

**COMPARATIVE STUDY OF "RESIDUAL JURISDICTION"
IN CIVIL AND COMMERCIAL DISPUTES IN THE EU
NATIONAL REPORT FOR:**

BULGARIA

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(A) General Structure of National Jurisdictional Rules for Cross-Border Disputes

1. Main legal Sources

The rules of jurisdiction in The Republic of Bulgaria in civil and commercial matters are based on law mostly, although there is certain type of acts of the Supreme Court which provide unified interpretation of certain legal provisions which reveal variation in implementation. The said acts are obligatory to all public bodies including the legal and natural person. Therefore the sources of rules of jurisdiction could be divided into several groups:

1.1. Law.

1.1.1. Court organization.

The **Juridical System Act** determines the court system in The Republic of Bulgaria and the interaction between its units. It provides the structure of the different courts and the basic competency of each of them in system of justice, as well as their hierarchy.

1.1.2. Substantive provisions of law applicable to cross-border cases are contained in various acts. The main legal sources of rules in the matter herein are the **Commercial Act**, the **Family Code**, the **Succession Act**, the **Property Act**, the **Obligations and Contracts Act**, the **Consumer Protection Act**, etc.

1.1.3. The main source of rules of jurisdiction is the **Civil Procedure Code**.

As far as arbitral jurisdiction is concerned, the **International Commercial Arbitration Act** is applicable. Its provisions are special as regarding to the ones in the Civil Procedure Code and reveal a faster and more effective procedure. However, where the ICAA provisions are silent the CPC provisions are applicable as a subsidiary source of rules.

The regulation of the international civil matter and the procedure that corresponds to it is in the **Private International Law Code**. The latter also provides the conditions and the procedure for recognition and enforcement of judgments by foreign courts.

1.2. Court Practice ("case law").

Case law is not a legal source of rules of jurisdiction in The Republic of Bulgaria, but some decisions of the supreme courts are compulsory for the other courts to comply with. These interpret the legislation in force and thus contribute to the accurate and equal application of the laws by all courts.

Prior to the adoption of The Private International Law Code jurisdiction and recognition and enforcement of judgments by foreign courts was thoroughly regulated by The Civil Procedure Code. Therefore such decisions interpret the provisions of the Civil Procedure Code and some of them have lost their significance because the interpretation transformed in legal provisions in the Private International Law Code. Nevertheless some of them are still a source of rules. Such decisions are **Interpretive Judgment No 1/2000**, **Interpretive Judgment No 1/2001** (these decisions partly concern the matter of jurisdiction), **Interpretive Judgment No 41/1960**, **Interpretive Judgment No 98/1966** etc.

1.3. Bilateral and multilateral treaties.

Pursuant to the Bulgarian Constitution any international treaty, ratified by the Parliament, promulgated, and entered into force for the Republic of Bulgaria, shall be part of the domestic law. Any such treaty shall take priority over any conflicting rules of domestic legislation. Therefore if such a treaty provides rules of jurisdiction, it is going to have priority to local rules of jurisdiction where the latter are in contradiction.

1.3.1. Bilateral agreements between the Republic of Bulgaria and third countries on mutual legal assistance.

The Republic of Bulgaria has entered into such agreements with a lot of countries and they provide the procedure for giving legal assistance, for recognition and enforcement of judgments of the courts of the contracting country and other matter regarding jurisdiction and other aspects of interaction.

1.3.2. Multilateral treaties concerning rules of jurisdiction are **The European Convention for international Commercial Arbitration, European Convention on Recognition and Enforcement of Decisions concerning Custody of Children and on Restoration of Custody of Children, Convention on recognition and execution of arbitrary decision Convention on the Taking of Evidence Abroad in Civil or Commercial Matters, Convention on settling of investment disputes between countries and other countries' citizens etc**

2. Specific Rules (or Not) for Transnational Disputes

The sources of law pointed out above are applicable to and contain rules of jurisdiction on transnational and local disputes. The Civil Procedure Code provides the procedure all courts must comply with when approached with a civil or commercial dispute. The Private International Law Code provides the jurisdiction of courts on cross-border disputes and the rules of specifying the applicable law but the procedure they follow to render a lawful decision (calling of parties or witnesses, sessions etc) is in the Civil Procedure Code and is the same as the one for internal disputes.

