

# RECOGNITION OF PERSONAL STATUS VALIDLY ACQUIRED OR MODIFIED ABROAD: HUNGARY\*

## RECONOCIMIENTO DE UNA SITUACIÓN JURÍDICA RELATIVA AL ESTATUTO PERSONAL VÁLIDAMENTE CREADA O MODIFICADA EN EL EXTRANJERO: HUNGRÍA

TAMÁS SZABADOS

*Associate professor, ELTE Eötvös Loránd University, dr. habil, PhD (ELTE), LL.M. (UCL)*

ORCID ID: 0000-0002-5195-685X

Recibido:15.12.2021 / Aceptado:21.01.2022

DOI: <https://doi.org/10.20318/cdt.2022.6748>

**Abstract:** In matters related to personal status, the case law of the CJEU and the ECtHR enhances the recognition by states of a status validly acquired or amended abroad. The aforementioned case law has changed and is changing the private international law methodology and practice in national law. This paper analyses how this case law has changed Hungarian private international law, particularly when a legal situation related to the status of the person that has been validly created abroad is sought to be recognised in Hungary.

**Keywords:** personal status, personal law, recognition, legal situation related to the personal status acquired abroad, Hungarian private international law.

**Resumen:** En algunas materias relacionadas con el estatuto de la persona, la jurisprudencia del TJUE y del TEDH ha fomentado el reconocimiento por parte de los Estados de las situaciones jurídicas válidamente creadas o modificadas en otros Estados. Esta jurisprudencia ha cambiado y está cambiando la metodología y práctica propias del Derecho internacional privado de producción interna. Este trabajo analiza los efectos de esta jurisprudencia europea sobre el Derecho internacional privado húngaro cuando este se enfrenta a una situación jurídica relacionada con el estatuto de la persona que ha sido válidamente creada en el extranjero y que se quiere hacer valer en Hungría.

**Palabras clave:** estatuto personal, Ley personal, reconocimiento, situación jurídica relativa al estatuto personal válidamente creada en el extranjero, Derecho internacional privado húngaro.

**Summary:** I. Introduction. II. Awareness in academia, politics, legislation and judicial practice. III. The scope of recognition. 1. Rules on procedural recognition. 2. Names. 3. Companies. 4. Family matters. 5. Capacity. 6. Surrogacy. 7. Same-sex marriage. IV. Methodology. 1. Procedural recognition. 2. Conflict-of-laws methods. 3. Simple recognition. V. Formal requirements for recognition. VI. Material requirements for recognition. 1. Conditions for recognition. 2. Refusal of recognition. 3. Effects of recognition. VII. Summary.

---

\*This national report forms part of a comparative law research project which started in 2018. Preliminary results were presented and discussed at an internal meeting in Würzburg in spring 2019, at the JPIL conference 2019 in Munich and at the online conference “La famille dans l’ordre juridique de l’Union européenne” in autumn 2020.

## I. Introduction

1. Hungarian private international law has recently undergone a significant change. The Hungarian legislature adopted Act XXVIII of 2017 on private international law (New PIL Code)<sup>1</sup> which replaced Decree-Law 13 of 1979 on private international law (Old PIL Code).<sup>2</sup> The New PIL Code entered into force on 1 January 2018 and only a few judicial decisions have been rendered so far under the New PIL Code. Therefore, in analysing the issue of recognition of status the relevant judicial practice related to the Old PIL Code will be also taken into consideration.

2. In elaborating the New PIL Code, the Hungarian legislature did not follow a single comprehensive approach towards recognition. This does not mean, however, that the New PIL Code does not address recognition. The Hungarian legislature applies more than one method of recognition set out in the General Report: the traditional procedural recognition, the conflict-of-laws method and the simple recognition.

## II. Awareness in academia, politics, legislation and judicial practice

1. The issue of ‘recognition’ of status is part of the academic discussion, and in particular of the private international law and EU internal market law discourse. The question of recognition is primarily examined by private international lawyers regarding certain specific fields, such as companies or family names. In this context, the notion of ‘recognition’ is actually used. It must be added, however, that the concept of ‘status recognition’ has not been so far comprehensively discussed in Hungarian legal literature. Recognition is most often discussed in relation to the operation of the rules of international civil procedure and conflict-of-laws rules, and not as an independent concept serving as an alternative to private international law.

2. Legal literature has discussed in detail the ECJ case law on recognition of names and the cross-border mobility of companies. Arguments in favour of recognition under EU law rely primarily on the promotion of the free movement of persons. An argument raised against the principle of mutual recognition is that it results in the bifurcation of rules, because it applies only in the relation between the Member States of the EU, but not concerning third countries.<sup>3</sup> Additionally, it was also stressed that ‘it disregards the complexity of civil law matters.’<sup>4</sup>

3. The status decisions of the ECtHR have been discussed by some scholarly articles. The ECtHR case law on the continuity of names (*Burghartz v. Switzerland*,<sup>5</sup> *Losonci Rose and Rose v. Switzerland*<sup>6</sup>) as well as the recognition of marriages and divorces (*Zvoristeanu v. France*,<sup>7</sup> *Mary Green and Ajad Farhat v. Malta*<sup>8</sup>) has been analysed in the legal literature.<sup>9</sup> The legal literature also showed interest in the ECtHR decisions on other areas, such as surrogacy, as it will be indicated below.

<sup>1</sup> An unofficial translation of the New PIL Code prepared by the author was published in *Rabels Zeitschrift* 2018, p. 1004.

<sup>2</sup> The translation of the Old PIL Code prepared by the author is available in J. BASEDOW ET AL., *Encyclopedia of Private International Law*, vol 4, Cheltenham, Elgar, 2017, p. 3287.

<sup>3</sup> Cs. I. NAGY, “The Personal Law of Companies and the Freedom of Establishment under EU Law”, *Hungarian Yearbook of International and European Law*, 2013, p. 354.

<sup>4</sup> Cs. I. NAGY, “The Personal Law of Companies and the Freedom of Establishment under EU Law”, *Hungarian Yearbook of International and European Law*, 2013, p. 354.

<sup>5</sup> ECtHR 22 February 1994, *Burghartz v. Switzerland*, no. 16213/90.

<sup>6</sup> ECtHR 9 November 2010, *Losonci Rose and Rose v. Switzerland*, no. 664/06.

<sup>7</sup> ECtHR 7 November 2000, *Zvoristeanu v. France*, no. 47128/99.

<sup>8</sup> ECtHR 6 July 2010, *Mary Green and Ajad Farhat against Malta*, no. 38797/07.

<sup>9</sup> K. RAFFAI, “Határon áthúzó házassági ügyek és az emberi jogok védelme” [Cross-Border Matrimonial Matters and the Protection of Human Rights], *Iustum Aequum Salutare* 12, 2016, 83.

