Bánrévy for example, parties' choice of law should not be regarded as a connecting factor, since while this the latter is intended to resolve conflicts between competing legal systems, the parties' choice of law '*predetermines the applicable law and thus excludes the possibility of conflict of laws*'. For our part, we are sharing this latter opinion.By all means, however, the parties' autonomy removes the burden of determining the applicable law from the dispute resolver's shoulders saving so resources and time.

II. DEVELOPMENT OF PRIVATE INTERNATIONAL LAW IN THE EUROPEAN UNION

In the process of the development of the private international law of the European Union the entry into force of the Treaty of Amsterdam on 1 May, 1999 represented the dividing line. The system prevailing today is, however, based on the provisions of the Treaty on the Functioning of the European Union (TFEU) recalibrated by the Treaty of Lisbon signed on 30 December, 2007. The primary basis for the unification of private international law is Article 81 of the TFEU, which - within the framework of judicial cooperation between member states in civil matters - authorizes the European Parliament and the Council to adopt measuresin accordance with the ordinary legislative procedure- among other things – to ensure '*the compatibility of the rules applicable in the Member States concerning conflict of laws and of jurisdiction*'. The regulations on the law applicable to contractual obligations (Rome I Regulation) and on the law applicable to non-contractual obligations (Rome II Regulation) were adopted in the frame of this ordinary legislative procedure. Another regulation on the succession matters (the Succession Regulation - also laying down rules of jurisdiction) fits into this row.

In Article 326-334 of the TFEU, we may find the rules relating to the so-called 'enhanced cooperation'.According to these rules, a group of Member States may also agree on enhanced cooperation *inter se*on issues in which unanimity cannot be reached. In this case, the Member States participating in the cooperation may submit a request to the European Commission '*specifying the scope and objectives of the enhanced cooperation proposed*'. The Commission then submits a proposal to the Council which gives its consent in the form of a regulation. Different regulations were adopted in the frame of this enhanced cooperation, namely in respect of the law applicable to divorce and legal separation (Rome III Regulation), to matrimonial property regimes (Matrimonial Property Regulation) and to property consequences of registered partnerships (Partnership Property Regulation). These regulations bind only the limited number of the participating Member States.

On may conclude from the above that unified conflict rules apply in the European Union in most of the fields of civil law and the importance ofnational legislation of the Member States basically retains only property law and the law of persons.
In Hungary, the conflict rules are determined in a recent legislation. When adopting Act XXVIII of 2017 on private international law (Hungarian PIL Act) the Hungarian legislator evidently took into consideration the results of the development of the European conflict rules and adjusted national rules to EU law.

III. DIFFERENT ISSUES OF THE PARTIES' CHOICE OF LAW

3.1. Parties' Choice of Law and the Otherwise GoverningLaw

In relation to the party autonomy to determine the applicable law two different theories have emerged over time.The difference between the two theories is in the assessment of the underlying role of the governing law that would apply in the absence of the parties' choice. One of these is the so called 'absolute choice theory' which holds that the law chosen by the parties replaces the law applicable in the absence of choicein its entirety. In contrast, according to the 'relative choice theory' the law chosen may not override the mandatory provisions of the otherwise governing law.

Today's private international law is characterized by the fact that, as a general rule, the parties' choice of law is 'absolute'. This principle is reflected in the different legal instruments of the European Union, too. However, some of them, like for example the Rome I Regulation, contain exceptions where the parties' freedom to choose the applicable law would remain relative: pursuant to Article 3(3) of the regulation if a choice of law is made and all other elementsrelevant to the situation are located in a country other thanthe country whose law has been chosen, the choice of lawshould not prejudice the application of provisions of thelaw of that country which cannot be derogated from byagreement.There are some opinions that allowing party autonomy to be trumped by mandatory rules of another law may undermine legal certainty and therefore a broader interpretation of these provisions would be required. Rome II Regulation contains a similar provision. In addition, both regulations contain also an 'internal market clause' which ensures that the parties cannot avoid the application of the binding rules of EU law through a choice of the law of a third country if '*all the elements relevant to the situation' are located in one or more Member States*'.

