

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

**POLAND**

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

### **1. Main legal Sources**

The main legal source for the rules of jurisdiction in Poland in civil and commercial matters is the codex of statutory law known as the Civil Procedure Code (*kodeks postępowania cywilnego*), hereafter the "CPC".

### **2. Specific Rules (or Not) for Transnational Disputes**

The current rules in Poland are specific to transnational disputes, in the sense that there are two distinct bodies of rules for the establishment of domestic jurisdiction and the allocation of cases within Poland. The rules of proceedings in case of cross-border disputes are completed by the rules governing internal disputes.

#### *Territoriality rule*

This rule is not expressly stipulated in the CPC but results from the legal writings (doctrine) and the provisions of part IV of the CPC. Each state has the right to define on its own the competence of its courts and the form of proceedings.

#### *Lex fori processualis*

This rule means that if domestic jurisdiction applies in a given case, the court considering the case is obliged to apply the rules of proceedings applicable in the State of the court. According to this rule, the court shall apply the uniform rules of proceedings to all participants regardless of their nationality. Only when verifying the meaning and effectiveness in Poland of foreign court decisions can the court that is applying the law take into account the foreign rules of procedure.

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

You will not find in the CPC a specific set of national rules designed to govern the jurisdiction of courts pursuant to article 4(1) of the Brussels I regulation, in other words the traditional rules of jurisdiction for cross-border cases apply.

### **4. Influence of EU Law**

The application and interpretation of national jurisdictional rules are not influenced by the Brussels I Regulation and/or the case law of the European Court of Justice. The provisions in the CPC were adopted in 1964 and no changes were made in respect of the residual jurisdiction. Nevertheless, at least one ruling of the Supreme Court was influenced by European law, i.e. the Supreme Court ruling of 18 February 1993, n° I CRN 6/93 concerning security claims under Polish law. In that ruling, the Supreme Court decided that a lack of domestic jurisdiction does not hinder consideration of a demand for securing a claim and issuance of an interim injunction by the Polish court. This decision was influenced by similar regulations in the Lugano convention and the Brussels convention of 1968.

## 5. Impact of Other Sources of Law

There is a principle in Poland's Constitution envisaging that international treaties which have been transformed into Polish law by an appropriate act take precedence over Polish laws, in the event that those Polish laws do not conform to such international treaties (article 91 of the Polish Constitution). Article 1096 of the CPC excludes the application of the Code's provisions concerning residual jurisdiction in the event that an international treaty to which Poland is party provides otherwise.

## 6. Other Specific Features

There are no other specific features in Poland with respect to the jurisdiction of Polish courts in cross-border disputes.

## 7. Reform

To the best of our knowledge, there is one proposed project of changes currently planned in Poland for the rules of jurisdiction applicable in cross-border cases. The draft (project) of proposed changes, dated January 2006, has undergone interdepartmental consultation and has been submitted for examination by a Committee of the Council of Ministers. Only after approval by the Committee of the Council of Ministers and by the Council, will the project be considered by Parliament.

### **(B) Bilateral and Multilateral Conventions**

The rules of part IV of the CPC - Rules Governing International Civil Proceedings do not apply if an international convention to which Poland is a party provides otherwise. International conventions prevail over CPC rules. Rules included in the international conventions are *lex specialis* (specific rules) to the CPC, regarded as *lex generalis* (general rules), and these exclude the CPC rules to the extent to which they apply.

## 8. Conventions with Third States

The bilateral and multilateral conventions between Poland and third countries that include jurisdictional rules in matters regulated by the Brussels I regulation are as follows:

### *Bilateral conventions*

- Mongolia–Poland. Agreement of 19 October 1998 on judicial assistance and legal relations in civil matters, family matters, employees' matters and criminal matters, signed in Warsaw.
- Romania–Poland. Agreement of 15 May 1999 on judicial assistance and legal relations in civil matters, signed in Bucharest.
- Russia–Poland. Agreement of 16 September 1996 on judicial assistance and legal relations in civil and criminal matters, signed in Warsaw.
- Estonia–Poland. Agreement of 27 November 1998 on judicial assistance and legal relations in civil matters, employees' matters and criminal matters, signed in Tallinn.
- Cyprus–Poland. Agreement of 14 November 1996 on judicial cooperation in civil and criminal matters, signed in Nicosia.
- Belarus–Poland. Agreement of 26 October 1994 on judicial assistance and legal relations in civil matters, family matters, employees' matters and criminal matters, signed in Minsk.
- Latvia–Poland. Agreement of 23 February 1994 on judicial assistance and legal relations in civil matters, family matters, employees' matters and criminal matters, signed in Riga.

- Ukraine–Poland. Agreement of 24 May 1993 on judicial assistance and legal relations in civil and criminal matters, signed in Kiev.
- Lithuania–Poland. Agreement of 26 January 1993 on judicial assistance and legal relations in civil matters, family matters, employees’ matters and criminal matters, signed in Warsaw.
- Egypt–Poland. Agreement of 17 May 1992 on judicial assistance in civil and commercial matters, signed in Cairo.
- Germany–Poland. Treaty of 14 December 1992 on further facilitation of legal relations on the basis of the Hague Convention dated 1 March 1954 concerning civil proceedings, signed in Warsaw.
- Italy–Poland. Agreement of 28 April 1989 on judicial assistance and on recognition and enforcement of judgments in civil matters, signed in Warsaw.
- Turkey–Poland. Agreement of 12 April 1988 on judicial assistance in civil and commercial matters, signed in Warsaw.
- Belgium–Poland. Agreement of 17 December 1986 on legal information, signed in Brussels.
- Iraq–Poland. Agreement of 29 October 1988 on judicial assistance in civil and criminal matters, signed in Baghdad.
- Czechoslovakia–Poland. Agreement of 21 December 1987 on judicial assistance and legal relations in civil matters, signed in Warsaw.
- China–Poland. Agreement of 5 June 1987 on judicial assistance in civil and criminal matters, signed in Warsaw.
- North Korea–Poland. Agreement of 28 September 1986 on judicial assistance in civil matters, family matters and criminal matters, signed in Pyongyang.
- Libya–Poland. Agreement of 2nd December 1985 on judicial assistance in civil matters, commercial matters, family matters and criminal matters, signed in Tripoli.
- Tunisia–Poland. Agreement of 22 March 1985 on judicial assistance in civil and criminal matters, signed in Warsaw.
- Syria–Poland. Agreement of 16 February 1985 on judicial assistance in civil and criminal matters, signed in Damascus.
- Cuba–Poland. Agreement of 18 November 1982 on judicial assistance in civil matters, family matters and criminal matters, signed in Havana.
- Morocco–Poland. Agreement of 21 May 1979 on judicial assistance in civil and criminal matters, signed in Warsaw.
- Algeria–Poland. Agreement of 9 November 1976 on judicial assistance in civil and criminal matters, signed in Algiers.
- Greece–Poland. Agreement of 24 October 1979 on judicial assistance in civil and criminal matters, signed in Athens.
- Finland–Poland. Agreement of 27 May 1980 on judicial protection and judicial assistance in civil matters, family matters and criminal matters, signed in Helsinki.
- Austria–Poland. Agreement of 11 December 1963 on mutual relations in civil matters and on documents, signed in Vienna.
- Mongolia–Poland. Agreement of 14 September 1971 on judicial assistance and legal relations in civil matters, family matters and criminal matters, signed in Warsaw;
- France–Poland. Treaty of 5 April 1967 on facilitating the use of the Hague Convention on civil proceedings of 1 March 1954, signed in Warsaw.
- Bulgaria–Poland. Agreement of 4 December 1961 on judicial assistance and legal relations in civil matters, family matters and criminal matters, signed in Warsaw.
- Romania–Poland. Agreement of 25 January 1962 on judicial assistance and legal relations in civil matters, family matters and criminal matters, signed in Bucharest.
- Hungary–Poland. Agreement of 6 March 1959 on judicial assistance and legal relations in civil matters, family matters and criminal matters, signed in Budapest.
- Great Britain and Northern Ireland – Poland. Extension to Scotland of the convention between the President of the Polish Republic and His Royal Highness regarding the United Kingdom of Great Britain and Northern Ireland on proceedings in civil and commercial matters, signed in Warsaw on 26 August 1931.
- Great Britain and Northern Ireland – Poland. Convention of 26 August 1931 on proceedings in civil and commercial matters, signed in Warsaw.
- Holland–Poland. Treaty of 12 April 1930 on judicial proceedings, arbitration and conciliation, signed in Hague.

