

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

CZECH REPUBLIC

PREPARED BY:

**VERONIKA NEDBALOVA & ONDREJ CECH
PROCHAZKA / RANDL / KUBR
JACHYMOVA 2
110 00 PRAHA 1
CZECH REPUBLIC**

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

1. Main legal Sources

The main legal sources in the Czech Republic assistant to determine the inland jurisdiction of Czech courts for proceedings with an international element are: **(i)** constitutional laws **(ii)** acts (statutes) **(iii)** multilateral international conventions, and **(iv)** bilateral international conventions. Pursuant to Art. 10 of Act No. 1/1993 Coll., the Constitution of the Czech Republic, it applies that promulgated international agreements, the ratification of which was approved by the Parliament of the Czech Republic and which are binding upon the Czech Republic, shall prevail over law. For the purpose of this questionnaire, we will use the term “international jurisdiction” to express the inland jurisdiction of Czech courts in proceedings with an international element.

For completeness, please note that the international jurisdiction of Czech courts also can be established by a prorogation agreement between participants. On the contrary, the jurisdiction of Czech courts can be excluded, inter alia, on the basis of a derogation agreement prorogating the jurisdiction of courts in other countries (for more details, please see Part C) item 11).

In the Czech Republic, case law is not considered as an official legal source, i.e. not even with respect to the stipulation of rules for determining the international jurisdiction of Czech courts in civil and commercial matters. In spite of this fact, decisions reached particularly by higher instance courts or by a constitutional court have more weight in practice; the case law substantially influences how the courts apply and interpret the laws.

In particular, the legal sources are following:

INTERNAL LEGAL SOURCES

Constitutional Laws

- Constitutional Act No. 1/1993 Coll., the Constitution of the Czech Republic;
- Resolution No. 2/1993 Coll., on Declaration of the Charter of Fundamental Rights and Freedoms as a Part of the Constitutional Order of the Czech Republic.

Acts

- Act No. 97/1963 Coll., on International Private and Procedural Law (the “**IPPA**”). In Part II. the IPPA regulates “International Procedural Law” including the rules for determining the international jurisdiction of Czech courts; however, for more precise determination of the rules of international jurisdiction of Czech courts, the IPPA refers to the basic procedural norm (the CPC – see below) governing the procedural rules for internal disputes; ;
- Act No. 99/1963 Coll., the Civil Procedure Code (the “**CPC**”), is the basic procedural norm in the Czech Republic for internal disputes; the CPC, particularly its jurisdictional provisions, shall be subsidiarily applied to the determination of international jurisdiction of Czech courts (the substance of this regulation is explained in item 2, below);

INTERNATIONAL LEGAL SOURCES

Multilateral International Conventions

The Czech Republic is a contracting party to a number of multilateral international conventions, which contain the rules for determining the international jurisdiction of Czech courts in civil and commercial matters. In particular, they are transportation agreements and the Vienna Convention on Consular Relations (see Part A) item 8) below). The Czech Republic is a party to neither the Brussels nor the Lugano conventions. Nevertheless, the Czech Republic should join the Lugano Convention after the current revisions are completed.

Bilateral International Conventions

The Czech Republic has entered into a number of bilateral conventions on international legal assistance in the area of civil law, which contain the rules of international jurisdiction of Czech courts (see Part A) item 8 below). A common aspect of all these bilateral agreements is that the relevant legal regulation of international jurisdiction is quiet brief, limited to only a few articles.

The Czech Republic is also a party to many bilateral consular agreements which, inter alia, lay down the rules for excluding diplomatic corps members of the other contracting party from Czech courts' jurisdiction.

In general, bilateral agreements primarily stipulate rules for the recognition and enforcement of decisions; only some of them stipulate rules for determining international jurisdiction in specific cases (real estate, damages, labour relationships, contractual obligations in general), as in the case of the EC Regulation No. 44/2001 (hereinafter referred to as "**Brusel I Regulation**").

As result from the hierarchy of legal sources in the Czech republic, international conventions prevail over laws, i.e. over the general legal regulation contained in the IPPA or CPC.

The rules for determination of international jurisdiction of Czech courts as involved in the IPPA, CPC or international conventions can be, however, used only if the parties did not prorogate or derogate, as the case may be, the jurisdiction of the courts.

2. Specific Rules (or Not) for Transnational Disputes

The conception of the legal regulations governing the international jurisdiction of Czech courts in civil and commercial matters is that the general rule for determination of the international jurisdiction of Czech courts is sets out in the IPPA. This general rule is as follows:

In property matters, the jurisdiction of Czech courts shall be given if their competence is given under Czech laws, which is basically determined according to the rules set out in the CPC. Further, the jurisdiction of Czech courts in property matters also may be based on a written agreement of the parties – "prorogation agreement". Contraty to the previous, as

for property disputes, the Czech legal entities may exclude the international jurisdiction of Czech courts on the basis of “derogation agreement”.

Regarding this point, the IPPA regulation can be considered as specific to proceedings dealing with disputes with an international element because it is a special provision governing only those relationships with an international element. The regulation contained in the IPPA only applies to proceedings in “property matters”, a term which is regularly interpreted quite broadly in order to cover the widest number of cases (see the definition of a property dispute in item 11 below).

Section 37 of the IPPA contains only a general rule that refers to legal regulations governing the jurisdiction for internal disputes, such as the CPC, particularly its Section 84 et seq. (see the citation of the respective provisions of the CPC in Annex No. 1). From this point of view, regulation of the international jurisdiction of Czech courts can be considered to derive from general procedural norms governing the rules of jurisdiction for internal proceedings.

Therefore, it could be said that in the Czech Republic there is no specific set of rules for determining the international jurisdiction of Czech courts in civil and commercial matters. Based on the IPPA’s reference to internal regulations, the jurisdictional rules emanate from the jurisdictional rules applicable to internal disputes.

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

So far, no specific rules governing the international jurisdiction of Czech courts in reference to Art. 4 (1) of the Brussel I Regulation have been adopted in the Czech Republic. Therefore, the general rules for determining the international jurisdiction of Czech courts arising from the IPPA together with the respective provisions of a procedural regulation applicable to internal disputes, i.e. the CPC (see the previous item), shall apply.

4. Influence of EU Law

The Brussel I Regulation has been binding upon the Czech Republic since May 2004. As yet it has influenced only a rather small number of relevant court decisions. However, this Brussel I Regulation’s influence on the interpretation and application of national jurisdictional rules for cross-border disputes has increased recently. According to court records, there has been an increase in the number of cases where the Brussel I Regulation is applied, in particular, to issues regarding the determination of jurisdiction in disputes arising from business contracts, as well as to matters of alimony payments and the enforcement of decisions.

A number of decisions reached by higher instance courts deal primarily with the Regulation’s effective date of application in a sense, as to what steps are to be taken in proceedings which were initiated before the Regulation became binding upon the Czech Republic. As an example, the Supreme Court of the Czech Republic ruled that pursuant to Art. 23 a prorogation agreement entered into between an entity from the Czech Republic and another EU citizen must be considered as a prorogation agreement with effect from the date on which the Brussel I Regulation became binding upon the Czech Republic. Therefore, such agreement is no longer subject to consideration under national regulations but under the regime of the Brussel I Regulation.