3.2. Unilateral Choice of Law

In international contract law, it is self-evident that the choice of law is the result of a joint decision of the contracting parties, i.e. it is based on the mutual agreement of the persons who are parties to the contract. The first sentence of Article 3(1) of the Rome I Regulation reads as follows: '*A contract shall be governed by the law chosen by the parties*.' The same principle applies - as a general rule - to non-contractual obligations (Article 14(1) of Rome II: "*The parties may agree to submit non-contractual obligations to the law of their choice...*"). Article 5(1) of the Rome III Regulation also allows the spouses to choose the law jointly: '*The spouses may agree to designate the law applicable to divorce and legal separation (…)*'.

In some other matters, there are also cases where the applicable law is chosen unilaterally, i.e.,by one of the partiesof the given legal relationship, independently of the intention of the other parties involved. The following two examples may be identified in EU private international law:

(i) In the case of non-contractual obligations arising out of environmental damage, the person claiming damages may decide unilaterally whether to base his claim on the law of the country in which the damage occurred (*lex loci damni*) or on the law of the country in which the event giving rise to the damage occurred (*lex loci delicti commissi*).
(ii) According to Article 22(1) of the Succession Regulation, '*a person* (i.e. a potential testator) *may choose as the law to govern his succession as a whole the law of the State whose nationality he possesses at the time of making the choice or at the time of death*' instead of the law of the State in which he had his habitual residence at the time of his death, irrespective of the will of his future heirs.

3.3 Express and Implied Choice of Law

The classic form of choice of law is when the parties (or the person unilaterally entitled to choose the law) designate(s) a country's law as applicable law *expressisverbis* (express choice of law). However, even if it is not a general rule, the rules of private international law recognize not only an express choice of law, but also an implied one. In such a case, even in the lack of an express choice, it is clear from the circumstances of the case which law was chosen.

An implied choice is allowed by the Rome I Regulation:'*The choice shall be made expressly or clearly demonstrated by the terms of the contract or the circumstances of the case.*' The Rome II Regulation contains a similar provision: '*The choice shall be expressed or demonstrated with reasonable certainty by the circumstances of the case and shall not prejudice the rights of third parties*'. The Succession Regulation also recognizes an implied choice of law if it is '*demonstrated by the terms*' of the disposition of property upon death.

Implied choice of law should not be confused with the so-called hypothetical choice of law. In the past, in the judicial practice of some countries, courts have determined the applicable law to a contract by reference to the presumed intention of the parties in the absence of an interpretable intention of them. It is now a well-established rule of private international law that there is no room for such speculative determination of the applicable law.

The question arises as to when the choice may be considered as 'clearly demonstrated' and what factors may constitute 'reasonable certainty' for an implied choice of law. English case law for example requires to ascertain the implicit choice within the 'factual matrix' of the case. It is generally accepted that this may be a reference to specific laws of a State or to specific provisions thereof, or a choice of law made in a previous or related transaction in a continuing business relationship. However, the principle *qui eligitiudicem, eligit ius* does not apply, i.e., the choice of forum does not in itself constitute a choice of law.

3.4. Formal Requirements of the Choice of Law

An explicit choice of law presupposes the agreement of the parties or a declaration to that effect by the person entitled to choose. In contractual relationships, there is no formal requirement for an agreement on choice of law; contracts may be concluded orally, so there is of course no obstacle to the parties also agreeing orally on the applicable law. The situation is similar for agreements on the law applicable to non-contractual obligations. Neither the Rome I Regulation nor the Rome II Regulation impose any formal requirements. Article 22(2) of the Succession Regulation to the estates of deceased persons merely provides that the choice of law may be made '*in a declaration in the form of a disposition of property upon death*", but the testamentary disposition may also be made orally.

Interestingly, in connection with adult relationships the European legislator laid down stricter formal rules for the choice of law agreement. Article 7(1) of the Rome III Regulationprovides that such an agreement '*shall be expressed in writing, dated and signed by both spouses*' (any communication by electronic means which provides a durable record of the agreement is also in writing). The Matrimonial Property Regulation and the Partnership Property Regulation also contain similar provisions.