The International Commercial Arbitration Act is applied to internal and international arbitration. Only some provisions concern international arbitration only.

3. Specific Rules (or Not) for Article 4(1) Jurisdiction

The rules that determine the jurisdiction of courts on international disputes are in the Private International Law Code which meets the need of codification of the rules for international private relationships. It is strongly influenced by and is in conformity with the European law. Article 4, Para 1 of the Code herein reproduces the provision of Article 2(1) of Brussels I Regulation. As far as the cases under Article 4(1) of the regulation are concerned, the Private International Law Code provides jurisdiction determined by the nationality of the claimant or applicant and also contains rules for jurisdiction for specific matters.

4. Influence of EU Law

The application and interpretation of the national jurisdictional rules is influenced by the Brussels I regulation. Its influence can be noticed in the latest changes of Bulgarian legislation. One of the reasons for the adoption of the Private International Law Code apart from the need pointed out above are the obligations of Bulgaria in the process of European integration including in the field of law. The jurisdictional rules in this code are in conformity with the Brussels I Regulation.

The influence could also be found in the new draft Civil Procedure Code. The jurisdictional rules are amended pursuant to the significance of the domicile under the Brussels I Regulation. We should point out that the Civil Procedure Code provides internal civil procedures and therefore does not affect the application of the regulation.

5. Impact of Other Sources of Law

The Constitution of the Republic of Bulgaria is the supreme law, its provisions are the basic principles of the Bulgarian law system and the legislation including in the field of jurisdiction is based on them. Some of these principles are the right of defense and legal aid and the protection of human rights whatever the nationality of the person and with no discrimination. The application of the national jurisdictional rules follows the principle that a person shall be sued by the court of his/her country and within the country – by the court in the region of which the person is domiciled.

6. Other Specific Features

Generally the regulation of the jurisdiction of Bulgarian courts in cross-border disputes is in the Private International Law Code. But according to Art. 3(1) of the Code its provisions shall not affect the regulation of relationships at private law with an international element as established in an international treaty, in another international instrument in force for the Republic of Bulgaria, or in another law. Therefore such a treaty is applicable when it determines court jurisdiction in specific matters. This corresponds to Art 5(4) of the Constitution.

The Private International Law Code provides:

- a) general jurisdiction of the courts;
- b) exclusive jurisdiction for specific matter;
- c) special jurisdictional rules regarding some relationships and
- d) choice of jurisdiction.

7. Reform

No changes are currently contemplated for the rules of jurisdiction applicable to cross-border cases. To some extent this is due to the fact that The Private International Law Code entered into force in 2005 and is in con

(B) Bilateral and Multilateral Conventions

8. Conventions with Third States

The bilateral conventions under 1.3.1 herein include jurisdictional rules in matters regulated by the Brussels I Regulation. Some of the multilateral conventions were mentioned in 1.3.2.

9. Practical Impact of international conventions with third states

The practical impact of the conventions is explained in 1.3 and 6 herein.

(C) Applicable National Rules Pursuant to Article 4 of the Brussels I Regulation

10. Structure

The rules that determine the jurisdiction of courts on international disputes are in the Private International Law Code (the Code) which meets the need of codification of the rules for international private relationships. It is strongly influenced by and is in conformity with the European law. Article 4, Para 1 of the Code reproduces the provision of Article 2(1) of Brussels I Regulation. On the other hand, according to Art. 3(1) of the Code its provisions shall not affect the regulation of relations at private law with an international element as established in an international treaty, in another international instrument in force for the Republic of Bulgaria, or in another law. Therefore the Code in question is not applicable to cases provided by the Brussels I Regulation and concerns all other cases, i.e. its provisions regulate jurisdiction pursuant to Art 4(1) of the Regulation.

See also topic 6 for information regarding the subject matter of the International Private Law Code.

11. General Jurisdiction

According to the Code the Bulgarian courts and other authorities shall have international jurisdiction where the defendant has a habitual residence, statutory seat or principal place of business in the Republic of Bulgaria. This is the general rule of jurisdiction of Bulgarian courts in international disputes.