4. Political discussion hardly touches upon the issue of recognition of status. This is not to say, however, that legislation has not addressed the recognition of status. Generally speaking, Hungarian law does not follow the principle of mutual recognition in private law as a method alternative to traditional private international law. Instead, the recognition of a foreign status takes place mainly at the level of international civil procedure by the recognition of a foreign decision or through conflict-of-laws rules. The legislation reacted to the judgments of the ECJ on bearing of names, and in particular to the *García Avello* judgment,<sup>10</sup> as it will be set out in section III.2.

5. EU Regulation 2016/1191 has been transposed into Hungarian law by adopting an implementing regulation and amending several relevant acts.<sup>11</sup> Regulation 2016/1191/EU is very little discussed both in legal science and in the broader legal community. Interestingly, Regulation 2016/1191/EU attracted more attention among translators<sup>12</sup> primarily because of the elimination of the requirement on certified translations of public documents related to personal status.<sup>13</sup> Under Hungarian law, it is not entirely clear in which proceedings and when a certified translation of a foreign public document must be submitted to courts and authorities causing considerable legal uncertainty. Currently, the Hungarian Office for Translation and Attestation Ltd. (Országos Fordító és Fordításhitelesítő Iroda Zrt., OFFI), a fully state-owned company, has an almost monopolistic position for preparing certified translations of foreign language documents and certifying translations prepared by other persons.<sup>14</sup> Freelance translators, therefore, see Regulation 2016/1191/EU as challenging this monopolistic position in matters covered by the Regulation. Translators also expect a decrease in the demand for certified translations on the translation market due to the application of the Regulation, and in particular due to the use of standard forms.

6. Decisions of the ECJ have influenced Hungarian court practice, in particular concerning names and companies. The jurisprudence of the ECtHR has not been referred to in Hungarian judicial practice as far as recognition of status is concerned.

### III. The scope of recognition

#### 1. Rules on procedural recognition

7. The New PIL Code contains rules on international civil procedure and provides for detailed rules on the recognition and enforcement of foreign court decisions generally and in matters concerning family law and personal status.<sup>15</sup> The provisions on the recognition and enforcement of foreign court decisions in matters concerning family law and personal status embrace decisions rendered, among others,

<sup>10</sup> ECJ 2 October 2003, C-148/02, *Carlos García Avello v Belgian State*, ECLI:EU:C:2003:539.

<sup>11</sup> Regulation (EU) 2016/1191 of 6 July 2016 on promoting the free movement of citizens, OJ L 200, p. 1. Implementing legislation: 269/2018. (XII. 20.) Korm. rendelete az egyes közokiratoknak az Európai Unió belüli bemutatására vonatkozó előírások egyszerűsítése révén a polgárok szabad mozgásának előmozdításáról és az 1024/2012/EU rendelet módosításáról szóló, 2016. július 6-i (EU) 2016/1191 európai parlamenti és tanácsi rendelet végrehajtásáról [Government Decree 269/2018. (XII. 20.) on promoting the free movement of citizens by simplifying the provisions on the presentation of certain public documents in the European Union and on the amendment of Regulation 1024/2012/EU].

<sup>12</sup> Proford – SZOFT – MFTE Fordításszabályozási munkacsoport [Proford – SZOFT – MFTE Working Group on Regulating Translation], Magyar Hites Fordítók és Tolmácsok Névjegyzéke –

Szakmai javaslat a hiteles fordítás és hatósági tolmácsolás decentralizált modelljére és a jogszabály reformjára [List of Hungarian official translators and interpreters – Proposal for a decentralised model of certified translation and official interpretation and for the reform of legislation], 2017. szeptember 1. [https://mfte.hu/sites/default/public/files/media/forditasszabalyozasi\\_mcs\\_kezikonyv\\_0.pdf](https://mfte.hu/sites/default/public/files/media/forditasszabalyozasi_mcs_kezikonyv_0.pdf).

<sup>13</sup> Article 6 of Regulation 2016/1191/EU.

<sup>14</sup> 24/1986. (VI. 26.) MT rendelet a szakfordításról és tolmácsolásról [Ministry Council Regulation 24/1986. (VI. 26.) on specialised translation and interpretation] s. 5 and 7/1986 (VI. 26.) IM rendelet a szakfordításról és tolmácsolásról szóló 24/1986. (VI. 26.) MT rendelet végrehajtásáról [Regulation of the Minister of Justice on the implementation of Ministry Council Regulation 24/1986. (VI. 26.) on specialised translation and interpretation], s. 5. § (1) a).

<sup>15</sup> Ss. 109-112 and ss. 116-121 of the New PIL Code.

in matters related to the existence, validity and dissolution of a marriage or a registered partnership, establishment of origin and adoption.

8. These provisions, however, apply only to cases not covered by the recognition rules of an international convention or an EU regulation. Therefore, the provisions of the New PIL Code on recognition apply only to decisions rendered in third countries (not parties to the international conventions concerned and non-EU Member States).

9. It is to be noted that for the purpose of the New PIL Code, ‘court’ duly means also any other authority proceeding in private law matters.<sup>16</sup> Therefore, the rules on recognition and enforcement of judicial decisions duly apply, for example, to the proceedings of public notaries or the civil status registry competent in matters falling under the scope of application of the New PIL Code.

10. Moreover, it must be noted that the New PIL Code addresses the issue of recognition in several areas beyond the rules on international civil procedure. These specific rules related to recognition will be summarised below in points 3.2-3.5. Subsequently, the legal treatment of foreign surrogacy and same-sex marriages will be presented (3.6-3.7).

## 2. Names

11. Concerning the recognition of names, the Hungarian legislature amended the provisions of the Old PIL Code following the *Garcia Avello* judgment so as to grant a choice of law for persons having multiple citizenships to ensure conformity with EU law.<sup>17</sup> As a general rule, the use of name was determined by the personal law, i.e. primarily by the law of the citizenship of the person concerned and the personal law of a person having multiple citizenships, including Hungarian citizenship, was Hungarian law. Due to the amendment following the *Garcia Avello* judgment, in the course of the registration of a birth name the court, upon request of the person concerned, had to apply the law of the state of the person’s other citizenship instead of Hungarian law. On the one hand, this amendment seemed to be restrictive: the choice of law was limited to the birth name, excluding, for example, a married name from its scope of application. On the other hand, the rule was broader than required by EU law since a choice of law was granted not only to citizens of EU Member States; any other person could avail himself of the choice of law. Although the prohibition of discrimination within the meaning of the *Garcia Avello* judgment covers only Union citizens, the Hungarian legislature extended the possibility of choice to citizens of third countries.

12. It is to be noted that in 2009, that is even before the *Sayn-Wittgenstein* judgment of the ECJ,<sup>18</sup> the Hungarian Constitutional Court had to take a decision on the application of the amended provision concerning titles of nobility.<sup>19</sup> The petitioner after having obtained Canadian nationality in addition to Hungarian citizenship changed his name in Canada taking the “Von” prefix. In the course of changing his birth name in Hungary, the Hungarian authority entered this prefix not as a word indicating a title of nobility, but as a family name consisting of two parts linking the prefix to the surname with a dash, into the register due to the prohibition of titles of nobility in Hungary. According to the petitioner, the application of the relevant provisions might have resulted in situations where a change of name is registered in different ways by a foreign and a Hungarian authority for persons having dual nationality. The Constitutional Court referred to the amendment of the Old PIL Code following the *Garcia Avello* judgment and held that Hungarian law applies to a change in the name of persons having Hungarian and

<sup>16</sup> S. 3 a) of the New PIL Code.