3.5. The Range of Laws to be Chosen

The rules of private international law on the parties' choice of law can generally be said to allow choiceof the law of a country. The Rome I Regulation makes this clear referring to the aim to determine the applicable 'national law'. Consequently, one may conclude that any reference to non-state laws, such as *lex mercatoria*, the UNIDROIT Principles of Commercial Contracts, or the clauses of international treaties such as the Vienna Convention on Contracts for the International Sale of Goods, cannot be interpreted as a choice of law. It can also be concluded from the above rules that the law of states which no longer exist (e.g., Roman law, Soviet law, etc.) may not be chosen either.

The issue of non-state law has a specific aspect in respect of the Rome III Regulation. It is to be pointed out that the party autonomy does not permit parties to evade the operation of secular (civil) law, by opting into religious non-state law.

On the other hand, we may find that the parties' options to choose the applicable law are limited in almost all areas of law. As we see above, even in the law of contracts, wherein principle there is no obstacle to the parties choosing a law that is not even tangentially related to their legal relationship, EU law imposes a specific constraint.

Compared with the general European approach, which does not generally require a link between the legal relationship of the contracting parties and the law chosen, some laws have stricter rules. For example, under US law, if '*the chosen state has no substantial relationship to the parties or the transaction and there is no other reasonable basis for the parties' choice*' the law chosen by the parties may not prevail over the otherwise applicable law.

It also seems to be a common arrangement in EU private international law that the parties are only entitled to choose between certain specific laws being connected to the parties' relationship. Examples of such requirements for a geographical nexus in the Rome I Regulation are the contracts for the carriage of passengers andcertain insurance contracts.As we could see above, the Rome II Regulation also provides for a choice of one single alternative solution in case of environmental damages instead of the otherwise applicable law.

The regulations relating to adult relationships all set forth strict limits in respect of the choice by the spouses (partners) of the law applicable.Basically, the parties may choose as governing law only the law of a country with which they have a special connection.
Finally, as we could also see earlier, the right of a person to choose the applicable law to his succession is also limited, as he could choose only the law of the State of his nationality instead of that of the law of the State of his habitual residence. This measure, however, can be viewed "as a sensible counterbalance to such a weakly constructed general rule".

3.6. Choice of SeveralLaws

Although as a general rule the law chosen by the parties covers the legal relationship as a whole, the

question may arise whether it is possible to choose a law for only a part of the legal relationship or whether the legal relationship can be subject to several laws. This splitting of the applicable law is known in private international law as*dépeçage*. In such case the parties can subordinate different parts of their contract to different laws, but it is also possible that they choose a law thatapplies only for a specific part of their contract, while the otherwise applicable law will govern the remaining part.

In respect of contractual relationships, the last sentence of Article 3(1) of the Rome I Regulation expressly allows for such a split of the contract stipulating that '*by their choice the parties can select the law applicable to the whole or to part only of the contract*'.While some concerns are formulated in connection with *dépeçage* by academics, it is generally admitted that its acceptance by the Rome I Regulation 'expands the scope of the parties' freedom in choice of law context'.
The other EU Regulations do not contain any provision on this issue, so it is not entirely clear whether this option is available to spouses (life partners) in adult relationships or in respect of non-contractual obligations. On the other hand, it is quite evident that the (potential) testator does not have this right under the Succession Regulation, as he is only entitled to choose a law'*to govern his succession as a whole*'.

It is also possible that the parties choose different laws consecutively in time. It practically meansthat the parties essentially change their choice of applicable law and make their legal relationship subject to the provisions of another law instead of the law previously chosen. In cases where private international law rules allow for a choice of law, there is usually no obstacle to changing the chosen law. However, some rules may limit the parties' right to do so in such a way that such subsequent change cannot adversely affect the rights of third parties.

3.7 Static and Dynamic Choice of Law

Both the theory and the practice of private international law usually interpret the parties' choice of applicable law in a dynamic way, i.e., as the parties' choice of a specific law as a dynamically changing, evolving substance. The relevant conflict-of-law rules are typically silent on this issue, so that, as a general rule, account must be taken of any subsequent changes in the law chosen by the parties. Scholars are reluctant to accept a choice of applicable law as it stands at a specific time arguing that the validity of such '*freezingclause*' is more than doubtful.

