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REPORT ON THE CROATIAN GOOD PRACTICES

(drafted by prof.dr.sc. Mirela Župan and Martina Drventić, junior researcher)

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INTRODUCTION

The Croatian Exchange Seminar was the third National Exchange Seminar organized within the EUFam's Project. It was organized by the Faculty of Law Osijek. The aim of the Seminar was to evaluate the state of implementation of EU legal instruments on Family Law (Brussels IIbis Regulation¹, Maintenance Regulation² and Succession Regulation³), taking into account also the relevant international conventions (Hague 1980 Child Abduction Convention, Hague 1996 Child Protection Convention, Hague 2007 Maintenance Convention and Protocol). The objective of the National Exchange Seminar was to identify problems in the implementation process and to work on solutions to improve the effectiveness of the relevant European instruments.

The Seminar was held in two days in the form of round table in which selected invitees participated (First day: 10 academics, 18 judges, 14 practitioners, 1 state officer, Second day: 11 academics, 18 judges, 12 practitioners, 1 state officer).

Four experts: two Croatians, Slovenian and international, were invited to present distinctive topics related to the Project. Purpose of these presentations was to present the specific materia to participants that were at various levels of knowledge on respective instruments. Besides this educative and repetition purpose, speakers were here to encourage the participants to discussion, exposure of their opinions, sharing different experiences. The Seminar was also attended by the representative of the Project coordinator, who took the opportunity to familiarize the participants with overall objectives of the Project, as well as the current state of play of project activities throughout the other member states participating to Project. Particular emphasis was placed on EUfam's database. Representative of the University of Milan encouraged participants to use the data base, but also to cooperate in its future maintenance. He recalled that ensuring sustainability and update of the database (with Croatian cases) is further entrusted also to the EUfam's network practitioners, not only project Partners.

¹ Council Regulation (EC) No 2201/2003 of 27 November 2003 concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and the matters of parental responsibility, repealing Regulation (EC) No 1347/2000, Official Journal L 338 , 23/12/2003 P. 1 – 29.

² Council Regulation (EC) No 4/2009 of 18 December 2008 on jurisdiction, applicable law, recognition and enforcement of decisions and cooperation in matters relating to maintenance obligations, Official Journal L 7, 10.1.2009, p. 1–79.

³ Regulation (EU) No 650/2012 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, Official Journal L 201, 27.7.2012, p. 107–134.



Main web site of the Project at UNIMI domain, as well as the Croatian variant at PRAVOS UNIOS domain, were presented to the participants on the big screen. Participants were invited to take advantage of information regularly uploaded on both websites. Participants were informed on easily accessible links available in Croatian language (directing to the relevant legal sources, reports and other official documents, list of relevant CJEU case law as well as legal writings uploaded in full text or with relevant bibliographical notice).

For the duration of this event the Seminar was held as a free and open discussion between the PRAVOS team members, invited speakers and participants. PRAVOS team members prepared a comprehensive handout containing a summary of cases collected within the Project and implemented into EUFam's database. Handout contained 31 case, with short summary of facts, procedure before the court and themes for discussion/questions. Selection of the cases for this handout was conducted on the bases of two criteria: most typical cases and most problematic cases. Besides these handouts participants were provided with other relevant working materials: PPT of the presentations, 17 recorders with full text copies of legal materials - regulations and conventions. PRAVOS team members decided to put all of the relevant material at disposal in print form, ready at hand, in order to maximize active participation. Enhancing participants to share their everyday practice was of utmost priority, as in Croatian legal system no publicly available database with anonymized judicial decisions exist. Entire Seminar was set in order to stimulate participants to exchange the views and to compare their practical experiences underlining the main critical issues on the application of the EU Regulations and Hague Conventions that mainly arise from the national case-law. Additionally, Seminar targeted at raising awareness on the importance and advantages of cooperation among academics-judges-practitioners-state officers, for the benefit to all.

The names of the participants are not given in this Report, their professional status is provided, so that their remarks can be put into context.