- Norway–Poland. Treaty of 9 December 1929 on conciliation, arbitration and judicial proceedings, signed in Oslo.
- Spain–Poland. Treaty of 3 December 1928 on conciliation, judicial proceedings and arbitration signed in Madrid.
- Yugoslavia–Poland. Agreement of 6 February 1960 on legal relations in civil and criminal matters, signed in Warsaw.

#### *Multilateral conventions*

- Convention of 15 November 1965 on the service abroad of judicial and extrajudicial documents in civil or commercial matters, signed in The Hague.
- Convention of 18 March 1970 on the taking of evidence abroad in civil or commercial matters, signed in The Hague.
- Convention of 16 September 1988 on jurisdiction and the enforcement of judgments in civil and commercial matters, signed in Lugano (at the moment only in relationship with EEA countries and Denmark).
- Convention of 2 October 1973 on the recognition and enforcement of decisions relating to maintenance obligations, signed in Hague.
- European Convention of 27 January 1977 on transferring applications for legal assistance, signed in Strasbourg.
- European Convention of 20 May 1980 on recognition and enforcement of decisions concerning custody of children and on restoration of custody of children, signed in Luxembourg.
- Convention of 25 October 1980 on international access to justice, signed in The Hague.
- International convention of 10 May 1952 for the unification of certain rules relating to civil jurisdiction in matters of collision, signed in Brussels.
- European Convention of 7 June 1968 on information on foreign law, signed in London.
- Convention of 1 March 1954 on civil procedure, signed in The Hague.
- Convention of 20 June 1956 on the recovery abroad of maintenance, signed in New York.
- Convention of 17 July 1905 relating to civil procedure; signed in The Hague.

### **9. Practical Impact of international conventions with third states**

Under Polish law, foreign judgments are recognized on the basis of the reciprocity rule. To secure the mutual recognition of judgments, Poland usually includes the reciprocity rule in international conventions or recognizes foreign judgments on the grounds of international practice.

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

#### **10. Structure**

The general structure of the rules of jurisdiction is as follows:

- 1) bilateral and multilateral international conventions;
- 2) provisions of particular statutes;
- 3) provisions of part IV of the CPC, i.e. Rules Governing International Civil Proceedings;
- 4) other provisions of the CPC.

International conventions prevail over CPC rules. Rules included in the international conventions are *lex specialis* (specific rules) to the CPC, regarded as *lex generalis* (general rules), and these exclude the CPC rules to the extent to which they apply.

*Structure of Part IV of CPC – Rules Governing International Civil Proceedings*

Part IV of the CPC – Rules Governing International Civil Proceedings is composed of three chapters: “Domestic Jurisdiction”, “Proceedings”, and “Judgments of Foreign Courts and Settlements concluded before Foreign Courts”.

It should be stressed that the Polish system of jurisdiction clearly separates the question of domestic jurisdiction from that of local competence, i.e. jurisdiction of the local courts of a given district (*właściwość miejscowa*). Thus, the first step to undertake is to verify whether domestic jurisdiction exists in a given case. If it does exist, one must verify the connecting factor provided for in the CPC in relation to the local jurisdiction of the Polish courts (Articles 27–46 CPC, specific provisions). In other words, the local competence is not relevant for determining the grounds for domestic jurisdiction.

There is no legal definition of domestic jurisdiction in the CPC.

According to the legal writings (“doctrine”), domestic jurisdiction exists if the two following conditions are fulfilled simultaneously:

- 1) Positive condition – there exists a relevant connection of the case with Poland justifying the existence of jurisdiction and, in consequence, the competence to hear the case;
- 2) Negative condition – there is no specific rule expressly excluding domestic jurisdiction and there is no restriction on Polish courts administering justice which has its source in international law and which would concern judicial immunity.

## **11. General Jurisdiction**

There is no distinction between general rules and specific rules of jurisdiction under Polish law. Such distinction is contemplated in the proposed changes to the rules of jurisdiction applicable in cross-border disputes. The method of regulation adopted under Polish law consists of establishing a basis for domestic jurisdiction for the different kinds of cases. Nevertheless, two main articles determining domestic jurisdiction can be distinguished.

### *Main Articles determining domestic jurisdiction*

If domestic jurisdiction in matters covered by Brussels I regulation is not clearly defined in a particular Article of the CPC, then the main rule for determining whether such jurisdiction exists is contained in Article 1103 CPC for litigious proceedings and in Article 1110 CPC for non-litigious proceedings. Both of these constitute examples of exorbitant jurisdiction in the meaning of Brussels I regulation.

Article 1103 CPC deals with connecting factors in litigious proceedings other than real estate matters. According to Article 1103 CPC, the following cases are subject to domestic jurisdiction:

- 1) if the defendant is staying, residing or has its seat (registered office) in Poland at the moment of service of the statement of claims;
- 2) if the defendant has assets or is entitled to proprietary rights in Poland;
- 3) if the case concerns a subject of dispute situated in Poland or a liability which has arisen or is to be performed in Poland.

Article 1110 CPC concerns non-litigious proceedings other than incapacitation matters, matters concerning acknowledgement of a person as deceased, care and guardianship matters, and inheritance matters. According to this Article, such other cases also belong to domestic jurisdiction so long as at least one participant in the proceedings is a Polish citizen or has its place of residence or registered office in Poland.

PROPOSED CHANGES:

According to the proposed version of Article 1103 CPC, domestic jurisdiction shall exist for litigious proceedings if the defendant has its place of residence or place of habitual stay in Poland. A short stay in Poland at the moment of service of the statement of claims will not be sufficient for establishment of domestic jurisdiction. It will be necessary to establish that the defendant has its habitual stay in Poland not at the moment of service of the statement of claims but at the moment proceedings are instituted.