3.8. The Timing of Choice

The rules of private international law do not usually contain any provision as to when the option to choose the applicable law opens to the parties, but it is common for the legislature to specify the time until which the parties concerned may exercise the option. Typically, the right of choice of law is available to the parties even in the course of the proceedings to determine a private international law question.

A peculiarity of the new Hungarian PIL Code is that the Code allows the choice of law at the latest at the stage of the preparatory partof the court proceedings, within the time limit set by the court.

IV. CONCLUSIONS

Party autonomy is a widely accepted principle in private international law and has become increasingly important in the last decades. It gives a (limited) power to the parties to determine the law applicable to their relationship. The different regulations of the European Union visibly widened the scope of application of party autonomy to a significant extent to all areas affected by EU legal harmonization.As a result of this development, a colourful and complex system of rules regarding party autonomy has been created, which is currently awaiting a thorough analysis by legal science.

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[2] Palásti Gábor, Nagykommentár a Róma I. rendelethez, Wolters Kluwer Hungary, Budapest, 2021, p. 21

[3] In Italy party autonomy was recognized in an Italian statute as early as 1865 and was inserted in theCodiceCivile in 1942.

[4] SeeGreece, Poland, Switzerland, Spain and Hungary as examples.

[5] Giesela Ruhl: Party Autonomy in the Private International Law of Contracts: Transatlantic Convergence and Economic Efficiency, (2007), Comparative Research in Law & Political Economy, Research Paper No. 4/2007 p. 6 (http://digitalcommons.osgoode.yorku.ca/clpe/227) accessed 8 December 2024 [1755] 96 Eng. Rep. 129 KB

[6] Joseph Story, CommentariesontheConflict of Laws, 1st ed (reprint) (New Jersey: Lawbook Exchange Limited, 2010), p.280 Restatement (First) of the Conflicts of Laws (1934) 322§

[7] Uniform Commercial Code section 105-1, Restatement (Second) of the Conflicts of Laws (1971) 187§. One of the said qualifications was that the contract must bear reasonable relation to the state the law of which was chosen by the parties.

[8] This is the situation in Latin America where national laws generally reject the doctrine. Although the Inter-American Convention on the Law Applicable to International Contracts(Mexico Convention) recognized party autonomy this convention was ratified by two states (Mexico and Venezuela) only.

[9] Bundesgesetz über das Internationale Privatrecht vom 18. Dezember 1987(IPRG) IPRG Article 52, IPRG Article 104, IPRG Article 135

[10] Alex Mills: ConceptualisingPartyAutonomy in Private International Law, Revuecritique de droitinternationalprivé 2019/2 (No 2), p. 418 (https://www.cairn.info/revue-critique-