12. Specific Rules of Jurisdiction

a) Contract

According to Article 15 of the Code the Bulgarian courts shall have jurisdiction over actions on contractual relationships where the place of performance of the obligation is within the Republic of Bulgaria or where the defendant has a principal place of business within the Republic of Bulgaria.

b) Tort

According to Article 18 of the Code the Bulgarian courts shall have jurisdiction over actions on damage sustained as a result of a tort where the harmful act was committed in the Republic of Bulgaria or where the damage or part thereof occurred in the Republic of Bulgaria. This jurisdiction shall furthermore apply to direct actions taken by the party who has suffered the damage against the insurer of the person claimed to be liable

c) Criminal Proceedings

The Bulgarian Criminal Code is applicable under specific circumstances to Bulgarian citizens who have committed a crime abroad and to foreign citizens whatever their domicile who have committed a crime in The Republic of Bulgaria or abroad. In these cases The Criminal Procedure Code provides the jurisdiction of Bulgarian courts. As far as civil claims are concerned, there is no specific ground of jurisdiction, the rules herein (under c)) determine the jurisdiction. Pursuant to the Criminal Procedure Code the court seized with crimination proceedings could but is not necessarily competent to hear the civil claim against the defendant. The victim or his or her heirs and the legal entities, which have sustained damages from the criminal offence, may file in the course of court

proceedings a civil claim for compensation of the damages and be constituted as civil claimants but the court is not obliged to hear it.

d) Secondary Establishment

The Code allows actions against a legal person to be brought before the Bulgarian courts if the entity has registered a branch in the Republic of Bulgaria. However the dispute must have arisen out of direct relationships with the branch.

e) Trust

There are no specific rules that determine the courts before which a settler, trustee or beneficiary of trust may be sued. In fact these figures are not recognized by Bulgarian law. The Code provides only the jurisdiction of Bulgarian courts for establishing and terminating guardianship or curatorship – if the person placed under curatorship is a Bulgarian national or is habitually resident in the Republic of Bulgaria.

(f) Arrest and/or location of Property

According to the Bulgarian legislation creditors are entitled to secure the property of the debtor to secure payment or other consideration. Pursuant to the Code the matters relating to immovable property situated in the Republic of Bulgaria, the matters relating to enforcement or to security which such property constitutes, as well as the matters relating to transfer or establishment of rights in rem in such property, shall be exclusively cognizable by the Bulgarian courts and other authorities. Pursuant to Article 12 of the Code Bulgarian courts shall have jurisdiction over actions on rights in rem in movable property where the property is situated in the Republic of Bulgaria.

13. Protective Rule(s) of Jurisdiction

(a) Consumer contracts

According to Article 16 of the Code the Bulgarian courts shall have jurisdiction over actions brought by a consumer save in the cases covered under Article 4 (general jurisdiction) and where the said consumer is habitually resident in the Republic of Bulgaria. An agreement on choice of court shall be admissible solely if entered into after the dispute has arisen.

(b) Individual Employment Contracts

Matters relating to labour disputes shall be cognizable by the Bulgarian courts, where the employee habitually carries out his or her work in the Republic of Bulgaria, as well as in the cases covered under Article 17. An agreement on choice of court shall be admissible only if it has been concluded after the dispute has arisen.

(c) Insurance Contracts

There are no specific rules that apply in insurance matters.

(d) Distribution Contracts

There are no specific rules that apply in distribution matters.

(e) Protective Rules in Other Matters

Pursuant to Article 11 of the Code Bulgarian courts shall have jurisdiction over actions on maintenance save in the cases under Article 4 (1) and where the maintenance creditor is habitually resident in the Republic of Bulgaria.

14. Rule(s) for the Consolidation of claims

(a) Co-Defendant

The Bulgarian courts shall have jurisdiction over actions brought against a number of defendants if the grounds for jurisdiction exist in respect of one of the said defendants

(b) Third Party Proceedings

There are no specific rules for participation of a defendant domiciled in a non-EU state as a third party in other third party proceeding. The Bulgarian Civil Procedure Code provides the participation of third parties and the latter is applicable to proceedings before Bulgarian courts no matter the domicile of the third party because the dispute which is object of the procedure is between the claimant and the initial defendant (the third party is not a principal in the case but just a warranty or guarantee). According to the Civil Procedure Code a third party may enter the case before the conclusion of the oral presentations, in order to help one of the parties if it has an interest that the decision rules in the latter's favour. Each party may include a third party in the case, when such person has the right to enter proceeding in order to help. The inclusion may be requested not later than the first hearing in written form a copy of which request is handed to the third party. It is up to the third party to decide whether to enter or not enter the proceedings.