According to the proposed version of Article 1103<sup>7</sup> CPC, for litigious proceedings, domestic jurisdiction also exists in matters other than child/parent relations and adoption matters, alimony matters, employment matters (if the employee appears as the plaintiff), assurance matters against the insurer, and consumer matters (if the consumer appears as the plaintiff), providing that the claim concerns:

- 1) liability which results from a legal act, and was performed, is to be performed or should have been performed in Poland;
- 2) liability which results from a legal act which arose in Poland;
- 3) activity of an establishment or branch located in Poland;
- 4) claims for proprietary rights and the defendant has assets in Poland or is entitled to proprietary rights in Poland of significant value in relation to the value of the claim;
- 5) an object of dispute that is located in Poland.

According to the proposed version of Article 1110 CPC, for non-litigious proceedings in matters other than child/parent relations and adoption matters, registration matters and real-estate matters, jurisdiction shall exist if the case concerns a Polish citizen, a foreigner residing in Poland or having its habitual stay there, or a legal person (or another legal entity having legal capacity) with its registered office in Poland; jurisdiction will also exist in other cases if for another reason the case is sufficiently connected with Polish law.

## 12. Specific Rules of Jurisdiction

Article 1103 CPC deals with connecting factors in litigious proceedings other than matrimonial matters, child/parent relations and adoption matters and real estate matters. It constitutes one of the articles of exorbitant jurisdiction under the Brussels I regulation, but is the main Article constituting grounds for domestic jurisdiction in litigious proceedings.

According to Article 1103 CPC, the above-mentioned cases are subject to domestic jurisdiction:

- 1) if the defendant is temporarily staying, residing or has its seat in Poland at the moment of service of the statement of claims; (or)
- 2) if the defendant has assets or is entitled to proprietary rights in Poland; (or)
- 3) if the case concerns an object of dispute which is located in Poland or a liability which arose or is to be performed in Poland.

The existence of one of the above mentioned connecting factors is sufficient to establish domestic jurisdiction.

For instance, in accordance with Polish legal writings, the wording "a liability which arose or is to be performed in Poland" of Article 1103 point 3 CPC refers to such situation as: place of conclusion of a contract (*locus contractus*), place of performance of an obligation (*locus solutionis*), place where a tort was committed. The place where the liability arose and the place where the obligation should be performed is determined in accordance of internal rules included in the Polish Civil Code or may

be determined in the agreement. This point does not refer to persons but to the criteria concerning the object of the dispute or liability arising from a legal relationship.

### *Connecting factors*

The catalogue (set) of connecting factors is open and may be enlarged, for example by connecting factors which have their source in international conventions. There is no gradation between connecting factors based on internal or international law.

The most important connecting factor for domestic jurisdiction in Polish law is the temporary stay or domicile in Poland of the parties, or one of the parties, or their nationality.

Domicile is the most important connecting factor in the case of international conventions.

### *National treatment*

This rule is not expressly stated in the CPC. According to it, in the scope of judicial protection, foreigners have the same rights in respect of access to courts in proceedings instituted before them. The State treats foreigners as its proper citizens. The court must apply uniform rules in proceedings to all participants regardless of their nationality. This rule is sometimes restricted by the reciprocity rule but exceptions are rare (e.g. a foreigner may be exempt from paying the costs of proceedings if in its own state there exists a reciprocity rule in relation to Polish citizens).

Under the law, there is no difference between persons domiciled in an EU or a non-EU state. In general, all foreigners are treated the same way unless an international convention states otherwise. Privileged treatment of persons domiciled in an EU state is foreseen in the proposed changes to domestic jurisdiction. For example, according to the proposed version of Article 1119 CPC, only a defendant who does not reside or does not have its habitual stay in Poland or another EU member state is obliged, on the plaintiff's demand, to pay a deposit to secure the costs of proceedings.

### ***a) Contract***

The existence of domestic jurisdiction shall be determined on the basis of Article 1103 CPC unless international convention states otherwise or on the basis of a prorogation agreement.

### ***b) Tort***

The existence of domestic jurisdiction shall be determined on the basis of Article 1103 CPC unless international convention states otherwise, or on the basis of a prorogation agreement.

### ***c) Criminal Proceedings***

According to Article 5 of the Polish Penal Code, the Code shall be applied to a perpetrator who commits a prohibited act on the territory of Poland as well as on a Polish vessel or aircraft unless the international convention states otherwise.

Under Article 6 §2 of the Polish Penal Code, a prohibited act is deemed to have been committed at a place where the perpetrator acted or failed to act, as he was obliged to, or where an effect being a feature of a prohibited act occurred or in the perpetrator's intention should have occurred.

According to the general rule, every natural person regardless of his/her nationality may be accused under Polish regulations if the conditions of Article 5 and 6 §2 of the Polish Penal Code are fulfilled.

A Polish court engaged in criminal proceedings may hear a civil claim against a defendant domiciled in a non-EU state only if the following conditions are fulfilled:

- 1) Domestic jurisdiction for a civil claim also exists (Article 70 PCPP; in general domestic jurisdiction for criminal proceedings is broader than that for civil proceedings);
- 2) An injured person has filed a civil complaint against the accused in order to litigate by the commencement of the judicial examination at the main trial;
- 3) Property claims of the injured person directly result from the offence (Article 62 PCPP).

In the event of the death of the injured person, such a civil complaint may be filed against the accused by the closest relatives within the same time limit. The closest relatives may assume the rights of the deceased. If they fail to do so, this shall not impede the course of the proceedings and when issuing its decision concluding the proceedings, the court shall leave the civil complaint unheard (Article 63 PCPP). Also, the state prosecutor may, within the same time limit, file a civil complaint on behalf of the persons mentioned above or support the complaint filed by them, if the public interest so requires (Article 64 PCPP).

If the court has refused to admit a civil complaint or has left it unheard, the civil plaintiff may litigate his claim in civil proceedings in accordance with the CPC rules.

If proceedings pending in a criminal court are suspended, the civil plaintiff may require his civil complaint to be referred to the appropriate court having jurisdiction over civil cases.

The civil complaint may also be filed in the course of the preparatory proceedings. Simultaneously with the civil complaint, a motion requesting security for the claim may be made. In the event the preparatory proceedings are discontinued or suspended, the injured person may, within a final time limit of 30 days from the date on which the order is delivered, demand that the case be referred to the appropriate court having jurisdiction over civil cases. If, within the prescribed time limit, the injured fails to do so, the security shall be annulled, and the civil complaint previously filed shall be without legal effect.

In the event that a question concerning a civil complaint is not regulated by the PCPP, the provisions of the CPC shall be applied accordingly.

#### ***d) Secondary Establishment***

The existence of domestic jurisdiction shall be determined on the basis of Article 1103 CPC unless international convention states otherwise or on the basis of a prorogation agreement.

#### ***e) Trust***

The notion of a trust is unknown in Polish law; hence there is no provision on this matter in the CPC, nor any specific provisions of law.

#### ***f) Arrest and/or location of Property***

There is no specific provision in part IV of the CPC on this matter.