PRESENTATIONS

Lecture on **Comparative application of Regulation 2201/2003 - 4/2009 - 650/2012**, presented by **Ines Medić**, PhD assistant professor at Faculty of Law, University of Split, began with the short overview of the Brussels *Ibis* Regulation, concerning jurisdiction for divorce, parental responsibility and child abduction. Presenter pointed to the fact that number of alternative criteria for jurisdiction are stipulated. Hence, Regulation offers truly a wide spectre of jurisdiction separately for matrimonial matters and parental responsibility matters. The necessity of full understanding and *euro autonomous* interpretation of the habitual residence criteria was underlined as particular challenge for the adaptation of the Croatian legal practice. Lecture pointed to provisions on the automatic recognition of decisions, as a tool which significantly speeds up the execution proceedings. Distinction to rules on the automatic execution in the access and child abduction cases was clarified.

In the context of the Maintenance Regulation priority was given to the provisions that enable concentration of jurisdiction for maintenance to other attributed claims (status, parental responsibility). Participants were alerted that despite national procedural rules that impose *ex officio* settlement of maintenance and parental responsibility matters in the course of divorce with minor children, EU *acquis* has supremacy. Ones several claims are joined together in the application, careful distinction among different Regulations material scope has to be performed and jurisdiction has to be inspected separately for each request of the claim.

Concerning the Succession Regulation presentation focused on determination of the habitual residence of the decedent at the time of death, which happens to be more difficult than determination of the habitual residence in cases regarding the Brussels *Ibis* Regulation. In the sphere of applicable law emphasis was given to the universality principle, explicitly ruling that any law specified by this Regulation shall be applied whether or not it is the law of a Member State.

Lecture was concluded by stating that with regard to all three Regulations it is of high importance to be aware of their limited material, territorial and temporal scope of application and the necessity of *euro autonomous* interpretation of their provisions, rather than in accordance with the national law. The emphasis was added to the fact that if some issue appeared in the main proceedings related to one of respective Regulations it cannot be regarded as decisive as to whether the measure should be classified as falling within the scope of application of that particular Regulation. Therefore, the



participants were recommended to also consult the explanations contained in the Preamble of each Regulation, existing practice of the CJEU and other national courts and also reminded of the possibility of submitting the request for preliminary ruling to the Court of Justice of the European Union. Above mentioned theoretical thesis were afterwards presented on the example of the cases: Case C-184/14, A against B and Case C-404/14, Matoušková.

Program proceeded with a presentation on **Open questions of Croatian practice** by **Paula Poretti**, PhD, assistant professor at Faculty of Law, University of Osijek. Presentation was based on EUFam's case law. Emphasis was given to cases of lawsuits on several interconnected claims. Application of Succession regulation before notary office was based on several cases as well. Discussion proceeded.

Lecturer on **Brussels IIbis regulation - uniformed rules at the EU level**, **Vesna Lazić**, PhD, full professor at T.M.C. Asser Institute Hague, first emphasised that application of the Regulation is a challenge in most European jurisdiction and is not easy to apply. Due to spectrum of possible topics under the Regulation the lecture was limited on several topics, underlining three detected problems regarding the application of the Regulation. Each of the selected topic was inspected through relevant provisions proposed by the revision of the 2201/2003 regulation.

As the first problematic area the obscurity regarding the scope of the Regulation was stressed, respectively whether it has limited or unlimited scope of application considering the Art 3, 6 and 7. This issue was further expanded with the short overview of the ECJ ruling in case C-68/07 Kerstin Sundelind Lopez v Miguel Enrique Loper Lizazo. Second issue related to the fact that the Regulation does not contain the definition of a marriage, which was consciously omitted at its drafting process. Consequently, a problem arises as there is no regulated jurisdiction for the registered partnership, besides using the Art 7 of the Regulation, respectively to establish the jurisdiction on the national provisions. Third problematic issue related to the provisions on child abduction. The Article 11 was presented as a problematic provision which does not preclude the application of Hague 1980 Child Abduction Convention but already it intensifies provisions contained in Convention. That led to the situation in which the Convention was applied differently between the Member States and between other contracting parties of the Convention.