The Supreme Court of the Czech Republic has issued a number of decisions regarding the Brussel I Regulation's application on issues of exclusive jurisdiction with respect to the enforcement of decisions. The court pointed out that the application of the Brussel I Regulation prevails over the application of national regulations as of 1 May 2004, i.e. the date when the Czech Republic joined the EU.

According to information obtained from selected Czech courts, the cases of the Brussel I Regulation's application have been rather exceptional so far. An increase in such cases is monitored, in particular, by courts in cross-border regions. According to Czech courts' statement, for now, the case law of the European Court of Justice has no impact on judicial practice.

5. Impact of Other Sources of Law

The generally recognised rules of international public law prohibiting the subordination of other countries or their diplomatic representatives or other consular persons under international treaties to the jurisdiction of national courts are taken into consideration by Czech laws, namely the IPPA (the so-called exemption and immunity). However, the above-mentioned entities may be subordinated to the jurisdiction of Czech courts if they consent to such subordination at their own discretion or in other cases as expressly stated in the IPPA.

The same applies to the exemption of officials of international associations from the jurisdiction of Czech courts, if it is so stipulated in an international agreement which is binding upon the Czech Republic.

In general, the right to judicial protection, the right to consultation by an independent and impartial court as well as by a competent court is embodied in the Charter of Fundamental Rights and Freedoms, which constitutes a part of the constitutional order of the Czech Republic. Any potential breach of these principles shall result in a collision with the constitutional norm, and the affected entity shall be authorised to seek judicial protection with the Constitutional Court of the Czech Republic.

6. Other Specific Features

Czech legislation, particularly the IPPA, specifically regulates the exclusive international jurisdiction of Czech courts in matters of status, inheritance (with certain exceptions), family and others. However, relative to their subject matter, these matters do not fall under the scope of the Brussel I Regulation and are therefore not addressed in more detail herein.

As the current legislation contained in the IPPA dates from 1963, it does not contain, save for the above-stated exceptions, any other specific features relating to the determination of international jurisdiction of Czech courts. Currently, a re-codification of the IPPA is under preparation. However, it is in only the very initial stages of preparation and was not publicly available at the moment this document was prepared.

7. Reform

A new IPPA, which the government was to submit to the House of Deputies of the Czech Republic for discussion in December 2006, is currently under preparation. The text of the upcoming re-codification is not yet publicly available. Therefore, it is difficult to presume

how the rules for determining jurisdiction applicable to cross-border disputes will be resolved.

(B) Bilateral and Multilateral Conventions

8. Conventions with Third States

The multilateral international conventions, which are binding upon the Czech Republic and which govern the jurisdiction, relate primarily to international transport. As an example, these conventions include: Convention on the Contract for the International Carriage of Goods by Road (CMR), United Nations Convention on the Carriage of Goods by Sea, Convention for the Unification of Certain Rules Relating to International Carriage by Air, Convention for the Unification of Certain Rules for International Carriage by Air.

The Czech Republic is a party to neither the Brussels nor the Lugano conventions.

The Czech Republic has entered into several bilateral international conventions with third countries (i.e. non-EU states). These bilateral conventions can be divided into two categories: **(i)** conventions on legal assistance governing, *inter alia*, the recognition and enforcement of decisions, without containing the rules for determining jurisdiction in matters falling under the operation of the Regulation, and **(ii)** conventions on legal assistance containing, beyond the framework of the rules for recognition and enforcement of decisions, the rules for determining jurisdiction of contracting parties' courts, for example, in matters concerning real estate proceedings, unlawful conduct, damages or contractual relationship, i.e. in matters being within the subject-matter operation of the Brussel I Regulation. The second category of conventions is characteristic in that the relevant regulation of international jurisdiction of Czech courts is only limited to a few articles. Most of these bilateral international conventions date back to the '60s, '70s and '80s and were entered into with countries such as Bulgaria, former Yugoslavia, Cuba, Mongolia, Romania, the former USSR, Ukraine, Uzbekistan and Switzerland.

In the past, the majority of bilateral international conventions on legal assistance were concluded between the Czech Republic and EU member states (conventions with Greece, Cyprus, France, Italy, Spain, Poland, Hungary and Slovakia). These conventions have been replaced by the Brussel I Regulation pursuant to Art. 69 of the Brussel I Regulation.

Therefore, the general legal regulation contained in the IPPA shall apply to countries with which the Czech Republic has not entered into any bilateral international convention governing the international jurisdiction, or those which are not a party to any multilateral international treaty containing jurisdictional rules.

9. Practical Impact of International conventions with third states

If the defendant is a national of country with which the Czech Republic has entered into a bilateral convention, the international jurisdiction for the respective case shall be established on the basis of the respective provisions of the convention that prevails over the general legal regulation contained in the IPPA. To the extent to which these conventions do not regulate the international jurisdiction of Czech courts, the general legal regulation embedded in the IPPA shall be applied.

In connection with the issue concerning the practical applicability of bilateral international conventions on legal assistance, we have asked several courts seated in the Czech Republic for their opinion. According to information available to us, provisions of respective agreements on service of judicial documents are more likely to be used rather than provisions on recognition and enforcement of decisions coming from non-EU states. The application of provisions governing jurisdiction, as contained in the relevant bilateral conventions, represents an insignificant percentage of cases.

Therefore, it could be concluded that Czech courts apply the provisions of bilateral agreements governing the jurisdiction as well as the recognition and enforcement of decisions in matters falling within the operation of the Brussel I Regulation rather exceptionally. As for appellate courts, this agenda is more extensive due to the concentration of cases resolved during the lower levels of proceedings.

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

10. Structure

The structure of Czech legal order is based on the fact that international conventions, which are binding upon the Czech Republic, have priority over law. In order to answer the question whether or not the international jurisdiction of a Czech court has been established in the given case, it should first be checked whether any of the international conventions binding upon the Czech Republic or its provisions governing the jurisdiction of Czech courts have an impact on the respective case or whether the parties entered into the agreement on jurisdiction.

If there is no international convention or jurisdiction agreement, then the legal regulation contained in the IPPA shall be applied pursuant to Art. 4 (1) of the Brussel I Regulation in the cases where the defendant has his/her residence or seat in a non-EU state. For civil and commercial matters ("property disputes" in the terminology of the IPPA) the IPPA lays down only a general rule; it does not contain any special rules for determining the international jurisdiction in matters falling within the subject-matter operation of the Brussel I Regulation, nor does it include any protective provisions for certain types of disputes where one of the parties deserves protection.

The above-stated general rule is set out in Section 37 of the IPPA, which is a provision referring to a further procedural norm – the CPC. Only after a Czech court competent to resolve disputes with an international element is identified according to the rules provided for in the CPC, could the establishment of the international jurisdiction of Czech courts under the IPPA be established. The foregoing relationship between the IPPA and the CPC can be designated as the principle of subsidiarity of the CPC for cases where the international jurisdiction of Czech courts is established according to the IPPA.