In the Supreme Court ruling of 18 February 1993, n° I CRN 6/93 concerning security claims under Polish law, the Supreme Court decided that a lack of domestic jurisdiction does not hinder consideration of a demand for securing a claim and issuance of an interim injunction by a Polish court.

This decision was influenced by the similar regulations in the Lugano convention and the Brussels convention of 1968.

According to the Supreme Court ruling of 6 April 2001, n° V CO 3/01 concerning the local competence of a Polish court when the case is being heard before a foreign court, the Supreme Court decided that the Polish court competent for securing the claim in a case being considered before a foreign court is the Polish court before which the proceedings would have been instituted.

### **13. Protective Rules of Jurisdiction**

There is no specific provision concerning protective rules of jurisdiction in part IV of the CPC.

#### ***a) Consumer Contracts***

Article 385<sup>3</sup> point 23 of the Polish Civil Code defines prohibited contractual clauses, in the event of doubt, as those that specifically exclude the jurisdiction of the Polish courts, or have the case determined by a Polish or a foreign arbitration court or other authority, and also impose the hearing of the case by a court which has no territorial jurisdiction. The list of prohibited (abusive) clauses included in the Polish Civil Code is open. The Office of Competition and Consumer Protection maintains a register of prohibited (abusive) clauses which are deemed null and void if used in consumer contracts.

Clauses which exclude the jurisdiction of the common courts in favour of arbitration courts are deemed abusive in the case of contracts concluded between Polish parties. There is no prohibition of such clause in relation to the jurisdiction of foreign courts.

Lawsuits concerning recognition of clauses as prohibited may be brought before the court by:

- anyone who, on the basis of an offer from the defendant, might enter into a contract containing a clause whose recognition is demanded to be declared illegal;
- a public organization responsible for protection of consumer rights;
- local consumer ombudsman;
- the President of the Office of Competition and Consumer Protection;
- a foreign organization on the list of organizations (published in the EU Official Journal) authorized in EU member states to institute proceedings to recognize abusive clauses as prohibited, if the purpose of its activity justifies it raising such a claim.

#### **PROPOSED CHANGES:**

According to the proposed version of Article 1103<sup>6</sup> CPC, disputes resulting from consumer contracts in which the consumer appears as the plaintiff are covered by domestic jurisdiction also in cases where the consumer resides in or has its habitual stay in Poland and has undertaken actions in Poland that were essential for entering into the contract. In such cases, the defendant is deemed to reside or have its registered office in Poland if it has an establishment or branch in Poland and the consumer contract was entered into as part of the activity of such an establishment or branch.

#### ***b) Individual Employment Contracts***

Unless an international convention states otherwise, domestic jurisdiction in an employment contract-related dispute is determined either in accordance with Article 1103 CPC or on the basis of a prorogation agreement.

**PROPOSED CHANGES:**

According to the proposed version of Article 1103<sup>4</sup> CPC, employment matters in which the employee appears as plaintiff are covered by domestic jurisdiction also in cases where the work is, was or should have been carried out in Poland.

Domestic jurisdiction also exists in the case of claims brought by an employee sent for a limited period to carry out work on the territory of the Polish Republic by an employer whose seat is in an EU member state (or in a non-member state).

***c) Insurance Contracts***

There is no specific provision concerning protective rules of jurisdiction in part IV of the CPC. Hence, unless international convention states otherwise, the existence of domestic jurisdiction shall be determined on the basis of Article 1103 CPC or on the basis of a prorogation agreement.

**PROPOSED CHANGES:**

According to the proposed version of Article 1103<sup>5</sup> CPC, cases in insurance matters brought against the insurer will also be covered by domestic jurisdiction if: the plaintiff resides in Poland; or if there exists domestic jurisdiction in a case brought against the leading insurer and the defendant is co-insurer; or if the harmful event occurred in Poland and the case concerns liability insurance, insurance of immovable property or insurance of immovable property and movables if the damages resulting from one harmful event occurred in respect of these. In such cases, the insurer is deemed to reside in or have its registered office in Poland if it has an establishment or branch in Poland and the dispute results from the activity of such an establishment or branch.

***d) Distribution Contracts***

There are no specific provisions concerning protective rules in this matter.

***e) Protective Rules in Other Matters***

There are no other specific matters concerning protective rules.

**14. Rules for the Consolidation of Claims**

There are no specific provisions on this matter in part IV of the CPC.

***a) Co-Defendants***

If domestic jurisdiction can be established either on the basis of Article 1103 CPC or a prorogation agreement or according to an international convention, then a defendant domiciled in a non-EU state may be sued before the Polish courts as a co-defendant in a proceeding brought against a defendant domiciled in Poland.

In case of torts, according to the Supreme Court ruling of 28 February 1975, n° I CR 25/75, Article 441 of the Polish Civil Code provides for two rules of liability for damage caused by the prohibited acts of

several persons. Firstly, each of those persons is independently liable for redressing all of the damage. Secondly, their liability is joint and several. If one of these persons is exempted from the domestic jurisdiction of Polish courts, this does not prevent the application of the first rule to the other person who is subject to domestic jurisdiction.

### ***b) Third Party Proceedings***

Under Article 84 CPC, a party, who in the event of a decision unfavourable to it would have the right to claim against a third party, or against whom a third party could file a claim, can inform such a person of proceedings in progress and call on it to participate in them. Such a person is not a defendant, but is notified about the ongoing proceedings. The notified party may voluntarily join the case, but becomes a participant rather than a party in the proceedings, and thus the question of domestic jurisdiction in relation to it is not examined.

The notified party may announce that it is joining a party as an outsider intervener.

### ***c) Counter-Claims***

If proceedings are instituted before the Polish courts, the party domiciled in Poland who has been sued by a party domiciled in a non-EU state can bring a counter-claim before the Polish courts against the non-EU party.

A counter-claim cannot be brought if any of the parties change, for example if additional persons become necessary co-defendants (or necessary co-plaintiffs) in the counter-claim but were not co-plaintiffs (co-defendants) in the principal lawsuit. However, it is possible to bring a counter-claim against some of the plaintiffs in the principal lawsuit.

If persons benefiting from diplomatic or consular immunities institute proceedings before a Polish court, they will also be subject to its jurisdiction in relation to all counter-claims directly associated with the principal lawsuit (Article 1114 CPC).

#### **PROPOSED CHANGES:**

According to the proposed version of Article 1103<sup>10</sup> CPC, if there is domestic jurisdiction for a claim from the principal lawsuit, then that jurisdiction also covers the counter-claim. If there is material joint participation in the case, and domestic jurisdiction exists towards one of the co-participants, then the claim is covered by domestic jurisdiction towards all co-participants.

### ***d) Related Claims***

If domestic jurisdiction exists towards the defendant established in accordance with Article 1103, or a prorogation agreement or an international convention, then Articles 194–196 CPC (internal CPC provisions) may apply.

According to Article 194 CPC, if it turns out that a claim has not been instituted against a person who should have been the defendant in the case, then the court shall, on either the plaintiff's or defendant's motion, call that person to participate in the case. In such a case, the notified party may freely take part in the proceedings.

Under Article 195 CPC, if not all persons whose joint participation in a case is necessary appear as plaintiffs or defendants, the court shall call on the plaintiff to identify persons who are not participating, in such a way that their summons or notification is possible.