Presentation on open questions proceeded. **Open question of Croatian practice** were presented by **Nataša Lucić**, PhD, senior assistant and **Mirela Župan**, PhD associate professor, both of the



Faculty of Law, University of Osijek. Presentations were based on EUFam's case law. Emphasis was given to cases of divorce and parental responsibility. Discussion proceeded.

On the second day of the national seminar three lectures were enlisted to program. The first lecture titled **Parallel application of the regulation 2201/2003, 4/2009, Hague maintenance convention and Hague protocol of 2007** was presented through a discussion. Lecturer **Mirela Župan** PhD assistant professor at Faculty of Law, University of Osijek delivered a presentation that was handed to the participants. Therefore, the presentation on the **Open question of Croatian practice** regarding the child abduction cases were presented by prof Župan continuing the presentation which empathised the right to apply for a review in maintenance cases presented by **Martina Drventić**, mag.iur, junior research at EUFam's project at Faculty of Law, University of Osijek. Presentations were based on EUFam's case law. Discussion proceeded.

Second presentation titled **Application of EU law in cross border matters provided** was presented by **Vesna Tomljenović**, Phd, former full professor at Faculty of Law, University of Rijeka, now sitting judge of the CJEU. Participants were given some information regarding the functioning of the Court, from the perspective of a judge, composition and operation of the panels and work of a judge. Furthermore, the current request for the preliminary ruling concerning the Art 15 of the Brussels IIbis Regulation in Case C-428/15 Child and Family Agency vs J.D was presented to the participants. At that time the case was still pending and only the Opinion of the Advocate General was available.

The third lecture on the **Experience of application of EU law in the Slovenian court practice** was presented by **Rajko Knez**, PhD, full professor at Maribor University and court advisor of the Supreme Court of Slovenia. This lecture referred to the issues such as direct application and direct effect of EU Regulations, reciprocity, relationship between Slovenian Constitution and EU law, the application of the EU law *ratione temporis*, retroactive application of the EU law, implementation of the EU law, violation of the human right and finally, the effects of the decisions issued by the CJEU. Lecturer gave added value to the importance of preliminary procedure and urgent preliminary procedure before CJEU, which have been used in Slovenian practice also in respect of 2201/2003 Regulation. Using sample case of *Dahby vs Italy* participants were acquainted with a possibility of facing charges for violation of fundamental right to a fair trial if they do not



reconsider and explain why a request for a preliminary ruling was not posed. At closure prof. Knez stated that the hardest question is when and why to send a question to the CJEU.

At closure of the second day program **Open questions of Croatian practice** regarding the cases of the transfer of jurisdiction were presented by professors Župan and Poretti. Discussion proceeded.

1. SUCCESSION REGULATION

I. JURISDICTION AND DETERMINATION OF HABITUAL RESIDENCE

Discussion revealed that rules on jurisdiction in cross border succession cases were not familiar to all of the participants. Judges addressed the problem regarding the determination of the habitual residence of the deceased. Academics suggested that it would be useful to consult the Recitals 13 and 14 of the Succession Regulation while deciding on the habitual residence. Additionally, academics indicated on the specific life situations concerning determination of habitual residence in succession cases, for example, returnees in the Republic of Croatia living most of the life time abroad for economic reasons; cases of the accommodation in the cheaper retirement homes abroad and also cases of the persons living one half of the year in one state and another state for the other half (egz. for vacation). Furthermore, they indicated that sometimes even five years of staying in some state is not a condition for acquiring a habitual residence. The social integrity and language knowledge are relevant. While determining the habitual residence, the court takes a role of a legislator. The judges were wondering how this procedure will look like in practice, commenting that the evidence taking procedure will precede the succession procedure.

The academics and judges agreed on the possible solution in these cases – to ask the parties for the memorial amendment with respect to additional information, in order to facilitate the determination of habitual residence. But still, it remains as a fact that the judges are often not aware of the cross border element of the case at all, due to obscure information received from the parties (usually only nationality and permanent residence specified).