<sup>17</sup> S. 10 (2) of the Old PIL Code.

<sup>18</sup> ECJ 22 December 2010, C-208/09 *Ilonka Sayn-Wittgenstein v Landeshauptmann von Wien*, ECLI:EU:C:2010:806.

<sup>19</sup> 1231/E/2007. AB határozat.

foreign nationality with the exception of the registration of the birth name. It laid down that granting and bearing titles of nobility is incompatible with the treatment of persons as having equal dignity and taking a title of nobility did not constitute a case requiring special appreciation that would have allowed deviation from Hungarian rules on bearing of names.

**13.** The New PIL Code expands further party autonomy regarding the use of name.<sup>20</sup> As a general rule, the individual's personal law applies regarding bearing of name, but he may request the application of Hungarian law. A person having multiple citizenships may choose the law of any of his citizenships. Moreover, choice of law is equally ensured for married names: the parties may choose the law of citizenship of any of the spouses or Hungarian law.

**14.** Section 16 (5) of the New PIL Code refers expressly to the recognition of names. Pursuant to this provision, the birth name as well as the married name of a Hungarian citizen which has been validly registered under the law of another state must be recognised in Hungary if the person concerned having Hungarian citizenship or his spouse is also a citizen of this other state or if the place of habitual residence of the Hungarian citizen concerned is located in that state. However, a name which violates Hungarian public policy may not be recognised.

**15.** Concerning this rule, the legislative justification, a document elaborated by the Ministry of Justice to explain the need for the New PIL Code and its more specific provisions, explicitly refers to the *Grunkin and Paul* judgment of the ECJ.<sup>21</sup> The provision has been justified by the need for legal certainty by avoiding situations when the same person should bear different names in different states.<sup>22</sup>

**16.** The *Garcia Avello* judgment was cited in one further decision of the Constitutional Court without actual discussion, but not concerning names, but more generally in the context of the prohibition of discrimination.<sup>23</sup> Other judgments of the ECJ on bearing names have not been referred to so far by Hungarian courts. Legal literature, however, discussed this case law. The relevant judgments of the ECJ are discussed in standard EU law course books in relation to the prohibition of discrimination, the free movement of persons and Union citizenship as well as in private international law course books.<sup>24</sup> Moreover, several articles deal with these judgments,<sup>25</sup> including the more recent ones, such as *Bogendorff von Wolfersdorff*.<sup>26</sup>

### 3. Companies

**17.** Companies raised the question of recognition in relation to the cross-border mobility of companies and in particular the transfer of the company seat, including cross-border conversions. In the

<sup>20</sup> S. 16 of the New PIL Code.

<sup>21</sup> ECJ 14 October 2008, C-353/06, *Stefan Grunkin and Dorothee Regina Paul*, ECLI:EU:C:2008:559.

<sup>22</sup> Legislative justification to s. 16 of the New PIL Code.

<sup>23</sup> 26/2015. (VII. 21.) AB határozat.

<sup>24</sup> F. MÁDL and L. VÉKÁS, *Nemzetközi magánjog és nemzetközi gazdasági kapcsolatok joga* [Private International Law and the Law of International Economic Relations], 9<sup>th</sup> edition 2018, pp. 214-217.

<sup>25</sup> K. RAFFAI, "Unió alapszabadságok kontra tagállami jogszabályok avagy az uniós állampolgár névviselési jogát meghatározó szabályok ellentmondásai" [Fundamental Freedoms of the EU v the laws of the Member States, or the Inconsistencies of the Rules Determining Union citizens' Right to a Name], in: J. SZALMA, *A Magyar Tudomány Napja a Délvidéken 2009* [The Day of the Hungarian Science in Délvidék 2009], 2010, p. 156; K. RAFFAI, "Kultúrák versengése – a névviseléshez való jog megítélése az Európai Bíróság döntéseiben" [The Competition of Cultures – The Right to a Name in the Decisions of the European Court of Justice], in: Á. FUGLINSZKY and A. KLÁRA, *Európai jogi kultúra – megújulás és hagyomány a magyar civilisztikában* [European Legal Culture – Reform and Tradition in Hungarian Private Law], 2012, p. 475.

<sup>26</sup> ECJ 2 June 2016, C-438/14, *Nabiel Peter Bogendorff von Wolfersdorff v Standesamt der Stadt Karlsruhe and Zentraler Juristischer Dienst der Stadt Karlsruhe*, ECLI:EU:C:2016:401; Á. MOHAY and N. TÓTH, Nobility Titles and Free Movement: Case C-438/14 Nabiel Peter Bogendorff von Wolfersdorff, *Pécs Journal of International and European Law*, 2017, p. 30; Á. MOHAY and N. TÓTH, What's in a Name? Equal Treatment, Union Citizens and National Rules on Names and Titles, *Vienna Journal of International Constitutional Law* 11, 2017, p. 585.

course of the codification of the New PIL Code, the codification committee decided not to include any rule on the transfer of the company seat or cross-border conversion of companies. The regulation of this issue would have required the adoption of conflict-of-law rules together with substantive and procedural rules, and it was not intended to insert detailed substantive and procedural rules on the cross-border mobility of legal persons into a private international law code containing conflict-of-laws rules. It was also considered that the issue might be settled by future EU legislation creating uniform rules for the Member States. At the moment, therefore, the New PIL Code contains rules on the determination of the law governing companies only.<sup>27</sup> Following the adoption of the New PIL Code, the EU legislature has indeed created the uniform substantive and procedural law framework of cross-border conversions by the Cross-border Mobility Directive.<sup>28</sup> The New PIL Code applies the incorporation doctrine and the scope of the governing law extends to the questions related to the status of the company. These include its legal capacity, its formation and termination, its legal and organisational representation, its personality rights, its organisation, the legal relationships between its members, the legal relationships between the members and the legal person, and the responsibility of the legal person, its members and its executive officers for the obligations of the legal person.

**18.** The issue of the cross-border transfer of seat of companies received considerable attention in Hungary both in legal science, practice and even in the press due to the fact that two cases have been referred to the ECJ from Hungarian courts – *Cartesio*<sup>29</sup> and *VALE*<sup>30</sup> – which called into question the compatibility of Hungarian law with the freedom of establishment provisions.<sup>31</sup> However, it must be noted that in the legal literature the transfer of the company seat has been discussed primarily in terms of the determination of the applicable law and the concept of the ‘recognition of companies’ has been discussed more rarely. In a study, Nagy analysed *Cartesio* and *VALE* more broadly in the context of the country-of-origin principle.<sup>32</sup> Király put the principle of mutual recognition elaborated in relation to the free movement of goods and the transfer of the company seat in parallel.<sup>33</sup> As the sale of a product lawfully produced and marketed in one Member State cannot be prohibited in another Member State, so the transfer of seat and the operation of a company incorporated in one Member State should not be prohibited in another Member State. The recognition of companies has been discussed by Király in terms of its ‘cultural effects’, including regulatory competition and safeguards for stakeholders.