(c) Counter-Claims

Pursuant to the Code where the Bulgarian courts have international jurisdiction over the original claim, the said courts shall also have jurisdiction over the counter-claim

(d) Related Claims

The court is solely entitled to determine its own jurisdiction for each specific case but there is no explicit rule allowing a defendant domiciled in non-EU state to be sued before Bulgarian courts on the ground that the claim is connected with another claim the national courts.

(e) Any Problems Pertaining to Lack of Harmonisation

We are not aware of cases that have been troubled by any specific problem related to a lack of harmonization of the above mentioned rules.

15. Rules of Jurisdiction Pursuant to Annex I of Brussels I

(a) The rules listed in annex I

Annex 1 of the Brussels I regulation points to Article 4(1) of the Private International Law Code as a rule not applicable pursuant to Article 3(2) of the Regulation, respectively it should be applicable in cases of Article 4 of the Regulation. The rule of the Code provides that the Bulgarian courts and other authorities shall have international jurisdiction where the defendant has its habitual residence, statutory seat or principal place of business in the Republic of Bulgaria or the claimant or applicant is a Bulgarian national or is a legal person registered in the Republic of Bulgaria. Therefore Annex 1 presumably refers to the grounds of jurisdictions based on the nationality of the claimant/applicant.

(b) Practical use of the rules listed in Annex I

The Private International Law Code entered into force in May 2005 and there is a lack of practice (case law) for most of its essential provisions. The idea of the Article 4, para.1 of the Bulgarian International Private Code obviously is that Bulgarian citizens should be defended by Bulgarian courts. Thus if there is no other grounds of jurisdiction, Bulgarian citizens should be defended before the Bulgarian courts, in cases where the Brussels I Regulation is not applicable.

(c) Extension of jurisdiction pursuant to article 4(2) of Brussels I

Regarding the recent accession of the Republic of Bulgaria to the European Union there is no practice of the courts under Article 4(2).

16. Forum *necessitatis*

There is no specific rule allowing a court to exercise jurisdiction on the basis that there is no other forum available. In general the Bulgarian courts are restricted from declining jurisdiction, However the court is entitled solely to determine if the subject matter of the dispute is in its jurisdiction.

(D) National Jurisdiction & Enforcement of Non-EU Judgments

17. National rules of jurisdiction barring the enforcement of a non-EU judgment

Under Bulgarian legislation and in particular pursuant to Article 117 of the International Private Law Code (The Code) the judgments and authentic act of the foreign courts may be recognized and enforced in Bulgaria, provided that all the requirements, defined in Article 117, para. 1 of the Code, have been satisfied. Therefore if the judgment of the foreign court does not comply with these requirements it would not be capable of enforcement under Bulgarian legislation.

The requirements of The Code in order to enforce a judgment are as follows:

1. the foreign court or authority had jurisdiction according to the provisions of Bulgarian law, but not if the nationality of the plaintiff or the registration thereof in the State of the court seized was the only ground for the foreign jurisdiction over disputes;

2. the defendant was served a copy of the statement of action, the parties were duly summonsed, and fundamental principles of Bulgarian law, related to the defence of the said parties, have not been prejudiced;
3. if no effective judgment has been given by a Bulgarian court based on the same facts, involving the same cause of action and between the same parties;
4. if no proceedings based on the same facts, involving the same cause of action and between the same parties, are brought before a Bulgarian court earlier than a case instituted before the foreign court in the matter of which the judgment whereof the recognition is sought and the enforcement is applied for has been rendered;
5. the recognition or enforcement is not contrary to Bulgarian public policy.

Given the current research the criteria defined in point 1 and point 5 should be considered as the most important since they are related to the subject of the case and defines the absolute requirement for recognition and enforcement.

(E) Declining Jurisdiction

18. Forum Non Conveniens

Pursuant to Article 92, para. 1 of the Civil Procedure Code each court is entitled to determine solely whether its jurisdiction covers the case. Therefore the court may decide on its own jurisdiction if the defendant is domiciled in a non-EU state and the jurisdiction is based on domestic law. However, if the domestic law provides that the local courts are imperatively competent for the specific type of case, it would probably block the enforcement of the judgment in the non-EU country.

In case the Bulgarian court decides that it is not competent for the specific type of case, the judge is entitled to terminate the litigation procedure.