II. EUROPEAN CERTIFICATE OF SUCCESSION

The Regulation creates a European Certificate of Succession which shall be issued for use in another Member State and shall produce effects there. The use of the Certificate shall not be



mandatory. In accordance to this, the court officer was saying that there was no difficulty with the handling of the Certificate in practice so far, but also stressing out that in the context of the Succession Regulation it remains unclear whether the translation of the Certificate is necessary.

2. BRUSSELS *Ibis* REGULATION

I. JURISDICTION IN MATTERS RELATIONG TO DIVORCE (Art. 3)

The academics were stressing out that in the most of the collected cases the Courts have established their jurisdiction properly (mostly on the basis of the nationality of both spouses). However, they still had not referred of the rules of jurisdiction set out in the Regulation, in the explanation of the decision. The Courts are obliged to refer on the application of the Regulation in the decisions. Although there is no explicit provision in Croatian Civil Procedure Act (CPA) concerning the application of the Regulation in establishing jurisdiction, still the obligation of the judges to include the relevant provisions of the Regulation on which the Court established its jurisdiction in the dispute could be derived from the provision of Art 388 of the CPA which prescribes the obligation of a judge to refer to the substantive law relevant for the delivering of a judgment in the reasoning (explanation) of a judgment.

The incomplete system was creating by not applying and not referring to the Regulation. This might cause the situation where Croatian judgment would not be recognized in other Member States. Also, the notion of the concept of habitual residence was highlighted once again. Above all, the national law, respectively Art 106 (2) of the Civil Procedure Act⁴ is prescribing the residence as the main part of the memorial of the judgement, and causes confusion in respect of proper application of the Regulation.

II. RESIDUAL JURISDICTION (Art. 7) AND LIS PENDENS (Art. 19)

Regarding the Art 7, it was discussed that, where no court of a Member State has jurisdiction pursuant to Art 3, 4 and 5, the Croatian Court shall determine his jurisdiction by the national law,

⁴ Civil Procedure Act, Official Gazette No. 53/91, 91/92, 58/93, 112/99, 88/01, 117/03, 88/05, 02/07, 84/08, 123/08, 57/11, 148/11, 25/13, 89/14.



Law on Resolution of Conflict of Laws with Regulations of Other Countries.⁵ Respective provisions of the PIL Act would provide sufficient ground of jurisdiction in disputes for establishing the existence or non-existence of marriage, annulment of marriage or divorce (marital disputes) even when the defendant is not domiciled in the Croatia (1) if both spouses are Croatian citizens, irrespective of where they are domiciled; or (2) if the plaintiff is a Croatia citizen and is domiciled in Croatia; or (3) if the spouses had their last domicile in Croatia, and the plaintiff was domiciled or resident in Croatia at the time of filing of the action. Croatian court shall have jurisdiction in marital disputes even when the spouses are foreign citizens who had their last common domicile in Croatia and plaintiff is domiciled here, provided that in those cases the defendant consents to the jurisdiction of the Croatian court and that the jurisdiction is allowed by the legislation of the State whose citizens the spouses are. Furthermore, in divorce disputes Croatian court shall also have jurisdiction if the plaintiff is a Croatian citizen and the law of the State whose court would have jurisdiction does not provide for the institution of divorce of marriage. These provisions on residual jurisdiction have been connected to several cases uploaded to EUFam's.

It was also discussed that, in accordance with the *lis pendens* rules, where proceedings relating to divorce, legal separation or marriage annulment between the same parties are brought before courts of different Member States, the Croatian court shall of its own motion stay its proceedings until such time as the jurisdiction of the court first seized is established. Question arose on the matter of establishing the fact that ongoing process is taking place abroad. It has been clarified by the academics that it is an *ex officio* obligation for the court to establish the moment of seizure of both courts. It has been emphasised that direct judicial cooperation and EJM are effective tools in discovering relevant data. Practitioners were rather reluctant to EJM mechanisms, as none of them have need employing it so far. Discussion further led to a question which kind of a document deriving from foreign jurisdiction should be used by the judge in establishing the fact that prior procedure is ongoing in another member state. Question arose if a judge can rely on a document on foreign language and stop/drop its later procedure, or it is considered to be a public document that ought to be translated by official translator office, as was suggested by one appellate court decision. Conclusion was reached that this issue requires further research. In addition to this, the academics pointed on the Art 24 of Regulation which had prescribed the prohibition of review of jurisdiction