11. General Jurisdiction

The general rule for determining the international jurisdiction of Czech courts is laid down in Section 37 of the IPPA. After the Czech Republic joined the EU it became apparent that this rule is particularly significant for determining the international jurisdiction of Czech courts in relation to defendants whose residence or seat is in a non-EU state or for matters that are not subject to the operation of the Brussel I Regulation.

According to the above-stated provision, Czech courts shall be given jurisdiction in property matters if their competence is provided for under Czech law. The regulation of the competence of Czech courts is contained in Section 84 et seq. of the CPC. In addition, Czech courts may also base their jurisdiction in property matters on a written agreement of the parties, i.e. prorogation agreement for the benefit of the jurisdiction of Czech courts for a specific type of dispute or disputes. For completeness, it is to be stated that the IPPA allows for entering into a "derogation agreement", i.e. an agreement of the parties regarding the competence of a court other than Czech courts. However, according to the express wording of law a Czech individual cannot enter into a derogation agreement. Nevertheless, in practice many specialists cast doubt on this mandatory provision of the IPPA, which was intended to protect individuals as weaker participants of a legal relationship.

We might conclude that the Czech legal order does not contain any specific jurisdiction provisions which would only apply to relationships where defendants have their residence or seat in non-EU states.

Pursuant to Art. 4 (1) of the Brussel I Regulation and in connection with Section 37 of the IPPA, any defendant whose residence or seat is not in an EU member state can be sued before Czech courts in the case of a property dispute (i) if the jurisdiction of Czech courts is given under Czech law provisions, or (ii) if the jurisdiction of Czech courts has been prorogated.

According to commentary literature and the constant case law, property disputes are proceedings regarding legal relationships with an international element, the subject-matter of which are property values. Therefore, disputes arising from the right to protection of personal rights, non-property rights, disputes under personal status matters, etc. are excluded. Property disputes include not only disputes over property fulfilment, i.e. performance appraisable in money, but also proposals to determine the existence or non-existence of the right to property fulfilment. According to the case law, property disputes include: (i) the determination whether or not a defendant is a shareholder of a business company, (ii) labour-law matters with an international element, (iii) dispute over compensation for damage caused by a traffic accident, etc.

In order to establish the international jurisdiction of Czech courts under the IPPA, it is therefore sufficient that a respective dispute is a property dispute, and that any type of **local jurisdiction** is given. Therefore the determining rule is local jurisdiction of any of the Czech court. The local jurisdiction is stipulated in the CPC; it has a similar structure as a jurisdiction governed by the Brussel I Regulation, i.e. general jurisdiction, jurisdiction given by selection (alternative) or exclusive jurisdiction. A special type of local jurisdiction is a jurisdiction established by the consolidation of matters or by a cross-petition of the defendant.

General jurisdiction is based on the following criteria: (i) the defendant's place of residence/domicile (seat, place of business), (ii) the place of the defendant's stay, (iii) the defendant's last known place of stay within the territory of the Czech Republic, (iv) the place where the defendant has his property within the territory of the Czech Republic, unless a court can be established according to the previous items, and in the case of the exercise of property rights towards such person (v) the place of an enterprise or an organisational component (branch) of the defendant (foreigner) in the Czech Republic.

In addition to courts of general jurisdiction, a plaintiff may lodge an action with a court according to its own choice (**alternative jurisdiction**) under the following criteria: (i) the

place of the defendant's permanent workplace, **(ii)** the place where an incident causing damage has occurred, **(iii)** the place of the defendant's organisational component (branch), if a dispute relates to this component, **(iv)** in matters regarding bills of exchange or any other securities in the place of payment, **(v)** the place (seat) of a stock exchange, if a dispute relates to exchange business and **(v)** the place of future seat of the European company being established if the subject matter relates to appointment of expert.

Exclusive jurisdiction is regulated for proceedings concerning (i) real estate and associated rights referred to a court, in whose district the real estate is located, (ii) inheritance, bankruptcy, status proceedings, etc., that do not fall within the operation of the Brussel I Regulation.

As stated above, the CPC recognizes a further criterion for the determination of the local jurisdiction. This criterion arises from a provision of Section 89 of the CPC, where a court being competent to hear proceedings on a certain case shall also be competent to hear proceedings on cases connected therewith and on cross-petitions of the defendant, unless prevented by the rules of exclusive jurisdiction. The criterion for connecting the matters shall be either (i) the subject matter relates to the same participants or (ii) the subject matter pending before the court has the same factual substantial with the other matter. However, there is a question which can only be answered by case law as to whether such jurisdiction, as well as the competence of Czech courts, would be applicable in practice. The opinions of individual courts differ, although there is currently no guideline in the form of case law of the Supreme Court of the Czech Republic which, despite legal independence thereof, highly influences the decision-making of the lower instance courts.

12. Specific Rules of Jurisdiction

The IPPA does not contain any specific rules of international jurisdiction in matters falling within the subject-matter operation of the Brussel I Regulation, which would specially apply to defendants domiciled in non-EU states.

a) Contract

In **contract disputes** the international jurisdiction of Czech courts shall be determined according to the general rule set forth in Section 37 of the IPPA (see Annex No. 1).

As a follow-up criterion, if the defendant does not have his residence (seat) in any EU member state, the following aspects shall be taken into particular consideration: **(i)** the place of the defendant's stay in the Czech Republic, **(ii)** the defendant's place of business in the Czech Republic, **(iii)** the place where the defendant's property is situated in the Czech Republic in the case of the exercise of property rights towards such person, **(iv)** the place of an enterprise or its organisational unit (branch) of the defendant, who is a foreigner¹, in the Czech Republic, **(v)** the place (seat) of a stock exchange, if a dispute relates to exchange business, **(vi)** the place of payment in the Czech Republic in the case of a dispute arising from bills of exchange, cheques or other securities, **(vii)** the place of the defendant's permanent workplace, or **(viii)** the place where an event constituting the right to damages has occurred.

The place of contract performance is not considered as a follow-up criterion in the Czech Republic.

Similar criteria are contained in bilateral conventions governing the jurisdiction for contractual obligations; the follow-up criteria contained in these conventions are the place of residence (domicile), stay or seat of the defendant, or the place where the disputed property is located.

b) Tort

In **tort disputes (compensation for damage)** the international jurisdiction of Czech courts shall be determined according to the general rule set out in Section 37 of the IPPA (see Annex No. 1). As a follow-up criterion, if the defendant does not have his residence or seat in any EU member state, the following aspects shall be taken into a particular consideration: (a) the place where an incident causing damage, which constitutes the right to damages, has occurred, and (b) the place where the defendant's property is situated in the Czech Republic in the case of the exercise of property rights towards such person, or (c) the place of the defendant's enterprise or its organisation unit (branch), if any of the lastly mentioned criteria is more advantageous to the plaintiff.