<sup>27</sup> S. 22 of the New PIL Code.

<sup>28</sup> Directive (EU) 2019/2121 of the European Parliament and of the Council of 27 November 2019 amending Directive (EU) 2017/1132 as regards cross-border conversions, mergers and divisions, OJ L 321, 12.12.2019, p. 1.

<sup>29</sup> ECJ 16 December 2008, C-210/06, *Cartesio Oktató és Szolgáltató Bt.*, ECLI:EU:C:2008:723.

<sup>30</sup> ECJ 12 July 2012, C-378/10, *VALE Építési Kft.*, ECLI:EU:C:2012:440.

<sup>31</sup> See from the abundant literature without being exhaustive, M. KIRÁLY, “A társasági jog nemzetközi vonatkozásai és az Európai Közösség joga” [International Perspectives of Company Law and the Law of the European Community], in P. MISKOLCZI BODNÁR, *Európai társasági jog* [European Company Law], 2004, p. 23; M. KIRÁLY, “A cégbejegyzési elv jövője figyelemmel a közösségi jog változására” [The Future of the Incorporation Doctrine with Regard to the Change of Community Law], *Gazdaság és Jog* [Economy and Law] 13, 2005, 37; L. BURIÁN, “The Impact of Community Law on the Determination of the Personal Law of Companies”, in: P. HAY ET AL., *Resolving International Conflicts – Liber Amicorum Tibor Várady*, Budapest/New York, CEU Press, 2009, p. 67; V. KOROM and P. METZINGER, “Freedom of Establishment for Companies: the European Court of Justice Confirms and Refines its Daily Mail Decision in the Cartesio Case C-210/06”, *ECFR* 6, 2009, p. 125; P. METZINGER, Z. NEMESSÁNYI and A. OSZTOVITS, *Freedom of Establishment for Companies in the European Union*, Budapest, Complex, 2009; L. VÉKÁS, “Adójogi megfontolások és a társaságok nemzetközi magánjoga” [Tax Law Considerations and the Private International Law of Companies], in: I. SIMON, *Tanulmányok Nagy Tibor tiszteletére* [Studies in Honour of Tibor Nagy], Budapest, Szent István Társulat, 2009; T. SZABADOS, *The Transfer of the Company Seat within the European Union: The Impact of the Freedom of Establishment on National Laws*, Budapest, ELTE Eötvös Kiadó, 2012; T. SZABADOS, “The Transfer of the Company Seat: The Freedom of Establishment and National Laws”, *Acta Universitatis Sapientiae Legal Studies* 2, 2013, p. 153; T. SZABADOS, *Companies in EU Private International Law – An EU Law Perspective...*, in: T. SZABADOS and M. KIRÁLY, *Perspectives of Unification of Private International Law in the European Union*, Budapest, ELTE Eötvös Kiadó, 2018, p. 85.

<sup>32</sup> Cs. I. NAGY, “The Personal Law of Companies and the Freedom of Establishment under EU Law”, *Hungarian Yearbook of International and European Law*, 2013, p. 353.

<sup>33</sup> M. KIRÁLY, *Unity and Diversity*, Budapest, ELTE Eötvös Kiadó, 2011, pp. 210-211; M. KIRÁLY, *Egység és sokféleség*, Budapest, Új Ember, 2007, pp. 208-209.

**19.** From the Hungarian court practice, the follow-up decision of the Kúria, the supreme court of Hungary, in the *VALE* case, must be highlighted. Notwithstanding the preliminary ruling of the CJEU, VALE Kft. could not rely on the freedom of establishment after all. Considering the facts of the case, the Kúria found that VALE Srl. had already been deleted from the Italian commercial register when the articles of association of VALE Kft. were adopted for the purpose of registering the conversion in Hungary.<sup>34</sup> The Kúria stated that the rule of Hungarian company law, that the articles of association of the legal successor company must be adopted at the latest until the deletion of the legal predecessor, applies even with regard to cross-border conversions. As a consequence, the continuity of the legal personality of the company was missing and it could not be entered into the Hungarian registry.

#### 4. Family matters

**20.** The New PIL Code contains conflict-of-laws rules on family matters, partnerships and registered partnerships. These provisions determine, among others, the law governing the formal and substantive validity of marriage,<sup>35</sup> parentage<sup>36</sup> and adoption.<sup>37</sup> Adoption is valid under the New PIL Code only if the conditions thereof are met under the personal law of both the adoptive parent and the person intended to be adopted at the time of adoption.<sup>38</sup> It must be noted that Hungary is a party to The Hague Convention on protection of children and co-operation in respect of intercountry adoption.<sup>39</sup> International adoption is also discussed in legal literature.<sup>40</sup> Similarly, the New PIL Code provides for the law applicable to the existence and termination of partnerships and registered partnerships.<sup>41</sup> In addition to conflict-of-laws rules, the aforementioned procedural provisions on the recognition of foreign decisions specifically address the recognition of decisions rendered in family matters as set out in section III.1.

#### 5. Capacity

**21.** Hungarian private international law promotes the recognition of capacity of persons under certain circumstances who have no disposing capacity or who have restricted disposing capacity under their personal law. Pursuant to section 17 of the New PIL Code:

- (1) A person who has no disposing capacity or who has restricted disposing capacity under his personal law shall be regarded as a person having disposing capacity in terms of contracts of minor significance that are concluded and performed in Hungary and which take place in large number in everyday life and which would not require any particular consideration if this person had disposing capacity under Hungarian law.
- (2) A person who has no disposing capacity or has restricted disposing capacity under his personal law but who would have disposing capacity under Hungarian law shall be regarded as a person having disposing capacity also in terms of this person's other property transactions if the legal consequences of the transaction are arise in Hungary.

**22.** No relevant case law is known regarding this section or its counterpart from the Old PIL Code.

<sup>34</sup> EBH2013. G.3.

<sup>35</sup> S. 26 of the New PIL Code.

<sup>36</sup> S. 31 of the New PIL Code.

<sup>37</sup> S. 33 of the New PIL Code.

<sup>38</sup> S. 33 (1) of the New PIL Code.

<sup>39</sup> Promulgated by 2005. évi LXXX. törvény a gyermekeknek a nemzetközi örökbefogadások terén való védelméről és az ilyen ügyekben történő együttműködésről szóló, Hágában, 1993. május 29. napján kelt Egyezmény kihirdetéséről [Act LXXX of 2005 on the promulgation of The Hague Convention of 29 May 1993 on Protection of Children and Co-operation in Respect of Intercountry Adoption].

<sup>40</sup> E. KATONÁNÉ PEHR, "Nemzetközi örökbefogadás" [International Adoption], in: BENCZE LÁSZLÓNÉ ET AL., *A családjog kézikönyve* [Handbook of Family Law], vol 2, Budapest, HVG-ORAC, 2007, 1226.