⁵ The Law on Resolution of Conflict of Laws with Regulations of Other Countries, Official Gazette No. 51/91.



of the court of origin. Discussion led to a conclusion that no one can latter on question the established jurisdiction and that mutual trust is by several rulings of CJEU placed over any other consideration. Even if a case of a false jurisdiction, such judgement may not be refused recognition abroad. It was however concluded that each judge has to carefully establish its jurisdiction to a case, as other sanctions for non-application or misapplication of EU law may be imposed by the European Commission.

III. GENERAL JURISDICTION IN MATTERS OF PARENTAL RESPONSIBILITY (Art. 8)

The question, whether the procedure of mandatory counselling before divorce, prescribed as one of the procedural requirements with the Croatian Family Act⁶, has to be conducted where the child has habitual residence in another state, was brought. Precisely, in accordance with the national law, to take the divorce proceedings to the court, the procedure of mandatory counselling before divorce has to be conducted before the competent Centre for Social Welfare. In accordance with the Family Act, the main aim of this procedure is to reach a consensual solution regarding the child matters (parental responsibility, access rights, maintenance), but on the other hand there was no ground for jurisdiction of the Croatian authorities to decide over parental responsibility, because child has a habitual residence in another state.

The state officer underlined that, in the most of the cases, it has been hard to the Centres to decide upon their jurisdiction to conduct the procedure on mandatory counselling.

Academics proposed that it is necessary for the Centres to try to find out where is the habitual residence of the family. If they determine that the child has his habitual residence in another Member State, it will be necessary to issue a decision stating that the procedure of mandatory counselling was not conducted due to the fact that child does not have habitual residence in Croatia and proceed the claim to the competent court to decide upon the divorce. Some of the practitioners did not agree with the proposal set by the academics, arguing that the legal nature of mandatory counselling is not clearly determined. In addition, they announced that this kind of ruling was left out in the thesis of the new family law of 2016, respectively the thesis had predicted that the request in these matters will be addressed to court directly.

⁶ Family Act, Official Gazette No. 103/15.



IV. HEARING OF A CHILD

Following the discussion regarding the mandatory counselling before the divorce, the issue on taking into account the child's opinion was brought. Practitioners agreed that it was not visible from the decision issued in accordance with the Family Act that child's opinion was considered. Judges commented that, according to the court practice, hearing of a child is always conducted in disputed divorces, because in those cases all the circumstances are usually taken into account. There is a problem with the divorce by mutual consent. In these cases, it is hard to identify whether the child was given an opportunity to express its views. Judges proposed amendments of the Form of the Plan of joint parental care in the section of methods and ways that have been used to reach the voice of a child. Plan is a product of a mandatory counselling, but it is subsequently verified by a judge and produces effects of a court decision. If a judge has more information on hearing of a child he could decide to check the voice of a child and hear the child that has not been properly heard. In that situation judge would not only verify the Plan of joint parental care, but reopen it. Academics concluded that this has been a problem within the national law, but might have repercussion on the recognition of Croatian judgements abroad. The competent authorities are obliged to always give an opportunity to the child to express its views, or otherwise, to conclude that child opinion was not taken considering his or her age and maturity. Also, academics pointed out on the provision of Art 86 (2) of the Croatian Family Act which prescribes the general obligation of taking into account the child opinion, which has to be applied in the procedures of the mandatory counselling also. Discussion ended with a referral to proposal for a recast 2201/2003 regulation directly refers to Art 12 of the UN Convention on the rights of a child in respect of this matter.