19. Defendant is Domiciled in a Non-EU State and the Jurisdiction is Based on Domestic Law (Art 4 Brussels I Regulation)

(a) Choice of court clause

Under Bulgarian legislation and pursuant the Brussels I Regulation the freedom of the parties to specify jurisdiction is restricted by some spheres that are exclusively in the power of the national courts of the member state. For instance, these are the jurisdiction over immovable property, the status of the natural and legal entities, the validity of the acts of the public bodies and other matters.

The parties however are allowed to designate a jurisdiction of the court in a non-EU state, provided that they are in compliance with the imperative requirements concerning the jurisdiction of the member state.

(b) Parallel proceedings

In case the court of the member state is entitled to exclusive jurisdiction, it would proceed regardless of the parallel proceeding in a non-EU state. It is not required that the proceeding before the non-EU court be ceased in order the member state court to proceed with the case. In Bulgarian

law there is no explicit rule and therefore the Brussels I Regulation would be applicable for this specific cases.

(c) Subject-matter is closely related to a non-EU state

When the subject-matter of the dispute is closely related to a non-EU state the Bulgarian court would decline jurisdiction and especially in cases of the exclusive jurisdiction of a non-EU state. These would be the disputes related to immovable property, the status of the natural and legal entities and other.

20. Declining Jurisdiction When the Defendant is Domiciled in the EU

a) Non-EU Jurisdiction Agreements

Under Bulgarian legislation the parties are entitled to designate the jurisdiction, provided that the subject matter complies with the requirements of the law. Therefore the court may terminate the procedure in case one of the parties object that the dispute should be solved by the court within other jurisdiction.

(b) Parallel Proceedings in a non-EU court

In case there is a parallel proceeding of a court in a non-EU state, Bulgarian court would be entitled to proceed in case the subject matter is in its exclusive jurisdiction.

c) "Exclusive" Jurisdiction in a non-EU State

Where there is an exclusive jurisdiction of a non-EU court the Bulgarian court would not be entitled to proceed and the procedure should be terminated.

(F) The Adequate Protection (or lack thereof) of EU Nationals and/or Domiciliaries through the Application of Domestic Jurisdictional Rules

21. Use of National Jurisdictional Rules to Avoid an Inadequate Protection in Non-EU Courts

We have no information for a case or practice where Bulgarian courts have exercised jurisdiction on the basis of national rules in circumstances where it was known that the plaintiff would not get fair hearing or adequate protection. However the law provides that for instance the family law and legal status of the persons should be exclusively pursuant to the Bulgarian law, which the legislator considered as such guarantee for fair hearing.

22. Lack of Jurisdiction Under National Rules Having the Effect to Deprive EU Plaintiffs of an Adequate Protection

The following answers may not be satisfactory due to the lack of practice in the field of EU law of Bulgarian court. In this regard we would like to note that Bulgaria has joined the European Union on 1st January 2007.

- a) We have no information for a case or practice regarding a consumer who has filed a claim against a professional domiciled in a non-EU country.
- b) We have no information for a case or practice regarding an employee who has filed a claim against an employer domiciled in a non-EU country.
- c) We have no information for a case or practice regarding plaintiff who has filed a claim in Community regulated matters.

23. Lack of Adequate Protection as a Consequence of Transfer of Domicile to or from a Third State

The following answers may not be satisfactory due to the lack of practice in the field of EU law of Bulgarian court. In this regard we would like to note that Bulgaria has joined the European Union on 1st January 2007.

We have no information for a case or practice where Bulgarian courts have not been able to invoke the protection of Community legislation because the person involved was no longer domiciled in the EU at the time of the proceeding.

24. The Risk that EU Rules and Principles be Put in Jeopardy Because of the Application of National Jurisdictional Rules

We may not provide information due to the lack of practice in the field of EU law of Bulgarian court. In this regard we would like to note that Bulgaria has joined the European Union on 1st January 2007

(G) Residual Jurisdiction under the new Brussels II Regulation

25. Applicable National Rules Pursuant to article 14 of the New Brussels II Regulation (Parental Responsibility)

Pursuant to International Private Law Code Bulgarian courts have jurisdiction to hear claims in matters of parental responsibility in the following cases:

- Where at least one of the parents is a Bulgarian citizen or has its residence in the Republic of Bulgaria – Article 7 of the Code;
- In mentioned above cases the Bulgarian courts has jurisdiction over the personal and property relations between the parents – Article 8 of the Code;

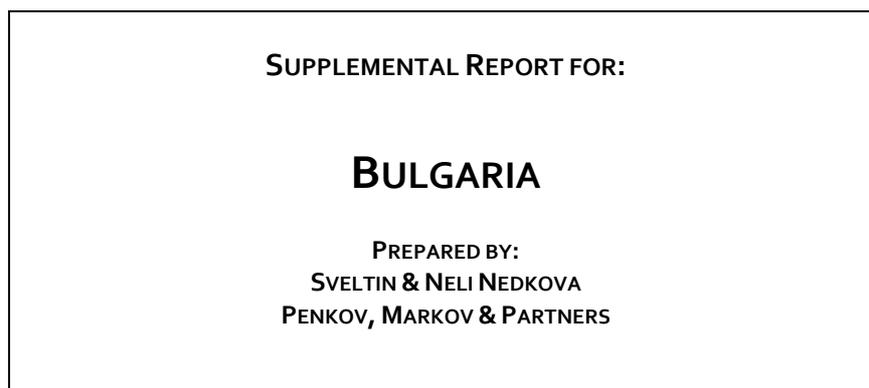
In this regard we have to note that Bulgarian law would be applicable to the relations between the parents and their children if both of them reside in the Republic of Bulgaria.

DISCLAIMER

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26. NA

27. Conventions with Third States in Matters of Parental Responsibility (and maintenance of children)

What are the international (and in particular bilateral) conventions concluded between your country and non-EU countries that include rules of jurisdiction in matters of parental responsibility (and maintenance of children)?

Bulgaria has ratified on 18.01.2006 the **Convention on Jurisdiction, Applicable Law, Recognition, Enforcement and Cooperation in respect of Parental Responsibility and Measures for the Protection of Children** concluded on 19 October 1996 at the Hague Conference on Private International Law. This is the only international convention concluded by Bulgaria relating to matters of parental responsibility.

28. Jurisdiction as a Ground for Resisting the Enforcement of non-EU Judgment in Matters of Parental Responsibility

Can the judgment of a non-EU State relating to matters of parental responsibility (for instance, a judgment given the guardianship of a child to one of the parents) be denied recognition or enforcement in your country on the basis that the courts of your country are the only ones who have jurisdiction to entertain the matter? If so, what is (are) the ground(s) of these "exclusive" rules of jurisdiction (e.g., habitual residence of the child in your country, citizenship of one or several of the parties, etc.)

Bulgarian Private international law code provides in its article 22:

"The international jurisdiction of the Bulgarian courts and other authorities shall be exclusive solely where so expressly provided for".

There is no such express legal regulation relating to matters of parental responsibility which means that Bulgarian Court never considers itself as the only one having jurisdiction to entertain such matters. Hence, such a judgment of a non-EU State cannot be denied recognition or enforcement in Bulgaria.

(H) Specific Country Questions

29. Jurisdiction in Divorce Proceedings Based on Citizenship

Can divorce proceedings be brought in your country on the basis of the citizenship of only one of the spouses? If yes, is it enough that the spouse was a citizen of your country at the time of marriage, or is it required that the spouse still be a citizen of your country at the time of divorce?

Article 4 of the Private international law code provides the general jurisdiction of Bulgarian courts and article 7 specifies the jurisdiction related to matrimonial matters.

Article 4 (1) of the Private international law code reads as follows: "The Bulgarian courts and other authorities shall have international jurisdiction where:

1. the defendant has a habitual residence, statutory seat or principal place of business in the Republic of Bulgaria;
2. the claimant or applicant is a Bulgarian national or is a legal person registered in the Republic of Bulgaria."

Article 7 of the Private international law code reads as follows: "Matrimonial matters shall be cognizable in the Bulgarian courts if one of the spouses is a Bulgarian citizen or is habitually resident in the Republic of Bulgaria."

This article provides that divorce proceeding can be brought in Bulgaria on the basis of the Bulgarian citizenship of *only one* of the spouses. The same article suggests that the spouse should be Bulgarian citizen or to have habitual residence at the time of divorce and not at the time of marriage.

Article 28 provides the jurisdiction of the Bulgarian court is to be verified ex officio.