According to Article 196 CPC, if the lawsuit was brought not by the person who should appear as the plaintiff in a case, the court shall on the plaintiff's motion inform the person indicated by it of the proceedings in progress.

***e) Any Problems Pertaining to Lack of Harmonisation***

A controversy existed on whether the lack of domestic jurisdiction hinders consideration of a demand for securing the claim.

In the Supreme Court ruling of 18 February 1993, n° I CRN 6/93 concerning security claims under Polish law, the Supreme Court decided that a lack of domestic jurisdiction does not hinder consideration of a demand for securing the claim and issuance of an interim injunction by the Polish court.

This decision was influenced by the similar regulations in the Lugano convention and the Brussels convention of 1968.

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

### ***a) The rules listed in annex I***

There are two Articles considered as constituting exorbitant jurisdiction under Polish law: Article 1103 CPC for litigious proceedings and Article 1110 CPC for non-litigious proceedings.

According to Article 1103 CPC, domestic jurisdiction exists in the following cases:

- 1) if the defendant is staying, residing or has its seat in Poland at the moment of service of the statement of claims;
- 2) if the defendant has assets or is entitled to proprietary rights;
- 3) if the case concerns a subject of dispute situated in Poland, opened inheritance in Poland or liability which arose or is to be performed in Poland.

The second Article 1110 CPC concerns non-litigious proceedings other than incapacitation matters, matters relating to acknowledgement of a person as deceased, care and guardianship matters, inheritance matters. According to this Article, such other cases also belong to domestic jurisdiction so long as just one participant in the proceedings is a Polish citizen or has its place of residence or registered office in Poland.

PROPOSED CHANGES: see point 11 above

### ***b) Practical use of the rules listed in Annex I***

In fact, Article 1103 CPC is a basic article providing for domestic jurisdiction in litigious proceedings. It applies to contractual obligations, torts, personal rights, and real rights on movable property.

According to the Supreme Court ruling of 5 January 2001, n° I CKN 1180/00, if a defendant who is not staying in or does not have its place of residence in Poland is sued before a Polish court in respect of its liability which does not result from a legal act (tort liability), the Polish court when examining the existence of domestic jurisdiction shall take into consideration the content of the foreign law and determine how that law regulates the place where that liability arises or its place of performance.

According to the Supreme Court ruling of 27 July 1993, n° I CO 23/93, the Polish court has jurisdiction for the annulment of a decision of an arbitration court issued in Poland if such possibility is provided for in an international convention binding upon the states to which the parties belong, even though none of the connecting factors of Article 1103 CPC justifies domestic jurisdiction.

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

There are no known cases of application of Art 4(2).

## **16. Forum *necessitatis***

The Polish law does not contain specific provisions in this scope. The Supreme Court expressed its position only in relation to inheritance matters if the testator is a foreigner (these matters are not covered by Brussels I regulation).

The Supreme Court determined two conditions for the existence of necessary jurisdiction: 1) an adequate relation of the case (in a given case) to Polish territory or Polish law; 2) inability to claim

protection rights by interested parties before any foreign court for legal or actual reasons. According to the judicature, such an inability exists when the party has obtained a negative decision from a foreign court on refusal to examine the case because of the lack of domestic jurisdiction of the courts of that country, or in the event of a lack of such decision if the lack of domestic jurisdiction of that foreign country is established due to an analysis of that country's law.

**PROPOSED CHANGE:**

Article 1099<sup>1</sup> CPC envisages, if there are no grounds justifying domestic jurisdiction in a case, and if it is not possible to conduct proceedings before a foreign court or other foreign authority, or it is not possible to reasonably require that it be conducted, that the case belongs to domestic jurisdiction, providing that it shows sufficient connection with the Polish legal order. In the event of a legally binding determination by a Polish court that a ruling by a foreign court or other foreign authority is not recognized in Poland, the case decided by this ruling should belong to domestic jurisdiction providing that it shows sufficient connection with the Polish legal order.

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

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

According to Article 1098 of the CPC, Polish courts have vested in them jurisdiction provided for in the CPC, even if proceedings in the same case and between the same parties are pending before the court of a foreign state. In other words, there is no rule or practice allowing Polish courts to decline jurisdiction or to stay the proceedings in favour of the court of an EU or non-EU state; the *prior tempore* rule does not apply. However, international conventions may state otherwise.

This rule influences the rules on recognition and enforcement of foreign judgments. The recognition or enforcement of a foreign judgment depends on whether the claim had been brought before the competent Polish court before the foreign judgment became final (Article 1146 §1 point 4 CPC, Article 1150 §1 point 2 CPC). Thus, if foreign proceedings had been instituted before they were brought before the Polish court but the foreign judgment became final after proceedings were instituted in Poland, then the recognition and enforcement of such foreign judgement by the Polish court is excluded.

**PROPOSED CHANGE:**

According to the proposed version of Article 1098 CPC, the Polish court shall suspend proceedings instituted before it only on the defendant's duly justified motion. The Polish court shall not suspend the proceedings if either a foreign judgment or decision is not recognized in Poland or if it cannot be expected that the foreign proceedings shall be terminated within a reasonable time. The defendant's motion should be submitted before engaging in a dispute as to the merits of the case unless the defendant later learns that the case had already been initiated.

The proceedings shall be suspended until termination of the proceedings before the foreign court/another authority. If the foreign judgement is recognized in Poland, the Polish court discontinues the proceedings instituted before it, otherwise it shall undertake proceedings *ex officio*. On the application of a party, the Polish court can open proceedings if the proceedings before the foreign court/another body have not been terminated within a reasonable time.

According to the proposed version of Article 1098<sup>1</sup> CPC, if the determination in a case depends on the decision in another case pending before a foreign court or before another foreign authority, the

Polish court may suspend the proceedings *ex officio*, unless the judgment of the foreign court/ other authority cannot be recognized in Poland.

According to the Supreme Court ruling of 6 November 1978 n° IV CZ 127/78, in case of exclusive jurisdiction: "*The legal consequences of the facts of a given legal relationship shall be considered and judged solely under the Polish judicial system. It means that the State does not recognize in such cases the jurisdiction of other states and denies enforcement of judgments of foreign courts in such cases.*"

The exclusive jurisdiction exists as an exception to the facultative jurisdiction.

The exclusive jurisdiction also means that the parties of a given legal relationship are not allowed to choose a court to consider their case.

Domestic jurisdiction is exclusive in the scope covered by Brussels I regulation for cases concerning property rights and ownership of real estate located in Poland as well as lease or tenancy matters regarding such real estate shall be exclusively subject to domestic jurisdiction, except for cases regarding rental; as well as other cases in the extent to which the determination concerns real estate located in Poland (Article 1102 CPC).

In the legal writings, it is stated that exclusive jurisdiction exists only in cases expressly specified in the CPC. On the other hand, it is also assumed that exclusive jurisdiction may exist even if not expressly foreseen by the provisions of law if it results from the very nature of the claim. In the latter case, the legal writings enumerate cases against the Public Treasury in the scope in which according to international law domestic jurisdiction of foreign states is excluded, namely: matters relating to counter-enforcement suits in connection with enforcement conducted in Poland; company law cases concerning the winding up of companies or challenges to resolutions of company ruling bodies; registration matters; cases regarding the overturning of an arbitration court award issued in Poland.