V. CONTINUING JURISDICTION OF THE CHILD'S FORMER HABITUAL RESIDENCE (Art 9)

PRAVOS team members presented a case in which the request for consensual modification regarding the parental responsibility and assets right was brought before the Croatian court. In the same case, the mother and child legally moved to another state two months before they applied to court. It was discussed that in the presented case judge has to apply the rule on continuing jurisdiction of the child's former habitual residence. Where a child moves lawfully from one Member State to another and acquires a new habitual residence there, the courts of the Member State of the child's former habitual residence shall, by way of exception to Article 8, retain



jurisdiction during a three-month period following the move for the purpose of modifying a judgment on access rights issued in that Member State before the child moved, where the holder of access rights pursuant to the judgment on access rights continues to have his or her habitual residence in the Member State of the child's former habitual residence. Pursuant to all, the Croatian Court was competent to decide upon this subject matter. This example presents a prototype for application of Art 9, however, the court omitted to recall to this provision in the explanation of the judgement.

VI. REPLACEMENT OF THE CONSENT OF ONE OF THE PARENTS

Discussion focused on the question whether a mother can obtain the traveling document for the child without father's consent. In the context of cross-border situation, top question is which Member State's authority is responsible for the issuance of a document replacing the father's consent. Academics pointed out that according to the CJEU ruling in *Gogova vs Iliev*, the consent must be issued by the competent authorities of the Member State of the child's habitual residence. One of the participants shared a case in which mother living in Croatia needed the father's consent for the issuance of the passport for a child. The father lived in Israel. The Court has replaced father's approval but at the time Seminar took place decision was still not valid due to the duration of the diplomatic delivery of the decision to the father.

VII. ISSUANCE OF THE CERTIFICATES FROM ART 39 AND ART 41

The question which authority (national) is competent for the issuance of the certificates from the Art 39 and Art 41 arose from the different rules contained in those provisions. In accordance with Art 39, the competent court or authority of a Member State of origin shall, at the request of any interested party, issue a certificate using the standard form set out in Annex I (judgments in matrimonial matters) or in Annex II (judgments on parental responsibility), and in accordance with Art 41(2) the judge of origin shall issue the certificate using the standard form in Annex III (certificate concerning rights of access). There is no uniform solution in this matter before the Croatian courts, but the participants agreed that this issue should be governed by the national implementation act.

VIII. CHILD ABDUCTION (Art 10 and 11)



Art 11 (4) prescribes that a court cannot refuse to return a child on the basis of Art 13b of the Hague 1980 Child Abduction Convention if it is established that adequate arrangements have been made to secure the protection of the child after his or her return. Also, this provision is supported by that fact that there is no prescribed remedy against the enforceable court decision issued in the Member State. Additionally, they pointed that in cases of cross border child abduction the encourage of the access right is crucial, what was confirmed also by the CJEU in the case C-403/09 Jasna Detiček v Maurizio Sgueglia. However, one of the participants mentioned a very recent child abduction case where mother (abductor) allowed access to the father, that has re-abducted a very minor child and disappeared with it. Present state officer stated that the enforcement over the child was the hardest part of child abduction cases. A mandate for drafting The implementation act on Child abduction Convention has been given in summer 2016. It has been agreed among the participants that this legislation should solve the legal gap in execution of child return across border. Also, the mediation, as good solution in these cases, was mentioned.⁷

IX. TRANSFER TO A COURT BETTER PLACED TO HEAR THE CASE (Art 15)

The academics presented the rule established by the Art 15 as rather incomprehensible. Practice has shown that this rule in some countries had worked well, while in others had not. The provision allows the courts to independently find solutions related to the application of this provision. There are many open questions regarding this matter such as, which is the legal basis for the acting of the court of another member state or how the court should communicate - directly or through judicial network. Solution offered was, that court having jurisdiction and wishing to transfer the case of its own motion (if all the other conditions of Art. 15 are satisfied) should stay the case and invite the parties to start proceedings before another court, respectively, to file a complaint before the another court. Participants agreed that this matter should be regulated by the implementation act (examples could be found with some other Member States). Judges suggested that it would be very useful to have the prescribed form for the transfer of jurisdiction, which would set out all mandatory information relevant in these cases. Also, the judges confirmed that there have been such cases before the Croatian courts. One of them said that there is an ongoing case pending and if the court

⁷ Two members of the PRAVOS-UNIOS team were appointed as a members of the working group in charge for making the Draft of the Law on implementation of the Hague Convention on the Civil Aspects of International Child Abduction by the Decision of the Ministry of Social Policy and Youth CLASS: 552-07/16-03/4, REG.NO: 519-03-3-3/1-16-2 from 8 June 2016.



of another member state accepts the jurisdiction, the decision on application of Art 15 would be issued by the Croatian court.