The jurisdictional rules for disputes arising from unlawful conduct, which are contained in bilateral conventions, are usually based on the following criteria: disputes are resolved by **(i)** courts of that country, on the territory of which an unlawful conduct has been committed, damage has occurred, etc., **(ii)** courts in whose district the perpetrator of unlawful conduct

¹ Under Art. 21 (2) of the Commercial Code, a foreign person (foreigner) is understood to be a natural person (an individual) whose residence is outside the territory of the Czech Republic, or a legal entity whose seat is outside the territory of the Czech Republic.

(wrongdoer) resides, (iii) authorities of that country, whose legal order shall be applied to the consideration of unlawful conduct. International treaties shall prevail over the application of law, i.e. the IPPA.

c) Criminal Proceedings

In **criminal proceedings**² an injured party, who suffered damage by a criminal offence, may file a claim for damages against the perpetrator in an **“adhesion proceeding”**. As for criminal proceedings, the competent courts are those courts in whose district a crime has been committed. If the scene of a crime cannot be ascertained or if a crime has been committed abroad, the jurisdiction shall be established according to the place where the accused resides, works or stays. If the jurisdiction cannot be determined according to any of the set criteria, the proceedings shall be held before a court, where a crime has come to light.

Any Czech court, which conducts criminal proceedings in respect of a perpetrator who does not reside in an EU member state, is competent to adjudicate on compensation for damage if the injured party has duly filed a claim for damages. The competent court shall decide on compensation for damage caused by a crime in its judgment. If the court does not decide on compensation for damage in the criminal proceedings, or if it decides on compensation for damage in an amount lower than the proposed amount or if it finds the defendant not guilty of the accusation, then the court shall refer the injured party to tort (civil) proceedings.

A plaintiff may commence a **tort proceeding** against a defendant who is not an EU resident and who caused damage (detriment) to the plaintiff by committing a crime. The international jurisdiction of Czech courts shall be determined according to the general rule set out in Section 37 of the IPPA (see Annex No. 1). As a follow-up criterion, the place where the incident constituting the right to damages has occurred, comes into a particular consideration (see item 12 b) above). Czech legislation does not contain any special rule for these cases. Therefore, an injured party does not have to necessarily claim damages in criminal proceedings, but he may directly file such claim with a competent civil court, if the jurisdiction of Czech courts is given in relation to the wrongdoer (the defendant).

d) Secondary Establishment

If a defendant, whose residence or seat is in a non-EU state, has an **enterprise or an organisational component** (branch) located in the Czech Republic, Czech courts shall be given international jurisdiction because their competence is granted under the general rule provided for in Section 37 of the IPPA with reference to the CPC.

The CPC contains special rule for cases where the defendant is a foreign person (foreigner), i.e. a person whose residence or seat is located outside the territory of the Czech Republic, and also outside the EU. A court, in whose district an enterprise or organizational component of such person is situated, shall be competent to hear proceedings regarding the action against a foreign person in the Czech Republic. In the case of a strict grammatical interpretation of this rule, it could be inferred that the relationship of the subject-matter of a dispute to an enterprise or organizational component of a foreign person (defendant) is not necessarily a condition for the commencement of proceedings on a dispute at the competent court.

² Section 43 (3), Sections 228 and 229 of Act No. 141/1961 Coll., on the Judicial Criminal Procedure (the Code of Criminal Procedure)

e) Trust

Czech law does not directly use the term "trust". In Czech legislation, the legal term coming the closest in meaning to the word "trust" is "foundation" or "endowment fund". The specific case of trusts in the Czech Republic may include mutual or investment funds. There is no special follow-up criterion for **trust disputes** or disputes arising from the above-stated categories of a trust in the Czech Republic. Therefore, the international jurisdiction of Czech courts shall be established according to the general rule stipulated in the IPPA.

f) Arrest and/or location of Property

The Czech law is familiar with the arrest of property in civil proceedings in the form of a "preliminary injunction". Upon a preliminary injunction, the defendant (opponent) may be, *inter alia*, ordered not to dispose of certain things or rights. The petitioner may ask for the issuance of a preliminary injunction prior to the commencement of legal proceedings, i.e. before an action is brought or during the pending proceedings.

The Czech legal order does not contain any special regulation of the international jurisdiction of Czech courts in matters regarding a petition for the issuance of a preliminary injunction, not even in relation to a defendant whose residence or seat is outside the EU. Therefore, firstly, the jurisdiction of a Czech court in relation to a defendant domiciled or residing outside the EU must be ascertained pursuant to Section 37 of the IPPA as a basic condition of the Czech courts' possibility to discuss the petition for issuance of a preliminary injunction.

13. Protective Rules of Jurisdiction

The legislation governing the international jurisdiction of Czech courts does not contain any protective provisions for certain types of disputes where one of the parties deserves protection. The general rule for determining the international jurisdiction set out in Section 37 of the IPPA shall fully apply to these disputes.

a) Consumer Contracts

In the case of consumer contracts, there are no special rules for determining the international jurisdiction of Czech courts in the Czech Republic. Therefore, the general rules governed in the IPPA and the CPC shall apply.

Czech law does not contain any special regulation of the international jurisdiction of Czech courts for disputes arising from contractual legal obligations (in general), not even for disputes under consumer contracts. The rules for the determination of the international jurisdiction of Czech courts in disputes arising from contractual obligations (however, not particularly from consumer contracts) are contained in certain bilateral conventions.

b) Individual Employment Contracts

In the case of employment contracts, in the Czech Republic there are no special rules which would differ from the general rules for determining the international jurisdiction of Czech

courts. According to the constant case law, labour-law disputes are considered as property disputes. Therefore, a Czech court is always obliged to consider its international jurisdiction under the relevant provisions of the IPPA and the CPC.

A follow-up criterion for determining the international jurisdiction of a Czech court could be, in particular, the defendant's permanent workplace in the Czech Republic as a way to establish an alternative jurisdiction. For further details, please see item 11 above.

c) Insurance Contracts

In the case of insurance policies or in general insurance matters, no special rules for determining international jurisdiction differently from the general rules shall apply.

For further details, please see item 12 a) above.

d) Distribution Contracts

In the case of distribution contracts, no special rules for determining international jurisdiction of Czech courts differently from the general rules shall apply. The same shall apply to distributorship agreements, commercial agency agreements and franchise agreements.

e) Protective Rules in Other Matters

In the Czech Republic there are no special provisions governing the determination of the international jurisdiction of Czech courts which would protect the contracting parties that deserve special protection for certain reasons.

14. Rules for the Consolidation of Claims

Czech legislation does not contain any special rules for the consolidation of related claims in the case of cross-border disputes. Therefore, the consolidation may occur only if the international jurisdiction of Czech courts in relation to the defendants is given according to the general rule set out in Section 37 of the IPPA with reference to the subsidiary application of the regulation contained in the CPC.

a) Co-Defendants

Concerning any person to be sued before a Czech court, the international jurisdiction of Czech courts must be derived in the sense of the general rule contained in Section 37 of the IPPA. As stated, in details concerning the determination of jurisdiction of Czech courts, the IPPA refers to the provisions of the CPC. Under Section 89 of the CPC, the court which is competent to hear proceedings on a certain case shall also be competent to hear proceedings on cases connected therewith and on cross petitions of the defendant except for cases for which the exclusive jurisdiction is set out (see item 11 above). As stated above, so far, there is no guideline in the form of case law of the Supreme Court of the Czech Republic that explicitly states whether the international jurisdiction of a Czech court by "involving" a co-defendant in a pending dispute can be established without any other follow-up criterion.