In the Polish legal writings it is stated that Poland respects the exclusive jurisdiction of foreign courts (Article 1146 §1 and §3 CPC). Such exclusive jurisdiction is established in accordance with Polish law (or international conventions) and the foreign jurisdiction shall be considered as exclusive in the cases in which in an analogous situation the exclusive jurisdiction of Polish courts is established, i.e. on the basis of the same connecting factors. Nevertheless, if there exists at least facultative jurisdiction of the Polish courts, then the exclusive jurisdiction of the foreign court is excluded (J. Jodłowski, 'The guiding principles of Polish international civil procedure law (Zasady przewodnie polskiego międzynarodowego prawa procesowego cywilnego)', [in:] *Festschrift in honour of Kamil Stefka (Księga pamiątkowa ku czci Kamila Stefki)*, Warsaw-Wrocław 1967).

It is also said that if the provisions of law foresee the exclusive jurisdiction of Polish courts in a given scope (given connecting factors) it means that in the remaining scope (other connecting factors) the domestic jurisdiction of Polish courts is excluded (Supreme Court ruling of 6 November 1978, n° IV CZ 127/78).

#### PROPOSED CHANGES:

The proposed changes foresee restriction in the existing exclusive jurisdiction as well as foreseeing other cases of such jurisdiction. The aim of the new regulations is to limit cases of exclusive jurisdiction (by introduction of accumulation of several circumstances justifying the connection of the case with Poland, such as citizenship, residence, habitual stay) but also to protect Polish citizens against the exorbitant jurisdiction of foreign states.

According to the proposed version of Article 1103<sup>8</sup> CPC, for litigious proceedings, cases concerning property rights and ownership of real estate located in Poland as well as lease, tenancy, other use matters regarding such real estate shall be exclusively subject to domestic jurisdiction, except for cases regarding rental and other payments in connection with use and receiving an income from such real estate; other cases in the extent to which the determination concerns property rights or ownership or use of real estate located in Poland.

According to the proposed version of Article 1109<sup>2</sup> CPC, for non-litigious proceedings, cases concerning property rights and ownership of real estate located in Poland as well as other matters regarding such real estate shall be exclusively subject to domestic jurisdiction, in the extent to which the determination concerns property rights or ownership of real estate located in Poland.

It is proposed to introduce exclusive jurisdiction in corporate matters and relating to legal persons.

According to the proposed version of Article 1103<sup>9</sup> CPC, for litigious proceedings matters concerning the winding up of a legal entity or of a commercial company not having legal personality, on the reversal of or finding as invalid of resolutions of its ruling bodies, if the legal entity or company has its registered office in Poland, shall be exclusively subject to domestic jurisdiction.

According to the proposed version of Article 1109<sup>1</sup> §2 CPC, for non-litigious proceedings, matters concerning the winding up of a legal person or of a commercial company not having legal personality considered by a registration court, if the legal person or company has its registered office in Poland, shall be exclusively subject to domestic jurisdiction.

Moreover, according to the proposed version of Article 1109<sup>1</sup> §1 CPC, for non-litigious proceedings, cases of registration proceedings concerning public registers kept in Poland, shall be exclusively subject to domestic jurisdiction.

In enforcement suits, exclusive domestic jurisdiction shall apply if the enforcement is to be initiated or is being conducted in Poland; the same holds in the case of counter-enforcement suits (proposed version of Article 1110<sup>3</sup> §1 and §2 CPC).

Exclusive domestic jurisdiction applies to the enforcement of an interim injunction (Article 1110<sup>3</sup> §1 CPC).

## **(E) Declining Jurisdiction**

### **18. Forum Non Conveniens**

There is no such rule or practice. According to Article 1098 CPC, the Polish courts have vested in them jurisdiction provided for in the CPC, even if proceedings in the same case and between the same parties were pending before the court of a foreign state. In other words, there is no rule or practice allowing Polish courts to decline jurisdiction or stay the proceedings in favour of the court of EU States or non-EU States, the *prior tempore* rule does not apply. However, international conventions may state otherwise. The *forum non conveniens* rule does not exist under the Polish law.

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

#### ***(a) Non-EU Jurisdiction Agreements***

In case of dispute connected with laws of different states, the interested parties are allowed to choose between the national or foreign courts. The provisions on facultative jurisdiction apply only as a result of a legal act of a party before the Polish Court.

Two conditions must be fulfilled simultaneously:

- 1) the party shall undertake an action before the court of a given country if it chooses that court to hear the case;
- 2) the character of the case allows it to be heard before the courts of different states.

Under Polish law, it is possible to conclude an agreement which either establishes domestic jurisdiction (*prorogation of jurisdiction*; see point 11 above) or excludes it (*derogation of jurisdiction*). The admissibility and effectiveness of such an agreement is assessed under *lex fori*, i.e. Polish law. International conventions may regulate this matter differently.

According to the Supreme Court ruling of 10 March 2000, n° IV CKN 831/00, it is commonly admitted that the admissibility and the effectiveness of agreements on prorogation or derogation of domestic jurisdiction shall be examined in accordance with the laws applicable at the court before which the claim is brought (*lex fori*).

According to Article 1104 CPC, parties to a specified legal relationship can agree in writing to subject any cases concerning proprietary matters that result or may result from such relationship to the jurisdiction of Polish courts.

The agreement may concern the jurisdiction for cases that result or may result from a specified legal relationship.

Such an agreement may only concern proprietary matters examined in litigious proceedings.

There is no restriction as to the nationality of the parties (Polish citizen, foreigner, stateless person).

The parties may establish the jurisdiction of the courts of more than one country.

The establishment of the jurisdiction shall be made in the form of a declaration of both parties to the agreement.

The agreement shall be made in writing.

According to the Supreme Court ruling of 22 April 1966 (I CR 433/64), an agreement establishing jurisdiction may be included in the main agreement (e.g. sale agreement) or made as a separate agreement. If such an agreement is included in the main agreement, its validity does not depend on the validity of the main agreement.

In the Supreme Court ruling of 18 February 1993, n° I CRN 6/93 concerning security claims under Polish law, the Supreme Court judged that a lack of domestic jurisdiction does not hinder consideration of a demand for securing a claim and issuance of an interim injunction by the Polish court.

This decision was influenced by similar regulations in the Lugano convention and the Brussels convention of 1968.

The established jurisdiction may be facultative (beside the jurisdiction being in force so far) or obligatory and exclusive. In the latter case, it replaces the jurisdiction being in force so far.

According to Polish legal doctrine, the agreement establishing jurisdiction may establish the jurisdiction of the court even though, according to the code, domestic jurisdiction does not exist at all. In consequence, no connection between the case and the territory of Poland is needed.

#### PROPOSED CHANGES:

According to the proposed version of Article 110<sup>4</sup> CPC, domestic jurisdiction may be established by engaging in a dispute as to the merits of the case if the defendant does not contest domestic jurisdiction. Moreover, the provisions on prorogation agreement do not apply if the case belongs, under Polish law, to the exclusive jurisdiction of foreign courts.