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[15] Ulrich Magnus – Peter Mankowski (ed.): Rome I Regulation: Commentary, Köln, Verlag Otto Schmidt, 2017, p. 107 Article 81(2) c) of the TFEU
[16] Regulation (EC) No 593/2008 of the European Parliament and of the Councilof 17 June 2008on the law applicable to contractual obligations (Rome I)
[17] Regulation (EC) No 864/2007 of the European Parliament and of the Councilof 11 July 2007on the law applicable to non-contractual obligations (Rome II)
[18] Regulation (EU) No 650/2012 of the European Parliament and of the Council of 4 July 2012 on jurisdiction, applicable law, recognition and enforcement of decisions and acceptance and enforcement of authentic instruments in matters of succession and on the creation of a European Certificate of Succession
[19] It is to note that Council Regulation (EC) No 4/2009 of 18December 2008 on jurisdiction, applicable law, recognition and enforcement of decisions and cooperation in matters relating to maintenance obligations (Maintenance Regulation) is also a result of the ordinary legislation process, but pursuant to Article 15 of this regulation the law applicable to maintenance obligations shall be determined in accordance with the 2007 Hague Protocol. Consequently, the provisions applicable to the parties' choice of the applicable law, not being of European but international character are not further discussed in this article.
[20] Council Regulation (EU) No 1259/2010 of 20 December 2010 implementing enhanced cooperation in the area of the law applicable to divorce and legal separation
[21] Council Regulation (EU) 2016/1103 of 24 June 2016 implementing enhanced cooperation in the area of jurisdiction, applicable law and the recognition and enforcement of decisions in matters of matrimonial property regimes
[22] Council Regulation (EU) 2016/1104 of 24 June 2016 implementing enhanced cooperation in the area of jurisdiction, applicable law and the recognition and enforcement of decisions in matters of the property consequences of registered partnerships
[23] There are 16 Member States applying the Rome III Regulation, while 18 Member States apply the other two regulations adopted in enhanced cooperation.
[24] Even in the law of persons, a remarkable choice of law rule is based on case law of the European Court of Justice. The judgment of the court in the case Carlos Garcia Avello v État belge (C-148/02 of 2 October 2003) persons of double nationality may choose to determine their surnames according to the law and tradition of any country which nationality they hold.
[25] Kostova p. 9 Article 14(2) of the Rome II Regulation
[26] Article 3(4) of the Rome I Regulation and Article 14(3) of the Rome II Regulation
[27] Article 7 of the Rome II Regulation Second sentence in Article 3(1) of the Rome I Regulation
[28] The last sentence in Article 14(1) of the Rome II Regulation
[29] Article 22(2) of the Succession Regulation
[30] Hellenic Steel Co v Svolamar Shipping Co Ltd (The Komninos S) [1991] 1 Lloyd's Rep 370
[31] Please note however, that under the Rome I Regulation the choice of exclusive jurisdiction of the parties over the courts of a Member State may be an indicator of an implied choice of law (see recital 12). See Article 23(1) in both regulations
[32] See Recital (6) of the Rome I Regulation. The same rule can be deduced from the provisions of the Rome II Regulation, from Article 5(1) of the Rome III Regulation and from Article 22(1) of the Succession Regulation speaking of the choice of the law of a particular State.
[33] It is to note thatRecital (13) of the Rome I Regulation might be considered as an attempt to encourage the parties to 'incorporate by reference into their contract a non-State body of law or an international convention'. However, incorporation of any non-state law by the parties into the contract may not be considered as a choice of law and does not make redundant the determination of the applicable law.
[34] Janeen Carruthers: Party Autonomy in the Legal Regulation of Adult Relationships: What Place for Party Choice in Private International Law? (2012) The International and Comparative Law Quarterly, October 2012, Vol. 61, No. 4 p.890 Restatement (Second) of Conflict of Laws Article 187(2)(a)
[35] Pursuant to Article 5(2) of the Rome I Regulation the parties may choose as applicable law only the law of the country of the habitual residence of the passenger, of the habitual residence or of place of central administration of the carrier, or of the place of departure or destination.
[36] Pursuant to Article 7(3) of the Rome I Regulation the parties may choose only the law of the country where the risk is situated, where the policy holder has his habitual residence, in case of life insurance where the policy holder is a national, etc. Article 7 of the Rome II Regulation
[37] Pursuant to Article 5(1) of the Rome III Regulation:'The spouses may agree to designate the law applicable to divorce and legal separation provided that it is one of the following laws: (a) the law of the State where the spouses are habitually resident at the time the agreement is concluded; or (b) the law of the State where the spouses were last habitually resident, in so far as one of them still resides there at the time the agreement is concluded; or (c) the law of the State of nationality of either spouse at the time the agreement is concluded; or (d) the law of theforum'. Article 22(1) of both the Matrimonial Property Regulation and the Partnership Property Regulation enables parties to choose any one of the law of the habitual residence or nationality of either party or – in case of registered partnerships - the law of the State under whose law the registered partnership was created.
[38] Carruthers p. 904, Kostova, p. 15, Article 22(1) of the Succession Regulation
[39] See for example Article 3(2) of the Rome I Regulation Burian, p. 368
[40] With the exception, for example, of the Rome II Regulation, which allows choice of law as a general rule to be made 'by an agreement entered into after the event giving rise to the damage occurred' (Article 14(1)(a) of the Rome II Regulation. See Articles 23(2), 28(3), 30, 45(3), 50(2), 59 and 63(2) of the PIL Code

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