Further open questions which have been highlighted through discussion were: What if the court receives a file on the foreign language? Will the court accept the evidences presented by another court? What if the circumstances of the case change or the child moves to another country? Is it possible to submit the request under Art 15 where there is an appeal procedure, given that the court should not examine the merit of the decision given in another Member State?

Judges agreed that in case of changed circumstances the court should establish the changes and keep his jurisdiction. Also, they suggested that it would be useful for the judges to look up the national provisions, respectively to consult the provisions related to the delegation of jurisdiction contained in the Civil Procedure Act⁸ in these cases.

3. MAINTENANCE REGULATION

I. CERTIFICATE ISSUANCE

Discussion regarding the maintenance obligation started by presenting the difficulties the courts have been faced with when receiving requests for the issuance of the certificate in the language of another Member State. On the other hand, the state officer answered that this practice was recommended by the European Commission, in order to reduce the potential cost incurred to the applicant. There is a special tool for this situation available on the E-Justice Portal which allows the judges to fulfil the certificate in their own language and convert it in the language of another Member State afterwards.

II. RIGHT TO APPLY FOR A REVIEW (Art 19)

The question, which remedy is available to the defendant who did not enter an appearance in the Member State of origin and also the court of which Member State is competent to decide upon it, was brought to the participants. Some of the practitioners suggested that the appropriate remedy would probably be the request for retrial and that the court of the state of the origin would be competent for the deciding upon it.

⁸ Civil Procedure Act, Official Gazette No. 53/91, 91/92, 58/93, 112/99, 88/01, 117/03, 88/05, 02/07, 84/08, 123/08, 57/11, 148/11, 25/13, 89/14.



Academics has confirmed that in this case the Art 19 is applicable, saying that a defendant who did not enter an appearance in the Member State of origin shall have the right to apply for a review of the decision before the competent court of that Member State. Also, academics highlighted the omissions appeared in Croatian translation of the Regulation which may cause the wrong interpretation of this provision. Namely, from the official translation it remains unclear whether mechanism of Art 19 is applicable before the state of judgement or state of enforcement.

Also there was a question which legal remedy in national law suits to the remedy prescribed in Art 19. The judges suggested different solutions as the request for the retrial (extraordinary remedy) or the complaint (ordinary remedy). Academics draw attention to the fact that Croatian Government has given the information that under the Civil Procedure Act, the review procedure for the purposes of Art. 19 of the Regulation must be instituted at a motion of the party for a retrial (in accordance with the provisions of Arts. 421-428 of the Civil Procedure Act) due to the Art. 71 1 (c) of the Maintenance Regulation, which was published on the E-justice portal. Finally, there remains a question which was the legal power of such information considering the fact that there was no implementation act governing this question.



CONCLUSIONS

- There is a good practice in national succession cases where judges ask the parties for the memorial amendment in order to facilitate the determination of habitual residence of the decedent.
- There are difficulties concerning not awareness of the cross border element in the succession cases regarding the limited information received from the parties (usually only information on the residence), pointed by the judges.
- It is not clear whether the translation of the Certificate in accordance with the Succession Regulation is necessary, pointed by the court officer.
- It is necessary for the Croatian courts to establish their jurisdiction and to refer on the rules of jurisdiction according to the Brussels *Ibis* Regulation, pointed by the academics.
- There are some open questions regarding the conduction of the procedure of mandatory counselling as the prerequisite for the divorce petition where the child has habitual residence in another Member State, in relation to the establishment of the jurisdiction of Centre for Social Welfare, pointed by the judges and practitioners.
- There is different practice related to the hearing of a child which is a problem especially in the cases of mutually agreed divorce, pointed by the judges.
- The decision replacing the parent's consent must be issued by the competent authority of the Member State of the child's habitual residence, pointed by the academics.
- It is necessary to regulate the authorities competent for the issuance of the certificated from Art 39 and 41 Brussels *Ibis* Regulation with the national implementation act, pointed by the judges and academics.
- In the cases of cross border child abduction the encourage of the access right is crucial, what was confirmed by the CJEU in the case C-403/09 *Jasna Detiček v Maurizio Sgueglia*, pointed by the academics.
- There is an initiative for the national implementation act concerning child abduction cases, pointed by the state officer; act should relate both to situations among Member States and third states.
- *Lis pendens* rules of the respective regulations should be elaborated by the academics, uniform interpretation should be achieved in practice.
- Habitual residence as a criterion for jurisdiction and a connecting factor requires open minded approach, with active investigating role of the adjudicating authority.