<sup>41</sup> Ss. 35-38 of the New PIL Code.

## 6. Surrogacy

**23.** The legal treatment of surrogacy is not regulated in Hungarian law and as such surrounded by uncertainties.<sup>42</sup> The legal literature discussed the judgments of the ECtHR (*Mennesson v. France*,<sup>43</sup> *Labassee v. France*,<sup>44</sup> *Paradiso and Campanelli v. Italy*<sup>45</sup>).<sup>46</sup> However, the recognition of surrogacy has not been so far directly addressed in Hungarian judicial practice. There is a single case where the issue of a possible foreign surrogacy arose in the course of the registration of the birth of children. The registration of the birth of the twin children of a Hungarian father was denied by the Hungarian civil status registry, because Hungarian authorities suspected that the twins were born by a surrogate mother in Ukraine where surrogacy is legal and the data of the women giving birth to a child were not indicated in the birth certificate issued by Ukrainian authorities. According to the competent Hungarian authority, the birth certificate attached to the request verified only that under Ukrainian law who qualified as the parents of the children. Due to the difference in Hungarian and Ukrainian law, the birth certificate itself did not prove parentage. The applicant did not attach the parental care book requested by the authority in order to establish maternity. Both the first instance court<sup>47</sup> and on appeal the Metropolitan Regional Court<sup>48</sup> confirmed that the decision of the authority was ill-founded. Under the United Nations Convention on the Rights of the Child, the interests of the child must be taken into account above all in the course of taking administrative measures in relation to children by authorities. The Metropolitan Regional Court established that the authority mentioned surrogacy as a legal institution allowed by Ukrainian law in its decisions only in general terms, but did not prove its existence in the given case. Maternity could have been verified by means other than the parental care book, such as adoption or a DNA test.

## 7. Same-sex marriage

**24.** Pursuant to Article L (1) of the Hungarian Basic Law, marriage as a legal institution is a life community based on a voluntary decision between a man and woman. Same-sex couples can enter into a registered partnership, but cannot conclude a marriage.

**25.** The Hungarian LGBT Association (Magyar LMBT Szövetség) brought forward a proposal for amending the Private International Law Bill in the course of the codification of the New PIL Code.<sup>49</sup> The proposals focused on three questions.

**26.** First, it was proposed that Hungarian law should recognise the marriage of same-sex couples concluded abroad as registered partnership. Hungarian law does not know the marriage of same-sex couples, but enables them to enter into a registered partnership which is a legal institution similar

<sup>42</sup> Z. NAVRATYIL, “Az anyaság útvesztői – A dajkaanyaság és béranyaság rejtelmek a jogi szabályozásban, különös tekintettel az Egyesült Államokra” [The Labyrinth of Motherhood – The Mysteries of Surrogate Motherhood in Legal Regulation with Special regard to the United States], *Iustum Aequum Salutare* 6, 2010, 189, 210-211.

<sup>43</sup> ECtHR 26 June 2014, *Mennesson v. France*, no. 65192/11.

<sup>44</sup> ECtHR 26 juin 2014, *Labassee v. France*, no. 65941/11.

<sup>45</sup> ECtHR 24 January 2017, *Paradiso and Campanelli v. Italy*, no. 25358/12.

<sup>46</sup> Z. NAVRATYIL, “Béranyaság határok nélkül - Különös tekintettel az Emberi Jogok Európai Bíróságának döntéseire” [Surrogate Motherhood without Borders with Special Regard to the Decisions of the European Court of Human Rights], *Iustum Aequum Salutare* 13, 2017, p. 101; P. BUZÁS, *Mennesson Franciaország elleni ügye* [Mennesson v France Case], *Fundamentum* 18, 2014, p. 105; P. BUZÁS, *Paradiso és Campanelli Olaszország elleni ügye* [Paradiso and Campanelli v Italy Case], *Fundamentum* 19, 2015, p. 96.

<sup>47</sup> Fővárosi Törvényszék 3. K.34.141/2011/7.

<sup>48</sup> Fővárosi Ítéltábla 2.Kf.27.291/2012/8.

<sup>49</sup> A Magyar LMBT Szövetség véleménye a nemzetközi magánjogról szóló T/14237. számú törvényjavaslatról [Opinion of the Hungarian LGBT Association on Bill No. T/14237. on private international law], 2017. március 7., [http://lmbtszovetseg.hu/sites/default/files/mezo/file/lmbtszov\\_ogynkozi\\_2017marc.pdf](http://lmbtszovetseg.hu/sites/default/files/mezo/file/lmbtszov_ogynkozi_2017marc.pdf)



to the marriage in terms of conclusion, termination and legal effects.<sup>50</sup> In practice, the recognition of marriages of same-sex couples concluded abroad as a marriage or as a registered partnership is denied by the Hungarian authorities responsible for civil status registration. Due to the rejection of recognition, same-sex couples, who concluded a marriage abroad and wish their relationship to be recognised under Hungarian law, have to enter into a registered partnership in Hungary. This causes additional costs. The concept of the New PIL Code had declared that the marriages concluded abroad by same-sex couples could not be recognised in Hungary as a marriage, but such marriages should have been considered at request as registered partnership.<sup>51</sup> This proposal has been, however, set aside and the New PIL Code does not contain any rule to this effect.

**27.** Second, according to the Hungarian LGBT Association the rules on married names should have been extended to the name of registered partners. Under Hungarian law, the provisions on bearing names of married couples may not be applied to registered partners,<sup>52</sup> and as such, Hungarian law does not know the name of registered partners to the analogy of married name. In this sense, the New PIL Code lays down in section 37 (1) that regarding the existence, validity and legal effects of a registered partnership, not including the bearing of a name, the provisions of the New PIL Code on marriages shall duly apply. This situation has the consequence that registered partners can acquire and use a registered partnership name abroad, while in Hungary they can use their birth name only. This causes inconveniences in the course of the verification of personal identity as well as the delivery and receipt of mails. The Hungarian LGBT Association referred in this context to the *Garcia Avello* and the *Grunkin and Paul* judgments of the ECJ as being incompatible with the free movement of persons to compel someone to bear different names in different Member States. It was also referred here to a report of the Office of the Commissioner for Fundamental Rights, where the ombudsman established concerning a person having Hungarian and German citizenships who entered into a registered partnership in Germany, and whose new family (registered partnership) name obtained in Germany was not recognised by Hungarian authorities, that the regulation which compelled the petitioner to bear different names in the countries of his/her citizenships resulted in an abuse in relation to the petitioner's right to his/her name which may be deduced from human dignity.<sup>53</sup> It was proposed by the Hungarian LGBT Association to eliminate from section 37 (1) the exception referring to the bearing of name.

**28.** Third, it was submitted that the rule according to which the law of the state of the common citizenship of the partners applies regarding the existence, termination and legal effects of a partnership should be so amended that if the law of the state of the common citizenship does not know the institution of partnership or only in the case of persons of different sex, the law of that state should apply in the territory of which the habitual residence of the partners; in the absence of this their last common habitual residence, is located. In this way, if the state of the citizenship of the partners does not know the institution of partnership or only in the case of persons of different sex, the law of that state should apply where the partners have or had their habitual residence.