Article 28 reads as follows: "The court shall of its own motion verify international jurisdiction. The determination of the existence of absence of such jurisdiction shall be subject to intermediate and cassation appeal."

30. Jurisdiction in Divorce Proceedings Based on Other Grounds

Can divorce proceedings be brought in your country on the basis of one or several of the following grounds: (1) the last habitual residence of one spouse in your country; (2) the close connection with the forum State; (3) the forum necessitatis, i.e. the fact that divorce proceedings cannot be brought in any other court abroad?

Article 7 of the Private international law code provides that divorce proceeding can be also brought in Bulgaria on the only basis of the habitual residence in Bulgaria of *one* of the spouses and in this case does not require cumulatively Bulgarian citizenship of none of the spouses. The interpretation of the article brings to the conclusion that the spouse should be habitually resident in Bulgaria *at the time of the divorce*. The article is exhaustive which excludes the possibility to bring a divorce proceeding in Bulgaria on the base of the *last* habitual residence which is a different hypothesis, meaning that the spouse does not live in Bulgaria anymore.

Article 48, paragraph 7 of the Private international law code contains the legal definition of *habitual residence*:

"Within the meaning given by this Code, "habitual residence of a natural person" shall denote the place where the said person has settled predominantly to live without this being related to a need of registration or authorization of residence or settlement. For determination of this place, special regard must be had to circumstances of personal or professional nature arising from sustained connections of the person with the said place or from the intention of the said person to establish such connections."

The analyzes of this definition shows that a difference should be made between "habitual residence" and "residence or settlement" which require an obligatory registration. The criteria for habitual residence in Bulgaria are two:

1. circumstances of professional nature (for instance an employment contract concluded with a Bulgarian employer) and
2. circumstances of personal nature (for instance a marriage with a person resident in Bulgaria etc.)

Therefore the connection of the habitually resident with the State should be sustained, permanent and objective.

The definition is rather broad and adds another criterion: *the intention* of establishing such connections with the place (for instance he has applied for a position or has submitted a request for marriage etc.)

Meanwhile, we should underline that the European Council has delivered the Regulation 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 effective from 1 March 2005 ('the New Brussels II regulation') whose article 3 enumerates exhaustively the hypotheses when a Court in a Member State has jurisdiction in case of divorce. The regulation regards both hypotheses of *habitual residence* and *last habitual residence* but does not give definition of any of these concepts:

Article 3

"1. In matters relating to divorce, legal separation or marriage annulment, jurisdiction shall lie with the courts of the Member State

(a) in whose territory:

- *the spouses are habitually resident, or*
- *the spouses were last habitually resident, insofar as one of them still resides there, or*
- *the respondent is habitually resident, or*
- *in the event of a joint application, either of the spouses is habitually resident, or*
- *the applicant is habitually resident if he or she resided there for at least a year immediately before the application was made, or*
- *the applicant is habitually resident if he or she resided there for at least six months immediately before the application was made and is either a national of the Member State in question or, in the case of the United Kingdom and Ireland, has his or her "domicile" there;*

(b) of the nationality of both spouses or, in the case of the United Kingdom and Ireland, of the "domicile" of both spouses.

2. For the purpose of this Regulation, "domicile" shall have the same meaning as it has under the legal systems of the United Kingdom and Ireland."

Article 7

"1. Where no court of a Member State has jurisdiction pursuant to Articles 3, 4 and 5, jurisdiction shall be determined, in each Member State, by the laws of that State."

Article 14

"Where no court of a Member State has jurisdiction pursuant to Articles 8 to 13, jurisdiction shall be determined, in each Member State, by the laws of that State."

In accordance with Article 7(1) and Article 14 of the Council regulation 2201/2003 when none of the Rules of the Regulation provides jurisdiction to the courts of a Member State, the jurisdiction shall be defined by Bulgarian Private international law code, i.e. the two exhaustive hypotheses of habitual residence and Bulgarian citizenship of one of the spouses.

Bulgarian Private international law code does not contain any legal regulation about divorce proceedings in Bulgaria on the ground of the *close connection with the forum State* (2), nor on the ground of *forum necessitates* (3). They are not indicated among the hypotheses in article 3 of the Council Regulation (EC) No 2201/2003 as well. Therefore, these legal instruments cannot be used as a legal basis for a divorce proceeding in Bulgaria.

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