- There has been good practice in transfer of jurisdiction cases according to which, court having jurisdiction stays the case and gives an invitation to the parties to start proceedings before the court of another Member State, respectively, to file a complaint before the another court.
- In transfer of jurisdiction cases where the case circumstances are changed, the court should establish the changes and keep his jurisdiction, pointed by the judges.
- It would be useful for the judges to consult the provisions related to the delegation of jurisdiction contained in the Civil Procedure Act in cases concerning Art 15 of the Brussels *Ibis* Regulation, pointed by the judges.
- It would be very useful to have the form for the transfer of jurisdiction, which would set out all mandatory information relevant in these cases, suggested by the judges.
- There are a lot of open questions regarding the transfer of jurisdiction prescribed by the Art 15 of the Brussels *Ibis* Regulation, such as: which is the legal basis for the acting of the court of another member state; how the court should communicate - directly or through judicial network; what if the court receives a file in the foreign language; will the court accept the evidence presented by another court; what if the circumstances of the case change or the child moves to another country; is it possible to submit the request under Art 15 when there is an appeal procedure, given that the court should not examine the merit of the decision given in another Member State.
- The practice of the issuance of the Certificates within the Maintenance Regulation in the language of another Member State was recommended by the European Commission in order to facilitate the cost that might arise to the applicant, for that purpose there is a specialized tool available on the E-Justice Portal, pointed by the state officer.
- Maintenance Regulation contains provisions which allow attributing jurisdiction. The participants were reminded that, where there are more claims pertaining to the same parties, it is necessary to consider the jurisdiction separately for each request, and determine whether it is possible and/or admissible for the courts with jurisdiction to also entertain the related proceedings, pointed by the academics.
- Due to the fact that Maintenance regulation, unlike the other instruments inspected here, determines not only international but also internal jurisdiction, as confirmed by the CJEU in joined cases C-400/13 and C-408/13 further research should be conducted and presented to Croatian practitioners.



- There is an omission in the Croatian translation of the Maintenance Regulation in Art 19 which may lead to the wrong interpretation of this provision, stressed by the academics.
- In cross-border maintenance case applicable law has to be established in accordance to Hague Protocol provisions; relevant general reports and guides for application issued by HCCH should be consulted.
- Information given in accordance with the Art 71 1. (c) of the Maintenance Regulation is that under the Civil Procedure Act, the review procedure for the purposes of Art 19 of the Regulation must be instituted at a motion of the party for a retrial (in accordance with the provisions of Arts 421-428 of the Civil Procedure Act). This information was published on the E-justice portal and there is a question which is the legal power of such information considering the fact that there is no implementation act governing this question, as pointed by the academics.
- Whenever issuing a judgment authority should refer to relevant provisions of the Regulation that served as a starting point of its jurisdiction; such attitude would foster mutual trust amongst member states and contribute to free circulation of the judgements, as pointed by the academics.
- Value and significance of reading and using case law pertaining to CJEU was emphasized to the participants; it was however noted that many relevant judgements that serve as prototype guide in application of the 2201/2003 regulation, have not been translated to Croatian language.
- Judges are invited to reconsider posing a question to CJEU, if any doubt in application of EU law appears.
- Informal judicial cooperation should be fostered, particularly tools at disposal through EJNI and Hague International Judicial Network; as for the later, Croatia should nominate a judge to HIJN.