**29.** These proposals were taken up by an MP of one of the opposition parties and submitted them essentially with the same content to the Hungarian Parliament in the course of the debate on the New PIL Code.<sup>54</sup> The majority of the Parliament accepted none of these proposals.

---

<sup>50</sup> 2009. évi XXIX. törvény a bejegyzett élettársi kapcsolatáról, az ezzel összefüggő, valamint az élettársi viszony igazolásának megkönnyítéséhez szükséges egyes törvények módosításáról [Act XXIX of 2009 on registered partnership and the amendment of the related and those acts necessary for the facilitation of the verification of partnership] s. 3 (1) a).

<sup>51</sup> Concept of the New PIL Code, para 189.

<sup>52</sup> S. 3 (3) of Act XXIX of 2009 on registered partnership.

<sup>53</sup> Az alapvető jogok biztosának jelentése az AJB-1278/2014. számú ügyben [Report of the Office of the Commissioner for Fundamental Rights in case no. AJB-1278/2014.].

<sup>54</sup> Dr. Szél Bernadett, Módosító javaslat T/14237/4; Dr. Szél Bernadett, Módosító javaslat T/14237/5; Dr. Szél Bernadett, Módosító javaslat T/14237/6.

In the meantime, some change seems to occur in court practice. A Hungarian citizen requested the registration of a marriage concluded with a same-sex US citizen in Belgium. After the authority acting in civil status matters rejected the request, the Hungarian citizen plaintiff asked before a Hungarian court the registration of the foreign marriage as a registered partnership. Referring to the judgments of the ECtHR, at first instance the Metropolitan Administrative and Labour Court,<sup>55</sup> while at second instance the Metropolitan Court of Appeal<sup>56</sup> ordered the registration of the marriage as a registered partnership. Both the court of first and second instance pointed out that in the event of the rejection of the plaintiff's request, the same-sex couple could not live together in any form recognised by Hungarian law, because the US spouse lives in a marriage according to his/her personal law, that is under Hungarian law he/she cannot enter into a registered partnership. The court of first instance also referred to the violation of the right of free movement and residence guaranteed by EU law. The Kúria, the supreme court of Hungary, seized upon a request for revision, did not see any possibility to register the marriage concluded abroad as a registered partnership.<sup>57</sup> The Kúria justified its decision by the fact that the plaintiff requested in the contested administrative procedure only the domestic registration of the foreign marriage. The plaintiff asked only later in the court proceedings for the registration of the marriage as a registered partnership. Since Hungarian law does not know the marriage of same-sex parties, the authority seized refused correctly the registration, while the courts gave an answer to a question that had not emerged in the administrative procedure. Notwithstanding the formalism of the ruling by the Kúria, the decisions of the courts of lower instances reveal more openness.

#### IV. Methodology

**30.** In Hungarian private international law, recognition of status takes place first of all by recognising a relevant foreign decision at the level of international civil procedure. Sometimes, the operation of conflict-of-laws provisions promotes recognition under the New PIL Code, in particular regarding names and legal persons and entities not having legal personality. Furthermore, the simple recognition, as referred to in the General Report, is used as far as the recognition of names and capacity are concerned. Hungarian legislation and judicial practice have not endorsed the principle of mutual recognition as a substitute for private international law.

##### 1. Procedural recognition

**31.** In most cases, recognition takes place by the recognition of a foreign decision at the level of international procedural law under the relevant international conventions, EU regulations and the New PIL Code. The autonomous rules on recognition of foreign decisions are determined by the New PIL Code, though these provisions apply only if none of the EU regulations and international conventions concerning recognition is applied. In this way, the relevant provisions of the New PIL Code apply only if the decision was rendered in a third country or if the subject matter of the case does not fall under the scope of application of the EU regulations. As the rules in the EU regulations are well-known, I focus exclusively on autonomous national rules. The provisions concerned of the New PIL Code are not limited to foreign judicial decisions, but they apply also to decisions of other authorities acting in civil matters.

**32.** The New PIL Code provides for the recognition of foreign judgments generally and specifically in matters concerning family law and personal status.<sup>58</sup>

<sup>55</sup> Fővárosi Közigazgatási és Munkaügyi Bíróság, 27.K.32.541/2016/6.

<sup>56</sup> Fővárosi Törvényszék, 1.Kf.650.054/2017/4.

<sup>57</sup> Kúria, Kfv. VI.37.558/2018/5.

<sup>58</sup> Ss. 109-112 and ss. 116-121 of the New PIL Code.

**33.** As a main rule, no special procedure is required for the recognition of a foreign decision.<sup>59</sup> However, the recognition of foreign decisions is not automatic.<sup>60</sup> Unless otherwise provided by law, the question of recognition is examined by the court (other authority), in the procedure of which it arises. This court (other authority) has to examine whether the foreign decision complies with the preconditions for recognition and even if it is not necessary to render a separate decision on this question, it has to take the outcome of this examination into account in the procedure.

**34.** The party concerned may also request the court to establish in a special procedure that the foreign decision may be recognised in Hungary.<sup>61</sup> The court decides on such a request in a non-litigious procedure by rendering a decision on the question of recognition. The New PIL Code provides for special rules on competence for such a procedure.<sup>62</sup>

## **2. Conflict-of-laws method**

**35.** The conflict-of-laws method is used in particular regarding names and the status of legal persons and entities not having legal personality. As the relevant provisions and the related court practice has been analysed above in section 3, it suffices here to state that the New PIL Code follows the conflict-of-laws method in these fields. It is remarkable that the conflict-of-laws method relies to a large extent on the autonomy of the parties, directly concerning names and indirectly through the application of the incorporation theory as far as the recognition of legal persons is concerned. The more specific rules, where the conflict-of-laws method appears, are supplemented by a general rule on the change of status.

**36.** The New PIL Code provides a possibility of choice concerning the bearing of the birth as well as the married name. Regarding the birth name, instead of the personal law, the person concerned can select Hungarian law as governing law. A person having multiple citizenships may choose the law of any of his citizenships to the use of his/her birth name.<sup>63</sup> The parties may choose by their joint request the law of the citizenship of any of the spouses or Hungarian law to bearing of the married name.<sup>64</sup>

**37.** It is to be noted that in addition to the pure conflict-of-laws rules a further provision in the New PIL Code provides for the simple recognition of names by the recognition of a foreign administrative act. Under Section 16 (5) of the New PIL Code, the birth name as well as the married name of a Hungarian citizen which has been validly registered under the law of another state must be recognised in Hungary if the person concerned having Hungarian citizenship or his spouse is also a citizen of this other state or if the place of habitual residence of the Hungarian citizen concerned is located in that state.