Considering the above, it could be stated that if the plaintiff consolidates the filed claims by "involving" another defendant as co-defendant in the pending proceedings, the jurisdiction of a Czech court could be established pursuant to Section 89 of the CPC and, therefore, in the sense of the IPPA.

b) Third Party Proceedings

This issue can be answered in a way similar to the previous question. If a person domiciled or residing outside the EU is to be sued as a "third party" in any dispute pending before a Czech court, then the jurisdiction of Czech courts in relation to such person will have to be inferred pursuant to Section 37 of the IPPA. The acceptance of this person as a further co-defendant could result in the connection ("merger") of pending cases under Section 89 of the CPC and, hence, the international jurisdiction of Czech courts would be established in relation to such defendant. The criterion for connecting the matters shall be either (i) the subject matter relates to the same participants or (ii) the subject matter pending before the court has the same factual substantial with the other matter, which is to be connected to the previous.

c) Counter-Claims

Under the Czech procedural regulations it applies that any person with a residence or seat in the Czech Republic, which is sued in the Czech Republic by a person whose residence or seat is outside the EU, may bring a counter claim in such proceedings, i.e. a cross petition of the defendant. The competence to hear such cross petition proceedings shall be exercised by a court which is competent to hear proceedings in the same case. However, the Czech court may split the cross petition for a separate hearing, unless the conditions for why the cases should be connected are stipulated.

d) Related Claims

There is no such other rule in Czech legislation governing related claims. However, the following situation could be considered as rather specific: a person domiciled or residing outside the EU enters into proceedings pending before a Czech court as the "main intervenient", i.e. at the moment when this person lays claims to a thing or right which is the subject-matter of the proceedings. Then, such person would act as the plaintiff in relation to the original participants of the proceedings. However, the original participants,

currently acting as defendants (co-defendants), could file a cross petition against the plaintiff – the person domiciled or residing outside the EU.

e) Any Problems Pertaining to lack of Harmonisation

When obtaining information on the practical application of the Brussel I Regulation by Czech courts, we were informed that no situation is known where the lack of harmonisation of the above-listed rules would result in any practical problem.

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

a) The rules listed in annex I

Section 86 of the CPC is listed among the special rules of jurisdiction of annex 1 of the Brussels I Regulation. The cited provision of the CPC has impact on cases where another court of general jurisdiction cannot be determined for the defendant (inter alia, also for a person domiciled or residing outside the Czech Republic).

The provision of Section 86 regulates situations in relation to (i) Czech nationals and (ii) persons whose domicile or seat is located outside the Czech Republic.

Ad (i) If the defendant being a citizen of the Czech Republic has no court of general jurisdiction or has no court of general jurisdiction in the Czech Republic, the local competence shall be exercised by the court in whose district he had his last known residence in the Czech Republic.

Ad (ii) Property rights against any person, whose domicile or seat is outside the EU or who has no other competent court in the Czech Republic, may be exercised before the court in whose district his assets are located in the Czech Republic. In addition, a legal action against a foreign person, whose domicile or seat is outside the Czech Republic, may be brought also before the court in whose district in the Czech Republic its enterprise or an organisational component of the enterprise (branch) is located.

However, the rules to which Annex No. 1 of the Brussel I Regulation refers, can be applied only if the CPC does not stipulate exclusive jurisdiction, or unless there is a prorogation agreement between the parties, as the case may be. It is always required to consider the application of other statutory provisions which could prevail over the application of Section 86 of the CPC.

b) Practical use of the rules listed in Annex I

The mentioned rules are the most frequently applied and the international jurisdiction of Czech courts is given in cases where a person, whose residence or seat is not in any EU member state, has his/her property in the Czech Republic and where the plaintiff exercises property rights towards such person. In practice, this provision is significant in a sense that in the case where the property is situated in the Czech Republic, the conditions for the establishment of the international jurisdiction of Czech courts and the condition for the future enforcement of such decision issued by a Czech court are set; however, this occurs only if the plaintiff exercises property rights towards the defendant.

In practice, bringing of an action against a person, whose residence or seat is not in any EU member state, with a court in whose district the person's enterprise or its organisation component (branch) is located, shall often come into consideration. As stated above and according to the strict interpretation of the CPC, the fact whether or not the subject-matter of a dispute relates to the organisation component or enterprise of a legal entity should not be decisive.

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

According to information obtained from the selected Czech courts, including the Supreme Court of the Czech Republic, the courts has not yet applied the provisions of Article 4 of the Regulation. For the present, the relevant case law of Czech courts is relatively modest and is primarily limited to the interpretation and application of Articles 5, 22 and 23 of the Brussel I Regulation.

16. Forum *necessitatis*

The Czech legal order contains a provision that allows the Supreme Court of the Czech Republic to decide which of the Czech courts shall be competent to settle the respective case. However, this provision has an impact only on the cases of the national or international jurisdiction of Czech courts when it is impossible to determine a particular court in the Czech Republic which would be competent to settle the respective case.

Consequently, we might conclude that in the Czech Republic there is no rule for establishing the international jurisdiction of Czech courts in the case where no other foreign court is competent. The international jurisdiction of Czech courts is not based on this principle in the sense of Section 37 of the IPPA.

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

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

Czech courts have exclusive international jurisdiction in matters such as (i) upbringing and maintenance of minors and in other associated matters, if the minors are Czech citizens even though they live abroad, (ii) adoption, if at least one of the adoptive parents is a Czech citizen, (iii) declaration of the death of a Czech citizen, (iv) proceedings regarding the inheritance of the deceased being a Czech citizen; however, if the probate estate is situated abroad, the hearing of a case is bound by further conditions in the IPPA, (v) probate proceedings concerning real inheritance situated in the Czech Republic.

Further cases of Czech courts' exclusive jurisdiction arise from the provision of Section 88 of the CPC in matters falling within the subject-matter operation of the Brussel I Regulation. These cases include, in particular, proceedings concerning the rights to real property in the Czech Republic, if the proceedings relate to such rights. In other cases the exclusive jurisdiction of Czech courts primarily relates to matters which do not fall within the subject-matter operation of the Brussel I Regulation, i.e. status matters.

The exclusive jurisdiction of Czech courts constitutes a bar to the recognition and enforcement of foreign decisions (Section 64 a) of the IPPA). Such decisions can neither be recognised nor enforced in the Czech Republic.

(E) Declining Jurisdiction

18. Forum Non Conveniens

In the Czech Republic, it is not possible to refuse the international jurisdiction of Czech courts or to stay the proceedings because of forum non conveniens in matters falling within the operation of the Brussel I Regulation. The specific cases includes the validly negotiated arbitration clauses applied when a Czech court declares its lack of competence with reference to a validly negotiated arbitration clause. A similar case may be (a) a derogation agreement constituting the jurisdiction of courts of another country, or (b) a plea of litispendence ("pendent elite estoppel"), which is however applied differentially in relation to non-EU courts depending on the fact whether this issue is regulated in a bilateral convention.