According to Article 110<sup>5</sup> PCPC, in the scope of contractual obligations entities carrying on economic activity may agree in writing to exclude jurisdiction of Polish courts in favour of courts of a foreign state, if such a change is valid according to the law of such state. This does not concern matters belonging to the exclusive jurisdiction of Polish courts. The Polish court takes into consideration an agreement on jurisdiction of courts of a foreign state and contract on foreign arbitration court only on the submitted and duly justified plea of a party, before engaging in a dispute as to the merits of the case.

An agreement excluding jurisdiction may be concluded solely by and between professionals (entities conducting economic activity).

The agreement shall be concluded in writing.

The exclusion of domestic jurisdiction is effective only when the jurisdiction is not exclusive under the Polish law.

Such agreement may only concern contractual obligations.

The exclusion of domestic jurisdiction may apply only in case of litigious proceedings.

The admissibility of such an agreement is assessed under Polish law and the law of the foreign state in which the claim was brought.

The exclusion of domestic jurisdiction may be made in favour of courts of a foreign state or foreign arbitration court.

#### PROPOSED CHANGES:

The above-mentioned regulations concerning derogation of domestic jurisdiction are to be enlarged. Derogation shall be permitted for all proprietary matters but such agreements shall be excluded for exclusive domestic jurisdiction, employment matters (unless such an agreement is concluded after the dispute arose), claims resulting from consumer contracts when the consumer resides in or has its habitual stay in Poland. (It is permitted to conclude such an agreement if the consumer can bring the case before the foreign courts).

According to the proposed version of Article 110<sup>2</sup> CPC, the general rules of domestic jurisdiction also apply to security claims. Nevertheless, a derogation agreement is ineffective if it excludes domestic jurisdiction only for security claims. Domestic jurisdiction also exists in case the security claim shall be enforced in Poland or will evoke effects in Poland.

Domestic jurisdiction shall not be excluded in a case where only one of the parties can bring the case before the foreign courts.

**(b) Parallel Proceedings in a non-EU court**

According to Article 1098 CPC, Polish courts have vested in them jurisdiction provided for in the CPC, even if proceedings in the same case and between the same parties were pending before the court of a foreign state. In other words, there is no rule or practice allowing Polish courts to decline jurisdiction or stay the proceedings in favour of the court of EU States or non-EU States, the *prior tempore* rule does not apply. However, international conventions may state otherwise.

This rule influences the rules on recognition and enforcement of foreign judgments. The recognition or enforcement of a foreign judgment depends on whether the claim had been brought before the competent Polish court before the foreign judgment became final (Article 1146 §1 point 4 CPC, Article 1150 §1 point 2 CPC). Thus, if foreign proceedings had been instituted before they were brought before the Polish court but the foreign judgment became final after proceedings were instituted in Poland, then the recognition and enforcement of such foreign judgement by the Polish court is excluded.

PROPOSED CHANGE:

According to the proposed version of Article 1098 CPC, the Polish court shall suspend proceedings instituted before it only on the defendant's duly justified motion. The Polish court shall not suspend the proceedings if either a foreign judgment or decision is not recognized in Poland or if it cannot be expected that the foreign proceedings shall be terminated within a reasonable time. The defendant's motion should be submitted before engaging in a dispute as to the merits of the case unless the defendant later learns that the case had already been initiated.

The proceedings shall be suspended until termination of the proceedings before the foreign court/another authority. If the foreign judgement is recognized in Poland, the Polish court discontinues the proceedings instituted before it, otherwise it shall undertake proceedings *ex officio*. On the application of a party, the Polish court can open proceedings if the proceedings before the foreign court/another body have not been terminated within a reasonable time.

According to the proposed version of Article 1098<sup>3</sup> CPC, if the determination in a case depends on the decision in another case pending before a foreign court or before another foreign authority, the Polish court may suspend the proceedings *ex officio*, unless the judgment of the foreign court/ other authority cannot be recognized in Poland.

*Perpetuatio iurisdictionis*

According to Article 1097 CPC, the domestic jurisdiction that applies when proceedings are instituted continues to do so even though its grounds ceased to apply during the case.

There are two exceptions to this rule:

- 1) Article 1103 CPC ("exorbitant jurisdiction"), according to which the relevant moment for determining whether domestic jurisdiction exists or not, is the moment of service of the statement of claims to a defendant who is either staying, residing or has its seat in Poland at that moment;
- 2) Article 1113 CPC, according to which if a person who has been sued ceases to be subject to the Polish courts during the case, the proceedings are discontinued *ex officio*.

PROPOSED CHANGES:

According to the proposed version of Article 1097 CPC, besides the above-mentioned rule, the court cannot consider the lack of domestic jurisdiction if the basis for such jurisdiction arose during the proceedings.

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

According to Article 1102 §2 CPC, Polish courts do not try disputes related to the rights *in rem* and possession connected with an immovable property (real estate).

There is no specific rule concerning registered intellectual property under Polish law.

The Polish law recognizes the exclusive jurisdiction of foreign courts on the basis of the reciprocity principle in all the cases where in analogous situations such jurisdiction is recognized in favour of the Polish courts.

According to the Supreme Court ruling of 23 August 1966 (II CZ 101/66), if the provisions of the international convention reserve the jurisdiction only in favour of one of the parties to the convention, such jurisdiction is exclusive.

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

### a) Choice of court clause

see point 19 a) above

### b) Parallel proceeding

see point 19 b) above

### c) Exclusive jurisdiction

Similarly to the Polish legal writings (“doctrine”) concerning the application of the CPC rules towards a defendant domiciled in a non-EU state, it is said that in case the Brussels I regulation establishes exclusive jurisdiction of the courts of a third state, the EU states shall not consider the case even if another basis (not exclusive) for their jurisdiction exist, but only some conditions. The third state shall have at least non-exclusive jurisdiction in the case under its law and the judgment of the court of the third state shall be recognized in the EU state, the courts of which declined their jurisdiction on the case in order to evade the problem of negative conflict of jurisdiction. The existence of exclusive jurisdiction of the third state under its law is unnecessary (Karol Weitz, *Domestic jurisdiction in civil proceedings (Jurysdykcja krajowa w postępowaniu cywilnym)*, Warsaw 2005).

## (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 are not aware of any such reported cases.

### 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*

We are not aware of any such reported cases.

#### *(b) Claims from EU Employees against non-EU Employers*

We are not aware of any such reported and commented upon cases.

#### *(c) Claims from EU Plaintiffs in Community Regulated Matters*

We are not aware of any such reported and commented upon cases.

### 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 cases.

### **(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)**

According to Article 1101 CPC, cases concerning child/parent relations and adoption shall be subject to domestic jurisdiction, even if only one of the parties has Polish citizenship, or not having citizenship resides in Poland. If both parties reside in Poland, domestic jurisdiction is exclusive except when neither of the parties has Polish citizenship. Furthermore, cases concerning child/parent relations and adoption between foreigners living in Poland shall be subject to domestic jurisdiction. In the case of child/parent relations the connecting factor is the Polish citizenship of one of the parties or the domicile in Poland of both parties. The child's citizenship is not prevailing.