**38.** Foreign incorporations and thereby the existence of foreign legal persons (or entities not having legal personality) are recognised through the application of the incorporation doctrine.<sup>65</sup> The reference to the law of the state of incorporation implies that legal persons and entities without legal personality set up in accordance with the law of the state of origin are recognised in the forum state. As the owners can decide where to incorporate a company, the incorporation doctrine enshrined by the New PIL Code promotes indirectly the autonomy of the parties. Nevertheless, it must be noted that the cross-border transfer of seat of companies or the cross-border conversion of companies is not regulated in Hungarian law.

---

<sup>59</sup> S. 122 (1) of the New PIL Code.

<sup>60</sup> Legislative justification to s. 122 of the New PIL Code.

<sup>61</sup> S. 122 (2) of the New PIL Code.

<sup>62</sup> S. 122 (3) of the New PIL Code.

<sup>63</sup> S. 16 (2) of the New PIL Code.

<sup>64</sup> S. 16 (3) of the New PIL Code.

<sup>65</sup> S. 22 (1) of the New PIL Code.

39. As mentioned above in section III.4, the New PIL Code contains conflict-of-laws rules on family matters, including marriage, parentage and adoption, as well as on partnership and registered partnership. These conflict-of-laws rules are complemented with procedural provisions which address specifically the recognition of foreign decisions rendered in family matters as indicated in section III.1.

40. More generally, the New PIL Code contains in the General part a provision on the change of status (*Statutenwechsel*) relevant in terms of recognition. A change in the circumstances determining the applicable law impacts legal relationships which validly came into existence in accordance with the law applicable before the change only if the New PIL Code expressly so provides. As a main rule, therefore, the legal relationships (status) are not affected by a change in the connecting factor on the basis of which the governing law was determined.<sup>66</sup> This rule also applies to personal status. In particular, the change of citizenship does not affect the personal status and the rights and obligations related to them. An exception is laid down for rights *in rem*. If, after a change in the right *in rem*, the movable thing is relocated to the territory of another state permanently, the rights acquired previously may be recognised in accordance with the law of the new location of the thing.<sup>67</sup>

### 3. Simple recognition

41. As mentioned above, a simple recognition rule may be found in relation to names acquired abroad. Under Section 16 (5) of the New PIL Code, the birth name as well as the married name of a Hungarian citizen which has been validly registered under the law of another state must be recognised in Hungary if the person concerned having Hungarian citizenship or his spouse is also a citizen of this other state or if the place of habitual residence of the Hungarian citizen concerned is located in that state. The recognition of a foreign name in Hungary on the basis of this provisions necessitates the registration of the foreign name by the civil registry. The text of the above norm refers to the conditions and limits of recognition. The condition of the recognition is the existence of close connection to the state, where the name was registered. This appears through the requirements concerning the citizenship and the habitual residence. At the same time, recognition can be denied if it violates the Hungarian public policy.

Another rule of the New PIL Code does not only provide for recognition, but also for the upgrade of a foreign legal status. As mentioned above, Hungarian private international law promotes the recognition of capacity of persons under certain circumstances, even if the person concerned has no disposing capacity or who has restricted disposing capacity under his personal law. This means that by virtue of section 17 of the New PIL Code, the missing or restricted disposing capacity is completed to a full disposing capacity in Hungary concerning the everyday life transactions and property transactions the legal consequences of which arise in Hungary. In fact, this involves a completion of the status possessed in the country of origin without the need for a formal registration process.

### V. Formal requirements for recognition

42. As a main rule, the recognition of decisions takes place under the provisions of the New PIL Code on recognition of foreign decisions (if an international convention or an EU regulation does not apply). Therefore, the existence of a prior formal decision is required for recognition.

43. The notion of ‘decision’ is not determined by the New PIL Code. However, the legislative justification points out that the notion of ‘decision’ must be construed flexibly.<sup>68</sup> It includes not only judicial decisions, but also decisions rendered by other authorities (public notary, administrative autho-

<sup>66</sup> S. 14 of the New PIL Code.

<sup>67</sup> S. 41 (1) of the New PIL Code.

<sup>68</sup> Legislative justification to s. 109 of the New PIL Code.

rities, such as the civil registry). An entry into the civil registry may also constitute a ‘decision’. Private status decisions (i.e. the change of legal status without the involvement of a public authority, such as religious ceremonies; private acts drawn up by an individuals) cannot be recognised. However, a qualification must be made. The legislative justification to the New PIL Code finds that the rules on the recognition of foreign decisions apply to a decision of a non-state organ, such as a religious court, if it acts on the basis of an authorisation stemming from state legislation and thus exercises public power.<sup>69</sup> In this case, its decision amounts to a decision of a state organ. Furthermore, as discussed above, the autonomy of the parties is recognised by the conflict-of-laws rules of the New PIL Code which provide for a possibility of choice by the parties concerning bearing birth and married names. The name chosen by the parties will be registered by the authorities in Hungary.

**44.** Changes in the civil status require registration in the civil status registry. There are, however, cases, for example, if the recognition of capacity arises in a procedure before a court (authority), where no registration is required.

**45.** When a foreign status question arises in a civil procedure or an administrative procedure, the court or authority can require proving the existence of that status, for example capacity, incorporation of a legal person or name, by some official document.

**46.** Pursuant to Act CXXX of 2016 on the Civil Process Code (the Civil Process Code), if a fact may be proven by a document, other evidence is not necessary.<sup>70</sup> In the civil process, the capacity of a person may be examined by the court *ex officio* in the event of doubt.<sup>71</sup> In a decision, the Supreme Court, the predecessor of the Kúria, established that a Russian company had to prove its capacity by attaching the copy of the full company records kept by the competent Russian authority in the form of a public document.<sup>72</sup>

**47.** In the civil status registration procedure, the data to be registered must be proved by a public document or a private document having full evidentiary effect.<sup>73</sup> If, under section 16 (2) of the New PIL Code, due to the joint request of the parents a foreign law is to be applied to the registration of the birth name of a child, a foreign name is registered provided that the parents prove the foreign citizenship of the child and that the family and first name indicated comply with the foreign law.<sup>74</sup>

**48.** A foreign public document has the same evidentiary force as a domestic public document provided that it was legalised by the competent Hungarian diplomatic representation at the place where it was issued, unless otherwise provided by an international convention entered into with the state in which it was issued.<sup>75</sup> Exemption from legalisation can be based on the The Hague Convention on Abolishing the Requirement of Legalisation for Foreign Public Documents or another international convention.

**49.** In a civil process, the foreign language attachments of the statement of claim must be accompanied by a simple translation.<sup>76</sup> In relation to evidence, the Civil Process Code provides that if the party wants to prove his statements of fact by documents, he has to attach a simple translation in the case of foreign documents.<sup>77</sup> In civil status registration procedure, documents issued in foreign language must be accepted only if it is accompanied by an official translation.<sup>78</sup>

<sup>69</sup> Legislative justification to s. 109 of the New PIL Code.

<sup>70</sup> S. 320 (5) of the Civil Process Code.

<sup>71</sup> S. 35 (1) of the Civil Process Code.

<sup>72</sup> LB Gf. I. 30.059/2000/5.

<sup>73</sup> 2010. évi I. törvény az anyakönyvi eljárásról [Act I of 2010 on civil status registration procedure], s. 14 (1).