In certain cases, which are, however, not subject to the operation of the Brussel I Regulation, a Czech court may hear the case, unless the case has been heard by authorities of the foreigner's domestic country. Typically, this includes status matters and some inheritance matters. The respective provisions are aimed at the protection of the affected participants.

The Czech legal order excludes both the transfer of a Czech court jurisdiction and the removal of a case to another court in a different country. Therefore, the Czech courts may only declare the lack of their competence without the entitlement of "delegating" a dispute to courts in other countries.

19. Declining Jurisdiction when the Defendant is Domiciled in a Third State

a) Non-EU Jurisdiction Agreements

Parties to a dispute (the plaintiff and defendant, whose residence or seat is not in any EU member state) may agree on a choice of court clause (**derogation clause**) stipulating that a court of any third country, i.e. a non-EU state, is competent to settle their disputes. Then a Czech court shall suspend the proceedings because the basic condition for such proceedings has not been met. However, before suspending the proceedings, a Czech court is obliged to consider the validity of the derogation clause (see below).

According to Section 37 (3) of the IPPA, as for property disputes, a Czech legal entity may also agree in writing to the competence of a foreign court. Nevertheless, this possibility is not given to a Czech individual (in practice, this rule is frequently criticized and contested by experts). The condition for the validity of a derogation clause and for the possibility of a Czech court to suspend the pending proceedings is (i) the arrangement of a derogation clause by a Czech legal entity and (ii) the case must constitute a property dispute.

b) Parallel Proceedings is a non-EU court

The Czech laws do not regulate the possibility to decline the jurisdiction or to stay proceedings in the case of **parallel proceedings** held before a non-EU state court and before a Czech court, where an entity, which does not have a residence or seat in any EU member state, is sued.

A plea of litispendence in the case of parallel proceedings before Czech courts is regulated in Section 83 of the CPC, under which the commencement of proceedings shall prevent other proceedings concerning the same case from being conducted before a court. However, this provision only applies to parallel proceedings held before Czech courts and probably cannot be applied to the proceedings conducted parallelly before a Czech court and a non-EU state court. Nevertheless, it cannot be excluded that a Czech court stays its pending proceedings, with reference to the pending proceedings which were earlier commenced in the same case before any non-EU court, especially if a decision issued in such third country could be subsequently enforced in the Czech Republic.

Although the Czech laws do not regulate the issue of parallel proceedings held before a Czech court and a court of any third country, this issue is solved in certain bilateral conventions. Such provisions, for example, contain agreements on legal assistance with Ukraine or the Republic of Uzbekistan.

The Czech laws, particularly the IPPA, however, regulate the issue of a case determined upon the final and conclusive decision (*rei iudicatae*). Under Section 64 of the IPPA, a foreign decision shall neither be recognized nor enforced if, in the same case, a final and conclusive decision has been issued by Czech authorities or a final and conclusive decision of an authority of a third country has been recognized in the Czech Republic.

In the Czech Republic, the recognized final and conclusive decision of a court of a third country constitutes an impediment to a re-trial of the same case.

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

In matters falling within the operation of the Brussel I Regulation, the Czech laws do not regulate the possibility to decline jurisdiction or to suspend proceedings in the case where the subject-matter of proceedings is closely related to a non-EU state.

Nevertheless, certain bilateral conventions entered into with non-EU states govern the rules for determining jurisdiction in matters regarding real estate, claims arising from liability for damage, etc. These rules can be considered as the determination of the exclusive jurisdiction of courts of one state. Therefore, if these rules are breached, a Czech court would have to declare the lack of its competence and would need to stay the proceedings, provided that it ascertains, for example, that the real property that is the subject-matter of the proceeding is situated within the territory of the other contracting party.

Only in exceptional cases do the bilateral conventions contain provisions that conceive the jurisdiction as facultative and not exclusive in the given cases.

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

a) Non-EU Choice of court clause

Based on the consultation with Czech judges, in a situation when the defendant is domiciled in an EU State and the jurisdiction is based on the uniform rules of the Brussels I Regulation and there is a choice of court clause designating the court of a non-EU state, a Czech court would review whether the proceedings commenced before this Czech court is justified by the provisions on the exclusive jurisdiction under the Brussel I Regulation.

If not, a Czech court would accept the derogation agreement (out of court clause) of the parties for the benefit of a non-EU court, and it would stay the proceedings. However, in practice the occurrence of such case is not known and, therefore, this is only a theoretical opinion not proven by practice.

b) Non-EU Parallel proceeding

In general, the Czech legal order does not impose an obligation upon the Czech courts to decline jurisdiction or to stay proceedings in the case of parallel proceedings held before a non-EU state court. If a Czech court ascertains its international jurisdiction for the settlement of disputes based on the Brussel I Regulation, there is no obligation arising for the court from any legal regulation to suspend or discontinue proceedings with reference to parallel proceedings in any non-EU state. However, this situation is not known in practice and, therefore, it cannot be excluded that a particular court can choose another approach, i.e. to discontinue proceedings with reference to the parallel proceeding in another non-EU state. However, a final and conclusive decision of a Czech court would impede, in the same, the recognition and enforcement of a decision issued by a non-EU state court.

c) Non-EU Exclusive jurisdiction

It is to be noted again that the Czech laws do not regulate the possibility to decline jurisdiction or to suspend the proceedings in the case when the jurisdiction of a Czech court is established under the Brussel I Regulation and, simultaneously, when the exclusive jurisdiction for the hearing of a case by a non-EU court is given.

Therefore, a possible support to decline the jurisdiction or to stay the proceedings could be the provisions from certain bilateral conventions between the Czech Republic and non-EU states, which constitute the exclusive jurisdiction for specific cases (see Part 19) item b) above).

(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

According to information obtained from selected Czech courts, they are not aware of any similar case in practice, where the Czech court have exercised jurisdiction on the basis of national rules in circumstances where it was shown that the plaintiff would not get a fair hearing or an adequate protection in the courts of non-EU states.

A decision of non-EU courts could neither be recognized nor enforced in the Czech Republic if a participant in the proceedings has been deprived of the possibility to duly take part in the proceedings (e.g. proper delivery etc.).

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

a) Claims from EU Consumers against non-EU defendants

There are no special provisions which would regulate the international jurisdiction of Czech courts for consumer disputes and we are not aware of any such reported case.

b) Claims from EU Employees against non-Eu Employers

In the Czech Republic, there are no special provisions which would regulate the international jurisdiction of Czech courts for labour-law (employee - employer) disputes.

The plaintiff (EU employee) domiciled or residing in any EU state, who would file his/her claim against non-EU employer (seated outside the EU) is entitled, under Article. 4 (2) of the Regulation, to seek the Czech rules in order to determine jurisdiction. Therefore, a Czech court would have to consider its international jurisdiction for the settlement of such dispute pursuant to Section 37 of the IPPA and the respective provisions of the CPC.