The Supreme Court decided in ruling n° III CRN 284/76 of 8 June 1977 that child/parent relations concern solely non-proprietary rights, hence domestic jurisdiction for alimony claims shall be established on the basis of Article 1103 CPC.

#### **PROPOSED CHANGES:**

According to the proposed version of Article 1103<sup>2</sup> CPC, for litigious proceedings, cases concerning child/parent relations are also subject to domestic jurisdiction in cases where: the child or adopting person or adopted person reside or have their habitual stay in Poland; or the plaintiff other than the child, resides or has its habitual stay at least for one year directly before the claim is brought before the court; or the plaintiff other than the child, is a Polish citizen and resides or has its habitual stay at least for six months directly before the claim is brought before the court; or both plaintiff and defendant are Polish citizens.

Domestic jurisdiction is exclusive only in cases where both parties have Polish citizenship and both parties have their residence and place of habitual stay in Poland.

According to the proposed version of Article 1103<sup>3</sup> CPC, alimony cases and claims cases connected with establishing parentage of a child are subject to domestic jurisdiction also when the plaintiff resides in or habitually stays in Poland. Alimony cases considered together with matrimonial cases are subject to domestic jurisdiction also when the matrimonial case is subject to domestic jurisdiction. A claims case relating to establishing parentage heard together with a case to establish parentage of a child belongs to domestic jurisdiction in the same circumstances when the case on establishing parentage belongs to domestic jurisdiction.

According to the proposed version of Article 1106<sup>3</sup> CPC, for non-litigious proceedings, cases concerning child/parent relations are subject to domestic jurisdiction also in cases where the child concerned resides or has its habitual stay in Poland, or the applicant and the child concerned are Polish citizens.

According to the proposed version of Article 1106<sup>4</sup> CPC, for non-litigious proceedings, cases concerning adoption matters are subject to domestic jurisdiction if the person to be adopted is a Polish citizen or a foreigner who resides in or has his/her habitual stay in Poland, or if the adopting person is a Polish citizen and resides in or has his/her habitual stay in Poland. In case of joint adoption by spouses, it is sufficient if one spouse is a Polish citizen and resides or has his/her habitual stay in Poland

Domestic jurisdiction is exclusive only if the adopting person (each of the adopting spouses in case of joint adoption) and the person to be adopted are Polish citizens residing in and having their habitual stay in Poland.

Moreover, according to the proposed version of Article 1103<sup>1</sup> CPC, domestic jurisdiction in matrimonial matters covers parental custody over minor children of spouses.

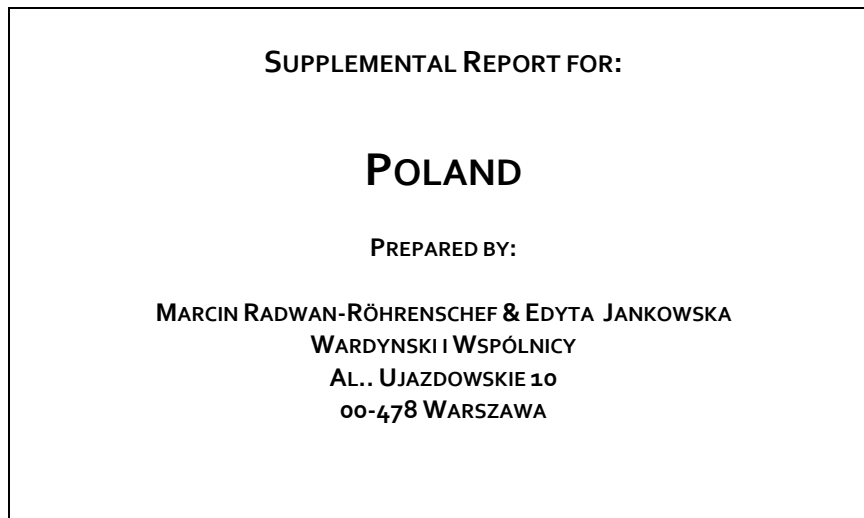
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26. NA

**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)?*

Under Polish law, matters of parental responsibility are covered by the notion of child/parent relations and adoption matters.

*Bilateral conventions*

In some cases, child/parent relations and adoption matters come within civil matters.

- Russia–Poland. Agreement of 16 September 1996 on judicial assistance and legal relations in civil and criminal matters, signed in Warsaw.
- Belarus–Poland. Agreement of 26 October 1994 on judicial assistance and legal relations in civil matters, family matters, employees’ matters and criminal matters, signed in Minsk.
- Ukraine–Poland. Agreement of 24 May 1993 on judicial assistance and legal relations in civil and criminal matters, signed in Kiev.
- North Korea–Poland. Agreement of 28 September 1986 on judicial assistance in civil matters, family matters and criminal matters, signed in Pyongyang.
- Cuba–Poland. Agreement of 18 November 1982 on judicial assistance in civil matters, family matters and criminal matters, signed in Havana.
- Mongolia–Poland. Agreement of 14 September 1971 on judicial assistance and legal relations in civil matters, family matters and criminal matters, signed in Warsaw;
- Yugoslavia–Poland. Agreement of 6 February 1960 on legal relations in civil and criminal matters, signed in Warsaw.

Questions of recognition and enforcement of judgments in bilateral conventions:

- Mongolia–Poland. Agreement of 19 October 1998 on judicial assistance and legal relations in civil matters, family matters, employees’ matters and criminal matters, signed in Warsaw
- Egypt–Poland. Agreement of 17 May 1992 on judicial assistance in civil and commercial matters, signed in Cairo.
- China–Poland. Agreement of 5 June 1987 on judicial assistance in civil and criminal matters, signed in Warsaw.
- Libya–Poland. Agreement of 2nd December 1985 on judicial assistance in civil matters, commercial matters, family matters and criminal matters, signed in Tripoli.
- Syria–Poland. Agreement of 16 February 1985 on judicial assistance in civil and criminal matters, signed in Damascus.
- Iraq–Poland. Agreement of 29 October 1988 on judicial assistance in civil and criminal matters, signed in Baghdad.

*Multilateral convention*

- Convention of 20 June 1956 on the recovery of maintenance abroad, signed in New York.

## **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.)*

Grounds of exclusive jurisdiction for cases concerning child/parent relations and adoption:

- according to Article 1101 § 2 CPC, if both parties reside in Poland, domestic jurisdiction is exclusive except when neither of the parties has Polish citizenship.

PROPOSED CHANGES:

Grounds of exclusive jurisdiction for cases concerning child/parent relations and adoption:

- according to the proposed version of Article 1103<sup>2</sup> CPC, for cases concerning child/parent relations in litigious proceedings, domestic jurisdiction is exclusive only in cases where both parties have Polish citizenship and both parties have their residence and place of habitual stay in Poland;
- according to the proposed version of Article 1106<sup>4</sup> CPC, for cases concerning adoption matters in non-litigious proceedings, domestic jurisdiction is exclusive only if the adopting person (each of the adopting spouses in case of joint adoption) and the person to be adopted are Polish citizens residing in and having their habitual stay in Poland.

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