<sup>74</sup> S. 44/A. (1) of Act on civil status registration procedure.

<sup>75</sup> Civil Process Code s 593.

<sup>76</sup> S. 171 (2) of the Civil Process Code.

<sup>77</sup> S. 320 (1) of the Civil Process Code.

<sup>78</sup> S. 14 (3) c) of Act on civil status registration procedure.

## VI. Material requirements for recognition

### 1. Conditions for recognition

**50.** The New PIL Code determines the conditions for recognising a foreign decision in section 109:

- (1) The decision of a foreign court shall be recognised if
  - a) the jurisdiction of the foreign court seised was founded based on this Act,
  - b) the decision became final or has an equivalent legal effect under the law of the state in which it was rendered, and
  - c) none of the grounds for denial specified in subsection (4) apply.
- (2) If this Act does not provide otherwise, for the purpose of subsection (1) point a), the jurisdiction of the foreign court seised shall be considered as founded if it proceeded based on a ground of jurisdiction which would establish the jurisdiction of a Hungarian court based on this Act.
- (3) Regarding the recognition of decisions in matters concerning family law and personal status, any other citizenship of a Hungarian citizen shall be taken into consideration in the course of the examination of whether the jurisdiction of the foreign court seised was founded.

**51.** For decisions rendered in matters concerning family law and personal status, the New PIL Code lays down special rules. Thus, it determines when the jurisdiction of the foreign court seised must be considered founded (sections 116-119); it creates a special ground for recognition regarding marriages (section 116 (2)) and adoption (section 120); and specifies deviations from the general rules when the recognition may be denied in such cases (section 116 (3) and section 121).

**52.** Courts have to examine *ex officio* that

- the jurisdiction of the foreign court seised was founded based on the New PIL Code. The jurisdiction of the foreign court seised shall be considered as founded if it proceeded based on a ground of jurisdiction which would establish the jurisdiction of a Hungarian court based on the New PIL Act;
- the decision became final or has an equivalent legal effect under the law of the state in which it was rendered;
- the Hungarian public guardianship authority granted approval to the adoption of a child having Hungarian citizenship; and
- Hungarian public policy was not breached.

**53.** In two cases, where after having dissolved the marriage by a foreign court, the ex-spouses requested the dissolution of the marriage also in Hungary. In these cases, the Hungarian courts seised established that a decision rendered in a foreign procedure for the dissolution of the marriage of a Hungarian citizen domiciled abroad must be recognised in Hungary.<sup>79</sup> It must be noted that these decisions were rendered before the application of the Brussels II Regulation under the provisions of the Old PIL Code on the recognition of foreign decisions.

### 2. Refusal of recognition

**54.** If recognition takes place by recognising a foreign decision under the provisions of the New PIL Code on recognition of foreign decisions, a foreign decision may not be subject to review on the

<sup>79</sup> BH1982. 516 and BH 1988. 145.

merits (prohibition of a *révision au fond*). However, the New PIL Code also determines the cases when the recognition of a foreign decision may be denied. The general grounds for the denial of recognition apply also to matters concerning family law and personal status. Pursuant to Section 109 (4) of the New PIL Code:

**55.** A foreign decision may not be recognised if

- a) the recognition thereof would violate Hungarian public policy,
- b) the party against whom the decision was rendered did not participate in the proceedings either in person or by representative, because the summons and the statement of claim or other document on the basis of which the proceedings were instituted was not served on him at his domicile or place of habitual residence in such a way and at such a time as to allow him to prepare for his defence,
- c) proceedings were instituted before a Hungarian court for the same right stemming from the same facts between identical parties before instituting foreign proceedings,
- d) a Hungarian court previously rendered a final decision on the merits concerning the same right stemming from the same facts between identical parties, or
- e) a court of a foreign state other than the state of the court rendering a decision previously rendered a final decision concerning the same right stemming from the same facts between identical parties which complies with the conditions for recognition in Hungary.

**56.** The absence of the grounds for denial specified in section 109 (4) b)-e) must be presumed until the contrary is proved.

**57.** Furthermore, pursuant to section 16 (5), the birth name as well as the married name of a Hungarian citizen which has been validly registered under the law of another state must be recognised in Hungary if the person concerned having Hungarian citizenship or his spouse is also a citizen of this other state or if the place of habitual residence of the Hungarian citizen concerned is located in that state. This rule applies unless the name violates Hungarian public policy.

**58.** In a case, the Kúria, had to decide about the recognition of the adoption of adult persons by a person who was a Hungarian-Belgian double national.<sup>80</sup> The adoption was declared by a decision of a court in Marseille. Under Hungarian law, only minors may be adopted and for the validity of adoption Hungarian law requires the observance of the conditions laid down both by the law of the adoptive parent and the person intended to be adopted. This means that the provisions of Hungarian family law on the conditions for adoption have a public policy nature which do not allow any deviation in order to observe the interests of the child. It added, however, that the recourse to the public policy clause is an exceptional possibility, because it involves an obstacle to the free movement of decisions and it may not be established that the recognition of a foreign decision applying a solution differing from the domestic one constitutes the violation of the principles of the legal system. The Kúria also noted that Hungarian law knew before the legal institution of the adoption of an adult person. It found that in the case of the adoption of an adult, the purpose of the protection of the interests of the child does not arise, and recognition may not be denied simply on the grounds that there is a difference in the law of the country of origin (France) and the rules of the state where recognition was sought (Hungary) which would have been applied by the courts or public guardianship authority of the latter state if seised. The Kúria declared that the recognition of the foreign decision did not violate Hungarian public policy. Although the New PIL Code does not provide specifically for the denial of the recognition of a foreign decision on the grounds of abuse of rights, in the same decision, the Kúria also remarked that it could not be established that the procedure requested by the petitioners would have aimed at the circumvention of the purpose of the legal institution of adoption. This statement points to the possible denial of recognition on the grounds of abuse of rights.

<sup>80</sup> BH2018. 174.

### 3. Effects of recognition

59. In the case of recognition, the foreign decision has *res judicata* effect in Hungary from the date when the decision became final and binding in the issuing state.<sup>81</sup> For example, in the case of the recognition of a foreign decision dissolving a marriage, the marriage is to be considered as dissolved in Hungary from the date when the decision became final and binding in the issuing state irrespective of the time of the registration of the dissolution of the marriage in Hungary.

## VII. Summary

60. Like the private international law of many states, Hungarian private international law ensures the recognition of a legal status acquired abroad by more than one method. These include the procedural recognition of foreign decisions, the conflict-of-laws method and the simple recognition of the foreign legal status. In practice, difficulties have arisen and may emerge in the future in relation to the legal treatment of surrogacy and same-sex relationships.

---

<sup>81</sup> L. BURIÁN, “Eljárásjogi rendelkezések” [Procedural Provisions], in: L. BURIÁN, L. KECSKÉS and I. VÖRÖS, *Magyar nemzetközi kollíziós magánjog* [Hungarian Conflict of Laws], 2006, p. 296.