If the international jurisdiction of Czech courts is not given according to the general rule, a Czech court shall suspend the proceedings despite the fact that (i) the plaintiff is an EU consumer and the defendant is a professional domiciled or residing outside the EU, or (ii) the plaintiff is an EU employee and the defendant is an employer domiciled or residing outside the EU.

Based on an inquiry addressed to certain Czech courts, we have been informed that the courts are not aware of any similar case in practice.

c) Claims from EU Plaintiffs in Community Regulated Matters

According to the Czech courts that responded to our inquiry, they are not aware of any such case in practice when EU plaintiffs would have been deprived of an adequate protection in Community regulated matters.

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

We are not aware of any such reported case.

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

We are not aware of any such reported case where the application of Czech jurisdictional rules have led in practice to jeopardize the application of mandatory Community legislation or the proper functioning of the internal market or the adequate judicial protection of EU nationals and domiciliaries.

(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)

Under the Section 38 et seq. of the IPPA the issues relating to the parental responsibility in cases that involve international elements are as follows:

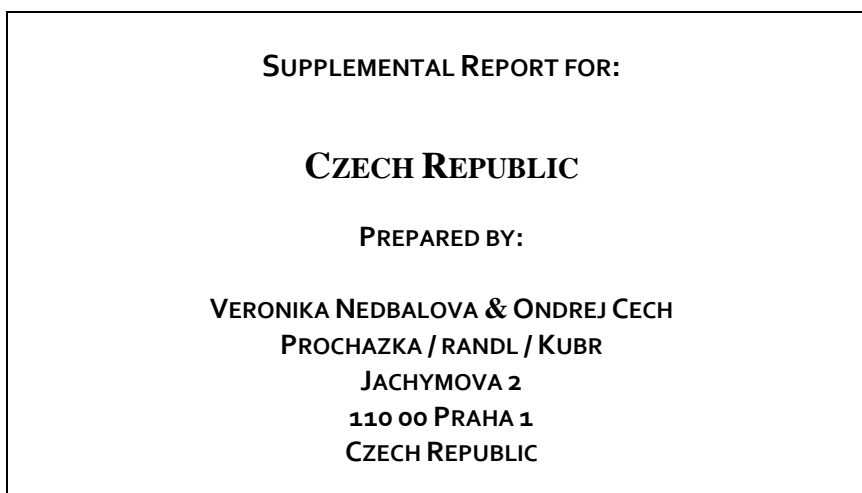
The upbringing and maintenance (alimentation) of minors or other matters concerning the minors who are Czech citizens, the jurisdiction of Czech courts shall be given even if the minors live abroad. The jurisdiction of Czech courts shall also be given for (i) proceedings on maintenance against a Czech citizen sued by a foreign minor living abroad, as well as for (ii) proceedings when a Czech citizen sues a foreign minor and asks the court to quash or change the decision of a Czech court.

Care of a Czech citizen who is a minor living abroad without any parental care may also be taken over by a Czech consulate authority to the extent of jurisdiction of courts if such jurisdiction is recognised by the state where the minor lives. Remedial measures against the consulate's decisions shall be decided upon by the Ministry of Foreign Affairs.

Matters regarding foreign minors living in the Czech Republic, the Czech court shall only take the necessary measures to protect such persons and their property and shall notify the relevant authority of their domestic state. Unless the relevant authority of the domestic state regulates the minor's matters within an adequate period, the Czech court shall do so.

When cancelling the matrimony of parents of a foreign minor living in the Czech Republic, the court shall regulate the rights and duties of the parents, vis-à-vis the minor, for the period after the divorce if the foreign minor stays in the Czech Republic and if the authorities of its domestic state take no other measures.

Adoption matters shall fall within the jurisdiction of Czech courts if the adopting person is a Czech citizen. If the adoption is intended to be made by spouses, it shall be sufficient if at least one of them is a Czech citizen who has his/her residence in the Czech Republic. Unless either of the adopting persons or one of the adopting spouses is a Czech citizen, the jurisdiction of Czech courts shall be given (i) if either the adopting persons or at least one of the adopting spouses has his/her residence in the Czech republic and the decision may be recognised in the domestic state of the adopting person or spouses or (ii) if either of the adopting persons, or at least one of the adopting spouses, has had his/her residence in the Czech Republic for a longer period of time.



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)?

Multilateral Conventions

Úmluva o pravomoci orgánů, použitelném právu, uznávání, výkonu a spolupráci ve věcech rodičovské zodpovědnosti a opatření k ochraně dětí, (sdělení č. 141/2001 Sb.m.s.)

Convention on Jurisdiction, Applicable Law, Recognition, Enforcement and Co-operation in respect of Parental Responsibility and Measures for the Protection of Children (Statement No. 141/2001 Coll.)

Evropská úmluva o uznávání a výkonu rozhodnutí o výchově dětí a obnovení výchovy dětí (sdělení č. 66/2000 Sb.m.s.)

European Convention on Recognition and Enforcement of Decisions concerning Custody of Children and on Restoration of Custody of Children (Statement No. 66/2001 Coll.)

Úmluva o občanskoprávních aspektech mezinárodních únosů dětí (vyhláška č. 34/1998 Sb.)

Convention on the Civil Aspects of International Child Abduction (Decree No. 34/1998 Coll.)

Bilateral Conventions

Albania

Smlouva mezi Československou republikou a Albánskou lidovou republikou o právní pomoci ve věcech občanských, rodinných a trestních (vyhláška č. 97/1960 Sb.)

Convention between the Czechoslovak Republic and the People's Republic of Albania on the Mutual Legal Assistance in Civil, Family and Criminal Matters (Decree No. 97/1960 Coll.)

Belorussia

Smlouva mezi Československou socialistickou republikou a Svazem sovětských socialistických republik o právní pomoci a právních vztazích ve věcech občanských, rodinných a trestních (vyhláška č. 95/1983 Sb.)

Convention between the Czechoslovak Socialist Republic and the Union of Soviet Socialist Republics on the Mutual Legal Assistance and Legal Relations in Civil, Family and Criminal Matters (Decree No. 95/1983 Coll.)

Bosnia and Hercegovina / Serbia

Smlouva mezi Československou socialistickou republikou a Socialistickou federativní republikou Jugoslávií o úpravě právních vztahů ve věcech občanských, rodinných a trestních (vyhláška č. 207/1964 Sb.)

Convention between the Czechoslovak Socialist Republic and the Socialist Federative Republic of Yugoslavia on the Regulation of Legal Relations in Civil, Family and Criminal Matters (Decree No. 207/1964 Coll.)

Croatia

Smlouva mezi Československou socialistickou republikou a Socialistickou federativní republikou Jugoslávií o úpravě právních vztahů ve věcech občanských, rodinných a trestních (vyhláška č. 207/1964 Sb.)

Convention between the Czechoslovak Socialist Republic and the Socialist Federative Republic of Yugoslavia on the Regulation of Legal Relations in Civil, Family and Criminal Matters (Decree No. 207/1964 Coll.)

Cuba

Smlouva mezi Československou socialistickou republikou a Kubánskou republikou o vzájemné právní pomoci ve věcech občanských, rodinných a trestních (vyhláška č. 80/1981 Sb.)

Convention between the Czechoslovak Socialist Republic and the Republic of Cuba on the Mutual Legal Assistance in Civil, Family and Criminal Matters (Decree No. 80/1981 Coll.)

Montenegro

Smlouva mezi Československou socialistickou republikou a Socialistickou federativní republikou Jugoslávií o úpravě právních vztahů ve věcech občanských, rodinných a trestních (vyhláška č. 207/1964 Sb.)

Convention between the Czechoslovak Socialist Republic and the Socialist Federative Republic of Yugoslavia on the Regulation of Legal Relations in Civil, Family and Criminal Matters (Decree No. 207/1964 Coll.)

Georgia

Smlouva mezi Československou socialistickou republikou a Svazem sovětských socialistických republik o právní pomoci a právních vztazích ve věcech občanských, rodinných a trestních (vyhláška č. 95/1983 Sb.)

Convention between the Czechoslovak Socialist Republic and the Union of Soviet Socialist Republics on the Mutual Legal Assistance and Legal Relations in Civil, Family and Criminal Matters (Decree No. 95/1983 Coll.)

Kyrgyzstan

Smlouva mezi Československou socialistickou republikou a Svazem sovětských socialistických republik o právní pomoci a právních vztazích ve věcech občanských, rodinných a trestních (vyhláška č. 95/1983 Sb.)

Convention between the Czechoslovak Socialist Republic and the Union of Soviet Socialist Republics on the Mutual Legal Assistance and Legal Relations in Civil, Family and Criminal Matters (Decree No. 95/1983 Coll.)

Macedonia

Smlouva mezi Československou socialistickou republikou a Socialistickou federativní republikou Jugoslávií o úpravě právních vztahů ve věcech občanských, rodinných a trestních (vyhláška č. 207/1964 Sb.)

Convention between the Czechoslovak Socialist Republic and the Socialist Federative Republic of Yugoslavia on the Regulation of Legal Relations in Civil, Family and Criminal Matters (Decree No. 207/1964 Coll.)

Moldavia

Smlouva mezi Československou socialistickou republikou a Svazem sovětských socialistických republik o právní pomoci a právních vztazích ve věcech občanských, rodinných a trestních (vyhláška č. 95/1983 Sb.)

Convention between the Czechoslovak Socialist Republic and the Union of Soviet Socialist Republics on the Mutual Legal Assistance and Legal Relations in Civil, Family and Criminal Matters (Decree No. 95/1983 Coll.)

Mongolia

Smlouva mezi Československou socialistickou republikou a Mongolskou lidovou republikou o poskytování právní pomoci a o právních vztazích v občanských, rodinných a trestních věcech (vyhláška č. 106/1978 Sb.)

Convention between the Czechoslovak Socialist Republic and the People's Republic of Mongolia on the Mutual Legal Assistance and Legal Relations in Civil, Family and Criminal Matters (Decree No. 106/1978 Coll.)

North Korea (Democratic People's Republic of Korea)

Smlouva mezi Československou socialistickou republikou a Korejskou lidově demokratickou republikou o vzájemné právní pomoci ve věcech občanských, rodinných a trestních (vyhláška č. 93/1989 Sb.)

Convention between the Czechoslovak Socialist Republic and the Democratic People's Republic of Korea on the Mutual Legal Assistance in Civil, Family and Criminal Matters (Decree No. 93/1989 Coll.)

Russia

Smlouva mezi Československou socialistickou republikou a Svazem sovětských socialistických republik o právní pomoci a právních vztazích ve věcech občanských, rodinných a trestních (vyhláška č. 95/1983 Sb.)

Convention between the Czechoslovak Socialist Republic and the Union of Soviet Socialist Republics on the Mutual Legal Assistance and Legal Relations in Civil, Family and Criminal Matters (Decree No. 95/1983 Coll.)

Ukraine

Smlouva mezi Českou republikou a Ukrajinou o právní pomoci v občanských věcech (sdělení č. 123/2002 Sb. m. s.)

Convention between the Czech Republic and Ukraine on the Mutual Legal Assistance in Civil Matters (Statement No. 123/2002 Coll.)

Uzbekistan

Smlouva mezi Českou republikou a Republikou Uzbekistán o právní pomoci a právních vztazích v občanských a trestních věcech (sdělení č. 133/2003 Sb. m. s.)

Convention between the Czech Republic and the Republic of Uzbekistan on the Mutual Legal Assistance and Legal Relations in Civil and Criminal Matters (Statement No. 133/2003 Coll.)

Vietnam

Smlouva mezi Československou socialistickou republikou a Vietnamskou socialistickou republikou o právní pomoci ve věcech občanských a trestních (vyhláška č. 98/1984 Sb.)

Convention between the Czechoslovak Socialist Republic and the Socialist Republic of Vietnam on the Mutual Legal Assistance in Civil and Criminal Matters (Decree No. 98/1984 Coll.)

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.)

An absolute majority of bilateral conventions to which the Czech Republic is a party contain a provision under which any decisions reached by the respective authorities in matters of parental responsibility will be recognized and enforced within the territory of the other contracting party, provided that the authority which has issued such a decision is competent according to the provisions of the respective convention or pursuant to the legal order of the contracting party on the territory of which recognition and enforcement of the decision is sought.

If, in the given case, jurisdiction of the Czech authorities in matters of parental responsibility is exclusive according to the respective bilateral convention, and this rule is not respected, the failure to respect the rule of exclusive jurisdiction will constitute a ground for refusing recognition and enforcement of the decision.

In most bilateral conventions the criteria for exclusive jurisdiction of the Czech authorities are as follows:

- in matters of guardianship and trusteeship an exclusive jurisdiction is given to those authorities of a contracting party of which a person in whose favour the guardianship or the trusteeship is to be established; the criterion is the person's citizenship; or
- in some bilateral conventions an exclusive jurisdiction in matters of guardianship and trusteeship is given to the authorities of such contracting party on which territory the person under guardianship/trusteeship is domiciled; the criterion is the person's domicile and not his/her citizenship;

In relation to countries with which the Czech Republic has not entered into any bilateral convention, or where no multilateral international treaty exists, the rules set forth in Act No. 97/1963 Coll., on International Private and Procedural Law, shall apply. The criteria for potential refusal to recognize and enforce a decision are the following:

- the rules for exclusive jurisdiction of the Czech judicial authorities have been breached; exclusive jurisdiction is given (i) in matters regarding the upbringing of minors who are Czech nationals (and related matters), and (ii) in matters of guardianship, where the person under guardianship is a Czech national;
- a Czech authority has already issued a final and conclusive decision in the same matter, or a foreign authority's decision has been recognized in the same matter;
- upon actions taken by a foreign authority, the participant has been deprived of the possibility to take part in proceedings;
- the recognition of a judgment is contrary to Czech public order;
- reciprocity is not guaranteed.

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